

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

August 25, 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 Bird gave the invocation.

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

MINUTES:

- July 28, 2014 – Councilmember Cimmino moved for approval, as written; seconded by Councilmember Pitman. On a voice vote, the motion was unanimously approved.
- August 11, 2014 (pending)

COURTESIES:

- Mayor Hanel said the Billings Clinic Classic was held the previous weekend. Despite the rain, there was a tremendous turnout, and the organizers had done an excellent job.
- Councilmember Pitman wished his daughter, Diandra, a happy 14th birthday.
- Councilmember Bird reminded everyone that school was starting and drivers needed to be aware of the children who would be walking to and from school.
- Councilmember Bird noted August 26th was Women's Equality Day. The observance commemorated the passage of the 19th Amendment in 1920.
- Councilmember Cimmino remembered Sue Hart, a local educator and published author, who passed away that day. She noted a memorial service was scheduled for 3:00 p.m. Thursday at Petro Hall, and mass was scheduled for noon on Friday at St. Pat's.
- Councilmember Crouch noted there would be a bench dedication in a Heights Park on September 6th at 1:00 p.m. in memory of Joan Hurdle. Additional information would be forthcoming.

PROCLAMATIONS: None

ADMINISTRATOR REPORTS - TINA VOLEK

Ms. Volek commented on the following items.

- **Item #3, Public Hearing and Resolution setting Park District 1 Assessments for Tax Year 2014.** The resolution included with the agenda packet incorrectly listed the public hearing as September 8, 2014, instead of August 25, 2014. The final resolution would reflect the correct date.
- **Item C, BUFSA Agreement with Yellowstone County.** Staff was suggesting an amendment to Page 2, Section 5 – TERM, as follows: This Agreement shall be effective on July 1, 2014, and shall terminate on June 30, 2019, ~~approval and execution by the parties hereto and shall remain in effect~~ unless renewed by the parties as provided herein. The Agreement sent from the County had an indefinite continuation, and the amendment would give the agreement a 5-year term. Staff recommended the wording be changed as noted, and the agreement would be returned to the County for reconsideration.
- Due to the Labor Day Holiday, the work session was scheduled for Tuesday, September 2. There were no items on the agenda for September 2. Ms. Volek asked if the Council would like to cancel. The Council agreed to cancel the work session.
- Departmental tours were being scheduled. Ms. Volek said if there were councilmembers who would like to go on any of the tours to let her know.
- Council agreed to add a fourth Community Conversations date. The meeting would be held on the evening of September 11 at a south side location to be determined.

Mayor Hanel advised Councilmember McCall needed to leave the meeting early in order to arrive safely at another destination that evening; so she would like to bring forward an initiative at that time. Councilmember McCall said she would like to bring forward the initiative that she had spoken about at the last work session. She visited with Attorney Brooks that morning, and he agreed that the City needed to do the initiative process regarding a 4-plex at 2707 13th Street West. Zoning changes were made, and there was not a grandfather clause for the address. Councilmember McCall MOVED for an initiative for a map amendment for 2707 13th Street West from R-96 to R-60 and also for the appropriate zone change, seconded by Councilmember Swanson. Councilmember Cimmino asked if they would just be correcting the clerical error or if they had to go through the whole process. Councilmember McCall said they had to go through the complete process, which would take about 60 days. Mayor Hanel asked for a date certain the item would be on the agenda. Attorney Brooks said the City would initiate it, and then it would have to go first to the Zoning Commission and then to the City Council. City Administrator Volek said it could be placed on the September 8 agenda. On a voice vote, the motion was unanimously approved. Councilmember McCall left the meeting.

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: #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. Bid Awards:

1. Deicer/Anti-icer, Calcium Chloride Liquid. (Opened 8/12/2014) Recommend Brenntag Pacific; \$0.9275/gallon first year; years two and three based on mutual agreement of the City and the supplier.

2. Striping and Road Markings for Nine Roundabouts on Shiloh Road and King Avenue. (Opened 8/12/2014) Recommend Arrow Striping & Manufacturing, Inc.; \$107,044.

3. Winter Traction Material. (Opened 8/12/2014) Recommend Knife River; \$19.95/ton first year; years two and three based on mutual agreement of the City and the supplier.

B. Adult Resource Alliance of Yellowstone County Funding Agreement Renewal (formerly Yellowstone County Council on Aging) for FY2014-2015; \$26,780.

C. BUFSA Agreement with Yellowstone County; 2014 Fee - \$1,088,072.

D. Montana Department of Natural Resources (DNRC) Cooperative Agreement with City of Billings Fire Department.

E. Amendment #1, Airport Terminal and Land Use Planning Studies Agreement, Jacobs Consultancy/LeighFisher, Inc., \$245,467.

F. Amendment to Subdivision Improvements Agreement for Vintage Estates Subdivision; Vintage Estates, LLC, owner; Sanderson Stewart, agent; no financial impact to the City.

G. Recommendation of approval to the Policy Coordinating Committee for Draft 2015 Unified Planning Work Program.

H. Acceptance of donation to Fire Department for purchase of fire safety/public education supplies; IAFF Local 521; \$750.

I. Preliminary Plat Three-Year Extension for Amended Lot 4A, Block 2, Goodman Subdivision, 4th Filing; generally located on the southeast corner of 41st Street West and Avenue C; setting a new expiration date of August 22, 2017.

J. Preliminary Major Plat of High Sierra Subdivision, 8th Filing, generally located north of Benjamin Boulevard, on both sides of High Sierra Boulevard in Billings Heights;

High Sierra II, Inc., owner; Sanderson Stewart, engineer; conditional approval and adoption of the findings of fact.

