

## REGULAR MEETING OF THE BILLINGS CITY COUNCIL

February 25, 2013

The Billings City Council met in regular session in the Council Chambers located on the second floor of the Police Facility, 220 North 27<sup>th</sup> Street, Billings, Montana. Mayor Thomas W. Hanel called the meeting to order at 6:30 p.m. and served as the meeting's presiding officer. Councilmember McCall gave the invocation.

**ROLL CALL:** Councilmembers present on roll call were: Cromley, Ronquillo, Pitman, Cimmino, McFadden, Bird, McCall, Ulledalen, Astle and Crouch.

**MINUTES:** February 11, 2013 – Councilmember Astle moved for approval, seconded by Councilmember Pitman. On a voice vote, the motion was unanimously approved.

### COURTESIES:

- Mayor Hanel noted BikeNet would be holding its annual meeting Thursday, February 28, at the Mansfield Health & Education Center, 2920 12<sup>th</sup> Avenue North. The doors open at 6:30 p.m., and the program starts at 7:00 p.m.
- Councilmember McFadden noted on March 15 the local bagpipe band would hold their pub crawl, and proceeds would be donated to the Big Sky Honor Flight. He did not know the route, but said it would be posted on their website.

**PROCLAMATIONS:** Women's History Month, March 2013

### ADMINISTRATOR REPORTS - TINA VOLEK

Ms. Volek referenced the following items:

- **Item L – Western Subdivision Final Plat.** Council received copy of Letter of Understanding to Mr. Mike Tooley, MT Department of Transportation Director, from the Planning Department in the February 22, 2013, Friday Packet. The letter will now be sent to Mike Tierney, MDT Planner, instead of Mr. Tooley. There were no changes in the text of the letter. Copy of letter was filed in the ex-parte notebook.
- **Item 2A and 2B – Public Hearing and Resolution for Annexation #13-01 and Public Hearing and First Reading Ordinance for Zone Change #907.**
  - ✓ Letter from Matt Brosovich in opposition of the annexation was e-mailed to Mayor and Council on 2/21/13, and was filed in the ex-parte notebook.
  - ✓ Letter from Diamond B Companies, dated 2/21/13, in opposition of zone change was received in the City Clerk's Office on 2/22/13 and forwarded to Mayor and Council via e-mail on 2/22/13. Copy was on Council's desk and filed in ex-parte notebook.
  - ✓ Letter from SunCap, dated 2/20/13, in favor of annexation was received in the City Clerk's Office on 2/21/13 and forwarded to Mayor and Council via

e-mail on 2/22/13. Copy was on Council's desk and filed in ex-parte notebook.

- ✓ Letter from ACE Transtech, LLC, dated 2/21/13, in opposition of zone change was received in the City Clerk's Office on 2/22/13 and forwarded to Mayor and Council via e-mail on 2/22/13. Copy was on Council's desk and filed in ex-parte notebook.
  - ✓ Letter from Advanced Care Hospital of Montana, dated 2/22/13, in opposition of zone change was received in the City Clerk's Office on 2/22/13 and forwarded to Mayor and Council via e-mail on 2/22/13. Copy was on Council's desk and filed in ex-parte notebook.
  - ✓ Letter from Bobcat Land Holdings, LLC, dated 2/21/13, in opposition to the proposed development and zone change was received in the City Clerk's Office on 2/22/13 and forwarded to Mayor and Council via e-mail on 2/22/13. Copy was on Council's desk and filed in ex-parte notebook.
  - ✓ Letter from Attorney Kenneth D. Peterson, dated 2/22/13, in opposition of the zone change was received in the City Clerk's Office on 2/22/13 and forwarded to Mayor and Council on 2/22/13. Copy was on Council's desk and filed in ex-parte notebook.
  - ✓ E-mail from Bob Stickman, dated 2/25/13, in opposition of proposed annexation and zone change sent to Mayor and Council. Copy was on Council's desk and filed in ex-parte notebook.
  - ✓ E-mail from Wayne Leischner, dated 2/25/13, in favor of proposed annexation and zone change sent to Councilmember Pitman. Copy was on Council's desk and filed in ex-parte notebook.
  - ✓ E-mail from Councilmember Bird, dated 2/25/13, sent to Mayor and Council on 2/25/13 disclosing attendance at a meeting at the invitation of the Trans Tech Group. Copy was on Council's desk and filed in ex-parte notebook.
  - ✓ E-mail from Councilmember Bird, dated 2/25/13, sent to Mayor and Council on 2/25/13 forwarding an e-mail received from John Edwards requesting a discussion on the proposed FedEx site. Copy was on Council's desk and filed in ex-parte notebook.
- Proposed date to meet with School District #2 Board was Friday, March 8, 2013, from noon to 1:30, at a place to be determined. Ms. Volek advised she would be seeking agenda items from the Council via e-mail on February 26.

