

## **REGULAR MEETING OF THE BILLINGS CITY COUNCIL**

### **December 10, 2007**

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

**CALL TO ORDER – Mayor Tussing**

**PLEDGE OF ALLEGIANCE – Mayor Tussing**

**INVOCATION – Councilmember Boyer**

**ROLL CALL – Councilmembers present on roll call were: Ronquillo, Gaghen, Stevens, Brewster, Veis, Ruegamer, Ulledalen, Boyer, Jones, and Clark**

**MINUTES – November 26, 2007, approved as amended**

**COURTESIES –**

- **VISTA Placement** – Brenda Beckett, Community Development Manager, recognized Mr. Jim Nolan and the Human and Community Services Division of the MT Department of Public Health and Human Services for providing \$2,500 in placement costs for VISTA volunteer, Miranda Dye, as a member of the Mayor's Committee on Homelessness.

**PROCLAMATIONS – none**

**ADMINISTRATOR REPORTS – Tina Volek**

- Ms. Volek reminded Council and the public that the last regular meeting of 2007 was scheduled for December 17, 2007, at 6:30 p.m.; the next work session was scheduled for January 7, 2008; and the first regular meeting in the new year was scheduled for January 14, 2008.
- Ms. Volek referenced a letter received from the developer for Agenda Item #4 requesting an indefinite delay. She said the Mayor and Council had received the letter, and it was included in the Ex-Parte notebook.
- Ms. Volek advised the land appraisal for Item N had not been included in the agenda packets, but had been included in the Friday packets. She noted a copy of the appraisal was in the Ex-Parte notebook.
- Ms. Volek referenced Item B, Change Order No. 2 in the amount of \$87,114.00 for the new ballpark, that was included in the Friday packet. She said a copy was included in the Ex-Parte notebook.
- Ms. Volek advised that Item H was recommending approval of an "agreement" and not a "letter" as indicated on the staff report.

**PUBLIC COMMENT on "NON-PUBLIC HEARING" Agenda Items: 1 and 2 ONLY. Speaker sign-in required.** (Comments offered here are limited to 1 minute per speaker. Please sign up on the clipboard located 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.)

*(NOTE: For Items not on this agenda, public comment will be taken at the end of the agenda. Please sign up on the clipboard located at the back of the room.)*

The public comment period was opened. Mayor Tussing asked if anyone was present to testify on Item 2, because the committee had not provided its recommendation prior to the meeting. Councilmember Boyer stated the committee would provide its recommendation if there was someone who wanted to testify. No one came forward to testify on Item 2.

- **SHELLY KLEEN, Bruce Avenue**, referenced Item O and Montana Code 7-15-4202. Ms. Kleen said the code stated they were endangering the state and its municipalities; they were focus centers of disease; and they promoted juvenile delinquency. Ms. Kleen asked if there was another way to go about improvements with an SID or to move the boundary for specific areas. She asked the Council to explain.

Councilmember Stevens asked Ms. Kleen if she realized that 'blight' did not mean every single property in the area. Councilmember Stevens said it meant that there were some blighted areas, and the renewal district was a way to pay for improvements without an SID being assessed against each property. She said by taking the incremental taxes generated by improvements in the area and putting them back into the area, it would improve infrastructure such as missing sidewalks or providing city sewer and water to properties. Councilmember Stevens said it did not imply that Ms. Kleen's property was blighted. Ms. Kleen asked if the properties still on septic would have to pay to hook-up to city sewer because she had to pay for her hook-up. Councilmember Stevens explained the incremental tax would be used to build sewers in the area instead of being sent to Helena. Mayor Tussing explained that once the sewer was installed, the property owner would still have to pay the same hook-up charge as she had to pay.

- **LORI NELSON, 4235 Bruce Avenue**, said she had distributed a copy of Montana Code 7-15-4202 and a personal letter that Council should have in front of them. Ms. Nelson asked either the Council or Mayor Tussing to read aloud the code so everyone understood what it said before voting on Consent Agenda Item O. She said if Council voted 'yes', they were knowingly breaking the law.

Councilmember Gaghen asked City Attorney Brooks to explain that not all of the stipulations in Code 7-15-4202 must be present, and they did not apply to every house. She said she did not understand how Ms. Nelson was interpreting the Code. Mayor Tussing asked Attorney Brooks to read it from the statute book and not the piece of paper that was distributed. Attorney Brooks said it would take approximately two minutes to read it if that was what Council wanted. Councilmember Ruegamer said he did not want the Code read, and Councilmember Brewster said they were in the public comment period and reading the code could wait until they got to the actual agenda item.

