

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

March 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. Former Councilmember Jim Ronquillo introduced Tom Piper, Unit Commander of the Billings Young Marines. The Billings Young Marines Color Guard presented the flags and led the Pledge of Allegiance. Councilmember Swanson gave the invocation.

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

MINUTES: March 10, 2014 – Councilmember Cimmino moved for approval, as submitted; seconded by Councilmember Pitman. On a voice vote, the motion was unanimously approved.

COURTESIES:

- Police Department Donation Presentation – Police Chief Rich St. John said on December 31, 2013, long-time Animal Shelter volunteer, Lisa Marie Frank, passed away at the age of 45. Lisa volunteered at the shelter every Monday through Friday at 5:00 p.m. after her regular job. In honor of Lisa's memory her parents, Art and Marlene Frank, asked that any memorials be in the form of a donation to the Billings Animal Control Injured Animal Fund. Chief St. John presented a cumulative donation of \$1,000; and said \$550 of the donation was from EBMS. He presented Art and Marlene Frank with a plaque in memory of their daughter for her dedication, devotion, and service to the City of Billings' citizens and its animals.
- Legal Department Victim Witness Presentation – City Attorney Brent Brooks said the Billings Chapter of the Zonta Club had recently honored three city employees who had provided service to the cause of domestic violence victims.

Attorney Brooks introduced Karen Benner, Victim Witness Program Director for the City, and said she had a Masters Degree in Counseling and had been with the City for 16 years. He noted Ms. Benner was named the Montana Attorney General Outstanding Crime Victim Advocate for 2002; and in 2011-2012 she was named the National Association of Professional Women VIP Woman of the Year.

Attorney Brooks introduced Billings Police Officer and Domestic Violence Investigator, Katie Nash; and said she had been with the City for eight years. He noted Ms. Nash had degrees in psychology and criminal justice and was named Officer of the Year in 2011.

Attorney Brooks introduced Charly Marsh, Victim Witness Specialist, and said she had a B.S. in Criminal Justice with an emphasis on forensics. He noted

Ms. Marsh received the Montana Attorney General Award for Crime Victim Advocate in 2010.

- Mayor Hanel recognized the Police Department, Fire Department, and other departments who assisted with the recent, extensive fire on First Avenue South.

PROCLAMATIONS: National Service Recognition Day - April 1, 2014.

Brenda Beckett, Community Development Manager, asked the VISTA volunteers to introduce themselves and to provide their home state and the name of their project.

- Chance Miller, Georgia, Community Development Homeless Services
- Jessica Van Natter, Utah, YWCA - Transitional Housing for Domestic Violence Victims
- Shelby Barron, Kentucky, Tumbleweed Program
- Liz Prather, Wisconsin, Parks & Recreation Community Gardens
- Elizabeth Schlobohm, Minnesota, Parks & Recreation Community Gardens
- Elizabeth Donald, Iowa, Homeless Veteran's Project
- Courtney Carver, Georgia, Community Development Homeless Services
- Kersey Voss, Florida, Billings Public Library Digital Media Learning Lab
- Catherine Bailey-Sullivan, Virginia, Friendship House Resource Development Project
- Emily Willis, Virginia, Youth Court Services Juvenile Detention Alternatives
- Kalyn Yasutake, Illinois, Homelessness Awareness
- Bridget Johnson, New Jersey, Housing Authority Community Gardens
- Sophie DeMartine, Florida, NeighborWorks Montana Housing Resource Center
- Erica Ratner, Ohio, Head Start School Readiness and Children's Garden Project
- Andrew Golden, Wisconsin, Billings Public Library Digital Media Learning Lab
- Deirdre Loftus, South Carolina, Coalition Board of Faith Leaders to Expand Homelessness Initiatives
- Christine Morico, Connecticut, Head Start Garden Education Enhancement Project

Mayor Hanel said on behalf of the Adult Resource Alliance of Yellowstone County and Pam Makara, RSVP Program Director, he would like to recognize the volunteers serving with the local RSVP and Foster Grandparent Programs. He said they were fortunate to live in a community where the citizens viewed voluntarily service as necessary, worthwhile, and healthy. At a recent Community Connect event, 80 community members contributed nearly 400 hours of voluntary service over two days toward a successful outcome. Many volunteers worked together to make a positive difference for the chronically homeless and the needy.

ADMINISTRATOR REPORTS - TINA VOLEK

Ms. Volek commented on the following items.

