

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

February 24, 2014

The Billings City Council met in regular session in the Council Chambers located on the second floor of the Police Facility, 220 North 27th 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 Crouch gave the invocation.

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

MINUTES: February 10, 2014 – Councilmember Cromley moved for approval, seconded by Councilmember Cimmino. On a voice vote, the motion was unanimously approved.

COURTESIES: Councilmember McFadden commented Girl Scout Cookies were currently on sale.

PROCLAMATIONS: Yellowstone Art Museum 50th Anniversary

ADMINISTRATOR REPORTS - TINA VOLEK

Ms. Volek commented on the following items.

- Reminded councilmembers of their meeting with the School District 2 Board scheduled for noon on February 27 and confirmed who would attend.
- Council was being asked to add the submittal of a Recreational Trails Program Grant application to the agenda as Item 5. The item from Ms. Millar sent to Council via e-mail on Friday had been slightly amended; and the updated version with the correct numbers was on Council's desk.

Councilmember Cromley moved to add the Recreational Trails Program Grant item to the agenda as Item 5, seconded by Councilmember Crouch. On a voice vote, the motion was unanimously approved.

- Billings had received record snowfall the last couple of days, with two more storms expected the next 7 to 10 days. She said Public Works Director, Dave Mumford, would like to present Council with a possible, one-time snow removal option.

Mr. Mumford reported they were pushing the end of their snow removal budget. So far this year they had approximately 9,000 hours more of snow removal time over last year; they had about 20% of their sand and Ice Slicer left; and they had spent about \$800,000 more than last year. They were anticipating overages and expecting a lot of potholes; and would be talking to the City Administrator about using reserves. As a result of the current storm, Knife River and CMG would be helping haul snow the next day. He said that night they would

be plowing and hauling around the schools, all fire stations, and hospital corridors. Mr. Mumford said with the forecast for considerably more snow, staff would like direction from Council on how to handle the plowing and snow hauling. To help prevent rutting, did Council want a one-time plowing of the center of residential streets with the snow pushed into the parking lanes? There would be two drive lanes down the middle of the road. It would create problems for vehicles parked on the streets and make mail delivery difficult.

Mayor Hanel asked where they would start and if the City had sufficient equipment and staff. Mr. Mumford said it would take at least two, 24-hour days to get it done. They would focus on plowing and not hauling snow. They needed to get started within the next 24 hours or the snow would get packed down and be hard to move. He would not recommend doing it on a regular basis but felt it made sense now with the anticipated snowfall. Mayor Hanel asked when they would start and if the public would receive advance notice. Mr. Mumford said they would get it on the news tomorrow. They were only talking about clearing two lanes in the middle of the road. He said Ms. Volek had spoken with Police and Fire. They both said they could get around.

Councilmember Cromley asked Mr. Mumford for an estimated cost and a preference for snow plowing. Mr. Mumford said the drivers were already being paid; and in order to minimize overtime, they changed the shifts. Out of 24 hours each shift worked four hours of overtime and eight hours of regular time. Mr. Mumford said as far as a preference, he did not know. He wanted to make sure they "respond and not react" to the snow. He felt part of plowing was reacting instead of just responding with "snow happens," but he also had a concern that emergency responders would have trouble getting into a street because of deep snow.

Councilmember Cimmino said they had already spent over \$800,000 more than last year, and they had a reserve of \$1,000,000. She asked if that meant they only had \$200,000 left. Mr. Mumford said they had not touched the reserves. Councilmember Cimmino asked if the contracts with Knife River and CMG were estimated at \$100,000 each. Mr. Mumford said the contracts were anticipated to be not more than \$25,000 each. They charged \$100/hour for a truck, driver, fuel, and insurance; so it was not an excessive cost. Councilmember Cimmino asked if Knife River and CMG were collecting the snow and relocating it to a different site. Mr. Mumford advised the City was leasing two of Knife River's gravel pits for snow relocation, which did not violate any federal laws with regard to river pollution.