- **KEVIN NELSON, 4235 Bruce Avenue**, said if Council approved Agenda Item O, they were breaking the law. He said the district was “rushed and pushed through” and he firmly believed not one law was followed. Mr. Nelson said the “therefores”, the “to this”, and “Section that” were very confusing. He said he took the information the City provided and applied it to the Code in Section 7-15-4202. Mr. Nelson said he would like Council to answer the questions in his handout.

Councilmember Stevens asked Mr. Nelson if he had consulted an attorney or if his statements were his own opinion. Mr. Nelson said they were his own opinion.

- **JOE WHITE, Billings**, said he did not approve of the salary increase for the City Administrator, and the Mayor had asked a police officer to remove her. (The rest of Mr. White’s testimony was inaudible.)

## **CONSENT AGENDA:**

### **1. A. Bid Awards:**

(1) **100-Ton Static Pipe Bursting System.** (Opened 11/20/07). Recommend Vermeer Rocky Mountain, Inc., \$186,000.00.

(2) **LED Traffic Signal Components.** (Opened 11/20/07). Recommend Tristar, Inc., \$72,664.50.

**B. Change Order No. 2**, New Baseball and Multi-Use Stadium at Athletic Park, \$87,114.00. (Moved to Regular Agenda Item 6)

**C. Amendment #1, Restriping Airfield Markings Service Agreement**, changing contractor’s name from United Rentals to Streamline Marking, Inc.

**D. Approval** and acceptance of the 2009 Billings Adult Misdemeanor Drug Court Award from the Supreme Court of Montana, \$180,384.00.

**E. Approval** of Assignment of Drew C. and/or Jennifer R. White West End Hangar Ground Lease to Western Security Bank for financing purposes with no financial impact to the City.

**F. Approval** of 20-year lease with Corporate Jet LLC, for Fuel Farm Site on Lot 1 in the East End Fuel Farm (12/1/07-11/30/27), \$1,269.96 first year revenue.

**G. Approval** of 5-year lease renewal for building and ground space with the Bureau of Land Management (9/5/07-9/4/12), \$54,967.37 first year revenue.

**H. Approval** of letter extending franchise agreement with Bresnan Communications.

**I. Declaring surplus property** and authorizing the Aviation and Transit Department to donate airfield lighting equipment to the Montana Aeronautics Division.

**J. W.O. 04-33, Lake Elmo Drive (Hilltop to Wicks Lane) Right-of-Way Acquisition:** Parcel 2: Portion of Tract 3, Certificate of Survey 205, Benjamin J. Huber, \$7,700.00.

**K. Right-of-Way Easement** with Department of Natural Resources and Conservation (DNRC) for Zone 4 Reservoir, \$26,894.00.

**L. Street Closure:** Martin Luther King Observance March on Monday, January 21, 2008, from 6:00 p.m. to 6:50 p.m. originating on the courthouse lawn, walking on the sidewalk to the corner of N. 27<sup>th</sup> and 3<sup>rd</sup> Avenue N, crossing N. 27<sup>th</sup>, marching in the street to N. 29<sup>th</sup>, north on N. 29<sup>th</sup>, and disbanding at the Lincoln Center.

**M. Resolution #07-18647** setting zoning compliance review fees at \$41.00 for residential permit applications and \$16.00 for commercial permit applications.

**N. Resolution of Intent #07-18648** to sell Lot 27A, Block 6, Rehberg Ranch Estates Subdivision, 1<sup>st</sup> Filing, and setting a public hearing date for January 14, 2008.

**O. Second/final reading Ordinance #07-5441** creating the South Billings Boulevard Urban Renewal District.

**P. Bills and Payroll**

- (1) November 9, 2007
- (2) November 16, 2007

Mayor Tussing asked for separations from the Consent Agenda. Councilmember Brewster separated Item O; Councilmember Clark separated Item B; and Councilmember Boyer separated Item H.

Councilmember Clark moved for approval of the Consent Agenda with the exception of Items B, H, and O, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

Councilmember Clark moved for approval of Item B, seconded by Councilmember Ruegamer. Councilmember Clark advised that the Steering Committee asked Parks Director, Mike Whitaker, to make a presentation on the item. Councilmember Brewster recommended moving Item B to a regular agenda item. Councilmember Veis made a substitute motion to move Consent Agenda Item B to Item 6 of the Regular Agenda, seconded by Councilmember Ruegamer. On a voice vote, the substitute motion was unanimously approved.