**PUBLIC COMMENT on "NON-PUBLIC HEARING" Agenda Items: #1 and #8A, #8B ONLY. Speaker sign-in required.** (Comments offered here are limited to one (1) minute. Please sign in at the cart located at the back of the council chambers or at the podium. Comment on items listed as public hearing items will be heard ONLY during the designated public hearing time for each respective item. For Items not on this agenda, public comment will be taken at the end of the agenda.)

The public comment period was opened. There were no speakers, and the public comment period was closed.

1. **CONSENT AGENDA**

A. **Bid Awards:**

1. **W.O. 12-39, Newman Lane Improvements (curb and gutter, sidewalk, street reconstruction, ADA corners, and approaches)** (Opened 2/12/13) Recommend CMG Construction, Inc.; \$245,730.

B. **Airport Improvement Program (AIP) Runway 10L/28R Rehabilitation Project**

1. **Bid Award: Airport Runway 10L/28R Rehabilitation** (Opened 2/12/2013) Recommend Riverside Contracting; \$7,167,213.

2. **Amendment #5, Engineering Services for Airport Runway 10L/28R Rehabilitation;** Morrison-Maierle, Inc.; \$548,450.

C. **Amendment #6, Engineering Services for Airport Cargo Ramp Slot 4;** Morrison-Maierle, Inc.; \$339,550.

D. **Approval of Amendment to Special Improvements Agreement** for Vintage Estates Subdivision.

E. **Memorandum of Understanding** between the Police Department and Montana Board of Crime Control accepting \$3,200 in allotted funds for purchase of a hostage negotiations trailer.

F. **Grant Application Request** to submit FY2013-2014 Montana State Historic Preservation Office Certified Local Government Grant application; \$5,500.

G. **Acceptance** of 2013 Federal Aviation Administration Airport Improvement Grants.

H. **Acceptance** of State Homeland Security Program Grant for replacement of two Fire Department VHF narrow-band radio repeaters; \$36,000.

I. **Acceptance** of 2013 High Intensity Drug Traffic Area (HIDTA) Award from Executive Office of the President, Office of National Drug Control Policy, \$191,289.

J. **Resolution #13-19244** relating to \$4,100,000 Refunding Certificates of Participation, Series 2013; Authorizing execution and delivery of Ground Lease, Lease Purchase Agreement, Declaration of Trust and related documents for Billings Operations Center.

K. **Preliminary Subsequent Minor Plat** of Amended Lot 4, Block 1, Montana Sapphire Subdivision, generally located just south of the intersection of King Avenue West and Montana Sapphire Drive; Montana Sapphire, LLC, owner; Affinity at Billings,

LLC, subdivider; Sanderson Stewart, agent; conditional approval of the plat and adoption of the Findings of Fact.

**L. Final Plat** of Western Subdivision.

**M. Bills and Payroll:**

**1.** January 28, 2013

Councilmember Ronquillo separated Consent Agenda Item A1. Councilmember Cimmino separated Consent Agenda Item F.

Councilmember Pitman moved for approval of the Consent Agenda with the exception of Items A1 and F, seconded by Councilmember Ronquillo. On a voice vote, the motion was unanimously approved.

Councilmember Ronquillo referenced Item A1 and commented the Newman Lane project was one of three planned projects involving South Side Tax Increment money. He said tax increment districts were needed in all areas of the city, and they really did work. Councilmember Ronquillo moved for approval of Item A1, seconded by Councilmember McCall. On a voice vote, the motion was unanimously approved.

Councilmember Cimmino referenced Item F and said she needed to abstain due to a potential conflict of interest. Councilmember Pitman said there were a lot of "ifs" involved and asked if it was dependent on all of the pieces coming together. Planning Director, Candi Beaudry, advised it was an annual application that for the last five years required lining up all the contributors (Yellowstone County, City of Laurel, and the City of Billings). She said they went to each body individually and asked, and they had never been denied. If a request was denied, they would need to reconsider their contribution, but they had high confidence they would receive approval from all three contributors. Councilmember Pitman moved for approval of Item F, seconded by Councilmember Ronquillo. On a voice vote, the motion was approved 10 to 0.

**REGULAR AGENDA:**

**2. TRACT 1, CERTIFICATE OF SURVEY 2587 & TRACT 1, CERTIFICATE OF SURVEY 3329**

**A. PUBLIC HEARING AND RESOLUTION FOR ANNEXATION #13-01: Two parcels totaling approximately 97 acres in Tract 1, C/S 2587, and Tract 1, C/S 3329, generally located northwest of the intersection of Hesper Road and Gabel Road; Industrial Planning Associates, L.P, owner and petitioner. Staff recommends conditional approval. (Action: approval or disapproval of staff recommendation.)** Planning Division Manager, Wyeth Friday, explained the Public Hearing for the annexation request must be held, and the property must be annexed into the City before Zone Change #907 could be considered. He began his presentation showing the Limits of Annexation Map and advised the subject property was located within the Red Area of the current Limits of Annexation Map and was bordered on three

sides by the city limits. He showed a map of the subject property and the surrounding properties.