K. Preliminary Major Plan of High Sierra Subdivision, 9th Filing, generally located north of Annandale Road, west of Greenbriar Road in Billings Heights; High Sierra II, Inc., owner; Sanderson Stewart, engineer; conditional approval and adoption of the findings of fact.

L. Preliminary Major Plat of High Sierra Subdivision, 10th Filing, generally located north of Annandale Road, west of Greenbriar Road in Billings Heights; High Sierra II, Inc., owner; Sanderson Stewart, engineer; conditional approval and adoption of the findings of fact.

M. Final Plat Approval

1. Zeiler Subdivision
2. Hogan Homestead Subdivision, Amended Lot 4, Block 3
3. Winemiller Subdivision, Amended Lots 9 & 10

N. Bills and Payroll:

1. July 28, 2014
2. August 4, 2014

Mayor Hanel separated Consent Agenda Item H. Councilmember Cromley said he would abstain from Consent Agenda Item B because he served on the Board of the Adult Resource Alliance. Councilmember Brown said he would abstain from Consent Agenda Items N1 and N2.

Councilmember Pitman referenced Item N2. He said in August there was a tremendous amount of P-Card use and asked if they were keeping good track of the charges. He said when he started seeing charges to Gainan's, Pepsi, Service Candy, and Holiday Station, he got a little nervous. Ms. Volek advised she periodically vetted them, and Ms. Kampa-Weatherwax looked at them. It was up to each individual department director to review and approve the P-Cards for their employees. Ms. Volek said she would personally review them.

Councilmember Pitman moved for approval of the Consent Agenda except for Items C (as requested by Ms. Volek) and H, seconded by Councilmember Cimmino. On a voice vote, the motion was unanimously approved.

Mayor Hanel referenced Item H and asked if there were representatives of IAFF Local 521 in attendance or if the Fire Chief was in attendance to comment on the donation. Fire Chief Paul Dextras said Local 521 had supported fire prevention efforts in the past and continued to do so this year. Their donation was greatly appreciated, and it allowed them to buy fire prevention materials, especially in October during Fire Safety Week when thousands of children in the community visited the City's fire stations. The children were given fire prevention material to take home such as wristbands, coloring books, and pencils. Mayor Hanel said he felt the donation deserved recognition on

behalf of the IAFF city employees who were giving back to the community. Councilmember Cimmino moved for approval of Item H, seconded by Councilmember Bird. On a voice vote, the motion was unanimously approved.

Councilmember Pitman moved for approval of Item C as amended and recommended by staff, seconded by Councilmember Yakawich. On a voice vote, the motion was unanimously approved.

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

Councilmember Pitman moved for approval of Item N1, seconded by Councilmember Yakawich. On a voice vote, the motion was approved 9 to 0.

Councilmember Pitman moved for approval of Item N2, seconded by Councilmember Yakawich. On a voice vote, the motion was approved 9 to 0.

REGULAR AGENDA:

2. PUBLIC HEARING AND RESOLUTION #14-10388 setting tax year 2014 mill levy rates for Public Safety II Fund, General Obligation Debt Service Parks, General Obligation Debt Service Streets, General Obligation Debt Service Library, and General Obligation Debt Service Series A Baseball Stadium. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) Ms. Volek advised there was no presentation, but staff was available to answer questions. She noted as a result of the Charter and Verizon settlements, it actually represented a slight reduction in mills.

The public hearing was opened. There were no 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 #14-10389 setting Park District 1 assessments for tax year 2014. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) Parks Director, Mike Whitaker, began his presentation showing the city-wide park district assessment for FY2013 at \$1,855,000; FY2014 at \$1,895,000; and FY2015 at a proposed \$2,304,876; with an average assessment of \$2,000,000 a year. He listed the projects they hoped to accomplish in FY2015, as follows:

- Stewart Park Infrastructure Improvements - \$1,200,000. The improvements would include auto/pedestrian circulation, parking, safety, emergency access, and irrigation upgrades. He noted \$165,000 of that amount would be used for the rock removal along 6th Avenue North.
- Amend Park Irrigation Upgrades - \$250,000. The upgrades would be to the city water service, ditch infrastructure, etc.
- Large Event Shelter at Pioneer Park - \$200,000. The shelter would replace a shelter that had been removed from North Park.
- Park and Facility Maintenance Tracking Software - \$9,900. The software would track labor, equipment and materials costs.

- Personal Services - \$213,292. Three full-time and 7 seasonal employees.
- Operations and Maintenance - \$431,594. New picnic tables, vegetation/weed management, emergency maintenance and repairs.

Councilmember Cimmino referenced the proposed shelter for Pioneer Park and asked if they would retain the Zimmerman Center at Pioneer Park. Mr. Whitaker said the Zimmerman Center would stay. Several years ago they lost a shelter at North Park as the result of a major storm, and it was determined it made more sense to put a shelter in Pioneer Park instead of replacing the one in North Park because North Park still had two other shelters. Councilmember Cimmino asked if the proposed shelter would be the same concept as the gazebo in South Park. Mr. Whitaker said it would not be the same design. It would be an open structure with no walls. It would accommodate more people and protect people from the weather. Councilmember Cimmino commented \$200,000 would build a 3-bedroom, 2-bath house in the community; so she was surprised by the dollar amount. Mr. Whitaker said \$200,000 was arrived at when they put together the 3-year plan; and the numbers were around three years old.

Councilmember Pitman said he always struggled with Park Maintenance District One for a lot of reasons, and his biggest concern right now was they started at \$1,855,000 and in just three years they had increased by \$410,000. It was his understanding it was supposed to be focused on deferred maintenance versus building a lot of new things. He would feel more comfortable if they were staying closer to the \$1.8 million and looking at a slower track. To increase nearly half a million dollars in three years meant they were stepping up the pace. They were told it was a 10-year process to bring the parks back up and do general maintenance. Replacing a shelter in North Park with a new shelter in Pioneer Park was not helping North Park. They were adding more to a system that was already strapped.

