

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

January 12, 2015

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. The Color Guard from Boy Scout Troop 10 Presented the Colors and led the Pledge of Allegiance. Mayor Hanel gave the invocation. Scout Master, Casey Dolph; Assistant Scout Master, Brice Ligget; and Committee Chair, Tom Watson, introduced themselves. Each Boy Scout introduced himself and provided the name of the school he attended.

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

MINUTES:

- December 8, 2014
- December 15, 2014

Councilmember Cimmino moved for approval of the December 8 and December 15, 2014, minutes, as submitted; seconded by Councilmember Pitman. On a voice vote, the motion was unanimously approved.

COURTESIES: Police Department 2014 Annual Awards. Chief St. John said every year they recognized their best and brightest in cooperation with partners in the community. Each recipient was voted on by his/her peers. He introduced Exchange Club Officer of the Year, Ben Milam; Supervisor of the Year, Sergeant Shawn Finnegan; Employee of the Year, Becky Shay; and American Legion National Law Enforcement Officer of the Year, Richard Gilmore. He noted Officers Jerry Smidt and Chris Simpson, recipients of the Optimist Club Respect for Law Community Award, were not able to attend the meeting. Officers Milam and Gilmore introduced their family members.

PROCLAMATIONS:

- **Martin Luther King, Jr. Day, January 19, 2015** - Pastor Melvin Terry said he was the Chairman of the Black Heritage Foundation of Billings, Yellowstone County, and the surrounding areas. Activities and events would start on Saturday, January 17, 8 a.m. to noon, with a clean-up detail at the Friendship House and a dinner at the Billings Food Bank at 6 p.m. Sunday, January 18, 3:00 p.m., an Interfaith Program would be held at St. Andrew Presbyterian Church. Monday, January 19, 9:45 a.m., the Bell Ringing celebration would begin followed by a special program at the Student Activity Center. At 6:15 p.m. on Monday the MLK, Jr. March would begin at the Courthouse Lawn and proceed to the NOVA Center where a MLK, Jr. Celebration Program would begin at 7:00 p.m. with guest speaker, Dr. Vernon Johnson.

- **Kiwanis Day - Wednesday, January 21, 2015** – Bob Keene said he was with the Billings Golden K Kiwanis Club and was the Lieutenant Governor for the division that included three Billings Kiwanis Clubs, the Hardin Kiwanis Club, and the Columbus Kiwanis Club. Mr. Keene said there were Kiwanis Clubs in over 80 countries, and their primary goal was helping kids.

Hans Abbey said he was with the Billings Kiwanis Club, which was celebrating its 95th birthday. Two of their many projects included the Special K Ranch and the Movies in the Park. He said they would be having a big birthday party on January 21st at the Elks Club and invited the City Council and former members of Kiwanis Clubs to join them.

ADMINISTRATOR REPORTS - TINA VOLEK

- Reminded City Council that City Hall and all other government offices would be closed on January 19, 2015, in observance of Martin Luther King, Jr. Day. The work session normally held on that Monday would be held on Tuesday, January 20 at 5:30 p.m.
- **Item 8 – Reconsideration of Second/Final Reading Ordinance** amending BMCC Section 14-400 regulating public fireworks displays. Copy of the ordinance was sent to City Council in the January 9, 2015, Friday Packet and was filed in the ex parte notebook.

Mayor Hanel complimented Public Works Director, David Mumford, and Director of Aviation and Transit, Tom Binford, and their crews for doing everything they could to keep the city streets and airport runways clear of snow.

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: #1, 6, 7 & 8 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

- Approval** of award to Donnes Construction for supply and placement of rip rap along the Yellowstone River; \$72,000.
- Approval** of the City-County Special Investigations Unit (CCSIU) Agreement with Yellowstone County for calendar year 2015.

C. Professional Services Agreement for Water and Wastewater Rate Study; Advanced Engineering and Environmental Services, Inc.; \$107,087.

D. Subordination Agreement for Southern Lights.

E. Approval of Limited Commercial Aviation Building and Ground Lease with Edwards Jet Center for additional building and ground space to garage deicing vehicles and equipment, and ground handling equipment (11/1/14-4/30/15); 6-month revenue - \$4,968.72.

F. Amendment #16, Engineering Services for conversion of former Airport Employee Parking Lot to Airport Long-Term Parking Credit Card Lot; Morrison-Maierle, Inc.; \$111,047.

G. Acceptance of the 2015 High Intensity Drug Traffic Area (HIDTA) Award from the Executive Office of the President, Office of National Drug Control Policy; \$196,001.

H. Approval of application for State Revolving Fund Loan for W.O. 14-09, Briarwood Reservoir Expansion, \$2,600,000 (20-year amortization with 2.5% interest rate).

