

REGULAR MEETING OF THE BILLINGS CITY COUNCIL
October 26, 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. Councilmember Yakawich gave the invocation.

A group of Young Marines presented the colors prior to reciting the Pledge of Allegiance.

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

City Administrator Tina Volek was excused from the meeting.

MINUTES: October 13, 2015: Councilmember Crouch moved for approval, seconded by Councilmember Cimmino. On a voice vote, the motion was unanimously approved.

COURTESIES:

- Mayor Hanel invited Lisa Harmon, Executive Director of the Downtown Billings Alliance, to the podium to discuss an award. Ms. Harmon presented the International Downtown Association Pinnacle Award for leadership and management of the Community Innovations efforts in Billings. Ms. Harmon stated that the Downtown Billings Alliance proudly accepted and shared the award on behalf of the City, the Rocky Mountain Tribal Leaders Council, the Crisis Center, and Rimrock. Mayor Hanel and Ms. Harmon exchanged congratulations for the award, and the audience gave a round of applause. Ms. Harmon acknowledged City Administrator Tina Volek for her dedication to the Alliance and to the Community Innovations efforts. Ms. Harmon introduced members of the Downtown Billings Alliance staff: Greg Krueger, Director of Development; Joe Stout, Director of Operations; Natasha Potratz, Director of Art and Events; Mel Barbour, Outreach Coordinator and Website Manager; Ray Porello, Executive Assistant – Member Relations. Ms. Harmon also introduced Downtown Billings Police Officers Tony Nichols and Matt Lennick, as well as Resource Outreach Coordinator Joel Simpson. The audience applauded. Mayor Hanel thanked Ms. Harmon as well as other community members for their support and for the success of the program. Mayor Hanel stated that the Council is honored that the award was received.
- Councilmember Yakawich invited Dr. Michael Brown, Coordinator of "Know Your Dose" prescription drug abuse prevention program, to the podium. Dr. Brown stated that drug overdose deaths surpassed highway and automobile fatalities in 2012, and that over 50% of drug overdose fatalities are due to prescription medication abuse. 369 people passed away from prescription drug overdoses in Montana in 2013. Mr.

Brown announced that the Montana Medical Association has launched an educational "Know Your Dose" initiative to combat prescription drug abuse.

PROCLAMATIONS:

Mayor Hanel invited the Young Marines to the front of the Council Chambers. Mayor Hanel read a proclamation declaring October 23-31, 2015 to be Red Ribbon Week, and encouraged citizens to wear a red ribbon to show support and encourage healthy, drug-free lifestyles.

Mayor Hanel read a proclamation declaring November 1, 2015 to be Extra Mile Day. Mayor Hanel encouraged community members to go the extra mile, and to acknowledge those who are inspirational in their efforts to make the world a better place.

ADMINISTRATOR REPORTS - TINA VOLEK.

Assistant City Administrator Bruce McCandless delivered the report.

Mr. McCandless reminded Council that the City/County/School District meeting would be taking place on October 27, 2015 at noon in the Billings Library Community Room.

Mr. McCandless noted that the November 2, 2015 work session only included Quarterly Reports on the agenda, and asked whether Council would prefer to cancel that work session and postpone the Quarterly Reports until the November 16, 2015 work session. Mayor Hanel suggested to cancel the work session. Councilmember Cimmino asked Mr. McCandless when the next conversation regarding public safety was scheduled. Mr. McCandless replied that no additional presentations regarding public safety were scheduled for future work sessions. Mayor Hanel stated that a consensus had been reached to cancel the November 2 work session. Mr. McCandless stated that the next work session would be November 16, 2015 and the final work session of the year is scheduled for December 7, 2015.

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. **W.O. 16-03, Contract # 1 City Crack Seal.** (Opened 10/13/15)
Recommend Z&Z Seal Coating Inc., \$150,345.19.

B. Change Order #3 - W.O. 13-20, Arrowhead School Path, Asphalt Plus, Inc., \$2,605.

C. Acknowledging Receipt of Petition to Annex #15-10: 40 acres of the southwest corner of the intersection of Grand Avenue and 56th Street West, located at 5640 Grand Avenue, Billings School District #2, petitioner, and setting a public hearing date for November 9, 2015.

D. Acknowledging Receipt of Petition to Annex #15-11: 16.6 acres south of Barrett Road, east of the intersection of Bench Boulevard and Barrett Road, Billings School District #2, petitioner, and setting a public hearing date for November 9, 2015.

E. Acceptance of Donation to Billings Police Department, 2015 Domestic Violence Grant, \$19,022.

F. Second/Final Reading Ordinance amending City Code Section 2-565, 2-566, and 2-567, relating to the name and responsibilities of the Parking Advisory Board.

G. Final Plat of DayBreak Subdivision.

H. Bills and Payroll:

2. September 28, 2015

3. October 5, 2015

Mayor Hanel noted that Councilmember Cromley would be abstaining from Regular Agenda Item 2.

Councilmember Brown separated Items 1H1 and 1H2 in order to abstain.

Councilmember Cromley separated Item 1H1 in order to abstain.

Councilmember Cimmino separated Item 1H2 in order to abstain.

Councilmember McCall moved to approve the Consent Agenda with the exception of Items 1H1 and 1H2, seconded by Councilmember Pitman. On a voice vote, the motion was unanimously approved.

Councilmember McCall moved to approve item 1H1, seconded by Councilmember Pitman. On a voice vote, the motion was approved 9-0, with Councilmembers Brown and Cromley abstaining.

Councilmember McCall moved to approve Item 1H2, seconded by Councilmember Pitman. On a voice vote, the motion was approved 9-0, with Councilmembers Brown and Cimmino abstaining.

REGULAR AGENDA:

2. **PUBLIC HEARING AND SPECIAL REVIEW #932: a special review to locate a beer and wine license without gaming for a proposed City Vineyard and for a drive through service window for a proposed City Brew in a 12,000 square foot proposed building in a Planned Development zone with underlying Community Commercial (PD-CC) zoning, on a 2.22 acre parcel of land described as: Lot 9, Block 2 Cardwell Ranch Subdivision 1st filing. Beckie Reno, co-owner; Steve Corning, agent. Zoning Commission recommends conditional approval and adoption of the findings of the 3 criteria. (Action: approval or disapproval of Zoning Commission recommendation.)**

Dave Green, Planner, began a PowerPoint presentation for Special Review #932. Mr. Green gave an overview of the property and proposed development. Mr. Green noted that the proposed development was within 600 feet of a school (Will James Middle School) and offered onsite consumption; therefore the proposed development required special review. Mr. Green noted the conditions of approval as follows: 1) the special review is limited to Lot 9, Block 2, or Cardwell Ranch Subdivision, 1st Filing, generally located at 1335 Golden Valley Circle; 2) the special review approval is for the construction of a 12,000 square foot building of which 2,160 square feet is City Brew and the remaining square footage is City Vineyard with a drive-through service and a beer and wine license without gaming. No other use or development configuration is intended or implied by this approval; 3) any expansion of the proposed drive-through café or the remainder of the building use greater than 10 percent of what is shown on the submitted site plan 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 20 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 three 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) is 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) any outdoor announcement system shall be operated so it is not audible beyond the property lines; 10) 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; 11) these conditions of special review approval shall run with the land and shall apply to all current and subsequent owners, operators, managers, lease-holders, heirs, and assigns; 12) 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 Swanson asked whether wine tasting onsite was considered onsite consumption. Mr. Green replied that wine tasting is considered onsite consumption, and therefore the proposed development required special review.

