

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

November 10, 2014

The Billings City Council met in regular session in the Council Chambers located on the second floor of the Police Facility, 220 North 27th Street, Billings, Montana. Mayor Thomas W. Hanel called the meeting to order at 6:30 p.m. and served as the meeting's presiding officer. Councilmember Crouch asked for a moment of silence in honor of individuals who had served or were currently serving in the military. Councilmember Crouch gave the invocation.

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

MINUTES: October 27, 2014 - Councilmember Cimmino moved for approval, seconded by Councilmember Crouch. On a voice vote, the motion was unanimously approved.

COURTESIES: Police Chief St. John introduced Jim Gartner, Brett Kruger, Jeff Chartier, Earl Campbell, Jim Woog, Brian Krivitz, Blake Richardson, Keith Buxbaum, and Ernie Watters. He said through exceptional diligence and dedication to duty, the detectives were able to identify, isolate, and convict a serial predator who had terrorized the City the first part of 2013. The investigation started on May 27 when Detectives Paharik and Beckers were assigned as lead investigators and worked the case full time; while Detectives Gartner, Kruger, Chartier, and Krivitz provided support that included continual surveillance of the suspect for four weeks. Detectives Richardson, Buxbaum, and Watters coordinated crime scene investigations that uncovered crucial evidence leading to the identification of the suspect; and following a search warrant of the suspect's home, Detectives Campbell and Woog provided forensic examination of seized electronic equipment that uncovered additional crucial evidence. Detectives Beckers and Paharik coordinated with other agencies, including the Yellowstone County Attorney's Office and the FBI. Chief St. John advised as a result of the Detectives' efforts, Tobey Griego was charged with 40 felonies, convicted in July 2014, and sentenced to 22 consecutive life terms. Chief St. John also noted Detectives Gartner, Kruger, Chartier, Campbell, Woog, Krivitz, Richardson, Buxbaum, and Watters had been awarded the Meritorious Service Medal for exceptional job performance; and Detectives Beckers and Paharik had been awarded the Distinguished Service Medal for exceptional performance of duty in an area of great responsibility and of critical importance to law enforcement. The detectives received a standing ovation.

Chief St. John also noted law enforcement in Billings was working very hard to gain control of a drug problem that was seeing a resurgence of methamphetamine and related activities. He advised the Billings Police Department was a member of a task force called the Rocky Mountain High Intensity Drug Traffic Area (RMHIDTA), which included Montana, Wyoming, Colorado and Utah. He said for the second year in a row, the task force had been recognized as the Outstanding Task Force of 2014 for its work.

Billings Detective Jamie Schillinger had been recognized as the 2014 Outstanding Drug Enforcement Officer; however, he was not able to attend the meeting that evening.

PROCLAMATIONS:

- Veteran's Day, November 11, 2014
- Active Military Family Support Month - November 2014
- Benjamin C. Steele Day – November 10, 2014

ADMINISTRATOR REPORTS - TINA VOLEK

- Ms. Volek reminded Council that City Hall would be closed November 11 in recognition of Veterans Day.
- Ms. Volek reminded Council of a meeting scheduled for Wednesday, 1:30 to 3:30 p.m., in the Library Community Room to follow-up on the recent Community Innovations Summit; particularly the second day when the work groups talked about goals in the areas of enforcement, finance, and legislation. The Council and all members of the public were invited to attend.

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items 1 & 4 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. 2015 Tractor Truck for Street/Traffic Division.** (Opened 10/28/2014) Recommend Tri-State; \$102,267.
- 2. 2015 Loader for Street/Traffic Division.** (Opened 10/28/2014) Recommend Titan Machinery; \$131,080.
- 3. 2015 Aerial Truck for Street/Traffic Division.** (Opened 10/28/2014) Recommend I-State; \$156,531.
- 4. Landfill Compactor for Solid Waste Division.** (Opened 10/28/2014) Recommend rejection of all bids for the purchase of the new compactor and use of the funding to replace severely-damaged dozer.

B. Contract for Professional Services with Sanderson Stewart for design and construction administration of W.O. 15-08, Exposition Gateway Infrastructure Improvements - 3rd Avenue North between Exposition Drive and North 11th Street, 2nd Avenue North between North 9th Street and North 11th Street, North 9th Street between 1st Avenue North and 3rd Avenue North, and North 10th Street between 1st Avenue North and 4th Avenue North (water, sanitary sewer, storm drain and street improvements); \$297,178.

