

## REGULAR MEETING OF THE BILLINGS CITY COUNCIL

October 24, 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 5:30 p.m. and served as the meeting's presiding officer. Councilmember Clark gave the invocation.

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

**RECESS TO CLOSED EXECUTIVE SESSION\*** (meeting will be called back to order at 6:30 pm)

**\*Note:** The closed Executive Session is solely for the purpose of discussing litigation strategy in which the only parties are NOT public bodies or associations, as described in Section 2-3-203(1) and (2). The meeting is closed, as allowed by Section 2-3-303, MCA, "to discuss a strategy to be followed with respect to litigation when an open meeting would have a detrimental effect on the litigating position" of the City of Billings.

The meeting was called back to order at 6:30 pm.

**MINUTES:** October 11, 2016 – Councilmember Yakawich moved for approval, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

### COURTESIES:

- Mayor Hanel stated the Boards and Commissions Dinner on October 20<sup>th</sup> was well attended and he thanked all those involved in its success.

### PROCLAMATIONS:

- Mayor Hanel read a proclamation announcing that November 1, 2016, as Extra Mile Day. He encouraged every Billings citizen to go the extra mile and whole-heartedly commit their efforts toward family, friends and community.

### ADMINISTRATOR REPORTS - TINA VOLEK

- Ms. Volek informed the Council that a letter from Gary Buchanan, Owner of Buchanan Capital, Inc., was hand-delivered regarding Items 6 and 7 and due diligence. She also mentioned that an email from Maisie Sulser, RESTOR design + build, was received regarding One Big Sky Center project. Copies were included in the ex parte notebook and copies were placed at each Council desk.

- Ms. Volek inquired as to how many Councilmembers wished to have a printed copy of the 2016 Growth Policy. She added that it would be available online as well.
- Ms. Volek reminded Councilmembers about Community Conversations on October 25<sup>th</sup>, Noon to 1:30 pm at the Billings Public Library Community Room; October 25<sup>th</sup> at 7 pm to 8:30 pm at Arrowhead Elementary Library; October 26<sup>th</sup> at 7 pm to 8:30 pm at Medicine Crow School Cafeteria; and November 1<sup>st</sup> at 7 pm to 8:30 pm at Little Horn State Bank.
- Ms. Volek stated that the Mayor's Committee on Homelessness was terming after 10 years and a Legacy celebration would be held on October 27<sup>th</sup> at 4:30 pm to 7 pm at the Billings Public Library Community Room.

**PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: #1, 5, 6 and 7**

**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.

- **Kelly McCarthy, 625 Yellowstone Avenue, Billings, Montana**, in reference to Items 5, 6, and 7, stated he was the House Representative for House District 49. He stated he was a strong proponent of Tax Increment Finance Districts and was concerned about the use of TIF monies for St. Vincent DePaul relocation and remodel. He suggested the City be paid back for any monies granted to the private non-profit organization, St. Vincent DePaul, on a 35-year note at 3% interest. He provided a letter to Council that outlined his concerns.
- **John Bollinger, 2927 Illinois Street, Billings, Montana**, in reference to Item 5, stated he had been an active member of the St. Vincent DePaul society. He stated that the mission of St. Vincent DePaul had remained the same, but Montana Avenue had not. He stated that Montana Avenue used to be the rough side of the City, but that had gone away. He stated that Montana Avenue was now home to upscale retail businesses, art galleries, and restaurants. Mr. Bollinger continued that St. Vincent DePaul no longer fit the neighborhood and they were in need of additional space to provide greater care for their client base. He supported the TIF grant.
- **Terry Odegaard, 2101 Lake Hills Drive, Billings, Montana**, in reference to Items 5, 6, and 7, stated he wanted to know if \$350,000 in TIF monies were enough for St. Vincent DePaul to do all that needed to be done. He supported the grant. He provided an article from *The New York Times* to support his concern about EB-5 as it related to the One Big Sky Center. He questioned who would conduct audits on bonding. Councilmember Sullivan questioned Ms. Volek about bond audits. Ms. Volek responded that the pre-bonding cost resolution was one that was adopted virtually with every bonding plan and it would be adopted to track and account for any costs if there was bonding. She reiterated that there was nothing guaranteeing that bonding would occur. She stated that the resolution served notice that the City

would be able to reimburse itself, because one way or the other, it would be paid for from the City's coffers or they would be bound up and paid back through bonding in the costs of the project. She stated that would be the intent of the resolution. She continued that the costs of the bonding attorney and the costs for issuing the bonds are all born by the taxpayer one way or the other and this way the costs would go into the project and would be paid from the project. Mr. Odegaard asked who would be accountable and what were the guidelines even if it met the criteria of the bonding company. Ms. Volek stated that it was an IRS rule. Councilmember Yakawich asked Mr. Odegaard for his understanding of EB-5. Mr. Odegaard responded that the information he distributed would explain the program and he encouraged the Council investigate on their own into EB-5 program. Councilmember Brewster assured Mr. Odegaard that he was not alone in his concerns about EB-5 and he had received information about the subject and would continue to do his research about it.

- **Paula Schilke, 115 South 29<sup>th</sup> Street, Billings, Montana**, in reference to Item 5, stated she loved where she resided and the history of the area. She was concerned St. Vincent DePaul's clientele would trespass on her and her neighbors' property and that it raised safety issues. She stated that the South side of Billings was not a depository for nonprofit, non-taxpaying organizations.
- **Gary Buchanan, Buchanan Capital, 201 N. Broadway, Billings, Montana**, in reference to Items 6 and 7, stated he there had not been enough due diligence made toward the One Big Sky Center to enter into a Development Agreement. He stated the developers did not have enough "skin in the game" and he opposed moving forward on the project until more research had been done. He applauded the City for choosing Springsted to conduct the review, but it was not enough. He stated there should be 10% to 15% investment from the developers, not less than 1%. Councilmember McFadden asked that should the developers invest at least 10% into the project, would Mr. Buchanan look more favorably to the City's involvement in the project. Mr. Buchanan responded that 10% was certainly better than 1%, but there was still a number of unanswered questions and that 10% should be the developers' money. Councilmember Sullivan asked if Mr. Buchanan felt that due diligence needed to be done before a pre-development agreement should be entered into. Mr. Buchanan responded affirmatively
- **Tom Zurbuchen, 1747 Wicks Lane, Billings, Montana**, in reference to Items 5, 6 and 7, stated the TIF grant was taking tax money of the finance district and he was opposed to it. He stated he was concerned about EB-5 and that it allowed immigrants into the Country without being thoroughly and properly vetted. He called it back door immigration and stated it was a Federal program that gave no controls on the local level. He stated it was program through the IRS and the Immigration Service, Employment Based Immigration Plan No. 5 (EB-5). He continued by stating the developers needed more "skin in the game".
- **Jeff Essman, 3130 McMasters Road, Billings, Montana**, in reference to Items 5, 6 and 7, stated St. Vincent DePaul was a great organization, however he did not believe it met the levy requirements of "public purposes", i.e., water, sewer, streets, sidewalks, curbs and gutters. He stated that the monies would benefit a private organization and not the community as a whole. In reference to the One Big Sky

Center, he stated he was concerned about bonding; that the project may not be able to sell the EB-5 visas; and whether the TIF district would cover the costs.