Councilmember Clark moved for approval of Item H, seconded by Councilmember Ruegamer. Councilmember Boyer asked if there was a representative from Bresnan Communications present. City Administrator Volek said Mr. O'Donnell, the local manager, was on the road; and she had spoken with him earlier that day. Councilmember Boyer said people with satellite did not have access to the Community 7 Station and asked if access could be extended if people were willing to pay for it. Ms. Volek said she did not know but would get an answer for her. On a voice vote, the motion was unanimously approved.

Councilmember Clark moved for approval of Item O, seconded by Councilmember Boyer. Councilmember Brewster said he received Mr. Nelson's information, and he referenced the Development Agreement between Four Square Properties and the City. Councilmember Brewster noted Mr. Nelson mentioned Section 7-15-4258 of the State Code dealing with acquisition and administration of real and personal property that said a municipality may not acquire real property for an urban renewal project or enter into a development agreement, as provided in Subsection (1)(e), unless the local governing body had approved the urban renewal project plan in accordance with a couple of codes. Councilmember Brewster advised he could not find (1)(e) and asked if the Council's approval on November 26th violated the law because they were not considering approval of the urban renewal project plan until that evening. City Attorney Brooks advised, as with many other annexations, there was almost always a Development Agreement or a subsequent Subdivision Improvement Agreement attached as a condition of annexation, and that was what had occurred in the current case. Attorney Brooks advised the Development Agreement approved by the Council was separate from any potential urban renewal plan. Councilmember Brewster said he had relayed that to Mr. Nelson; however, the issue was that they benefited substantially from the TIF District because it offset costs in the development of the street. Councilmember Brewster asked if the City "stretched it a little" to have Cabela's come to town. Attorney Brooks said "no", it was a standalone Development Agreement that would have existed regardless. He added the tax increment financing district was a component of the urban renewal plan. Councilmember Brewster asked if the tax increment district was or was not a component of the Agreement. Attorney Brooks said he did not understand Councilmember Brewster's question and said the Development Agreement was "passed, drafted, and approved separate and apart with no linkage whatsoever to the urban renewal plan or the tax increment finance district."

Councilmember Brewster amended the motion to eliminate the property at 4235 Bruce Avenue from the tax increment finance district, seconded by Councilmember Veis. Councilmember Brewster said there was a request to eliminate the property because Mr. Nelson felt strongly that he did not want to be included. Councilmember Brewster added that, if the property was eliminated and the street was improved, Mr. Nelson would have to improve his portion under the Miscellaneous Sidewalk Program at his own expense. Councilmember Ruegamer asked Mr. Nelson if he still wanted to be excluded now that he knew he would have to pay for his own improvements. Mr. Nelson replied he believed the City was violating his constitutional rights to privacy and his personal property rights. Mayor

Tussing asked Mr. Nelson for a yes or no answer. Mr. Nelson replied he wanted "out". Mayor Tussing asked Attorney Brooks if it would be legal to eliminate Mr. Nelson's property. Attorney Brooks said it had more to do with practicality and if the improvements installed in the infrastructure could stop at Mr. Nelson's property line and then begin again on the other side. Attorney Brooks said that portion was a technical question he could not answer, but legally the property could be excluded.

Councilmember Boyer asked Mr. Nelson if he understood there would be improvement costs he would encounter personally by excluding his property. Mr. Nelson said he requested "no government" and did not want a "handout".

Mayor Tussing stated he would not support the amended motion because it set a bad precedent. Councilmember Brewster said it was an unusual tax increment district because it contained so much residential property. Councilmember Ruegamer stated he would vote against it because he had heard "I don't want a government handout" often enough and then as soon as it came out of someone's own pocket, the whole thing changed. He said the City could get into a situation where Mr. Nelson would get a free sidewalk, street, curb and gutter out of it.

Councilmember Jones said he felt the TIFD was the best one ever passed. He said when Cabela's went into the neighborhood, all types of traffic would be brought in with children walking to two or three different schools and the Boys and Girls Club. He said it would be a great benefit for the neighborhood to have new streets and sidewalks. He said there would be chaos and all kinds of issues with the increased traffic and safety of the children living in the area without it.

