

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

July 27, 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 McFadden gave the invocation.

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

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

COURTESIES:

- City Administrator Tina Volek announced the retirement of Tom Binford, Director of Aviation and Transit. Mayor Hanel thanked Mr. Binford for his 30 years with the City and noted highlights from Mr. Binford's career. Councilmember Yakawich thanked Mr. Binford for his work, and noted that the airport is run very professionally. Councilmember Cimmino commended Mr. Binford's passion and talent for his work. Councilmember Cimmino stated that Mr. Binford will leave a legacy of pride and that his staff members also take pride in their work. Mayor Hanel also presented Mr. Binford with a plaque for his service. Mr. Binford thanked Council for its support over the years, and noted that there are many improvement projects in the works for the future.
- Councilmember Cimmino stated that the City is working with United Way for school supply donations. Donation bins will be placed in City offices throughout the month of August and the beginning of September. Councilmember Cimmino stated that she will distribute additional information via email.
- Councilmember Bird stated that she attended the past weekend's farmers market and that the market improves each year. Councilmember Bird also stated that she attended the Minnesota Avenue Flea Market, and believes that the flea market is growing and improving as well.
- Councilmember Crouch noted that the Relay for Life event was extremely successful and raised over \$600,000.

PROCLAMATIONS: There were no proclamations.

ADMINISTRATOR REPORTS – TINA VOLEK

- Consent Agenda Item D (Amendment #20, Airport Improvement Program Micro-Tunneling Project): Ms. Volek stated that the item was originally included on the 7/13 Council agenda. Councilmember Brown asked to separate the item in order to abstain. Council inadvertently did not return to the item to take action. Per the advice of Mr. Brooks, the item was included on the 7/27 agenda so that Council may take action.
- Regular Agenda Item 5 (Ordinance Variance #OP-15-01): Staff determined that this variance was not needed, and requested that the item be removed from the agenda. There was no advertisement for a public hearing on this item.
- Zone Change #936 for 1545 Hawthorne Lane was originally scheduled for a public hearing at this evening's meeting. The applicant requested to withdraw the zone change request, and a copy of the letter of withdrawal is filed in the ex parte notebook.
- Ms. Volek discussed an email that was sent from Candi Millar, Planning and Community Services Department Director, regarding the City's bicycle rating. The City is currently rated as a "silver" for bicycle friendliness, and would like to improve to a "gold" rating. The League of American Bicyclists will provide technical assistance to staff by recommending certain actions to improve the rating. The League of American Bicyclists will participate in a group bicycle ride in the City on August 5, and will assess the City's bicycle infrastructure. The Planning Department staff has invited Mayor and Council to participate in the group ride, and will provide additional information to interested participants.
- Ms. Volek mentioned that several emails and discussions have occurred regarding property valuation notices mailed out by the Department of Revenue. The notices show property valuation changes from the previous review. Ms. Volek noted that a valuation change does not necessarily correlate to taxation changes. This topic is scheduled for discussion at the August 17 Council Work Session. Ms. Volek noted that for every tax dollar raised within the City, the City receives \$.264; the remaining amount is distributed to other taxing entities. Councilmember Pitman asked for staff to distribute information as quickly as possible. Councilmember Pitman expressed concern over discussing the topic at the August 17 Work Session, as there is only a 30 day window to appeal tax appraisals to the Department of Revenue. Councilmember Yakawich asked if staff is able to request a letter of explanation from the Department of Revenue. Ms. Volek stated that she will contact the Department of Revenue to request this information.

Councilmember Cromley moved to remove Regular Agenda Item 5 from the agenda, seconded by Councilmember Swanson. Councilmember Cimmino asked whether the item would come before Council at a later time. Ms. Volek replied that staff discovered that the variance was not needed, so the issue will not come before Council at a later time. Councilmember Cimmino asked whether the applicant will be required to install 50 parking spaces or 15 parking spaces. Dave Mumford, Public Works Director,

stated that the applicant will be installing parking spaces based on national standards. Councilmember Cimmino asked whether the applicant is a flooring store or a furniture store. Mr. Mumford stated that the applicant is a furniture store. Ms. Volek noted that a 3/4 vote is required to remove the item from the agenda. Councilmember Brown asked Mr. Mumford what would happen if the building would change use in the future. Mr. Mumford replied that a new use for the building would require applying for a new permit. On a voice vote, the motion was unanimously approved.