Mr. Friday advised the proposed annexation complied with the adopted Annexation Policy criteria as follows:

1. The area is located within the Limits of Annexation. Mr. Friday confirmed the subject property was located within the Red Limits of the Annexation Map currently adopted by the Council.
2. The City is able to adequately provide municipal water and sewer services. Mr. Friday indicated sewer and water services would require extension of lines by the property owner in Hesper Road at the time of development, and the City was able to provide services to the property as soon as the property moved forward for development.
3. Any proposed improvements to the property will meet City standards. Mr. Friday advised the property was vacant, and all new development would have to meet City standards.
4. As part of a Development Agreement or Subdivision Improvements Agreement the owners will sign a Waiver of Right to Protest the creation of any Special Improvement Districts. Mr. Friday said staff was recommending the Resolution annexing the property be subject to the following conditions:
  - (a) Prior to site development a Development Agreement be executed between the owner(s) and the City that stipulated specific infrastructure improvements and provided guarantees for said improvements, and a Waiver of Right to Protest the Creation of Special Improvements District be recorded; and/or
  - (b) If the property was to be subdivided after annexation, a Subdivision Improvements Agreement and Waiver of Right to Protest the Creation of Special Improvements Districts be approved and recorded that would stipulate specific infrastructure improvements and provide guarantees for such infrastructure improvements.
5. Any proposed land use will comply with the zoning. Future development also may conform to the goals of the City of Billings and Yellowstone County Growth Policy. Mr. Friday said the Growth Policy was their over-arching, visionary document; and the West Billings Plan was part of it. He said based on their analysis the annexation conformed to those policies.

Mr. Friday advised staff did not find any issues based on the Annexation Policy criteria and the ability to provide services to the area and was recommending the property be annexed into the City.

Mayor Hanel asked, for matter of record, if any members of the City Council had made a decision previous to the meeting based on any ex-parte communication; and if so, suggested they recuse themselves from any participation on the subject.

Councilmember Cromley said he would recuse himself not because of any opinion but because his office had represented FedEx on other matters.

Councilmember Ronquillo said he would not recuse himself, but he had attended a meeting and listened to one side of the story. He said he had not made up his mind because he wanted to hear the other side of the story. He said they were not convincing, and they just provided their idea. It was interesting.

Councilmember Bird said she also attended the same meeting that Councilmember Ronquillo attended, and she had not made up her mind. She said she would like to also say she had not made a decision and had not received any pressure in any way to vote one way or another. She said she was interested in listening to and hearing from both parties.

Mayor Hanel stated he was also invited to attend a meeting on the matter, but declined and had no communication and discussion regarding the outcome one way or another; so he would participate.

Councilmember Astle said he also received an invitation and declined because he did not feel it would be proper to attend.

Councilmember Ulledalen asked Mr. Friday if Public Works had any concerns with water capacity in Zone 3 or if it was even supplied by Zone 3. Mr. Friday said he did not know which zone it was supplied from, but Public Works had no concerns with delivery to the property.

Councilmember Pitman said Sub-Items A and B were totally separate even though they were under the main topic. He asked if approving A obligated them to follow through with B; and if B did not pass would they have to go back and de-annex. Mr. Friday said under the action that evening, the property would be annexed; and they would have to go back through a process to de-annex it.

The public hearing for Item 2A was opened.

- **Tim Filz, 2825 3<sup>rd</sup> Avenue North, Billings, MT**, said he was an attorney with Christensen, Fulton & Filz speaking on behalf of SunCap Property Group, the developer. He said he was also authorized to speak on behalf of Greg MacDonald and the Industrial Planning Associates (IPA) Group, but not as their attorney. Mr. Filz said at the suggestion of City Attorney Brent Brooks representatives from IPA and SunCap met with representatives of the opposition group, including Mr. Brosovich and Mr. Peterson. He said he wished he could report the discussions were resounding and successful and all matters were resolved, but they were not. He said there was at least a dialogue started that had not occurred before at that level, and FedEx/SunCap really wanted to work with the opposition group to see if there was a way to resolve; if not all, at least a portion of the concerns. He said Mr. Brosovich indicated concerns about traffic, much of which pre-dated the particular facility, but they were still optimistic they could do something to accommodate those concerns or at least minimize them to the greatest extent possible. Mr. Filz said they had also heard some of the opposition group was concerned about the aesthetics such as what the building would look like and the berms, as opposed to being just fundamentally in opposition to the facility at all costs. He said further discussions with the opposition would be fruitful, and they would be able to bring back to the Council a better project that may solve many of the concerns. Mr. Filz said they asked

Attorney Brooks if it was possible to delay, postpone, or extend the public hearings, and Attorney Brooks said the City Council had the authority to do so. Mr. Filz said he was asking the City Council to grant them a 30-day extension so they could meet with the opposition group, have further discussions, continue the process of trying to resolve their concerns, and report back to the City Council. He said the delay would apply to both the annexation and zone change issues.