Councilmember Sullivan asked Ms. Volek if the costs were TIF reimbursable. Ms. Volek responded she could not answer that question, but would provide an answer at a later date.

- **Connie Wardell, P. O. Box 214, Billings, Montana**, in reference to Items 5, 6 and 7, stated she was shocked the City would consider a pre-development agreement for One Big Sky Center without having a public hearing on the matter. She agreed with others that not enough due diligence had been done on MontDevCo and its partners. She was concerned about the demolition of a portion of the downtown area for the project and the asbestos abatement involved, etc. and what would happen to that area should the project fail. She suggested the project be placed on a ballot with the School District's election in the spring to allow voters to weigh in on the decision. She recalled that when she served on the Downtown Business Partnership the intent was local property, local people, local monies and she mentioned that EB-5 workers were not local people. She stated that the current St. Vincent DePaul building on Montana Avenue could no longer house the amount of clientele for which it served and that impacted other businesses on Montana Avenue. She encouraged the City to approve the TIF grant for St. Vincent DePaul to relocate. Councilmember Brewster reminded Ms. Wardell that the public comment time was appropriate for the public to comment on matters. Ms. Wardell stated she preferred testifying at a public hearing after a presentation was made, rather than during the public comment period. She stated the project would totally change the face of downtown Billings and she was surprised that the community was not invited to have a conversation about that. Councilmember Yakawich asked Ms. Wardell about placing the item on the ballot. Ms. Wardell responded that whether the monies were from a TIF district or not, the monies were taxpayers' monies. She stated the City was taking on a huge risk on the project. She stated that Dehler Park and the new library were successful because it took 3 years of public involvement to develop workable solutions. She cautioned the Council to enter into any kind of agreement on the project before it had been presented to the public for them to voice their concerns.
- **Doug Jensen, 1432 Shade Tree Circle, Billings, Montana**, in reference to Items 5, 6 and 7, he stated the Council should consider the One Big Sky Center project because if Billings did not, Missoula or Bozeman would. He stated he ran the hospitality unit for Payne-West Insurance. Mr. Jensen stated he had been involved in a 1,400 acre project in Indianapolis, mixed-use center and that his background was in the hospitality arena. He has been involved with the developers of the One Big Sky Center for the past 3 years. He stated there were insurance companies that protected cities in the event of a failure and he believed the developers insurance would do the right thing. He supported the TIF grant to St. Vincent DePaul.
- **Dennis Sulser, 3624 Flagstone Dr., Billings, Montana**, in reference to Item 5, stated he represented St. Vincent's Healthcare and that it had a similar mission to that of St. Vincent DePaul to help the poor and vulnerable in the community. He provided shared that in 1898, the City committed a dollar per resident to St. Vincent Healthcare to serve the community. He encouraged the Council to apply that same

spirit of support toward St. Vincent DePaul. He supported the approval of the TIF grant.

- **Jerry Ray, 2646 Grand Avenue, #1, Billings, Montana**, in reference to Item 5, stated he owned the Crane Building for which St. Vincent DePaul would relocate. He supported the TIF grant approval to St. Vincent DePaul and stated that everything St. Vincent DePaul did was in service to the community and it was in the community's best interests to get people off the street. He stated St. Vincent DePaul had been at its current location for years and it would continue to serve the community for years to come. He stated that approximately 70% of the population St. Vincent DePaul served came from the neighborhood where the Crane Building was located. Councilmember Clark asked Mr. Ray if he realized that St. Vincent DePaul had told the Council that they would acquire the Crane Building with or without the TIF monies. Mr. Ray responded that may be true, however, it was the improvements that would be missing because the Crane Building was basically a shell. He stated there was no kitchen, no walls or rooms for office space, etc., so St. Vincent DePaul could probably purchase the building, but would have no way to make improvements to the building for its needs.
- **Clark Marten, 2606 Montana Avenue, Billings, Montana**, in reference to Item 5, stated he was a neighbor of St. Vincent DePaul's current location on Montana Avenue. He provided pictures of the improvements made to the building he occupied. He supported the TIF grant and spoke well of St. Vincent DePaul's community efforts.
- **Jeremiah Young, 1744 Songbird, Billings, Montana**, in reference to Item 5, stated he had a buy/sell agreement with St. Vincent DePaul to purchase the building on Montana Avenue and he looked forward to making improvements to the building and the area. He stated he had been involved in the Downtown Business Partnership at one time and he understood how TIF funds could be used. He supported the TIF grant and the relocation of St. Vincent DePaul. He stated the public purpose was to create a place where business would thrive. Councilmember Brown asked what could be said to the people who lived in the neighborhood of the Crane Building. Mr. Young stated there was a strong geographical boundary in that area, that being First Avenue South. He continued that the Crane building had more room for people to be inside the building, which was not the case at the current location. He said people had to wait in lines outside of the building. Councilmember Cimmino asked Mr. Young about his plans for the 3-story building. Mr. Young responded that the third floor was completely empty and the second floor was partially used for storage and some offices. He stated living quarters were prohibited by the railroad, so the building would be redeveloped strictly for commercial use. He stated the building could be polished and to be a jewel of the area. Councilmember Cimmino stated that the improvement project Mr. Young spoke about could potentially qualify for TIF funding as well. Mr. Young stated it could, but that he would not be asking for TIF funding. Councilmember Cimmino asked whether St. Vincent DePaul would be moving with or without the TIF grant. Mr. Young stated he believed the entire project would be dead if the TIF monies were not granted.
- **Ernie Dutton, 2046 Mariposa Lane, Billings, Montana**, in reference to Item 5, stated that St. Vincent DePaul had been at its current location for 40 years and

predated many of the longstanding businesses in the downtown business area. He stated that a year ago St. Vincent DePaul applied for a building permit to upgrade and expand its kitchen to serve more people, but it was denied as it did not meet code. He stated that in order for St. Vincent DePaul to purchase the Crane Building and move, they would have to sell the current building on Montana Avenue. He stated they had sold the building on Grand Avenue and were making every effort to continue their mission serving the community. He clarified that if St. Vincent DePaul was not successful in receiving TIF monies, they could not go forward with selling the Montana Avenue location and purchasing the Crane Building because too many improvements were needed in the Crane Building. He stated he understood the question about whether it was appropriate for TIF monies to go to a non-profit. He stated the project was absolutely consistent with the goals of the Downtown TIF District. He continued that it would promote urban renewal and increased property values in the TIF district. He supported the approval of the TIF grant and stated St. Vincent DePaul would not be able to proceed with the move without the TIF grant. Councilmember Brown asked for clarification of the use of TIF monies for not just improvements for a kitchen, but also for the purchase of the building. Mr. Dutton stated that while there had been significant improvements made to the Crane Building by the current owner/seller, the building remained a shell. He stated that St. Vincent DePaul provided meals, however, they could not provide hot meals because they were prohibited by Riverstone Health from using stoves or ovens.