C. Acknowledge receipt of petition to vacate a portion of 7th Avenue South adjacent to Lots 9, 10, 11 and 12, Block 221, Second Addition, near the intersection of South 35th Street and 7th Avenue South; City of Billings, petitioner; and set a public hearing date for December 8, 2014.

D. Acceptance of Donation to Billings Fire Department for purchase of public education materials; Exxon Mobil Corporation; \$2,000.

E. Acceptance of Montana Board of Crime Control 2014 Domestic Violence Grant; \$13,077.

F. Second/Final Reading Ordinance #14-5632 for Zone Change 926: A zone change from Residential 9,600 to Residential 6,000 on property legally described as Lots 21-24, Block 12, College Subdivision, 3rd Filing, and addressed as 1247 Princeton Avenue; Vaughn and Marla Rohrdanz, owners. Approval of the zone change and adoption of the determinations of the 10 criteria.

G. Resolution of Intent #14-10406 to create SID 1397, paving of Treasure Drive from Donna Drive to the City High Ditch; and set a public hearing date for December 8, 2014.

H. Final Plat of Price Subdivision.

I. Bills and Payroll:

1. October 6, 2014
2. October 14, 2014

Councilmember Brown and Councilmember Cromley separated Consent Agenda Item I1 in order to abstain. Councilmember Cimmino separated Consent Agenda Items A4, B, and G. Councilmember Pitman moved for approval of the Consent Agenda with the exception of Items A4, B, G, and I1, seconded by Councilmember McCall. On a voice vote, the motion was unanimously approved.

Councilmember Pitman moved for approval of Item I1, seconded by Councilmember McCall. On a voice vote, the motion was approved 8 to 0.

Councilmember Cimmino referenced Item A4 and asked Public Works Director, David Mumford, if there was insurance coverage on the landfill dozer. Mr. Mumford advised since the City was self-insured, there was no insurance. He said he and staff

discussed a dozer and a compactor; and it was decided the dozer was currently more necessary than the compactor. Councilmember Cimmino moved to reject the bids as recommended, seconded by Councilmember McCall. On a voice vote, the motion was unanimously approved

Councilmember Cimmino referenced Item B and said the City had already earmarked \$2 million, and the County's Rural SID was \$250,000. She asked Mr. Mumford why the need for Water Funds and Gas Tax Funds since they already had East Billings TIF Funds available for the project. Mr. Mumford said there was not sufficient funding within the EBURD to pay for the whole project. The Water Funds would be used to replace the old county water system with a new system acceptable to the City of Billings. The Gas Tax Funding would be used to assist with storm drain needs in the area. Councilmember Cimmino asked Mr. Mumford when the City would receive the \$250,000 from the County. Mr. Mumford said the \$250,000 would be received sometime after the first of the year following the City's approval of the water system. Councilmember Cimmino moved for approval of Item B, seconded by Councilmember Pitman. On a voice vote, the motion was unanimously approved.

Councilmember Cimmino referenced Item G and asked Mr. Mumford what type of traffic control would be installed for \$5,000. Mr. Mumford advised the traffic control would be a flashing light. Councilmember Cimmino moved for approval of Item G, seconded by Councilmember Pitman. On a voice vote, the motion was unanimously approved.

REGULAR AGENDA:

2. PUBLIC HEARING AND RESOLUTION #14-10407 FOR ANNEXATION #14-05: Approximately 2.5 acres located at 659 Lincoln Lane in the Billings Heights; Lary and Judy Garrison, owners and petitioners. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) Planning Division Manager, Wyeth Friday, began his presentation showing the location of the subject property and surrounding properties on the Limits of Annexation Map; as well as photographs of the subject property and surrounding properties. He noted the property owners were requesting annexation in order to obtain city services; and they were in the process of selling the property. Mr. Friday advised the Annexation Committee reviewed the petition for annexation and determined the City could provide sewer service, and Billings Heights Water could provide water service to the property. Future improvements to the property would be required to meet City standards, the property owners would sign a waiver of right to protest the creation of any future special improvement districts, and any proposed uses would conform to the City of Billings and Yellowstone County Growth Policy. Mr. Friday noted the subject property currently had Residential Professional zoning along the frontage of Lincoln Lane and R6000 zoning along the back portion. He said staff was recommending the property be annexed into the City with one condition. The condition was that a Development Agreement be executed and recorded between the City and the owners directly after the City acted on the annexation to stipulate specific infrastructure improvements and right-of-way dedication for Lincoln Lane and to make sure any future improvements, if needed, were guaranteed.