- Reminded Council of the dinner honoring the recent, outgoing councilmembers scheduled for Tuesday, March 25, at 6:00 p.m. in the Billings Public Library Community Room. She said no business would be conducted, and a quorum of the City Council would be present. She noted the event was being paid for in its entirety by members of the Council and staff who would be attending.
- **Item C – Construction/Maintenance Agreement and Easement with Montana Rail Link for W.O. 11-10, 25th Street Pedestrian Bridge:** Noted in Part VIII, Page 6, Commercial General Liability Insurance, of the agreement the Combined Single Limit of \$5,000,000 had been reduced to \$2,000,000; and the Aggregate of \$10,000,000 had been reduced to \$6,000,000.
- **Item K – Resolution of Intent to Construct W.O. 14-02, Miscellaneous Improvements Program:** Noted staff was requesting the public hearing date be changed from April 28, 2014, to April 14, 2014.
- **Items 5, 6, and 7 – Tax Exemption Requests for Billings Ventures, LP, dba Big Horn Resort; Roscoe Steel dba True North Steel; and FKCD LLP/360 Office Solutions, Inc:** Noted Council received e-mails that day from Jerry Zitun and C.B. and Nedra Brown opposing the proposed tax exemptions. Copies of both e-mails were filed in the ex-parte notebook.

Councilmember Pitman said they were receiving many e-mails on items that were not yet scheduled for the agenda and asked if they all had to be noted as ex-parte. He noted most of them were being sent through the City Council/Mayor e-mails. Ms. Volek noted City Council/Mayor e-mails were posted on-line within a business day of receipt and were posted for three months for public inspection. Ms. Volek advised having them posted should cover the Mayor and Council for disclosure. Councilmember Pitman said the e-mails were coming in at a fast rate, and he wanted the public to know Council was reading all of them; but it had become overwhelming trying to respond.

Councilmember Bird said she assumed the rest of the Council was receiving the unending e-mails from the COP organization and asked if they could be blocked. Ms. Volek advised they could be blocked. Councilmember Bird clarified for the record they were an organization sending continual international newsfeeds. She said she was not trying to censor anybody. Ms. Volek advised the e-mails were not in regard to a specific issue and were simply a broadcast.

Ms. Volek noted for the record there was a Council initiative involving the non-discrimination ordinance, which required staff to bring material back to the Council for future discussion in June once the city's budget process was completed. The request from the Not In Our Town group was scheduled for the council meeting of April 14.

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Item #1 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. Consultant Agreement with Sanderson Stewart to conduct the Highway 3 Corridor Planning Study; not to exceed \$68,000.

B. Contract for Downtown Parking Strategic Plan; Kimley-Horn; not to exceed \$86,025.

C. Construction/Maintenance Agreement and Easement with Montana Rail Link for W.O. 11-10, 25th Street Pedestrian Bridge.

D. Approval of 5-year Airport Business Park Building and Ground Lease with State of Montana Department of Environmental Quality (3/1/14-2/28/19); 5-year revenue - \$380,839.20

E. Approval of 5-year Airport Business Park Building and Ground Lease with State of Montana Department of Natural Resources and Conservation (3/1/14-2/28/19); 5-year revenue - \$435,918.60.

F. Amendment #1, W.O. 12-44 Water Treatment Plant High Service Pump Station H2-3 Pump Replacement. Professional Services Contract, HDR Engineering; \$16,300.

G. Confirmation of Probationary Police Officers - Zachary Wallis, Gabrielle DeNio, Matthew Widdekind, Robert Miller & Matthew Edwards.

H. Right-of-Way Easement with Aviara, Inc.; RIMS Development, LLC; and X Bar S Enterprise, LLC for Falcon Ridge Estates Subdivision, 2nd Filing.

I. Acceptance of Donation to Billings Animal Control from EBMS in memory of Lisa Marie Frank; \$500.

J. Acceptance of grant from Spare Change for Real Change on behalf of the Mayor's Committee on Homelessness for venue rental for the 2015 Billings Community Connect ; \$1,000.

K. Resolution of Intent #14-10341 to construct W.O. 14-02, Miscellaneous Improvements Program, and set a public hearing for April 28, 2014.

L. Preliminary Minor Plat of North Pointe Square Subdivision, 2nd Filing, described as five lots on approximately 4.8 acres of land on the west side of Highway 87 North, just north of the intersection with Highway 312 in the Billings Heights; Vacant

Land LLC, owner; Sanderson Stewart, agent; conditional approval and adoption of the Findings of Fact.

M. Bills and Payroll:

1. February 24, 2014

Councilmember Cromley separated Consent Agenda Item C. Councilmember Yakawich separated Consent Agenda Item B. Councilmember Pitman separated Consent Agenda Item K. Councilmember Brown advised he would abstain from Consent Agenda Item M1. Councilmember Cimmino said she had been directed by her employer, HDR Engineering, to abstain from Consent Agenda Items A, B, C, F, H, L, and M1 because other engineering consulting firms, as well as her employer, were involved.

Councilmember Pitman moved for approval of the Consent Agenda with the exceptions of Items B, C, and K, seconded by Councilmember Bird. On a voice vote, Consent Agenda Items D, E, G, I, and J were unanimously approved. Consent Agenda Items A, F, H, and L were approved 9 to 0 with Councilmember Cimmino abstaining; and Consent Agenda Item M1 was approved 8 to 0 with Councilmembers Cimmino and Brown abstaining.