Councilmember Brown confirmed with Mr. Dutton that without the TIF grant the move for St. Vincent DePaul was dead. Mr. Dutton stated that St. Vincent DePaul currently had no debt, but they would purchase the Crane Building and acquire debt in that purchase, but they would not have enough monies to upgrade the building to suit St. Vincent DePaul's needs. Councilmember Sullivan asked about the timeframe. Mr. Dutton responded that both buy-sell agreements had expired the Friday before, but believed those could be extended. Councilmember Yakawich asked if a merger could be considered between Montana Rescue Mission and St. Vincent DePaul. He noted there were a lot of similarities between the two agencies. Mr. Dutton stated he was not on the board, but believed there were different philosophical missions between the two agencies. He continued that St. Vincent DePaul is often the last agency people could turn to for help and aid, because the Crisis Center and Montana Rescue Mission turned away people.

- **Ed Zubroki, 3111 Zinnia, Billings, Montana**, in reference to Item 5, stated he was the director of St. Vincent DePaul and clarified its mission. He stated that the homeless in the community was not St. Vincent DePaul's problem; homelessness was the City's problem. He stated that St. Vincent DePaul had been happy operating where they were, but the numbers of needy people had grown dramatically and the agency had outgrown its space. He stated that if the TIF grant would not be approved, would the City approve the building permit to make improvements to the current kitchen to bring it within code and help with the space needs on Montana Avenue. He urged Council to approve the TIF grant so St. Vincent DePaul could continue serving the community's homeless.
- **Stella Ziegler, Stella's Bakery, 2525 First Avenue North, Billings, Montana**, in reference to Item 5, stated she had been a business owner for 38 years in downtown

Billings and had seen many changes in the downtown area. She stated it was disheartening to see gangs of homeless people wandering the streets with no place to go. She stated she has had to remove many of the homeless from and around her business because her patrons did not need to be approached or threatened by the homeless. She stated the Rescue Mission provided a place for the homeless to sleep and receive a hot meal, but would not allow people to stay there during the day. She stated that St. Vincent DePaul provided counseling, money management and job seeking. She supported St. Vincent DePaul's mission to help those in need and urged the Council to approve the TIF grant.

- **Jeanne Bender, 1617 Second Street West, Billings, Montana**, in reference to Item 5, stated she was the secretary of the Board for St. Vincent DePaul. She stated that St. Vincent DePaul was no longer the right fit for Montana Avenue. She stated St. Vincent DePaul had a public purpose and was eligible for TIF monies. She outlined numerous moving pieces to the relocation process. She supported the approval of the TIF grant. Councilmember Cimmino asked whether there were discussions about staying at the Montana Avenue location and utilizing TIF funds to improve what already existed. Ms. Bender responded that there had not been discussions, because they had been advised by the City that they would not receive a building permit to improve their current location. Councilmember Cimmino asked what department provided that response. Ms. Bender stated Ms. Volek had mentioned it to Mr. Zubroki, because the building had a wooden infrastructure. Ms. Volek responded that all of the beams were wooden and she explained it would have been very difficult to obtain a permit for a kitchen because of the wood construction. Ms. Bender stated St. Vincent DePaul had enough monies to purchase the Crane Building because they had sold the Grand Avenue store. She continued that they would not have enough money to make any improvements. Councilmember Yakawich asked Ms. Volek what it would take to establish a kitchen at the present Montana Avenue location. Ms. Volek stated the fire department and Riverstone Health would be involved in determining what improvements were needed to comply with fire and health codes. Ms. Bender reiterated that St. Vincent DePaul had nearly ran out of time to move forward on their relocation plans. Mayor Hanel spoke about several moving pieces and the fact that the existing building did not allow for adequate seating or housing of any kind.
- **Lee Humphrey, Jr., Edward Jones, 213 North Broadway, Billings, Montana**, in reference to Items 6 and 7, stated downtown Billings had improved over recent years and most of those improvements came from cornerstone businesses with large investments. He stated with the large improvements came very few issues. He supported focusing on large improvements and a centerpiece for downtown and developing a large convention center.
- **Jeanine Micks, Billings Chamber of Commerce NextGen, 217 Avenue D, Billings, Montana**, in reference to Items 6 and 7, stated she represented NextGen and supported One Big Sky Center because it would create jobs and opportunities for younger citizens.
- **Lief Willhaven, 4637 Neibauer Road, Billings, Montana**, in reference to Items 6 and 7, represented Eggart Engineering and Construction (EEC), and stated the One Big Sky Center was a game changer. He expressed concern about whether the

developers had enough “skin in the game” and that the Council did not fully understand EB-5 and TIF district policies. He was opposed to the City entering into any agreements or bonding for One Big Sky Center without more information. Councilmember Yakawich asked Mr. Willhaven what he thought needed to be done to move forward on the One Big Sky Center. Mr. Willhaven responded that EEC was heavily involved in the refurbishing of the Battin Building and stated the developers of that building had placed a ton of “skin in the game” and was very committed to the project, which was great for the City. He stated he was not comfortable with a developer only having about 1% of its own investment into the project. He said it would be too easy for them to walk away from the project without having more investment in it. He would like to see the developers with a 10% to 15% investment tied to the project and the Council receive more education on EB-5. Councilmember Sullivan asked about the market for class A office space and whether the downtown area would be flooded with office space. Mr. Willhaven stated EEC would not look to just filling spaces with offices, but also meeting spaces, a convention area, retail and a plaza. He stated there would be plenty of opportunity for One Big Sky Center and redevelopment of other buildings in the downtown area.

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

Mayor Hanel called for a recess at 8:11 pm.

Mayor Hanel called the meeting back to order at 8:27 pm.

**1. CONSENT AGENDA -- Separations:**

**A. Bid Awards:**

- 1. W.O. 14-11, Water Reclamation Facility Nutrient Upgrade; Circuit Breaker Procurement.** (Opened 10/11/16) Recommend Yellowstone Electric Co., \$171,619.