Councilmember Bird said she shared Mr. Mumford's concern about public safety. A lot of neighborhoods had huge ruts last winter, which was not a good situation. She asked if a long-term cost analysis had been done on road repair for plowing versus not plowing. Mr. Mumford said he did not feel it would make a lot of difference. There would still be a lot of moisture, freezes, and thaws that would create a lot of potholes.

Councilmember Swanson asked if they had ever plowed residential streets before or if they were "flying blind." Mr. Mumford said he had lived in other communities that plowed residential streets, but Billings had not.

Councilmember Swanson asked if the residential street plowing had worked in the other communities. Mr. Mumford said it worked, but the community had to get used to it. Councilmember Swanson said if it did not cause them to go over budget, he would like to see them give it a try.

Councilmember Brown said one of his biggest issues was with vehicles parked on the street. Often times there were no other places to park. He asked how high the vehicles would be buried. Mr. Mumford said there could be eight inches to a foot of snow pushed to the sides. He said the downtown residential area had narrow streets, and most everyone parked on the street. Only one pass could be made down the middle of a narrow street, so there may be areas of town they could not plow. Councilmember Brown commented when people dug out their vehicles they would put the snow back onto the road, the mail would not be able to be delivered, and it would create a lot of havoc. Mr. Mumford commented that was why he wanted to have a conversation with the Council. He said there was no right answer.

Councilmember Pitman said it had been a long winter, and everyone was frustrated. Some people wanted the snow plowed to the middle and some did not. He thought it was working well; and if the berm was taller than a person's vehicle, that person should not be trying to bust through it. He said if the City could do a media blitz and get the information out there, it would be great. He felt it was worth trying. Councilmember Bird agreed with Councilmember Pitman.

City Administrator Volek pointed out they were not recommending it be a trial with a pledge they would do it again in another year. She said the cost was about \$100,000 per snowfall, and it was being considered because of the current extreme conditions and the anticipated weather.

Councilmember Yakawich said his concern was that there were a lot of people who could not shovel their own sidewalks, and they would be snowed in. He asked Mr. Mumford what strategy would be used. Mr. Mumford said one of the problems was time, and his first thought would be to plow frequently-used neighborhood streets that would link up to major streets for in and out access.

Councilmember Cromley expressed his concern for a lot of residents in Ward I who did not have driveways and had to park on the street. He said they would wake up in the morning with a lot of slush and ice pushed against their cars, so he could not support it.

Councilmember Cimmino asked if only the residential streets with high traffic counts could be plowed. Mr. Mumford advised they did not have traffic counts for residential streets.

Councilmember Brown asked where the blitz would come from to notify residents to remove their vehicles from the streets. Ms. Volek advised a news release would be sent to all the local media as soon as possible. They could attempt to do radio interviews, and both television stations and the Gazette were present at the meeting. Mr. Mumford said it would be best to let the press know they would only be looking at plowing higher volume streets in residential areas and not all residential streets. Councilmember Brown asked if staff had enough time within the 24 hours to decide what residential streets would be plowed. Mr.

Mumford said they would make the decision and meet with the Streets staff right away. Councilmember Brown said in that case he would support it.

Councilmember Crouch commented they were "damned if they do and damned if they don't." Some would appreciate it and some would not. He thought it would be worth a try.

Councilmember Bird commented if it was not a concern they would not be hearing from Mr. Mumford. It was an exceptional year and not something that they would have to do every single winter.

Mayor Hanel said he understood the concern with snow piling up on the residential streets, the inconvenience, mail delivery problems, and the safety issue. He said he wanted Council to know they could be setting a precedent and needed to be prepared for calls and complaints. He asked Ms. Volek if there was any way to track the good, bad, and ugly calls. Ms. Volek said most of the calls would go to the Street Maintenance Department. Mayor Hanel said he would like to think of it as an experiment.

Councilmember Pitman asked if there were groups that could be called upon if people were in need of help with snow removal. Nicole Cromwell, Planner II/Code Enforcement Supervisor, advised there were a number of people, who wished to remain anonymous, who had offered to help people in dire straits with snow shoveling at no cost.