Councilmember Yakawich asked if there was a reason for the 600 foot separation requirement between the establishment and the school. Mr. Green replied that State law requires the separation, but the law does give the option to grant a waiver. Councilmember Yakawich asked whether there was an explanation for the requirement in State law. Candi Millar, Planning and Community Services Department Director, replied that there was no explanation in State law, but the requirement is to ensure the welfare of children in school or at play.

Councilmember Brown asked whether the requirement that the building view was obscured was measured from building to building. Mr. Green stated that the requirement was not clearly defined. Councilmember Brown asked how many waivers have been granted for beer and wine licenses within 600 feet of schools. Mr. Green discussed several surrounding properties in the same area that had been granted waivers.

Councilmember Yakawich mentioned a letter that was sent by the school superintendent to Council, and asked whether any additional communication occurred. Mr. Green stated that the superintendent also spoke with the developers of the property. Mr. Green stated that the superintendent hoped that the right decision would be made.

Councilmember Crouch asked whether the surrounding residents would be stuck with dealing with outdoor live music from the property. Mr. Green stated that only outdoor unamplified music would be allowed. Councilmember Crouch asked whether the 600 foot separation requirement applies to football fields and tracks. Mr. Green stated that the requirement only applies to playgrounds with playground structures for children.

Mayor Hanel noted that Councilmember Cromley abstained from participation in Item 2.

The public hearing was opened.

- **Diane Wilhaven, 2726 Woody Drive, Billings, MT**, expressed concern over the location of a place selling beer and wine being located close to a school. Ms. Wilhaven also mentioned an accident that occurred near Rehberg and Grand earlier that morning, and that the lights were still not up and running. Ms. Wilhaven stated that drivers are often not willing to stop for pedestrians, and that she is concerned for the safety of children. Ms. Wilhaven stated that the neighboring school to the proposed development produces heavy traffic.
- **Steve Corning, 2939 Gregory Drive, Billings, MT**, stated that he is the developer for this property. Mr. Corning stated that this proposed development will incorporate a gourmet market. Mr. Corning noted several successful projects also initiated by owner Becky Reno. Mr. Corning stated that this development is currently budgeted at \$4 million, and will be a beneficial addition to the community. Mr. Corning referenced the letter from the superintendent and stated that he was told the letter was written as a routine response to a special review of this nature. Mr. Corning also stated that the superintendent wrote a follow-up letter stating that establishing barriers between the school and the development would ease his concerns. Mr. Corning stated that the school is surrounded by a barrier. Mr. Corning stated that he and his wife support the schools in our community, and that he would not pursue a project that he believed would jeopardize education. Councilmember Yakawich stated that Council did not receive the second letter. Councilmember Yakawich referred to the first letter, and asked Mr. Corning whether he would consider completely obstructing the view of the building from the school. Mr. Corning stated that a fence would not be feasible, but that the development team would consider extensive landscaping to obstruct the view. Councilmember McFadden asked whether onsite consumption would take place at this development. Mr. Corning stated that the current City Brew/City Vineyard has not had any instances of minors consuming alcohol on the premises, and that minors often frequent the City Brew side of the development.
- **Becky Reno, 3021 North Slope Trail, Billings, MT**, noted that City Brew celebrates its 17th anniversary this year, and City Vineyard celebrates its 15th anniversary this year. Ms. Reno stated that the new development concept will be scaled in Billings before expanding elsewhere. Ms. Reno stated that events such as cooking classes and wine and food pairings will occur at the new development. Ms. Reno stated that she has been involved in retail in Billings for 35 years, beginning with Video Library. Councilmember Brown asked Ms. Reno to explain the difference between City Vineyard and a bar. Ms. Reno stated that City Vineyard is more of a gathering place, and she envisions patrons enjoying wine while they shop for expanded offerings of breads, cheeses, and meats; City Vineyard is not a bar. Councilmember Yakawich asked Ms. Reno whether an

orchard would be considered outside of the development to obscure the view from the school. Ms. Reno stated that the existing City Brew/City Vineyard has well-developed landscaping, and that she intends to do the same for the proposed development. Councilmember Bird congratulated Ms. Reno on her success. Councilmember Bird asked Ms. Reno why she selected this particular property, given that a variance/special review would have to be conducted. Ms. Reno stated that City Vineyard went through a special review 15 years ago, and again when it moved its location. Ms. Reno stated that this land was great real estate for customers. Councilmember Bird asked whether the previous special reviews for the existing City Vineyard dealt with the same issue of being within 600 feet of a school. Ms. Reno stated the latest concept will not include a gaming license like the original City Vineyard previously did. Councilmember Cimmino stated that she was on the Zoning Commission 15 years ago when City Vineyard went through the special review process. Councilmember Cimmino stated that she remembered hearing concerns from surrounding property owners, but noted that the business has been a success story. Councilmember Cimmino congratulated Ms. Reno on her success, and noted that she supported the application request.

- **Charlie Yegen, 211 N 30th Street, Billings, MT**, stated that he represents the Yegen Family and Cardwell Ranch. Mr. Yegen stated that when he was approached by Mr. Corning, his concerns over casinos in the area decreased markedly. Mr. Yegen stated that this development will be beneficial, and that the view obstruction issue from the school will be alleviated by landscaping. Mr. Yegen stated that the developers have gone above and beyond in plans for this business, and the development would be of high quality.
- **Eric Simonson, 609 N 29th Street, Billings, MT**, displayed several photos of the proposed development. Mr. Simonson noted that the property was separated from the school's property, and that door to door, the two buildings will be 1,484 feet apart. Mr. Simonson noted where the outdoor seating areas were located. Mr. Simonson stated that there were several other examples of the professionalism of the developer for this project.
- **Kevin Nelson, 4235 Bruce Avenue, Billings, MT**, stated that this is a good opportunity to fix the fence post on the corner of Grand and Zimmerman. Mr. Nelson also stated that this is a good opportunity to complete sidewalks around the cancer center and the school. Councilmember McFadden stated that Council could not force City Brew to insert a sidewalk. Councilmember McFadden also stated that he believed that the other sidewalks Mr. Nelson mentioned were in the works.

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

Councilmember McCall moved for approval of Item 2, including the conditions and the adoption of the findings of the three criteria, seconded by Councilmember McFadden. Councilmember McCall stated that she was in full support of this proposal, and thanked Ms. Reno for locating her businesses in Billings. Councilmember McCall stated that she had full faith in Ms. Reno and Mr. Corning. Mayor Hanel stated that the

City and Council has the opportunity to help the community grow and prosper. Mayor Hanel stated that he supported the motion, and that City Brew/City Vineyard have been successful. Councilmember Yakawich stated that he supported the motion, and that he appreciated the comments and cooperation between the school, developer, and owner. Councilmember Bird stated that she was struggling with this decision, not because of the concept, but because of her concerns with infrastructure gaps and public safety. Councilmember Bird noted that it was difficult for her to make this decision. Councilmember Cimmino acknowledged the comments made by Ms. Wilhaven and Mr. Nelson, and stated that Council takes them into consideration. Councilmember Cimmino acknowledged Councilmember Bird's concerns, but stated that she believed the concerns will be mitigated. Councilmember Pitman stated that he is a card-carrying member of the City Brew Club and that he uses City Brew as a meeting location. Councilmember Pitman stated that this is an opportunity to provide a gathering place on the West End. Councilmember Crouch asked Public Works Director Dave Mumford whether he was aware of traffic backups on Grand from Zimmerman Trail, and whether there are plans to alleviate traffic on Grand. Mr. Mumford stated that the CIP that was presented to Council includes reconstruction of Grand between Zimmerman Trail and Shiloh Road. The improvements will take place within the next five years, and Public Works is currently working on obtaining the necessary rights of way for the improvements. Mayor Hanel also noted that Mr. Mumford had previously stated that the rights of way would be in place within 2016. Mayor Hanel also noted that he hoped improvements continue to take place, and that concerns should be addressed. Mr. Mumford stated that design and completion of sidewalks will continue. On a voice vote, the motion was approved 9-1, with Councilmember Bird voting in opposition and Councilmember Cromley abstaining.