City Administrator Volek advised 30 days would take them to the March 25 regular council meeting. Mayor Hanel confirmed with Attorney Brooks that the petitions filed would remain in the file and no new petitions would be added to the existing file if the items were continued. Attorney Brooks said 5:00 p.m. on Friday was the deadline for receiving written protests, but Council could take testimony that evening and continue testimony to March 25.

Councilmember McCall asked Mr. Filz when he met with the other party and if they met just the one time. Mr. Filz said there had been some meetings before, but the most recent meeting was that day at 2:00 p.m., and it started to indicate productive communication.

- **Kenneth D. Peterson, 424 48<sup>th</sup> Street West, Billings, MT**, said he represented several people in the valid protest. He said they were not overly optimistic, but they did not want to obstruct FedEx and SunCap in any way and would not object to the continuation provided they would still have an opportunity to give testimony. Mayor Hanel advised that all protests that had been filed were now final and there would be no additional protests; but continuation of testimony would be allowed.
- **Connie Wardell, 1302 24<sup>th</sup> Street West, Billings, MT**, said she wished to testify on Items 2A and 2B. She said she managed the original building when FedEx first came to Billings, and she had concerns about air quality. She said Council needed to have respect for the risks Jerry Thomas and Matt Brosovich took in being the first developers in the area and make sure what located in the area was compatible with what was already there. She said she managed the property on 1<sup>st</sup> Avenue South that FedEx Ground occupied when they first came to Billings. She had managed the property for 12 years prior and during that time she never had a complaint but within three months after FedEx occupied the property, she received a number of complaints from people who felt they were nearly run off the road by trucks entering on First Avenue South and Minnesota Avenue during certain times of the day. She went there during those times to observe and found it to be true. Ms. Wardell said she was glad for the 30-day continuance, and told Council they needed to be very certain of the kind of access provided for the trucks because they were not considerate of people driving cars. She said even more concerning was the air quality due to the running truck engines, especially for individuals with asthma and the hospital located near the proposed site. She said the proposal needed to be sent back to staff to make it compatible with the hospitals and hotels located near the proposed site.
- **Steve Arveschoug, Executive Director of Big Sky Economic Development**, said he was encouraged by the request for a continuance giving everyone 30 days to work through some of the challenges that might exist with the project. He

said 200 above-average paying jobs would provide an \$8 million to \$10 million annual payroll to our community. He said it was akin to doing another GE project similar in scale as when they first came onboard. He said it was an important consideration for Council and the community because it was a great opportunity. Mr. Arveschoug said he believed FedEx and SunCap were more than willing to work with the concerns expressed, and he was confident that discussion and remedies would come out of the 30-day continuance. He said if the proposed site was not approved, their work would really start because they did not want to lose the opportunity or opportunities similar to it. He encouraged everyone involved to maintain a partnership to bring it toward a positive resolution because it was an important project for the community.

Councilmember Bird said they had been hearing 200 jobs and 400 jobs and asked for clarification. Mr. Arveschoug said they were anticipating starting with 200 jobs with opportunities to grow.

Councilmember Ronquillo said he agreed with the need for 200 good-paying jobs and if the proposed site was not approved, they would be more than happy to have them talk to Ward I. He said they would even kick in some tax increment money. Mr. Arveschoug said there were considerable advantages to looking at one of the TIF Districts because TIF revenue could address infrastructure improvements.

Councilmember McFadden asked why a 30-day continuance was so advantageous to the project. Mr. Arveschoug said out of respect to Council on behalf of SunCap and with some encouragement for the opposition, it was important to provide the time to allow the concerns to be aired out.

- **Kevin Nelson, 4235 Bruce Avenue, Billings, MT**, said he supported the project, and some of the issues raised were insignificant. He referenced air quality and invited people to come to his neighborhood with the Highlands Project. He said it was so bad that day that people's eyes were burning from the paint. The State determined the air quality in his neighborhood did not even measure up to an impact, so he guaranteed the FedEx trucks did not even come close to an air quality issue. Mr. Nelson said he would like to see the Council stay consistent. One of the issues that was always raised was that if a person did not like the vacant property next to him, he better buy it and not come to the Council and expect to be saved because someone bought it and wanted to improve it. He said that had been a consistent position of the Council for many, many years; most recently with the Pickle Barrel on 32<sup>nd</sup>. He said what would be better than to have a project that close to the interstate, and the area could easily support the traffic. He said it was a great opportunity for jobs in Billings.

