

## REGULAR MEETING OF THE BILLINGS CITY COUNCIL

### January 25, 2016

The Billings City Council met in regular session in the Council Chambers located on the second floor of the Police Facility, 220 North 27<sup>th</sup> Street, Billings, Montana. Mayor Thomas W. Hanel called the meeting to order at 6:30 p.m. and served as the meeting's presiding officer. Councilmember Yakawich gave the invocation.

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

**MINUTES:** January 11, 2016: Councilmember Clark moved for approval, seconded by Councilmember Cimmino. On a voice vote, the motion was unanimously approved.

#### COURTESIES:

- Mayor Hanel recognized the Billings Chamber of Commerce and Visitors Bureau along with the Rimrock Arena for organizing a successful Ag Appreciation Banquet. This year's banquet drew the highest number of attendees in the event's history, with 300 more attendees than last year's event. Mayor Hanel thanked the organizers and stressed the importance of the Ag community.
- Kevin Ploehn, Director of Aviation and Transit, introduced Jim Perez as the new Transit Manager. Mr. Ploehn discussed Mr. Perez's previous experience working in the San Diego Metropolitan Transit System, and most recently as the CEO of Central Maryland Regional Transit. Mayor Hanel welcomed Mr. Perez and asked Mr. Perez to share more about his background. Mr. Perez added that he grew up in Wisconsin and also spent time in Maryland as a CEO of a large transit system. Mr. Perez stated that he also worked for the State of Kansas for Secretary Dan Miller. Mr. Perez started his career working with the San Diego Metropolitan Transit System and worked from the ground up. Mr. Perez stated that the position with the City seemed like a good opportunity. City Administrator Tina Volek noted that Mr. Perez filled the position that was vacated by Ron Wenger, who retired in 2015. Ms. Volek and Mayor Hanel welcomed Mr. Perez to Billings.

**PROCLAMATIONS:** Mayor Hanel read a proclamation declaring January 24-30, 2016 as "Billings School Choice Week."

#### ADMINISTRATOR REPORTS - TINA VOLEK

- Ms. Volek stated that e-mail communications were received earlier in the day from citizens regarding Items 2 and 4. The e-mails were received through the Mayor and Council email list, and copies were included in the ex parte notebook as well as on Council desks.

**PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: #1 and #7 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.

- **Connie Wardell, PO Box 21432, Billings, MT** spoke in regards to Item 7, and stated that she understood the difficulty of negotiating settlements. Ms. Wardell stated that negotiating settlements can be frustrating. Ms. Wardell encouraged Council to approve the settlement and to use this experience to improve future contracts and projects.

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

**1. CONSENT AGENDA**

**A. Bid Awards:**

1. **New CNG Trucks for Solid Waste Division.** (Opened 1/12/16): Schedule I: Three Rear Load Trucks, Recommend Montana Peterbilt, \$751,468.78; Schedule II: Two Side Load Trucks, Recommend Jack's Truck and Equipment, \$560,984; Schedule III: One Front Load Truck, Recommend Montana Peterbilt, \$245,645.61; Schedule IV: One Roll-off Truck, Recommend I State Truck Center, \$149,871.

**B. Operating Agreement Renewal** with Yellowstone Valley Animal Shelter, retroactive from July 1, 2015 through July 1, 2017.

**C. Approval** of the Assignment and Transfer of the West End Hangar Ground Lease from R.W. McKamy and Donna McKamy to Robert C. Bryan and Phyllis C. Bryan, Trustees of the Bryan Revocable Trust.

**D. Amendment #1, W.O. 15-07: Orchard Lane**, Professional Services Contract, Kadrmas, Lee & Jackson, Inc., \$196,100.

**E. Acknowledge receipt of petition to vacate** a portion of 10th Street West from Wyoming Avenue to the alley north of Wyoming Avenue, YWCA and Bonini Enterprises, petitioners, and setting a public hearing for February 22, 2016.

**F. Storm Drainage Easement** with James Powell for improvements constructed by SID 1398.

**G. Acceptance of Donation to Billings Fire Department, Alpha-Omega Disaster Restoration, kids' plastic fire helmets, retail value \$1,000.**

**H. Acceptance of Donation to Billings Parks, Recreation and Preservation Foundation, James and Linda Roscoe for the preservation and enhancement of the Yellowstone Kelly grave and interpretative site at Swords Rimrock Park, \$25,000.**

**I. Acceptance of Donations to Billings Police Department: Phillips 66 Billings, \$1,000 to K-9 Program; and Shawn and Judy Heringer, \$500.**

**J. Second/Final Reading Ordinance for Zone Change #944:** A zone change from Residential 6,000 (R-60) to Public (P) on a 1.02 acre parcel of land described as: Lot 2, Block 1 Westward Ho Subdivision. West Side Baptist Church, owner; Bill Stene, agent. Approval of the zone change and adoption of the determinations of the 10 criteria.

**K. Second/Final Reading Ordinance expanding Ward III (Annexation #15-12)** for an approximate 90 acre parcel of land described as: the southwest corner of the intersection of Elysian Road and Mullowney Lane. Harmony Meadows, LLC and James Weber, owners.

**L. Second/Final Reading Ordinance expanding Ward I (Annexation #15-13)** for an approximate 2 acre parcel of land located at 517 Lincoln Lane. Propriedad, LLC, owner.

**M. Bills and Payroll:**

1. December 28, 2015

2. January 4, 2016

Councilmember Brown separated Items 1M1 and 1M2 in order to abstain.

Councilmember Yakawich separated Items 1A1 and 1D for discussion.

Councilmember Cimmino separated Item 1B for discussion.

Councilmember Sullivan separated Items 1G, 1H, and 1I for discussion.

Councilmember Clark moved for approval of the Consent Agenda, with the exception of Items 1A1, 1B, 1D, 1G, 1H, 1I, 1M1, and 1M2, seconded by Councilmember Cimmino. On a voice vote, the motion was unanimously approved.

Councilmember Yakawich separated Item 1A1 for questions directed to Dave Mumford, Public Works Director. Councilmember Yakawich asked for Mr. Mumford to address a list of topics including: the trade-in values of the trucks, an update on the CNG conversion process and efficiency/cost savings of CNG trucks, status of the new CNG fueling station, and repairs of CNG trucks. Mr. Mumford stated that the trade-in values of the trucks range from \$10,000-\$47,000 depending on the model, with the average being \$20,000. Mr. Mumford stated that the City has owned two CNG trucks for just under one year and the trucks have been doing well. Drivers have experienced a reduction in headaches as a result of eliminating diesel fumes and adding a smoother ride. In the first six months of owning the CNG trucks, the City experienced a savings of about 50% for fuel. Now that fuel prices have decreased, the City is breaking even on fuel costs. Mr. Mumford stated that the new fueling station will be online next month and that the fuel costs will be half of what they are today since the City will no longer be paying MDU for use of its fueling station. Significant savings in fuel will be experienced. Mr. Mumford stated that repairs to the vehicles are made by City Fleet Services staff or by Cummins Diesel. Councilmember Brown asked when the fuel station will be paid off. Mr. Mumford stated that he estimated the payoff time to be approximately ten years, and that the City will experience significant maintenance savings. Councilmember Yakawich moved for approval of Item 1A1, seconded by Councilmember Cromley. On a voice vote, the motion was unanimously approved.

Councilmember Yakawich separated Item 1D to ask Mr. Mumford what "construction staking" referred to in the staff report and whether this additional cost was expected. Mr. Mumford stated that the cost was expected and was normal for this type of project. Mr. Mumford explained that construction staking includes survey work conducted by the design firm for a project. The cost generally occurs after the initial design work and once the construction work begins so that costs may be accurately calculated. Councilmember Yakawich moved for approval of Item 1D, seconded by Councilmember Cromley. On a voice vote, the motion was unanimously approved.

