

COUNCIL PROCEEDINGS

Council Pre-Meeting
p.m.

September 1, 2015

5:30

A Pre-Meeting of the City Council of the City of Gillette, County of Campbell, State of Wyoming, was held on Tuesday the 1st day of September 2015, in the third floor conference room, pursuant to due notice and call. The Presiding Officer called the meeting to order and upon roll call the following were found to be present:

Council Members present: Forrest Rothleutner, Dan Barks, Tim Carsrud, Ted Jerred, Kevin McGrath, and Mayor Louise Carter-King.

Council Member absent: Robin Kuntz.

Staff present: J. Carter Napier, City Administrator; Charlie Anderson, City Attorney; John Aguirre, Human Resource Director; Patrick Davidson, Asst. City Attorney; Kendall Glover, Utilities Director; Dustin Hamilton, Development Services Director; Jim Hloucal, Chief of Police; Tom Pitlick, Finance Director; Sawley Wilde, Public Works Director; Deca Wasson, Medical Fund/Retiree Trust Manager; Kristyn Eth, HR Specialist; Geno Palazzari, Communications Manager; Patti Davidsmeier, Community & Gov't Relations Manager; and Karlene Abelseth, City Clerk.

Warm Up Items

Mayor Carter-King asked for warm up items. There were none.

Introductions

City Administrator Napier introduced Myra Lacy as staff's recommendation for the Mayor's Art Council vacancy.

City Administrator Napier introduced Afton Evans as the new Senior Administrative Assistant in Administration.

Cadillac Excise Tax

Brad Johnson, Benefit Consultant, agent, Covenant Insurance Group, Inc., presented information regarding the Cadillac Excise Tax. He explained that the tax is designed to reduce health care usage and costs by encouraging employers to offer cost-effective plans that engage employees in sharing in the cost of care. He explained that "sharing in the cost of care" means higher deductibles, higher co-pays and higher out-of-pocket. It's a 40% tax if your costs are above \$10,200 for a single and \$27,500 for a family. That's the number that was established into law in 2010; it hasn't been indexed, changed or gone up since then and the IRS stated this is the number that will be used beginning in 2017. It applies to all employer sponsored plans, whether self-insured or fully insured; private and government plans; multi-employer plans/MEWA; retiree coverage plans and limited benefit plans where the premiums are pre-taxed. It will start in calendar year 2017, and if applicable, pay the tax in 2018. He went on to say that it is a 40%, non-deductible tax, on premium amounts exceeding allowed thresh-holds. He reported on the IRS Notice 2015-52 and stated that more comments are being accepted regarding the law and how it applies. Mr. Johnson went on to say that the tax is permanent and its purpose is to generate \$80

billion over the upcoming 10 years to fund the expansion of health coverage to the un-insured. The employer calculates and pays in self-funded plans. He went on to report that in 2018, 16% of employers will pay the tax. Included in plan costs are premiums paid by employers and employees; contributions to Health Reimbursement Arrangements (HRA), Flexible Spending Accounts (FSA), and employer Health Saving Account (HSA) contributions; cost of Employee Assistance Program (EPA), counseling benefits, on-site clinics and wellness programs are added into the employee costs. What's not included are excepted benefits that include standalone dental, vision, accident, life and disability plans, as well as long term care insurance plans are not included in this tax as far as calculating a premium. He then reported that the tax is calculated at the end of each calendar year; the calculation is made and the IRS notified. The cost of coverage is the COBRA equivalent premium. He went over the age and gender adjustments, employer aggregation, taxation, and paying the tax. Mr. Johnson gave an example of how the Cadillac Tax works for a single and family, as well as what employers are doing. The Affordable Care Act says you have to maintain a minimum essential coverage that provides at least a 60th percentile minimum value. He added that employers are looking at changes that would lower premiums such as higher deductibles and out-of-pocket amounts, higher doctor co-pays and Rx co-pays; looking at the elimination of Section 125 Cafeteria, HRA and employer funded HSA plans; as well as narrow "high performance" networks and/or HMO style benefits and purchasing health insurance through the exchange. Employers should lobby the IRS for repeal of "Notice 2015-52" which is due by October 1, 2015, and lobby for indexing. Mr. Johnson provided an article from Kaiser Family Foundation which explains the details and laws regarding the Cadillac Tax. After the presentation, Human Resource Director Aguirre introduced Decca Wasson, Medical Fund/Retiree Trust Manager. Ms. Wasson presented information regarding a more personalized analysis of what the impact to the City of Gillette will be, specifically. Gallagher, Campbell County Coordinated Benefits Trust Consultant, projected the City's tax based on three (3) separate scenarios; one with a 5.5%, 7.5%, and 9.5% growth trend in insurance premiums that the City pays which were computed with, and without, flex spending accounts. (Ms. Wasson provided a hand-out for Council's review of the three scenarios.) Until the laws are finalized, she is not sure how the flex spending account will impact the City's liability. Gallagher computed the forecasted amount of Excise Tax for 2018 of the City's liability based on current circumstances would be zero for the 7.5% growth trend. The increase in these premiums would still be lower than the taxes threshold, unless the flex accounts are added in which could also be used to compute the tax and then the City's estimated total excise tax is \$5,949 on a 7.5% trend assumption; 5.5% trend assumption would be zero based on premiums only, or \$5,080 if flexible spending accounts are included; and the worst case projection is the 9.5% growth trend which would be an estimated cost of \$15,884, or \$21,833 after the flexible spending accounts are added in. Mayor Carter-King asked if this affected the employees. Human Resource Director Aguirre replied that this is an employer paid tax. If deductibles are raised, or changes are made to the plan, then there may be an impact to the employee. Mayor Carter-King stated that this is minimal. Mr. Aguirre replied the cost is for the City of Gillette, at this time. Staff is still waiting for it to be finalized as to what is to be included in the calculations of that tax. Councilman McGrath asked, since the retirees still fall under the City's insurance,