City Administrator Volek advised that since Mr. Nelson was waiving his property rights on his current property, the information would need to be relayed somehow to a successive property owner. Attorney Brooks advised the boundary map would need to be amended to show Mr. Nelson's property had been excluded.

Councilmember Veis asked why the motion would not include amending the map and plan. Attorney Brooks said it could if that was the intent.

Councilmember Boyer said she also felt it was a very bad precedent to set with TIF Districts, and they were going down a "slippery slope" that could be challenging in the future.

Mayor Tussing said he agreed with Ms. Volek because Mr. Nelson could sell the property tomorrow, and the next owner would be "up a creek."

On a roll call vote, the amended motion to remove the property failed 8 to 3. Councilmembers Ronquillo, Gaghen, Ruegamer, Ulledalen, Boyer, Jones, Clark, and Mayor Tussing voted 'no.' Councilmembers Stevens, Brewster, and Veis voted 'yes.'

Councilmember Jones said he would vote against the original motion because eminent domain needed to be left out. Councilmember Stevens asked Attorney Brooks if the City could use eminent domain above and beyond what was in state statutes. Attorney Brooks said not that he was aware of, and he would need to research it. Mayor Tussing confirmed with Attorney Brooks that the City could not take someone's property just to give it to Cabela's or a developer and could take a property only if it was needed for infrastructure installation. Attorney Brooks said that was correct.

Councilmember Stevens said the condemnation abilities put in at the first reading were the same as under state law. She said the City was not expanding its condemnation abilities, and it was what the City had the ability to do all along.

Councilmember Veis said he agreed with Councilmember Jones and was not happy that eminent domain was included, but he would vote in favor because he felt overall it worked.

Councilmember Ronquillo asked if the City knew how much in taxes would be brought in and if it would be enough for infrastructure. City Administrator Volek advised there were estimates but until there was additional development, the City would not know what the increment would be.

Mayor Tussing asked if the Council would have to approve the expenditures like they did with the Downtown TIFD. City Administrator Volek advised there was a citizens committee from the neighborhood who would be making recommendations on the order of improvements.

On a voice vote, the motion was approved 10 to 1. Councilmember Jones voted 'no.'

## **REGULAR AGENDA:**

### **2. COMPENSATION increase for City Administrator. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

Councilmember Boyer advised she was the chairperson for the committee that reviewed the compensation increase for the City Administrator and that Councilmembers Ronquillo, Gaghen, Ruegamer, and Ulledalen served as committee members. Councilmember Boyer reported that the Council, along with the Department Heads, conducted a performance evaluation of Ms. Volek, and she performed very well. Councilmember Boyer moved, on behalf of the Council, that City Administrator Volek be given a 5% increase, in addition to the 3% COLA, seconded by Councilmember Ulledalen.

Councilmember Ronquillo said Ms. Volek had proven herself, he enjoyed working with her, and she had jumped into a difficult position. He said Ms. Volek was doing a good job and well worth it.

Councilmember Ulledalen said he agreed with Councilmember Ronquillo. He said the reviews were positive both by Council and the Department Heads. He extended appreciation to Ms. Volek for the good job she had done in the last year but also for stepping in and taking the reins during a very difficult time for the community.

Councilmember Ruegamer said he also agreed. He said Ms. Volek came along at a very difficult time when there were empty slots in Department Head areas, and she had done a great job filling the positions. Councilmember Ruegamer said Ms. Volek acted professionally and had healed a lot of wounds for the City. He said if her salary was compared with other City Managers in the area, Ms. Volek would be in the lower part. Councilmember Ruegamer said Billings was the best run city in the state; it was before Ms. Volek came; and it still was. He said Ms. Volek had added to it and made it better.

Councilmember Gaghen said she echoed the feelings of the rest of the Council. She said one of the chief concerns of the Council was Ms. Volek's extreme work ethic. Councilmember Gaghen said Ms. Volek was tireless to the point where Council needed to encourage her to take her sick days and vacation days. Councilmember Gaghen said Ms. Volek's dedication had been stellar, and she had done a great deal to heal the City.

Councilmember Boyer said the communication and the consensus of the Council was the result of Ms. Volek's management style. Councilmember Boyer said she was very grateful for what Ms. Volek had done, and it was a pleasure to suggest the raise.

Councilmember Clark said he felt it was the right thing to do. He said he appreciated the job Ms. Volek was doing.

