

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

August 22, 2016

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

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

MINUTES: August 8, 2016 – Councilmember Sullivan moved for approval, seconded by Councilmember Clark. On a voice vote, the motion was unanimously approved.

COURTESIES:

- Tina Volek introduced Bill Cole, President of the Billings Chamber of Commerce, regarding a fundraising update and donations for the Yellowstone Kelly Grave and Interpretive Site project, Consent Agenda Item 1F. Mr. Cole gave special recognition to Chris Dimmick, Fundraising Chair. Mr. Cole stated the current amount of pledges and donations received was approximately \$475,000, which put the project very close to Sanderson Stewart's estimate of \$500,000 to complete all aspects of the project. He stated the City had contributed \$50,000 in seed money; Harvey Singh of Singh Contracting, Inc. had pledged \$80,000; Phillips 66; The Billings Tourism Business Improvement District; Kris and Larry Carpenter; Kampgrounds of America; and Lee Enterprises. Mr. Cole mentioned several events that occurred during Yellowstone Kelly week.

PROCLAMATIONS:

- Mayor Hanel read a proclamation and declared the month of August as "Attendance Awareness Month". Mayor Hanel recognized Carol Burton, of United Way. Ms. Burton introduced Kristin Lundgren, Director of Impact, United Way, who has been instrumental in getting the "Attendance Matters" campaign up and running. Ms. Lundgren addressed the Mayor and Council and thanked them for their support. Ms. Lundgren stated that absenteeism is the number one reason students drop out of school and that much of the absenteeism was avoidable.

ADMINISTRATOR REPORTS - TINA VOLEK

- Ms. Volek reminded Council and Staff who had received hard copies of the agenda that Items 1A and 1J may have been incomplete copies. Complete replacement copies were provided at the meeting.
- Ms. Volek reminded Council that on Tuesday, August 23, 2016, at 10:00 am, at Centennial Park, there was a dedication ceremony of Musburger Field.
- Ms. Volek reminded Council that on Wednesday, August 24, 2016, at 3:00 pm, there was a meeting of the Community Innovations group at the Billings Public Library.
- Ms. Volek reminded Council that Monday, August 29, 2016, was the 5th Monday of the month and there was no Council meeting. Labor Day fell on Monday, September 5th, so the Work Session meeting was moved to Tuesday, September 6th, at 5:30 pm, in Council Chambers.

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: #1 ONLY.

Speaker sign-in required. (Comments offered here are limited to one (1) minute for one item, or three (3) minutes for multiple items. Please sign in at the cart located at the back of the council chambers or at the podium. Comment on items listed as public hearing items will be heard ONLY during the designated public hearing time for each respective item. For Items not on this agenda, public comment will be taken at the end of the agenda.

The public comment period was opened.

- **Tom Zurbuchen, 1747 Wicks Lane, Billings, Montana**, spoke in regard to Item 1G, and stated the Hart-Albin parking garage was a privately owned infrastructure that was totally leased during regular business hours and had little use during off hours when parking was free. Mr. Zurbuchen stated the item was not an appropriate use of TIF money. Mr. Zurbuchen stated that the Northern Hotel was an iconic downtown destination that used TIF monies for the public sidewalks surrounding the hotel. He supported a low-interest loan that would be repaid versus a grant. He urged the Council to reject Item 1G.

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

1. CONSENT AGENDA

A. Approval of Employment Status and Non-Bargaining Random Drug/Alcohol and Reasonable Suspicion Policy Revisions.

B. Acceptance of Contract with the Montana Department of Transportation (MDOT) for TransADE Operating Assistance; \$60,664.

C. Right-of-Way Easement with NorthWestern Energy for completion of power line installation to Low Level Wind Shear Alert System Tower.

D. Utility Easement with Northwestern Energy to provide upgraded electrical service to a new commercial building being constructed at 5327 Southgate Drive.

E. Transtech Center Subdivision, Third Amendment.

F. Acceptance of Donation for the Yellowstone Kelly Grave & Interpretive Site from The Billings Tourism Business Improvement District, Kris and Larry Carpenter, Kampgrounds of America, Lee Enterprises, Singh Contracting, Inc., \$169,000 over four years.

G. Acceptance of Downtown Tax Increment Financing (TIF) grant for rehabilitating the Hart-Albin Parking Garage, \$500,000.