Councilmember Ronquillo told Mr. Nelson he had a meeting with RiverStone Health regarding the painting, and they had two other options they were looking at to hopefully resolve the problem and get back to living in peace.

There were no other speakers, and the public hearing was closed.

Councilmember Astle moved to delay action on Items 2A and 2B until the meeting of March 25 and continue the public hearings on Items 2A and 2B to the meeting of March 25, seconded by Councilmember Cimmino.

On a voice vote, the motion was approved 10 to 0.

**B. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #907: A zone change from Agriculture Open-Space (A-1) to Controlled Industrial on 2 parcels of land described as Tract 1, C/S 2587 and Tract 1, C/S 3329, generally located northwest of the intersection of Hesper Road and Gabel Road; Industrial Planning Associates, LP, owner; Dowl HKM, agent. On a 2-2 vote, Zoning Commission forwards no recommendation.** Continued until March 25, 2013.

**3. PUBLIC HEARING AND RESOLUTION #13-19245 ordering construction of improvements identified in W.O. 09-20, Rimrock Road from Forsythia Boulevard to Shiloh Road. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** City Administrator Volek noted there were no protests received. Staff had no presentation but was available to answer questions.

Councilmember Cimmino asked Public Works Director, Dave Mumford, if this was the final phase of the Rimrock Road improvements. Mr. Mumford advised it was.

The public hearing was opened. There were no speakers, and the public hearing was closed.

Councilmember McCall moved for approval of Item 3, seconded by Councilmember Bird. On a voice vote, the motion was unanimously approved.

**4. PUBLIC HEARING AND RESOLUTION #13-19246 assessing the cost of cutting and/or exterminating weeds. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** City Administrator Volek advised there was no presentation, but staff was available to answer questions. She said there were seven properties, and the total assessment was \$1,242.50 spread across the seven properties.

Councilmember Cimmino advised she would abstain from the item because one of the property owners was a co-worker of hers.

The public hearing was opened. There were no speakers, and the public hearing was closed.

Councilmember Astle moved for approval of Item 4, seconded by Councilmember Pitman.

Councilmember Ronquillo asked if staff was prepared again this year and if they would keep going. Planning Director, Candi Beaudry, said they were prepared and they would keep going. Councilmember Ronquillo asked if it was working out well and if they were still using Parks employees. Ms. Beaudry said they cooperated very nicely with the Parks Department, and she felt they were also getting a lot of cooperation from the residents of Billings. Councilmember Ronquillo said they had no one complaining as in the past, and staff must be doing better. Ms. Beaudry said they were doing better and improving each year, and she carefully scrutinized the appeals to make sure she could defend the city's action, as well as identify something staff may have done wrong.

Councilmember McFadden said he had sat through the appeals process three times now, and it always occurred to him the City had been a little bit on the heavy-handed side.

On a voice vote, the motion was approved 10 to 0.

**5. PUBLIC HEARING AND RESOLUTION #13-19247 assessing the cost of abatement for properties located at 23 Rhea Lane and 1250 Princeton Avenue. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

City Administrator Volek advised the assessment on 23 Rhea Lane was \$872.14, the assessment on 1250 Princeton Avenue was \$9,231.40, and they were court-ordered as the result of code enforcement action. Ms. Volek advised staff had no presentation but was available to answer questions.

Councilmember Ulledalen thanked staff for cleaning up 1250 Princeton Avenue. He said it had been a long-term problem.

The public hearing was opened. There were no speakers, and the public hearing was closed.

Councilmember Pitman moved for approval of Item 5, seconded by Councilmember Astle. On a voice vote, the motion was unanimously approved.

**6. PUBLIC HEARING AND FIRST READING ORDINANCE: A text amendment to Section 2-207 of the Billings, Montana, City Code providing that the Office of Mayor or Councilmember shall be forfeited under certain circumstances. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

City Attorney, Brent Brooks, advised it was a minor amendment to Section 2-207 of the Billings City Code entitled Forfeiture of Office. He said Council received a PowerPoint presentation and had a discussion on the amendment at the work session of January 22, 2013. He said the amendment was based on Montana Statute 2-16-501 and Montana Statute 7-4-4111. The amendment was done to conform to State Statutes, but also to clarify and add the phrase "physical ailments."

The public hearing was opened. There were no speakers, and the public hearing was closed.

Councilmember Cimmino moved for approval of Item 6, seconded by Councilmember Ronquillo. On a voice vote, the motion was unanimously approved.