Councilmember Veis said he agreed Ms. Volek was doing a pretty good job, but he felt with the current budget, it might be a little too much, and the rest of the salaries would start to creep up behind it.

Mayor Tussing said he had serious concerns that the public was not involved in the process, and more than half of the Council did not know what the committee was going to recommend until that evening. He said people had spoken to him about the lack of getting back to people and following up on things. Mayor Tussing said in his mind he could support the cost of living raise but not the 5% increase because there was no criteria on which to base it.

Councilmember Boyer said she would like to address the Mayor's comments. She said when dealing with a performance evaluation, it was somewhat subjective; and good managers and leaders had to make some decisions as to the examples in what they had seen. She said it was a pretty strict evaluation form, and it came back from Council and Department Heads with very glowing results. Councilmember Boyer said the reason the committee did not release the amount of money was because they wanted it discussed in a public meeting that evening with fairly objective data. They did not want it on the blog or in the paper. Councilmember Boyer said she did not receive one comment about not involving the public.

Councilmember Ruegamer stated he worked in the private sector for 30 years, and measurements or an objective way to give raises never meant a thing. He said raises were always subjective.

Councilmember Boyer stated that Billings was the largest city in Montana with a \$231 million budget and one of the only cities with a municipal airport. She said our community had big issues to deal with. She said Missoula had a mayor form of government where they paid the mayor \$72,000 and the administrative assistant \$93,000, which totaled \$175,000. She said Missoula was paying two people to do the job that Ms. Volek was doing.

Councilmember Veis addressed Ms. Volek and told her if he voted against the recommendation, it was not a reflection of the job she was doing and only his concern over the numbers.

Councilmember Jones complimented Ms. Volek on a great job. He said he had gone through three City Administrators, and Ms. Volek had brought a refreshing management style with her. Councilmember Jones said Ms. Volek

listened to them, worked with them, and knew what the Council expected. He said he experienced challenges and struggled with the previous City Administrators, and he appreciated Ms. Volek's hard work and the difficult circumstances she encountered.

Councilmember Gaghen said when they began the process of hiring a new City Administrator, the City was very much on the low side of attracting candidates, which showed up in the number of candidates that applied. Councilmember Gaghen said she strongly supported the recommendation.

Councilmember Stevens said she agreed with Councilmember Veis that overall Ms. Volek was doing a good job, but she had concerns about the fiscal responsibility to the City. She said she also had concerns about the across-the-board COLA everyone received because the rest of the world did not get an automatic cost of living increase every year. Councilmember Stevens asked where the City would be in ten years with the public safety issues because the taxpayer money would be eaten up and voters would be asked for more. She said the raises would filter down, and staff would want to see the same kind of raises.

Councilmember Brewster agreed with Councilmember Ruegamer and said he had always worked in the private sector where salary increases were based on how much value the individual added to the organization. Councilmember Brewster said Ms. Volek did a good job reviewing what the other managers brought to her, and she recommended to Council an even more conservative budget than Council agreed to, which was added value to the organization. He said Ms. Volek did a good job at prioritizing and saving the taxpayer dollars. Councilmember Brewster said he wanted the City to be an employer of choice and employ good people; and if good employees were continually held down, they would look somewhere else. Councilmember Brewster said it was not a huge increase, and if Ms. Volek had asked for that same amount when she took the job, Council would have given it to her.

Councilmember Boyer commented how difficult it was to find quality employees. She said to find a replacement for Ms. Volek at the recommended salary increase would be impossible. Councilmember Jones said the City would have to pay in the \$120,000 and \$150,000 range to currently replace Ms. Volek. He said he felt the 8% increase was more of an adjustment of what Ms. Volek really should be paid, and said he would support the increase.

Councilmember Veis advised that Council would be setting the baseline the first year, and it would set the bar for the future. He said he worried the costs would escalate a lot quicker and when percentages had to go down, it would be taken as a reflection of performance rather than a reflection of the fiscal reality of the situation.

Councilmember Jones said he did not agree, and he felt it was a standalone evaluation. He said if Council were to look at the compensation study, he guaranteed the study would say Ms. Volek was way underpaid.

Councilmember Ruegamer agreed with Councilmember Jones and asked why this year would be setting the bar. He said he did not buy it, and Ms. Volek deserved the pay raise.

On a voice vote, the motion was approved 9 to 2. Councilmember Veis and Mayor Tussing voted 'no.'