3. PUBLIC HEARING AND SPECIAL REVIEW #933: a special review to locate a proposed elementary/secondary school (K-8) for the Billings Catholic Schools in an 87,000 square foot proposed building in a residential 9,600 (R-96) zone, on a 26 acre parcel of land described as: Lot 2, Block 1 St. Thomas Subdivision and located on the south side of Colton Boulevard between Woody Drive and 21st Street West. Billings Catholic Schools, owner; Rick Helt, agent. Zoning Commission recommends conditional approval and adoption of the findings of the 3 criteria. (Action: approval or disapproval of Zoning Commission recommendation.)

Dave Green, Planner, began a PowerPoint presentation and gave an overview of the property and development. Councilmember McFadden asked for Mr. Green to show where the proposed building would sit on the property. Councilmember Yakawich asked about traffic control and sidewalks. Mr. Green explained that the proposed school is expected to add bulb-outs that would alleviate traffic on the road and would provide a safe drop-off location for students. Councilmember Yakawich asked how the neighborhood infrastructure would benefit from the development. Mr. Green stated that site plans and improvements still need to be worked out with the Engineering Department. Mr. Green stated the conditions for approval as follows: 1) the special review is limited to Lot 2, Block 1, of St. Thomas Subdivision generally located on the lot

immediately east of the St. Thomas Church on Colton Boulevard between Woody Drive and 21st Street West; 2) the special review approval is for the construction of a new 87,000 square foot building for Billings Catholic Schools, K-8, no other use or development configuration is intended or implied by this approval; 3) any expansion of the proposed building or parking greater than 10 percent of what is shown on the submitted site plan 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 20 feet above grade. Exceptions to this requirement are allowed for entry doorway lighting; 5) all proposed drive approaches will be reviewed by the City Traffic Engineering for final approval and location; 6) no construction or demolition activity will occur before 7 am or after 8 pm daily; 7) 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; 8) any centralized solid waste storage shall be enclosed by a wall on three 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; 9) the site will be developed in substantial conformance with the submitted site plan including landscaping, parking, and building locations with the exception of condition 5; 10) any new sign will require a sign permit approval from the Planning Division. The school will be allowed one (1) monument sign not larger than 32 square feet and the sign may have external illumination; 11) 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; 12) 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 Swanson asked for Mr. Green to discuss the parking situation at the proposed development. Mr. Green stated that there is a staff parking lot in the plans, and there is an area for overflow parking. Mr. Green stated that the plans were still preliminary at this point, but will become more detailed as the project progresses. Councilmember Swanson asked about street parking. Mr. Green stated that street parking is allowed around the school, but that the school is providing a parking lot for its staff members, so they likely would not be parking on the street.

Councilmember Crouch asked whether any comments were received from neighbors to the west of this property. Mr. Green stated that no comments were received from those neighbors. Councilmember Crouch stated that he received comments that residents were concerned that they may be responsible for paying to pave a surrounding road. Mr. Green stated that the road in question would not be used by the school.

Councilmember McFadden stated that he attended a garage sale event at St. Thomas Church, and there seemed to be abundant parking. Councilmember McFadden stated that the church parking lot would likely be available during school days, and the school parking lot would likely be available on weekends. Mr. Green stated that each event use is required to have parking available; separate parking must be maintained and kept available.

The public hearing was opened.

- **Ron May, 2120 22nd Street W, Billings, MT**, stated that 22nd Street W will act as a funnel street for people on their way to the school. Mr. May stated that he is concerned about a quiet street turning into a heavy traffic street. Mr. May also stated that he was concerned with street parking if the school lot was full. Mr. May stated that he hoped his neighborhood does not turn into a parking lot.
- **Bob Murray, 16th Street W, Billings, MT**, stated that he believed the original plans for this land included a high school for the Billings Catholic Schools. Mayor Hanel stated that a high school was not included in the plans that were submitted to the City. Councilmember Cimmino noted that the application specifically states that the development will be for a K-8 school.
- **Kevin Nelson, 4235 Bruce Avenue, Billings, MT**, stated that special reviews do not change the zoning of the property. Mr. Nelson noted that this property was presented as being zoned R-96. Mr. Nelson stated that he believed the property is exempt commercial land, not R-96. Mr. Nelson stated the property should be paying higher assessments, and that the City should be doing a zone change rather than a special review. Ms. Millar replied that the property is zoned R-96, and the development needs special review since it is a proposed school in an R-96 zone. Ms. Millar stated that Mr. Nelson was referencing the tax property type, not the zoning. Ms. Millar stated that the fee assessments were lower because this property is currently vacant; once a building is placed on the property, the assessments will change. Councilmember Cimmino asked whether schools and churches are allowed to develop in R-96 areas. Ms. Millar stated that they are allowed to develop in R-96 zones, after a special review has been conducted.
- **Rick Heldt, 608 N 29th Street, Billings, MT, A&E Architects**, stated that the school will be a great boost to the community. Mr. Heldt stated that the north side access will include bulb-outs and will help with traffic issues. Mr. Heldt stated that, while there is land set aside on this property for it, the high school previously mentioned is planned to stay in its current location. Mr. Heldt stated that creating pedestrian areas around the school will benefit the community. Mr. Heldt also noted that playground facilities will benefit the community, outside of controlled access hours during the school day. Councilmember Brown asked what will happen with the existing schools that will be consolidated into this new school. Mr. Heldt stated that Holy Rosary will be going back to the parish that owns it. St. Pius will remain active in the school system. Mr. Heldt stated that he was unsure of the plans for the Frat Building.
- **Shawn Harrington, 250 Wind Cave Circle, President of Billings Catholic Schools (BCS)**, stated that the parking lots closest to the proposed building are

much closer than neighboring streets. Mr. Herrington stated that there may be times, such as games or special events, where additional parking may be necessary. Mr. Herrington stated that BCS has a very strong working relationship with St. Thomas Church, and that overflow parking could filter into the St. Thomas parking lot for some events. Mr. Herrington reminded Council that the school is K-8, so students will not be driving to school and requiring parking. Mr. Herrington stated that the St. Pius building is planned to be the new preschool. The Holy Rosary building will go back to Mary Queen of Peace. Mr. Herrington stated that the Frat Building does not have any plans, but that he has been contacted by two different parties who are interested in purchasing the building.

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

Councilmember Yakawich moved for approval of Item 3, including the conditions and adoption of the findings of the three criteria, seconded by Councilmember Swanson. Councilmember Bird stated that her son is a student of BCS, and asked City Attorney Brent Brooks whether her vote would pose a conflict of interest. Mr. Brooks stated that as long as Councilmember Bird did not have a personal or financial interest in the decision, her vote would not be a conflict of interest. Mr. Brooks noted that the provision is self-executing, and it would be left to the discretion of Councilmember Bird. Councilmember Bird stated that she would be abstaining from voting on Item 3. Mayor Hanel stated that he drives by the property every day, and that it would be a perfect location for the new school. Mayor Hanel stated that he supports the motion, and looks forward to the development of the school. On a voice vote, the motion was approved 10-0, with Councilmember Bird abstaining.

