

## REGULAR MEETING OF THE BILLINGS CITY COUNCIL

July 28, 2014

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

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

### MINUTES:

- June 23, 2014 – Councilmember Pitman moved for approval, seconded by Councilmember Yakawich. On a voice vote, the motion was unanimously approved.
- July 14, 2014 (pending)

**COURTESIES:** Mayor Hanel wished Lonnie Bell, long-time country music DJ, a happy 90<sup>th</sup> birthday from the City of Billings.

**PROCLAMATIONS:** None

### ADMINISTRATOR REPORTS - TINA VOLEK

- **Item C: Change Order #1 with Tetra Tech for the Empire Parking Garage in the amount of \$13,001.** Council received a copy of Change Order #1 in the July 25<sup>th</sup> Friday Packet. Copy of the change order was filed in the ex-parte notebook.

### **PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: #1 & 3B 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. **Mayor Hanel recommends that Council confirm the following appointments:**

|    | <b>Name</b>      | <b>Board/Commission</b>             | <b>Term</b>   |             |
|----|------------------|-------------------------------------|---------------|-------------|
|    |                  |                                     | <b>Begins</b> | <b>Ends</b> |
| 1  | Jessica Leuthold | Bicycle & Pedestrian Advisory Comm* | 07/28/14      | 12/31/15    |
| 2  | No Applications  | Board of Appeals - Electrical       | 07/28/14      | 12/31/17    |
| 3  | No Applications  | Housing Authority Res Comm          | 07/28/14      | 12/31/15    |
| 4  | Jeana Lervick    | Library Board*                      | 07/28/14      | 12/31/14    |
| 5  | No Applications  | Mayor's Homelessness Lending        | 07/28/14      | 12/31/16    |
| 6  | David Fishbaugh  | Parking Advisory Board              | 07/28/14      | 12/31/17    |
| 7  | No Applications  | Parking Advisory Board*             | 07/28/14      | 12/31/14    |
| 8  | Andy Piccioni    | Parking Advisory Board*             | 07/28/14      | 12/31/17    |
| 9  | Pierre Jomini    | Traffic Control Board*              | 07/28/14      | 12/31/14    |
| 10 | Jerry Dunning    | Traffic Control Board               | 07/28/14      | 12/31/17    |

1 Unexpired term of Darryl Wilson  
 4 Unexpired term of Shari Nault Pullar  
 7 Unexpired term of William Gilbert  
 8 Unexpired term of Edward Arnold  
 9 Unexpired term of Brent Krueger

**B. Bid Awards:**

**1. Airport Parking Lot and Road Construction.** (Opened 7/15/2014) Recommend delay of award until August 11, 2014.

**2. Electronic Waste Disposal.** (Opened 7/15/2014) Recommend Yellowstone E-Waste; \$0.25/per pound for three years.

**C. Change Order #1 - Empire Parking Garage;** Tetra Tech; \$13,001.

**D. Empire Parking Garage Management Agreement** between Zootist Hospitality LLC, and the Empire Garage Owner's Association.

**E. Interlocal Agreement** for Montana Firefighters Testing Consortium.

**F. Acceptance of Donation** to the Parks, Recreation and Public Lands Department from Bright and Beautiful for tree planting event at Coulson Park; \$5,000.

**G. Acceptance of Donation** to the Billings Police Department for graffiti abatement equipment from Hanser's Wrecker Company, Inc.; \$3,000.

**H. Acceptance of Quitclaim Deed** for portions of road right-of-way located on Barrett Road and Kyhl Lane in Billings Heights (Annexation #14-01) from Yellowstone County.

**I. Resolution #14-10382** providing assistance to the Billings Industrial Revitalization District (BIRD) with \$3.1 million estimated costs for storm water, water and sewer improvements to be developed as part of the Exposition Gateway Infrastructure Plan.

**J. Public Safety Mill Levy Charter Amendment**

**(1) Second/Final Reading Ordinance #14-5624** providing that the Billings City Charter be amended to add Section 1.05.2; providing for a permanent mill levy to fund Fire, Police, 911 Dispatch Services, and related public safety expenses and submitting the proposed amendment to the electors of the City as provided by law.

**(2) Resolution #14-10383** referring the ordinance amending the Billings City Charter to provide for a permanent mill levy to fund Fire, Police, 911 Dispatch Services, and related public safety expenses to a vote of the people at an election to be held on November 4, 2014.

**K. Final Plat Approval**

1. The Estates at Briarwood Subdivision, 2nd Filing
2. Popelka Commerce Center Subdivision, 2nd Filing

**L. Bills and Payroll:**

1. June 30, 2014
2. April 1, 2014 - June 30, 2014 Municipal Court

Councilmember Brown separated Consent Agenda Items L1 and L2 in order to abstain. Councilmember Brown also separated Consent Agenda Item B2. Councilmember Yakawich separated Consent Agenda Item F. Councilmember Pitman separated Consent Agenda Item C. Councilmember Cimmino separated Consent Agenda Item D. Councilmember Cromley moved for approval of the Consent Agenda with the exception of Items B2, C, D, F, L1 and L2, seconded by Councilmember Pitman. On a voice vote, the motion was unanimously approved.