Councilmember Cimmino asked if the City would suspend the code enforcement regulation of having to clear snow from the sidewalks within 24 hours since the plowing was experimental. Mr. Mumford advised they would not be pushing snow onto the sidewalks. He said they would only be plowing the center of the roads and would not be close to the sidewalks. Attorney Brooks advised an ordinance could not be suspended.

It was the consensus of the Council to direct staff to proceed with plowing the center of the busiest residential streets, leaving which streets to plow at the staff's discretion.

PUBLIC COMMENT on "NON-PUBLIC HEARING" Agenda Items: #1, #4 and #5 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. New High Speed Rotary Snow Blower for Billings Logan International Airport. (Opened 2/11/2014) Recommend MB Companies; \$580,012.

- 2. Airport Terminal Painting Project.** (Opened 2/11/2014) Recommend High Roller Painting; \$147,969.
- 3. Car Rental and Airline Ticket Counters Upgrade Project.** (Opened 2/11/2014) Recommend Square One; \$96,580.
- 4. SID 1395, Boca Raton Road Improvements.** (Opened 1/28/2014)(Delayed from 2/10/2014) **Schedule I:** Recommend COP Construction, \$450,054; **Schedule II:** Recommend JEM Contracting, Inc., \$383,964.50.
- 5. W.O. 13-17 Water Treatment Plant T2-1 and T2-2 Transformer Replacement.** (Opened 2/11/2014) Recommend Ace Electric, Inc.; \$143,750.
- 6. New Landfill Scale for Solid Waste Division.** (Opened 2/11/2014) Recommend Rocky Mountain Scale Works; \$67,740.
- 7. New CNG Garbage Trucks for Solid Waste Division.** (Opened 2/11/2014) Recommend One Side Load Truck to Jack's Heavy Equipment, Inc.; \$264,637.64; One Rear Load Truck to Jack's Heavy Equipment, Inc.; \$241,313.86.

B. Contract (2-year) with Big Sky Linen Supply for Uniform Rental or Purchase and Laundry Services; annual estimated expense - \$60,000.

C. Approval of West End Hangar Ground Lease 20-year renewal (10/1/2013-9/30/2033) with Experimental Aircraft Association, Chapter 57, Inc.; revenue first year - \$1,102.50; subsequent years adjusted annually using Consumer Price Index for All Urban Consumers (CPI-U).

D. Amendment #1, Airport Architectural and Engineering Services 5-Year Contract; CTA Architects and Engineers; Terminal Building Hot Water Boiler Replacement Project; \$32,082.70.

E. Amendment #9, Airport Civil Engineering Services 5-Year Contract; Morrison-Maierle, Inc.; Airport Employee Parking Lot Project; \$129,838.

F. Approval of Pledged Collateral Report.

G. Acknowledge Receipt of Petition to Vacate the east 21.6 feet of Henesta Drive right-of-way located on Lot 10, Block 2, Justiss Subdivision; David and Barbara Hawkins, petitioners; and set a public hearing date of March 24, 2014.

H. Acceptance of Donation to Billings Police Department from Billings Mustangs Boosters for one officer to attend the 2014 Conference on Crimes Against Women; \$1,628.28.

I. Resolution 14-10336 adopting new MMIA Workers Compensation Program Agreement.

J. Resolution #14-10337 calling for an election on the necessity of Local Government Review and establishing a Study Commission.

K. Preliminary Major Plat of The Estates at Briarwood Subdivision, 2nd Filing, generally located in the Briarwood community on the north side of McMasters Road; Estates of Briarwood, LLC, owner; Sanderson Stewart, agent; conditional approval and adoption of the Findings of Fact.

L. Preliminary Major Plat of Silver Creek Estates generally located between 46th Street West and 50th Street West south of Rimrock Road; Boyer Land LLC, owner; KLJ Engineering, agent; conditional approval and adoption of the Findings of Fact.