**B. Bills and Payroll:**

1. September 27 and 28, 2016
2. October 3, 2016

**C. Professional Services Contract for W.O. 16-18, 911 Call Center; CTA Architects; \$650,719.**

**D. Professional Services Contract for W.O. 17-01, Schedule 1 of the 2016 Water Main Replacement Projects; DOWL; \$377,800.**

**E. Professional Engineering Services Contract for W.O. 17-01, Schedule 2 of the 2017 Sanitary Sewer and Water Replacement Projects; Morrison-Maierle, Inc.; \$749,453.**

- F. **Professional Engineering Services Contract** for Schedule 3 of the 2017 Water Main Replacement Projects; Sanderson Stewart; \$558,975.
- G. **Customer Service Agreement** with NorthWestern Energy; W.O. 14-11, Water Reclamation Facility Nutrient Upgrade, Expansion and Improvements; \$235,752.
- H. **Development Agreement** with the Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-Day-Saints (LDS).
- I. **Acceptance of Quitclaim Deed** for the street tract within Maier Subdivision near the intersection of 48th Street West and Grand Avenue from Yellowstone County.
- J. **Acceptance of Donation** to the Fire Department from ExxonMobil for 2 jet skis and a trailer; \$9,600.
- K. **Acceptance and Approval** of State Highway Traffic Safety overtime grant and Standard Agreement for Billings Selective Traffic Enforcement Program (STEP); \$7,000.
- L. **Acceptance** of 2016 Internet Crimes Against Children (ICAC) Grant for the Police Department; \$246,797.

Councilmember Brown separated Items 1B1, 1B2 and 1E in order to abstain.

Councilmember Yakawich separated Item 1F for discussion.

Councilmember Cromley separated Item 1B1 and 1B2 in order to abstain.

Councilmember Friedel separated Item 1J for discussion.

Councilmember Cimmino separated Items 1A1, 1B1, 1B2 and 1G in order to abstain.

Councilmember Swanson moved for approval of the Consent Agenda, with the exception of Items 1A1, 1B1, 1B2, 1E, 1F, 1G and 1J, seconded by Councilmember Sullivan. On a voice vote, the motion was unanimously approved.

Councilmember Sullivan moved for approval of Item 1B1, seconded by Councilmember Freidel. On a voice vote, the motion was approved 8-0, with Councilmembers Brown, Cromley and Cimmino abstaining.

Councilmember Sullivan moved for approval of Item 1B2, seconded by Councilmember Freidel. On a voice vote, the motion was approved 8-0, with Councilmembers Brown, Cromley and Cimmino abstaining.

Councilmember Sullivan moved for approval of Item 1G, seconded by Councilmember Freidel. On a voice vote, the motion was approved 10-0, with Councilmember Cimmino abstaining.

Councilmember Sullivan moved for approval of Item 1A1, seconded by Councilmember Freidel. On a voice vote, the motion was approved 10-0, with Councilmember Cimmino abstaining.

Councilmember Sullivan moved for approval of Item 1E, seconded by Councilmember Freidel. On a voice vote, the motion was approved 10-0, with Councilmember Brown abstaining.

Councilmember Yakawich separated Item 1F thanked Dave Mumford, Public Works Director, for his attendance at a recent Pioneer Park Task Force's meeting and addressing residents' concerns about lead pipes in the area. He asked Mr. Mumford how Public Works was staying on top of the situation. Mr. Mumford responded that Billings was in a very good position because former City Councils had funded rehabilitation projects to replace and repair water and sewer infrastructure. He stated that many of the cities throughout the state were dealing with failing infrastructure and many of those communities did not know how they would meet the growing needs for the next 5 years. Mr. Mumford stated replacements in Billings were done with contractors and in-house pipe bursting techniques. He stated \$9 million to \$10 million per year was spent on rehab projects. He stated pipe projects were replaced with plastic pipe that would last at least 100 years. He noted there were issues, however, 1% to 2% of the system were replaced per year and breaks were kept down. Mr. Mumford addressed concerns about lead pipes in the McKinley School area and on the Southside. He stated Public Works was looking into a program that would allow the replacement of those lead pipes to be replaced within the next couple of years, including those located on private property. Mr. Mumford stated the Finance Department was creating an SID that would allow Public Works to replace pipes from the property line to the meter and property owners would have 15 years to repay the City. Councilmember Clark asked if there were any immediate problems with lead leaching into the water system. Mr. Mumford stated the City regularly tested for lead in the water and Billings' drinking water was significantly below any Federal standards. He stated that Billings did not have any lead in the water naturally and the water from the Yellowstone River had a high mineral content that naturally coated the inside of lead pipes so lead leaching from the pipes was not as much of a concern as it was in other areas of the country, such as Flint, Michigan. Mr. Mumford stated that the City worked with Riverstone Health to conduct a broad spectrum of area of concern for people concerned about lead in their homes. Councilmember Yakawich moved for approval of Item 1F, seconded by Councilmember Sullivan. On a voice vote, the motion was unanimously approved.

Councilmember Friedel separated Item 1J for discussion and asked for an explanation from Paul Dextras, Fire Chief, what uses the Fire Department had for 2 jet

skis donated by ExxonMobil. Fire Chief Dextras responded that the Fire Department was an all emergency first response and that included the Yellowstone River and Lake Elmo. He admitted that the Fire Department was not a very strong water rescue team. He stated there was some basic training in swift water, but when an emergency call was received for water rescue, the Fire Department did not have a way to get into the water. He stated that the Sheriff's Department and Search and Rescue Team were better equipped, however, time was of the essence in those situations and it took more time to assemble those agencies. He stated that by having the jet skis it would enhance rescue operations, upstream and downstream. Fire Chief Dextras stated that in the event of an oil spill, the Fire Department worked with the areas oil refineries to mitigate as much of the pollution as possible and that required extending booms across the river to absorb any pollutants that came downstream. He stated that the donation was by ExxonMobil and the Fire Department would absorb any costs in its operating budget for fuel and maintenance without much impact to the budget. Ms. Volek asked Fire Chief Dextras if the Fire Department had a boat to utilize for rescue efforts. He responded that the Fire Department did not have a boat, but had a snow sled that was be used on ice. Councilmember Friedel moved to approve Item 1J, seconded by Councilmember Cimmino. Councilmember Friedel stated it was great to see a private business support the Fire Department's water rescue efforts. Mayor Hanel stated the donation showed another good example of a private-public partnership and thanked ExxonMobil for the donation. On a voice vote, the motion was unanimously approved.

**REGULAR AGENDA:**

**2. PUBLIC HEARING AND RESOLUTION NO. 16-10590 approving and adopting budget amendments for FY 2017. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

Ms. Volek, City Administrator, stated that staff had no presentation, but was 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 2, seconded by Councilmember Swanson. On a voice vote, the motion was unanimously approved.