H. Acceptance of Downtown Billings Partnership (DBP) grant for 1111 Entertainment, LLC for fire alarm and fire suppression improvements in the expanded Pub Station, \$35,000.

I. Bills and Payroll:

1. July 25, 2016

2. August 1, 2016

J. Resolution # 16-10577 Repealing Resolution of Intent #16-10576 to create SID 1401, 62nd Street West turn lane, and set a public hearing date of September 12, 2016.

Councilmember Yakawich separated Item 1G for discussion.

Councilmember Cromley separated Item 1I1 in order to abstain.

Councilmember Brown separated Item 1I1 and 1I2 in order to abstain.

Councilmember Brewster moved for approval of the Consent Agenda, with the exception of Items 1G, 1I1 and 1I2, seconded by Councilmember Sullivan. On a voice vote, the motion was unanimously approved.

Councilmember Yakawich asked what the definition of "old but quite solid" meant when it referred to the Hart-Albin parking garage and was it worth the investment. Greg Kruger of the Downtown Billings Alliance addressed the question and stated it was definitely worth the investment. He stated that repairs to the parking garage would extend its life to approximately 2050. Councilmember Yakawich continued and asked for reassurance that once the repairs were made that that would be adequate to make the parking garage last until 2050. Greg Kruger deferred to Dennis Deppmeier, the architect on the project. A description of the repairs was given, i.e., covering exposed rebar to stop erosion and mitigating water away from the structure. Mr. Deppmeier

reinterated that once repairs were completed, the structure would last until 2050. Councilmember Yakawich asked about the parking garage's usage. Mr. Deppmeier responded that the parking garage was privately owned and had 229 parking spaces. He stated the tenants that rented the parking spaces were downtown enterprises and it was primarily used during the week from 6 o'clock am to 6 o'clock pm. He stated that after 6 o'clock pm and on weekends, the spaces were turned to free public access. He stated it was used quite heavily for public functions, i.e. Farmer's Market, Alberta Bair and Babcock Theatre patrons. Mr. Deppmeier stated that the parking rate structure in the downtown area was basically set by the City. A privately owned parking garage basically was bound to whatever was the public parking rate. The building was appraised on a cash basis. The cash basis was dictated by the income that it can generate, which was dictated by the rate structure the City of Billings set. The owner of the building has paid taxes and has contributed to the tax base. Any improvements made to the building that kept it functioning well into the future would contribute to the tax base. Mr. Deppmeier stated that some of the concerns heard about the building were that it was intimidating and dark. He stated that improvements would be made to the lighting and façade. Mr. Deppmeier stated the cash flow has been such that it has not allowed for improvements to be made without the grant.

Councilmember Brewster asked for examples wherein TIF grants were given to private property owners. Greg Kruger stated that in the EBURD area, First Interstate Bank was given TIF monies to assist with their parking lot because their parking lot was located in an area where parking was in demand, i.e., North Park. Mr. Kruger also mentioned that Stockman Bank's parking lot was available to the public in the evenings, where other private parking lots were not. Mr. Kruger stated that everything that was accomplished with TIF monies was used for the public's benefit.

Mayor Hanel asked Mr. Kruger if TIF monies were used to make significant repairs to a City-owned skybridge which connected to the Hart-Albin building. Mr. Kruger agreed with that statement.

Councilmember Sullivan asked what would happen to the project in 20 years. Would there be additional structural deficiencies and would the owners of the parking garage make a better effort toward upkeep on the parking garage? Mr. Kruger stated he believed that once the repairs were completed, the revenue from the structure would help maintain the structure from that point forward. Mr. Kruger also stated that the Parking Advisory Board was considering rate increases and he supported the increases. Councilmember Sullivan continued by asking whether the owners' cash flow was in peril if rate increases did not occur. Mr. Kruger stated the cash flow numbers were based on the current cash flow figures, so any increase would improve their cash flow.

Councilmember Brown asked how long it would take for the amount of taxes paid to make a return for the half a million dollars requested for the project. Mr. Kruger stated that the property had paid taxes since the 1960s and had never accepted public funds until now. It was the owners' desire to keep this structure viable and adding to the tax base in the future. The return on the investment was in the day-to-day parking costs that the City currently has. If the garage needed to be replaced in the near future, the downtown area would need to find an additional 229 parking spaces. Mr. Kruger estimated it would cost \$20,000 to \$30,000 per parking space to build a new structure.