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Item #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. **Consultant Agreement** with Sanderson Stewart to conduct West End Multi-Modal Traffic Modeling Project; total estimated cost to the City - \$79,960.
 - B. **Approval** of new 25-year Commercial Aviation Lot 9 Ground Lease with Edwards Jet Center (8/1/2015 - 7/31/2040); annual revenue first year - \$16,881; revenue for subsequent years to be adjusted annually by Consumer Price Index for all Urban Consumers (CPI-U); **approval** of Lessor's Consent to Assignment to First Interstate Bank; and **approval** of Amendment One to Lot 8 Lease.
 - C. **Approval** of the Assignment and Transfer of the West End Hangar Ground Lease and Amendment Two of the Lease from Jonathan R. Scott to Julia Holdings, L.L.C., and from Julia Holdings, L.L.C. to Ponderosa Properties, L.L.C.; and **approval** of the Assignment and Transfer of the 1998 West End Hangar Ground Lease and Steve J. Inman's updated West End Hangar Ground lease from Julia Holdings, L.L.C. to Steve J. Inman.

- D. **Amendment #20, Airport Improvement Program Micro-Tunneling Project**, Engineering Services Contract, Morrison-Maierle, Inc., \$189,299. (Note: This item was included on the 7/13 Council agenda, was separated, and was inadvertently not returned to for a vote by Council.)

- E. **Easement** with Westfeeds, Inc. for Yegen Drain project.

- F. **Grant Application Request** to submit 2015 Internet Crimes Against Children (ICAC) operational continuation application for \$248,323, and accept award.

- G. **Acceptance** of FM Global Fire Grant, \$1,000.

- H. **Resolution of Intent** to create SILMD 318, Summerhill Subdivision (street lighting), and set a public hearing date for August 10, 2015.

- I. **Sale of 3510 7th Avenue South.** (Opened 7/16/2015) Recommend rejection of sole bid.

- J. **Second and Final Reading Ordinance** amending the City Subdivision Regulation regarding development in the 100-year floodplain.

- K. **Preliminary Subsequent Minor Plat** of Amended Lots 9-11, Block 4, and Lots 15-18, Block 5, Grand Peaks Subdivision, 3rd Filing, located northeast of the intersection of Grand Avenue and 54th Street West and zoned Residential Multi-family Restricted (RMF-R) and Residential-5000 (R-50); Grand Peaks, LLC, owner; Sanderson Stewart, agent; conditional approval and adoption of the findings of fact.

- L. **Final Plat Approval** of Silver Creek Estates.

- M. **Bills and Payroll:**
 - 1. June 29, 2015

Councilmember Brown separated Items 1D and 1M1 in order to abstain. Councilmember Brown also separated Item 1J. Councilmember Cromley separated Item 1M1 in order to abstain. Councilmember Cimmino separated Item 1M1 in order to abstain.

Councilmember Cimmino, in regards to Item 1A, asked for clarification on why much of the area designated for the study was County land, rather than City land. Ms. Millar replied that the study involves both County and City properties, and as more property is annexed into the City, the rights of ways become the responsibilities of the City. This study will provide information on the types of street and traffic improvements that will be needed to handle additional volume with future annexations. Ms. Millar stated the City is involved in the Billings Urban Area Metropolitan Planning Organization, and that the project is funded through the Transportation Planning funds administered by the City-County Planning Division.

Councilmember McCall moved to approve the Consent Agenda, with the exception of Items 1D, 1J, and 1M1, seconded by Councilmember Pitman. On a voice vote, the motion was unanimously approved.