City Administrator Volek thanked the Council and said there was no City Administrator who was successful without the support of the management team and governing body. She said she felt very fortunate and any successes she had achieved were due in large part to the Council and the management team.

**3. PUBLIC HEARING AND RESOLUTION #07-18649 vacating a portion of Henry Road. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** City Administrator Volek advised there was no staff report, but staff was available for questions.

The public hearing was opened.

- **John Glenn, 1125 Henry Road**, said he was building a house and had a one-foot setback, so it was important that he acquired the right-of-way to gain a driveway to the roadway. Mr. Glenn said he had offered to buy it at the suggestion of the City. He said he would do everything he could to enhance it by paving Henry Road from his juncture east to the end of the road, the driveway to his house, and the parking area on the plateau right in front of the house. He said it would enable him to have parking for two cars in an area where parking was quite difficult. Mr. Glenn said he agreed with the City to post a bond, a promissory note, assuring his completion of the paving project in the spring. Mr. Glenn said he wanted to gain occupancy that coming Friday.

Councilmember Boyer asked Mr. Glenn if he was planning to carve out the area for two cars. Mr. Glenn showed the Council pictures of the area he planned to use for parking.

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

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

**4. PUBLIC HEARING AND RESOLUTION creating Park Maintenance District No. 4035, Bitterroot Heights Subdivision. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** City Administrator Volek advised there was no staff report, but staff was available for questions. She referenced a letter Council had received from the applicant.

The public hearing was opened.

- **Charles Strum, 844 Sandstone Trail**, said he worked for Interstate Engineering and represented the applicant. Mr. Strum advised Interstate Engineering had developed an overall concept plan for Bitterroot Heights Subdivision, created and approved a park master plan for the area, and

platted it for its final, which contained approximately 49 lots, and five separate public tracts that were the subject of the park maintenance district. Mr. Strum advised the development was anticipated to change hands and referenced his letter to Council, dated November 30, 2007, explaining the change. Mr. Strum said the new owners would like to revisit the overall concept plan for the subdivision and develop a new master plan, lot layout and concept. He asked Council to delay creation of the district to allow time to develop the new plan and lot layout. He said the owners were committed to be responsible for maintenance of the public tracts in the interim, as well as payment for power and irrigation and the special assessment for 2007. Mr. Strum said once the new concept plan had been developed, he would be back again in several months asking for approval.

Mayor Tussing asked Mr. Strum if he would rather have the item delayed to a date certain or just disapproved to be brought back at another point. Mr. Strum said he did not feel they could set a date certain and asked for disapproval.

Councilmember Veis asked City Attorney Brooks if tabling the item indefinitely would allow the applicant to come back with a different application. Attorney Brooks said tabling would definitely disapprove or kill the item currently, and would not preclude it from coming back at a later time with a new motion to create the maintenance district.

- **Matt Brosovich**, said he resided near 80<sup>th</sup> off of Avenue F. Mr. Brosovich said he was a traditional developer and believed in traditional developments toward parks. He said they took a look at the park concept and did not like it. Mr. Brosovich said there was a big need in the Heights for watered green space, particularly soccer fields and football fields. He said he would like to bring neighborhood park concepts into the plan and make smaller pocket parks with playgrounds in and around the subdivision. Mr. Brosovich said it would enable him to get the natural concepts he was after to support the development, as well as provide large green space for the football and soccer fields needed in the Heights.

Councilmember Gaghen asked Mr. Brosovich if he had spoken with the Parks Department about the new concept. Mr. Brosovich said he had.

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

Councilmember Veis moved to indefinitely table Park Maintenance District #4035, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

5. (a) **PUBLIC HEARING AND RESOLUTION #07-18650 creating Special Improvement District No. 1380, Terra West Subdivision, 3<sup>rd</sup> and 4<sup>th</sup> Filings, for Monad Road Street Frontage Improvements. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** City Administrator Volek advised that Items 5(a) and 5(b) could be combined into a single public

hearing; however, City Attorney Brooks suggested voting separately because if 5(a) did not pass, there would be no need for 5(b).