**3. PUBLIC HEARING AND SPECIAL REVIEW #949: a special review to construct a parking lot on a vacant lot that is zoned Residential 7000 (R-70) on a 7,500 square foot parcel of land described as Lot 2, Cowley Subdivision, at 331 Calhoun Lane. Niko B&W LLC, owner; Emarie Skelton - High Plains Architects, agent. Zoning Commission recommends conditional approval and adoption of the findings of the 3 criteria. (Action: approval or disapproval of Zoning Commission recommendation.)**

David Green, Planner and Subdivision Coordinator, gave a brief PowerPoint presentation that provided an overview of the property and its surroundings. He described a daycare, residential property and active business in the area. The subject property included 3 lots and had been unattended for a number of years. The residence on the property had been rehabilitated into a daycare. A public meeting was held and those who attended were the proposers for the new development. Mr. Green stated that the application met the 3 criteria and some of the new policies within the newly adopted 2016 Growth Policy. He stated the Zoning Commission forwarded a recommendation for conditional approval and he outlined the conditions.

Councilmember Yakawich asked if there would be a screening fence between properties and the sidewalk along Vaughn Lane. Mr. Green responded that it was only required to be on the property line between the subject property and the neighboring residence, not along the sidewalk. Councilmember Yakawich asked if the parking lot would be paved. Mr. Green stated it would be and there would be storm water retention requirements like any other parking lot. Councilmember Yakawich asked if a stop sign or yield sign would be placed exiting the parking lot. Mr. Green responded it was up to the Engineering Division whether placement of a sign was necessary. Councilmember Yakawich stated he noticed there was no response from the neighborhood. Mr. Green stated that was true and the public meeting was held in the Miller Building.

The public hearing was opened.

- **Dan Brocklebank, 3815 Fairmeadow, Billings, Montana**, stated he was the developer of the project. He stated there was good relationship between them and the property owner to the east of the property.

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

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

**4. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #949: a zone change from Residential 6,000-Restricted (R-60-R) and Residential 9,600 (R-96) to Residential 5,000 (R-50) on Lots 1, 2, 3 and 4, Block 18, Lots 3 and 4, Block 19, and Lot 11, Block 16 of Lake Hills Subdivision, 15th Filing; and Lots 4 and 5, Block 5 of Lake Hills Subdivision, 33rd Filing, a total area of 3.52 acres of land. Trent Parks, applicant. 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, gave a brief PowerPoint presentation. Ms. Cromwell noted that the description contained an error in that the Zoning Commission would not recommend approval of Lot 11, Block 16 of Lake Hills Subdivision, 15<sup>th</sup> Filing. She stated, therefore, that the applicant would ask Council to allow him to remove the lot from the Zone Change and made his decision to do so after the Zoning

Commission's public hearing. Councilmember Cimmino asked if that omission was noted in the published advertisement for the public hearing. Ms. Cromwell responded that the published notice did not contain Lot 11, Block 16 of Lake Hills Subdivision, 15<sup>th</sup> Filing, in its description. Councilmember McFadden asked whether Items 3 and 4 were correctly numbered as Special Review 949 and Zone Change 949. Ms. Cromwell stated that synchronicity had been reached in zone changes and special review applications and the numbering was correct. Ms. Cromwell continued that the Zoning Commission voted 4-0 to exclude Lot 11 from the recommendation of approval. She stated that at the public hearing most of the testimony from surrounding property owners, including Ron Hill and Mike and Tom Craighill, was in opposition for the zone change for Lot 11, Block 16. She stated there were developments around that property that were building single-family homes and all of the zoning to the south of the lot and east of the lot were zoned Residential 9600, so it would be different than any of the other lots in the block of Lake Hills Subdivision. Ms. Cromwell stated that in the area there was a lot of infrastructure and development work to be done. Ms. Cromwell concluded that the Zoning Commission recommended approval to change the zoning from R-60-R to Residential 5,000 (R-50) based on their findings of the 10 criteria, however, did not recommend approval of Lot 11, Block 16, which was zoned R-96. She stated the Zoning Commission believed the remaining lots were compatible with the surrounding zoning and the proposed development around those lots. Ms. Cromwell noted the zone change was consistent with the infill policy and 2016 Growth Policy.

The public hearing was opened.

- **Terry Odegaard, 2101 Lake Hills Drive, Billings, Montana**, stated he was familiar with the property as he lived nearby. He stated there had been an agreement years prior between Gary Oakland and Ron Hill to retain the first 200 feet of the property to protect the investment of the people south of Annandale and he asked for clarification. Ms. Cromwell stated that originally when the zone change to R-7-R was done for the Dover Ranch, the City Council did not approve the zone change for the far eastern boundary of Dover Ranch where it came against Lake Heights Drive. She stated she would check the zoning map to make certain it conformed to the ordinance that was adopted for that zone change. Mr. Odegaard stated he wanted to make certain that the buffer zone was considered. Mr. Odegaard then cautioned against spot zoning and for the City Council to do its due diligence. Councilmember Brewster stated he made the motion to create the changes to the area Mr. Odegaard had mentioned to create a buffer against the subdivision. He stated the only place the buffer was created was where there were existing homes, but the buffer did not exist in the undeveloped portion.
- **Tom Craighill, 2242 Clubhouse Way, Billings, Montana**, stated his lot was 13A, Block 16 of the zone change and he supported the zone change as proposed.
- **Trent Parks, 1001 N. 22<sup>nd</sup> Street, Billings, Montana**, stated he was the sponsor and applicant of the zone change. He reiterated that he had agreed to remove Lot 11, Block 16 from the zone change to preserve the zoning near the home Mr. Craighill was building.

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

Councilmember Cromley moved to grant the applicant's request to remove Lot 11, Block 16, from the zone change, seconded by Councilmember Cimmino. On a voice vote, the motion was unanimously approved.

Councilmember Brewster moved for approval of the Zoning Commission recommendation and the adoption of the 10 criteria for the zone change, seconded by Councilmember Cimmino. Councilmember Yakawich stated he appreciated how the applicants met with the community and negotiated terms that made it easier for the Council to make decisions. On a voice vote, the motion was unanimously approved.