I. Acknowledging Receipt of Petition to Annex #14-06, #14-07, #14-08, #14-09, #14-10, #14-11, #14-12: approximately 18 acres, including road rights-of-way, in the area of East Billings between the East Billings Urban Renewal District (EBURD) and MetraPark; and setting a public hearing date for January 26, 2015.

J. Acknowledging Receipt of Petition to Annex #14-14: approximately 80 acres located at the southwest corner of the intersection of Shiloh Road and Broadwater Avenue; Billings Clinic, owner and petitioner; and setting a public hearing date for January 26, 2015.

K. Resolution of Intent #15-10417 to create SILMD 314, Calhoun Lane Improvements; and setting a public hearing date for February 9, 2015.

L. Preliminary Subsequent Minor Plat of Lenhardt Square Subdivision, Third Filing, described as two lots on approximately 25.18 acres of land generally located on the southwest corner of South 44th Street West and Georgina Drive; Stock Development, owner; Sanderson Stewart, agent; conditional approval of the plat and adoption of the findings of fact.

M. Bills and Payroll:

1. **November 24, 2014**
2. **December 1, 2014**
3. **December 8, 2014**
4. **December 15, 2014**

5. **December 22, 2014**

Councilmember Brown separated Consent Agenda Items F, M2, M3, and M4 in order to abstain. Councilmember Cromley separated Consent Agenda Item M2 in order to abstain. Councilmember Cimmino separated Consent Agenda Items M2, M3, and M4 in order to abstain. Councilmember Cimmino separated Consent Agenda Items I and J. Councilmember Yakawich separated Consent Agenda Item G. Councilmember Cromley moved for approval of the Consent Agenda with the exception of Items F, I, J, M2, M3, and M4, seconded by Councilmember Yakawich. On a voice vote, the motion was unanimously approved.

Councilmember Yakawich referenced Item G and asked Police Chief St. John to briefly talk about the drug abuse issues in the community. Chief St. John said the most dangerous threat to the community was drugs, specifically methamphetamine. The majority of violent crimes they were seeing had the nexus of methamphetamine. Methamphetamine was coming through the Billings area from Mexico; the profit margin was incredibly high; and there was always someone willing to take the chance to run the drug. Item G was for the Drug Task Force, which was local, state and federal. The task force was very aggressive and very effective, and they felt they were making a difference. Councilmember Bird asked what the grant funded. Chief St. John said it funded only the task force. It helped with overtime, equipment, training, and paying for informants and evidence in undercover operations. Councilmember Bird asked if they had to apply for the grant every year and what position they would be in if they did not get the grant. Chief St. John confirmed the grant had to be applied for every year. He said if they did not receive the grant they would still have a drug unit; but they would not be as effective because they would not be able to support it the way they needed to. Councilmember Yakawich moved for approval of Item G, seconded by Councilmember Cromley. On a voice vote, the motion was unanimously approved.

Councilmember Cimmino referenced Item I and asked if staff could provide a brief overview acknowledging there would be a public hearing held on January 26. Planning Division Manager, Wyeth Friday, said the action that evening was to consider acceptance of the petitions for annexation and set the public hearing for January 26. It was a multi-piece process that included petitions for annexation of properties east of the EBURD between the current EBURD and the city limits and MetraPark and Exposition Drive on the eastern edge. The whole concept was to annex as many properties as the property owners were willing to petition. Council had already approved a design contract for a separate public infrastructure improvements project within the area with the expectation there would be development and redevelopment on the subject properties with other properties annexing later. On January 26 the City Council would also be considering the Annexation Incentive Agreements between the property owners and the City to provide certain development incentives and cost sharing through the EBURD Tax Increment Finance District process. Councilmember Cimmino said the properties were currently zoned Controlled Industrial and asked if they would be re-zoned to Community Commercial in order to make them compatible with the Exposition Gateway Concept Plan. Mr. Friday said staff was working to develop an overlay for the properties coming in through annexation, as well as for the existing county properties, that would include basic parameters to move toward the vision of the Concept Plan. The idea was

that the overlay would reflect a portion of what was in the EBURD code but be fairly basic because they would be dealing with some county properties. They would then come back with a similar type of code that would be focused on the Exposition Gateway Concept Plan, which looked at hospitality-type development such as restaurants, hotels, and big areas for public gatherings that would complement the Metra, as well as that particular area of town. Councilmember Cimmino referenced the Hospitality Corridor Study previously presented to City Council and said she recently read in the Billings Gazette a developer was interested in building a carwash. She asked if it was part of the property or if it would be separate. Mr. Friday said the Hospitality Corridor Study was completed and looked at how all modes of transportation would be able to move through the area with Exposition Drive, 1st Avenue, and Highway 87. The Hospitality Corridor Study had been adopted and was in place for future improvements and was in conjunction with the Exposition Gateway Concept Plan. Mr. Friday said there was a proposal in preliminary stages for a carwash on one of the Yegen properties petitioning to be annexed at the corner of 4th Avenue North and Exposition Drive. The annexation would happen first with the anticipation the project would develop in the City.