M. Bills and Payroll:

1. January 27, 2014

2. February 3, 2014

Councilmember Cromley separated Items 1A2, 1I, and 1J. Councilmember Yakawich separated Item 1H. Councilmember Brown separated Item 1E in order to abstain. Councilmember Cimmino separated Items 1A4, 1A5, 1D, 1E, 1K, 1L, 1M1 and 1M2 in order to abstain due to the involvement of architectural, engineering, and construction companies. Mayor Hanel separated Items 1A7, 1B, and 1G. Councilmember Pitman moved for approval of the Consent Agenda with the exception of Items 1A2, 1A4, 1A5, 1A7, 1B, 1D, 1E, 1G, 1H, 1I, 1J, 1K, 1L, 1M1 and 1M2, seconded by Councilmember Brown. On a voice vote, the motion was unanimously approved.

Councilmember Cromley referenced Item 1A2 and the lone bid. He asked if there was an estimate prepared beforehand. Aviation and Transit Director, Tom Binford, said there were two potential bidders looking at the project; however, one bidder was not able to get bonded in time. He said the recommended contractor was awarded the painting work on the concourse the year before. Staff was comfortable with their price then and now. Staff had estimated the project at \$200,000. Councilmember Cromley moved for approval of Item 1A2, seconded by Councilmember Cimmino. On a voice vote, the motion was unanimously approved.

Councilmember Cromley referenced Item 1I and asked Assistant City Administrator, Bruce McCandless, if the City would not have insurance for workers' compensation; they would just be handling the claims. Mr. McCandless said the City of Billings obtained its workers' compensation coverage through the MMIA. The program agreement and resolution did not change that; all it did was change the method by which retro calculations were made in the workers' comp program; allowing either refunds or additional assessments depending upon each individual entity's account balance. Councilmember Cromley asked if the City usually had higher claims for what it

paid in premiums. Mr. McCandless advised each individual member was based on its experience, and the City of Billings' experience had been very good. The City was substantially below the average so the assessment was less than what their pool rate would be except for loss experience.

Mayor Hanel asked Mr. McCandless if the City had received a reimbursement in 2013. Mr. McCandless said it did under the liability program in an amount between \$250,000 and \$300,000. He did not believe any entities had received refunds under the workers' comp program. Councilmember Cromley moved for approval of Item 1I, seconded by Councilmember Pitman. On a voice vote, the motion was unanimously approved.

Councilmember Cromley referenced Item 1J and said he separated it in order to vote 'no.' Councilmember Pitman moved for approval of Item 1J, seconded by Councilmember Bird. Mayor Hanel noted the item was discussed in great length at a previous work session. On a voice vote, the motion was approved 8 to 0. Councilmembers Cromley and Cimmino voted in opposition.

Councilmember Yakawich referenced Item 1H. He said it was commendable the Billings Mustangs Boosters were donating \$1,628.28 to fund an officer to attend the 2014 Conference on Crimes Against Women. Police Chief St. John said they worked very hard to generate revenues outside the regular budget price for all things they felt were very important. He said they had an officer dedicated solely to domestic violence and crimes against women, which was funded through a Board of Crime Control grant. He thanked the Mustangs Boosters. Councilmember Yakawich moved for approval of Item 1H, seconded by Councilmember Cimmino. On a voice vote, the motion was unanimously approved.

Councilmember Pitman moved for approval of Item 1E, seconded by Councilmember Crouch. On a voice vote, the motion was approved 8 to 0. Councilmembers Brown and Cimmino abstained.

Councilmember Pitman moved for approval of Item 1A4, seconded by Councilmember Crouch. On a voice vote, the motion was approved 9 to 0. Councilmember Cimmino abstained.

Councilmember Pitman moved for approval of Item 1A5, seconded by Councilmember Bird. On a voice vote, the motion was approved 9 to 0. Councilmember Cimmino abstained.

Councilmember Pitman moved for approval of Item 1D, seconded by Councilmember Yakawich. On a voice vote, the motion was approved 9 to 0. Councilmember Cimmino abstained.

Councilmember Pitman moved for approval of Item 1K, seconded by Councilmember Crouch. On a voice vote, the motion was approved 9 to 0. Councilmember Cimmino abstained.

Councilmember Pitman moved for approval of Item 1L, seconded by Councilmember Crouch. On a voice vote, the motion was approved 9 to 0. Councilmember Cimmino abstained.