4. SID 1399, Lake Hills Subdivision 25th Filing

A. PUBLIC HEARING AND RESOLUTION creating SID 1399, Lake Hills Subdivision, 25th Filing. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Mr. Mumford began a verbal presentation on SID 1399, and noted that it is a continuation of a subdivision that was partially developed in the 1980s. Mr. Mumford stated that the subdivision includes 33 landlocked lots, and the improvements would include all of the infrastructure (water, sewer, storm drains, pavement) for the subdivision. Mr. Mumford stated that 24 lots are owned by a Ms. Lovely, who will be putting forth 52% of the payment required for the development. Mr. Mumford stated that staff received one formal protest for SID 1399, representing 3% of the property owners. Mr. Mumford stated that a property owner who owned three lots expressed concerns, but did not submit a formal protest. If the concerns were included in the protest percentage, the protests would represent 12% of property owners. The cost for the SID is approximately \$39,000 per lot. The lots currently have a very low value, as they are undeveloped and landlocked.

- The public hearing was opened.
- **Kent Richmond, 2420 Ditton Drive, Billings, MT**, stated that his residence is located in the older part of the subdivision and that he owns an adjacent vacant lot that would be included in the SID. Mr. Richmond stated that the \$39,000 assessments came as a shock. Mr. Richmond said that he does not intend to build on the vacant lot, but that he does maintain it. Mr. Richmond stated that he was concerned with the assessments being calculated on a per lot basis, as his lot was one of the smallest in the subdivision. Councilmember Cimmino asked for Mr. Mumford to display the site plan map. Councilmember Cimmino asked Mr. Richmond where his lots are located on the site plan. Mr. Richmond stated that he owns lots 12 and 13 on Ditton Drive. Councilmember Cimmino asked how lots are assessed. Mr. Mumford stated that the assessments are calculated per lot rather than per square footage. Mr. Mumford stated that each lot contains approximately the same amount of frontage on the road. Mr. Richmond stated that he will not receive any benefit from the SID.
- **Ken Roll, 2620 Cook, Billings, MT**, stated that he purchased three lots in the subdivision and is concerned about the assessments. Mr. Roll asked whether he had to build on his lots within a certain amount of time after the passage of the SID. Mayor Hanel stated that this was not a requirement of the SID. Mayor Hanel asked Mr. Roll to identify the lots that he owns. Mr. Roll stated that he owns lots 3-5 on Ditton Drive. Mr. Roll asked about the bid process for constructing the road. Mr. Mumford stated that, if approved, the design for the road will be advertised for bid and the contract will be awarded to the lowest bidder. Mr. Mumford stated that the assessment estimate is the high end. The actual value will be fully assessed once bids are received and awarded. The cost estimate will not increase, but does have the potential to decrease. Councilmember Cimmino asked how long property owners have to pay the full assessments. Mr. Mumford stated that property owners have 20 years to pay the assessments. [NOTE: as later corrected, property owners have 15 years to pay assessments.] Councilmember Cimmino stated that the property values will greatly increase after the improvements have been made.
- **Mary Richmond, 2420 Ditton Drive, Billings, MT**, stated that she had heard that some of the larger lots in the subdivision could be divided further and sold as smaller lots. Ms. Richmond stated that she was concerned with potential traffic issues. Ms. Richmond stated that the smaller lot owners could be paying a smaller portion of the SID assessments. Ms. Richmond stated that she was concerned with the assessment amounts. Councilmember Yakawich asked how much Ms. Richmond would be paying in assessments. Ms. Richmond stated that she and her husband own two lots, but only one of the lots is included in the SID. The assessment amount is \$39,000 per lot.

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

Councilmember Pitman moved for approval of Item 4A, seconded by Councilmember Cromley. Councilmember Yakawich asked if residents are able to

examine and make suggestions for changes on proposed SID plans. Mr. Mumford stated that this SID has not moved into the design phase since it had not yet been approved. Mr. Mumford also noted that there are certain City standards for improvements. Councilmember Cromley asked how many of the lots currently have structures. Mr. Mumford stated that none of the lots have any structures or developments, and that they are all landlocked. Councilmember Bird stated that the assessments "are a bit hefty." Mr. Mumford stated that the City is taking raw land and developing it into a subdivision, and there are high costs associated with that type of project. Councilmember Bird asked whether anyone building in this subdivision would see the SID costs. Mr. Mumford stated that a property cannot be sold until the SID assessments are paid on the property. Mayor Hanel stated that the fee is high, but that there will be a considerable difference in property values after the improvements are complete. Mr. Mumford stated that the improvements will greatly increase the property values, especially since the lots are currently inaccessible. Councilmember McFadden asked if the improvements will include sewer, road, sidewalk, and water. Mr. Mumford replied that all of those improvements will be included, along with storm drains. Councilmember Cimmino stated that the \$39,000 assessment is an estimate at this point, and noted that one particular landowner will be contributing over \$600,000 to the improvements. The improvements will greatly increase the values of the lots. Councilmember Pitman asked whether the assessments are paid over 15 or 20 years. Mr. Mumford corrected his earlier statement and noted that this SID is to be paid over 15 years. Councilmember Pitman asked if there was any way for a property owner like Mr. Richmond to mitigate the assessments. Mr. Mumford stated that services and improvements will still be made to that lot. There is not a way to avoid installing services or improvements only on certain lots. Councilmember Brown asked if Mr. Richmond's situation was the only one where two adjacent lots were owned with one being inside the SID and one being outside the SID. Mr. Mumford replied that Mr. Richmond's situation is the only one he is aware of. Mr. Mumford stated that there is not a way for the services to bypass Mr. Richmond's vacant lot. Councilmember Crouch asked how the repayment period is determined. Mr. Mumford stated that the repayment period is set by the Finance Department, and SID repayment periods are usually 15 years. Mr. Mumford noted that the property owners also have the option of paying the assessments in cash rather than over a 15 year period. On a voice vote, the motion was approved 10-1, with Councilmember Brown voting in opposition.

B. PROFESSIONAL SERVICES CONTRACT for SID 1399, Lake Hills Subdivision; Kadrmas, Lee and Jackson; \$185,000. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Mr. McCandless stated that staff did not have any additional presentations or information for this topic. Councilmember Cromley moved for approval of Item 4B, seconded by Councilmember McCall. On a voice vote, the motion was unanimously approved.

5. **PUBLIC HEARING AND RESOLUTION authorizing the sale of City-owned property described as Lots 1-8, Block 226, Original Town of Billings, generally located at 716-724 S. 27th Street; A.L. Koelzer, \$196,500. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

Mr. McCandless began a PowerPoint presentation on the property and the two offers that were received. Mr. McCandless stated that a bid was received for \$196,500 (A.L Koelzer) and another bid was received for \$112,000 (G&L Properties/ SNG Inc.). Mr. McCandless stated that City-owned properties in this area typically sell for \$5-5.25 per square foot. The offer of \$112,000 is equal to \$4 per square foot, and the offer of \$196,500 is equal to approximately \$7 per square foot. Mr. McCandless stated that the plans for the land would not affect staff's recommendation to Council for the sale. G&L Properties planned to develop a new 3Gs store on this land. A.L. Koelzer did not have plans for the property. Mr. McCandless stated that staff is recommending sale of the property to A.L. Koelzer, and depositing the funds into the Home Reinvestment Revolving Loan Fund previously created by Council.