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

Councilmember Cimmino referenced Item J and asked if staff would provide a brief overview. Mr. Friday said in addition to the annexation, Billings Clinic had been working with City staff and property owners in the area on a Planned Development zoning proposal. If Council approved the annexation on January 26, consideration of a zone change from Agricultural Open-Space to Planned Development would follow. It was staff's understanding there were no immediate plans for development, but Billings Clinic wanted to start putting pieces into place. Councilmember Cimmino moved for approval of Item J, seconded by Councilmember Pitman. On a voice vote, the motion was unanimously approved.

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

Councilmember Pitman moved for approval of Item M2, seconded by Councilmember Bird. On a voice vote, the motion was approved 7 to 0.

Councilmember Pitman moved for approval of Item M3, seconded by Councilmember Bird. On a voice vote, the motion was approved 8 to 0.

Councilmember Pitman moved for approval of Item M4, seconded by Councilmember Bird. On a voice vote, the motion was approved 8 to 0.

REGULAR AGENDA:

2. PUBLIC HEARING AND SPECIAL REVIEW #920: A special review to allow a 22-space parking lot in a Residential 6,000 zone at 816 Avenue B and the addition of a drive-through service window adjacent to a residential zone in a Community Commercial zone at 819 Avenue B. Michael D. Stock, owner; Collaborative Design Architects, agent. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)

Planner II, Nicole Cromwell, noted the project was for Off the Leaf Coffee Company currently located in the 800 block of Grand Avenue. She showed a zoning map of the

subject property and surrounding properties. She advised Off the Leaf was currently zoned Community Commercial and had a special review on file for the parking lot north of the building because it was in a Residential 6000 zone. Off the Leaf recently purchased two properties east of their property – the front property was zoned Community Commercial and the rear property with frontage on Avenue B was zoned Residential 6000. The property at 816 Avenue B was planned for a new parking lot to expand the existing parking lot. Off the Leaf would like to add a drive-through service window on the west side of their existing building. Ms. Cromwell showed a site plan of the existing building, the new 510 square-foot addition that would be the drive-through service area; and a portion of the building to the east that would be used for an office, kitchen prep area, and a basement area for future coffee tasting events. She said a new, two-way drive approach would be built on the east side of the building. She explained the drive-through would then come around on the west side of the parking spaces and along the side of the building. The existing two-way drive approach on the west side would be reduced to a one-way out to Grand Avenue. The existing patio on the front of the building would stay. The proposed development of the new parking area would have a 6-foot-high, sight-obscuring fence that currently existed along Avenue B from the existing parking lot. There would be no direct vehicle access to Avenue B from the new parking lot, and the recently-purchased office building on the Grand Avenue frontage would be demolished to accommodate the expansion.

Ms. Cromwell showed photographs of the building and existing parking lot and noted Off the Leaf had a shared parking agreement with the casino to the west. Once the proposed parking lot was constructed, they felt there would no longer be a need for shared parking; and they would close off the access, which would eliminate the confusion caused by the side-by-side drive approaches separated by a short curb on Grand. She said one of the neighbors on Avenue B expressed concern at the Zoning Commission public hearing about parking congestion and night-time disturbances; however, the management of Off the Leaf had recently changed, and they felt they had a handle on the issues.

The Zoning Commission was forwarding a recommendation of approval based on the following conditions.

1. The special review is limited to the east 75 feet of the west 150 feet of Lot 2, Block 1 (parking lot) and Lot 1, Block 1 of Algeo Subdivision (drive through service).
2. The special review approval is for the construction of a new 22 space parking lot and the installation of a new drive through service window and no other use or development configuration is intended or implied by this approval. The 2,240 square foot tenant space shown on the site plan is not subject to this special review approval.
3. Any expansion of the proposed drive-through café building greater than 10 percent of what is shown on the submitted site plan (3,660 square feet) or expansion of the parking lot greater than 10 percent will require an additional special review approval.
4. All exterior lighting, including security lighting shall have full cut-off shields so no part of the fixture or lens projects below the cut-off shield. The maximum