**7. PUBLIC HEARING AND FIRST READING ORDINANCE establishing new boundaries for the City of Billings five election wards. Staff recommends adoption of a plan for new ward boundaries. (Action: approval or disapproval of staff recommendation.)**

Assistant City Administrator, Bruce McCandless, advised the 2000 City of Billings population was approximately 90,000, and the 2010 City of Billings population was approximately 104,000. He displayed a map of the current ward boundaries and said with that much growth it was obvious there was a need for changes in the ward boundaries. Mr. McCandless advised the ideal population for each ward would be 20,800. Currently Ward II had about 4,000 too many people, Ward III had about 3,000 too few people, and Wards I, IV, and V were relatively close to ideal. Wards II and III needed to change their boundaries in order to equalize the populations, but Wards II and III did not touch each other so any adjustment would have to affect the

other wards. Mr. McCandless advised staff presented twice to the City Council in January ways the ward boundaries could be modified to equalize the population. He displayed a map of the proposed new ward boundaries and said it met the mandatory criteria, and the population was equalized within 4%. Wards I, II, III, and V were more compact, and minority voting rights had been protected. The discretionary criteria such as using arterial streets, rivers, railroad, ditches, and the rimrocks was followed, and district boundaries allowed the ten current councilmembers to remain in their seats. He said the 2013 election was the primary reason for the current schedule; and if the Election Administrator were to use the newly re-drawn ward boundaries, City Council would need to act no later than March 25 on the second and final reading of the ordinance.

The public hearing was opened. There were no speakers, and the public hearing was closed.

Councilmember Pitman moved for approval of Item 7, seconded by Councilmember Crouch.

Councilmember Bird asked for the filing date for people choosing to run for City Council. Councilmember Cimmino confirmed it was April 29. Councilmember Bird asked if the new ward boundaries would be in effect by April 29 so people choosing to run for City Council would know what the new ward boundaries were. Attorney Brooks said the new boundaries would be in effect.

On a voice vote, the motion was approved 10 to 1. Councilmember Ronquillo voted in opposition.

## 8. ROSE PARK POOL IMPROVEMENTS

**A. RESOLUTION #13-19248 allocating \$27,650 of Council Contingency Funds toward construction of a 31-foot-high speed slide at Rose Park Pool to be repaid over the next two years with revenue generated from slide admissions. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** Parks Director, Mike Whitaker, acknowledged Parks Board Chairperson, Rick DeVore, who was in attendance. Mr. Whitaker said the Parks Department was requesting to borrow \$27,650 from Council Contingency to aid in the purchase of a speed slide for Rose Park. He showed a concept drawing of the proposed speed slide and said the total cost would be \$87,650. The past 18 years the existing slides had generated approximately \$600,000 in slide revenue that did not include entrance fees into the facility.

Mayor Hanel asked if revenues would likely increase with the addition of the speed slide. Mr. Whitaker said he believed revenues would definitely increase.

Councilmember Ronquillo complimented Mr. Whitaker on the good job of bringing the idea to the City Council. The speed slide was a good idea and would generate revenue.

Councilmember Cimmino said according to the staff report they would take \$60,000 from Park District #1 and asked why not take the whole amount. Mr. Whitaker said it was because they had identified some cost savings, and they were still planning to complete the projects outlined by Council. Councilmember Cimmino asked for clarification. Mr. Whitaker said they had identified a few projects they did not need to do,

such as the City Forester recommended against spraying for the Mountain Pine Beetle for a savings of \$25,000. They did not feel comfortable pulling any more money from the city-wide district. Councilmember Cimmino asked how it constituted a different maintenance project using those funds. Mr. Whitaker said he believed the advantage of good pricing because initially they thought they would have to replace the platform but the consultant, Interstate Engineering, said the platform did not need to be replaced. They discussed several concepts with the Parks Board, and this was the concept the Board recommended staff move forward with. They felt they had enough funds to replace the slide flumes, and they hoped the market was good enough to add the third speed slide; but the prices did not come in as good as they had hoped. Councilmember Cimmino said according to the figure quoted, \$270,000 would replace the existing water slides with the new slides based on the engineer's report. Mr. Whitaker said that was the contract with High Tech Construction. They spent \$30,000 with Interstate Engineering, who also serves as the Contract Administrator, and the \$270,000 would be used to pay High Tech Construction to replace the slide flumes. The combination of the engineering and the contract with High Tech Construction would be \$300,000.

Councilmember Astle moved for approval of Item 8A, seconded by Councilmember McFadden.

Councilmember Ulledalen said given the circumstances with the timing of the project and the money rebated back from the SID Revolving Fund, he would make a **substitute motion** to take the full cost of the speed slide from the funds received from the SID Revolving Fund. He said there was extra money in it, and it was money they had talked about using for fixing things such as this. It would leave the whole aspect of Park District #1 in place for deferred maintenance issues; and taking the full amount out of the SID Revolving Fund would leave the Council Contingency money in place. The motion was seconded by Councilmember Astle.