Councilmember Cimmino separated Item 1B to ask Ms. Volek whether the \$274,267 cost was to staff the shelter with Yellowstone Valley Animal Shelter (YVAS) Inc. employees rather than City employees. Ms. Volek replied affirmatively, and noted that the cost for using City staff for the animal shelter would be \$308,000. Councilmember Cimmino referenced page eight of the proposed agreement, specifically the section dealing with jurisdiction of the shelter. Councilmember Cimmino asked how services are rendered to outside jurisdictions such as the City of Laurel or Yellowstone County. Ms. Volek stated that the intent of that provision was that a contract would be executed (after being approved by Council) if services were to be rendered to outside jurisdictions; costs would be passed to those outside jurisdictions. Ms. Volek stated that the primary focus of the shelter is animals in the City of Billings. Animals must be brought to the shelter by a Billings property owner (identification is confirmed) or by Billings Animal Control. Councilmember Cimmino asked whether there was potential for YVAS Inc. to purchase the shelter facility. Ms. Volek stated that there have not been any active conversations with YVAS Inc. regarding purchasing the facility. Mayor Hanel asked whether the contract was a two or three year contract. Ms. Volek stated that the

contract was for a term of two years. Mayor Hanel stated that it was unusual that the cost of the contract was not increasing over two years. Ms. Volek added that this is one of the better working arrangements and it demonstrates a successful public-private operation. Ms. Volek stated that the arrangement is beneficial because the Animal Control division is able to focus efforts on public safety and public health rather than on adopting animals. YVAS Inc. focuses on adopting animals. Ms. Volek noted that the partnership has led to fewer complaints about the shelter. Mayor Hanel stated that he personally receives very few concerns regarding the shelter. Councilmember Cimmino moved for approval of Item 1B, seconded by Councilmember Swanson. On a voice vote, the motion was unanimously approved.

Councilmember Sullivan separated Items 1G, 1H, and 1I to recognize Alpha-Omega Disaster Restoration, James and Linda Roscoe, Phillips 66 Billings, and Shawn and Judy Heringer for being friends of Billings. Councilmember Sullivan moved for approval of Items 1G, 1H, and 1I, seconded by Councilmember Clark. Councilmember Cimmino asked for clarification on donations made to the Yellowstone Kelly Interpretative Site. Councilmember Cimmino mentioned a reported \$85,000 donation from Phillips 66. Mike Whitaker, Director of Parks, Recreation, and Public Lands, stated that the majority of the donations have been sent directly to the Billings Parks Preservation Foundation. Once the total amount of funds have been raised for the project, the Foundation will transfer the funds to the City. At that point, the donations will be brought forward for Council approval. Mr. Whitaker noted that the Roscoes desired a donation agreement to be executed, which is why that particular donation was brought forward for Council approval. Mayor Hanel asked whether any of the donors were present in the audience. None of the donors were present in the audience. On a voice vote, Councilmember Sullivan's motion was unanimously approved. Mayor Hanel called for a round of applause to recognize the donors mentioned by Councilmember Sullivan.

Councilmember Cimmino moved for approval of Items 1M1 and 1M2, seconded by Councilmember Yakawich. On a voice vote, the motion was approved 10-0, with Councilmember Brown abstaining.

#### **REGULAR AGENDA:**

#### **2. PUBLIC HEARING AND RESOLUTION approving and adopting budget amendments for FY16. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

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

Councilmember Clark removed the \$75,000 budget amendment dealing with the MAAP Program and Resource Outreach Coordinators to be considered as a separate item.

Councilmember Cimmino clarified that the budget amendment dealing with the South Billings Urban Renewal Association (SBURA) was to fund office space and a consultant, and asked where the Association was currently operating. Councilmember Cimmino referenced the current contract with the Association providing for \$25,000 per quarter from the City. Councilmember Cimmino asked whether there was a need for a full time consultant. Ms. Volek stated that the South Tax Increment District has been using services from the Planning Department as well as from a part-time individual. Ms. Volek stated that she believed that the other Tax Increment Districts in the City use the services of a full time consultant. Pat Weber, Finance Director, explained that the South Tax Increment District Board requested a full time consultant to assist with developing the district. Councilmember Cimmino asked if there was additional information to support hiring a full time consultant. Ms. Volek consulted with Planning and Community Services Department Director Candi Millar, and noted that the individual currently working with the district was working out of his home. Establishing an office will allow for a meeting place for the SBURA Board. Ms. Volek stated that the Planning Department will still work with the full time consultant, but the work load will be delegated more to the consultant. The Planning Department has also been reimbursed for the services it has previously provided to the SBURA.

Councilmember Friedel asked what the other two Tax Increment Districts are doing as far as representatives. Ms. Volek stated that the Downtown District has a full time employee and the East District is currently between employees, but has previously had a full time employee. Councilmember Friedel asked whether the other districts have office space. Ms. Volek stated that the other districts do have office space.

Councilmember Clark asked who has been doing the work for the South District. Ms. Volek replied that Steve Zier has been working for the South District.

Mayor Hanel clarified that Councilmember Clark separated the budget amendment dealing with fund 0100-14110 (the MAAP program/Resource Outreach Coordinator (ROC) positions).

Ms. Volek asked whether Council would prefer a presentation the separated item, or if Council would prefer to ask questions. Mayor Hanel asked for a presentation on the ROC budget amendment. Ms. Volek stated that this budget amendment was brought forward as a result of an item that was previously approved by Council on December 21, 2015. The original staff recommendation was to pay \$25,000 as part of the salary of current downtown ROC Joel Simpson and to pay \$50,000 for a second ROC. Mr. Simpson is paid through Rimrock Foundation, and Ms. Volek recommended continuing the position on a contract basis with Rimrock Foundation. The recommendation for the second ROC was a result of a transiency issue and the need for additional services throughout the rest of the City. Ms. Volek also noted that Mr. Simpson was currently at capacity and an additional ROC would provide relief and additional services. Ms. Volek stated that the second ROC position could also be supported by the Police Department on an as-needed basis. Councilmember Clark asked how the current ROC position is funded. Ms. Volek stated that the position was

not previously supported by City funding. Councilmember Clark asked what would happen if the City did not contribute any funding to the position going forward. Ms. Volek stated that the position was currently being partially funded through Rimrock Foundation and the Downtown Association. Ms. Volek stated that if the City did not contribute the remainder of the funds for the position, Rimrock Foundation and the Downtown Association would need to determine if they would be contributing the remainder. Ms. Volek stated that the City receives a great benefit from this position. Councilmember Swanson asked Ms. Volek for her recommendation on the funding. Ms. Volek recommended providing funding for Mr. Simpson's position at this time, and stated that a second ROC would benefit the City as well. Ms. Volek did note that she would be comfortable waiting to fund a second ROC position in FY17 through a supplemental budget request, if that was what Council would prefer. Councilmember Sullivan asked when Mr. Simpson started in his position. Mr. Simpson, along with downtown Officer Matt Lennick, and Rimrock Foundation CEO Lenette Kosovich came forward to answer questions. Mr. Simpson stated that he started his position in March 2015, and the MAAP Program began in July 2015. Councilmember Sullivan asked to hear data about the program. Mr. Simpson stated that, treatment-wise, he has worked with 23 of the original 74 program participants on a clinical treatment program. Mr. Simpson stated that the MAAP program addresses substance abuse issues along with all areas of participants' lives. Of the 23 treatment participants, there is currently an active caseload of 16 participants. Four participants have either entered sober housing or their own housing. Three participants are currently working to be reunited with their families and children. Mr. Simpson stated that participants have also been connected to additional agencies to help with long-term solutions. Five participants have gone through court to resolve outside warrant issues. Nine participants were referred to programs that offer peer mentoring services. Mr. Simpson stated that October 2015 saw the first graduate of the MAAP program, and that individual currently is almost finished with the program's after care process. Another individual will be graduating next week, and a third individual will graduate in March 2016. Ms. Kosovich mentioned that there are additional costs of operating the program, but that Rimrock Foundation was only requesting assistance with the salaries of the ROCs. Councilmember Sullivan stated that he was concerned with the law of diminishing returns and the effects of hiring a second ROC. Officer Lennick stated that he has been an officer for 11 years. Officer Lennick stated that when he began working for the City in 2013, he attempted to arrest his way through this issue. In one year, 618 open container citations were issued, and 474 people were arrested. Officer Lennick stated that making arrests was not helping to solve the problem, and costs associated with making arrests were increasing. Officer Lennick discussed statistics from the original 74 participants. Officer Lennick stated that, of the 74 people, five had passed away. Mr. Simpson has remained in contact with 34 people from that group. Of the 34 people, there are 13 who are no longer dealt with; they have not received any additional citations. Of the remaining 35 people who have not been worked with in the outreach program, three are serving long term incarcerations and 20 are no longer dealt with and have not had any other dealings with the law. Only 12 people are still dealt with on a regular basis. Councilmember Sullivan asked whether the crime rate has dropped downtown. Officer Lennick stated that January-November 2014, alcohol-related calls for service within the downtown Business Improvement Area