Councilmember Pitman moved for approval of Item L1, seconded by Councilmember McCall. On a voice vote, the motion was approved 9 to 0.

Councilmember Pitman moved for approval of Item L2, seconded by Councilmember McCall. On a voice vote, the motion was approved 9 to 0.

Councilmember Brown referenced Item B2. He said 25¢ per pound seemed high. Public Works Director, Dave Mumford, said it did seem a bit high. They only received one bid. Yellowstone E-Waste disposed of the waste in an appropriate manner, so it did not end up back in a landfill. Councilmember Brown asked if the 25¢ per pound was the

price the public also paid. Mr. Mumford said that was his understanding. Councilmember Brown asked for the amount of tonnage. Mr. Mumford said they averaged 120,000 pounds a year. Councilmember Brown asked if there was any other interest other than from Yellowstone E-Waste. Mr. Mumford said there was not.

Councilmember Cromley asked if there was a charge for the electronic waste at the landfill. Mr. Mumford said there was not. Councilmember Cromley asked if it came in with the general waste. Mr. Mumford said when it was brought to the landfill, it was kept separate, put on pallets, and delivered to Yellowstone E-Waste. Councilmember Cromley said his concern was that Yellowstone E-Waste could bring it back to the landfill. Mr. Mumford said Yellowstone E-Waste shipped it to the mid-west for disposal.

Councilmember Brown asked if it would make sense to advertise another Request for Proposals. Mr. Mumford said staff could re-advertise to see if they could get more bids or a better bid. There was no time crunch, so it was whatever Council wanted staff to do.

Councilmember Cromley asked if there was a guarantee Yellowstone E-Waste would not return the e-waste to the landfill. Mr. Mumford said the contract stated the e-waste was to be disposed of correctly.

Councilmember Brown asked Mr. Mumford if it was worth putting it back out for bid. Mr. Mumford advised they called around to see if anyone would be interested, and they only received the one bid. Once they would get out of Billings, the price would go up because it would have to be shipped to another location.

Councilmember McCall moved for approval of Item B2, seconded by Councilmember Crouch.

Councilmember Brown said 25¢ a pound was a lot. Yellowstone E-Waste would pick it up and then recycle it. He said half of that amount seemed more realistic to him.

Ms. Volek advised there were firms who did curbside recycling and general waste recycling, but the e-waste was specialized material and required appropriate recycling so the chips, etc. did not go into a landfill. She said there were no other providers in town, so they would have to ship it to another location and that would involve transport costs.

Councilmember Bird asked if they had e-waste stockpiling. Mr. Mumford said there was not a tremendous amount. He said there were companies who came to Billings from out of town to pick up recyclable materials, so they could go back out for bids if that was Council's request. Mr. Mumford said the 25¢ per pound price was good for three years.

On a voice vote, the motion was unanimously approved.

Councilmember Yakawich referenced Item F and asked Parks Director, Mike Whitaker, to describe the event at Coulson Park. Mr. Whitaker said the event was the closest thing possible to a perfect partnership. They had 78 community volunteers; members of the Parks staff; and Bright n' Beautiful donated \$5,000 towards the event - \$3,000 towards the purchase of trees and \$2,000 towards ongoing care of the trees. There was no master plan for Coulson Park as of yet, and it was all natural dry land grasses.

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

Councilmember Pitman referenced Item C and asked about the issues with the concrete samples that might not meet strength specifications. Assistant City Administrator, Bruce McCandless, said the suspected low strength was based upon the standard 28-day break tests conducted on concrete cylinders collected at the time pours were made. There was suspicion the extreme temperatures last winter played a role, as well as an air content in the concrete. He said following the 28-day breaks, it was determined it would be best to wait approximately 60 days and conduct further testing on the slab as it was in place. The testing on the slab was conducted, and the strength tests showed it met the specifications; and there were no areas in the garage that were below the specifications. Councilmember Pitman said an explanation would have been very helpful in the staff report instead of "we had a problem, and we need some money." Ms. Volek advised the concrete supplier provided approximately 45% of the cost of the testing, and the City was liable for approximately \$6,000.