- height of any light pole in the outdoor areas shall be 15 feet above grade. Exceptions to this requirement are allowed for entry doorway lighting.
5. No construction or demolition activity will occur before 7 am or after 8 pm daily.
 6. New trees shall not be any of the following species: Carolina poplar, other *populus* subspecies including any variety of aspens, elms, lombardy poplar, silver leaf poplar, weeping willow, or box elder. All installed trees will be continuously maintained and replaced as necessary by the owner.
 7. Any centralized solid waste storage shall be enclosed by a wall on 3 sides and a closing gate or gates. The wall and gates for the solid waste storage shall be similar or complimentary in color to the adjacent buildings and shall be sight-obscuring. The wall and gates shall be tall enough that no part of the interior dumpster(s) are visible from the outside.
 8. The site will be developed in substantial conformance with the submitted site plan including landscaping, parking and building locations.
 9. A sight-obscuring 6-foot fence shall be installed along the east property line that adjoins 814 Avenue B and along the north property line that adjoins Avenue B. A separate fence permit is required from the Planning Division.
 10. Any outdoor announcement system shall be operated so it is not audible beyond the property lines.
 11. The owner is allowed to have background music and un-amplified, live entertainment on the outdoor patio. Amplified, live entertainment is not allowed at any time.
 12. 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.
 13. 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 Cromley asked if vehicle access to Avenue B was prohibited or just not in the current plan. Ms. Cromwell said in general they did not like commercial traffic accessing residential streets, and Avenue B was considered a residential street. The casino had access to Avenue B, but it preceded most of the current Planning policies. Councilmember Cromley asked if it would be prohibited. Ms. Cromwell said they generally prohibited it through the special review. Councilmember Cromley asked if additional permission would be needed to obtain vehicle access to Avenue B. Ms. Cromwell said the sight-obscuring fence along the property line on Avenue B with no gates would not allow vehicle access; however, there was nothing in the Zoning Code that would prohibit vehicle access to Avenue B.

Councilmember Yakawich asked if comments had been received from the property owners at 814 Avenue B. Ms. Cromwell said they received no comments.

Councilmember Pitman asked if Condition #6 regarding prohibited trees was new. Ms. Cromwell said it was located in Section 25 of the City Code. The prohibited trees were invasive to water and sewer lines, and they tended to not have a long life span. Councilmember Pitman asked if they would be seeing the condition on a regular basis. Ms. Cromwell said staff would try to consistently bring the condition forward for

approval. Councilmember Pitman asked if there were preferred trees. Ms. Cromwell noted the City Forester had a list of preferred trees for planting landscapes and street boulevards.

The public hearing was opened.

- **Nick Pancheau, 112 11th Street West, Billings, MT**, said he was with Collaborative Design Architects, the agent for Off the Leaf Coffee Company. He noted the Zoning Commission's conditions were appropriate, and they had no problem complying with them. During the Zoning Commission meeting, they were asked if they planned to complete a traffic impact study. He said they spoke with Terry Smith, City Traffic Engineer, who asked them to provide an abbreviated traffic impact study, so they were currently working on one specific to the drive-through.

Councilmember Cimmino asked if the reason for the traffic impact study was because of the proximity to the signal-controlled intersection at Grand and 8th Street West. Mr. Pancheau said he understood the reason for the traffic impact study was because it was a standard process for the City of Billings when a drive-through was added. Mr. Smith told him the report did not need to look at the traffic impacts at adjacent intersections. Councilmember Cimmino said the study was probably needed because of potential car stacking in the drive-through. Mr. Pancheau said their study would address car stacking. He said the site plan provided a great deal of stacking all the way around the backside of the property, and they were confident there would be no issues.

Councilmember Cromley asked if the fence on the east end would start from Grand and go all the way to Avenue B. Mr. Pancheau said it would start from the Community Commercial property and go north from there.

Councilmember Cromley asked if there was an engineering study pending. Mr. Pancheau said there was one pending. They were waiting for Council's decision that evening before moving forward. Councilmember Cromley said he did not understand why the study was being done. Mr. Pancheau said the traffic impact study was specifically being requested by the City Engineer's Office because of the addition of a drive-through.

Councilmember Brown asked if the vehicles would enter, proceed to the back of the property, and then come back to the drive-through window. Mr. Pancheau said that was correct. They could easily have six to seven cars stacked between the order board and window with room for additional cars beyond that. He said there was potential for a large number of vehicles to stack before backing up onto Grand Avenue.

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

Councilmember Cimmino moved for approval of the special review with the stated conditions, seconded by Councilmember McFadden.

Councilmember Cromley said he did not understand the need for the traffic impact study. Ms. Cromwell said if a special review was not required and they were just

going for a building permit for a drive-through, City Engineering would ask for a traffic study to evaluate the impact of traffic moving on and off the site. It was a standard requirement of the City. The special review did not trigger the need for the study; but the City Traffic Engineer asked for one. Councilmember Cromley said if the traffic impact study came back and said it would create horrendous problems, it would be too late. Ms. Cromwell said the City Traffic Engineer would not approve the building permit if they could not figure out how to mitigate the traffic issues.

Councilmember McFadden asked how it would be different from the drive-throughs of Wendy's, Taco Bell, or MacDonald's that were in the same neighborhood. Ms. Cromwell said she was not certain other than the proximity to the intersection.

Councilmember Pitman said they were just making the applicant jump through a hoop by asking for the traffic impact study. It was obvious it would not create any issues with the intersection. None of the conditions of approval indicated the traffic impact study was a pending part of the approval. Ms. Cromwell said she believed the study would ensure the site design could accommodate the additional traffic with the existing traffic on Grand Avenue.