does it affect the retirees. Mr. Aguirre stated that it will apply to the retirees just as it applies to the current employees.

Audit Proposal from Bennett, Weber, & Herstad

City Administrator Napier reported that the current, three year agreement is expiring. Finance Director Pitlick informed the group that the proposed agreement is similar to past agreements. The proposed costs for the next three years is not to exceed \$80,000. The prior three year agreement was not to exceed \$78,000. He explained there is potential for additional costs. Ryan Gemar, Bennett, Weber & Herstad, gave background on the length of time he has been conducting the City's audit and reported that Mike Bennett will be retiring. Councilmen McGrath and Jerred announced their support of the proposed agreement with Bennett, Weber & Herstad.

Goldenrod Avenue Update

City Administrator Napier stated that there is a request from Attorney Berger, R.T. Cox Law Firm, to address the Council regarding the conditions at Goldenrod Avenue. Staff recently received an engineer's report that has been provided to Council. Attorney Alex Berger presented pictures of the flooding issues on Goldenrod Avenue to the Council. He began by stating that, essentially, several homes are sinking into the ground and probably, soon, will become unsafe to live. There are several issues with the subdivision, some of which can be addressed by the City. He went on to say that there are three major issues that he feels, can be addressed by the City; first of which there is too much water in the subdivision when it rains and the draining plan does not allow for the water to escape, and when there is a lot of water it apparently, causes the compaction rate to decrease and then the road actually is subsided. He presented information regarding the drainage issues of some lots and added that all the storm water is meant to drain into two inlets. At no point have those two inlets been sufficient to drain the water and the whole road becomes inundated. Additionally, the subdivision is on a hill and drains onto this road. There are several undeveloped lots and when it rains, all the dirt and silt drains into the gutters. He provided a picture of the street and stated that this issue was brought to the Council's attention at a Work Session on July 16th; the problem continues to get worse. His hope is that the City would put in more drainage, more inlets. Mr. Berger also provided pictures of lots at the top of the subdivision that are undeveloped. He went on to say that during a rain storm the dirt is washed into other resident's yards and ends up clogging the drains. Mayor Carter-King asked who owned the lots. Mr. Berger wasn't sure of the ownership, but believes that it is J&B Homes. Mr. Berger introduced Professional Engineer (Civil), Carol Chadwick. Ms. Chadwick began by stating that her analysis was strictly focused on the existing storm drain, inlets and street capacity of the subdivision. She commented that the existing storm drains are not sufficient to keep up with the water and it will continue to inundate the road. She feels that additional storm drain inlets are needed to capture the water before it gets to the other two inlets. Mayor Carter-King asked how many homes are affected. Attorney Berger replied that he represents homeowners throughout the subdivision and there are three obvious homes that are affected. Those homes were shown to Council on a map. Mr. Berger went on to say that throughout the neighborhood, homeowners have said there are various issues such as water collecting in weird areas, not draining properly, storm water runoff bringing debris into resident's yards and ripping out sod. Mayor Carter-King asked how long have these issues been going on. Ms. Chadwick