Mr. Whitaker explained the Parks Board's initial 3-year plan was to do \$2 million a year. When City Council prioritized the projects, it made some years less than \$2 million and one year more than \$2 million. They would average \$2 million based on the projects the Council chose to fund.

Councilmember McFadden asked for the size of the proposed shelter and if it would have a concrete floor. Mr. Whitaker said the shelter would accommodate 10 to 15 picnic tables at a minimum. It would be a slab on grade and would have a nice roof. It would be a wooden structure.

Councilmember Pitman asked if the City was using any donations or in-kind help from the organizations that pretty much ran Stewart Park to offset some of the costs. Mr. Whitaker said staff recently held a meeting with the Billings Softball Association, and staff worked closely with the Youth Football Program. Both organizations were very strapped for funding. They planned to work with each group to determine their top priorities; and if the City did not have the funding to address those priorities, they would be asking the user groups for help. Councilmember Pitman said he had hoped when the Volunteer Coordinator was hired the City would pay for a portion of the projects but not totally take over and pay the whole bill.

Mr. Whitaker said that was their goal. The Volunteer Coordinator had already assisted by writing a Land Water Conservation Grant to bring in an additional \$75,000 for a project at South Park. He also worked with Bright N Beautiful to bring in volunteers

and a \$5,000 grant for trees. The State would be offering more Land Water Conservation funding, and Stewart Park would be a prime location to use the funds.

Councilmember Pitman asked how much of the \$431,594 was for emergency maintenance repairs. Mr. Whitaker said he did not know that information off the top of his head, but he would provide it. Councilmember Pitman said he thought software was obtained through Supplemental Budget Requests (SBR) in the regular budget and asked why it ended up in the Park Maintenance District budget. Mr. Whitaker said it was initially an SBR; and when the SBR was reviewed with City Administration it was determined they would take half of the cost of the software out of the Park Maintenance Districts. Since they did not have a funding source in General Fund-Parks, they felt the city-wide Park District 1 was a natural fit for the other half.

Councilmember Yakawich asked if the remaining shelters in North Park were structurally sound or if they would need repairs. Mr. Whitaker advised three to four years ago they experienced a major microburst in the North Park area that demolished one of the three shelters. The remaining two shelters were in good shape. Harvest Church re-roofed the remaining two shelters as part of their Weekend of Caring a couple years ago.

Mayor Hanel asked Mr. Whitaker which of the projects could be trimmed if Council were to ask them to reduce the total by \$200,000 to \$300,000. Mr. Whitaker said he would take \$200,000 from the Stewart Park infrastructure improvements or eliminate the structure in Pioneer Park. Amend Park irrigation upgrades were necessary to maintain green grass for the soccer program. The maintenance software was important to track expenditures. It was very important to have money set aside in Operations and Maintenance for emergency repairs because of the aging equipment. He said he hesitated to lay anyone off they recently brought onboard. Mayor Hanel said even by reducing the amount by \$200,000 they would still accomplish quite a bit in Stewart Park with the remaining funds. Mr. Whitaker agreed. He said the roads and parking areas were very expensive, and they really needed to look at them from a safety standpoint.

Councilmember Bird asked for an update on the Amend Park ground squirrel issue. Mr. Whitaker said they were looking at purchasing a piece of equipment that would inject a sugary/sand solution into the holes and when the water dissipated, the sugary substance would become very hard and the squirrels would not be able to get out of the holes. He said it was the safest way to solve the problem. They did not want to use gas or poisonous pellets because it was a public park. Councilmember Bird asked if it was part of the budget for the Amend Park upgrades. Mr. Whitaker said they would take funds out of Operations and Maintenance. Councilmember Bird said it was very critical, and it was a wonder a lot of kids had not been hurt. Ms. Volek advised by contract the City was required to do basic maintenance at Amend Park, but technically maintenance beyond that was the responsibility of the associations that used the facility, scheduled all the events, and took all of the fees associated with the events. Several years ago an extensive review was done with the user associations who were looking at taking over the entire Amend Park operation, and they realized they could not afford to do it without the City's assistance. There was currently a good balance, but it required cooperation because the users were the recipients of the funds that in most other Park Departments would go to the department for operations. Mr. Whitaker advised they

were looking at purchasing the equipment, and the user groups would pay the City to use the equipment on-site. Councilmember Bird asked if the locker rooms at the Rose Park and South Park pools were in the long-term plan for deferred maintenance. Mr. Whitaker said they were. They had updated the list of needs and were working with the Parks Board to prioritize them. They hoped to come to Council this winter to present a 3-year plan. Councilmember Bird said the locker rooms were absolutely disgusting. She did not see Stewart Park or the event shelter at Pioneer Park being emergent issues; and they had a pretty sorry situation in the locker rooms at the public pools. Mr. Whitaker said he agreed from a structural standpoint they needed to be upgraded, but they were clean. Councilmember Bird said she was not saying they were not clean, but they never looked clean. The floors looked nasty, and the lockers were old. They needed to look clean. She would like the Council to consider bumping the locker room project up in lieu of Pioneer Park or Stewart Park. Ms. Volek said Stewart Park was selected because it handled many, many operations during the year; and the road and parking situation really needed to be addressed. She suggested if the Council wished to have a certain amount reduced or re-allocated, they give staff a specific list to take back to the Parks Board for re-assessment.