Councilmember Cromley referenced Item C and asked Planning Division Manager, Wyeth Friday, if he was familiar with the history of the project. Mr. Friday said he believed so. Councilmember Cromley said it was his understanding in the mid 90's and in 2001 there was a master plan for the bridge and the original plan was to build two bridges; one on 25th Street and one on 30th Street with a streetscape built in between. Mr. Friday said he was not aware of the two bridges. Councilmember Cromley asked if the original cost was estimated to be \$578,000. Mr. Friday said he was not aware of that specific number. Councilmember Cromley asked if Mr. Friday was aware the original annual operating cost would be \$18,000 not counting \$8,000 for an easement to Montana Rail Link. Mr. Friday said he was not aware of that specific number. Councilmember Cromley asked if he was familiar with the Heritage Trail Report of 2004 of Greater Billings Non-Motorized Trail System. Mr. Friday said he was. Councilmember Cromley said in the 2004 report there were three miles of on-street bikeways listed, and it proposed 18 additional bikeways including South 28th Street from 1st Avenue South to State Avenue and on South 34th Street from 1st Avenue South to State Avenue. Mr. Friday said he knew there were some areas on the south side that had been striped already, but he would have to double check for the exact locations. Councilmember Cromley said South 28th Street from 1st Avenue South to State was a bikeway now. Mr. Friday said that was correct, and there was striping on 25th Street where the bridge was currently being contemplated. Councilmember Cromley said the striping on 25th Street dead-ended on 7th Avenue South at the Women's Prison, Conoco, and the post office. Mr. Friday said that was correct. There was sidewalk that led past the post office, and the future idea was get over to Coulson Park. Councilmember Cromley said a \$20,000 payment by the City came up in January 2012 and at that time he asked Greg Krueger if there had been a study done on the potential use of a pedestrian bridge at 25th Street. Mr. Krueger indicated there had not been. He

asked Mr. Friday if he was aware of any studies in the last two years regarding potential use of the bridge. Mr. Friday said not specifically for the bridge. Councilmember Cromley asked if the City had a scanner that could measure bicycle traffic. Mr. Friday said they had two scanners, and they had also done counts with people at different locations in the past. Councilmember Cromley asked Mr. Friday if he had ever ridden a bicycle in that area. Mr. Friday said he had ridden down Montana Avenue and over by 27th Street. Councilmember Cromley said last Monday, Tuesday, and Wednesday mornings for half an hour each he watched for bike traffic at the intersection of 25th Street and 1st Avenue South, and he found no bicycle or pedestrian traffic. He asked if Mr. Friday had any information that would contradict his findings. Mr. Friday said he did not believe they had counts in that specific area. It was not a normal count area primarily because the corridor was incomplete, and the tracks could not be crossed at that location. Councilmember Cromley asked if it was fair to state they had no idea how many people would use the pedestrian bridge. Mr. Friday said they had not done an analysis because there was no connection in that area. He said there was pedestrian and bicycle traffic now at 27th Street trying to get back and forth. Because the striping and corridor was developed on 25th on the south side connecting to Montana Avenue and getting people into downtown, that area was the goal. Councilmember Cromley said the actual cost of the project was estimated at over \$1.2 million. Mr. Friday said the estimated cost was \$1.174 million according to the City Engineer's Office. Councilmember Cromley said the cost was about \$400,000 more than what was included in the materials provided to Council. Mr. Friday said the memo showed the total funding at \$821,559; and the engineering estimate was the \$1.174 million. The estimated cost provided in anticipation of the bidding was greater than the funding provided at that point. Councilmember Cromley asked if the City would be looking at approximately \$400,000 in addition to what was provided in the staff report if they proceeded. Mr. Friday said until they actually received bids, they would not know what the final number would be. They were anticipating the bids could come in closer to the engineering estimate. They had additional CTEP funds available that could be put toward the gap between the current funding amount and the potential estimate if the bids came in at that level. Councilmember Cromley asked if the CTEP funds would be taken from another project to be put towards the bridge. Mr. Friday said the available CTEP funds had not been allocated. The CTEP program was actually being retired and the new Transportation Alternatives Program (TAP) had taken its place. There was still CTEP funding left over that the City and County could use within the next couple of years to complete the CTEP program. Mr. Friday said they had consulted with CTEP specifically on the bridge project to make sure there would be no issue if they had to use some of those funds, and they were told there would be no issue because they still had two years to complete it. Councilmember Cromley said he was told by Engineering that it may be possible to move the location of the bridge. Mr. Friday said that was not his understanding. Councilmember Cromley said at one time there was talk about an elevator on one side, then just a ramp, and now an incline lift. Mr. Friday said that was correct. Councilmember Cromley said he saw a picture, and it reminded him of a tram at a ski lift. Mr. Friday said it was a very short and steep-type lift that went from ground level to the bridge on a track. Councilmember Cromley asked Mr. Friday if he had seen the preliminary cost estimate. Mr. Friday said he had. Councilmember Cromley said it

listed one incline lift at \$273,000; and asked if it was the intention to have two incline lifts. Mr. Friday said it was his understanding there would be two and both were included; and he could not say why the cost estimate only listed one.