said that on the City topo graph from 2014, the sink hole was already a pronounced problem. Ty Wright, homeowner, stated that the sink hole in front of his house began over a year and half ago. Prior to that, for the last two to two and half years some of his front yard has sloped. In the first phase of the subdivision, other sink holes have started, or have been there for a couple years that he recalls. Councilman Barks asked when the road was built. Mr. Wright replied that he believes around 2009. Councilman Barks asked if it was in 2014 that this issue surfaced. Brian Becker, homeowner, stated he thought it was around 2013, and spoke of issues that he has dealt with regarding his home. He added that his front yard had a little bit of sinking in 2012 when he bought the home. He had dirt brought in prior to the laying of sod. The sink hole was out towards the street; in 2013 it sank back down and in 2014 the street was at the same point. Another homeowner, who bought his home in 2011, presented a picture of the amount of water running down his street. He reported that his neighbor's home across the street is sinking. Mr. Berger stated that more pictures can be provided. He added that once the homes are repaired, and the subdivision is back up to par, that the roads and runoff aren't in such a way that it happens again. Mr. Berger stressed the urgency regarding the issues. Councilman Jerred asked that if the street is brought back up to its design, height and spec's, it would drain the water away like it was designed. Ms. Chadwick stated that there will still be issues in the area where the inlets are, as the inlets are not sufficient to adequately drain the water, and it will continually flood there. She added that she did not specifically look at the sink holes; she looked at the homes. She added that the streets are fairly flat, they're at half a percent grade, which is not allowed in the city of Gillette any longer. City Administrator Napier asked Attorney Berger to summarize the entire scope of the requests for Council to consider. Mr. Berger stated the entire scope would be for the City to do a thorough investigation of what needs to happen in the area. He added that three things need to happen: the road needs to be re-graded, enforcement or mechanism to change the storm water runoff so that it doesn't clog the inlets that are there, and the necessity of adding more storm drains. City Administrator Napier asked if the report reveals the number of inlets needed, locations, and so forth. Ms. Chadwick stated the report does say the number of inlets presently there are inadequate, however, a detailed study needs to be done to determine exactly where the inlets need to go, and how many. She added that her report only shows the inadequacy of what was there, and suggested that more inlets need to be added. Councilman Barks recalls when Council discussed this issue previously, the concern was that some work needed to be done and asked if Engineering had been looking at it. City Administrator Napier replied that the basic objective that staff has had, is to get the road, the sink hole in particular, back up to par with respect to its current design and specification. As Council is aware the project was bid out and had contractors on site. The contractors were led to believe that they were liable for the damage that the homes were occurring currently, and therefore, opted not to proceed with the performance of correction of the road that Mr. Berger presented to Council. At this point staff is working out options for Simon Contractor to consider in respect to getting back on the job that they contractually agreed to perform. Once those alternatives are exhausted with the current contractor, staff will have another proposal to bring to Council, if the existing contractor fails to perform. Councilman Barks asked if an engineering company has