Mayor Hanel referenced Item 1A7 and asked Mr. Mumford if the trucks could be serviced locally. Mr. Mumford advised the local Peterbilt vendor could service the trucks and said the City's Fleet Maintenance staff could perform the majority of the maintenance. Mayor Hanel asked if the new trucks had to be serviced separately from

other diesel and gas vehicles. Mr. Mumford said they did not. Councilmember Pitman moved for approval of Item 1A7, seconded by Councilmember Bird. On a voice vote, the motion was unanimously approved.

Mayor Hanel referenced Item 1B and asked why the pricing from Alsco, Inc. was not opened and reviewed. Purchasing Agent, Liz Kampa-Weatherwax, explained the standard protocol for the RFP process. She said the committee reviewed the proposals and if the committee determined unanimously that one vendor best suited the City's needs, only that vendor's pricing was opened. If the pricing was determined acceptable and within the budget, a contract was negotiated. She noted the RFP document that was advertised and provided to the public thoroughly outlined the RFP process and procedures. She noted the recommended vendor, Big Sky Linen, did not raise their pricing from the previous contract and guaranteed the same pricing for the next two years. Councilmember Pitman moved for approval of Item 1B, seconded by Councilmember Yakawich. On a voice vote, the motion was unanimously approved.

Mayor Hanel referenced Item 1G and asked Mr. Mumford who the \$3,700 market analysis would impact. Mr. Mumford said the petitioner would pay the City of Billings \$3,700 for the property. Councilmember Cimmino confirmed with Mr. Mumford that the petitioners would pay the person for providing the appraisal, in addition to paying the City \$3,700. Councilmember Pitman moved for approval of Item 1G, seconded by Councilmember Bird. On a voice vote, the motion was unanimously approved.

Councilmember Pitman moved for approval of Items 1M1 and 1M2, seconded by Councilmember Crouch. On a voice vote, the motion was approved 9 to 0. Councilmember Cimmino abstained from both items.

REGULAR AGENDA:

2. PUBLIC HEARING AND SPECIAL REVIEW #916: A special review to allow an all-beverage liquor license in an existing restaurant, Café Italia, located in the Central Business District (CBD) at 2417 Montana Avenue and legally described as Lots 9 and 10, Block 112, Billings Original Town; Computers Unlimited, owner; Michael Schaer, agent. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)

Planner II, Nicole Cromwell, began her presentation showing a zoning map, aerial view, and photographs of the subject property and surrounding properties, as well as the site plan of the subject property. She noted Mr. Schaer would not be including the allowed gaming with the all-beverage license. She said the Zoning Commission was recommending approval based on the following four conditions.

1. The special review approval shall be limited to Lots 9 and 10, Block 112, Billings Original Town generally located at 2417 Montana Avenue.
2. Increases in the area where alcohol service is provided greater than 10% of the area shown on the site plan (2,300 square feet) or the addition of an outdoor patio will require additional special review approval.
3. These conditions of special review approval shall run with the land described in this authorization and shall apply to all current and subsequent owners, operators, managers, lease holders, heirs and assigns.

4. The proposed development shall comply with all other limitations of Section 27-613 of the Unified Zoning Regulations concerning special review uses, and all other City of Billings, regulations and ordinances that apply.

Ms. Cromwell advised Mr. Schaer explained at the Zoning Commission meeting that he had previously owned the subject all-beverage liquor license, sold it to another person, and the license had now come back to him. According to State Licensing Rules, Mr. Schaer had a certain amount of time to relocate the license, so instead of trying to sell it he decided to locate it in his existing Café Italia business.

Councilmember Yakawich asked Ms. Cromwell to list the different types of alcohol licenses. Ms. Cromwell said there was an all-beverage license with gaming, a restaurant beer and wine license (cabaret) with no gaming, and an on-premise beer and wine license with some gaming. She said the State of Montana enforced rules and regulations; however, the City of Billings could regulate where the licenses could be placed through a special review. Councilmember Yakawich asked if Mr. Schaer would have to come back to Council if he wanted to include gaming at a later date. Ms. Cromwell said he would not. It was assumed when conducting a special review for an all-beverage license or an on-premise beer and wine license that gaming would be included or added at a later time. Should Mr. Schaer wish to include gaming, he would only need to go to the State to get the gaming established in the existing location.