Councilmember Cimmino said at the last work session staff provided a list of projects to be considered for use of additional Council Contingency Funds, and asked Ms. Volek if there would be enough money if the substitute motion passed. Ms. Volek said at that point she believed so, but she did not have a chance to check on the balance. She and Mr. McCandless discussed it and thought there was slightly over \$100,000 available in the fund. Councilmember Cimmino referenced Page 80 of the Operating Budget Manual that included the 5-year CIP Program. She said according to the Council Contingency Fund Budget narrative, "Council Contingency is a budgeted expenditure item established each year to provide the City Council with money for emergencies and to take advantage of opportunities that cannot be anticipated during the budget preparation." Councilmember Cimmino said she was trying to understand how the upgrade would be considered an emergency. Ms. Volek advised it would fall under the unanticipated piece. She said there was an extraordinary amount in Council Contingency, so that was the reason it was being discussed at this time.

Councilmember Ulledalen said his substitute motion would not affect the \$60,000 Council Contingency. They would take the funds out of the rebated money from the SID Revolving Fund and leave the existing Council Contingency in place. He said part of his concern with moving forward with Priority Based Budgeting was they were looking at trying to find savings; and potentially they could be cutting the Parks budget in a couple of years. He said Councilmember Astle's original motion handed an obligation to the

future Parks Board and Parks Staff to pay back money they may have a difficult time with.

Councilmember Pitman said he was growing to like the idea because he was struggling with a lot of the issues. Loaning from a General Fund to a General Fund was like the "husband loaning to the wife" and it did not make any sense. The Council adamantly said no new projects, no new anything, and it was to deal with existing issues. He thought it would actually keep the Park District #1 that was promised to the people intact. Councilmember Pitman said they needed to be cautious, as well, because it would come with liability, responsibility, and replacement ten years down the road. He said he struggled with the slides from the beginning because they were not letting the Parks Department set aside some of the money so they could replace the slides in ten years. He said it was not in an SBR, the Capital Plan, or the Deferred Maintenance Plan, and they needed to be very cautious moving forward because there were a lot of other great items out there and he would hate to see them thrown under the bus just because a great deal happened to come along. They needed to be consistent because they had dog parks and a disc golf course they were telling people to go out and raise money for because there was no money to put into them; yet they could come up with \$100,000 for an extra slide. Council needed to be careful and consistent so they were not sending mixed messages. He said he felt at this point he could support it.

Councilmember Bird said she was very supportive of the substitute motion. She agreed with Councilmember Pitman and staying true to Park District #1 for deferred maintenance was really important. She said based on Councilmember Pitman's comments and the difference between the slides at Rose Park and the dog parks, the slides generated revenue, and the dog parks did not.

Councilmember McCall said she was in support of the substitute motion. To her it was very, very different because the slides were revenue generators and the dog parks and disc golf parks were not. It was an investment in a piece of the Parks Department that actually produced revenue.

On a voice vote, the substitute motion was unanimously approved.

**B. CHANGE ORDER #1 – CONSTRUCTION OF 31-FOOT-HIGH SPEED SLIDE AT ROSE PARK POOL; High Tech Engineering; \$87,650. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** City Administrator Volek advised there was no additional presentation, but staff was available for questions.

Councilmember Ulledalen moved for approval, seconded by Councilmember Cimmino. On a voice vote, the motion was unanimously approved.

**PUBLIC COMMENT on Non-Agenda Items -- Speaker Sign-in required. (*Restricted to ONLY items not on this printed agenda. Comments here are limited to 3 minutes. Please sign in at the cart located at the back of the council chambers or at the podium.*)**

The public comment period was opened. There were no speakers, and the public comment period was closed.

## COUNCIL INITIATIVES

- **CROUCH:** Said Billings had been rated as the third best city in America; yet he had received three complaints from people in different parts of the city on the problem of people running red lights. There needed to be educational programs through the television stations, the schools, newspapers, and the Police Department.

Councilmember Ulledalen asked for clarification on the change in state law a few years prior that made the problem worse.

Councilmember Astle said the state changed the law that if a vehicle was in the intersection when the light turned red, the driver was safe and could not be ticketed. In order to be ticketed, a vehicle had to enter the intersection after the light turned red.

Councilmember Ulledalen asked if the fines could be increased and could they figure out some type of Public Service Announcement using available Council Contingency Funds. Attorney Brooks said the fines would be in cooperation with Municipal Court and could be discussed with the Police Chief and the Judge.

- **ULLEDALEN:** MOVED to have staff research (1) increasing fine amounts for traffic violations, such as running red lights, speeding, and cell phone usage while driving, (2) using available Council Contingency Funds to fund a public service campaign, and (3) using council contingency funds to pay for patrol officer overtime. The motion was seconded by Councilmember Astle.

Councilmember Cimmino said she agreed with the initiative; however, the overtime was a misnomer because the patrol officers could ticket the violators during regular shift time. She did not understand why they needed to count on overtime to enforce the law. Running red lights was a very big problem in Billings, and people were so nonchalant about it. It was a real enforcement issue.