Councilmember Brown separated Item 1J for further discussion. Councilmember Brown stated that he agreed with the current regulations which prohibit any type of development in the flood fringe. Councilmember Brown asked whether the State law allowing development in the flood fringe (with the proper permit process) would supersede City regulations. Wyeth Friday, Planning Division Manager, noted that the City ordinance regarding development in the flood fringe states that development may occur in the flood fringe if the proper permit process is followed. The only conflicting regulations occur in the City Subdivision Regulations (subdivision regulations do not currently permit development in the flood fringe). Ms. Millar noted a case in Hamilton, MT where the Court ruled that, although local regulations were out of date and not in compliance with State law, they were required to be enforced. Ms. Millar stated that a similar situation could occur in Billings. Councilmember Brown asked whether subdivision is currently permitted in the flood fringe. Mr. Friday stated that the current subdivision regulations do not permit development anywhere in the floodplain, including the flood fringe. Mr. Friday stated that the local floodplain administration ordinance allows for development in the flood fringe, with proper permitting. Councilmember Yakawich asked Mr. Friday whether any studies have been conducted that designate certain areas within the City as floodplain locations. Mr. Friday stated that there are designated, mapped, and FEMA-reviewed floodplain areas in Yellowstone County, including areas within City limits. Councilmember Yakawich asked whether a developer could develop a house or subdivision in the flood fringe if they followed the permit process. Mr. Friday stated that the developer would need to first receive a floodplain permit for the proposed development. If the requirements of the permitting process were met, then the developer could proceed with the development. Councilmember Yakawich asked Mr. Friday who would be liable for damages caused by floods in the flood fringe. Mr. Friday stated that, as discussed at the previous Council meeting, any developments in the flood fringe require flood insurance. Properties in the flood fringe would carry insurance. Councilmember Yakawich asked what would occur if he purchased a house in the flood fringe, carried flood insurance on the house, and then sold it to someone else who did not carry flood insurance. Ms. Volek stated that insurance requirements would be disclosed in a title report upon selling the home, and that a future lender would likely require the flood insurance. Mayor Hanel asked Councilmember Brown if he would like to

bring forward action on this item. Councilmember Brown replied that he would not be bringing forward action, as he intended to vote in opposition of this item. Councilmember Pitman moved to approve Item 1J, seconded by Councilmember Cromley. On a voice vote, the motion was approved 9 to 2, with Councilmembers Brown and Yakawich voting in opposition.

Councilmember Pitman moved to approve Item 1D, seconded by Councilmember McCall. On a voice vote, the motion was approved 10 to 0, with Councilmember Brown abstaining.

Councilmember Pitman moved to approve Item 1M1, seconded by Councilmember Bird. On a voice vote, the motion was approved 8 to 0, with Councilmembers Brown, Cimmino, and Cromley abstaining.

REGULAR AGENDA:

2. **PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #935: a zone change from Residential Professional (RP) to Neighborhood Commercial (NC), on a 13,706 square foot parcel of land described as: Lot 9A, Block 2, Justiss Subdivision, and located at 741 S 24th Street West. 741 S 24th Street West, Inc., owner; Mike Walker - NAI Business Properties, agent. Zoning Commission recommends approval of the zone change and adoption of the ten criteria. (Action: approval or disapproval of Zoning Commission recommendation.)**

Nicole Cromwell, Zoning Coordinator, began a PowerPoint presentation for Zone Change #935. Ms. Cromwell discussed the property and its surroundings, and noted that there were no adjacent residential properties. The zone change would open the property to small retail uses. Ms. Cromwell noted that the zone change would not allow for any on-site alcohol service or casino gaming. The zone change would be consistent with the City's infill policies.

Councilmember Brown asked whether the property could currently be purchased and turned into a coffee shop. Ms. Cromwell replied that no retail is permitted in a Residential Professional zone. Councilmember Yakawich stated that traffic is sometimes an issue around the exit of the parking lot at this property, and asked how the zone change would affect the issue. Ms. Cromwell stated that any new property use generating 500 or more new daily trips would require a traffic analysis to be conducted by the City Engineering department. The proposed new use is not anticipated to affect traffic in this area. Councilmember Cromley asked whether a dry cleaning business is permitted in a Residential Professional zone. Ms. Cromwell stated that a dry cleaning business would be permitted, and adding a drive-through window at a dry cleaning business would also require a special review.

The public hearing was opened.

- **Mike Walker, 2231 Green Terrace Drive, Billings, MT**, stated that he represents the owner of the property and that he was available for questions.

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

Councilmember Cromley moved to approve Item 2, including adopting the ten criteria, seconded by Councilmember McFadden. On a voice vote, the motion was unanimously approved.