Councilmember Bird asked how much gaming existed on Montana Avenue from McCormick's Restaurant to the east. Mr. Schaer, who was in attendance, said there were currently two locations.

Councilmember Brown asked for the seating capacity of Café Italia. Mr. Schaer said there were 40 seats. Councilmember Brown asked about the shared kitchens Ms. Cromwell mentioned in her presentation. Ms. Cromwell advised there was access between the two kitchens of McCormick's and Café Italia; however, there was no public access between the two.

The public hearing was opened.

- **Mike Schaer, 1109 N. 32nd Street, Billings, MT**, said he was the owner and asked if there were any questions.

Mayor Hanel commended Mr. Schaer for being instrumental in a lot of the development on Montana Avenue and thanked him for his efforts and investment in the community.

Councilmember Cimmino echoed Mayor Hanel's comments. She said if it was not for Mr. Schaer, they would not have the improvements along Montana Avenue. She said he had provided the passion and personal financing, and he was able to interest a lot of other partnerships.

Councilmember Swanson moved for conditional approval of Item 2, seconded by Councilmember Bird. On a voice vote, the motion was unanimously approved.

3. PUBLIC HEARING AND RESOLUTION #14-10338 assessing the cost of cutting and/or exterminating weeds. Staff recommends approval. (Action:

approval or disapproval of staff recommendation.) Planning Director, Candi Millar, began by explaining the weed assessment program. She said the program began on May 1 of each year, and City Code required all property owners to maintain their vegetation at a height of no more than 12 inches. She said if the City received a complaint, a Code Enforcement Officer inspected the property. If the vegetation was more than 12 inches in height, a notice was sent to the property owner explaining the code, giving them ten days to correct the problem, and explaining the penalty for not correcting the problem. If the problem was not corrected, the City Parks Department employees mowed the weeds, and the property owner was charged \$40/hour for the inspection fee, \$90/hour for the mowing costs, and an administrative fee. The penalty for the first offense was \$25; increasing \$25 for each subsequent offense. The property owner would receive the bill and had until September 30 to pay. If the bill was not paid by September 30, the charges were assessed on the property owner's tax statement. Ms. Millar said the weed program had gone through a lot of changes, and they had gone from about 80% compliance to 90% to 95% compliance. She said of the 876 weed cases they opened that year, only 70 required cutting. She commended the Code Enforcement Officers, the Parks Department, and the Finance Department for making the program work so well. She said it was not a heavy-handed program, and the Code Enforcement Officers worked very closely with the property owners in violation to help resolve the issues. Ms. Millar advised she had a property owner appealing her assessment but who was unable to attend the meeting. She said once the public hearing was opened, she would represent the property owner because she felt the property owner had made a good argument in her letter. Ms. Millar said she felt it was important that Council understood both points of view.

The public hearing was opened.

- **Candi Millar, Planning Director**, said she was representing Cheryl Lenhardt, 3209 Rimrock Road. Ms. Lenhardt was housebound and provided a letter that Ms. Millar would summarize. She said Ms. Lenhardt's property fronted Rimrock Road and backed up to a local residential street named Flora Avenue. On the south side of Flora between Ms. Lenhardt's back fence and the roadway, there was a 30-foot right-of-way that accommodated the Cove Ditch, which was piped and covered. When the City acquired the right-of-way in 1996, the Street and Traffic Division took on the maintenance responsibility; but due to the steepness, they did not cut the entire area. The City had received a number of complaints this year because the property had not been mowed. Ms. Lenhardt contends in years past the City had mowed the entire right-of-way; but Street and Traffic did not believe that to be the case. They said they may not have mowed as much as in other years giving the impression that they had previously mowed it in its entirety. Ms. Lenhardt was requesting that Council void the charge of \$102. Ms. Millar said there were other properties along the same street with the same situation that mowed their property; however, Ms. Lenhardt had health issues and was unable to mow it; plus she contended the City had always done it.

