

## REGULAR MEETING OF THE BILLINGS CITY COUNCIL

November 27, 2017

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 Hanel called the meeting to order at 6:30 p.m. and served as the meeting's presiding officer. Councilmember Cimmino gave the invocation.

**ROLL CALL:** Councilmembers present on roll call were: Cromley, Yakawich, Brewster, Cimmino, McFadden, Friedel, Sullivan, Swanson, Clark and Brown.

**MINUTES:** November 13, 2017 - Councilmember Sullivan moved for approval, seconded by Councilmember Friedel. On a voice vote, the motion was unanimously approved.

### **COURTESIES:**

- Mayor Hanel recognized radio personalities, Paul Mushaben and Mark Wilson of the Breakfast Flakes for the success of this year's Flakesgiving, sponsored by KCTR, which provided 1,500 Thanksgiving meals to those in need in the community.

### **PROCLAMATIONS: NONE**

### **ADMINISTRATOR REPORTS - BRUCE MCCANDLESS**

- Mr. McCandless stated that in reference to Regular Agenda Item 2, Special Review 958, over 117 emails were received in opposition to the special review and 0 responses in support. A copy of the emails were placed in the ex parte notebook.
- Mr. McCandless reminded Council of the City Administrator Interviews on November 30<sup>th</sup>.
- Mr. McCandless reminded Council that deliberations and selection of a City Administrator was on December 1<sup>st</sup>.

**PUBLIC COMMENT on "NON-PUBLIC HEARING" Agenda Items: 1 ONLY. Speaker sign-in required.** (Comments offered here are limited to one (1) minute for one item, or three (3) minutes for multiple items. 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 meeting.)

The public comment period was opened.

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

1. **CONSENT AGENDA**

- A. **Professional Services Contract** for the design and construction administration of Schedule 1 of the 2018 Water Main Replacement Projects; DOWL; in the amount not to exceed \$676,070.
- B. **Professional Services Contract** for the design and construction administration of Schedule 2 of the 2018 Sanitary Sewer Rehabilitation Projects; Morrison-Maierle, Inc.; in an amount not to exceed \$653,074.
- C. **Approval** of lease renewal of the Non-Commercial Aviation Ground Lease with Larson Family Properties, LLC, for a ten-year term (12/01/2017-11/30/2027), revenue first year \$4,569.60, revenue subsequent years adjusted by CPI-U.
- D. **Approval** of Air Transportation Company Operating Permit with Swift Air, LLC.
- E. **Acceptance** of Right-of-Way Agreement and Warranty Deed for widening of Central Avenue from Homestead Capital, LLC.
- F. **Public Access Easement** from Canyon Creek Ditch Company for a pedestrian bridge over Hogan Slough.
- G. **Second/Final Reading Ordinance 17-5700 amending the boundaries of Ward II (De-Annexation 17-04)** for an approximate 49 acres of undeveloped land described as portions of Terrace Estate Subdivision, 3rd filing; James and Jo Ann Boyer, petitioners.
- H. **Bills and Payroll:**
  - 1. October 30, 2017
  - 2. November 6, 2017

Councilmember Brown separated Items 1B and 1H1 to abstain.

Councilmember Cromley separated Item 1H2 to abstain.

Councilmember Yakawich separated Item 1A for discussion.

Councilmember Cimmino separated Item 1H1 to abstain.

Councilmember Sullivan moved for approval of the Consent Agenda, with the exception of Items 1A, 1B, 1H1 and 1H2, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

Councilmember Cimmino moved for approval of Item 1H2, seconded by Councilmember Sullivan. On a voice vote, the motion was approved 10-0, Councilmember Cromley abstained.

Councilmember Clark moved for approval of Item 1H1, seconded by Councilmember Sullivan. On a voice vote, the motion was approved 9-0, Councilmembers Cimmino and Brown abstained.

Councilmember Sullivan moved for approval of Item B, seconded by Councilmember Clark. On a voice vote, the motion was approved 10-0, Councilmember Brown abstained.

Councilmember Yakawich asked David Mumford, Public Works Director, about the impact on residences and businesses along the water main replacement project on North 27<sup>th</sup> Street. Mr. Mumford stated accesses are made available for all businesses and residences. He stated that construction would begin in the summer of 2018. Councilmember Yakawich moved for approval of Item 1A, seconded by Councilmember Cimmino. On a voice vote, the motion was unanimously approved.