Councilmember Yakawich asked Mr. McCandless how much the City would receive each year with a development such as the 3Gs. Mr. McCandless stated that he did not have the figure, but could do some calculations.

Councilmember Cimmino stated that the property owner of 3Gs has invested 18 years into the existing business and submitted a fairly detailed site plan. Councilmember Cimmino asked whether staff took that into consideration when making the recommendation to Council. Mr. McCandless stated that staff did not take those details into consideration. Mr. McCandless stated that he was not aware of any situation where the proposed development of a property has been a factor when the City decides to whom to sell property. Mr. McCandless stated that properties have always been sold to the highest bidder.

Councilmember McFadden stated that he did not think Council has a legal right to question the motives of purchasers and consider potential property taxes when bids are submitted. Councilmember McFadden stated that to do so would be outside of the realm of government. Mr. McCandless stated that he could not answer to that statement directly, but stated that regardless of who develops the property, the City will receive property taxes once the property is developed. Councilmember McFadden stated that he felt it would be illegal to reject or accept someone's bid based on potential future property taxes. Mr. McCandless stated that that would be a policy decision left to Council.

Councilmember Bird asked whether Council has the ability to make a counterbid to the lower bidder. Mr. McCandless stated that City Code allows for bids to be requested, but that there is not a provision for negotiating after bids are received. Mr. McCandless stated that to make a counterbid offer after all bid prices have been revealed would be considered unethical. Mr. McCandless stated that he would discourage making counterbid offers.

Councilmember Swanson asked whether Mr. McCandless had any examples of comparable property sale amounts. Mr. McCandless stated that City-owned property in this area typically sells for \$5-5.25 per square foot. Mr. McCandless stated that he did not have any examples of similar privately-owned properties. Mr. McCandless stated that the only other example would be the Department of Revenue's appraisal value of this property, which is \$213,000.

The public hearing was opened.

- **Dennis Ulvestad, 3040 Central Avenue, Billings, MT**, stated that he often passes this property, and that he agrees with Councilmember Cimmino. Mr. Ulvestad stated that developing a new 3Gs store is what is needed. Mr. Ulvestad stated that it is not acceptable to award the sale to the higher bidder because there is no site plan. Mr. Ulvestad stated that a new 3Gs would be good for the neighborhood. Councilmember McFadden asked Mr. Ulvestad what right the government has to micromanage the property of a private owner, and how Council could justify not awarding the bid to the highest bidder. Mr. Ulvestad stated that he would leave that decision up to the people who submitted the bids.
- **Larry Grosulak, Owner of SNG/G&L Properties**, stated that he attempted to purchase the property about four years ago, but was told by the City that a developmental plan and financing must already be in place before a purchase. Mr. Grosulak stated that he priced his bid based on the changes he will make to the property. Mr. Grosulak stated that he planned to build a 7,000 foot grocery store that is needed by the surrounding residents. Mr. Grosulak mentioned the improvements being conducted at several other properties he owns. Mr. Grosulak stated that he would like to break ground in 2016 if he is awarded the sale. Mr. Grosulak stated that he has had interest in the property for years. Councilmember Yakawich noted that there is a lack of grocery stores within walking distance of this area. Councilmember Yakawich asked whether this proposed development would be similar to the 3Gs on State. Mr. Grosulak stated that the proposed development would be larger than the store on State. Councilmember Yakawich stated that there are many other lots available on South 27th. Councilmember Yakawich stated that he likes that Mr. Grosulak would start development relatively soon. Mr. Grosulak stated that the planning and development stages typically take around a year. Mr. Grosulak stated that he would likely be able to break ground in 2017 if the sale is awarded to him.

Councilmember Cromley moved for approval of Item 5 with the recommendations set forth, seconded by Councilmember Swanson. Mayor Hanel agreed that 3Gs has been a great business within the City of Billings, but that he has a difficult time basing the decision on potential future development. Mayor Hanel stated that Council is to be doing what is in the best interest of the citizens of Billings, and that it would be difficult to explain and justify acceptance of a lower bid. Mayor Hanel stated that he supported Councilmember Cromley's motion. Councilmember Yakawich stated that the people of the Southside would benefit greatly from the proposed 3Gs. Councilmember Bird stated that she did not believe the City would be taking a loss on property taxes, because the

property is not currently bringing any revenues. Councilmember Bird stated that she is in favor of the 3Gs development because of the needs of that area, including transportation challenges. Councilmember Bird stated that the development would also help improve the entry corridor into the City. Councilmember Brown stated that he supported accepting the lower bid, because there is a time when Council can support those who support the City. Councilmember Swanson asked whether Council has the legal right to accept the lower bid. Mr. Brooks stated that, under current Code 22-902, subsection 1, Council has the authority and discretion to accept the bid that is in the best interest of the City. Mr. Brooks stated that if Council is basing its decision on the prospect of future development, future sale, or similarly situated commercial properties, then Council may be setting a precedent by doing so. Councilmember McFadden stated that it would be a bad precedent to set to accept a lower bid because a bidder made a sales pitch. Councilmember McFadden stated that Council cannot know if the City may be getting an even better development from the higher bidder. Councilmember McFadden stated that he supported Councilmember Cromley's motion. Councilmember Cromley noted that there is no commitment from the lower bidder that the development will actually occur. Councilmember Cromley also noted that there is potential for someone to purchase the property from Mr. Koelzer. Councilmember Cromley stated that the bid process was conducted, and that he did not see how Council could justify costing the City over \$80,000 by taking the lower bid when the lower bid does not have a commitment to develop. Councilmember Cimmino stated that the City is taking a chance on development of the Alberta Bear expansion, when \$1 was paid for the theater. Councilmember Cimmino noted that Council has confidence in that developer. Councilmember Cimmino stated that she looks at the history of this particular bidder, and that they have submitted a solid site plan. On a roll call vote, the motion was approved 7-4, with Councilmembers Cromley, Pitman, McFadden, McCall, Swanson, Crouch, and Mayor Hanel voting in favor, and Councilmembers Yakawich, Cimmino, Bird, and Brown voting in opposition.

Mayor Hanel called for a recess at 9:05 pm.

Mayor Hanel called the meeting back to order at 9:24 pm.

6. PUBLIC HEARING AND RESOLUTION approving and adopting First Quarter Budget Amendments for Fiscal Year 2016. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Mr. McCandless stated that staff did not have a presentation, but was available for questions.

The public hearing was opened.

- **Kevin Nelson, 4235 Bruce Avenue, Billings, MT**, stated that he would like to know if the \$6,500 budget amendment for Calhoun Lane was going toward restriping the street and allowing residents to park in front of their homes. Mr. Nelson asked if there would be pedestrian lights installed into the roundabouts in

the City. Mayor Hanel stated that he had not heard of any plans to install pedestrian lights into roundabouts. Mr. Mumford stated that the budget amendment for Calhoun was to finish the project that was started in FY15. Mr. Mumford stated that the striping will remain as it is, due to safety and traffic regulations. Councilmember Yakawich asked Mr. Mumford for an explanation of the first quarter budget amendments. Mr. Mumford stated that he could only speak for Public Works, but some projects were started in FY15 and were not completed, so they were continued into FY16. The funds from FY15 are rolled into the first quarter of FY16. Mr. Mumford stated that this practice is common with construction projects. Councilmember Cimmino asked whether the bike path on Calhoun is public right of way. Mr. Mumford stated that the right of way is public property; it does not belong to individual property owners. Mayor Hanel asked about Virginia Avenue, and whether any of the funding would be directed toward resurfacing. Mr. Mumford stated that the resurfacing would not take place this year; Public Works is concentrating on completing the intersection of Virginia Avenue and Poly.