Councilmember Yakawich asked for the amount they were asking for that evening. Deputy Public Works Director, Vern Heisler, said the council item that evening was the easement and construction and maintenance agreement with MRL. The cost of the easement was \$32,600; the cost to remove tracks and review the project was \$6,738; and the flagging cost estimated for a 30-day project was \$22,500, which totaled \$61,838. Councilmember Yakawich asked if the railroad had been asked to cover the expense. Mr. Heisler said he did not know if MRL had been asked, but in the past anytime they had worked with MRL, the costs had always been borne by the City. Councilmember Yakawich asked if there would be lighting or security cameras on the south side of 25th. Mr. Friday said the lighting included in the project was for the bridge itself and the approaches to the stairwells and lifts on both sides. Councilmember Yakawich asked if there had been any discussion on the lighting. Mr. Friday said he was not aware of any discussion aside from having to provide lighting for safety and visibility for people using the facility. Ms. Volek said the Downtown Partnership had been strategizing how to make it safe. She said she thought the bridge would be locked down during certain hours overnight so there would be a lesser chance of incidents. She said the questions being asked that evening dated back to 2001 and preceded the current staff; so the history was not something they had readily at their fingertips. She said Council could postpone the item, and it would be helpful to know in advance what the questions were so staff could provide answers. Councilmember Yakawich said he went to the site on South 25th and walked without taking any shortcuts to the other side of North 25th; and it took him seven minutes. He then walked to 21st and under the underpass, and it took him 10 minutes. He asked if spending \$1 million on a project where he could walk in 10 minutes to the other side was a good use of their resources.

Mayor Hanel said that question, as well as many of the other questions being asked, had been addressed in many conversations of the Council in a public forum over several years; which was why they were at the point they were that evening. He said the agenda item before them had to do with costs with MRL, and that was what they needed to consider. Mr. Friday commented they have had an exceptionally cooperative effort with the railroad to get to where they currently were with the project; and it happened much quicker than they had anticipated.

Councilmember Bird asked for an explanation as to why the liability coverage had been reduced. Mr. Heisler said it was the railroad being held harmless; and the numbers were being decreased for the railroad.

Councilmember McCall moved for approval of Item C, seconded by Councilmember Pitman.

Councilmember Cromley said he was a big supporter of downtown, but he could not accept the 25th Street Bridge as a viable project. He said if it was moved to 30th Street where one of the bridges was originally proposed a long time ago, it would be wonderful. It would serve no purpose on 25th; it would be an object that would fall into disrepair out of non use; and the City would be on the hook to remove it. The proposal to put incline lifts on both sides would make it very attractive to youth, and it would take a full-time operator to man the situation. He said 12 years ago the estimated annual

maintenance cost was \$18,000; and the cost of the project had more than doubled; so he was sure the annual maintenance cost would more than double. It only took a couple minutes more to go to the underpass. There were pedestrian lanes on both sides of the underpass, and one could be made a bike path. He said South 25th Street was not used as a bicycle route. He said 28th made a lot of sense. In the past 27th had been proposed as a bicycle route, which made a lot of sense; this did not make any sense so he would be voting against the motion.

On a roll call vote, the motion was approved 5 to 4. Councilmembers Pitman, Bird, McCall, Crouch, and Mayor Hanel voted in favor. Councilmembers Cromley, Yakawich, Swanson, and Brown voted in opposition. Councilmember Cimmino abstained.

Councilmember Yakawich referenced Consent Agenda Item B and asked Assistant City Administrator, Bruce McCandless, to provide detail on why Kimley-Horn was chosen. Mr. McCandless advised it was a Request for Proposals distributed locally and nationally. They received five proposals. He said the Kimley-Horn proposal was selected because they focused mostly on downtown parking. The other companies had worked for universities or private companies or had constructed parking facilities. Kimley-Horn was familiar with the Billings community, had prepared the 1998 Downtown Framework Plan, and was a major part of the parking forum last fall. Mr. McCandless said Kimley-Horn would bring a panel of experts volunteering their time to do a community assessment of the parking system and provide feedback; as well as identify peer cities to analyze and compare to Billings. Kimley-Horn provided a thorough explanation of the stakeholder involvement program, which was one of the items emphasized in the Request for Proposals. They also would provide follow-up consultation over the phone free of charge, and their schedule of four months to completion was what the City had asked for. Mr. McCandless noted Kimley-Horn's proposed \$86,000 price was slightly higher than the \$65,000 to \$85,000 range staff identified in January and February.

Councilmember Pitman asked what they would receive as a final product. Mr. McCandless said there would be a written plan on how to implement their recommendations. He referenced the Cedar Rapids, IA and Duluth, MN, innovative parking plans sent to Council last fall that involved Kimley-Horn. He said they would see completion of a plan unique to Billings with solid recommendations to improve the parking system. Councilmember Pitman asked if they were waiting until the Empire Parking Garage was completed. Mr. McCandless said they were not because it was not a parking demand study. Kimley-Horn would not be reproducing data because parking demand and supply was not a major component of their work.