On a voice vote, the motion was unanimously approved.

3. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE
#928: A zone change from Residential Professional to Residential 7,000 on Lots 4 and 5, Block 2, Justiss Subdivision, generally located northeast of the intersection of S. 24th St. West and King Avenue West and addressed as 2313 and 2321 Henesta Drive. Boris Krizek, owner of Lot 4 and the Dean Hardin Trust, owner of Lot 5; Lowell Cooke, agent. Zoning Commission recommends approval and adoption of the 10 criteria. (Action: approval or disapproval of Zoning Commission recommendation.) Planner II, Nicole Cromwell, said the subject properties were located along the back side of the old Veterans' Administration Building and were originally zoned Residential 7000 until the 1980's when the zoning was changed by petition of the owners in hopes the properties would eventually convert to professional office space uses. The conversion to office space use did not occur, and the owners were now asking to return to the original Residential 7000 zoning in order to maintain their investments as rental duplex properties. Ms. Cromwell showed a zoning map and photographs of the two subject properties and surrounding properties. Both properties had been rental duplex dwellings since construction, and the access was from Rosebud, down Henesta Drive, and into a cul-de-sac. The Zoning Commission was forwarding a recommendation of approval based on the following 10 criteria.

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 the existing duplex dwellings to remain and be reconstructed in the future, if necessary. The surrounding properties are compatible with this use.

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

The existing zoning is restricted to single family dwellings for residential uses. This does not allow the preservation of housing choice in the area. The proposed zoning will allow the continued investment in and maintenance of these dwellings.

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. The current zoning does not encourage the owner to invest in the dwellings since re-construction of the duplexes is prohibited by the zoning. The new zoning will ensure long term investment. 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 will have no impact on the surrounding streets.

Water and Sewer: The City already provides water and sewer services to the dwellings.

Schools and Parks: There should not be any impact to schools from the proposed zone change.

Fire and Police: The subject property is currently served by the city Public Safety Services.

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 should not change. The proposed zoning should have no impact on motorized or nonmotorized traffic.

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

The new zoning does promote compatibility with urban growth. The proposed zoning will support the long term investment in this existing residential area.

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 two-family dwellings. The proposed zoning is suitable for the existing and surrounding development.

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

The new zoning will conserve the value of the existing two-family dwellings. The current zoning does not allow the re-construction of the duplexes.

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

The proposed zoning will encourage the most appropriate use of the property. The proposed zoning is the most likely use of the property now and in the future.

Councilmember Brown asked for the advantage of changing from Residential Professional to Residential 7000. Ms. Cromwell advised if the owners were to sell the properties, the Planning Department could not issue a Rebuild Letter to the mortgage insurance underwriter. They would not be allowed to rebuild a duplex in that current zone. If the properties were rezoned to Residential 7000, a Rebuild Letter could be issued.

Councilmember Yakawich asked if Ms. Cromwell had attended the pre-application meeting. Ms. Cromwell advised staff's attendance at pre-application meetings tended to be a distraction. Staff liked to know about the meetings, but they did not attend. Councilmember Yakawich asked if there were residents opposed to the rezone. Ms. Cromwell said one resident at the Zoning Commission hearing wanted to know why they were not asking for a Neighborhood Commercial zone, which was one step up from the Residential Professional and would allow a duplex or a four-plex on the lot. She said the owners were not interested in owning commercially-zoned property.

Councilmember Brown asked for the zoning of the other two properties shown. Ms. Cromwell said they were Residential Professional. Councilmember Brown asked if the drive-through at the old VA location had ever been an issue. Ms. Cromwell said not that she knew of.

Councilmember Cimmino said she thought Residential Professional would provide for a higher property value. Ms. Cromwell said the agent for the owners was available to address marketability for other uses. She said because of the property's isolation from the traffic, she did not feel it would have much traction in the marketability as an office space. Councilmember Cimmino asked what could be rebuilt on the property under the current zoning. Ms. Cromwell said one single-family dwelling, an office use, or professional use would be allowed in Residential Professional.

The public hearing was opened.

- **Lowell Cooke, Coldwell Banker Real Estate, 525 Alderson, Billings, MT,** said he had the property at 2321 Henesta for sale. They had an offer and were getting ready to close when the bank said they would not finance it until

they received a rebuild letter or the property had been re-zoned. Ms. Cromwell told them they could not get a rebuild letter under the current zoning, so if the duplex ever burned down it could not be rebuilt as a duplex. That was why they pursued the Residential 7000 zoning. He contacted the owner of the duplex next door, and they combined both properties to request the zone change.

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

Councilmember Cromley moved for approval of Zone Change #928 and adoption of the 10 criteria, seconded by Councilmember Yakawich. On a voice vote, the motion was unanimously approved.