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

Councilmember Boyer moved for approval of Item 5(a), seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved

**(b) PUBLIC HEARING AND RESOLUTION #07-18651 creating Special Improvement Maintenance District No. 4038, Terra West Subdivision, 3<sup>rd</sup> and 4<sup>th</sup> Filings, Monad Road Street Frontage Improvements. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

Councilmember Boyer moved for approval of Item 5(b), seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

**6. Change Order No. 2, New Baseball and Multi-Use Stadium at Athletic Park, \$87,114.00. (Moved from Consent Agenda Item B.) Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

Parks Director, Mike Whitaker, advised that construction of the stadium was on schedule with an opening date of July 1st. Mr. Whitaker said when Council had approved construction of the stadium, there was a \$420,000 shortfall, but through value engineering and fundraising, the shortfall was cut back to approximately \$23,000. He advised the fundraising committee had raised close to \$250,000. Mr. Whitaker said the Steering Committee asked him to bring to Council's attention that several alternates on the project were very time sensitive. He said the first change order was strictly for value engineering, and the second change order included the results of plan review and upgrades for the concourse area.

Mr. Whitaker read the following alternates and time limits for decisions.

• Visitor Batting Tunnel	December 17, 2007
• Sound System	January 15, 2008
• Upgrade Field Lighting	December 10, 2007
• Protective Outfield Netting	January 15, 2008
• North Parking Lot Landscaping	January 15, 2008
• Landscaping Along 27 <sup>th</sup>	To be determined by contractor
• Memorial Park Area Sidewalk	January 15, 2008
• Landscaping Alternate #11 9 <sup>th</sup> Avenue, 25 <sup>th</sup> Street	To be determined by contractor
• Landscaping Alternate #12 10 <sup>th</sup> Avenue	To be determined by contractor
• Corporate Tent Area	December 17, 2007
• Barrier Netting Parallel to 27 <sup>th</sup>	January 15, 2008

Mr. Whitaker advised all of the alternates were time sensitive. He said the current change order related to what came out of plan review and additional electrical upgrades in the concourse for a variety of purposes.

Mayor Tussing asked Mr. Whitaker if money was available to pay for the change order, and Mr. Whitaker said it was not. He said there was a current \$23,000 shortfall for the project, and if Council approved Change Order #2, the shortfall would total roughly \$110,000. Mayor Tussing asked what the prospects were for raising the money, and Mr. Whitaker advised that donations continued to come in on a regular basis.

City Administrator Volek advised there were ongoing negotiations with other parties and an apparent additional \$200,000. She said there was also a Christmas campaign for paving bricks and plaques for the new ballpark that was bringing in results, as well as another round of letters going out to another group of individuals. Ms. Volek said she felt the change order and the shortfall would definitely be covered.

Councilmember Veis asked Mr. Whitaker to explain what was being bought with the change order. Mr. Whitaker said the change order was divided into two categories – the plan review and electrical upgrades. He said the major part of the plan review consisted of replacing the sidewalk on 27<sup>th</sup> Street in the amount of \$62,504 and a couple small additional items related to utilities. Mr. Whitaker asked Mike Radke from CTA to provide more details on the change order.

Mr. Radke referenced a letter from Langlas & Associates, Inc., dated October 19, 2007, that listed the following change requests generated from the plan review.

• Item #1 – Additional handicapped signage	\$3,199.00
• Item #2 – Additional opening in the field wall	\$316.00
• Item #3 – Installation of irrigation sleeves	\$5,031.00 (no charge)
• Item #4 – Manhole sumps	\$1,902.00
• Item #5 – Drainage swales on N. 27 <sup>th</sup>	\$3,050.00
• Item #6 – Sidewalk replacement on N. 27 <sup>th</sup>	\$46,315.00
• Item #7 – Extra gate valves at property line	\$2,691.00

Mr. Radke advised with the exception of Items 1, 5, and 6, everything had been completed. He said the sidewalk replacement would not take place until spring.

Councilmember Veis asked why Council was not made aware the sidewalk on 27<sup>th</sup> Street needed to be replaced. Mr. Radke advised he had met with City Engineering Staff on numerous occasions and in order to keep the project on track and meet the completion date of July 1st, the drawings were issued ahead of city plan review. He said it was decided by the team to have the City go through its process of reviewing the drawings and come back after the fact with a correction list, at which time the contractor would provide a price to complete the item. Mr. Radke advised replacement of the sidewalk was not included in the bid and if the City elected to have the sidewalk replaced, it would have to pay for it. Councilmember Veis asked if staff could explain to Council why the City was requiring the replacement of the sidewalk.

Mr. Whitaker advised he was told the sidewalk was in poor shape and needed to be replaced; and the City, as owner, needed to replace it. Mr. Radke offered to walk the sidewalk with Council.