**REGULAR AGENDA:**

**2. PUBLIC HEARING AND SPECIAL REVIEW 958: a special review to locate an all-beverage liquor license in a proposed 5,000 square foot tenant space in a new multi-tenant building in a Community Commercial (CC) zone, west of the intersection of 54th Street West and Grand Avenue on Lot 2, Block 1 of MK Subdivision. Karls Property, LLC, owners. Roger Beeter, Richard Wrobel, Terra Pierce, agents. Zoning Commission recommends conditional approval and adoption of the findings of the 3 criteria. (Action: approval or disapproval of Zoning Commission recommendation.)**

Nicole Cromwell, Zoning Coordinator, gave a brief presentation and reminded Council that special reviews were not zone change requests and outlined the differences between the two. She stated the Zoning Commission found positive findings on the three criteria that were tied to specific uses. She explained the business was a long-standing Billings business that wished to move to a new location with its all-beverage liquor license. Ms. Cromwell explained that the distance from property line to property line with the Ben Steele Middle School were actually further distance from each other than the City's Code required, that being 600 feet. She confirmed that there were three accesses into the property, however none of the accesses would be on Grand Avenue. She stated that written notice of the special review had been sent to all 14 property owners that were within 300 feet of the application property; a legal ad was published in the Billings Gazette, twice, and the property was posted with an orange "special review" sign.

Council discussed whether the process for notifying the public could be improved. Council also discussed traffic numbers and studies conducted and the impact the proposed business may have on traffic.

The public hearing was opened.

The following individuals spoke in opposition of Special Review 958:

- **Denise Joy, 1600 Avenue E, #10, Billings, Montana**, stated a bar and casino near a middle school was not appropriate.
- **Karen Kosiarek, P.O. Box 911, Billings, Montana**, stated she lived very close to the property, but had not received a written notice. She said the 300 foot requirement for sending written notice should be expanded. She stated she learned about the special review by reading an article, not a legal notice, in the Billings Gazette. She voiced her disagreement that a bar and casino were “necessary services”.
- **Larry Arpin, 5240 Vintage Lane, Billings, Montana**, stated he lived nearby and he had not received a written notice, but learned about the special review via an article in the Billings Gazette. He continued that there were too many bars and casinos in Yellowstone County.
- **Ron Spence, 5420 Corner Stone Avenue, Billings, Montana**, stated the proposed location for a bar and casino was located too closely to family-oriented neighborhoods and schools.

The following individuals spoke in support of Special Review 958:

- **Dennis Ulvestad, 3040 Central Avenue, Billings, Montana**, stated he wanted to recognize the Road Dogs organization for their support of the community during the holiday parade. He stated the area needed services of all kinds and the construction of this project would offer space for more services. Councilmember Sullivan asked whether the Zoning Commission had considered safe routes for schools and increased crime to the area should the special review be approved. Mr. Ulvestad responded affirmatively.
- **Pam Purinton, 3606 Quimet Circle, Billings, Montana**, stated she had known the owners of The Den for many years and supported their business venture. She stated amenities in the area were needed.
- **Larry Karls, 2980 Providence Place, Billings, Montana**, stated he was the current owner of the land and had changed the zoning to commercial as he had envisioned a restaurant, bar and other amenities and services to be located on the property. He continued that the bar would not be visible from the school.
- **Terra Pierce, 3623 Quimet Circle, Billings, Montana**, stated she and her husband were the owners of The Stadium Club, in the heights, and The Den and were the applicants of the special review. She continued that the location of the bar and casino were nearly twice the distance required by law from the middle school. She stated that she and her husband were relocating an existing liquor license and they would control what other businesses located into the building.

She assured Council that it would not be in her best interests to have a competing liquor business in the same building, so residents would not have to worry about additional bars and casinos in the building. She stated she and her husband had lived in the neighborhood for more than 20 years and had looked forward to amenities and services extending to that area of town. She stated the article in the Billings Gazette had been inappropriate. She stated that if the special review was denied, the building would not be built and she and her husband would not purchase the property. She continued that the bar and casino would take approximately 5,000 square feet of the building and anticipated a coffee shop, nail/hair salon, dental office, etc. to occupy the rest of the building.

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

Councilmember Cromley moved for approval, seconded by Councilmember Yakawich. Councilmember Sullivan made a substitute motion to deny the approval of the special review based on it not meeting all criteria, i.e., it was not consistent with the growth policy and was incompatible with surrounding land use. He stated the Zoning Commission had failed to consider the growth policy's safety, crime and property values statements. Councilmember Brown seconded the substitute motion. Councilmember McFadden voiced his support of the substitute motion. Councilmember Sullivan voiced his support of the substitute motion and added there were churches and schools in near proximity to the proposed bar and casino and the residential neighborhoods would not benefit from that kind of business. He continued that the Zoning Commission had not considered safe routes to schools or crime for the area and that property values would be raised by placing any building on the property, but this kind of development could drive away potential homeowners. Council held discussions with City Attorney Brent Brooks about possible delay of action, special review specific criteria, allowable land uses and conditions.