4. PUBLIC HEARING AND FIRST READING ORDINANCE expanding the boundaries of Ward V to include recently-annexed property in Annexation #14-13: Approximately 1.6 acres generally located on the northwest corner of the intersection of Shiloh Road and Central Avenue and addressed as 16 Shiloh Road. Leland and Lorraine Wells, owners. 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.

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

Councilmember Cromley moved for approval of expanding the Ward V boundaries in Annexation #14-13, seconded by Councilmember Crouch. On a voice vote, the motion was unanimously approved.

5. PUBLIC HEARING and approval of substantial amendment to the FY2014-2015 Consolidated Plan - Annual Action Plan for CDBG and HOME funding. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) Community Development Manager, Brenda Beckett, said they were holding a public hearing to change the FY2014/2015 Consolidated Plan – Annual Action Plan. The City had a repayment to HUD but requested the funding be used instead for First Time Homebuyer and Affordable Housing Development. HUD agreed, and the money was put into the City's line of credit. The City now had to program the funding, which required a Substantial Amendment. Ms. Beckett noted it was very difficult to estimate program income. They looked at the program income received for a full calendar year, began the budget process the following year, and began utilizing the funds at the beginning of a new fiscal year. HUD did not like that timeframe, so staff worked with the Finance Department to add the funding to this year's budget and put it into the programs automatically. They were currently writing language in their Consolidated Plan so they could switch the funding around with quarterly amendments to their budget. They would know the exact figures they were receiving and would not have to guess too far into the future. She said when they were approaching next year's budget, they would be looking more at the programs than the actual dollar amounts coming in. It would help keep an eye on the bottom line as they moved forward. Ms.

Beckett said they had just finished the 2nd quarter; and so far CDBG had received \$36,569, and HOME had received \$53,089.

Councilmember Yakawich asked if the CDBG funding came through HUD. He said in the past it had also gone towards non-profits and asked Ms. Beckett how it was tied into the VISTA volunteers. Ms. Beckett advised up to 15% of the new entitlement fund they received through CDBG could be allocated to a public service activity. The grants to external organizations were eliminated a number of years ago when the funding got so low and the dollar amounts were going to be very, very small to non-profit organizations. She would be providing charts at a later date showing what they used to receive compared to what they currently received. Councilmember Yakawich requested a flowchart of the money coming in and how it was spent. Ms. Beckett noted all of their plans were on the City's website.

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

Councilmember Crouch moved for approval of the substantial amendment to the FY2014-2015 Consolidated Plan - Annual Action Plan for CDBG and HOME funding, seconded by Councilmember Swanson. On a voice vote, the motion was unanimously approved.

6. APPROVAL of final payment to Safetech for library demolition asbestos abatement; \$89,025.25. 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 Cimmino asked Library Director, Bill Cochran, if the \$89,025.25 was in addition to the \$404,000 previously spent. Mr. Cochran said that was correct. Councilmember Cimmino asked if it would be the final payment. Mr. Cochran said Council approved a \$404,000 payment in August that they thought was the final payment to Safetech. Subsequent to the payment additional work they had done was based on estimates of the debris, particularly in the basement, that had been dragged in when the demolition subcontractor broke through the first floor. OSHA requirements would not allow anyone to go into the basement, so they had to estimate quantities, material, and costs by eyeballing it from the surface. The contributing factor was a double-whammy related to a DEQ determination about rebar. To the surprise of everyone on the project, the DEQ prohibited the recycling of the steel rebar removed from the concrete. The abatement contractor was supposed to get a credit from the steel rebar, but DEQ would not allow it until over half of the project was done. The rebar had to be treated as contaminated waste at the landfill, and the load tickets came in with tons of steel rebar. He said there was rebar about every eight to twelve inches in the building. Late in the project the determination was reversed, and the DEQ allowed the recycling of some of the rebar, but the credit given was very low and the costs for the load tickets for hazardous material at the landfill were high. Mr. Cochran said Safetech was called back several times as the civil work was done on the parking area because the contractor ran into sections of abandoned 6-inch gas line insulated with materials that contained asbestos. He said all of the abatement work had now been completed. Councilmember Cimmino asked if they could look forward to the parking lot in the spring. Mr. Cochran advised they had the site buttoned down, the construction fences

had been pulled back with temporary sidewalks along Broadway and 29th, and the south entrance was open. There was additional parking along Broadway and 29th, and there were 15 temporary parking spaces north of the Dude Rancher. Once the weather broke, they would get started again and hoped to have everything done in eight weeks.

Councilmember Cimmino asked if the extra half million dollars expended because of the unknown asbestos would come from the library's unobligated reserves. Mr. Cochran said they would be paying from library reserves, and they were at the limit of saying they were unobligated. They were into a zone where they would prefer to retain their operating reserve. There were other costs as a result of mistakes made by other parties, and they were in the process of setting a date the end of March to begin mediation to recover the costs.

