

## **SPECIAL MEETING OF THE BILLINGS CITY COUNCIL**

**January 6, 2014**

The Billings City Council met in special 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 5:30 p.m. and served as the meeting's presiding officer. Mayor Hanel gave the invocation.

**CALL TO ORDER:** Mayor Hanel

**PLEDGE OF ALLEGIANCE:** Mayor Hanel

**INVOCATION:** Mayor Hanel

**ROLL CALL:** Councilmembers present on roll call were: Cromley, Yakawich, Pitman, Cimmino, McFadden, Bird, McCall, Swanson, Crouch and Brown.

### **ADMINISTRATOR REPORTS - TINA VOLEK**

City Administrator Volek commented on the following items.

- The new library held a soft opening at 10:00 that morning with the dedication scheduled for February 1. She strongly encouraged everyone to visit the new library and commended the library staff for the time, energy, and hard work it took to get the building ready for the public. She said the library was a tribute to the citizens of Billings who were willing to build it.
- On Friday the City Council received a communication from Jerry T. Ray. A copy of the communication was included in the ex-parte notebook, and she believed Mr. Ray would be at the meeting during the public comment section to make a request of Council. She said staff would follow-up at that time with comments.
- An e-mail from Emilio Campos of T&E Realty withdrawing his petition in regard to the EBURD was on Council's desk and a copy was filed in the ex-parte notebook.
- A proposed agenda for a City Council pre-budget work session was on Council's desk. It would be discussed later that evening during the work session.

### **PUBLIC COMMENT on "NON-PUBLIC HEARING" Agenda Items: 1 & 2 ONLY.**

**Speaker sign-in required.** (Comments offered here are limited to one (1) minute. Please sign up on the clipboard located 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. Please sign up on the clipboard located at the podium.)

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

**SPECIAL AGENDA:**

2. **Oath of Office for Mayor Thomas W. Hanel.** Judge Sheila Kolar swore-in Mayor Hanel. She complimented Mr. Hanel on the great job he had done the past four years, and said she was proud he would be serving the next four years. Mayor Hanel introduced his wife, Robin, and his parents, Tom and AnnaMae Hanel.
3. **Oaths of Office for Councilmembers Angela Cimmino, Rich McFadden, Shaun Brown, Al Swanson, Mike Yakawich.** Mayor Hanel thanked the entire Council and told them it was a pleasure to work with each and every one of them. He swore-in re-elected Councilmembers Cimmino and McFadden and said the re-elections proved their constituents wanted them back and were pleased with the work they had done the past four years. Councilmember Cimmino said it was a sincere honor and thanked everyone in attendance and the viewers from home. She said it was an unbelievable dream for her to be there and extended her thanks and appreciation to all the voters who supported her even though she ran unopposed. She said her family was all out-of-state and introduced her gentleman friend, Kevin Kooistra. Councilmember McFadden said he was looking forward to another four years; thanked the voters of Ward 3, and said he would do his best to live up to their expectations.

Mayor Hanel swore-in newly-elected Councilmembers Brown, Swanson, and Yakawich. Councilmember Brown introduced his wife, Deanna, and his daughter, Sandra Speakerworth. He said he appreciated the opportunity, appreciated those who voted for him, and hoped he could prove to those who did not vote for him that he was worthy of being their council representative. Councilmember Swanson introduced his wife, Nancy, and said without her he would not be standing there. He said he was born and raised in Billings, he was honored, and he was looking forward to serving the City. Councilmember Yakawich thanked the Sterling, Renville, Harr, Terry, MacMurdie, Alba, and Davis families for their support. He introduced his wife, Yukiko; and children, John and his fiancé, Hyangmi; Luke; Naomi; and Jake.

**COUNCIL INITIATIVES:** There were no initiatives.

**PUBLIC COMMENT on Non-Agenda Items -- Speaker Sign-in required. (Restricted to ONLY items not on this printed agenda; comments limited to three (3) minutes per speaker. Please sign up on the clipboard located at the podium.)**

The public comment period was opened.