been hired to make sure the original engineer project is correct, as Council is hearing that it probably wasn't. Mr. Napier stated that generally speaking, when it comes to doing a project, an engineer is hired to help provide design of how the work should be completed and oversee the management of said project. Mr. Napier stated that he feels confident that an investigation has not been done consistent to the degree that Mr. Berger is suggesting to address the entire neighborhood. However, a Storm Water Master Plan has been conducted and there are parts of that plan that deal with this entire area of town (Foothills, Ironhorse, etc.), and specific strategies relating to this portion of town that would deal with storm water in that plan. Mr. Napier stated that staff has not had the opportunity to review Ms. Chadwick's report which does not propose solutions to the situation at hand. Ms. Chadwick stated that her report does pose a solution which is to put in more inlets to get the water off of the streets. She didn't specify exactly where those inlets need to be, or how many. Councilman Carsrud stated that sediment seems to be a huge issue and asked what is being done to address this issue. Mr. Napier responded by saying that Director Hamilton and his team have been working on Ordinances that address erosion issues more appropriately, than recent past. Councilman McGrath asked if silt fence could be installed in the meantime. Development Services Director Hamilton stated that there are straw waddles in place, but it depends on the storm. Most of the straw waddles installed are sized to handle a two year event. Discussion took place regarding the destruction of not only the straw waddles, but also silt fences. Multiple fences have been destroyed. After further discussion, Development Services Director Hamilton stated that staff would contact the DEQ and have them take a look at this area. Mayor Carter-King asked what the land owner has to say. Mr. Hamilton stated that staff has not been in touch with the land owner on this particular case, but contact would be made to see what can be done. Councilman Barks asked, that if in fact the original design was incorrect, and our current contract with the contractor is to bring it up to that level, should the City hold off. Mr. Hamilton recommended that the sink hole in front of Mr. Wright's house be addressed as soon as possible. The other issues that Ms. Chadwick mentions are further to the west. The current contract is to address the settlement in front of Mr. Wright's house. It will restore the street to its original design grade, going across Goldenrod Avenue to the north, and working on the fillets and valley gutter on Blaine Court. Mayor Carter-King asked if the difficulties are being worked out with the current contractor. Mr. Hamilton stated that staff is very close to working out the difficulties with the contractor. City Administrator Napier also stated that he feels it is important to point out that the picture presented was taken after Simon Contractor had left the site. The City had already engaged their services. Councilman Barks asked if there is a bigger problem that needs to be addressed regarding the drainage. City Administrator Napier stated that the Storm Water Master Plan does indicate some solutions. Whether or not it matches what is being thought of by the homeowners and Mr. Berger, he didn't know. Councilman Barks asked if the Storm Water Master Plan has been completed and approved by the Council. Mr. Napier confirmed it has, however, staff can meet with the group to demonstrate what the Master Plan suggests for the larger area in question. Councilman Barks stated that if the hole is fixed, and there is still a drainage problem, then there will be a hole again. City Administrator Napier reminded Council that staff has not had a chance to review Ms. Chadwick's report, and until staff has a

chance to review the report and compare it to the Storm Water Master Plan, then he was unsure how to respond to Councilman Barks' statement.

Thunder Basin Orthopaedics Site Development Discussion

Development Services Hamilton gave an overview regarding the Thunder Basin Orthopaedics Site Development. Highlights of the overview were: Building plans submitted to Building Inspection on February 2, 2012; Final plat creating Lot 3A filed with the County Clerk on March 2, 2012; Commercial site plan submitted to City Planning on March 21, 2012; Site plan staff review meeting was held on April 5, 2012; Final inspection of the building done on February 8, 2013; the building re-inspection (based on the punch list) on May 10, 2013 with a temporary Certificate of Occupancy issued on May 17, 2013. Along with that, requirements were needed to receive the final Certificate of Occupancy. Those requirements were a guarantee of a paved driveway and landscape guarantee, which were provided in cash at the time of the temporary Certificate of Occupancy, and a temporary unpaved driveway from Wyoming Work Warehouse (via the easement) to service the property. Mr. Hamilton provided a diagram of what was originally proposed to show the extension of Powder Basin Avenue, a future employee parking lot, as well as proposed overflow parking. The diagram also shown sanitary sewer extensions, water main extensions, and storm sewer. The infrastructure permit to construct was issued on July 15, 2013 and paved driveway, which was the interim solution to satisfy the building requirements, comes out to Powder Basin Avenue. To satisfy the building only, roads (shown on the diagram) weren't required as they meet their required parking in the front. Although the partners of the physical therapist want to build a structure, they are not able until the road requirements are complete. In August of 2014, the developer, representing the property owners, wanted to modify the orientation of the private road to fit the conceptual master plan for the overall property, and the permit was modified at that time. The water improvements and sanitary sewer improvements, along with the road bed were completed in 2014. He added that at one time, the actual curb machine was on site, however, there were issues between the owner and developer and has not commenced with the actual roadway installation. Mr. Hamilton stated that the remaining work needed to obtain a final Certificate of Occupancy on the building and to make the lot south of the building, permittable, is to complete the landscaping, complete the road work (in order to build an additional building), and close out the permits to gain City acceptance of water and sanitary sewer. Photos of the area were provided for Council's viewing. Mr. Hamilton then explained the project close-out options are the implementation of no additional building permits being issued until the road improvements are complete. He added that the owner and developer are actively discussing their arrangements to get the road paved and it is tentatively, on the contractor's calendar for this fall. He continued with other project close-out options to include that the contractor/developer can become ineligible for temporary Certificates of Occupancy on future projects; call on the landscape guarantee; and the temporary Certificate of Occupancy can be revoked for failure to install the landscaping. Councilman Jerred asked what the normal timeframe of a temporary Certificate of Occupancy is. Mr. Hamilton replied that usually, it is three to six months. It depends on when certain things are