totaled 1,046, and there were 594 trespasses. 618 open container citations were issued. In January-November 2015, alcohol-related calls for services dropped to 685, and there were 471 trespasses. 305 open container citations were issued. In 2014, City-wide alcohol-related calls for service totaled 1,771. There were 1,380 trespasses and 1,237 open container citations. In 2015, alcohol-related calls for service dropped to 1,379, and there were 1,239 trespasses. There were 737 open container citations. Councilmember Friedel asked where participants go for treatment through the MAAP program. Officer Lennick stated that there are different options such as The Mission, the Community Crisis Center, The HUB, and St. Vincent De Paul. Outpatient treatment sessions with Mr. Simpson are held at St. Vincent De Paul. After treatment, many participants are homeless, but some are placed into sober living facilities and others return to their own homes. Councilmember Friedel asked for recidivism rates. Officer Lennick stated that since July 1, 2015, there have been 66 referrals for the MAAP program through court, and 50 individuals became clients and participated in the program. Ms. Kosovich stated that the MAAP program provides a finite end. Participants are given the option to enter treatment at every step along the way. Ms. Volek reminded Council that staff has never represented that the issue of serial inebriation would be completely eliminated from the City. Ms. Volek stated that the program is attempting to lessen the impact of the issue. Ms. Volek stated that numbers and data will continue to be created regarding the program and will be brought back to Council. Mr. Simpson explained that the treatment and recovery from addiction process will sometimes lead to relapses. Mr. Simpson stated that when relapses occur, he works with participants to try to get them back on track. Councilmember Friedel asked Mr. Simpson how participants are held accountable and what consequences are faced if the process are not taken seriously. Mr. Simpson stated that the program offers an alternative to jail, which is an incentive for many participants. If a participant agrees to participate in group meetings and does not attend after one week, the court will issue a revocation and warrant for arrest is issued. If a participant relapses, Mr. Simpson will work with them to find help services. If they do not accept services, a revocation and warrant will also be issued. Officer Lennick stated that sentencing guidelines for this program were created within the court. The penalties for each additional offense become more severe.

Councilmember Brewster asked for Ms. Kosovich to explain Rimrock Foundation's benefit from the MAAP program. Ms. Kosovich stated that Rimrock Foundation is a non-profit entity and walked willingly into this program to help with issues in the community. Program participants do not pay money to Rimrock Foundation. Councilmember Yakawich asked what a reasonable expectation would be for Rimrock Foundation to provide reports to Council regarding the MAAP program. Ms. Kosovich stated that Rimrock Foundation is data heavy and is required to keep very detailed reporting. Ms. Kosovich stated that quarterly reports would make the most sense so that trends may be determined and analyzed. Ms. Volek noted that a MAAP program update could be added into Council's quarterly reports that are delivered at work sessions.

Councilmember Yakawich stated that a simple report would be beneficial so that Council could know whether the program is experiencing success. Councilmember Brown asked whether the participants who are no longer dealt with by the program or law enforcement have moved to areas other than downtown. Officer Lennick replied that the numbers presented included law enforcement encounters across the entire City.

Councilmember Brown asked if there were any new numbers since the original 74 participant numbers. Officer Lennick stated that a new set of numbers had not been run yet. Councilmember Brown stated that he was concerned with participants migrating to other areas of the City and asked if it would be possible for Mr. Simpson to provide services throughout the City for at least the original 74 participants. Ms. Volek stated that a second ROC would be needed to expand beyond the downtown area. Ms. Volek reminded Council that Officers Lennick and Nichols (Lennick's partner) are paid through the downtown association and that they are not paid through the City. Councilmember Brown asked whether the Police Department would be able to support a second ROC. Ms. Volek stated that it would be difficult to provide the level of support provided by Officers Lennick and Nichols elsewhere in the City. Councilmember Cimmino asked for Ms. Volek to explain how Rimrock Foundation was selected to provide services for the MAAP program. Councilmember Cimmino also noted that the City would be hiring additional police officers who may be able to direct attention toward the MAAP program. Ms. Volek stated that there may be opportunities for new officers to work with the MAAP program. Ms. Volek stated that Rimrock Foundation stepped forward and offered services. Ms. Volek and Ms. Kosovich reminded Council that Rimrock Foundation is paying for the services it is rendering. Councilmember Clark asked how many new program participants have been added since the original 74 participants. Officer Lennick stated that the program is a revolving door and a new number has not been determined. Officer Lennick stated that a model for dealing with participants has now been created and will be beneficial moving forward. Officer Lennick stated that he did not have a number for people on the street, but that he is responding to far fewer calls since the program has been implemented. Councilmember Clark asked how many participants enter inpatient care. Mr. Simpson stated that six participants have entered inpatient care. Councilmember Clark asked who pays for treatment for participants at Rimrock Foundation. Ms. Kosovich stated that many of the grants that Rimrock receives come from the State. Ms. Kosovich also noted that she hopes to see assistance for participants from the HELP Act (a new Medicaid expansion).

The public hearing was opened.

- **Steve Zier, PO Box 21462, Billings, MT** spoke in regards to the budget amendment dealing with the SBURA. Mr. Zier stated that the funds would go toward providing an office space within the district. An office would allow for board meetings and other meetings to help develop the district. Mr. Zier stated that the office would allow the board to better serve the district and to increase development. The office would allow for an actual market and retail presence within the district. Mr. Zier discussed progress of projects within the district. Councilmember Cimmino asked Mr. Zier to clarify his earlier statement regarding turnover in the Planning Department. Ms. Volek stated that Ms. Millar has announced her intent to retire around July 1, 2016. Ms. Volek stated that Ms. Millar has not submitted her official resignation, but has stated her intent. Councilmember Cimmino stated that other departments have continued to operate with turnover at the department head level. Mr. Zier stated that the full time consultant would be able to alleviate work that has been traditionally delegated to the Planning Department. Councilmember Yakawich

asked if this proposal was approved by the SBURA board. Mr. Zier stated that the board voted to approve the proposal and that it has been in the works for over six months. Councilmember Clark asked if the work in the district will continue to be primarily infrastructure projects. Mr. Zier stated that infrastructure projects are significant in the district, and the board has done its best to adhere to the needs set forth in the South Billings Master Plan.

- **Dyani Bingham, 335 Siewert Lane, Billings, MT** expressed her commitment and support for the ROC position within the MAAP program. Ms. Bingham stated that she is the Project Director for the Transitional Recovery and Culture Project associated with the Rocky Mountain Tribal Leaders Council. Ms. Bingham stated that her program assists the MAAP project by facilitating peer to peer recovery support. The program funds four Native American peer mentors who have been through recovery themselves. Ms. Bingham noted that recovery takes time, but is important to the community.
- **Connie Wardell, PO Box 21432, Billings, MT** stated that the City has spent \$8,400,000 per year over a period of five years trying to deal with the serial inebriation issue. Ms. Wardell stated that she was initially skeptical about programs like the MAAP program, but that she "has probably never been more wrong" in her life about a community project. Ms. Wardell stated that the City was ahead of its game at the offset of the project. Ms. Wardell stated that the investment of \$75,000 for the ROC positions makes economic sense and is quite an investment. Ms. Wardell stated that the collaboration for this program is incredible. Ms. Wardell said the program is working and that she wants to see it continue working.
- **Clark Martin, 2606 Montana Avenue, Billings, MT** stated that he moved to Billings three years ago. Mr. Martin stated that he is noticing improvements downtown and that he is excited about Billings. Mr. Martin thanked Council, Officer Lennick, and Mr. Simpson for their work. Ms. Volek noted that Mr. Martin and his family have been very helpful with this program. Mr. Martin and his family sponsored a fundraising event for the program.
- **Lisa Harmon, Executive Director of the Downtown Billings Alliance**, stated that she represents 250 business members, and 500 property owners in the Business Improvement District. Ms. Harmon stated that much data has been collected since the beginning of the Community Innovations program. Numbers of open container citations have been reduced. Ms. Harmon noted that February 17 is the next Community Innovations meeting, and invited Council to read information about the program and attend the meeting. Ms. Harmon stated that the Community Innovations project is being shared with other communities. Ms. Harmon stated that the downtown community has been working for two years to solve the issues downtown. Mayor Hanel asked Ms. Harmon to speak about a recent award given to the Community Innovations program. Ms. Harmon stated that the program earned the International Downtown Association's Pinnacle Award. Ms. Harmon stated that the program was also presented during an International Downtown Association meeting. Ms. Harmon stated that the program has led to a decrease of 46% in open container citations downtown, and a 41% decrease in open container citations City-wide.