Councilmember Brown said he understood they would be discussing the \$1.2 million for Stewart Park before it was spent. Mr. Whitaker said they had held one preliminary meeting where they updated the softball and football organizations on the process. The first step would be to hire an engineering firm and meet with the stakeholders and user groups to discuss the issues. They would then develop a matrix on prioritizing the needs and have a better understanding of what they could or could not do from a budget standpoint. Councilmember Brown asked how long it would be before it all took place. Mr. Whitaker said they would receive the first half of the funding in December. The engineering firm would not be on board any earlier than March with construction in the fall. They would not construct anything without consulting with the user groups from a timing perspective. Councilmember Brown asked if the \$1.2 million could be played around with a bit as long as they could cover the engineering cost. Ms. Volek advised that number had already been reduced by \$165,000 as a result of the rock removal. Councilmember Brown said he agreed with Councilmember Pitman and would like to keep the amount as low as they could. He also agreed with Councilmember Bird that they could move the money around prior to working on the roads at Stewart Park. Mr. Whitaker noted they also needed to address the irrigation at Stewart Park. The current pumps were not sufficient, and the ditch needed to be running 50% full before they could start pumping. They needed to start pumping prior to that, so all of the dollars were not being directed just towards the roads and parking areas. Councilmember Brown asked if it was safe to say they could do the engineering study, get with the groups, and possibly rearrange and reallocate some of the money. Mr. Whitaker replied they could.

Councilmember Pitman said he would like to see about \$400,000 knocked off so it would come closer to the \$1.8 million. They were provided with large numbers, and Council was wanting to hear more details behind them. Instead of it being a year-by-year project, maybe they could set a three-to-five-year goal for major projects and stay within the \$1.8 million range. It was not set up to solve all of the park problems in the next three to five years, but to look at the long-term issue of deferred maintenance. He

felt it would be beneficial to send it back to the Parks Board for more detail. Mr. Whitaker said they could do that. He added there was another possibility of bonding from the assessments.

Councilmember Bird said she respected the Parks Board for their hard work and their plan, but the locker rooms needed attention. It was important for the Parks staff and Council to serve as advocates for the City pools because there were no user groups such as swimming organizations. She said she disagreed with Councilmember Pitman on the money because originally they were looking at \$2 million a year. They could play the numbers game, but they needed to hold true to investing on average what they all thought they would be doing. They were seeing tangible, positive results; and they needed to keep the momentum and not start nit-picking the numbers. Councilmember Bird asked if they had a document that showed the long-range projects. Mr. Whitaker said when the Parks Board was trying to decide on a 3-year or 5-year plan, they felt things were changing so quickly and a 5-year plan would be outdated; so they went with the 3-year plan. They could do a 5-year plan if Council wanted one. Councilmember Bird said she did not want to be in a position to restrict adequately funding projects just so they could stay at \$1.8 million a year.

The public hearing was opened.

- **Tom Zurbuchen, 1747 Wicks Lane, Billings, MT**, said he thought some of the projects were not deferred maintenance. No matter how you looked at \$2,265,000, it was more than \$2 million. They needed to do as they originally decided and keep the amount at \$2 million a year and use it for deferred maintenance only. If Council voted for what had been presented that evening, they would be saying the City Council could say one thing one day and do something different the next. Currently they were about to embark on a high energy campaign for a public safety mill levy. He asked if that was the attitude they wanted to bring to the voters.
- **Kevin Nelson, 4235 Bruce Avenue, Billings, MT**, said they were breaching the public's trust again by allowing nothing more than a pole barn without sides at Pioneer Park to accommodate 10 to 15 picnic tables and spending \$200,000. It was a new project and did not compute to him as deferred maintenance. There was plenty of deferred maintenance to do without building new structures. They owed it to the people. The voters were told it was for deferred maintenance, and they expected deferred maintenance; not a pole barn to accommodate 10 to 15 picnic tables.

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

Councilmember Pitman moved to defer action, send it back to the Parks Department for reassessment, and have staff come back on September 22 with a number closer to \$1.8 million, seconded by Councilmember Yakawich. On a voice vote, the motion was approved 9 to 1. Councilmembers Cromley, Pitman, Cimmino, McFadden, Bird, Swanson, Crouch, Brown, and Mayor Hanel voted in favor. Councilmember Yakawich voted in opposition.

4. PUBLIC HEARING AND RESOLUTION #14-10390 FOR ANNEXATION #14-04: A parcel totaling approximately 12 acres located south of Elysian Road and just west of the existing Josephine Crossing Subdivision; Roman Catholic Bishop of Great Falls, owner; McCall Development, agent. Staff recommends conditional approval. (Action: approval or disapproval of staff recommendation.)

Wyeth Friday, Planning Division Manager, began his presentation showing a map of the subject property and surrounding properties. He advised the proposed annexation complied with the following criteria of the City's Annexation Policy.

1. The area was located within the Limits of Annexation.
2. The City was able to adequately provide municipal water and sewer services. Sewer and water services would require extension of lines by the property owner at the time of development.
3. Any proposed improvements to the property would meet City standards.
4. As part of a Development Agreement or Subdivision Improvement Agreement, the owners would sign a Waiver of Right to Protest the creation of any Special Improvement Districts.
5. If annexed, any proposed land use would comply with the zoning. Future development also may conform to the goals of the City of Billings and Yellowstone County Growth Policy.

Mr. Friday said staff was recommending approval of the resolution annexing the property subject to the following two conditions of approval.

1. Prior to site development, a Development Agreement shall be executed between the owner(s) and the City that shall stipulate specific infrastructure improvements and provide guarantees for said improvements, and a Waiver of Right to Protest the Creation of Special Improvement Districts will be recorded; and/or
2. A Subdivision Improvements Agreement (SIA) and Waiver of Right to Protest the Creation of Special Improvement Districts shall be approved and recorded that will stipulate specific infrastructure improvements and provide guarantees for such infrastructure improvements.