Councilmember McCall moved for approval of Item 6, seconded by Councilmember Cimmino. On a voice vote, the motion was unanimously approved.

7. PUBLIC HEARING AND RESOLUTION to waive EBURD Demolition Disposal Fees. Staff recommends disapproval. (Action: approval or disapproval of staff recommendation.)

Mr. McCandless stated that staff did not have a presentation. Mr. McCandless stated that this item was brought forward in response to a request from Council. Included in the staff report for this item is a resolution for Council consideration. Mr. McCandless also noted that City Administrator Volek recommended disapproval of the resolution waiving demolition disposal fees.

Councilmember Bird asked for a reminder as to why Ms. Volek recommended disapproval of the resolution. Mr. McCandless stated that there were a number of reasons for the recommendation. The request for the waiver of fees included reimbursing the solid waste fund from the general fund. Mr. McCandless noted that there were some concerns that if this request was approved, then there may be additional fee waiver requests from the greater community. Mr. McCandless stated that there are other funds that are available, such as the tax increment fund, which can support demolition throughout the City.

Councilmember Yakawich asked whether funds from MDU could be used to support demolition. Mr. McCandless stated that the MDU funds were already committed to a project, but that he was unsure of the project and the duration. Mr. McCandless stated that the decision would be up to Council, and that staff will maintain its position that tax increment funds may be used for demolition and landfill costs. Tax increment

funds have previously been used for demolition, but the funds could only be used if demolition was taking place within a tax increment district. Tax increment funds could not be used for demolition taking place city-wide outside of a tax increment district.

Councilmember McFadden asked for an explanation of why money would need to come out of the General Fund for the demolition fees. Mr. McCandless noted that if the money did not come from the General Fund, then the Solid Waste fund would need to pay for the demolition disposal; if revenue is not collected at the landfill, then Solid Waste would need to pay for the fees. If the fees are not coming out of the Solid Waste fund, then there would need to be another source for funding.

Councilmember Brown asked for the direct costs of waiving the demolition fees. Mr. Mumford stated that the biggest concern is filling up the cells where demolition debris is deposited. If the cells are filled up more quickly than usual, and without collecting fees, constructing additional cells will need to occur more rapidly. Without collecting revenue for the demolition debris, construction of new cells would become more difficult. Wages and operating costs also need to be covered. If revenue is not being received, reserves would need to be accessed. Mr. Mumford stated that there is no way of knowing just how much demolition debris would come in, and how much revenue would be lost. Councilmember Brown clarified that the resolution before Council could be considered a temporary trial-type period that allows the City to test out waiving demolition fees in the designated area of the EBURD. Councilmember Brown asked whether there was any idea of how much debris may be collected. Mr. Mumford stated that he was unsure of which structures could be considered blighted. Mr. Mumford also stated that he was unsure of how many people may actually demolish buildings to take advantage of the fee waiver, so it was therefore difficult to make a cost estimate.

Councilmember Swanson asked whether tax increment funds were available to subsidize the Solid Waste fund. Mr. Mumford stated that there are tax increment funds available. Mr. Mumford stated that there is a discrepancy among citizens from the EBURD who believed that tax increment funds were not available for demolition fees, but that Finance Director Pat Weber stated that the funds were available and have been used for demolition fees in the past. Mr. McCandless stated that demolition is an eligible expense under the tax increment district statutes. All three of the tax increment districts have an application process where private property owners may apply for assistance for eligible expenses.

Councilmember Cromley clarified that the fee waiver would apply to blighted areas, and stated that the Planning Department should provide guidance on the definition of "blight." Councilmember Cromley asked Mr. Mumford whether there has been a determination of what exactly would constitute a blighted structure. Mr. Mumford stated that there is not a consensus of what would be considered a blighted structure, but there have been conversations of who should be responsible for determining blighted status. Councilmember Cromley asked what types of materials would be deposited into the landfill from building demolitions. Mr. Mumford stated that all types of

materials other than hazardous materials such as asbestos would be deposited. Materials deposited would likely include wood, concrete, metal, glass, and other items related to demolishing a building.

Councilmember Pitman asked whether all of the deposited materials would be weighed and tracked as they enter the landfill. Mr. Mumford stated that State and Federal laws require tracking of all items entering the landfill. Councilmember Pitman asked whether some type of trigger point could be included in the waiver, which would then prompt Solid Waste to report back to Council with the associated costs. Mr. Mumford stated that some type of arrangement could be made with the EBURD disposal drop offs, and a report could be made back to Council. Councilmember Pitman stated that some sort of limit could be put into place to help ensure that the costs for Solid Waste do not escalate drastically.

Councilmember Yakawich stated that the proposed resolution seemed to start the process, and would provide for a cost-benefit analysis report back to Council at a later date once the impact can be determined. Mr. McCandless stated that interpretation was correct. Mr. McCandless also stated that Council could put a limit on the dollar amount of total fees to be waived. Mr. Mumford stated that the City will not know the amount of waste that will be deposited under this program until the fees are actually waived.

Councilmember Brown asked for clarification on the amount of personnel or time that is associated with the fee waiver. Mr. McCandless stated that the proposed resolution does not speak to staff or time to devote to the fee waiver. Mr. McCandless stated that the idea behind having the Planning Department determine blighted status came from the desire to have an independent review of properties from a third party outside of the EBURD.

Councilmember Cimmino asked why the Planning Department would make the blight determination on EBURD buildings. Councilmember Cimmino stated that she did not feel that the Planning Department has the expertise to determine which structures are blighted.

The public hearing was opened.

- **Marty Connell, 2903 Radcliffe Drive, Billings, MT**, stated that "this is an example of how the bureaucracy kills a great idea." Mr. Connell stated that the process of waiving demolition fees has been ongoing for four months, and the process has been made complicated. Mr. Connell stated that this idea is about eliminating blighted buildings from the EBURD, and that the BIRD could police the process. Mr. Connell stated that tipping fees are only 15-25% of total demolition costs. Mr. Connell stated that he cannot use tax increment district funds for demolition. Mr. Connell stated that this could be a two year trial period, and that Mr. Mumford could report back to Council if the costs escalate too greatly. Councilmember Bird asked whether there were reasons that some

properties are demolished and redeveloped more quickly than others. Mr. Connell stated that he was told that property owners wait until the last minute to demolish buildings, which can often delay construction. Properties with blighted buildings also do not sell as quickly as properties that already have removed blighted buildings. Councilmember McCall asked Mr. Connell for his opinion on putting a cap on the amount of fees that can be waived. Mr. Connell stated that it did not make a difference to him; the waiver would either work or not work. Mr. Connell stated that he is worried about finding participants rather than having too many participants. Councilmember Pitman stated that property owners could fill out applications to demolish their blighted properties and to take advantage of the landfill demolition fee waiver. Councilmember Yakawich asked Mr. Connell what he would add to the resolution if he had been included in the drafting process discussion. Mr. Connell stated that he would not have included the Planning Department in the blight determination process, due to lack of staff and time. Mr. Connell stated that he does not believe a cap on fee waivers will make a difference. Mr. Connell stated that the program needs to be put into place to see if it is going to work. Councilmember Swanson asked Mr. Connell why the EBURD has not been using tax increment funds for demolition. Mr. Connell stated that he was told by the Department of Revenue that he could not use tax increment funds for demolition. Councilmember Crouch asked Mr. Connell if he had an idea of the number of blighted properties in the City. Mr. Connell stated that he did not have an idea of the number. Mr. Connell stated that he did not want to be at odds with City Administration. Councilmember Cromley asked Mr. Connell for his opinion on a reduced fee rather than a waived fee. Mr. Connell stated that he believed that a reduced fee would add more bookkeeping work for the City.