**5. APPROVAL of Tax Increment Financing Grant from the Expanded N. 27th Street Urban Renewal Area funds to St. Vincent DePaul Building Improvements, at 2610 Minnesota Avenue; up to \$350,000. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

Ms. Volek, City Administrator, stated that this item was presented at the October 3, 2016, Work Session meeting and staff had no additional presentation, but was available for questions, as well as members from the Downtown Business Partnership. Councilmember Cromley asked Brent Brooks, City Attorney, about whether the request was appropriate and authorized by statutes for TIF funding. Mr. Brooks responded that in anticipation of the question he stated there were 3 or 4 Attorney General Opinions on the subject. He explained that in 1988, the Attorney General stated that granting \$125,000 to the Yellowstone Art Museum, a non-profit organization, was an appropriate use of TIF funds. He stated that project consisted of remodeling a current location and did not involve a relocation. He stated the statues themselves were lengthy and gave a long list of items where TIF funds could be used, but there was very little case law. Mayor Hanel stated that an earlier comment was made to the effect that the City had recommended St. Vincent DePaul move. He stated this had not been a recommendation, but a suggestion that perhaps a move to a different location would better serve their clientele. He supported St. Vincent DePaul and stated the organization had helped countless individuals and families for decades and had done a very fine job. Councilmember Swanson stated he and his wife had served at St. Vincent DePaul in the past. He stated that location and timing was perfect and he supported the grant.

Councilmember Swanson moved for approval of Item 5, seconded by Councilmember Cromley. Councilmember Brewster stated one of his frustrations with TIF Districts was the definitions of what they could do were so broad and varied that everyone could make an argument, pro and con, for the granting of the monies. He stated one could argue that this was improving the neighborhood or this would raise taxable value downtown or one could say that it did not do that at all. He continued that he did not believe anyone had any ill will toward St. Vincent DePaul, but questioned the proper use of TIF funds. Councilmember McFadden stated he pondered the testimony

given by Kelly McCarthy and Jeff Essman and he questioned whether the grant request was an appropriate use of TIF monies. Councilmember Sullivan echoed the concerns of TIF monies grants and referred to the City Attorney's statement about an Attorney General Opinion. He stated the application was marketed incorrectly as building improvements, but that it should have been marketed as a relocation of a tenant. Councilmember Sullivan stated he was looking for guidance. Councilmember Brown stated there was confusion over the appropriate use of TIF monies. He stated St. Vincent DePaul is a great organization, but he would not support the motion. Councilmember Yakawich stated he was disappointed with the TIF board not consulting other wards with decisions that impacted those wards. He was disappointed by the vision for the homeless situation and no collaboration between agencies. He encouraged the non-profit organizations to collaborate more to provide better coverage of services to the needy. Councilmember Yakawich stated he opposed the motion because his constituents had voiced their concern about having St. Vincent DePaul as a neighbor. He stated that he did not believe First Avenue South was a barrier to prevent St. Vincent DePaul patrons from crossing into neighborhoods. Mayor Hanel spoke in favor of the motion.

Councilmember Sullivan amended the motion to allow for a call back of funds should St. Vincent DePaul sell the new building within the next 20 years, up to \$350,000 would be paid back to the City. Mayor Hanel referred to Brent Brooks, City Attorney, and asked whether that would be allowed. Mr. Brooks responded that the Attorney General's Opinion he referenced earlier had provisions in the TIF grant to Yellowstone Art Museum and the amendment Councilmember Sullivan proposed would be appropriate as long as the details were well articulated. Councilmember Swanson asked how the call back amount would be determined. Councilmember Sullivan stated that he amended the motion to restrict another agency from benefitting from the grant of public funds should St. Vincent DePaul sell the building. Councilmember Swanson asked if there would be interest charged. Councilmember Sullivan responded he would not want interest to be charged. Councilmember Sullivan stated he was in agreement with the original motion for a TIF grant to be approved to St. Vincent DePaul for building improvements, with the amendment added for a call back of funds to the City of up to \$350,000, should St. Vincent DePaul sell the new building within the next 20 years. Councilmember Friedel asked for a definition of TIF. Mr. Brooks defined TIF as a component by which money was utilized for a "public purpose" within a district. He continued that the definition lies within a "public purpose". Mr. Brooks suggested that a deed restriction be applied to place the call back condition for future enforcement. Councilmember Friedel asked whether utilization of TIF monies were to enhance the tax base. Mr. Brooks responded that that was usually a byproduct by improving the district, however, the primary purpose as defined by statute was to accomplish urban renewal of blighted areas. Councilmember Cromley asked if there was a 3% interest on the call back. Councilmember Sullivan stated he specifically did not ask for interest in the amendment. Councilmember Cimmino stated that this was a grant, not a loan, and why would the City want it back. Mr. Brooks responded that if he understood Councilmember Sullivan's concern, the call back would ensure that should the building be sold in the near future, the funds that improved that building would remain for "public purpose" and

a new business that was not with a “public purpose” would not benefit from the TIF monies. Councilmember Cromley stated he would support the amended motion as it was not really a grant, but rather an investment in the community. Councilmember Clark asked whether the call back would be in effect should another non-profit buy the building because it would still fit the “public purpose” definition. Councilmember Sullivan confirmed that no matter who purchased the building, the call back would be in effect. Councilmember Brown stated that was not the argument. He stated the argument was whether TIF funds could be granted to a non-profit that did not pay taxes to the City. Councilmember Sullivan stated the amended motion was only about granting the monies and a call back provision should the non-profit sell the building within the next 20 years. Councilmember Brown stated he had no concern about the continued existence of St. Vincent DePaul, he was certain they would be around for decades to come. He stated his only concern was whether utilizing the TIF monies in this fashion was appropriate. Councilmember Cimmino called for the pitting of one part of the city against another to cease. She stated every part of the city was just as important as another and she loved the Crane Building and had wished that the City’s departments could have occupied that building in the past. She continued that there must be help for the homeless population and utilizing the Crane Building was a wonderful opportunity. She concluded that she supported the original motion without conditions. Mayor Hanel called for a roll call vote on the amendment to the original motion. The motion failed 5-6, with Councilmembers Yakawich, Cimmino, McFadden, Friedel, Clark and Brown voting in opposition.

Mayor Hanel called for a roll call vote on the original motion. Councilmember Clark asked staff if St. Vincent DePaul would receive the \$350,000 before or after the Crane Building purchase. Ms. Volek stated it was usually handled as a reimbursement after work had been completed with the remodel. Greg Krueger, Downtown Billings Alliance, confirmed that statement and stated TIF grants were always disbursed as a reimbursement. Councilmember Friedel stated he would not support the grant as he was opposed to giving tax monies to a non-profit that did not pay taxes. The motion was approved 7-4, with Councilmembers Yakawich, McFadden, Friedel, and Brown voting in opposition.