Councilmember Cimmino asked for a response regarding the concern relayed by the Fire Department. She said once the property was annexed, the nearest fire station would be #5 located on 24th Street West; and she questioned the 8-minute response time. Mr. Friday said the property was currently served by the City Fire Department through the BUFSA agreement. The current hay field would be a different type of service requirement from the proposed homes. In terms of distance and response time, he thought the 8-minute response time was only relevant to the American Medical Response ambulance service. He did not know if the Fire Department had a specific response time in place.

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

Councilmember McFadden moved for the conditional approval of Item 4, seconded by Councilmember Bird. On a voice vote, the motion was unanimously approved.

5. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE

#921: A zone change from Public (P) to Planned Development (PD) Josephine Crossing – Residential Neighborhood on an un-platted 12.263 acre parcel of land directly west of the existing Josephine Crossing Planned Development. Roman Catholic Bishop of Great Falls, owner; McCall Development, agent. Zoning Commission recommends approval of the zone change and adoption of the determinations of the 10 criteria. (Action: approval or disapproval of Zoning Commission recommendation.)

Nicole Cromwell, Planner II, began her presentation showing a zoning map, photographs, and an aerial view of the subject property and surrounding properties. She noted the property was currently used for agricultural production and pasture, and a portion of the existing agricultural land would remain between the cemetery and the new portion of Josephine Crossing. The Planned Development Zone was developed in 2006 to achieve higher densities and different development standards focused on streets and how the buildings addressed the streets. The development density achieved for Josephine Crossing in a residential neighborhood was a minimum of six units an acre, which was very effective and efficient in using City resources such as police, fire, water, sewer, trash collection, and all other services provided by the City. Ms. Cromwell advised the Zoning Commission conducted a public hearing on August 5 and was recommending approval based on the following 10 criteria for zone changes.

1. Is the new zoning designed in accordance with the Growth Policy?

The proposed zone change is consistent with the following goals of the Growth Policy:

- *Predictable land use decisions that are consistent with neighborhood character and land use patterns. (Land Use Element Goal, page 6)*

The proposed zoning would allow expansion of the existing Josephine Crossing neighborhood to the west on land currently farmed. It is south of Elysian Road where the Riverfront Pointe Estates neighborhood is developing with a mixture of housing types. The proposed density of 6 dwelling units per acre is consistent with both neighborhoods. The adjacent agricultural activity is compatible with the proposed zoning. The annexation policy anticipates that several other parcels in the area will annex in the next 5-10 years and similar subdivisions will develop. The zoning district is compatible with the neighborhood character and land use patterns. The Residential Neighborhood zone is consistent with the neighborhood character.

2. Is the new zoning designed to secure from fire and other dangers?

The new zoning requires minimum setbacks, open and landscaped areas and building separations. The new zoning, as do all zoning districts, provides adequate building separations and density limits to provide security from fire and other dangers.

3. *Whether the new zoning will promote public health, public safety and general welfare?*

Public health and public safety will be promoted by the proposed zoning. Development of the agricultural land in the city after annexation, zoning and subdivision approval will promote the public health and safety of the adjacent residential neighborhood by providing public water and sewer and other public amenities to the area.

4. *Will the new zoning will facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirement?*

Transportation: The proposed zoning and subsequent subdivision will have an impact on the surrounding transportation systems. Mitigation of these impacts will be required as part of the subdivision approval.

Water and Sewer: The City will provide water and sewer to the property. There should be no additional impact to the system from the proposed zoning.

Schools and Parks: There will be an impact to schools from the proposed zone change. Additional classroom space has been planned and is under construction for Elysian School (elementary and middle school). School District #2 will provide space for high school students. School District #2 is also planning expansion of facilities to accommodate an increasing enrollment.

Fire and Police: The subject property will be served by city public safety services. The Police Department had no concerns with the zone change and the Fire Department is involved in the subdivision approval process. Access for emergency services will assured through this process. Fire Station #5 is approximately 4.5 miles north and west of the subdivision.

5. *Will the new zoning provide adequate light and air?*

The proposed zoning provides for sufficient setbacks to allow for adequate separation between structures and adequate light and air.

6. *Will the new zoning effect motorized and non-motorized transportation?*

The new zoning will have an effect on vehicle and pedestrian traffic. The access to Elysian Road and connections to the existing Josephine Crossing streets will be studied and mitigated through the subdivision process. The subdivision proposes to build boulevard sidewalks and an internal trail system.

7. *Will the new zoning will promote compatible urban growth?*

The new zoning does promote compatibility with urban growth. The proposed zoning will allow single family, two-family dwellings, accessory dwellings as well as multi-family dwellings as long as the average density of 6 units per gross acre is not exceeded. Higher density zones are compatible with arterial street access, and nearby commercial zones. Zoning that supports 6 or more dwelling units per acre is more efficient for providing public services.

8. *Does the new zoning consider the character of the district and the peculiar suitability of the property for particular uses?*

The proposed zoning does consider the character of the district and the suitability of the property for a mix of housing types and density in the neighborhood.

9. *Will the new zoning conserve the value of buildings?*

The property is currently vacant and used for agricultural production. The Catholic Diocese has determined the property is not necessary for cemetery expansion.

10. *Will the new zoning encourage the most appropriate use of land throughout the City of Billings?*

The proposed zoning will permit affordable residential uses and is the most appropriate use of the property at this location.