- **Scott Josari, PO Box 31888, Billings, MT**, stated that "we have made this process way more complicated than it should be." Mr. Josari stated that the tax increment districts have been successful. Mr. Josari stated that there were probably only a couple of people who had projects in mind and would take advantage of the fee waiver. Mr. Josari stated that waiving demolition fees would really benefit the downtown Billings area. Mr. Josari stated that this process needs to continue moving forward.
- **Kevin Nelson, 4235 Bruce Avenue, Billings, MT**, stated that Council is discriminating against him by only offering demolition fee waivers to the EBURD. Mr. Nelson stated that the waiver program could be beneficial, and that it should be extended throughout the entire City. Mr. Nelson stated that the waiver benefits should not be limited to a small group of taxpayers. Mr. Nelson stated that a cap could be put into place, but that the program could be utilized throughout the City. Mayor Hanel asked Mr. Nelson if he thought the program was a good idea. Mr. Nelson stated that the program would be a good idea if it was offered to the whole City. Councilmember McFadden asked Mr. Nelson if he would have any problems with eventually offering the incentive to everyone, but testing it within the EBURD first. Mr. Nelson stated that the program should be tested throughout the City, and whoever was able to act and take advantage of the fee waiver before the cap was reached would benefit. Councilmember Brown asked Mr.

Nelson for his opinion on the possibility of too many people taking advantage of the fee waiver. Mr. Nelson stated that there is a possibility that the EBURD could use all of the fee waivers, but that opening the program to the whole City would avoid discrimination. Councilmember Brown asked Mr. Nelson if \$100,000 seemed like a reasonable starting point for the cap. Mr. Nelson stated that \$100,000 out of the MDU gas fund would be reasonable. Councilmember Cimmino stated that Council would not be discriminating against anyone if only the EBURD benefitted from the waiver, since EBURD came to the City to request the waiver. Mr. Nelson stated that Council can take General Fund dollars and administer the waiver program.

- **Sam Westerman, 2916 James Street, Billings, MT**, stated that he is a board member of the BIRD. Mr. Westerman stated that he supports testing this program, and that it is worth the effort.
- **Dennis Ulvestad, 3040 Central Avenue, Billings, MT**, asked whether tax increment funds could be used for demolition fees. Mayor Hanel stated that Council and staff would do more research on that topic. Mr. Ulvestad stated that he agreed with Mr. Nelson that a cap could be set.
- **Charlie Yegen, 211 N 30th Street, Billings, MT**, thanked and congratulated Council for its work on the EBURD. Mr. Yegen stated that the EBURD is at a tipping point, and that the area is a patchwork of City and County property. Mr. Yegen stated that EBURD developers need an incentive to complete work in the area, and that the EBURD fee waiver is a great test opportunity.

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

Councilmember Yakawich moved for approval of Item 7, seconded by Councilmember Pitman. Councilmember Bird stated that Council previously agreed to consider this a pilot project, and that she felt that would be an appropriate and prudent way to approach the issue. Councilmember Bird stated that if the program were opened to the entire City, there could be City staffing issues. Containing the pilot program within the EBURD would allow it to be more manageable. Councilmember Bird stated that development in the EBURD would benefit the City. Councilmember Swanson stated that Council needs to learn whether or not tax increment funds can be used for demolition. Councilmember Cimmino stated that she agreed with Councilmember Swanson, that she fully supported the EBURD, and that Council should support development in the EBURD. Councilmember Cimmino stated that she supported the program as a one year pilot program, but that funds should not be taken from the MDU gas fund. Councilmember McFadden stated that he generally agreed with Councilmember Cimmino, but that when lead time for financing and developing is considered, two years would be a more reasonable time period for the pilot program. Councilmember Brown stated that he supported the program, but that he did not support the motion on the table that did not include a cap or guidelines for policing the program. Councilmember Pitman moved to amend Councilmember Yakawich's motion by including a two year time limit, a \$100,000 spending cap, and a provision that the program be managed by the EBURD, seconded by Councilmember Cimmino. Councilmember Cromley asked Councilmember Pitman if he would be willing to remove the third "whereas" paragraph

in the proposed resolution. Mr. Brooks stated that the proposed resolution would need to be updated to reflect Council's motion. Mr. Brooks also noted that the definition of "blighted" is found in Code Section 7-15-4206. Mayor Hanel asked Councilmember Pitman if he would like to withdraw his amended motion. Councilmember Pitman withdrew his amended motion, and Councilmember Cimmino withdrew her second to the amended motion. Mr. Brooks stated that several of the "whereas" sections in the proposed resolution would need to be amended. Councilmember McCall stated that she supported examining the resolution, but that it would need to be examined very carefully. Councilmember McCall stated that Council could work with staff to make changes to the resolution, and learn additional information about the tax increment fund issue. Councilmember McCall stated that she would support tabling the decision until staff and Council revised the resolution. Councilmember Pitman moved to table the decision on Item 7 until the November 9, 2015 City Council Meeting, allowing for the resolution to be amended, seconded by Councilmember McCall. Mayor Hanel stated that he believed tabling the decision was a good idea. Mayor Hanel stated, as a word of caution, that Council was treading on very thin ice and that it should be awfully cautious before taking action; tabling the decision would be smart. On a voice vote, Councilmember Pitman's motion to table 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

Councilmember McCall stated that her first initiative of the evening dealt with the BillingsWorks Work Force Council. The Work Force Council was developed by Big Sky Economic, and it is about education, training, recruiting, and retaining a quality work force in Billings. Several groups have offered funding to the Work Force Council. Councilmember McCall stated that it would be helpful to have a member of the Work Force Council present at a future work session so that the Council could learn more information. Councilmember McCall moved to place on the December 7, 2015 agenda to authorize and direct City Administrator Volek to prepare documents to take \$2,500 from the Council Contingency fund to be given to the BillingsWorks Work Force Council seconded by Councilmember Bird. Councilmember Pitman asked what the \$2,500 would be directed toward. Councilmember McCall stated that the money would go toward furthering the strategic plan of the Work Force Council, and that a strategic coordinator for the program had just been hired through a grant. Councilmember Cimmino asked whether the \$2,500 was a match of donations from other groups. Councilmember McCall stated that donation amounts vary from group to group, depending on the organization, but that the request that came to Council was for \$2,500. Councilmember Bird stated that she seconded the motion based on Big Sky

Economic Development's accomplishments and the strategic plan of the Work Force Council. Councilmember McCall stated that she wanted the Work Force Council to attend a work session so that Council could learn more about its mission and strategic plan. Councilmember McCall also noted that Yellowstone County currently has an unemployment rate of 2.8%, and that it is in desperate need of a quality work force. Councilmember Brown asked whether the Work Force Council was a nonprofit organization. Councilmember McCall stated that the Work Force Council was developed by Big Sky Economic, and a collaborative effort came together between MSUB, Rocky Mountain College, School District 2, Riverstone Health, the hospitals, and others. Mr. McCandless noted that December 7 is a Work Session, and December 14 and December 21 are Regular Meetings, as decided by Council at an earlier meeting. Councilmember McCall corrected her motion to include this topic on the December 14, 2015 Regular Meeting, seconded by Councilmember Bird. Mr. McCandless asked Councilmember McCall whether she would like a Work Session presentation to Council prior to the December 14 meeting. Mr. McCandless stated that the available Work Session dates are November 16 and December 7. Councilmember McCall stated that December 7 would be preferred for the Work Session presentation. On a voice vote, the motion was approved 10-1, with Councilmember Cromley voting in opposition.