Councilmember Swanson asked if the plan included meter parking and rates in various parts of the city. Mr. McCandless said it would, and Kimley-Horn emphasized looking at on-street and off-street parking together as a system.

Councilmember Brown asked if they could expect answers to questions asked before, such as did they need a parking director or should they contract it out. Mr. McCandless said governance and management of the parking system was one of the items specifically identified as needed recommendations.

Councilmember Cimmino said for the record she was not asking a question on the contract. She said it was her understanding the city was currently recruiting for a parking manager. Mr. McCandless said that was correct.

Councilmember Swanson moved for approval of Item B, seconded by Councilmember McCall. On a voice vote, the motion was approved 8 to 1. Councilmember Pitman voted in opposition. Councilmember Cimmino abstained.

Councilmember Pitman referenced Consent Agenda Item K and moved for approval changing the public hearing date from April 28, 2014, to April 14, 2014, seconded by Councilmember Bird. On a voice vote, the motion was unanimously approved.

REGULAR AGENDA:

2. PUBLIC HEARING AND RESOLUTION #14-10342 vacating the east 21.6 feet of Henesta Drive right-of-way located on Lot 10, Block 2, Justiss Subdivision; David and Barbara Hawkins, petitioners; estimated value - \$3,700. 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. Mayor Hanel noted the item had been addressed at a previous work session where information was presented.

The public hearing was opened.

- **Barbara Hawkins, no address given**, said she and her husband owned the adjacent property, which they had purchased to build an office building. While doing the site plan development they became aware of the strip of land owned by the City. When Henesta was cut off going on to 24th Street an access was needed from Rosebud into the subdivision so a piece of two separate lots was taken to create Henesta Place. They would like to purchase the strip of land to include with their site plan and develop it as a nice entrance to their office building.

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

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

3. PUBLIC HEARING AND RESOLUTION #14-10343 authorizing the sale of a 20-foot-wide strip of parkland situated between Lots 7 and 8, Block 4, Rehberg Ranch Estates Subdivision, 1st Filing; using the Comparative Market Analysis value as the minimum opening bid price. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) Park Planner, Mark Jarvis, showed an aerial view and a plat of the subject tract of parkland in Rehberg Ranch Estates. He said staff believed it to be in the best interest of the City to sell the tract because of its minimal value as parkland. He noted there was significant other parkland throughout the subdivision.

Councilmember Bird said it was a small, oddly-placed strip of land and asked for the original purpose. Mr. Jarvis said he was not sure, but it could have been an original access point to parkland. He said there were other access points to the parkland that would be more easily accessible. Councilmember Bird asked if adjacent property owners had provided feedback that the tract was valuable to them as parkland. Mr. Jarvis said he had received no comments.

Councilmember Brown asked if the tract would be advertised for open bid. Mr. Jarvis said it would.

Ms. Volek noted it was not a buildable parcel. There was a single owner of the two surrounding parcels. It would be a publicly-bid item but the intent would be that the single owner would consolidate both lots and have a larger building site.

Councilmember McCall reminded Council they had been through a lengthy process with the Parks Department about identifying pieces of parkland that were not usable, and the Parks Department was following through exactly with what Council requested them to do. This was one of those properties.

Councilmember Pitman asked where the proceeds of the sale would go. Mr. Jarvis said the priority was to first pay for any costs incurred in the sale process. The balance would then go to pay for park improvements in the area where the land was sold. If there were no needed area park improvements, the money would go to pay for development of Billings community and regional parks that would benefit the subdivision.

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 Pitman. On a voice vote, the motion was approved 9 to 0. Councilmember Cimmino abstained due to a conflict of interest.

4. PUBLIC HEARING AND RESOLUTION #14-10344 assessing the cost of removing a dangerous or unsafe tree deemed as a public hazard or nuisance as provided in Billings, MT Municipal Code (BMCC), Section 25-209. 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.

Councilmember Brown asked if the property owner knew of the \$700 invoice. Parks Director, Mike Whitaker, said the property owner was given the opportunity to remove the tree before the City had it removed. The City Forester felt the tree had Dutch Elm Disease and needed to be removed. Ms. Volek advised the property owner had been notified that if the tree was not removed, the City would remove it and the \$700 would be assessed against their property if they failed to pay. She said the tree was removed in August.

Councilmember Swanson said he had received a number of calls on this particular item; and he needed to be better educated on the policy. He asked that the policy be placed on a work session agenda. Councilmember Pitman said he would also like the impact of Dutch Elm Disease included in the discussion. Ms. Volek said staff would be happy to present the requested information at a work session.

Councilmember McCall said she received a call from a woman who was very angry at Code Enforcement and the whole process. Councilmember McCall asked if the owners had contacted the City directly. Mr. Whitaker said he was not sure and would need to check with the City Forester. Councilmember McCall said they needed to communicate with the owners because there was a lot of angst about it. Mr. Whitaker said the City Forester was very good about working one-on-one with people; and he would bet he had spoken with the property owners, but he did not know for sure.