- **Travis Diamond, 3024 Kincaid Road, Billings, MT, Billings Downtown Alliance Board Member**, stated that he supported the MAAP program. Mr. Diamond stated that the program is working, and it is just asking for \$75,000 to help it continue to succeed.
- **Kevin Nelson, 4235 Bruce Avenue, Billings, MT** stated that the Solid Waste Department does a great job, and wondered why the City needs a Solid Waste route management system. Mr. Nelson asked why the South Billings Boulevard TIF District needs \$150,000 when a realtor would be able to advertise and sell properties in the district. Mr. Nelson asked what a consultant would do for 32 hours a week and stated that Public Works handles the infrastructure projects, and the Planning Department is also involved. Mr. Nelson stated that there should be other locations available for a one hour per month meeting. Mr. Nelson stated that this was a waste of \$150,000. Mr. Nelson stated that the City just completed paying off a \$4.5 million SID for Cabela's and will pay \$330,000 for Solid Waste's route management system, but the Council and public in attendance was concerned with \$25,000 for the MAAP program. Mr. Mumford thanked Mr. Nelson for his compliments about Solid Waste. Mr. Mumford stated that the Solid Waste system will improve services significantly. Mr. Mumford stated that Solid Waste drivers are generally efficient, however, there are many relief drivers who may not know all of the routes in the City. Mr. Mumford stated that the system will also allow Solid Waste to monitor whether trash cans have been placed out, and will allow services to be better tracked. Route planning will also be improved, which is important as the City continues to grow. Mayor Hanel asked whether the system will allow tracking of the actual Solid Waste vehicles. Mr. Mumford stated that the system will track vehicles and will also track actual pickups of trash cans. Mayor Hanel asked how many pickups are made annually in the City. Mr. Mumford stated that there are 39,000 customers and the 18 residential trucks total 1,100 cans picked up per truck per day. Mayor Hanel noted that there have been other instances within Public Works where software has been used to improve services, such as a system that allows traffic lights to be monitored from a computer rather than physically travelling to the light. Mr. Mumford stated that Public Works is testing a program for snow plows which will provide tracking and monitoring the blade and whether the truck was dispensing sand at a given time. Mayor Hanel asked Mr. Mumford whether the cost of the proposed Solid Waste system obtained through a competitive process. Mr. Mumford stated that Solid Waste conducted a Request for Proposals process and selected the proposed system based on its cost and ability to provide the desired service. Councilmember Friedel asked for details regarding the return on investment for this system. Mr. Mumford stated that the return on investment includes improving customer service and improving efficiency. Mr. Mumford stated that trucks will be equipped with a laptop which provides route guidance for optimal efficiency. The system will also provide alerts if a particular stop is missed and will provide locations of other vehicles which may be nearby to assist with additional pickups. Councilmember Friedel asked for the amount of time needed to recover the costs of the system. Mr. Mumford stated that a cost benefit analysis was not conducted for the system. Councilmember Brown asked what the \$330,000 cost includes. Mr. Mumford stated that the cost includes full service, software, hardware for the vehicles, and in-person training on the system from the company.

Councilmember Brown asked how many laptops the \$330,000 cost would include. Mr. Mumford stated that laptops will be installed in residential and commercial trucks, and will be models with increased durability. Councilmember Clark asked for the ongoing cost of the system. Mr. Mumford stated that the ongoing cost should be minimal and the majority of the cost is the upfront \$330,000. Mr. Mumford stated that he would be able to obtain the exact amount of the ongoing cost.

- **Revered Mike Mulberry, 1241 Avenue F, Billings, MT, Senior Pastor at Billings First Church**, stated that generally, five homeless people attend church worship services on Sunday mornings. Rev. Mulberry stated that the MAAP program is working. Rev. Mulberry stated that he assists members of the community with recovery from addiction and returning to their lives. Rev. Mulberry stated that the MAAP program provides an opportunity to help people in the community.
- **MarCee Neary, PO Box 20282, Billings, MT, Program Director for the Community Crisis Center**, stated that the people on the streets do not just end up there overnight; they end up there after dealing with long-term issues. The MAAP program provides an opportunity for them to get back on track. Ms. Neary stated that the Crisis Center is relieved to have the MAAP program in place, as it is reducing the pressure and the volume of people going into the Crisis Center. Ms. Neary stated that the investment for the MAAP program is relatively small, and the program makes a big difference over time. Ms. Neary stated that Mr. Simpson's position is critical to the continued success of the program, and that a second ROC would be extremely beneficial.
- **Roy Pack, 3310 South 2<sup>nd</sup> Avenue, Billings, MT** participates with special projects for the Rocky Mountain Tribal Leaders Council, and stated that the City has made tremendous progress over the years. Mr. Pack will be meeting with leaders in Washington, D.C., and stated that he will discuss the program in that meeting. Mr. Pack stated that he will be discussing the program with other tribal councils across the country.

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

Councilmember Cromley moved for approval of the separated budget amendment for fund 0100-14110, seconded by Councilmember Swanson. Mayor Hanel stated that he supported Councilmember Cromley's motion for many reasons. Mayor Hanel stated that he respects the fact that there have been changes to Council. Mayor Hanel stated that the MAAP program is a proactive program which has been efficient and successful. Mayor Hanel stated that the cost savings speak for themselves. Councilmember Sullivan stated that he was amazed at the support conveyed by the Downtown Alliance. Councilmember Sullivan stated that he supported continuing Mr. Simpson's position, but that he was concerned with adding a second ROC position. Councilmember Sullivan stated that he would be voting in opposition to Councilmember Cromley's motion. Councilmember Brown stated that he has always supported the MAAP program, and will continue to do so. Councilmember Brown stated that \$75,000 to continue funding the first ROC position and to add a second ROC position is a good investment, especially considering the fact that Council has routinely given \$50,000 and \$25,000 contributions for other programs. Councilmember Brown stated that not adding

a second ROC would simply push transients to other parts of the City. Councilmember Brown encouraged Council to support the program and stated that the program is demonstrating results. Councilmember McFadden stated that he agreed with Councilmember Brown, and stated that the program was still in the positive return phase rather than the diminishing return phase. Councilmember McFadden stated that he supported Councilmember Cromley's motion. Councilmember Yakawich stated that he recognizes the crisis facing the community, and that he supported Councilmember Cromley's motion with the specific hope and request that the program is held accountable by delivering quarterly reports to Council. Councilmember Clark stated that he supported contributing \$25,000 for Mr. Simpson's position, but that he would like to consider the \$50,000 contribution during the FY17 budget discussions. Councilmember Clark stated that the City does not need to contribute an additional \$50,000 to the program. Councilmember Swanson stated that he knows of several people who have faced the struggles of addiction, and that some have completed similar life-saving programs in other areas. Councilmember Swanson stated that he strongly supported Councilmember Cromley's motion. Councilmember Swanson stated that he has never seen such widespread support for a program across the City. Councilmember Swanson thanked those who provided testimony regarding the program. Councilmember Brewster stated that he would like to see more data and details about the program, and the next budget cycle would be an appropriate time to consider contributing the additional \$50,000. Councilmember Friedel stated that he supports programs that work, but that he agreed with Councilmembers Clark, Sullivan, and Brewster in wanting to see more data about this program. Councilmember Friedel stated that the program seems to be doing well, but that he wanted to see more numbers over a longer period of time. Councilmember Friedel stated that he supported the \$25,000 contribution, but would prefer to consider the \$50,000 contribution at a later time. Councilmember Clark made an amended motion to approve a \$25,000 contribution rather than a \$75,000 contribution, and to consider the additional \$50,000 contribution during the FY17 budget process, seconded by Councilmember Brewster. Councilmember Cromley stated that he opposed the amended motion, and that he supported his original motion. Councilmember Cromley stated that, during his experience as a Councilmember, the Community Innovations program has been one of the most astounding programs for the community. The community has come together with little funding from the City. Councilmember Cromley stated that one year's data shows that the numbers of citations and issues are decreasing, and that \$50,000 for a second ROC will continue that trend. Councilmember Cromley stated that a second ROC will help alleviate issues across the City, rather than just downtown. Councilmember Brewster stated that he appreciated Councilmember Cromley's comments, but asked Council to consider the additional funding during the FY17 budget process. Councilmember Brown asked if a second ROC would assist the current ROC. Ms. Volek stated that she has had conversations with Police Chief Rich St. John about the issue and role of a second ROC. Councilmember Brown asked if postponing the \$50,000 contribution would allow the City to develop a plan for police officers to assist a second ROC. Ms. Volek stated that she is confident that the Police Department would be able to handle assisting a second ROC. Ms. Volek noted that all officers have been instructed on the procedures of the MAAP program. Councilmember Sullivan stated that he wants the MAAP program

to be successful and to be a benchmark across the country, but that if the program grows too quickly, then it may end up as a failure. Councilmember Clark asked if the Police Department would be able to better assist a second ROC after new officers are hired. Chief St. John stated that once the Department is fully staffed, there will be more flexibility to assign an officer specifically to work with the second ROC. Chief St. John stated that the current staffing situation would allow for an on-call situation where an officer would be able to assist the second ROC on an as-needed basis. Councilmember Clark asked if there are many arrests and confrontations outside of the downtown area. Chief St. John stated that there are many more calls and incidents downtown than in other areas of the City. Chief St. John stated that certain issues such as aggressive offenses and assaults are not as common in areas outside of downtown. Mayor Hanel stated that he would vote in opposition of the amended motion, and noted that a second ROC is needed. On a roll call vote, Councilmember Clark's amended motion failed 4-7, with Councilmembers Brewster, Friedel, Sullivan, and Clark voting in favor, and Councilmembers Cromley, Yakawich, Cimmino, McFadden, Swanson, Brown, and Mayor Hanel voting in opposition. Councilmember Cimmino stated that she supports the program wholeheartedly, and thanked everyone who participated in the public hearing. On a roll call vote, Councilmember Cromley's original motion was approved 7-4, with Councilmembers Cromley, Yakawich, Cimmino, McFadden, Swanson, Brown, and Mayor Hanel voting in favor, and Councilmembers Brewster, Friedel, Sullivan, and Clark voting in opposition.