He continued by stating that looking at the cost of new versus this investment, it was a very good use of monies to have the repairs made to the current structure. Mr. Kruger stated that on a cash-on-cash return, the City probably would not see much return, but return on future expenditures would be held back for a number of years.

Councilmember Brown expressed his concern about future upkeep. Mr. Kruger stated he believed there was a strong downtown organization of which the property owners were members. The organization would monitor the project. Mr. Kruger stated things were very different now than when the building was built in the 1960s and it was virtually abandoned in the 1980s.

Councilmember McFadden wondered what kind of local labor force would be used for the repairs. Dennis Deppmeier responded that the numbers for the project were determined by a private bid process that occurred through a general contractor and all of the general contractors were local.

Councilmember Yakawich moved for approval of Item 1G, seconded by Councilmember McFadden. On a roll call vote, the motion was approved 7 to 3, with Councilmembers Cromley, Yakawich, Brewster, McFadden, Sullivan, Swanson and Mayor Hanel voting in favor. Councilmembers Friedel, Clark and Brown were opposed.

Councilmember Brewster moved for approval of Item 1I1, seconded by Councilmember Sullivan. On a voice vote, the motion was unanimously approved.

Councilmember Brewster moved for approval of Item 1I2, seconded by Councilmember Friedel. On a voice vote, the motion was unanimously approved.

REGULAR AGENDA:

2. PUBLIC HEARING AND RESOLUTION #16-10578 setting General Obligation (GO) Debt and Public Safety (PS) 2 mill levy rates for FY17. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Ms. Volek stated staff did not have a presentation, however, were available for questions.

The public hearing was opened.

- **Tom Zurbuchen, 1747 Wicks Lane, Billings, Montana**, stated the setting of mill levy rates was a Charter violation in its present form. He mentioned that Kevin Nelson had stated that every Charter amendment for additional taxes, including GO bonds and Public Safety 2, said that the money was used for one purpose only. Tax monies could not arbitrarily be placed aside for a TIF district. He provided instructions for calculating mills. Mr. Zurbuchen stated the City had overtaxed the majority of its citizens and violated the Charter. Mr. Zurbuchen admitted that State law supported method used by the City, but that the same State code also granted the City self-governing powers. He stated the City's Charter made financing a TIF district more restrictive than State code and the City violated its own Charter. He

warned the City to stop this practice or risk a class-action lawsuit brought against the City.

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

Mayor Hanel asked Ms. Volek if she wanted to comment or respond to Mr. Zurbuchen's statements or ask the Finance Director, Pat Weber, to respond. Ms. Volek stated that the TIF situation was primarily in the hands of the State and there was no additional comment at this time.

Councilmember Yakawich moved for approval of Item 2, seconded by Councilmember Cromley. Councilmember Brewster addressed Ms. Volek about a request that had been made for the City Attorney, Brent Brooks, to provide an opinion about whether the City violated the Charter. Mr. Brooks responded he was working on a brief memorandum to the Council. He stated the issue had been brought before him and also to Erin Furman McCrady, of Dorsey and Whitney. Mr. Brooks stated that both of them agreed that the TIF statutes required that the generated TIF funds stay in the district. He continued by stating that if the Council wished, he would submit the question to the Attorney General's Office for an opinion and/or letter of advice. He reiterated that under certain circumstances the City could impose more restrictive circumstances with its legislative authority. However, there were many other statutes within the self-governing part of Title 1, Sections 7-1-111 through 7-1-115, that placed significant restrictions on self-governing authority. Mr. Brooks stated that would also be addressed in his memorandum to the Council. Councilmember Brewster asked if it was Mr. Brooks' opinion that the City Council was not violating the City's Charter. Mr. Brooks responded that that was his opinion as well as that of Erin Furman McCrady, the City's bond counsel. He stated that Ms. McCrady was very involved in the analysis and approval of bond sales backed by TIF funds. Councilmember Sullivan followed and asked whether Ms. McCrady was involved with other municipalities concerning their TIF districts. Mr. Brooks responded affirmatively. Councilmember Sullivan asked whether Billings was falling into place with the other Montana municipalities. Mr. Brooks stated he couldn't speak to that, but would check with Ms. McCrady. Councilmember Brown asked Mr. Brooks whether he would include any additional information in his memorandum other than what he verbally addressed at the meeting. Mr. Brooks stated that if the Council wished for additional information to be included, they could request it, but that he had given a "Cliff Notes" version of the memorandum, verbally. Ms. Volek stated she confirmed with Pat Weber, Finance Director, that the State law required the City to adopt mill levies within 30 days of receipt of the assessed valuation. She added the assessed valuations were received on August 1, 2016, and a delayed adoption to the next Council meeting of September 12, 2016, would violate the State's statute. No further discussion.