Councilmember Cimmino said she understood the City Forester went through the proper channels, but she was surprised with the time element. She said 10 days was too short a time to have to come up with \$700 to pay the bill. She asked if 10 days was the general time frame to respond to correspondence or to pay the bill. Mr. Whitaker said he thought it was 10 days and said it was something that could be addressed during their work session presentation.

Councilmember Pitman asked if the item could be postponed by two weeks so Council could get answers to some of their questions. Mr. Whitaker said it was not a time-sensitive issue. The funds to do the tree work came out of the General Fund, and it was just a matter of reimbursing the General Fund.

Councilmember Cromley asked if a bill was sent to the property owners after the tree was cut. Mr. Whitaker said he did not know but he could get the answer.

Councilmember Bird said trees were important to people. She asked if there was some type of program to help people purchase replacement trees. Mr. Whitaker said they did not have funds for tree replacement on private property.

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

Councilmember McCall moved for approval of Item 4, seconded by Councilmember Cromley.

Councilmember Cimmino made a substitute motion to postpone to April 28 so the owner could pay the bill and not be assessed, seconded by Councilmember Pitman.

Councilmember Brown asked what they were expecting back on April 28. Councilmember Cimmino said 30 days would be more time for the property owners to budget their finances and pay the bill. Councilmember Brown asked if they would be postponing assessing the fee and not coming back to Council for any decisions. Councilmember Cimmino said that was correct. Ms. Volek advised in the interim staff would provide Council with the history on the property as to what occurred.

Councilmember McCall confirmed with Mr. Whitaker that he was not aware of any contact at all with the property owners. She said the fact that the property owners had not contacted the City was of interest to her. The property owners were aware of it but had not complained or come to the City, so she was not sure why they needed the additional 30 days.

Councilmember Cimmino responded that four of her neighbors were retired with second homes elsewhere, and they had not been home all winter. She did not know the actual situation of the property owners, but 10 days did not seem like a lot of time to come up with an extra \$700 to pay for removal of a tree damaged by nature.

Councilmember Brown confirmed that the tree had been cut down in August, and the property owners had received a notice they would be assessed a fee. Ms. Volek said that was correct.

Councilmember Bird said given the time from when the notice was given prior to the tree being cut down to now, eight months had gone by. She said there was a policy in place and a lot of time had passed, so she would not support the substitute motion.

Councilmember Cromley asked if the substitute motion was to delay the assessment or to delay the entire issue. Mayor Hanel said it was to delay the forwarding of the tax assessment for 30 days to allow the property owners to pay. Councilmember Cromley said if it was assessed they would not have to pay until November anyway.

Mayor Hanel said even though he respected the substitute motion they had a policy in place and notification was followed. He suggested proceeding with the initial motion.

Councilmember Cimmino said for purposes of clarification, she would withdraw her substitute motion. It was a goodwill effort. A lot of times it was all about communication, public relations, and damage control. They wanted to be perceived as conducting good business, and that was the basis for her substitute motion. Councilmember Pitman withdrew his second to the substitute motion.

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

5. PUBLIC HEARING AND RESOLUTION #14-10345 granting a tax exemption to Billings Ventures, LP, dba Big Horn Resort for building expansion at 1801 Majestic Lane. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) Assistant City Administrator, Bruce McCandless, said he would be making one presentation for Agenda Items 5, 6, and 7; however, a public hearing needed to be held individually for each item, and the resolutions were also separate. Mr. McCandless said state law allowed cities to establish four tax incentive programs - (1) industrial construction or expansion; (2) remodel, reconstruct or expand existing buildings; (3) remodel, reconstruct or expand abandoned commercial buildings; and (4) historic property restoration. In 2005 Council adopted the first three programs, and in 2010 adopted the historic property restoration. He said that evening they would be talking about #2 – remodel, reconstruct or expand existing buildings. BSEDA managed the application process, submitted the application to the City, staff prepared the report, and Council made the decision whether to grant the exemptions. Mr. McCandless said each program exempted only the added value of the property.

Mr. McCandless reviewed the applicant data for the Big Horn Resort. There was a \$1 million expansion investment, 14 part-time employees were hired, and they paid \$166,000 in property tax and \$30,000 in city assessments. The estimated abatement was for 100% of the added taxable value and equaled approximately \$3,600 of city tax per year for five years. He showed photographs of the expansion.

Mr. McCandless reviewed the applicant data for Roscoe Steel, Inc. There was a \$1 million expansion investment, 12 full-time employees were hired, and they paid \$55,000 in property taxes and \$20,000 in city assessments. The estimated abatement was for 100% of the added taxable value and equaled approximately \$3,600 of city tax per year for five years. He showed photographs of the expansion.

Mr. McCandless reviewed the applicant data for 360 Office Solutions, Inc. There was an \$836,549 remodel investment, they planned to hire 30 to 38 full-time employees over two years, and they paid \$40,000 in property tax and \$7,600 in city assessments. The estimated abatement was for 100% of the added taxable value and equaled

approximately \$2,900 of city tax per year for five years. He showed photographs of the remodel.