Ms. Cromwell noted there was concern voiced at the Zoning Commission public hearing regarding the 4-story height limit currently allowed in the residential neighborhood for Josephine Crossing. She said McCall Development had not gone above two and half stories, and Mr. McCall said they would be willing to reduce the number of stories allowed if the Zoning Commission thought it was critical. The Zoning Commission took the public testimony and determined it was not a critical issue. Mr. McCall indicated they did not have a product that they were planning to build that was four stories tall.

Councilmember Cimmino referenced the potential for 92 new family homes on the 12 acres and the traffic study that anticipated 840 additional trips per day. She asked how they would mitigate the additional traffic impact. Ms. Cromwell said there was concern about the intersection at Mallowney Lane, South Frontage, and Midland Road. The northbound lane of Mallowney did not have separate lanes for left or right turns, so traffic backed up at the intersection. She said one of the mitigations may be to pay for a certain amount of additional striping or pavement on the northbound lane to create separate right and left turn lanes. A final determination had not been made on the traffic impact because it was part of the subdivision that was now in the process.

Councilmember Brown asked if the zoning was for single family dwellings. Ms. Cromwell said it could be apartments, single family with accessory dwelling units, or multi-family as long as they kept the average density over the entire development. Individual parcels could have more than one unit, but it would have to be balanced out by a larger parcel with a single unit somewhere else in the subdivision. Councilmember Brown asked if staff had seen what was planned. Was a big, 4-story apartment building planned? Ms. Cromwell said they were considering an attached townhome project for the entry lots at the new road where it intersected Elysian, but primarily it would be like the other homes that had been built in Josephine Crossing.

Councilmember Yakawich asked if the proposed development was in the flood plain. Ms. Cromwell said she did not believe any part of it was in the flood plain; but if it were it would be addressed during the subdivision process and again during the building process.

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

Councilmember Cromley moved for approval of Zone Change #921 with adoption of the 10 criteria, seconded by Councilmember McFadden. On a voice vote, the motion was unanimously approved.

6. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #922: A zone change from Residential Multi-family-Restricted (RMF-R) to Community Commercial (CC) on Tract 1, Certificate of Survey 979, a 2.5 acre parcel of land generally located at 1125 Lake Elmo Drive; Harvey Capital, LLC, owner; Sanderson Stewart, agent. Zoning Commission recommends approval of the zone change and adoption of the determinations of the 10 criteria. (Action: approval or disapproval of Zoning Commission recommendation.) Nicole

Cromwell, Planner II, began her presentation showing a zoning map, photographs, and an aerial view of the subject property and surrounding properties. The Billings Heights Neighborhood Plan adopted by City Council stated everything from Lake Elmo Drive to Main Street should be mixed use or a higher density residential development area. The property owner would like to build personal storage warehouses on the subject property. The property owner had another location in the Heights at St. Andrews and Wicks Lane with an on-site manager who would also manage the proposed storage facilities. The Zoning Commission conducted a public hearing and was recommending approval based on the following 10 criteria for zone changes.

1. Is the new zoning designed in accordance with the Growth Policy?

The proposed zone change is consistent with the following goals of the Growth Policy:

- *Predictable land use decisions that are consistent with neighborhood character and land use patterns. (Land Use Element Goal, page 6)*

The proposed zoning would permit more land uses than currently allowed by the RMF-R zoning and this is consistent with the neighborhood character and the planned development of areas between Main Street and Lake Elmo Drive. The proposed zoning is compatible with the existing uses on Lake Elmo Drive and Main Street.

- *More housing and business choices with each neighborhood. (Land Use Element Goal, page 6)*

The existing zoning is restricted to residential uses. The proposed zoning will allow service businesses to locate here. The proposed zoning will allow more businesses and services to be located near existing residents.

2. Is the new zoning designed to secure from fire and other dangers?

The new zoning requires minimum setbacks, open and landscaped areas and building separations. The new zoning, as do all zoning districts, provides adequate building separations and density limits to provide security from fire and other dangers. The City

Fire Department will ensure safe access to the site and provision for minimum fire flow to the new buildings.

3. *Whether the new zoning will promote public health, public safety and general welfare?*

Public health and public safety will be promoted by the proposed zoning. Development of the vacant property will be done in accordance with current site development regulations that provide more screening and buffering for adjacent residential uses. These new requirement were adopted in 2012. This will improve public health and safety and the general welfare of the adjacent neighbors.

4. *Will the new zoning will facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirement?*

Transportation: The proposed zoning may have some impact on the surrounding streets, and a traffic impact study may be required depending on the development that is built on the property in the future. New development that generates 500+ new vehicle trips per day will require a Traffic Accessibility Study (TAS).

Water and Sewer: The City will be able to provide sewer to the property by extension of those utilities from Lake Elmo Drive. The Billings Heights Water District will provide water service.

Schools and Parks: There should not be any impact to schools from the proposed zone change. However, any residential development in the future could affect the schools in the area.

Fire and Police: The subject property is currently served by the city Public Safety Services. Commercial development of the site may increase calls for service and change the nature of those calls for service.

5. *Will the new zoning provide adequate light and air?*

The proposed zoning provides for sufficient setbacks to allow for adequate separation between structures and adequate light and air.

6. *Will the new zoning effect motorized and non-motorized transportation?*

Traffic generation from a commercial property is dependent on the specific uses within the development. A development plan has not yet been finalized so prediction of traffic impacts is not possible with certainty at this time. In general, the proposed development of personal storage units generates little additional daily traffic. The re-construction of Lake Elmo Drive included a 10-foot wide multi-use path on the east side of the street. Any new drive approach will interrupt this pathway but should not significantly impact its usability.

7. *Will the new zoning will promote compatible urban growth?*

The new zoning does promote compatibility with urban growth. The proposed zoning will provide an area to locate services businesses in an area where none currently

exist.