On a voice vote, the motion was unanimously approved.

3. PUBLIC HEARING AND RESOLUTION #16-10579 approving and adopting budget amendments for FY16. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Ms. Volek stated staff did not have a presentation, however, were available for questions.

Councilmember Brewster asked about the budget amendment for the parks. He thought that Public Works Department covered the cost. Pat Weber, Finance Director, responded that the Public Works Department covered water costs for the General Fund parks. He stated the budget amendment was for the Park Maintenance Districts and that would be folded into the rates which would be set in September.

The public hearing was opened.

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

Councilmember Sullivan moved for approval of Item 3, seconded by Councilmember Brewster. Councilmember Yakawich asked for a definition of the cemetery trust fund. Pat Weber responded that money was placed into that fund as required by State law. The fund ensures that if the cemetery should discontinue doing business, there would be money to maintain the gravesites. Mr. Weber continued that interest monies could be spent, but not the principal in that fund. Councilmember Clark asked why the interest would be spent on anything. He remarked that the City should preserve interest monies for the future maintenance of gravesites, too. Mr. Weber stated the interest monies were spent on cemetery improvements and it only amounted to approximately \$2,000 per year. Councilmember Clark asked if the interest monies were deposited into the General Fund for cemeteries. Ms. Volek responded affirmatively. No further discussion. On a voice vote, the motion was unanimously approved.

4. PUBLIC HEARING AND FIRST READING ORDINANCE expanding the boundaries of Ward IV to include recently annexed property in Annexation #16-04: for an approximate 11 acre parcel of land described as Lot 8, Sunny Cove Fruit Farms, located at the southeast corner of Rimrock Road and 62nd Street West. Tule Ridge Development, owner/petitioner. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Ms. Volek stated staff did not have a presentation, however, were available for questions.

The public hearing was opened.

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

Councilmember Sullivan moved for approval of Item 4, seconded by Councilmember Swanson. On a voice vote, the motion was unanimously approved.

5. PUBLIC HEARING AND SPECIAL REVIEW #945: a special review to locate an all beverage license with gaming in a new 3,500 square foot building in a Controlled Industrial (CI) zone, on Lot 3B, Block 2 of Trillium Subdivision Amended, a 1.431-acre parcel of land generally located at 545 S. 18th St. West. Greg Post, owner; Jerry Jones, agent. Zoning Commission recommends conditional approval and adoption of the findings of the 3 criteria. (Action: approval or disapproval of Zoning Commission recommendation.)

Ms. Volek introduced Dave Green, Subdivision Coordinator, Planning Department, who gave a brief PowerPoint presentation and an overview of the special review uses and the Zoning Commission's conditional approval recommendation based on the findings of the 3 criteria. Mr. Green summarized the 3 criteria as:

1. The application complies with all parts of the Unified Zoning Regulations;
2. The application is consistent with the objectives and purposes of the Unified Zoning Regulations and the 2008 Growth Policy; and
3. Is compatible with surrounding land uses and is otherwise screened and separated from adjacent land to minimize adverse impacts.

Mr. Green explained that the special review involved an existing casino, Copper Creek Casino. The casino owner wished to move to the new location because it had lost its lease. Mr. Green illustrated the unique circumstances of the present casino location and its close proximity to a church; they were located on the same lot. Mr. Green gave history of the property; it was originally a lumber yard and then a specialty furniture shop before it became the location of a church. The church obtained a "change of use" and updated the front of the building in 2011. That "change of use" made it so Copper Creek Casino, Hu Hut and Texas Roadhouse no longer conformed to State statute. The State statute required a 600-foot separation between a church and a business that had "on premise" alcohol consumption. Mr. Green explained the differences between the State statute and the Billings, Montana Municipal Code. The City's Code was more restrictive. Mr. Green provided the Zoning Commission's conditions of approval.