Councilmember Pitman said he wanted to make sure the statement "*Payment to Safetech for this work does not constitute acknowledgement by the City that all or any of these costs are the responsibility of the City and reimbursement will be pursued with responsible parties.*" was sufficient to protect the City in its attempts to recoup the costs. Attorney Brooks said it was. It did not obligate the City to a particular legal position; it was a way of paying the bill with an extra notation for mediation purposes and future potential litigation. Paying the bill did not acknowledge the City was fully responsible for it. Ms. Volek advised Safetech performed honorably, accomplished what the City asked them to do, and were upfront with the costs. Staff was mindful of the direction from the City Council to ensure the City accepted responsibility only for those issues for which it would have been responsible.

Councilmember Cromley said he was curious about DEQ's position that the steel had been impregnated with asbestos fibers. Mr. Cochran said they were advised washing the steel would not address or mitigate the contamination. He said everyone working on-site had never heard of it before, but they were under the pressure of the violation letter and complied with it.

Councilmember Yakawich said he understood a part of the sidewalk was just a temporary fix. Mr. Cochran advised a determination was made not to proceed with permanent or interim completion of the full parking lot because of the substantial costs involved. They put in temporary concrete sidewalks that were estimated to be less expensive and much safer than using plywood.

Councilmember Swanson asked if there were any other substantial bills that would be coming in at a later time. Mr. Cochran said he did not want to give any guarantees, but there was nothing above-ground; all the civil work had been done; and there would be no reason to open up the site to find something else. He suspected they would be receiving claims for delay impact; and all the different parties would be billing each other for more expenses. Mr. Cochran said there was nothing in terms of new work or costs.

Councilmember Cimmino asked about the whereabouts of the large, stuffed bear from the old building. Mr. Cochran said Booker was set free and did not make it to the new building after 20-plus years. The Billings Gazette ran an obituary for Booker, and he was now looking down on the new library.

Councilmember Cimmino moved for approval of the \$89,025.25 payment to Safetech for completion of library demolition asbestos abatement, seconded by Councilmember Yakawich. On a voice vote, the motion was unanimously approved.

7. RESOLUTION #15-10418 AMENDING AND RESTATING RESOLUTION 14-10409: A resolution authorizing the issuance and private negotiated sale of up to \$7,250,000 General Obligation Bonds, Series 2015, to Piper Jaffray & Company for construction of Dehler Park. 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 Crouch moved for approval of Item 7, seconded by Councilmember Cimmino.

Councilmember Pitman asked if it was just a reduction in the interest rate. Finance Director, Pat Weber, advised it was just a reduction in the interest rate and the length of time would remain the same.

Councilmember Cimmino said it was approved by the voters in 2006 and asked for the remaining amount of time. Mr. Weber estimated 12 years.

On a voice vote, the motion was unanimously approved.

8. RECONSIDERATION OF SECOND/FINAL READING ORDINANCE #15-5635 amending BMCC Section 14-400 regulating public fireworks displays. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) City Administrator Volek advised the second reading was considered at the December 8, 2014, business session. The item was voted down and then voted to reconsider.

Fire Marshal, Mike Spini, said after the December 8, 2014, meeting, he researched multiple states looking at current definitions of fireworks. The only definition he found that referenced "oxidizer" was in California. He looked at other Montana cities and all were consistent with the State's current wording. He sought the State Fire Marshal's opinion, who said they needed to be as restrictive as State Law. They could be more restrictive, but not less. He said he drafted a new definition and took it to the Legal staff and to the City Administrator. The new definition referenced State Law and the adopted Fire Code and provided the exclusions the City Council was concerned about at the last meeting. He said with the new definition, State Code and Fire Code could change in the future; but they would not have to change their definition of fireworks for the City of Billings.

Councilmember Cromley said he appreciated the new definition. He said he felt the State had a bad definition, and he was glad Mr. Spini modified it enough to satisfy Council's concerns.

Councilmember Pitman said he just wanted to be clear and asked if hobby rockets would be allowed. Mr. Spini said hobby rockets would be allowed.

Councilmember Yakawich thanked Mr. Spini for taking the time to come back with a new definition.

Councilmember Cromley moved for approval of Item 8, seconded by Councilmember Cimmino. 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. There were no speakers, and the public comment period was closed.

COUNCIL INITIATIVES

- **Swanson**: MOVED that the City Council initiate rezoning a 6-plex owned by F. Wayne Gustafson located at 1229-1239 Poly Drive from R9600 to R6000. Mr. Swanson said he presented the background information to the City Council at the last work session. He said, like a similar property that was rezoned in October 2014, the property was properly zoned in 1966 as R-3-R, but was automatically changed to R9600 when the City adopted city-wide rezoning in 1972. He said because the change was completed without the knowledge of the property owner, he was asking that the rezoning be conducted at the City's expense. The motion was seconded by Councilmember Cromley.