8. *Does the new zoning consider the character of the district and the peculiar suitability of the property for particular uses?*

The proposed zoning does consider the character of the district and the suitability of the property for commercial uses including neighborhood and commuter service businesses. The level of existing traffic along with the number of existing and planned residential developments in the area will likely support the types of businesses likely to locate here.

9. *Will the new zoning conserve the value of buildings?*

The lot is currently vacant and used for casual recreation by area residents. Development of the site will add property value and may increase the adjacent property values. Surrounding buildings should be conserved when development occurs on the site by adding property value to the market.

10. *Will the new zoning encourage the most appropriate use of land throughout the City of Billings?*

The proposed zoning will permit a greater variety of uses on the property and is the most appropriate use of the property.

Ms. Cromwell noted there was concern expressed by a neighbor about the potential for a bar or casino being built on the property. That was not the plan of the owner, who did not develop those types of properties and who had no desire to sell the property.

Councilmember Brown said his concern was it would be a big box with chain link fence around it. Ms. Cromwell said security fencing was important for personal storage. The property was bordered on the north and south by residential zoning; and under the zoning code, a solid-sided screening fence would be required on the north and south property lines, and at least 10% of the area not covered with buildings would need to be landscaped. She said she was not sure of the style of fencing the property owner planned to use; but chain link was very climbable. No barbed wire or sharp fencing below eight feet in height would be allowed. An 8-foot or higher fence with barbed wire would have to be set back 20 feet from the street. Ms. Cromwell said she thought they would install a nicer-style of climb-proof fencing rather than an 8-foot fence with barbed wire.

Councilmember Pitman said the area had no storm drain and asked if on-site storm drain management would be required. Ms. Cromwell said according to the site development requirements, storm water needed to be retained on site to a certain level of storm; and if they planned to discharge to a city system, they would have to meter it. If there was no city system, all storm water had to be retained on the property.

Mayor Hanel asked if the subject property was the former location of the Fish and Game. Ms. Cromwell said that was correct.

Councilmember Bird asked what type of impact the storage units would have on traffic. Ms. Cromwell noted storage units did not generate a lot of traffic. According to the ITE Engineering Manual, 300 storage units on 2.5 acres available to customers on a

24 hour/7 day-a-week basis would generate approximately 80 additional vehicle trips per day.

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

Councilmember Pitman moved for approval of Zone Change #922 with adoption of the 10 criteria, seconded by Councilmember Cimmino.

Councilmember Yakawich referenced the information provided in the staff report that surrounding owners voiced a strong objection to the development of other allowed uses and asked Ms. Cromwell to explain. Ms. Cromwell said the comment was taken directly from the meeting notes that were submitted with the zone change. Ms. Volek asked Ms. Cromwell to identify other potential uses that could be built in the proposed zoning category, which she felt may have concerned the surrounding property owners. Ms. Cromwell said other uses could be a gas station with a convenience store open 24 hours a day, a car wash, or a casino or bar with special review approval to name a few. She said the property owner had no intent to go forward with any of those uses or to sell to someone who would develop the property for those uses.

Mayor Hanel asked Ms. Cromwell if she was familiar with the petitioner's projects in other locations in Billings. Ms. Cromwell said she had never visited any of them.

Councilmember Cimmino said she was a customer of the petitioner at their location on Wicks Lane, and they ran a great operation. Her former employer rented a space from the petitioner on the west end, and they were top notch based on her personal experience. Mayor Hanel commented he thought the company's name was Homestead Storage, and their facilities around Billings were very well maintained and most of them had a manager on-site for security and assistance. Councilmember Cimmino confirmed it was Homestead Storage.

Councilmember Brown said he was concerned about the landscaping because they were located in a residential area. He asked Councilmember Cimmino what type of landscaping they had at their other locations. Councilmember Cimmino said they were aesthetically pleasing; the grounds were kept up; and it looked very professional. They were obviously spending money to make money and protect their investment. She said the proposed facility could be called a different name; but the facility she rented from was Homestead. They had a very distinctive design, and they did a really good job maintaining their facilities.

Councilmember Pitman said because of the location, what it had been, and that it had remained an empty lot for so long; it was a detriment to the community. The storage facility on Wicks Lane had grass, a nice fence, and was well-maintained. The proposed project would not increase the density of population; because if houses were built on the property, the school would be overrun. Improvements to the frontage along Lake Elmo, plus a buffer to the industrial area, would make that stretch of Lake Elmo pretty amazing.

On a voice vote, the motion was unanimously approved.

7. PUBLIC HEARING AND SPECIAL REVIEW #918: A special review to allow an all-beverage liquor license in a vacant tenant space in the Babcock Building located in the Central Business District at 116 N. Broadway; Babcock, LLC, owner; Bruce Harper, agent. Zoning Commission recommends conditional

approval. (Action: approval or disapproval of Zoning Commission recommendation.)

Nicole Cromwell, Planner II, advised the Babcock Building had been developed into tenant spaces; and Unit 2, which used to be Z Pizza, was currently vacant. The owners of the building and the owner of a liquor license would like to partner and place the all-beverage liquor license in Unit 2. She provided photographs and an aerial view of the subject property and surrounding properties, as well as a floor plan drawing of Unit #2. She noted the Zoning Commission was recommending approval based on the following four conditions.

1. The special review approval shall be limited to Unit 2 of the Babcock Building located on Lots 7 through 12 and a fraction of Lot 6, Block 93, Billings Original Town generally located at 116 North Broadway.
2. Increases in the area where alcohol service is provided greater than 10% of the area shown on the site plan (1,500 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.

Councilmember Bird asked what the intention was for the retail level. Ms. Cromwell said it would be a drinking establishment without gaming, and it would be open and available during certain downtown events.