Councilmember Brown asked if the casino was just moving their liquor license and business further away from the church. Mr. Green responded affirmatively. He stated there had been no problems and there had been good relations between the casino business and church. The church owned the property the casino had occupied and when the lease was due for renewal the church chose not to renew it to utilize the space for offices. The casino wished to stay in the neighborhood where their clientele is familiar and had chosen the site on South 18th Street West to build their casino. There had been no concerns raised by the church with the relocation of the casino. Councilmember Yakawich asked about the 600-foot separation requirements and whether there was more depth to that definition. Mr. Green responded that the statute stated there needed to be a 600-foot separation from property line to property line of a school, churches or a park with a public playground. He stated it did not go into depth

why there was a 600-foot separation and what it was trying to accomplish. Councilmember Sullivan asked whether there were any considerations to public safety in having a casino located mid-block within a busy industrial / commercial area. He asked if UPS or CEI Electrical Contractors had expressed any concerns. Mr. Green stated the only attendees at the Zoning Commission meeting were the property owner and applicant. The Planning Department had not received any letters of protest or phone calls. Councilmember Sullivan stated that the staff report indicated the construction of the casino was consistent with some goals of the 2008 Growth Plan. He asked if that was compliant with the newly adopted Growth Plan. Mr. Green responded that the newly adopted Growth Plan would be the new reference point.

The public hearing was opened.

- **Travis Dimond, 1550 Poly Drive, Billings, Montana**, stated his clients were in the process of land acquisition. He reiterated that his clients have had a very amiable relationship with the church but that their lease would expire, leaving his clients without a place in which to conduct business. The proposed location would allow the business to continue serving its clientele in the same neighborhood. The business would be in-filling at an appropriately zoned location that is currently vacant and the business would not be directly visible or accessible from the church. Mr. Dimond noted a correction to the description of the special review. He stated the casino did not have an all beverage license; there was no bar area and minimal food was served. Mr. Dimond addressed Councilmember Sullivan's inquiry by stating that letters were sent to surrounding businesses which gave them an opportunity to voice concern, but no responses were received.

Councilmember Sullivan stated his packet of information noted that the business would not apply for an all beverage license, but would secure a beer and wine license with the option to secure an all beverage license. Mr. Dimond responded that the casino would only have a beer and wine license.

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

Councilmember Cromley moved for approval of Item 5, seconded by Councilmember McFadden. Councilmember Sullivan stated it was weird to have a bar and casino in the middle of a busy semi-industrial area. He stated he would vote in opposition to the motion. Councilmember Brown stated it was odd to have a business like this in the location proposed, however, he was confident that thorough research had been conducted and he saw advantages to moving the business further away from the church location. Councilmember Clark stated he supported the motion. Councilmember McFadden stated he supported the motion. Mayor Hanel spoke in favor of the motion. Mayor Hanel asked Mr. Green if the business would have a pedestrian sidewalk installed in front of the business. Mr. Green stated Engineering had required installation of a sidewalk. On a voice vote, the motion was approved 9-1 with Councilmembers Cromley, Yakawich, Brewster, McFadden, Freidel, Swanson, Clark, Brown and Mayor Hanel voting in favor. Councilmember Sullivan was opposed.

6. PUBLIC HEARING AND SPECIAL REVIEW #946: a special review to construct a new 43-space parking lot with alley access and landscaping in a Residential 7,000 (R-70) zone, on the North 130 feet of Lot 8 and the North 140 feet of Lot 7, Block 3 of West View Subdivision, a 20,250 square foot parcel of land generally located on the east side of 16th St. West just north of the intersection of Lewis Avenue. Donald Lee, owner; Dave Pfohl, applicant. Zoning Commission recommends conditional approval and adoption of the findings of the 3 criteria. (Action: approval or disapproval of Zoning Commission recommendation.)