Councilmember Clark asked Nicole Cromwell when the zoning was changed to Community Commercial on the property. Ms. Cromwell responded in 2014 from Neighborhood Commercial and explained the differences between the two zones.

Councilmember Cimmino asked Ms. Cromwell if the special review was consistent with the growth policy. Ms. Cromwell responded affirmatively and that the growth policy did not specifically address crime, but safe, strong neighborhoods and essential services. Councilmember Cimmino asked whether the land use was compatible. Ms. Cromwell stated it was based on the proposed use. Councilmember Cimmino asked whether the Zoning Commission determined property values. Ms. Cromwell stated the Commission does not and that was a very specialized area. Councilmember Sullivan followed by asking Ms. Cromwell whether parking a garbage dump truck near her property would affect her property values. Ms. Cromwell stated it would cause the marketability of her property to decrease. Councilmember Brewster stated he supported the opposition the neighbors expressed, but reminded Council that a special review could not be denied due to someone not wanting a certain type of

business near them. He stated the denial had to be based on specific criteria not being met.

On a roll call vote, the substitute motion failed 7-3, Councilmembers Cromley, Yakawich, Brewster, Cimmino, Friedel, Swanson, and Clark voting in opposition.

Council held discussions about possible additions or deletions of conditions specific to land uses. Council also discussed possible transfers of the liquor license and business to new owners and whether a special review would be necessary at that time.

Councilmember Friedel made a substitute motion to delay action until December 11<sup>th</sup> and directed legal staff to review whether certain conditions that run with the land could be removed should a business be sold or moved, seconded by Councilmember Sullivan. Councilmember Cromley asked Ms. Cromwell if another liquor license transferred to the property, would an additional, separate special review be required. Ms. Cromwell responded affirmatively. Councilmember Cromley state he would vote in opposition to the substitute motion because the owners of the liquor license should be able to transfer the license without conditions or restrictions. On a voice vote, the substitute motion failed 10-1, only Councilmember Friedel voting in favor.

On a roll call vote, the motion was approved 7-4, Councilmembers McFadden, Friedel, Sullivan and Brown voting in opposition.

**3. PUBLIC HEARING AND SPECIAL REVIEW 959: a special review to allow the location of two drive-through services in a Community Commercial (CC) zone across an alley from a Residential 7,000 (R-70) zone and to allow the location of a new public parking lot. Hillcrest, Inc., owner. Dennis Randall, Sanderson Stewart, agent. Zoning Commission recommends conditional approval and adoption of the findings of the 3 criteria. (Action: approval or disapproval of Zoning Commission recommendation.)**

Karen Husman, Planner, gave a brief presentation and explained the proposed development of the lot would remove the structures on the lot presently and a small bank building with a parking lot would be built in their place. Mayor Hanel asked if the applicant would consider allow patrons of Dehler Park to utilize the parking lot during evening and weekend events. Ms. Husman stated there were conversations about it, but she was unaware of the outcome.

The public hearing was opened.

- **Pete Johnson, President and CEO of Opportunity Bank, Clancy, Montana**, stated he provided the bank's history and stated this location would be the third location for the bank in Billings. He stated conversations with Dehler Park have occurred and they would continue to work toward a solution to utilize the parking lot. He stated he appreciated the Council's support.

- **Patrick Klugman, Big Sky Economic Development, 222 North 32<sup>nd</sup> Street, Suite 200, Billings, Montana**, spoke in favor of the approval of the special review and gave economic impacts the business would have for Billings and the neighborhood area.
- **Art Westwood, Owner of Rimview Inn, 2606 Whittier Place, Billings, Montana**, spoke in favor of approving the special review.

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

Councilmember Yakawich for approval of Item 3, seconded by Councilmember Cromley. 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:**

- Councilmember Sullivan directed staff to research developing an ordinance eliminating spas and massage parlors that contributed to human trafficking, seconded by Councilmember Yakawich. On a voice vote, the motion was unanimously approved.
- Councilmember Friedel directed staff to review the entire Special Review process and provide recommended improvements to the process at a future work session, seconded by Councilmember Sullivan. On a voice vote, the motion was unanimously approved.
- Councilmember Yakawich directed code enforcement staff to continue providing detailed quarterly reports, highlighting the top “dirty dozen” statistics, seconded by Councilmember Sullivan. On a voice vote, the motion was unanimously approved.

There was no further business, and the meeting adjourned at 9:30 pm.



CITY OF BILLINGS

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

ATTEST:

BY: Denise R. Bohlman  
Denise R. Bohlman, City Clerk