completed, such as a parking lot. If it is finished the first of November, and hot plants don't start up until May, a guarantee for the parking will be obtained and will be able to operate on the gravel base until the hot plants open. Then a 30 day extension is given to complete the parking lot. In regards to this case, there has been a good construction season. Councilman McGrath noted that this is not a good reflection on the City because of the developer, and the developer should be held accountable. Mr. Hamilton stated that additional permits are not, and will not be issued for the other lot until the paved access is completed to the next lot. City Administrator Napier added that revoking the temporary Certificate of Occupancy does not force anyone's hand in building the road; all it does is require them to do the landscaping. Mayor Carter-King asked if what City Administrator Napier was saying is that there is nothing that the City can do to force the hand to build the road. Mr. Napier said that is not exactly what he was saying. If the City allows a building permit to extend for another building, without the road being built, then the City would be failing in that regard. The City has not issued any additional permits without the road being built. Mayor Carter-King asked if there have been requests for permits. Mr. Hamilton confirmed there has been requests to build another building. Mayor Carter-King asked if it should be the responsibility of those requesting the permits to put pressure on the developer to build the road. Mr. Hamilton stated that was correct. Councilman Jerred asked who the developer is. Mr. Hamilton stated that the development company is MC Family of Companies and he believes the property owner is Mach II, LLC. After further discussion, Councilman McGrath reiterated that he doesn't like the fact that the City is allowing the developer to get away with not completing the road and feels the City should be doing more to get the area cleaned up. Mr. Napier stated that he takes issue with this statement and feels that the City is doing everything to be accommodating. City Engineer VonEye added that this is a unique project. He explained that the potential for a project to run through to the expiration date of a permit to construct, allows the developer 48 months to complete a project. As Mr. Hamilton indicated in the slideshow, there was an extension to the permit to construct, which was issued in August 2014. This essentially modified the completion date for roughly, another year. After further discussion, Mayor Carter-King stated it looks like staff is doing all that can be done. City Administrator Napier added that he supports staff and until the appropriate infrastructure is in place, building permits should not be issued.

Review September 1st Agenda

The group reviewed the upcoming agenda items. Mayor Carter-King announced that various amendments were needed for the agenda. Discussion of the tabled Ordinance took place. City Attorney Anderson informed the Council that discussion has taken place with Brett King, attorney in Jackson, Wyoming, and discovered communication breakdown between the local representatives and the actual people running the Trust. Copies of the subdivision plat will be emailed to Mr. King. A faxed copy of the signed covenants has been received, but there is not a copy that can be recorded and he doesn't want to record it until the sale goes through with the purchase of the lot. Mr. King was informed that it's very likely, at the next regular meeting of the Council, that Council will take action to remove the item from the table for a vote. It sounded as if there was not a lot of insight,

prior to staff's call, regarding the agreement between the representatives in Gillette and proposed purchaser of the lot. Mayor Carter-King asked City Attorney Anderson if Mr. King was informed that the item would be removed from the table on September 15th. Mr. Anderson stated that he informed Mr. King of that possibility. City Administrator Napier then provided Council with proposed language to amend the Pre-Meeting Minutes for August 18th. Mr. Napier added, by legal counsel's suggestion, that the minutes be removed from the Consent Agenda and placed under Unfinished Business, General Agenda for Council's consideration. Councilman Barks stated that on page one, he didn't feel as if his question, regarding the bid award, was reflected in the minutes. After some discussion, it was decided that the red wording provided in the proposed amended minutes, was sufficient and a valuable addition. Item N1, the appointment to the Energy Capital Economic Development Board (ECED), was discussed, and decided to vote the item down as this was a mistake on the agenda and there is no appointment needed to this Board. City Administrator Napier informed the Council that Items P3 and P4, regarding the Ash Meadows Subdivision, Phase II, need to be removed from the agenda at the petitioner's request. Mayor Carter-King informed the group the Communications Manager Palazzari has prepared a different format regarding "For the Good of the Community"; Councilman Barks will be the first reader. The reader rotation will be alphabetically.

Adjournment

There being no further business to come before the Council, the meeting adjourned at 7:00 p.m.

Mayor Louise Carter-King

(S E A L)
ATTEST:

Karlene Abelseth, City Clerk

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