Dave Green, Subdivision Coordinator, Planning Department, gave a brief PowerPoint presentation and an overview of the special review uses and the Zoning Commission's conditional approval recommendation based on the findings of the 3 criteria. Mr. Green summarized the 3 criteria as:

1. The application complies with all parts of the Unified Zoning Regulations;
2. The application is consistent with the objectives and purposes of the Unified Zoning Regulations and the 2008 Growth Policy; and
3. The application is compatible with surrounding land uses and is otherwise screened and separated from adjacent land to minimize adverse impacts.

Mr. Green gave a background of other areas in Billings in which parking lots were contained in residentially-zoned parcels, such as Off the Leaf, Dairy Queen, Stockman Bank and Dana Motors, all located on Grand Avenue. The parcel affected by the special review was located at Lewis Avenue and 16th Street West. The neighborhood dates back to the late 1950s, early 1960s. The subject lot was located off an alley. Mr. Green stated there was water for the parcel and the sewer connection was located on Lewis Avenue. He stated that if the parcel was used for residential use, the sewer would have to be connected uphill on Lewis Avenue. Mr. Green stated there were no easements between the homes. He stated because there were no easements, that would require installation through 16th Street West to Lewis Avenue. Mr. Green continued, stating that a low pressure pump would also be required to push sewage up to Lewis Avenue's trunk. Mr. Green described a ditch and drain located on the parcel. He stated the Zoning Commission wished for the parcel to be leveled as flat as possible to reduce the slope to the alley. He stated the engineers required the parking lot capture water onsite and retain it onsite. He stated a fence and landscaping would be installed. He explained that the applicant would utilize the parking lot for staff parking to provide parking spots near the business for customers. Mr. Green identified the alley access and the location of Spring Creek in relation to the parcel. Mr. Green stated that at the Zoning Commission meeting several neighbors voiced their concerns about water runoff into the alley, lack of privacy and increased traffic in an already well-travelled alley. The Zoning Commission had recommended a privacy fence to the east and south. The Zoning Commission had forwarded a recommended conditional approval on a 3 to 1 vote. Mr. Green stated the special review also granted a variance from Engineering for alley access to parking facilities. He stated there was an alternative access in that access could be directly from 16th Street West. He stated that Engineering was comfortable

granting the variance at the same time. Mr. Green stated Engineering had expressed concern about pedestrian visibility due to the drop on 16th Street West from Lewis Avenue. Engineering wanted some kind of control over pedestrian jay-walking. Engineering required screening fence along 16th Street West to the northwest corner, opening the northwest corner to encourage people to walk to the intersection at Lewis Avenue and 16th Street West and utilize the crosswalk. Mr. Green stated signage would be placed advising people to utilize the crosswalk and no demolition or construction would be permitted before 7 am or after 8 pm. He stated the conditions would run with the land.

Councilmember Friedel stated he was concerned about drainage into Spring Creek and potential pollutants into the water that may affect the local wildlife. Mr. Green responded that the ditch actually was underground at that particular location and Engineering required an onsite drainage capable of holding runoff during a 50-year storm event and explained those methods. Councilmember Friedel asked about the privacy, screening fence and Mr. Green gave an explanation how that would work.

Councilmember Cromley asked about onsite storm water storage. Mr. Green stated there were several options available such as a boulder pit or perforated underground piping. Councilmember Cromley then asked about an existing drainpipe located onsite and whether that could be utilized. Mr. Green stated a certain amount of water had to be retained onsite. He said that once stormwater drainage reached a certain point, there was a release rate into the storm drain system, but the site must retain a 50-year storm event onsite. Councilmember Cromley asked how long the site had been in its present form. Mr. Green stated he believed it had been like that since 1982. Councilmember Cromley asked about why technology required additional parking spaces, rather than fewer spaces. Mr. Green explained that when the office spaces were built, equipment was larger and required more space. He stated now, due to technology changes, not as much space was required for equipment, etc., and that space was now filled with additional personnel, which required more parking spaces.

Councilmember Clark asked about neighborhood garage access into the alley and noted it was well-travelled due to the voidance of weeds in the photos provided. Mr. Green stated that some of the residences had garages that entered from the alley.