**6. APPROVAL of Pre-development Memorandum of Understanding (MOU) between the City of Billings and Montdevco II for the proposed One Big Sky Center downtown redevelopment project. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

Ms. Volek, City Administrator, introduced David MacGillivray of Springsted, Inc. and his assistant who provided a PowerPoint presentation on their due diligence findings. Mr. MacGillivray stated Springsted, Inc. had been the independent financial advisor for the City for the past couple of decades. He stated Springsted, Inc. did not work for underwriters or developers, but represented the City’s interests only. Mr. MacGillivray stated the presentation was not an opinion on the viability of the project. He explained the due diligence explored the backgrounds of the developers and would identify any red flags to help the City determine whether to proceed. He also stated the

presentation would not voice an opinion on TIF monies or the appropriate use of said monies. He said Springsted, Inc. entered into a nondisclosure agreement with the developers and described the process for gathering information. Mr. MacGillivray stated nothing adverse was found and the full details were in the written report provided. His assistant presented the details of the project and stated that a hotel with 150 rooms and a conference center in it. She stated there would be approximately 80 apartments, retail and office space and the entire project was slated to be \$124 million. She stated the combined project would include 650 parking stalls for about \$21 million, included in the \$124 million. She stated the City would be included in the costs of the parking and convention center only. She concluded that with all hard and soft costs included the project would be approximately \$165 million. Councilmember Brewster asked for information on the soft costs. The assistant stated soft costs were items like financing fees, costs of issuance, interest costs, architect and engineering costs and there could be some carrying costs because it is such a large project that would take a long time to complete. Councilmember Yakawich asked about the developers' funding. The assistant responded that \$17 million would be from a construction loan that the developers would incur. She stated the estimated amount of funds the City would contribute was \$35 million, EB-5 funding was \$30 million and the remainder of the funding would be from tenant paid improvements and other external equity investors attracted to the project over the next 9 to 12 months. Councilmember Yakawich asked where the \$35 million in City funds would come from. Ms. Volek responded that it would come from TIF monies. Councilmember Sullivan asked about tenant paid improvements and how that worked. Councilmember Brewster spoke about EB-5 funding on a project in the eastern side of the United States and that is was difficult for that project to even get \$15 million to do that project. He asked what would happen to the project if the EB-5 funding did not come into play and how would that affect the project and the tax increment funding or bonding. The assistant stated EB-5 could not be a definitive revenue source and would be a lingering issue that may cause concern. She stated that if the project were reduced, the amount of parking spaces would also be reduced which would lessen the amount of City TIF funding. The assistant introduced the 3 developers, Burke McHugh, Greg Tatham and Skip Ahern, who created MontDevCo, LLC specifically for the One Big Sky Center project and she outlined their various backgrounds and experiences. She stated that Greg and Burke had worked together on smaller projects, but all 3 had not ever worked together. She stated that Mr. Ahern had worked on larger projects, although not as large as this one and Mr. Tatham and Mr. McHugh had not worked on this large of a project. Councilmember Swanson added that the City was asked to enter into a Memorandum of Understanding or Letter of Intent only and that was not a firm binding contract on either side. Mr. MacGillivray spoke to the developers' ability to deliver on a \$165 million project in downtown Billings. He stated there was not a definitive answer to that question at this time. He encouraged the City to investigate the viability of each of the project components and add to the developers' capacity to provide performance along the way during the Memorandum of Understanding period to determine if they could deliver. He stated that the developers had not worked on a project that involved the Federal program, EB-5. He recommended that the City not get too far in front of the project, but go down the road together with the developers. He stated that the downtown area had a parking system in place and

encouraged the City to look at that system and how the proposed parking garage would fit into that system. Councilmember Yakawich asked who paid for the due diligence study. Mr. MacGillivray stated Springsted was contracted with the City and the cost was up to \$25,000, plus expenses, however there may be follow up costs depending on what the City decided. Councilmember Yakawich asked for a timeline; what kind of items would one look for red flags; and would that be in the report. Mr. MacGillivray responded that what one did not see for documented financing and private development aspects would be indicators for red flags and its sequencing. Councilmember Yakawich asked whether Springsted recommended the developers have 10% to 15% investment in the project. The assistant answered that the rules of thumb on debt to equity ratios varied on the type of project. Mr. MacGillivray stated that \$17 million was a good start and by the time dirt is moved there would be a fully executed development agreement between the City and the developers and private financing, hotel operators and tenant leases would be in place. Councilmember Sullivan asked about risk mitigation. Mr. MacGillivray stated there are a number of risk mitigation techniques, such as phasing, financial guarantees, TIF reimbursements and bonding. Councilmember Brown asked how the City could guard against the incompletion of the project. Greg Krueger responded that a development agreement would be entered into and the project would be a partnership between the developers and the City with each giving a bit to get the project accomplished. He stated the Empire Garage was a similar project and he had been involved in approximately 10 other projects that utilized development agreements. He offered to give monthly progress reports or anything the Council wished to help with the project. Councilmember Brown asked if the TIF monies were actually being used as collateral for the developers to get more financing. Mr. Krueger responded that in a way it was and through a development agreement stating that the developers needed to provide a number of secured leases, etc., that would protect the TIF monies. He stated that the value of the project when it enters the tax rolls will account for at least 48% of the bond payment. He stated that if the project reduced in value, the bond payment would as well to protect the City's investment. Councilmember Brown asked if the City would lose its TIF monies if the project was not to go forward. Mr. Krueger responded that the City was out nothing. Councilmember Brown stated he was concerned that if the City did the parking garage and convention center, that without the rest of the project, it was not feasible. Mr. Krueger stated the IRS would provide an estimate of taxes when the plans were provided and the plans would be paid by the developers. He stated the TIF monies would come in when the project was ready to build; bonds were not sold until the money was all there. Mr. Krueger stated that the developers had been working on this project for approximately 2 years with the DPA and the project was about halfway through the process. He stated that the Council would get the last say as to whether a dime was spent. Councilmember Cimmino asked how many of the development agreements Mr. Krueger was involved, was EB-5 ever used and if not, why use it now. Mr. Krueger responded that EB-5 had never been used before, but there was a project in Missoula that was using it now. He continued that it was a source of revenue and potential funding that he had not heard about before but learned about it through the Big Sky EDA. He stated the developers had connections with a firm in Missoula that would help with EB-5, but the program had its critics. Councilmember Swanson asked whether the Memorandum of Understanding would answer a lot of the