Recommendation to Council was to conduct three public hearings and consider the applications and resolutions presented. If approved, BSEDA, city staff, and the Department of Revenue would follow-up to make sure the properties were granted the tax exemptions.

Councilmember Bird asked for the rationale behind the 5-year exemption period. Mr. McCandless advised the State of Montana determined the time period. He said state law also required that City Council consider and approve each application by resolution.

Councilmember Yakawich asked Steve Arveschoug, Executive Director of BSEDA, to explain the benefits to the City of Billings. Mr. Arveschoug acknowledged his staff and the property owners in attendance. He said Billings, as well as the State of Montana, had very limited economic tools, and the tax abatement incentive was one of the tools. They were in a very competitive economic development region, and they needed to pay attention to what was happening not only locally but in surrounding states. The three applicants that evening were existing local businesses that were making an investment, growing, and adding jobs. In the long run it would be a good return on the investment for the community not just in the tax base, but the added job opportunities. Mr. Arveschoug said he would be more than happy to attend a work session and brief the Council on the scope of work they did on behalf of the community. Mr. Arveschoug noted 360 Office Solutions, Inc. was now occupying a building on the west end that had sat vacant for a number of months. He said having an occupant in the building would help spur additional development in that area.

The public hearing was opened.

- **Kevin Nelson, 4235 Bruce Avenue, Billings, MT**, asked why so much time had passed between the start of construction, completion date, and today's date. He said he doubted they even considered the tax abatement when they put the project together. He said the original application said they would add only two full-time jobs. They had already put their business plan together and hired their employees; and now they were begging for corporate welfare and shifting their tax burden onto the rest of the people. He read MCA 7-1-111(3) and said the City did not have the power to abate local school taxes. They did not know there was a tax abatement available to them until BSEDA brought it up. He opposed it and told Council they should oppose it, too.
- **Tom Zurbuchen, 1747 Wicks Lane, Billings, MT**, said he was also opposed to the tax abatement. The entire value of the new construction was removed from the tax rolls. If approved, the City would be saying it had adequate funds to absorb the increased costs. In a couple months, the City would be coming forward with a public safety levy and telling the citizens there was not enough growth in the City to sustain its operation. Both statements contradicted each other. The City was giving the money not as an incentive but as a windfall profit for expanding the business.

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

Councilmember Swanson moved for approval of Item 5, seconded by Councilmember Cromley.

Councilmember Swanson said he spent years in a commercial industrial real estate company that did business on a national basis. Every state had a similar program to entice good companies to come into its market area. He said he supported the tax abatement program and encouraged Council to approve the tax abatement incentive.

Mayor Hanel said it cost money to make money, and Big Horn Resort had spent a tremendous amount of money in the community to make money. Everyone had benefited in one way or another. Past tax abatement incentives had proven to be very successful and beneficial; and he would support the motion.

Councilmember Pitman said he supported the motion. It was a program the City offered, and the business did what it was supposed to do to qualify. It was appropriate that Council approve it.

On a voice vote, the motion was unanimously approved.

6. PUBLIC HEARING AND RESOLUTION #14-10346 granting a tax exemption to Roscoe Steel dba True North Steel for building expansion at 1501 S. 30th Street West. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

The public hearing was opened.

- **Kevin Nelson, 4235 Bruce Avenue, Billings, MT**, said there was Empire Steel, a good business with Highlands just in the wrong spot, and Laurel Tank Company. This company would build tanks for the Bakken, yet they were so desperate for money. Mr. Nelson said they were filling their pockets full of money from the \$100/barrel oil, but they were just barely getting by and needed the tax abatement. He said the owner of Toyota on Grand pulled his application the day of the public hearing because he recognized it was nothing but corporate welfare pushing the taxes onto the employees. He stood up and took the responsibility to build his business and pay his fair share of taxes. He said if tax abatement was good for business, they should abate everybody's taxes.
- **Tom Zurbuchen, 1747 Wicks Lane, Billings, MT**, said state code left them the ability to accept and reject applications on merit. Council was not forced to accept the applications just because the businesses qualified. The only thing that came back to the City was the value at the time it was put on the tax roll in future years. By IRS law and regulations all commercial business property depreciated, and the City would not recoup the abated monies. The taxable value on the improvements would, by law, go down every year; and they would be preventing the City from showing an honest growth by abating all its business taxes.

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

Councilmember McCall moved for approval of Item 6, seconded by Councilmember Cromley. On a voice vote, the motion was approved 9 to 1. Councilmember Crouch voted in opposition.

7. PUBLIC HEARING AND RESOLUTION #14-10347 granting a tax exemption to FKCD LLP/360 Office Solutions Inc. for building remodel at 3723 Pierce Parkway. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

The public hearing was opened.