Councilmember Sullivan asked about the economics of building a parking lot with an expensive drainage infrastructure versus housing with an expensive infrastructure. Mr. Green stated there were no easements for sewer. He said a residence built on the site would be required to install a pump system and sewer line to the trunk on Lewis Avenue. He continued by saying that 16th Street West would have to be excavated from the alley to Lewis Avenue and a portion of Lewis Avenue would need to be excavated as well. Mr. Green emphasized that the sewer line was approximately 17 feet under the surface at Lewis Avenue and traffic would have to be redirected for a period of time during the excavation and reconstruction of the streets and that was very expensive. He said that after all of those improvements were made, it would be difficult to sell the property and get a return on one's investment. Mr. Green stated it would be difficult to dig a foundation on the property for a home because of the existing drain system. Mr. Green stated the boulder pit approach would be far less costly.

Councilmember Friedel stated he lived on the other side of the street and that the alleyway was very used and people drove at a high rate of speed through the alley. He

did not believe that access from the alleyway for the parking lot was a good idea. He preferred access from 16th Street West. Councilmember Friedel asked about property line location in the alley because it was an "S" shaped alley. Mr. Green answered he was not certain, but that alleys are a 20' right-of-way. He stated he wasn't certain about this particular alley because of the "S" shape.

Councilmember Brown stated he looked forward to improved runoff drainage. He asked about how much of the alleyway would be paved. Mr. Green responded the alley would be paved just to the access point.

Councilmember Yakawich commented that people could gain access to the parking lot from an east entry off the alley. He voiced his concern that if the alleyway was not fully paved then pot holes, mud, etc. would become a problem from the increased usage. He agreed with Councilmember Friedel that an entrance off of 16th Street West made more sense or to pave the entire alley.

Councilmember Clark asked whether the boulder pit would have to be built if the storm sewer was connected. Mr. Green stated the site had to retain a certain amount of runoff, equivalent to a 50-year storm event, before the runoff would be allowed into the City's storm water system.

Mayor Hanel asked if anyone had measured the elevation difference from the far southern boundary of the parcel to the northern boundary. Mr. Green did not have the answer, but stated the parcel would be leveled. Mayor Hanel asked whether the City would consider a striped pedestrian crosswalk at the exit point of the alley leading across 16th Street West. Mr. Green stated the City would not approve another crosswalk part way down the hill from where a crosswalk was already located.

The public hearing was opened.

- **Dave Pfohl, D & P Land Investments, LLC, 1601 Lewis Avenue, Billings, Montana,** stated he was the applicant for the special review. He gave a brief history of property ownership and development of the subdivision. He stated the property had been for sale for a very long time and it is a difficult piece of property to develop because of the sewer system. He thanked Dave Green for his assistance. He stated he did not actually own the property, but sought to have the special review to see if the property could be developed into a parking lot before purchasing it. He stated that during a recent meeting with area neighbors, several problems were discovered, including drainage. Mr. Pfohl stated he has had engineers and contractors assess the property and it had been noted that when the alley left 15th Street West, there was a significant drop. He stated the alley actually washed down toward 16th Street West and the storm sewer drain was not able to keep up with the runoff and quickly plugged. He stated that one neighbor had a driveway that dropped from the alley into his garage and runoff was a problem. He stated the engineers and contractors advised it would be best to have access to the property from 16th Street West, rather than off of the alley and that a barrier between the entrance and the alley, to prevent drainage into the alley, was recommended. Mr. Pfohl stated he was confident drainage would be improved by development of the property as a parking lot. He reiterated what Dave Green had said about technology changing space needs. He mentioned that when there was

considerable snow pack it was likely that snow hauling and removal would be necessary.

Mayor Hanel asked Mr. Pfohl what the elevation difference was from the northern boundary to the southern boundary line of the parcel. Mr. Pfohl responded that the elevation and entrance from the 16th Street West should correspond and there would not be a climb into the parking lot should the entrance be located right next to the alley entrance. He continued by saying that if the entrance to the parking lot were from the alley there would be a definite incline into the parking lot. Mr. Pfohl stated the alley was in very poor condition and needed repair.

- **Gordon Vandiviere, 235 Third Street North, Huntley, Montana**, stated he owned a duplex in that area and he was concerned about increased traffic in the alley. He stated it made sense to him to have access to the parking lot from 16th Street West. Mr. Vandiviere also stated he was not opposed to the special review, but was also concerned about storm water runoff into the alley and the plugged storm drain.
- **Dennis Ulvestad, 3040 Central Avenue, D103, Billings, Montana**, stated he was on the Zoning Commission, but was not representing the Zoning Commission by his statements. Mr. Ulvestad stated he had visited the alley and noted it was quite crooked and well-travelled. He stated it would be a good idea to block off entry into the alley from 15th Street West to reduce traffic.