3. **PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #937: A zone change from Residential 9,600 (R-96) to Residential Professional (RP) on a 35,719 square foot parcel of land described as: C/S 604 and Tract 2 of C/S 356, and located at 100 Emerald Drive. Lois Schroeder, owner; Michael Schroeder and The City of Billings, agents. Zoning Commission recommends approval of the zone change and adoption of the ten criteria. (Action: approval or disapproval of Zoning Commission recommendation.)**

Nicole Cromwell began a PowerPoint presentation for Zone Change #937. Ms. Cromwell discussed the property and its surroundings. Ms. Cromwell noted that this property was previously determined to have improper zoning, which was discovered when the property owner applied for a permit to build a garage on the property. Ms. Cromwell noted that Council initiated this zone change at the June 8 Council meeting. The surrounding properties were properly zoned as Residential Professional.

Councilmember Pitman asked whether there are neighbors to the west of the property. Ms. Cromwell noted that there was one single family home to the west of the property. Ms. Cromwell also noted that there were no surrounding property owners in attendance for the Zoning Commission public hearing, and that no protests were received prior to the public hearing. Mayor Hanel asked whether the petitioner owned adjacent property. Ms. Cromwell noted that the petitioner owned several adjacent lots. Councilmember Brown asked whether Residential Professional permits retail uses. Ms. Cromwell stated that Residential Professional does not permit retail uses. Mayor Hanel asked if she knew the present use of surrounding property. Ms. Cromwell stated that real estate and production companies are located in surrounding properties.

The public hearing was opened.

- **Mike Schroeder, Property Owner of 100 Emerald Drive, Billings, MT**, stated that he was available for questions. Councilmember Yakawich complimented Mr. Schroeder for bringing this zoning issue forward. Councilmember Yakawich also commended Ms. Volek for proceeding with the zone change process. Councilmember Yakawich also thanked Council for bringing the zone change forward as an initiative, and noted that this zone change was an example of government in action. Mr. Schroeder thanked Councilmembers Yakawich and Cromley as well as Ms. Cromwell for their work on the zone change.

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

Councilmember Yakawich moved to approve Item 3, including adopting the ten criteria, seconded by Councilmember Cromley. On a voice vote, the motion was unanimously approved.

4. **PUBLIC HEARING AND SPECIAL REVIEW #927: a special review for an all-beverage liquor license without gaming for a proposed The Divide Restaurant and Bar in a Highway Commercial zone on a 1.69 acre parcel of land described as: Lot 7, Block 1, Montana Sapphire Subdivision. David Williams, owner; Scott Atwood- Atwood Architecture, agent. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

Nicole Cromwell began a PowerPoint presentation for Special Review #927 and explained that this special review had originally appeared before Council on May 26, 2015. The applicant discovered that there had been a miscalculation for the number of required off-street parking spaces, and therefore requested that the application be withdrawn at that time. The plans were subsequently revised and the parking requirements were then met. Ms. Cromwell gave an overview of the surrounding property as well as the site plan. Ms. Cromwell noted that plans for the building on this property have been submitted to the Building Department for review. Ms. Cromwell stated that the Zoning Commission recommended conditional approval, and gave an overview of the following conditions: 1) the special review approval shall be limited to Lot 7, Block 1, Montana Sapphire Subdivision; 2) the special review approval is for the location of an all beverage license without gaming and no other use is intended or implied; 3) any expansion of the restaurant and patio area greater than 562 square feet will require an additional special review approval; 4) any increase in the number of parking spaces over 10% of what is shown (56 spaces) will require an additional special review approval; 5) there shall be no outdoor public address system or outside announcement system, whether permanent or temporary, of any kind. There shall be no outdoor events on the patio or grounds that include amplified music or an amplified sound system of any kind; 6) the outdoor patio shall have a continuous 3-foot fence around the perimeter with "exit only" gates as required for public safety. There will be no direct entrance from the parking area or landscaped area to the fenced patio area except through the restaurant; 7) the patio is allowed to have background music or un-amplified live music. Background music is defined as amplified music that is not audible beyond the patio perimeter; 8) the solid waste storage area shall have a sight-obscuring enclosure constructed in similar materials and colors of the building. The enclosure will include a sight-obscuring gate; 9) 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; 10) 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 Pitman asked for Ms. Cromwell to return to a previous slide (showing the aerial view of the property) in the PowerPoint presentation. Councilmember Pitman stated that the extended access roads to each surrounding property seemed strange. Ms. Cromwell stated that when the Montana Sapphire Subdivision was created, City rights of way were not platted, so each lot was required to have legal access to an existing right of way. Each property that does not have frontage on Shiloh Road or King Avenue West has an extended access road out to the main roads. Councilmember Pitman asked if, as properties were added in this area, the access roads would continue to grow longer. Ms. Cromwell stated that the lots to the west have access roads heading westward.