Councilmember Brown asked how many other bars were located on the block. Ms. Cromwell estimated at least three. He asked if the liquor license was being moved from another facility. Ms. Cromwell said they were using the license for events only at the Depot building on Montana Avenue; and they wanted a permanent location for it.

The public hearing was opened.

- **Bruce Harper** said he was the agent for the Babcock LLC and the liquor license owner. Their business plan and research had persuaded them that Billings was missing an ingredient downtown they would like to add. Many larger cities around the country had one or more martini bars, and that was what they intended to focus on even though they had a full liquor license. They would also serve local microbrews on tap and wine. Their purpose was to compliment the other events happening in Billings and add something different. They did not intend to compete with restaurants and would have a variety of tapas or snack-type meals. They did not intend to focus on being a sports bar but they would have three or four televisions. From time to time they would have live music, stand-up comedians, and a mix and match of entertainment. They saw themselves as being a before and after place for many of the functions in downtown Billings. The name would be Doc Harper's named after his father who was a doctor in

eastern Montana for many years and who retired to the Billings community. He noted his nephew, R.D. Harper III, was currently on the Billings Police Force.

- **Mike Mathew, 115 N. Broadway, Billings, MT**, said he lived directly across from the establishment and was speaking as a neighbor and one of the property owners of the site. He said currently the Soup Place on the same side of the street had a beer and wine license. The Brew Pub, Hooligan's, and the Monte Carlo located across the street operated under the same license, and Bin 119 had a beer and wine license. They were very pleased with Mr. Harper's design and concept; and as the owners of the property and a neighbor, they were very much in support of it.

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

Councilmember Cromley moved for approval of Special Review #918 with the conditions set forth and adoption of the criteria set forth, seconded by Councilmember Yakawich. On a voice vote, the motion was unanimously approved.

Mayor Hanel called for a recess at 8:30 p.m. Mayor Hanel called the meeting back to order at 8:52 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.

- **Kevin Nelson, 4235 Bruce Avenue, Billings, MT**, distributed pictures of the road behind the Blue Basket gas station out to the motorcycle hill climb and the parking lot of the county shops that had been resurfaced using rotomillings from Laurel Road. He said it was a nice road that did not involve an RFP, a bid, or a bond. He asked Council for an initiative to have staff bring back a policy or some type of proposal that would identify the gravel streets in town; identify which streets had storm sewer, curb and gutter, partial curb and gutter, traffic counts, and identify parking lots in the city where rotomillings could be used. They could cut money from the safety mill levy and Stewart Park by using rotomillings. They could use rotomillings on bike trails instead of concrete. He said the use of rotomillings was a great opportunity to save the city a lot of money.

Ms. Volek noted the subject of rotomillings was scheduled for a future work session.

- **Abraham Madinger, 226 Terry Avenue, Billings, MT**, read a note signed by 418 people via a petition-type website thanking the Mayor and City Council for their hard work, passion, sacrifice, and diligence with regards to the late, proposed non-discrimination ordinance. He gave a special thanks to Councilmembers Brown, Cimmino, McFadden, Pitman, and Yakawich and Mayor Hanel for voting to defeat the late, proposed non-discrimination ordinance.

- **Mark Hall, 3952 Chamberlain, Billings, MT**, said he was speaking on behalf of the Billings Family Action Committee. He said the Mayor and City Council patiently listened to hours of testimony, read hundreds if not thousands of e-mails, fielded numerous calls, as well as spent a substantial amount of time in discussion inside and outside council meetings about the proposed non-discrimination ordinance. They voted no, and the Billings Family Action Committee felt it was the right thing to do two weeks ago and the right thing to do today. He thanked everyone involved and asked them to stand by their votes.
- **Marty Elizabeth Ortiz, 707 1st Street West, Billings, MT**, said she realized they did not have to answer her questions, but she would ask them anyway. She asked Mayor Hanel what he meant when he said Billings was not ready for an NDO. Was he referring to the fact that the town was conflicted? She said the conflict in itself signified the need for an NDO. The need for them to be protected. What was the reasoning of "will it help everybody; will it benefit or make everyone happy?" Obviously, if someone wanted to discriminate they would not be happy with it. A lot of the decision had been arguing for the right to discriminate based on religious beliefs. Mayor Hanel said there was bad language, but he did not name it. Maybe he was talking about the locker room extension, but that was being removed with the actual motion. Ms. Ortiz said she assumed the bad language he was referring to was protections in place for them. So then she had to wonder if he did not believe she had the same rights to be protected like anyone else and treated as anyone else; treated equally. She said she was asking them once again, and she would continue to ask, to reconsider and do the right thing.
- **Daniel Mehrenz, 527 St. Johns Avenue, Billings, MT**, said he planned to sit quietly until the word "sacrifice" was uttered in the chamber. He said they did not understand the word "sacrifice." Their neighbors and their children were dying all over this country. He asked the Mayor to look at his city and asked if he was proud. He said these people speak of faith; this was a room full of bullies. Shame on them.

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

COUNCIL INITIATIVES

- **Pitman:** MOVED to direct staff to bring discussion to a work session in the near future involving tow trucks and street parking and first responders, seconded by Councilmember McFadden. Councilmember Pitman said it was his understanding they were just looking at the weight of the vehicles that exceeded the code so they could not be taken home for the night. Maybe it would be a simple change of the code for weight or to include them as first responders as far as the importance of getting to wrecks and clearing sites. On a voice vote, the motion was approved 9 to 1. Councilmember Cromley noted he would not vote in favor of the initiative because a 24-hour notice was not provided.

There was no further business, and the meeting adjourned at 9:07 p.m.

CITY OF BILLINGS



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

ATTEST:

BY: Cari Martin
Cari Martin, City Clerk