- **Jerry Ray, 2646 Grand Avenue, Billings, MT**, congratulated the new councilmembers. He distributed packets to the Council and said he wanted to talk about the first two phases of EBURD in which he owned property. They

were trying to get it rezoned back to Controlled Industrial. The past year and a half there had been no development because the costs were too great, and it was too stringent. The City needed to buy all the properties, bulldoze them, and sell to a developer to get what it wanted. The responsibility should not be put on the property owners. Landscaping requirements for one of his lots would cost \$120,000. Mr. Ray said the majority of businesses in the area already fit under Controlled Industrial, which was not allowed in the EBURD. They were doing away with off-street parking, which was needed for the businesses. He asked why there needed to be so many restrictions.

Councilmember McFadden asked what the historical zoning requirements were when the existing buildings were constructed. Mr. Ray said when he became involved the zoning was Controlled Industrial. Of the two city blocks he owned, there was not one building that would make it through the EBURD. If something happened to any of the buildings, they would have to be torn down.

Councilmember Bird commented the EBURD planning process had been going on for several years, and asked if it was a new position for him. Mr. Ray said there were certain phases they were adamantly against; such as not allowing parking lots on a corner and not allowing two lots to be put together for a parking lot. Councilmember Bird asked if his position was from the beginning or as a result of the evolving progress. Mr. Ray said it was part of both. It was not a clear code, there was no advantage to it, and the plan was not feasible for that part of town. Councilmember Bird asked if that part of town was exactly the type of property that was right for redevelopment. Mr. Ray said most major cities set aside funds to buy blighted areas to stop the problems, but the City of Billings wanted the property owners to do the revitalization. The only incentive for anyone in the area was the offer to return a little bit of their tax dollars for off-street improvements.

Councilmember Brown asked Mr. Ray if the main problem he had was with beautifying the parking lots. Mr. Ray said the building code was just as bad because it dictated where to put doors and windows, the type of siding, and roof lines. If someone wanted to change any of it, there were huge fees. Councilmember Brown asked if paying a fee was a process to get around the codes. Mr. Ray said he went to the Board of Adjustment, the EBURD sued the Board of Adjustment, and the City of Billings tried to head it off.

- **Marty Connell, 2903 Red Cliff Drive, Billings, MT**, said he was “public enemy #1 in the petition.” He distributed two letters rescinding petitions because they were misrepresented by Mr. Ray; as well as information reflecting approximately \$38,000,000 in tax benefits that had occurred in the EBURD since starting in 2012. Mr. Connell said they started out with a district valuation of \$1.8 million; and as of 2013, it was \$2.5 million. They told Mr. Ray and the Council when they gave their presentation in November that November was the month that the City/County Planning and the BIRD could review the EBURD code and present changes to the City Council. No one came forth with any significant changes, so no presentation was made. The EBURD was set up so it could be reviewed annually and presented to the City

Council. Mr. Connell invited Mr. Ray to follow the city procedure, buy the permit, and go through the process. Members of the BIRD stand ready for more public hearings because they had tremendous interest in the area and businesses wanting to move in. He said what had been represented by Mr. Ray that evening was "just simply not true."

Councilmember McFadden asked if the same tax advantages would be available if the code were changed. Mr. Connell said in the beginning they were under Controlled Industrial; and the general public's biggest misconception was that of the building code, which was totally separate from zoning. A lot of people thought they had a zoning issue when, in fact, it was a building issue. Controlled Industrial had limitations not allowing growth and beautification of the area. He said a small parking lot on a corner was just not workable for a parking lot; it had other uses. They worked long and hard, hired experts, and worked with City/County Planning; and they believed they were giving far more benefits to the landowners than they ever had under Controlled Industrial. He said they learned from the experts that if they did not get workforce housing in the area, the industrial part of it would die; so they set up the Rail Spur Village and the Rail Spur Village Main Street to develop and promote workforce housing. Councilmember McFadden asked if there was a developer who had put money down and purchased land with plans to build houses. Mr. Connell said they had two developers purchasing land and one developer from Missoula who wanted to assemble properties.

Councilmember McFadden asked if it would force Mr. Ray to not develop his land the way he wanted and asked why both could not happen simultaneously. Mr. Connell said Mr. Ray could develop his property the way he wanted; he just needed to follow the regulations. He said if they held a hearing with sworn testimony, it would be found that what Mr. Ray had told Council was not true. Councilmember McFadden asked if there was a simple remedy to allow Mr. Ray to put together his parking lot and landscaping as he would have desired under Controlled Industrial. Mr. Connell said the differences were not that much. Matthew McDonnell of their Board met with City/County Planning to talk about the differences, and then he met with Mr. Ray and told him the Board would be willing to recommend TIFD funds to help compensate for any differences that might come about in the landscaping. Mr. Connell said he would not speak for Mr. McDonnell, but Mr. McDonnell told them he was rebuffed by Mr. Ray. Mr. Connell said he did not know what else they could do.