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

Councilmember Cimmino referenced Item D. She congratulated everyone involved with the four-year project with special recognition going to Bruce McCandless for his extensive work. She said according to her calculations, the amount to manage the garage over three years was \$325,600 and asked if that was correct. Mr. McCandless said the amount would be \$225,000. He said the City would not pay the full cost; it would be divided among the five property owners, including Zootist Hospitality. Councilmember Cimmino referenced Page 3 of the Agreement and asked for clearer language on who would be liable in the event of mishaps. She asked where the protection was for the City's investment. She referenced Paragraph #8 - Disclaimer of Warranties and Paragraph #10 – Limitation of Liability. She read, "IN NO EVENT SHALL THE NORTHERN HOTEL'S TOTAL LIABILITY UNDER ANY PROVISION OF THIS AGREEMENT EXCEED THE AGGREGATE AMOUNT" and said it was interesting to note that particular paragraph was all capitalized, which meant on the Internet someone was shouting. They needed to zero-in on ironing out who exactly was liable to do what. Mr. McCandless said it was a provision he had pointed out to the City Attorney, who agreed it was unacceptable in its present form. They had held discussions with Zootist Hospitality, and they believed they would be able to get #10 changed. Mr. McCandless recommended City Council delay action on the item for two weeks to allow time to bring back the final language of the agreement. They planned a soft opening with a dedication sometime in September, and it was not critical that the management agreement go into effect immediately. The final inspection was scheduled for next week, and it would be a week or two or possibly longer before they closed on the sales of the properties and allowed vehicles and people into the garage. He said he believed they could get Paragraph #10 eliminated or modified to make the liability limitation more clear.

Councilmember Pitman said he would rather wait and see the final draft before approval. He asked what Zootist would be doing to receive the payment. Mr. McCandless said it would include maintenance of the entire structure, bookkeeping, management of the structure, making sure personnel was there on time, making sure contracts were in place for emergency repairs or repairs Zootist did not have the ability

to do, daily inspection of the garage, and security. He said he could provide a complete list that was put together when the Declaration of Unit Ownership was approved.

Councilmember Swanson asked if the utilities were billed separately. Mr. McCandless said the structure was built with each unit on its own meters.

Councilmember Cimmino moved to delay action for two weeks until the August 11, 2014, meeting in order to have the final revisions clarified, seconded by Councilmember Pitman. On a voice vote, the motion was unanimously approved.

## **REGULAR AGENDA:**

**2. PUBLIC HEARING AND SPECIAL REVIEW #917: A special review to locate an approximate 100-unit assisted living facility in a Multi-Family Residential zone on Lot 1, Block 1, Lenhardt Square Subdivision, 1st Filing, generally located on the southeast corner of S. 44th Street West and Monad Road in the Lenhardt Square Planned Development; Stock-Naughton, LLP, owner; Sanderson Stewart, agent. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** Planner II, Nicole Cromwell, began her presentation showing a zoning map of the subject property and surrounding properties, an aerial photo, a site development plan including parking and landscaping, and photographs of the subject property and surrounding properties. She noted a future Phase II was shown on the site plan, but it was not currently up for approval.

Councilmember Bird asked if the facility was specifically for memory care or if it would be mixed. Ms. Cromwell said it was presented as a memory care facility, and she did not believe they intended to include any other type of care.

Ms. Cromwell advised the Zoning Commission conducted a public hearing on July 1 and was recommending approval based on the following seven conditions.

1. Special review approval for a 100-unit assisted living facility – 2<sup>nd</sup> Phase would require additional special review.
2. Limited to this lot.
3. Increased in number of units or parking space greater than 10% would require additional special review.
4. Site developed in substantial conformance with submitted site plan.
5. Conditions run with the land.
6. Comply with all other limitations of Section 27-613 and other codes as required.
7. The developer shall obtain the Reviewer's written consent in accordance with Article IV.G. of the Planned Development Agreement for Lenhardt Square.

Councilmember McCall asked if the building would be one floor. Ms. Cromwell said she did not believe it would be, but they would be limited to a certain number of units and residents. They did not have an elevation plan to review, but it would have to conform to all the restrictions in the Planned Development zone.

Councilmember Bird asked if there was an identified timeframe for start to completion. Ms. Cromwell said she did not believe so.

Councilmember Yakawich asked how the City would provide public safety as it continued to grow. Were emergency services considered in the plan? Ms. Cromwell

noted the Lenhardt property was annexed in 2008, and concerns were voiced at that time. The annexation was not approved on the first reading, the plan had to be re-worked, and agreements were reached with city service providers. At the same time the City was constructing a new fire station at 54<sup>th</sup> Street West and Grand Avenue. The Planned Development was seen as a benefit because of the increase in density that would be more efficient, more effective, and serve a larger population in a smaller, more compact development. Ms. Cromwell said she did not think the development would unduly burden the City, and it would serve a growing segment of the population of Yellowstone County.

Councilmember Swanson asked if the parking requirements were the same as a 100-unit apartment building. Ms. Cromwell said they were not; the Lenhardt Planned Development Agreement had specific parking ratios. There was adjustment for specific uses.