Councilmember Cimmino asked if zoning had gone into effect in the late 70's. City Administrator Volek said it was 1972. Planning Director, Candi Millar, advised the situation was very similar to the previous zone change the City Council approved; however, the previous zone change occurred simultaneously with the City adopting zoning regulations in 1972. The difference with the current situation was that it occurred six years earlier. Councilmember Cimmino asked if the subject property would be grandfathered in. Ms. Millar said the use was grandfathered in, but it was in the wrong zone at the current time. If the subject property were to be destroyed, it could not be replaced. She said staff was concerned there may be a number of properties with the same situation and would like to explore with the Council the option of doing a blanket zone change to cover other existing properties; however, they did not want to delay the current request.

On a voice vote, the motion was unanimously approved.

- **Bird**: MOVED that \$15,000 of Council Contingency Funds supplement the \$10,000 of Council Contingency Funds approved last year in support of developing a master plan for Optimist Park. The additional funds would bring the Council's commitment to \$25,000 to which the South Billings Urban Renewal Association (SBURA) offered to match, bringing the total amount for the master plan to \$50,000. The motion was seconded by Councilmember Yakawich.

Councilmember Cromley asked if the initiative was conditional upon the SBURA raising the \$25,000. Councilmember Bird said that was correct.

Councilmember Pitman asked if it would have to come to a future agenda and go through a public hearing. Ms. Volek advised it would not require a public hearing, but a resolution would need to be approved by Council.

Councilmember Cimmino asked if the City would go out for a bid or a Request for Proposals (RFP). Ms. Volek advised there would be an RFP. Based on experience in recent months, \$50,000 should be enough for a master plan. Councilmember Cimmino said she would support the initiative because parks were a huge amenity to the community; but it was interesting to note that when they had two consultants provide services for the Riverfront Trail Design, it was

done for \$15,000. Ms. Volek said she suspected it had to do with the involvement and size of the project. It was a major redesign of the Optimist Park Plan, and the other was minor modifications to the existing plan.

Councilmember Bird said it was never determined if there had ever been an Optimist Park Master Plan. It was a beautiful space, but there was such a bad parking situation. It was a solid family neighborhood that had been asking the City to do something for quite some time.

Councilmember Brown said he supported the initiative. He said the cost to do a master plan for a park in the \$50,000 range was unbelievable to him. He referenced a previous master plan prepared by high school students in the Heights, and said he would like to involve them even more. He said it was really hard for a community to come up with that kind of money to do a master plan.

Councilmember Crouch asked if there was City Staff to do the work. Ms. Volek advised staff had one individual who was a park planner with the credentials. He was also responsible for making sure plans, building, and construction was correctly done, so he was occupied; and they could not begin to ask him to address three or four master plans each year. She said Optimist Park was a 16-acre park, and it was her understanding from Ms. Millar that the community there had a strong desire for a significant park development that would require concentrated services. Councilmember Bird said there may be an opportunity for an intern or a VISTA volunteer to provide assistance.

Councilmember Pitman asked for a more detailed presentation when the resolution was presented.

Councilmember Swanson asked for a map showing the location of all city parks. Ms. Volek advised there was a map on the website.

Councilmember Crouch called for the question.

On a voice vote, the motion was unanimously approved.

- **Bird:** MOVED that the City Council consider holding quarterly planning meetings to be held in January, April, July, and October that would allow the Council ample opportunity to talk at length about important or emergent issues relevant at that time, seconded by Councilmember Crouch.

Councilmember Yakawich said he felt it was a good idea and said staff would not necessarily need to attend. City Administrator Volek advised she was required by the Charter to attend all Council meetings. Councilmember Yakawich said he did not mean to disregard anyone; he was just trying to avoid creating more costs.

Councilmember Cromley said he would speak against the motion. He hated to have meetings set up thinking they might have something to talk about. They needed a purpose to schedule a meeting; and they could always set up a meeting if one was needed. Mayor Hanel said he agreed with Councilmember Cromley that the meetings should be on an as-needed basis instead of scheduling them in advance.

Councilmember Bird said her reason for bringing the initiative forward was because it was not always easy getting 11 people together on a Saturday. They could always cancel a meeting, which would be easier than trying to scramble to find the time.

Councilmember Yakawich said it was very important for Council to create in-depth discussion where the public was present and able to provide input. It would also benefit new councilmembers.

Councilmember Cimmino said she agreed with Councilmember Bird. She said in addition to the meetings with the County Commissioners and School District #2, they had Community Conversations to address important issues.

Councilmember Bird called for the question.

On a roll call vote, the motion failed 5 to 5. Yakawich, Cimmino, Bird, Crouch, and Brown voted in favor. Cromley, Pitman, McFadden, Swanson, and Mayor Hanel voted in opposition.

There was no further business, and the meeting adjourned at 8:55 p.m.

CITY OF BILLINGS



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

ATTEST:

BY: Cari Martin
Cari Martin, City Clerk