Mayor Hanel asked Mr. Connell to list some of the projects that had contributed to the nearly \$40,000,000 worth of improvements. Mr. Connell listed the First Interstate Bank IT Center, the new GSA Building, Red Oxx, a carwash, Karos Development, and Billings Marble; all businesses that were improving and growing.

Councilmember McCall commented it was a process that had been going on for several years. It was extensively researched, and there were many communities that had been very successful with it. She asked Mr. Connell to give the new councilmembers a quick overview. Mr. Connell said

about seven years ago they conducted the Urban Renewal Study and found they were in the most blighted area of the City. They put together a master plan, formed a TIF District, and did a parking overlay to solve potential parking problems. They encouraged development of properties in that part of town, and they held public meetings. He said Mr. Ray attended the meetings and voiced his concerns on parking issues; and changes were made to try to accommodate everybody. He said there were some properties that did not lend themselves to certain things, and a small lot on the corner did not lend itself to a neighborhood setting or development of a parking lot because the regulations required more landscaping. He said they offered to help and were still willing to help because they wanted to see that part of town develop and become a nice place to live in the core of the City.

Councilmember Swanson asked Mr. Connell if he felt the present zoning was appropriate to the overall goal. Mr. Connell said "absolutely" and he would be willing to sit down with anyone and take them through it line item by line item. He said the Planning staff worked immensely hard with the consultants; there was community involvement; and public meetings were held. It was not something "just hatched" by a few people.

Councilmember McCall commented it was a mixed-use development. Montana Avenue and Minnesota Avenue went through the same kind of process and now they had a community where people worked, were entertained, and enjoyed living there. They wanted mixed-use in the EBURD with restaurants, music, bars, shops, places to live, and places to work.

Councilmember Cimmino said Mr. Ray indicated he was told he could not develop two parking lots on the corner. He applied for a variance through the Board of Adjustment, who was under the supervision of the Planning Department. She asked why the EBURD sued the Board of Adjustment. Mr. Connell said when they had the Board of Adjustment meeting there were only four members present, and there was no sworn testimony. Based on the meeting recordings members of the Board of Adjustment said they had no idea what the EBURD code was, and Jerry T. Ray had ex parte communication with all the people beforehand giving them information not factually correct. Mr. Connell said he could not attend the meeting and testify because Jerry T. Ray had turned his name into the Board of Realty for malpractice. He had to go before the Board of Realty, who dismissed the complaint with prejudice. The bottom line was there were seven criteria to grant a variance, and Mr. Ray only qualified for one – a parking lot; but the board granted it. Mr. Connell said he was told by City Administrator Tina Volek and Planning Director Candi Millar he needed to sue, and there was no alternative. He said those who reluctantly filed the lawsuit had spent \$26,000 out-of-pocket so far. He said he was told by City/County Planning that if the variance was granted and stayed, everyone would be able to build parking lots on corners. Mr. Connell said they were just landowners, and they wanted their part of town to be better. They had no desire to buy or take over anyone's land.

Councilmember Swanson asked if the area had been master-planned; and if so, were they following it. Mr. Connell said it had been master-planned, and they were following it "to a T."

- **Jacqueline Ayers, (address inaudible)**, said she owned a business located at 1916 Fourth Avenue North. When EBURD came in with their zoning restrictions, she did not like what they had so she went to a zoning meeting. The Zoning Commission told them they needed to take 30 days and come up with an answer. She said the people on N. 20<sup>th</sup> and N. 13<sup>th</sup> got together and spent 30 days working things out. They did not get everything they wanted, but they got everything they could live with. Once a year they could ask for a variance or changes to the codes. She said EBURD had been very open. She had attended most of the EBURD meetings, and they were trying to make the area beautiful. She said she had to do the landscaping, and she did more than she needed. As a result, she believed she had one of the nicest pieces of property in the downtown area. She was responsible for her own landscaping maintenance. It was the EBURD's vision, and she had that vision before the EBURD. When someone said they did not want to plant a tree, did not want to give up any of their property, or did not want to have to maintain it, they were not doing what the City of Billings needed them to do. They needed to make a nice place for people to be. Ms. Ayers said the EBURD code was workable and helped make things better.
- **Mark Sewell, Northwest Industrial Supply, 1819 2<sup>nd</sup> Avenue North, Billings, MT**, said his building was built in 1960, and he bought it in 1990. They were in the Rail Spur Village portion, which limited what they could do. They had just completed a 6-figure remodel the year before, and if they would have known, they would not have done the remodel and likely would have looked for another location. It was a very complicated, "nit-picky" code that did not work. He felt "blind-sided" on how demanding it was, and he did not believe people would want to live there.