Councilmember Brown asked if it would come up again next year if they voided the charge this year. Ms. Millar said they often had repeat offenders. She

spoke with Street and Traffic, who said they would look at it more closely; however, they did not like to get too close to private fences because of potential damage. Councilmember Brown said the ordinance stated it needed to be mowed and if they just kept voiding it every year, the City would have to keep mowing it. Ms. Millar said in the future they would work more closely with Ms. Lenhardt.

Councilmember Pitman asked if there were citizens who volunteered to help property owners with mowing; much like volunteers for snow removal. Ms. Millar said every time they sent notices; they included a brochure with names and numbers of mowing services. She said a past contractor with the City, Mr. Mow-It-All, had volunteered to mow people's property if a hardship was involved.

Councilmember Cromley asked if the right-of-way was immediately adjacent to Ms. Lenhardt's property. Ms. Millar said it was.

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

Councilmember Pitman moved for approval of Item 3, seconded by Councilmember Cromley.

Councilmember Swanson amended the motion to void the \$102 charge to Ms. Lenhardt for one time only, seconded by Councilmember McFadden. On a voice vote, the amended motion was approved 9 to 1. Councilmember Pitman voted in opposition.

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

4. ACCEPTANCE OF OFFERS FOR RETAIL/OFFICE SPACE AT THE EMPIRE GARAGE from (1) Asian Sea Grill Shorelong for Subunits F, G, and H at \$52/sq ft; and (2) Kelly Donovan of First Montana Title for Subunits A, B, C, D, and E at \$46/sq ft, for a total sale price of \$767,090. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) Ms. Volek advised staff had no presentation, but was available to answer questions. She thanked Assistant City Administrator, Bruce McCandless, and the agent, Mike Walker, who worked on the project. She said she believed through the process they obtained better bids for the properties than anticipated otherwise. Mayor Hanel noted a detailed presentation on the matter had been made at a work session.

Councilmember Swanson asked for clarification on the rights of first refusal. Attorney Brooks said the person the City had the right of first refusal agreement with would have the opportunity to purchase up to 4,000 square feet. He noted they were condominiums so there were separate ownership units involved. Ms. Volek advised if the right of first refusal was exercised, they could end up with not all of the units sold. Mr. McCandless said there was a right of first refusal on each of the two corners of the property. The right of first refusal was for no less than 4,000 square feet on the 27th Street side, and the right of first refusal on the Broadway corner was for no less than 1,500 square feet. He said due to the column placement in the structure, they would be talking about slightly larger spaces than identified in the rights of first refusal, but the outcome would be the same. Both parties with the rights of first refusal would be able to purchase less square footage than what was contained in the two offers before Council

that evening, so there could be a piece of property between the two corners that would still be available for sale to someone else.

Councilmember Bird asked why they were moving forward with approving the sales before they knew what the first right of refusal decisions were going to be. Mr. McCandless said both Option Agreements between the City and the two parties said they could exercise their right of first refusal if an offer was made that the City was willing to accept. In other words, the City Council had to be willing to accept the offers being made that evening before the first right of refusal could be triggered.

Councilmember Cromley asked if staff had any information regarding whether or not the rights of first refusal would be exercised. Mr. McCandless said they did not. He knew both parties were aware Council was considering the two offers that evening, the dollar amounts, and under what conditions they would have to exercise their rights; but neither had indicated at all what their intentions were.

Councilmember Bird asked if all they were doing that evening was voting on whether or not to accept the two offers, and it would still not be a done deal. Mr. McCandless said if the Council approved the two offers to purchase the property before them that evening, the next morning he would notify the two parties with the rights of first refusal in writing that the City was willing to accept the other two offers. That would then trigger the rights of first refusal. He said Zootist (Northern Hotel) through their Option Agreement had 30 days to respond and exercise their right. He said there was no such time limitation for Alley Cat; however, he had been told by the owner that he believed he could respond promptly.

Councilmember Swanson asked if the time limit for closing specified by the person making the offer on the property would be the same time limit placed on the right of first refusal. Mr. McCandless said the proposed closing date was August 1st. The building would be open and occupied in June, and even though there was no guarantee, he felt Alley Cat would understand the need to respond well in advance of August 1st.