- **Kevin Nelson, 4235 Bruce Avenue, Billings, MT**, said this is what happened when the government got involved in the free market enterprise. He asked why Sportsman's Warehouse was empty. Could it be because the City granted Cabela's a TIF district and gave them an \$8 million road or because their parking lot was considered a public improvement infrastructure allowing them to deduct \$5,000 a month off their Montana corporate income tax? When the playing field was unlevel, it had to happen. It was Capitalism. It was not the City Council's job to pick the winners and the losers; and that was what they were doing that evening. He said taking property tax off the tax rolls disrupted the school equalization issues. It was very important to the schools that all property of taxable value be calculated for the state share. That was why MCA prohibited them from affecting schools, which they were doing that evening; and he did not feel it was correct.
- **Tom Zurbuchen, 1747 Wicks Lane, Billings, MT**, said the County did a tax abatement a couple weeks ago on the same improvements. He asked if it was the same tax abatement or a second tax abatement. Ms. Volek advised it was a second abatement for the same improvement project. The City and County each had its own tax abatement.

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

Mr. McCandless read from Montana Code Annotated Section 15-24-1501(4):

The tax benefit described in subsection (1) applies only to the number of mills levied and assessed for high school district and elementary school district purposes and to the number of mills levied and assessed by the local governing body approving the benefit. The benefit described in subsection (1) may not apply to statewide levies.

Mr. McCandless said that section specifically granted the City Council authority to abate taxes for the local school levies. He said the local government body improving the abatement was only exempting its levies, which was the reason for action by both the City Council and the County Commissioners.

Councilmember Cimmino asked if the City had a contract with 360 Office Solutions. Ms. Volek said the contract was bid periodically, and 360 Office Solutions

was the current holder of the contract. Councilmember Cimmino asked if there would be a financial conflict of interest voting on the project. City Attorney Brooks said as long as the application was processed like everyone else's application, as long as the statutes gave City Council the authority to approve or deny, and as long as the contract with 360 Office Solutions was competitively bid, which it was; he could see no conflict.

Councilmember Yakawich asked Mr. Arveschoug to comment. Mr. Arveschoug said the merits of the program spoke for themselves. It was an opportunity for City Council to work with existing or future businesses. He said he viewed it as a partnership.

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

On a voice vote, the motion was approved 9 to 0. Councilmember Cromley abstained due to a conflict of interest.

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.

- **Kevin Nelson, 4235 Bruce Avenue, Billings, MT**, said he was going back to last week's work session on Agenda Item #1. He said he did not believe the Council had agenda setting meetings; they did not set the agenda. Who set the agenda? Ultimately, the City Administrator. The City Administrator had a conflict of interest by putting Item #1 on the agenda for her personal gain in a private organization because she sat on the steering committee for Not In Our Town.

Ms. Volek said she did not sit on the steering committee.

Mr. Nelson said it was on the city website.

Ms. Volek said Councilmember Bird was the Council's appointed representative to the board. She said she was an alternate and had no other involvement.

Mr. Nelson said that was her opinion, but that was on the packet sent out on Friday. She was the last person listed on the steering committee, and it did not say 'alternate.' Mr. Nelson said he believed that Brent Brooks had a conflict of interest also because essentially he did not work for Ms. Volek; he worked for the City. Is his opinion tainted? Mr. Nelson said he would not have a clue. Is that of the City Administrator? Mr. Nelson said he would not have a clue. He said the city attorney was conflicted, the city administrator was conflicted, and the city councilmember had already conflicted herself rather than stepping away because she sat on the committee. She was out there speaking in favor of the motion and failing to recuse herself. Mr. Nelson said he thought it would behoove the Council to seek private counsel on the matter to have an independent person look out for their best interest and not the best interest of the City Administrator who sat on

the steering committee of Not In Our Town requesting \$25,000 of Council Contingency Funds.

- **Brandon Berger, 222 N. 32nd Street, Billings, MT**, said he was speaking on behalf of the Downtown Exchange Club. He reminded Council of the Crime Prevention Luncheon honoring an officer from the Billings Police Department, Yellowstone County Sheriff's Department, and the Montana Highway Patrol who were nominated for the award by their peers. He said the luncheon would be held on April 1 at noon on the 3rd Floor of the Crowne Plaza.
- **Walt Donges, 941 Constitution Avenue, Billings, MT**, said he heard about Agenda Item #1 last week and heard issues raised recently. He told Council they were there to partner with the community and to grow the community. They were all elected to represent and make decisions for the community. He suggested that Council partner with the community and have their best interests at heart.

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

COUNCIL INITIATIVES

- **Pitman:** MOVED to direct the Parks Department to give a work session presentation on Dutch Elm Disease, the pine beetle, and any other critters that may be attacking city trees with remedies or things they should be anticipating in the future. He said he would like the presentation to include tree diseases, preventable treatments, and the tree removal process, seconded by Councilmember Cimmino. On a voice vote, the motion was unanimously approved. Councilmember Pitman noted the staff presentation could wait until after the work on the budget had been completed.

There was no further business, and the meeting adjourned at 9:00 p.m.



CITY OF BILLINGS

By: Thomas W. Hanel
Thomas W. Hanel, Mayor

ATTEST:

By: Cari Martin
Cari Martin, City Clerk