Councilmember Yakawich moved for approval of Item 2 with the exception of fund 0100-14110, seconded by Councilmember Cromley. Councilmember Cimmino asked if the motion was to approve the remaining budget amendments under Item 2. Mayor Hanel stated that it was. On a voice vote, the motion was unanimously approved.

Mayor Hanel Called for a recess at 9:16 pm.

The meeting was called back to order at 9:36 pm.

3. **PUBLIC HEARING AND RESOLUTION creating SILMD 321, Grand Avenue between 30th Street West and Shiloh Road (street lights). Staff will make a recommendation at the January 25 meeting. (Action: approval or disapproval of staff recommendation.)**

Ms. Volek stated that staff did not receive any written protests, and recommended approval of Item 3. Ms. Volek noted that staff did not have a presentation, but was available for questions.

The public hearing was opened.

- **Kevin Nelson, 4235 Bruce Avenue, Billings, MT** stated that this SILMD calculated assessments based on lineal feet of a lot. Mr. Nelson stated that the Orchard Lane SILMD assessments will be calculated based on zoning. Residential lots will be calculated based on a maximum depth of 100 feet and commercial lots will be

calculated on a maximum depth of 200 feet. Mr. Nelson asked whether there was a policy for determining SILMD assessment calculation methods because he felt that the numbers were arbitrary.

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

Mayor Hanel asked for Mr. Mumford to respond to Mr. Nelson's comments. Ms. Volek noted that she believed the depths mentioned in the staff report are maximum depths rather than arbitrary numbers. Mr. Mumford stated that street light district assessment calculation methods are regulated by State statute. Mr. Mumford stated that the Public Works Department examines methods and determines which method will be most consistent and equitable for a given SILMD. Mr. Mumford stated that property types and shapes will vary, and those variations are considered. Mr. Mumford stated that there is not one specific method that is used for all SILMDs, but rather all methods are considered and an analysis is conducted to determine which method would be most equitable. Mayor Hanel asked Mr. Mumford to further clarify the decisions for assessments on Orchard Lane. Mr. Mumford stated that some lots were extremely deep, which is why maximum depths were set. Councilmember Yakawich asked how many valid written protests were received for SILMD 321 and how many notices were mailed regarding the SILMD creation. Mr. Mumford stated that zero protests were received, and that a notice was mailed to every property owner who would be affected by the SILMD creation. Mr. Mumford stated that Public Works did have conversations with several property owners as well. Councilmember Clark clarified that Grand Avenue is primarily commercial properties. Mr. Mumford stated that that was correct, and added that the properties included in this SILMD were either commercial or would be developed into commercial properties. Councilmember Clark asked for the distance of the Orchard Lane SILMD. Mr. Mumford stated that the SILMD will include the entire length of the street.

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

**4. PUBLIC HEARING AND SPECIAL REVIEW #935: a special review to locate a beer and wine license with gaming at a proposed Town Pump Casino in a Highway Commercial (HC) zone on a 2.11 acre parcel of land described as: Lots 1, 2, 3A, 4A, 4B, and the north 65 feet of Lot 5 Thomas Subdivision and located at 450 Main Street. AT Architecture, agent. Zoning Commission recommends conditional approval and adoption of the findings of the 3 criteria. (Action: approval or disapproval of Zoning Commission recommendation.)**

Dave Green, Planner, began a PowerPoint presentation for Item 4, giving an overview and showing plans and images of the property. Mr. Green noted that, if approved, the applicant would be required to work with the City and with the Montana Department of Transportation (MDT) to conduct traffic studies during the development process. Mr. Green discussed the ten conditions to approval: 1) the special review is

limited to Lots 1, 2, 3A, 4A, 4B, and the north 65 feet of Lot 5, Thomas Subdivision, generally located at 430/450 Main Street; 2) the special review approval is for the location of a beer and wine license with gaming and no other use is intended or implied; 3) any expansion of the interior space of the casino of more than 10% will require an additional special review approval; 4) all exterior lighting, including security lighting and fuel canopy lighting, shall have full cutoff shields so no part of the fixture or lens projects below the cutoff shield. The maximum height of any light pole in the outdoor areas shall be 20 feet above grade; 5) there shall be no outdoor public address system or outside announcement system, whether permanent or temporary, of any kind; 6) no construction or demolition activity will occur before 7 am or after 8 pm daily; 7) new parking lot construction will meet the Highway Commercial zoning requirements for landscaping. In addition, there will be one street tree planted every 40 feet in the proposed landscape area along both frontages, Lake Elmo, and Main Street. Street trees are trees that can have their lowest branches at eight feet, without disfiguring the tree, within four years. New trees shall not be any tree with the genus of *Populus* or any of its subspecies, including a variety of aspens. Also prohibited are *Salix* (willows), *Acer negundo* (Box Elder), or *Ulmus* (Elms). Small ornamental trees do not qualify as street trees. All installed landscape will be continuously maintained and replaced as necessary by the owner as outlined in Section 27-1110 BMCC, Installation and Maintenance; 8) any centralized solid waste storage shall be enclosed by a wall on three sides and a closing gate or gates. The wall and gates for the solid waste storage shall be similar or complimentary in color to the new building and shall be sight-obscuring. The wall and gates shall be tall enough that no part of the interior dumpster(s) are visible from the outside; 9) 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, leaseholders, 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 Clark asked if the convenience store would still be built if the beer and wine license with gaming was denied by Council. Mr. Green stated that the store could still be built, as the property is properly zoned for that type of development. Councilmember Yakawich stated that he received phone calls from a Mr. Dunham and a Mr. Friedel wanting to discuss this special review. Councilmember Yakawich stated that he was unable to engage in a conversation with them, but referred them to the City website and encouraged them to attend the meeting where the special review would be discussed. Councilmember Yakawich stated that he was concerned with traffic and asked whether a traffic impact study had been conducted for the proposed development. Mr. Green stated that a traffic impact study would not be conducted until after the special review was approved. Mr. Green stated that special review approval is generally sought before conducting a traffic study. Councilmember Yakawich asked what would happen with the development if a traffic impact study showed that there was too much traffic. Mr. Green stated that the property owner would need to make a decision with how to proceed with the project. Mr. Green stated that the engineer for the project would likely be able to provide additional information on that topic.

Councilmember Cimmino asked if there was a preliminary neighborhood meeting regarding this application. Mr. Green stated that a neighborhood meeting is not required for special reviews, but that all people located within 300 feet of the property were notified of the public hearing. Mr. Green stated that only zone changes require neighborhood meetings, not special reviews.

Ms. Volek noted that the Zoning Commission forwarded a recommendation of approval on a 3-1 vote. Ms. Volek stated that she appreciated Councilmember Yakawich's disclosures of speaking with citizens and informing them to attend the meeting instead of engaging in ex parte communications. Ms. Volek reminded Council that it is important for both sides to make a presentation regarding a land use issue. Ms. Volek stated that Councilmembers are permitted to visit property sites, but that engaging in ex parte communications can lead to an adverse legal effect. Ms. Volek stated that if any Councilmembers feel that they engaged in conversations that may impair their ability to vote on this issue fairly, staff recommends that those Councilmembers recuse themselves from the discussion and the vote on the issue. City Attorney Brent Brooks referenced a memo that was emailed to the Mayor and Council. The memo discussed avoiding private ex parte conversations dealing with land use issues. Mr. Brooks stated that if there are any private or external substantive discussions on the merits of a land use issue (outside of an advertised public meeting), he would recommend erring on the side of caution and abstaining from the vote on that item. Councilmember Clark asked if a Councilmember was permitted to attend neighborhood meetings and simply observe the proceedings. Mr. Brooks stated that if a Councilmember has private communications or discussions on the merits of a land use issue to come before Council, then he recommends abstaining from the vote. Mr. Brooks stated that there are other ways for citizens to communicate with Council: emailing all Councilmembers as a group, sending correspondence to all Councilmembers as a group, or Councilmembers may ask or encourage citizens to attend Council meetings to offer comments. Mr. Brooks stated that if there are discussions away from a Council meeting on the merits of a land use issue, then Councilmembers need to seriously consider recusing themselves from participation in the discussion and vote on that issue. Mr. Brooks stated that Zoning Commission memos and staff reports will also provide information on issues. Mr. Brooks stated that Montana law seeks to protect the right of the public to view and participate in public meetings. Councilmember Friedel clarified that these regulations deal specifically with ex parte communication on land use issues. Mr. Brooks stated that was correct.