Mayor Hanel asked Mr. Sewell if he had participated in any of the meetings when the draft was being created. Mr. Sewell said he attended several meetings but did not realize it was going to such a depth and became concerned possibly too late.

Councilmember Crouch asked Mr. Sewell if he was required to do more remodeling as a result. Mr. Sewell said the criteria would apply if an improvement was needed that entailed 50% of what they currently had.

Councilmember McFadden asked if the regulations addressed or alleviated the drainage problems in that area of town. Mr. Sewell said most of the water causing the problems was coming downhill from the rims, and the storm sewers were not adequate.

Councilmember Brown asked Mr. Sewell if he had gone to an annual EBURD meeting to try to change the rules. Mr. Sewell said he thought there had only been one meeting, and he had not attended.

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

Ms. Volek said it was her understanding the request that evening was that the Rail Spur Village and the Rail Spur Village Main Street Districts be re-zoned. She said there were three ways zoning changes could be initiated. (1) By action of the City Council; (2) By action of the Board of Planning; and (3) Unless initiated by the City Council or Board of Planning, all applications for official map amendments must be submitted to the Planning Department by the owner of such property, the contract purchaser, or the authorized agent of the owner. Ms. Volek said there was a fee, which was over \$1,000, which she understood was of some concern. Ms. Volek advised if the Council wished to initiate a zone change in those districts after discussion with the Legal Department, it would be her recommendation that a Council initiative be created to place the item on a future council agenda for discussion. Ms. Volek advised there were two lawsuits in regard to the Board of Adjustment, and she asked City Attorney Brooks for his comments.

City Attorney Brooks said it was actually an administrative appeal by the Board of Adjustment. There were two variances presented to the Board of Adjustment in May 2013; one variance was granted, and the other variance was denied. There were currently two cases appealing the two decisions by the Board of Adjustment in District Court. The two cases were recently consolidated, and he was unsure of the judge's intention. Both appeals were currently in a state of repose. He recommended that he contact Mr. Ray's attorney, the MMIA attorney, and the BIRD's attorney; find out what affect, if any, the request for re-zoning would have on the pending litigation; and report back to the Council.

Councilmember Pitman cautioned the Council about acting on the item in a rushed order. There was time to look at it, and he recommended bringing it to a work session so all parties involved could be part of the discussion.

Councilmember Bird stated she would be opposed to any initiative to modify the EBURD master plan. It had been worked on for over seven years, and there was extensive outreach to every property owner in the area. Every property owner in the area had a lot of opportunity to participate and be part of the master plan. She said it was an excellent project for the City in one of the most blighted areas that would completely change the heart of the City in a good way. She said it was vetted time and time again with the Council, and it was not a "fly in the sky overnight decision." She said it was a policy approved by a previous Council, and they should not impulsively attempt to revise or eliminate policy decisions. Their first priority was to allow policy to direct the process. The EBURD had a very well-defined master plan and policies that were very well thought out and planned. They needed to honor policy; otherwise, every time they turned around they would be changing their minds.

Councilmember Cimmino referenced Councilmember Bird's comments and said the purpose of a zone change application had to do with the Unified Zoning Code for the city and county. They already had the zoning regulations as policy; so anytime someone filed for a special review, zone change, or variance, it was part of the process; and they did change policy to grant those special privileges. She suggested having the legal staff review the administrative appeals; discuss the item at a future work session; and then from that point see if anyone wanted to initiate a zone change through the Council level.

Councilmember McCall commented she felt the best course of action would be for staff to bring an update to a future work session. Mayor Hanel said he agreed.

There was no further business, and the meeting adjourned to the Work Session at 6:47 p.m.



CITY OF BILLINGS

BY Thomas W. Hanel  
Thomas W. Hanel, Mayor

ATTEST:

BY: Cari Martin  
Cari Martin, City Clerk