Councilmember Yakawich asked if there was a projected date for work to begin on Lincoln Lane. Public Works Director, David Mumford, advised an SID would need to be created, and there were no plans at that time. Councilmember Yakawich asked if there were any plans to annex other properties in the area. Mr. Friday advised they were not aware of any other pending annexations near the subject property.

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

Councilmember Yakawich moved for approval of Item 2 subject to the noted condition, seconded by Councilmember Cimmino.

Councilmember Pitman commented it was a positive movement for the area. The biggest problem with Lincoln Lane was trying to fix it with the zigzag of City and County properties. There were severe issues with the quality of the road and storm drainage, and the more properties they could encourage to become part of the city, the easier it would be to make the improvements.

On a voice vote, the motion was unanimously approved.

3. PUBLIC HEARING AND RESOLUTION #14-10408 vacating a slope easement along Lot 21-A-2, Block 39, Lake Hills Subdivision, 12th Filing; Clint Kegal, owner and petitioner. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) City Administrator Volek advised there was no presentation, but staff was available to answer questions.

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

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

4. RESOLUTION #14-10409 RELATING TO GENERAL OBLIGATION REFUNDING BONDS, SERIES 2014. A resolution authorizing the issuance and private negotiated sale of up to \$7,250,000 General Obligation Bonds, Series 2014, to Robert W. Baird & Co., Inc. for the construction of Dehler Park. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

City Administrator Volek noted the Series 2007A bonds were the public portion of the bonds for Dehler Park. The Finance Director would be authorized to negotiate with Robert W. Baird & Company to determine if the City could refund the Series. She said the bonds had been issued with a 20-year interest rate of 4.47%. Staff anticipated, based on preliminary market analysis, that the net savings would exceed \$200,000; however, if they did not, staff would not proceed with the refunding and the existing bond prices would remain in place.

Councilmember Brown asked what refunding of the bonds involved. Ms. Volek advised it was refinancing the bonds at a lower interest rate that saved taxpayers future payments.

Councilmember Cimmino said they also had Series B Bonds for another \$2 million. Ms. Volek advised the Series B Bonds were paid for with pledges from private individuals. Councilmember Cimmino asked if Jon Dehler's \$1 million donation for the naming rights applied to the \$10.7 million amount or the \$2 million amount. Ms. Volek advised Mr. Dehler's donation was applied to the \$2 million amount.

Councilmember Pitman asked if they would be extending the time of the bonds. Ms. Volek advised the time period of the bonds would remain the same. Councilmember Pitman said he did not see anything in writing stating that only the interest rate would change, and the term of the bonds would stay the same. He asked if they could get it in writing. Ms. Volek advised staff would clarify the resolution to include it. She noted there would be 13 years left, which was an adequate period of time to amortize out the cost and to make the bonds very saleable.

Councilmember McCall moved for approval of Item 4, seconded by Councilmember Swanson. 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.

- **Kevin Nelson, 4235 Bruce Avenue, Billings, MT**, referenced an e-mail he sent to the Mayor and Council over the weekend with a link to a Facebook page with a collection of videos of the residences around the Highlands Project. He said Councilmember Cimmino responded and asked for the legal recourses. Mr. Nelson said he thought the legal recourses were there, and referenced Montana Code Annotated, Title 27-30-101, Definition of Nuisance, (1) Anything that is injurious to health, indecent, or offensive to the senses, or interferes with the comfortable enjoyment of life or property. Mr. Nelson said he believed they were certainly there with the dust, the noise, and the impacts. He referenced Title 27-30-102, Distinction between Public and Private Nuisances, (1) A public nuisance was one which affects, at the same time, an entire community or neighborhood. He said they were certainly a neighborhood. He referenced Title 27-30-204, Abatement of Public Nuisance by Public Body or Officer or Injured Party. A public nuisance may be abated by any public body. Mr. Nelson said it did not have to be the one that was within the confines of control, which would be the County. It said any public body. The County did not care what was going on because there were no county residents affected. According to the constitution it was everyone's duty to protect the environment they lived in. Mr. Nelson said his wife called Sheriff Linder, who said an officer went to Highlands and tried to get them to close the door. It was his understanding the next day the manager of Highlands went to the Sheriff's Department and threatened the County with harassment charges and said they could do whatever they wanted on the property. Mr. Nelson referenced the Facebook page and said the banging noise with the door open was their biggest complaint. He said he talked with Dan Schwartz from the County Attorney's Office who was going to write a letter after reviewing the Facebook videos. Mr. Nelson said he did not think the letter happened because Commissioner Ostlund became involved and went to Highlands last Friday and told them they had some issues. They acknowledged their employees got a little out of hand scraping the dust and dirt around with

the wind blowing. Mr. Nelson said it was criminal, and there was legal recourse for the Council as elected officials to protect the citizens it served.