Councilmember Brown clarified that Council was to vote on the merits of whether this project was eligible for approval of a beer and wine license with gaming. Mr. Brooks stated that Council is not deciding whether the company may exercise use of its beer and wine license, but whether this location is appropriate for the proposed business and its beer and wine license. Mr. Brooks stated that Council is to determine whether the proposed use would cause impacts to the area, and if so, whether the conditions imposed would mitigate those impacts. Councilmember Brown asked if Council could add a condition relating to traffic at this location. Mr. Brooks stated that if Council felt that a more exact condition regarding traffic should be imposed, the issue could be

discussed with Mr. Green and the engineers of the project. Mr. Brooks reminded Council that regulations dealing with traffic will be imposed on the project by both the City and the State. Ms. Volek noted that the City does not issue liquor licenses; the State of Montana issues liquor licenses. Ms. Volek also noted that the City cannot set any conditions relating to Main Street. The State is the appropriate authority to set conditions on Main Street. The City is, however, able to impose conditions on Lake Elmo Drive. Councilmember Cromley asked whether the petitioner was required to obtain permission from MDT when determining the location of driveways on the property. Mr. Mumford stated that the petitioner would only need MDT permission if they were going to move the driveways from their current locations.

The public hearing was opened.

- **Alex Tommerup, AT Architecture, agent for the applicant**, stated that he lives in The Heights and drives by this location frequently. Councilmember Yakawich asked if the site plan took into consideration the impact it will have on the neighborhood. Mr. Tommerup stated that traffic impacts were considered, but that the traffic from the casino will be spread throughout the day. Councilmember Brewster asked whether the casino will generate more traffic than the gas station and convenience store. Mr. Tommerup stated that the traffic in the area is already existing, and the gas station will not create additional traffic, but will bring traffic into that particular lot. Councilmember Brewster stated that this location would pose a difficulty in exiting during peak commuting hours. Councilmember Cimmino asked why there were no arrows on the site plan drawing for Lake Elmo Drive. Mr. Tommerup stated that there is a turning lane on Lake Elmo which would allow for turning into the proposed development. Mr. Mumford stated that there is an existing turn pocket on Main Street which allows for entrance into the proposed development. Councilmember Cimmino asked whether access is required off of Lake Elmo Drive. Mr. Mumford stated that access is not required, but that decision would be made after a traffic impact study. Councilmember Yakawich asked for the logistics and process for conducting a traffic study, stating that it does not make sense to approve the special review prior to a traffic study being conducted. Mr. Mumford stated that Council was to determine the placement of a beer and wine license with gaming. Mr. Mumford stated that the traffic impact study will reveal steps to mitigate traffic issues. Mr. Mumford stated that a traffic impact study will definitely be conducted and will be reviewed by the City and the State. Ms. Volek clarified that there is a traffic light at the intersection of Lake Elmo Drive and Main Street. Councilmember Cromley asked who pays for the traffic impact study. Mr. Mumford stated that the developer pays for the traffic impact study.
- **Neil Friedel, 588 Killarney Street, Billings, MT** stated that he believed Mr. Mumford was ill-informed and that Lake Elmo and Main Street is the most dangerous intersection in Montana. Mr. Friedel stated that residents will be forced to deal with diesel smells, noise, and traffic. Mr. Friedel stated that Council should consider the placement of this proposed development. Mr. Friedel asked for Council to table the decision so that a petition opposing the development could be circulated and then submitted.

- **Dennis Ulvestad, 3040 Central Avenue, Billings, MT** stated that he was testifying as a concerned citizen rather than a Zoning Commission member. Mr. Ulvestad stated that he has watched the traffic during peak hours at this location. Mr. Ulvestad urged Council to examine the issue more closely, and to deny Special Review 935.
- **Scott Aspenlieder, Performance Engineering, engineer for the applicant**, stated that Mr. Mumford was not ill-informed. Mr. Aspenlieder stated that traffic volumes are high in the area and that issue will be addressed as development proceeds. Mr. Aspenlieder stated that this is a beer, wine, and gaming application. Mr. Aspenlieder noted that the City is extremely diligent in reviewing developments and traffic impacts. The next steps for this development will be to work with the Engineering Department during a site review, including a traffic analysis and traffic study. MDT is also extremely diligent in reviewing traffic impacts, and safeguards have been put into place. All traffic concerns will be considered and reviewed. Mr. Aspenlieder stated that it is difficult to ask an applicant to spend \$20,000-\$40,000 on a traffic study before Council has approved a plan; Mr. Aspenlieder stated that the proper steps are in place to ensure that developments proceed in the safest manner. Councilmember Brewster stated that Mr. Aspenlieder needed to understand that there are many concerned citizens who continuously fight traffic in this area. Councilmember Brewster stated that other businesses down the road pose traffic difficulties as well. Councilmember Brewster asked how the developer would address the grade of the driveway entering onto Lake Elmo Drive. Mr. Aspenlieder stated that he was not trying to minimize the concerns of the citizens, but that he was asking for the ability to continue the steps of the development process and to continue working with City staff on the issues discussed. Councilmember Cimmino asked Mr. Aspenlieder if he is a traffic engineer. Mr. Aspenlieder stated that he is a civil engineer, which encompasses traffic. Councilmember Cimmino stated that there are around 7,000 car trips per day on Lake Elmo Drive, and around 48,000 car trips per day on Main Street. Councilmember Cimmino stated that part of the special review process is to mitigate impacts, and that traffic is the most significant issue with this particular development. Mr. Aspenlieder stated that he understands there are high traffic volumes in this area. Mr. Aspenlieder reiterated that his client could decide to move forward with building a gas station without a beer, wine, and gaming license, and that gas station approval would not come before Council. Councilmember Cromley asked for an overall cost estimate for demolition and construction. Mr. Aspenlieder stated that he did not know the costs, and would also not be able to disclose them publicly. Councilmember Cromley asked if any feasibility studies were conducted for this proposed project in this location. Mr. Aspenlieder stated that he did not personally know, and would also not be able to disclose that information publicly. Mr. Aspenlieder reiterated that a traffic study will be conducted as the project proceeds. Councilmember Yakawich stated that the Zoning Commission minutes state that the intersection was described as dangerous. Councilmember Yakawich stated that Council is essentially making a decision based on information on four pieces of paper. Councilmember Yakawich asked if it would be possible to delay a decision on this item for 30 days so that a traffic impact study could be conducted. Mr. Aspenlieder stated that his client came to the meeting this evening hoping to move onto the next phase of development. Mr. Aspenlieder stated