Ms. Volek pointed out the rights of first refusal were built into the contracts almost two years ago, and at that time they did not know what the dates would be. They would be relying on the goodwill of the individuals involved.

Councilmember Cimmino commented the proposers would need parking, and parking was not included in their price. Ms. Volek advised there were spaces in the parking garage that were reserved for hourly parking only, and they anticipated those parking spaces would benefit the two proposals in front of Council that evening. Mr. McCandless said that was correct; however, one of the proposers had asked for 22 parking spaces, and the other proposer had not asked for a specific number. He said they were anticipating that both proposers would want some amount of leased parking to accommodate employees, so City staff and the Parking Advisory Board had been discussing a way to allocate a certain number of leased parking spaces for those two businesses. If the City was able to provide the spaces, the businesses would lease them under the same terms and conditions as any other renter in the parking garage.

Mayor Hanel asked for the amount of earnest money on the two proposals. Mr. McCandless said one party was \$10,000 and the other party was \$20,000.

Councilmember Bird moved that the Council accept both offers for retail/office space in the Empire Garage, seconded by Councilmember Crouch.

Mayor Hanel thanked those who made the offers. The City of Billings was honored to receive the lucrative offers for premium space in a very fine building that would be finished this year.

On a voice vote, the motion was unanimously approved.

5. (ADDED TO AGENDA AT THE MEETING) APPROVAL to submit a Recreational Trails Program Grant to provide funding for construction of trail linkages in Stewart Park, Descro Park, and Lillis Park. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) Planning Director, Candi Millar, thanked the Council for approving the addition to the agenda and said it was urgent that they move forward with the grant. Ms. Millar introduced Jeffrey Butts, the new Alternative Modes Coordinator. She said Mr. Butts relocated from Portland and was very familiar with innovative bicycle and pedestrian facilities and programs. He would be coordinating bicycling events, bicycling and pedestrian programs, and seeking out the funding to construct the facilities.

Mr. Butts said he was requesting approval to submit a grant for the Recreational Trails Program in the amount of \$28,428; as well as an additional local match from BikeNet and Lucky's Market in the amount of \$7,107 for the trail connections in Stewart Park, Descro Park, and Lillis Park.

Councilmember Cimmino asked how Lucky's Market got involved in the match. Mr. Butts said they came to the Planning Office looking for a way to contribute to the bicycle facilities. Ms. Volek said Lucky's Market had a very active donation program. The Marketing Director for Lucky's Market approached both the Mayor and her, and she understood they would be offering other grants, as well. Councilmember Cimmino asked if the grant involved maintenance. Mr. Butts said there was a maintenance plan the City had adopted in the past. Parks took care of the maintenance, and they had patrol volunteers.

Councilmember Yakawich thanked Mr. Butts and Ms. Millar for their work in applying for the grants. He said his kids and their friends rode on the trails and asked if he could get more information on the trails. Mr. Butts said there was a map available he would provide to Councilmember Yakawich. He said they had held discussions internally about how to further expand the educational opportunities.

Councilmember Crouch moved for approval of Item 5, seconded by Councilmember Yakawich. On a voice vote, the motion was approved 9 to 0. Councilmember Bird left the chambers at 8:30 p.m. and was not present for the vote. Councilmember Bird returned at 8:33 p.m.

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.

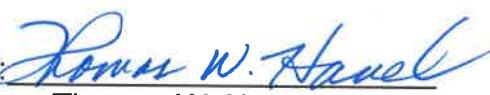
Mayor Hanel called Mr. Butts back to the podium. He said Portland was known for its trail system and had made leaps and bounds compared to other parts of the country. He asked Mr. Butts if he had been a part of Portland's trails system. Mr. Butts said he worked as a private consultant in a number of different avenues such as active transportation, land use, master planning, and downtown revitalization. His specialty was active transportation so he was happy to be back in his hometown of Billings applying what he had learned and serving as a conduit for the community.

COUNCIL INITIATIVES: There were no initiatives.

There was no further business, and the meeting adjourned at 8:35 p.m.

CITY OF BILLINGS



BY: 
Thomas W. Hanel, Mayor

ATTEST:

BY: 
Cari Martin, City Clerk