City Administrator Volek suggested she consult with the Police Chief and report back.

On a voice vote, the motion was approved 9 to 2. Councilmember McFadden and Councilmember Cromley voted in opposition.

- **PITMAN:** MOVED to set up an equipment replacement fund for the waterslide at Rose Park and have all revenues from the waterslides go into the fund until it reached \$300,000, seconded by Councilmember Astle.

Councilmember Ulledalen said it was a good idea but thought instead of piece-milling, he would rather they come back with a more comprehensive, long-term maintenance program that looked at all of the issues going forward and not just this one.

Councilmember Bird said she agreed with the concept and was in support of the initiative, but at the last work session when Mr. Whitaker gave the presentation on the speed slide, they talked about considering the fee structure. She would be interested in talking more about the fee structure first.

Councilmember Pitman said they had talked about other fees on everything before. He said he felt this was one they could do that was not attached to a surplus or surcharge fee, and they would actually be directing all of

the funds. He said it would not take a long time to get the fund in place and use it as an example for other ideas. He would hate to see them give it up in lieu of a bigger project they had been struggling with for years.

Councilmember Astle said the last time he remembered talking about surcharges was for Cobb Field only, and bond counsel said they could not do it. He asked if they could ticket surcharge anything else they wanted. City Administrator Volek said that was her recollection. Councilmember Astle said setting the price for a ticket or wrist band was not policy. Council set policy and did not get down to the point on how much it cost to ride a slide.

Councilmember McFadden said he did not want to create accounting nightmares in every city amenity. It would be opening a can of worms, and he did not like it.

Councilmember Cimmino said staff could propose any fee increases but as a governing body, Council still had to approve the resolution. Attorney Brooks said that was correct.

On a voice vote, the motion was approved 9 to 2. Councilmember Ulledalen and Councilmember McFadden voted in opposition.

- **CIMMINO:** MOVED to direct staff to research what would be necessary to provide water to the Heights Dog Park and report back in 30 days, seconded by Councilmember Pitman. On a voice vote, the motion was unanimously approved.
- **BIRD:** Said on 2/21/13 she e-mailed the City Administrator requesting that Department Heads provide two budget proposals for their departments for 2014. She said she was no longer requesting the information because similar information would be received from staff during budget discussions. City Administrator Volek said she had asked the Department Heads for a list of what they believed the impact would be to their departments on flat-lining the budget because there was 5% figured on an annual basis covering health insurance increases, steps, etc. It did not take into account any negotiated contracts, and all three of the city's contracts came due April 1<sup>st</sup>. There would be additional reduction beyond that. She said on March 4 they would have what the impact would be and the cost of benefits ready for discussion.
- **PITMAN:** Asked if they could project city growth based on an actual growth percentage instead of using 1%. Councilmember Ulledalen said it was part of the crux of the issue on how they were funded by the state level and how they were funded by the charter. They talked about all the new houses being built but the issue was the fees were split between the city, county, and state and even though the city grew around 2%, the budget grew at around 1%. The argument with the development community was that annexation and growth on one hand did not pay for itself. On the other hand, the development community claimed it provided jobs, etc. That was the conflict where the older core of the city was asked to come up with tax increases because what was being annexed did not bring in additional revenues to fund what they needed to expand. He said with priority based budgeting they were trying to come up with a more accurate sense of what the number was. City Administrator Volek said for many years they had projected a 2% to 3% growth rate. The increased participation by the state, the

appraisals reducing the city's return from property values, and the appeals going on had dropped them to 1%.

- **BIRD:** Asked for information on staggering the pedestrian cross signals so pedestrians could cross the street first before cars received the signal to move forward. Currently by the time the pedestrians got across the street, cars yielding to the pedestrians did not have enough time to get through the intersection, particularly in the downtown area. Ms. Volek advised the streets downtown were actually under the control of Montana Department of Transportation. She said staff could talk to them to see if they would be agreeable and then talk about the city's streets separately.

Councilmember Pitman suggested Councilmember Bird sit down with one of the City's Traffic Engineers to explain what she was actually wanting and then report back to Council.

- **RONQUILLO:** Said he received a call from Pug Mahon's regarding the removal of the parking meters in front of the business that depended on parking turnover. He said people would park there all day and not make spaces available for customers. Ms. Volek advised she needed to look into it because it was the parking map the City Council approved in October. She said the ordinance may need amended. Councilmember McCall asked Ms. Volek to report back to the Council.

There was no further business, and the meeting adjourned at 8:29 p.m.

CITY OF BILLINGS



BY: Thomas W. Hanel  
Thomas W. Hanel, Mayor

ATTEST:

BY: Cari Martin  
Cari Martin, City Clerk