that it was the prerogative of Council if it wished to implement the conditions mentioned by Councilmember Yakawich. Mayor Hanel asked if Mr. Aspenlieder was familiar with how long MDT traffic impact studies typically take. Mr. Aspenlieder stated with absolute certainty that 30 days is insufficient for MDT to conduct a traffic impact study. Councilmember Swanson asked if the project would move forward if the special review request was denied. Mr. Aspenlieder stated that if the special review request was denied, his client could still move forward with the gas station, and that project would not come before Council, as it would not require a special review. Councilmember Cimmino asked Mr. Aspenlieder if he believed Mr. Tommerup's site plan drawing left the arrows off of the Lake Elmo driveways by accident. Mr. Aspenlieder stated that he could not speak for Mr. Tommerup. Councilmember Cimmino asked if the driveways on Lake Elmo Drive could be closed off. Mr. Aspenlieder stated that the site plan would not function without the driveways on Lake Elmo Drive. Councilmember Clark asked what Council could use to deny this special review. Mr. Brooks stated that the project is an allowed use for this property, but that Council could set conditions for that allowed use. If there were objective facts that show that a beer and wine license at this location could not be mitigated by conditions, then Council could deny the application; however, Mr. Brooks stated that he did not see any such facts in the staff report. Mr. Brooks reminded Council that it is not authorized to permit or deny an actual liquor license; that is the job of the State. Mr. Brooks stated that Council could impose a condition stating that a traffic impact study must be conducted, and that the findings of the study must be followed; however, the conditions must not delay the progression of the development. Councilmember Brewster clarified that a karate school would not be considered a school for the purposes of disapproving the special review. Councilmember Cromley clarified that if Council approved the special review, it would do so based on finding that all three criteria for special review had been met. Councilmember Cromley asked if Council could deny the special review based on a determination that the proposed use was not compatible with surrounding land uses. Mr. Brooks stated that, in order for Council to make such a determination, objective evidence would need to be cited from the staff report as the basis for the decision. Mr. Brooks stated that Council would also be determining that there were no reasonable conditions to impose that would mitigate the predicted impacts of the proposed business. Mr. Brooks stated that if Council voted to deny the special review request, it must do so based on objective facts showing that the three criteria had not been met. Mayor Hanel asked Mr. Mumford if the intersection of Lake Elmo Drive and Main Street is the most dangerous intersection in the State. Mr. Mumford stated that accident rates are calculated based upon numbers of accidents and volumes of vehicles. Mr. Mumford stated that the Lake Elmo Drive and Main Street intersection is not the most dangerous intersection in the state. Mr. Mumford stated that the accident rate is somewhat low, given the high volume of vehicles on the road. Councilmember McFadden stated that there were gas stations, liquor stores, and casinos along Main Street near the proposed development. Councilmember McFadden noted that this development would not increase or add additional traffic on Main Street, but that existing traffic could simply choose to enter this business rather than other businesses. Mr. Mumford stated that the traffic to this location

would still be pass-by traffic. Mr. Mumford noted that there will be negative impacts to the neighborhood, but that transitioning from a low-use business to a higher use business will often lead to negative impacts. Mr. Mumford stated that the Public Works Department would work to ensure that the negative impacts are kept as minimal as possible. Councilmember Swanson stated that he was concerned with the entrances and exits for the proposed development, and asked if Council would be able to approve the design of the entrances and exits. Mr. Mumford stated that the Public Works staff will work with the developer on placement of the driveways, and that he was concerned with non-engineers making engineering decisions; placement and design of the driveways are set by codes and are managed by engineers. Ms. Volek and Mr. Mumford reminded Council that MDT controls access points along Main Street, and that the City does not exercise any control over access points on that road. Councilmember Sullivan clarified that Council was to either approve or deny the location of a beer and wine license with gaming at this proposed development, based on the three criteria. Councilmember Sullivan asked whether revising the City Zoning Code would prevent issues such as this from occurring in the future. Ms. Volek stated that revising the City Zoning Code would be a process lasting a minimum of 70 days. Mr. Brooks noted that the staff report for this item stated that the City had previously approved several alcohol licenses with gaming in this area. Mr. Brooks stated that he was not advocating for one decision or another, but was stating the facts of the situation. Mr. Brooks advised Council to examine the facts, and base its decision on the facts presented. Councilmember Cimmino stated that Council had previously approved a location of a Town Pump on Airport Road, and that she believed the need for that type of business in that location had been met. Councilmember Cimmino stated that compromises would need to be made. Councilmember Brown asked Mr. Mumford whether the City has any influence on decisions made by MDT. Mr. Mumford stated that the City has a good rapport with MDT, and that the City could make suggestions or recommendations to MDT. Mr. Mumford stated that he understood the concerns voiced by Council. Mr. Mumford assured Council that staff will work to mitigate traffic concerns.

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

Ms. Volek asked Councilmember Friedel if he was a relative of Mr. Friedel who spoke during the public hearing for this item. Mr. Brooks noted that City Code addresses financial and personal interests arising from blood or marriage relationships or close business or political associations. Mr. Brooks stated that City Code section 2-704(b) requires "an official to publicly disclose the nature and extent of such interest and disqualify himself or herself from participating the deliberation as well as in the voting" of that issue.

Councilmember McFadden moved for approval of Item 4 including the conditions and the findings of the three criteria, seconded by Councilmember Sullivan. Councilmember McFadden stated that every business in the City will have an impact on traffic. Councilmember McFadden stated that the traffic on Main Street will not increase due to this development; only traffic in and out of that particular area would increase.

Councilmember McFadden urged Council to approve the special review. Councilmember Sullivan voiced his frustration with the process. Councilmember Sullivan stated that Council was to examine the location of a beer and wine license with gaming at this development, and that he believed the three criteria had been met. Councilmember Brewster noted his frustration with the process. Councilmember Brewster stated that a previous casino existed 500 feet from this proposed development, so the use would be compatible with surrounding properties. Councilmember Brewster stated that the traffic along Main Street will be backed up from this development. Mayor Hanel spoke in favor of the motion, but noted that he was sorry to see Reiter's Marina leave. Mayor Hanel stated that Council was to consider placement of a beer and wine license with gaming, and that the three criteria had been met. Councilmember Clark noted that the Town Pump on Airport Road was a casino and liquor store, not a gas station, and that location should not affect Council's decision on this special review. Councilmember Friedel stated that the business owner would have eased the minds of Council and citizens by having a business plan in place showing that the traffic study had been conducted prior to presentation to Council. On a voice vote, the motion was approved 8-2, with Councilmembers Cromley and Yakawich voting in opposition, and Councilmember Friedel abstaining.

Mayor Hanel called for a recess at 11:25 pm.

The meeting was called back to order at 11:48 pm.

**5. PUBLIC HEARING AND SPECIAL REVIEW #937: a special review to allow a 9,172 square feet addition to an existing church in a Residential 9,600 (R-96) zone on a 5.219 acre parcel of land described as: Lot 1, Block 1 St. Thomas Subdivision and located at 2055 Woody Drive. CTA Architects and Engineers, 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, began a PowerPoint presentation for Item 5, giving an overview of the property and the proposed development. Ms. Husman described the nine conditions for approval of the special review: 1) the special review is limited to the described property; 2) the special review is for the expansion of the existing church. No other use is intended or implied by this approval; 3) any expansion greater than 10% of the request will require an additional special review approval; 4) site lighting must be no less than 20 feet in height and have full cutoff shields; 5) all proposed drive approaches will be reviewed by City Traffic Engineering; 6) no construction activity will occur before 7 am or after 8 pm daily; 7) the development must substantially conform to the submitted site plan; 8) these conditions shall run with the land; 9) the development shall comply with other limitations of Section 27-613 and all other City code provisions as required.

Councilmember Yakawich asked about proposed bulb-outs in the site plan. Ms. Husman stated that the bulb-outs are primarily part of the displayed proposal, rather

than for future development proposals. Ms. Husman noted that the applicant's agent was in attendance and would be able to answer additional questions.

The public hearing was opened.

- **Mike Tuss, 23 North 23<sup>rd</sup> Street, Billings, MT, CTA Engineers, agent for the applicant**, noted that Father Steve Zabrocki of St. Thomas the Apostle Parish was in attendance. Mr. Tuss stated that the church is growing, and expansion will allow for additional seating and a larger vestibule with more entrances along the building. The additional entrances will allow for improved handicap accessibility. The gymnasium will be renovated to improve fellowship space.

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

Councilmember McFadden moved for approval of Item 5, including the conditions and the findings of the three criteria, seconded by Councilmember Yakawich. Mayor Hanel spoke in favor of the motion, and stated that the plan for the church was excellent and meets its needs. On a voice vote, the motion was unanimously approved.

## 6. **PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE**

**#945: a zone change from Residential 9,600 (R-96) to Residential Professional (RP) on a 1.06 acre parcel of land described as: Lot 4A2 Blue Meadow Acreage Tracts. Kincaid Land, LLC, owner; Sanderson Stewart, agent. Zoning Commission recommends approval and adoption of the findings of the 10 criteria. (Action: approval or disapproval of Zoning Commission recommendation.)**

Nicole Cromwell, Zoning Coordinator, began a PowerPoint presentation for Item 6, giving an overview of the property and its surroundings. Ms. Cromwell noted that Residential Professional zoning allows for professional offices with business hours from 9 to 5. Retail businesses are not permitted and storage of large pieces of equipment is not permitted. Ms. Cromwell noted that the proposed zone change is compatible with existing development in the area and is consistent with the City's infill development policy, 2008 growth policy, and the 2001 West Billings Plan.

Councilmember Yakawich noted that six people attended the community meeting for this zone change. Councilmember Yakawich if any comments were received from that meeting. Ms. Cromwell stated that she did not receive written testimony from the meeting, and that there were no attendees at the Zoning Commission meeting.