Councilmember Yakawich said he went to Highlands a couple months ago, and the noise was so loud it was like being near a jet engine. He asked Attorney Brooks if the City had any recourse. Attorney Brooks said it would need to be researched. If there was pursuit of a legal remedy by the City and County he felt the Department of Environmental Quality (DEQ) would want to monitor the air and provide air quality samples. Attorney Brooks said he would need to contact Dan Schwartz at the County to discuss his conversations with the Commissioners and the DEQ. The statute that Mr. Nelson cited was a general private and public nuisance statute and whether or not the City could, on its own behalf, file a public nuisance action against Highlands was two-fold; (1) Could it be done legally; and (2) Should it be done as a matter of being able to prove it.

Councilmember McCall said Mr. Nelson had been talking about the problem for months. She asked if the City had sat down with officials from the County to brainstorm the problem. It would be a good idea for the City and County to put their heads together and look at options because it seemed to be getting more and more flagrant. Ms. Volek advised she had met with the County Commissioners and the public from the Highlands area when it all started. There was a similar circumstance involving Empire Steel off of 6th Avenue, and the correction was made by DEQ and not by the City or the County. She said it really was a matter for the State and RiverStone Health. It was a county island, and she suggested the best recourse would be to contact DEQ once more and ask them to monitor the situation. Attorney Brooks added they needed to make sure the City and County had a concurrent ability to abate the issue; or if the DEQ had a preemption over the City and County with exclusive jurisdiction for the particular situation. Councilmember McCall said it was something they definitely needed to research and address. If DEQ took the lead that would be fine; but she still felt the stakeholders needed to be involved. With the research Attorney Brooks was going to do, they would be able to determine the next steps. She did not think they could put it aside anymore.

Councilmember McFadden asked Attorney Brooks if the City Council had the authority to request a DEQ investigation and do it with or without help from the County. Attorney Brooks said the Mayor or City Administrator could submit a letter to the DEQ and request an investigation.

Councilmember Cimmino thanked Mr. Nelson for forwarding the tangible evidence of noise, dust, and complete disturbance to the surrounding area and for his patience and diligence. She agreed they needed to do something to mitigate the impacts. It seemed to her Highlands was in violation of several ordinances, including the noise ordinance.

Councilmember Crouch said it was a justice issue and not just a legal issue. It had been going on too long, and it was up to the City to do what it could.

Councilmember Brown said he agreed with Councilmember McCall. The issue had come up many times, and they were at a point they needed to decide

if they would move forward and find a resolution. He would like to authorize staff to start finding out what the City could do.

- **Marty Elizabeth Ortiz, 707 1st St. W. #6, Billings, MT**, invited City Council to the Not In Our Town Summit on Hate scheduled for Saturday at 10:00 a.m. at the Billings Public Library.

Councilmember Cimmino said she would be out of town and not able to attend. She asked if they were able to find a photographer. Ms. Ortiz said she had two possibilities for pictures, but she was still looking for a videographer.

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

COUNCIL INITIATIVES

- **Cimmino:** MOVED to request that legal staff conduct research on what the City could do to help mitigate impacts as a result of the Highlands operation and contact the State Department of Environmental Quality to determine what impacts were taking place in terms of air quality, seconded by Councilmember McFadden. Councilmember Cromley advised he would waive his need for advance notice of the initiative because of the past discussions on the issue. Councilmember Crouch called for the question. On a voice vote, the motion was unanimously approved.
- **Yakawich:** Advised he would be bringing forth an initiative to help address the transient/vagrant issue by sending a letter to all Montana cities stating they could not send anyone to Billings by bus unless they were held accountable. The letter would be sent by the Mayor. They needed to continue supporting Ms. Volek and the entire group working on the problem.

There was no further business, and the meeting adjourned at 7:31 p.m.



ATTEST:

BY: Cari Martin
Cari Martin, City Clerk

CITY OF BILLINGS

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

(Note: After adjournment Councilmember Cimmino commented the public safety mill levy failed by a very narrow margin. She said she wanted it on the record that it would come back to a work session. Ms. Volek confirmed it would be discussed at a work session after the first of the year.)