Councilmember Yakawich stated that there are 22 locations that serve alcohol on premise in the area of the property in question. Councilmember Yakawich asked if there are limitations for serving alcohol near buildings such as schools and churches. Ms. Cromwell stated that alcohol may not be served at locations within 600 feet of a church, school, or public park with playgrounds or playfields. Councilmember Yakawich asked if there were reasons why Council should vote in opposition of Item 4, such as issuing too many liquor licenses in one location. Ms. Cromwell stated that the City has historically allowed itself to approve specific locations where on premise alcohol would be served. The exceptions would be microbreweries and restaurants with no gaming attached to their alcohol licenses. Councilmember Yakawich asked if there is a limit for the number of alcohol licenses that may be issued. Ms. Cromwell stated that license allotments are based on population and there is a quota set by the State; Billings has historically been over-quota for beverage licenses.

Councilmember Bird asked whether the liquor license without gaming could be changed at some point to a license with gaming. Ms. Cromwell stated that the proposed license does not have the option to add gaming. Councilmember Bird asked whether the applicant would need to come before Council to add gaming in the future. Ms. Cromwell replied that the applicant would need to come before Council. Councilmember Bird asked whether the liquor license would transfer to a new owner if the existing owner would sell the business. Ms. Cromwell noted that the liquor license would need to be purchased separately from the building and business.

Councilmember Brown asked if the proposed development would be a bar/pub only. Ms. Cromwell replied that the development will be a full service restaurant with a full service bar.

Councilmember McCall asked how many liquor licenses are issued in the City. Ms. Cromwell replied that there are more than 123 issued liquor licenses in the City. Ms. Cromwell noted that the 123 licenses are for on premise serving.

Mayor Hanel asked whether the majority of the liquor licenses are for restaurants. Ms. Cromwell replied that a very small amount of the liquor licenses are strictly for bars. The majority of the licenses are for restaurants.

Councilmember Bird asked how many liquor licenses the City is able to issue. Ms. Cromwell stated that she felt that the City is able to issue around 100 licenses, but she was

unsure of the exact number and how the Department of Revenue allocates the licenses (by type, by location, etc.). Councilmember Bird asked why the City has issued over 123 liquor licenses if it is allowed to issue around 100. Ms. Cromwell stated that the allotments are based on data collected in the census conducted every ten years. Ms. Cromwell explained that licenses are also sold and turned over to new locations and owners. Ms. Cromwell also stated that the State provisions allow for a small number of additional licenses even if the City is over its allotted quota.

The public hearing was opened.

- **Scott Atwood, 1301 Division Street, Billings, MT, agent for the applicant, stated that he was available for questions.**

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

Councilmember Cromley moved for approval of Item 4, including the conditions discussed, seconded by Councilmember Crouch. On a voice vote, the motion was unanimously approved.

5. **PUBLIC HEARING AND SITE DEVELOPMENT ORDINANCE VARIANCE #OP-15-01: A variance allowing 15 parking stalls at 2908 Millennium Circle, Billings Warehouse Flooring, LLC, owner. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

Item 5 was removed from the agenda, but remains listed as a reference.

6. **PUBLIC HEARING AND FIRST READING ORDINANCE expanding the boundaries of Ward IV to include recently-annexed property in Annexation #15-09: 3.5 acres generally located on the west side of 46th Street West, just south of the intersection of Rimrock Road and 46th Street West; Eggart Enterprises, LLC and RK Development, LLC, owners. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

Ms. Volek noted that staff did not have a presentation for this item, but was available for questions.

The public hearing was opened.

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

Councilmember McCall moved to approve Item 6, seconded by Councilmember Swanson. Councilmember McCall stated that there would only be two homes developed on the property, and that this was a logical annexation. 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: There were no Council initiatives.

ADJOURN: There was no further business and the meeting adjourned at 7:45 pm.



CITY OF BILLINGS

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

ATTEST:

BY: Billie Guenther
Billie Guenther, City Clerk