Councilmember Sullivan asked what types of buildings may be developed in a Residential Professional zone. Ms. Cromwell stated that Residential Professional allows for single family homes, any type of professional office (doctor, lawyer, dentist, real estate broker, etc.), service-type businesses with hours of 9 to 5 (beauty shop, tax preparation, etc.), schools, day care facilities, and churches. Ms. Cromwell noted that

34 feet is the maximum height allowed for buildings within a Residential Professional zone.

The public hearing was opened.

- **Pat Davies, Sanderson Stewart, agent for the applicant**, asked for Council's support of the zone change and stated that he was available to answer questions.

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

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

**7. APPROVAL OF A MEDIATED SETTLEMENT of Demolition of the Parmly Billings Library. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

Ms. Volek began a verbal presentation for Item 7. Ms. Volek noted that Library Director Bill Cochran was in attendance along with Jon Dyre of Crowley Fleck. Ms. Volek addressed issues experienced with demolition of the library, and noted that the City completed two rounds of mediation to reach the proposed settlement.

Mayor Hanel asked if a Request for Qualifications was conducted during the contractor selection process. Mr. Cochran stated that the general contractor was responsible for the demolition of the building. The general contractor hired a subcontractor and used a surety bond to carry out the demolition of the building. Mayor Hanel stated that he knew a Request for Proposals was conducted. Mayor Hanel stated that Requests for Qualifications should be considered for future projects. Mr. Brooks stated that he did not know whether or not a Request for Qualifications was conducted for the library demolition. Mr. Cochran noted that the library demolition invitation for bid was advertised nationally. Mayor Hanel stated that the new library turned out to be a beautiful building, but that the demolition process resulted in an ill feeling.

Councilmember Yakawich stated that the staff report for this topic seemed comprehensive, and asked if Mr. Cochran if he believed the reasons for avoiding litigation were fully explained. Mr. Cochran stated that he is not an attorney, but that he felt that the overview of the project dispute in the staff report was comprehensive. Mr. Dyre stated that he believed the staff report accurately and fully described the terms of the settlement. Mr. Dyre noted that other parties were also involved and paid claims in the settlement (such as subcontractors, design teams, and insurance companies).

Councilmember Cimmino asked how the offer of \$175,000 was reached or determined. Mr. Dyre stated that an initial two-day mediation session did not result in a settlement offer. A second two day mediation session resulted in an offer based on the efforts of the City's mediator Tracy Axelberg. Mr. Dyre stated that as a result of Mr.

Axelberg's efforts, he believed that \$175,000 was the top dollar amount that could have resulted from the mediation.

Councilmember Sullivan asked Ms. Volek if there was any sort of wrap-up meeting to discuss the demolition and mediation processes. Ms. Volek stated that staff has been keeping track of areas for improvement. Ms. Volek stated that for future major construction projects, an Owner's Representative will be hired for the City. Ms. Volek noted that staff learned many lessons from the project, and those lessons will be applied to future projects.

Councilmember Yakawich moved for approval of Item 7, seconded by Councilmember Sullivan. Councilmember Friedel stated that he hoped lessons were learned from this process. Councilmember Friedel stated that if this situation had occurred in the private sector, "you all would be terminated." Councilmember Friedel stated that the City should fight for every dollar it is owed, but that he felt backed into a corner to approve the settlement agreement to avoid costly and lengthy litigation. Councilmember Friedel stated that he believed this was an administration failure and that the taxpayers had to pay the bill. Councilmember Friedel stated that he would like to see policies put into place to avoid this type of issue in the future. On a voice vote, the motion was approved 9-2, with Councilmembers Brewster and Cimmino voting in opposition.

**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 Friedel moved to create a policy for blocking access to obscene material on public computers, seconded by Councilmember Clark. Councilmember Yakawich asked for further explanation of the initiative. Councilmember Friedel stated that he would like to see a policy to prevent obscene material from being viewed on public computers. Councilmember Friedel referenced a recent news story describing an incident at the library in which a teacher walked by a computer and saw obscene material being viewed by another user. Councilmember Swanson asked if this would be in the form of a program to be installed on computers. Councilmember Brown stated that regulations must be followed for open and free access on public computers. Mr. Cochran stated that he has been involved in evaluations of this issue. Mr. Cochran stated that every computer (except for four) in the Billings Library has a filter which prevents viewing obscene material. The four unfiltered computers are set up with recessed monitors which are covered from the top, and drapes have

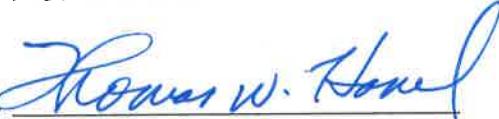
been installed around the bottom of the computers' desks to prevent outside viewing from above, next to, or below the computer. Mr. Cochran stated that the solution described with the four computers is the most effective way to uphold the First Amendment to the U.S. Constitution, the U.S. Supreme Court findings, and the State Constitution. Mr. Cochran noted that library policies are under the power of the Library Board. To remove that power from the Library Board, the interlocal agreement between the City and the County would need to be amended. Mr. Cochran also noted that he predicted a failed constitutional lawsuit at both the State and Federal levels. Mayor Hanel stated that he was aware that a very strict policy is in place to prevent City employees from using City computers to access obscene material. Ms. Volek stated that the policy is in place and is enforced. Mayor Hanel stated that he felt there was adequate protection in place at the library in accordance with State and Federal law. Councilmember Brown asked if there would be any benefit to an initiative asking staff to examine whether or not any additional protections could be put into place. Mr. Cochran stated that the library urges patrons to express concerns directly to the library by use of a Statement of Concern Form. Mr. Cochran stated that the library is currently conducting a policy review with the Library Board. Mayor Hanel stated that Council has asked staff to examine the library policy on obscene material and then report back to the City Administrator and Council. Councilmember Cimmino asked if City employee computers are equipped with software to block access to certain material. Ms. Volek stated that they are. Ms. Volek stated that the IT Department monitors employee computer use, and that employees are disciplined if the computers are misused. Councilmember Cimmino asked whether the City would be able to prevent library patrons from using computers to access explicit material. Mr. Brooks stated that the library policies put into place are effective in addressing the issue by segregating the four unfiltered computers from the main area. Mr. Cochran reminded Council that only four of the 90 computers in the library are unfiltered, and that those four computers are blocked from view by recessed monitors, shields above the viewing area, and drapes sewn around the monitors below the desks. Councilmember Brewster asked at which age full access is permitted on library computers. Mr. Cochran stated that children under 13 are not granted unfiltered internet access on any library computers, including the four unfiltered computers. Access is limited based on settings on the user's library card. Mr. Cochran stated that the library also offers a parental guidance option which allows parents to determine the level of access for their children's library cards. Mr. Cochran noted that the library receives very few complaints on its internet access policies. Councilmember Sullivan moved to call the question, seconded by Councilmember Brewster. On a roll call vote, the motion to call the question was approved 10-1, with Councilmember Brewster voting in opposition. On a roll call vote, Councilmember Friedel's motion to create a policy for blocking access to obscene material on public computers was approved 7-4, with Councilmembers Yakawich, Brewster, Cimmino, McFadden, Friedel, Swanson, and Clark voting in favor, and Councilmembers Cromley, Sullivan, Brown, and Mayor Hanel voting in opposition. Mayor Hanel asked Councilmember Friedel if he had a time frame in

mind for the next discussion. Councilmember Friedel stated that he would like the discussion to take place after budget discussions. Councilmember Friedel stated that a discussion in August would be acceptable. Councilmember Clark asked if the August discussion would allow for the library staff to meet with the Library Board. Mr. Cochran stated that the timeline would be acceptable. Library staff would be able to bring back information in August. Councilmember Brown noted that Councilmember Friedel's initiative was to create a policy that will block public computer access to obscene materials, not to have a later discussion on the topic. Mr. Cochran stated that he understood the initiative as directing staff to work to improve the current policy based on State and Federal law. Mr. Cochran noted that Council does not have the authority to adopt a policy for the library; that duty lies with the Library Board. Councilmember Brewster stated that the library would bring back a recommendation and then Council would vote on it.

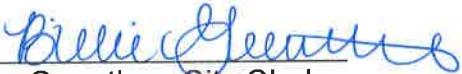
- Councilmember Sullivan stated that he would like to create four initiatives, but that he would do so at the February 8, 2016 meeting.

There was no further business, and the meeting adjourned at 12:46 am.

CITY OF BILLINGS

BY   
Thomas W. Hanel, Mayor

ATTEST:

BY:   
Billie Guenther, City Clerk