Mayor Hanel stated that should the alley be closed on the 15th Street West end, garbage trucks would have to back all the way down the alley from the 16th Street West entrance. He asked Mr. Ulvestad if he thought that would be a good idea. Mr. Ulvestad stated he wasn't certain about that, but he supported his statement about alley closure. Mayor Hanel stated that the backup alarms equipped on garbage trucks are loud and the neighbors may not appreciate hearing them sound the entire length of the alley at 6 AM every week.

Councilmember Sullivan made a comical comment about garbage trucks turning around in Councilmember Friedel's driveway should the alley be closed at the 15th Street West entrance.

Councilmember Friedel responded that he did not wish to block the entrance to the alley on the 15th Street West location, but he warned against having additional traffic at the 16th Street West end. He stated increased traffic at that location with the water runoff problems, would cause expensive road repairs and congestion. He did not want to hear the sounding of garbage truck alarms as they back into the alley for garbage collection. He supported the parking lot entrance off of 16th Street West.

Councilmember Clark stated the applicant was talking about having an entrance off the 16th Street West and that made alley use a moot point.

- **Nikki Angell, 1543 Lewis Avenue, Billings, Montana**, stated that a lot of her concerns were addressed at the Zoning Commission meeting. She stated that Spring Creek has caused alley erosion and the "S" shape of the alley as vehicles

navigated around the creek to avoid falling into it. She was very concerned about remedying that problem.

Mayor Hanel asked Ms. Angell to show on the PowerPoint presentation where her home was located.

Councilmember Yakawich asked her whether her experience through the process had been pleasant. Ms. Angell stated she was very pleased and had learned a lot. She said it wasn't the most ideal situation to have a parking lot on the same block as her home, but it was likely the best outcome considering the parcel.

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

Councilmember Friedel asked Dave Green about the lighting requirements for the parking lot. Mr. Green responded that there were lighting restrictions set forth in the Zoning Commission's conditions. He stated the lighting could not intrude on the neighbors' property and all lighting was required to have a cut-off shield with the maximum height at 20 feet. He continued by saying the lighting had to shine directly to the ground.

Councilmember McFadden moved for approval of Item 6, seconded by Councilmember Friedel. Councilmember Clark asked that the motion be amended to require the access into the parking lot from 16th Street West. Brent Brooks, City Attorney, stated the Council could specify the access as a condition or it could be left to the Engineers to determine which would be a better choice. He stated Council just needed to be very specific in its motion. Councilmember Brown asked if the alley was part of the conditions as set forth by the Zoning Commission's recommendation. Dave Green answered that condition number 5 – "site will be in conformance with Zoning and Engineering's input, codes and the attached requirements from Engineering." He stated that one of the options Engineering proposed was to alternatively utilize an access from 16th Street West. He stated the Council could decide upon either access point and Engineering would be fine with that decision either way.

Councilmember Friedel made a substitute motion and moved for approval of Item 6 with a requirement that the parking lot's access be from 16th Street West only, seconded by Councilmember Clark. Councilmember Sullivan stated he felt it was a potentially dangerous situation for pedestrians but he would support the motion. Councilmember Cromley stated he felt the same way and didn't believe people would walk to the intersection corner and cross at the crosswalk. On a voice vote, the motion was unanimously approved.

PUBLIC COMMENT on Non-Agenda Items -- Speaker Sign-in required. (*Restricted to ONLY items not on this printed agenda. Comments here are limited to 3 minutes. Please sign in at the cart located at the back of the council chambers or at the podium.*)

- **Tom Zurbuchen, 1747 Wicks Lane, Billings, Montana,** stated that the annual review of the City Administrator would occur in September. He encouraged Council to consider all department issues when reviewing the City Administrator's leadership performance.

COUNCIL INITIATIVES:

There were no Council initiatives.

There was no further business, and the meeting adjourned at 8:39 pm.



CITY OF BILLINGS

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

ATTEST:

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