questions. Mr. Krueger stated the Memorandum of Understanding would serve as an outline; answers would be in the development agreement later. Councilmember McFadden stated he was impressed with Mr. Krueger's information and asked if the developers were willing to speak at the meeting. Mr. Krueger stated the developers were present and wished to address the Council. Councilmember Yakawich asked Mr. Krueger to provide a playbook explaining a point-by-point process. Mr. Krueger stated the Memorandum of Understanding basically did that, but he could put it in a one page format if it would be helpful. Councilmember Yakawich asked about the differences between bonds. Mr. Krueger stated the project was interested in tax increment finance bonds which would pledge the increment from the district to make the payment on the bond. He stated there would be no general funds, no special assessments within the district, the growth revenue from the district would make the bond payment. He continued that the City had never defaulted on a TIF bond. Councilmember Sullivan asked what would occur to make the City default on a TIF bond. Mr. Krueger stated that should a natural disaster or sink hole sink the entire project into the ground, as had happened in Bozeman wherein an explosion occurred, the IRS would allow the City to lower the base on the project should something like that occur. Councilmember Brewster asked for clarification on the increment paying the bond. Mr. Krueger stated that approximately 48% would pay the bond and the rest of the payment would come from the rest of the district in the growth that was established so far. He stated there was a 25-year tax increment on the project. David MacGillivray advised Council that there were situations in which TIF bonds had gone into default and that had occurred when a project wasn't completed, or there were changes in tax law. He stated that when a TIF bond went into default investors became unwilling to invest in another TIF bond project and it could hurt an overall credit rating to the City should that occur. The developers, Skip Ahern of Denver, Colorado, Greg Tatham of Phoenix, Arizona and Burke McHugh from Denver, Colorado, introduced themselves and addressed the Council. Councilmember Cimmino asked for a brief overview of the project. Mr. Ahern addressed the Council and stated the downtown area had a lot going for it and the project would turbo charge the area, economically, etc. He confirmed that the developers were asking the City to pay for the conference center, parking garage and the 29<sup>th</sup> Street green space that would occur by vacating a portion of 29<sup>th</sup> Street. He stated there were 3 tenants interested in leasing 90,000 sq. ft. of office space and the developers would not consider developing more space than what they could have leases for. He stated that if they could not obtain leases for the amount of space, then the space would be reduced prior to building. He stated the same would be true if they obtained leases for 90% of the space, then the developers would consider more office space to accommodate future growth. He assured Council that the developers would not overbuild what was needed in the City. Mayor Hanel asked who would manage and staff the conference center once it was built. Mr. Ahern responded it would be managed by the hotel, another group would manage the apartments and another group would manage the office space and retail space. Mayor Hanel asked whether the developers had utilized the EB-5 program before. Mr. Ahern stated he had and explained that the program was ran by the IRS. He stated research was done in the Billings area to utilize \$30 million as EB-5 toward the project by the Montana regional office. He stated that in Missoula on a \$46 million project, \$23 million was in EB-5 funding. Mayor Hanel asked

what the response had been from the local financial institutions. Mr. Ahern responded that the response had been very favorable, however he stated that most of the banks were smaller banks that could not take on a project this large without syndication. He explained that syndication would put the project at risk and therefore they would be working with a large bank with a local presence that could fund the entire project. Councilmember Sullivan asked about the rate of return to EB-5 investors. Mr. Ahern explained that should an investor make a \$500,000 investment, the project would have to create 10 jobs. He stated that then the EB-5 regional office would assess whether those jobs were real and how many could be done. He stated the Montana regional office proposed that the project could support \$30 million of EB-5 funding. He stated the investors would be sought outside of the United States and those investors would be brought in as debt at 4% to 5% range. He continued that ground would not be broken until all of the financial pieces were in place. He stated this was a fun and exciting project and Billings was a great place for this to happen. Mr. Ahern also stated that the numbers were loose because until a Memorandum of Understanding was entered into with the City, the details of the type of construction, etc. were not firm. He stated the Memorandum of Understanding with the City was the first step. He assured the Council that the TIF monies were not at risk because they would not be paid until the project was done. Greg Tatham spoke to the Council about how he became familiar with downtown Billings and decided to invest in downtown Billings. Burke McHugh addressed the Council and stated the developers had worked on the planning stages of the project for 2 plus years and they were really excited about partnering with the City to move the project forward. Mayor Hanel stated the project was huge and a major undertaking and Council was extremely cautious about how taxpayers' monies were used. Mr. Ahern encouraged Council to be thorough, ask hard questions and get involved so it was comfortable with its decisions. Mayor Hanel asked Gary Buchanan to approach the podium. Mr. Buchanan stated the Springsted report was excellent and he encouraged Council to read the full report before taking action. He reiterated what he meant by "skin in the game". He stated that the 3 developers had \$1.4 million invested in the project. He stated the developers should have more than 1% of their own money into the total project. He stated he loved the project and if it were successful it would help his business too. Mr. Ahern approached the podium in response and stated he was offended by Mr. Buchanan's comments. He stated the developers had invested a lot of money in Billings and it was expected they would put in a lot more, but the amount was uncertain and he stood by his track record. Council discussion followed about whether to delay making a decision. Ms. Volek stated the EB-5 involvement and numerous other things needed to be considered, including the outcome of the elections. She continued that she was uncertain whether the developers were willing to wait on Council decision. She stated other than staff time, the costs incurred by the City were for Mr. MacGillivray's report and for bond counsel to review the bonding, which would be paid from the TIF district funds. Councilmembers Yakawich and Swanson stated they wished to review the Springsted report and Memorandum of Understanding further. Councilmember Brewster stated he wished to delay a decision on Items 6 and 7 until the next regular Council meeting to allow time for Councilmembers to review the reports, etc. Councilmember Cimmino stated that Mr. Krueger had provided information about a number of studies and reports about downtown hotel needs and market

feasibility in the Billings area and encouraged fellow Councilmembers to also review that information. Councilmember Brewster made a motion to delay a decision on Item 6 until the November 14, 2016 regular Council meeting, seconded by Councilmember Friedel. Councilmembers Friedel and Yakawich supported the delay. Councilmember Cromley stated he would abstain from Item 6. Councilmember Cimmino made a substitute motion to approve Item 6 to enter into a pre-development Memorandum of Understanding, seconded by Councilmember McFadden. On a voice vote, the motion failed 2-8 with Councilmembers Cimmino and McFadden voting in favor, and Councilmembers Yakawich, Brewster, Friedel, Sullivan, Clark, Swanson, Brown, and Mayor Hanel voting in opposition. Councilmember Cromley abstained. On a voice vote, Councilmember Brewster's motion was approved 10-0. Councilmember Cromley abstained.

**7. APPROVAL of Bond Reimbursement Resolution for the One Big Sky Center project. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

Based on the discussions held on Item 6, Councilmember Brewster made a motion to delay a decision on Item 7 until the November 14, 2016 regular Council meeting, seconded by Councilmember Friedel. On a voice vote, Councilmember Brewster's motion was approved 10 to 0. Councilmember Cromley abstained.

**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 Brewster moved to direct staff to, by April 2017, provide information regarding TIF districts to educate Council and give direction to Council to develop policies and criteria for use of TIF funds, seconded by Councilmember Friedel. On a voice vote, the motion was unanimously approved.
- Councilmember Brewster moved to direct staff to draft an ordinance for Council consideration concerning tree ownership to address imminent danger to neighboring property owners, seconded by Councilmember Sullivan. On a voice vote, the motion was unanimously approved.

There was no further business, and the meeting adjourned at 11:39 pm.

CITY OF BILLINGS



ATTEST:

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

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