Councilmember Crouch moved to place on the November 23 City Council agenda to authorize and direct City Administration to hire four police officers, one firefighter, one fire EMS training officer, and two dispatchers as soon as feasible, but no later than June 30, 2016, and to direct the City Administrator to prepare and submit to Council a proposed budget amendment to pay the personnel, equipment, operations, and maintenance expenses by increasing the General Fund payment to the Public Safety Fund using a portion of the unrestricted General Fund reserves, seconded by Councilmember McCall. Councilmember Pitman moved to amend the motion to hire six police officers, one fire EMS training officer, and two dispatchers, seconded by Councilmember Brown. Councilmember Pitman stated that he made the amendment based on what seemed most feasible, and what seemed most effective. Councilmember Bird asked Mr. Brooks for the process of amending the amended motion. Mr. Brooks stated that Robert's Rules of Order allows for two amendments to a motion, and then Council would work its way back through the amendments and original motion. Councilmember Bird moved to amend the amended motion by hiring six police officers, six firefighters, and four dispatchers, seconded by Councilmember McCall. Councilmember Bird stated that she made the motion based on the passionate presentations made by staff, and because public safety is the number one topic that is heard about in the City. Councilmember Cimmino stated that Councilmember Bird's amended motion did not address the need for a fire EMS training officer. Councilmember Bird stated that the omission was an oversight, and that her agenda was to give Emergency Management and Law Enforcement the personnel they requested. Councilmember Bird requested for Fire Chief Paul Dextrus to come forward for questions. Councilmember Bird asked Chief Dextrus to clarify his personnel request. Chief Dextrus stated that the Fire Department is requesting five firefighters and one fire EMS training officer, for a total of six employees. Chief Dextrus noted that the fire EMS training officer is essential to the Fire Department. Mayor Hanel asked Chief Dextrus

whether he would be able to hire six firefighters, and make the decision to have one of the firefighters become the fire EMS training officer. Chief Dextras stated that there are funding issues associated with the fire EMS training officer position, and the costs would be different than a firefighter, and therefore the fire EMS training officer would need to be named separately from the firefighter positions. Councilmember Pitman asked if the firefighter lawsuit would be completed in 2016. Chief Dextras stated that he believed the payment would be complete in 2017. Councilmember Bird requested to correct her amended motion providing for hiring six police officers, five firefighters, one fire EMS training officer, and four dispatchers. Mayor Hanel noted that Councilmember Bird had again amended her motion, and requested that she withdraw her second amendment to the motion. Councilmember Bird withdrew her amendment, and Councilmember McCall withdrew her second. Councilmember Bird moved to amend Councilmember Pitman's amended motion, by providing for hiring six police officers, five firefighters, one fire EMS training officer, and four dispatchers, seconded by Councilmember McCall.

Councilmember Cromley asked whether there was a specific date for hiring the officers. Councilmember Bird stated that the hiring would take place during this fiscal year. Councilmember Cimmino asked whether Council would then need to amend the FY16 budget to provide for hiring these positions. Mr. McCandless stated that staff will convene with the Police and Fire Chiefs to determine schedules for hiring and training, and will then draft a proposed budget amendment. On a voice vote, Councilmember Bird's amended motion was approved 6-5, with Councilmembers McFadden, Bird, McCall, Swanson, Crouch, and Mayor Hanel voting in favor, and Councilmembers Cromley, Yakawich, Pitman, Cimmino, and Brown voting in opposition. On a voice vote, Councilmember Crouch's original motion as amended was approved 8-3, with Councilmembers Brown, Cromley, and Yakawich voting in opposition.

Councilmember McCall reminded Council that representatives from Riverstone Health attended the previous work session and requested that Council consider making a monetary gift to go toward building a new Community Health Clinic. Councilmember McCall stated that several community groups have also provided a monetary gift. Councilmember McCall moved to place on the December 14, 2015 Council Agenda the following: authorize and direct the City Administrator to prepare and submit a proposed budget amendment to include \$50,000 from unrestricted reserves to be used as a gift to the Riverstone Community Health Clinic in Billings, seconded by Councilmember Swanson. Councilmember Cimmino stated that she spoke to a representative from Riverstone Health who stated that the Clinic preferred to receive \$25,000 in each of the next two fiscal years. Councilmember Cimmino asked Councilmember McCall whether the \$50,000 would be paid in one sum, or divided into two payments. Councilmember McCall stated that either method would be satisfactory, and Council could make the determination at the December 14 meeting. Councilmember McFadden stated that he believed this was a good investment in the community, and that he supported the motion. Councilmember Cromley stated that he supported the motion, but that he would be voting in opposition as a result of not receiving advance notice of the initiative. Councilmember Yakawich stated that Riverstone Health is an important asset to the community, and that he supported the motion. On a voice vote, the motion was approved 10-1, with Councilmember Cromley voting in opposition.

Councilmember Crouch stated that part of his initiative was to discuss public safety hiring at the November 23 meeting, and that the City Administrator would prepare a budget amendment to be discussed at that meeting. Mayor Hanel stated that the motion was voted on and passed. Mr. McCandless stated that the portion of the motion that Councilmember Crouch was referring to remained unchanged and was passed as moved. Mayor Hanel stated that any changes would need to occur via a motion to reconsider. Mr. McCandless stated that Councilmember Crouch's original motion was to hire a certain number of public safety personnel and to direct the City Administrator to prepare a budget amendment to reflect the hiring. When the motion was amended, only the number of public safety personnel was changed; the remaining portion of the motion remained unchanged. The budget amendment will still be presented at the November 23 meeting, and the hiring will still take place on or before June 30, 2016.

Councilmember Pitman moved to discuss at a future work session City water bills and how City departments appropriate funds for utilities, seconded by Councilmember Yakawich. Mayor Hanel stated that he would not vote in favor of the motion since the changes could be significant and new Councilmembers will be elected soon. Mayor Hanel stated that the issue is very involved and it would be better to discuss after the new Council has taken office. Councilmember Cimmino stated that she has been on Council for six years, and that she remembers Councilmember Pitman requesting to discuss this topic several times. Councilmember Pitman stated that Council just voted to spend a large amount of money, and that decision will affect future Councilmembers. Councilmember Brown stated that this topic will continue to arise, and that City departments will need to budget for utility bills. On a roll call vote, the motion failed 5-6, with Councilmembers Yakawich, Pitman, Cimmino, Swanson, and Brown voting in favor, and Councilmembers Cromley, McFadden, Bird, McCall, Crouch, and Mayor Hanel voting in opposition.

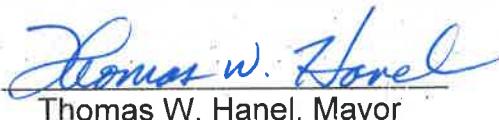
Councilmember Cimmino asked whether Council has a policy on how Council contingency funds are allocated and distributed. Mr. McCandless asked for clarification on the question. Councilmember Cimmino stated that she was concerned with fairness and ensuring that all potential fund recipients had an opportunity to have their requests heard and granted by Council. Mr. McCandless stated that there is not a policy on how Council contingency funds may be distributed.

There was no further business, and the meeting adjourned at 11:07 pm.



CITY OF BILLINGS

BY:


Thomas W. Hanel, Mayor

ATTEST:

BY: 
Billie Guenther, City Clerk