Councilmember Bird asked at what point the intersection between development and public safety would be part of the conversation. Ms. Cromwell said the parts of public safety they looked at under zoning for special reviews was access to the property and traffic generation to the property. Staff always sent all applications to the Police and Fire Department, and both responded they had no concerns with the proposed development at that location. Councilmember Bird asked if the development was in Fire Station 7's area. Ms. Cromwell said she believed so, but Fire Station 5 on 24<sup>th</sup> Street West was of equal distance.

The public hearing was opened.

- **Pat Davies, Sanderson Stewart**, said he represented Stock-Naughton Development as agent on the project. He said he was available to answer questions.

Councilmember Yakawich asked Mr. Davies to address the concern of public safety. Mr. Davies commented the issue of city services had been discussed and analyzed several times throughout the annexation and zoning processes.

Councilmember Cimmino asked for a development timetable. Mr. Davies said they anticipated starting construction in spring 2015, so they would be working on the design and plans this fall. He said he anticipated the project would take 8 to 12 months.

Councilmember Bird asked if there were additional fire code requirements on the proposed structure that might not be required on a residential or multi-family structure. Mr. Davies said they were the civil engineers on the project and not the architects, so he was not an expert on fire codes. He said it would be sprinkled, and there would be hydrants in the appropriate spots.

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

Councilmember Crouch moved for approval of Special Review #917 to include the seven conditions, seconded by Councilmember Brown.

Councilmember Bird said more memory care facilities were needed in Billings and in every community across the country, so she would support the motion.

Councilmember Brown commented it was a good location for the facility with the St. Vincent medical corridor located next door.

Councilmember Pitman said public safety had been discussed at length when the Lenhardt property began development. Current codes and the way the structure would be built did not lend itself to a lot of issues that would require police or fire. It would be very positive for the community.

On a voice vote, the motion was unanimously approved.

### **3. MONT VISTA SUBDIVISION, 1ST FILING**

**A. PUBLIC HEARING AND RESOLUTION #14-10384 authorizing the exchange of Cynthia Park in Yerger Heights Subdivision for an equal size of parkland in Mont Vista Subdivision, First Filing. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** Park Planner, Mark Jarvis, noted Mont Vista Subdivision was located on the southeast corner of Rimrock Road and 54<sup>th</sup> Street West south of the Cove Ditch. He presented an aerial view of the subject property, the Subdivision Master Plan, and a Context Map showing the location of Cynthia Park and the property to be exchanged. The aggregated parkland would total approximately four acres and would be more centrally located in the subdivision.

Councilmember Brown asked if the land being swapped was good, flat land or a rocky coulee in the middle of nowhere. Mr. Jarvis said the majority of the land was flat with gentle slopes.

Councilmember McCall commented she would support the project. It had been in the works for approximately four years. She and former Councilmember Ulledalen had attended the first public meeting, and she felt it would be a great addition to the area.

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

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

**B. FINAL PLAT OF MONT VISTA SUBDIVISION, 1ST FILING. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** Ms. Volek advised there was no presentation, but staff was available to answer questions.

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

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

The public comment period was opened. Mayor Hanel referenced the Non-Discrimination Ordinance and said the City Council had heard most everything there

was to hear for many, many hours and asked those wishing to testify to be polite and respectful and to keep that in mind.

The following individual spoke in favor of a Non-Discrimination Ordinance.

- **Dennis Ulvestad, 3040 Central Avenue, Billings, MT**

The following individuals spoke in opposition of a Non-Discrimination Ordinance.

- **Terry Forke, 341 Rolling Hills Boulevard, Billings, MT**
- **Dick Pence, 4307 Palisades Park Drive, Billings, MT**
- **Mark Carlstrom, 3134 Poly Drive, Billings, MT**
- **Donna Braun, 333 South 38<sup>th</sup> Street West, Billings, MT**
- **Meg Burvainis, 384 W. Daffodil, Billings, MT**
- **Kyndall Miller, 1500 1<sup>st</sup> Avenue North, Billings, MT**
- **Janice Linn, 821 North 27<sup>th</sup> Street, Billings, MT**
- **John Klier, 2514 Meadow Creek Drive, Billings, MT**
- **Tom Jones, 519 Carriage Circle, Billings, MT**
- **Susan Smith, 5522 Billy Casper Drive, Billings, MT**
- **Kari Beebe, 712 N. 26<sup>th</sup> Street, Billings, MT**
- **Mark Hall, 3952 Chamberlain Drive, Billings, MT**

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

#### **COUNCIL INITIATIVES** - None

There was no further business, and the meeting adjourned at 8:15 p.m.

CITY OF BILLINGS



BY:   
Thomas W. Hanel, Mayor

ATTEST:

BY:   
Cari Martin, City Clerk