Councilmember Clark commented that the Steering Committee just found out about the need to replace the sidewalk on Tuesday. He said the sidewalk would have had to be replaced anyway, and the question was whether it should be part of the cost of the ballpark or paid for some other way.

Councilmember Jones said it should be paid for by the water department since the water department put the water in the pool that kept leaking, causing the sidewalk to sink.

Councilmember Veis asked Mr. Radke why he felt the City did not have to pay for Item #3. Mr. Radke said Item #3 was on the contractor's list, and he believed it was already in the drawings. Mr. Radke said the list was brought to the City Council for an approval "not to exceed," and he planned to go back to the contractor to negotiate certain items to reduce the cost. Councilmember Veis asked if there were other items that were incorrect. Mr. Radke advised the Parks Department would like Council to approve the concept of the change order not to exceed the \$87,114 and allow the design team to go back to the contractor and negotiate for less. Councilmember Veis asked if the \$5,000 was part of the \$87,000. Mr. Radke said it was part of the total list. Councilmember Veis asked what would prompt the contractor to pay for it if Council had already said they would pay for it. Mr. Radke said Item #3 was on the drawings and should not have been included on the list presented. Councilmember Veis asked if the City would have a better negotiating position if they chose not to pay for it. Mr. Radke said it would if it were an addition, but it was already on the drawings.

City Administrator Volek advised that Mr. Whitaker suggested postponing this item a week so a meeting could be held with the contractor and someone from Engineering could provide an explanation or photos showing the condition of the sidewalk on 27<sup>th</sup> Street.

Councilmember Veis asked for an explanation of the changes to the electrical. Councilmember Clark said it was explained to him that there was only 220 run to the plug-ins on the concourse, and 110 was also needed. He said a breaker would also be installed at every plug-in, which was not in the plans.

Mr. Radke said there were four items that made up the electrical portion of the change order. He said the largest item was the change-out outlet to the kiosks that totaled about \$16,000. Mr. Radke stated the items were not mandatory, but the design team suggested going back to look at how the City intended to use the facility. He said it was discovered that the suggested kiosks were all 220, which would not allow for a vendor to come in during another function and plug into a 110. Mr. Radke said the suggestion to the City was to add the 110 outlets next to the 220 outlets to fully utilize the concourse. Councilmember Veis confirmed there would be seven 110's and seven 220's. Mr. Radke said that was correct and all in separate boxes. Councilmember Veis asked if alternating outlets had been discussed, or if it was felt all seven 110's and seven 220's were necessary. Mr. Radke said it was a suggestion to have both in each location in order to use the concourse to its fullest capacity.

Councilmember Boyer asked if the topic had been discussed and explained at the Steering Committee level. Mr. Radke said it had.

Mayor Tussing suggested postponing the item until December 17th so information on the sidewalk, cost of additional wiring, and what could or should be negotiated could be provided beforehand.

Councilmember Veis moved to delay Item 6 until December 17th, seconded by Councilmember Clark.

Councilmember Jones asked why the barrier netting parallel to 27th Street was optional. He said he felt it was needed right next to 27th Street and was surprised it was not in the original drawings. Mr. Whitaker advised that once they had gotten into the project, HNTB realized something needed to be done along 27th Street, and they came back with a recommendation to put up the netting. Councilmember Jones said he felt leaving it out was an error in their design because 27th Street was a busy road and the liability would be much greater than that of the sidewalk.

City Administrator Volek said, given the shortfalls, the lighting would meet the minor league ballpark minimum standards. She said it was not what the City would like to have and, in long range, it may need to be replaced; but given the financial circumstances, there would be no recommendation for it that evening.

On a voice vote, the motion to delay Item 6 until December 17th was unanimously approved.

**7. PUBLIC HEARING AND RESOLUTION 07-18652 FOR ANNEXATION #07-05: Property described as 13.4 acres of a portion of park land along Zimmerman Trail right-of-way and a portion of Zimmerman Trail right-of-way between Highway 3 and Rimrock Road; City of Billings, requester. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** Planning Division Manager Wyeth Friday advised Council he would be giving one presentation that covered a variety of the annexations. Mr. Friday said the annexations were a culmination of several years of work to clean up and address right-of-way properties the County still maintained in some cases and the City owned in some cases. Mr. Friday listed the annexations to be approved, as follows:

- #07-05 Zimmerman Trail between Highway 3 and Rimrock Road
- #07-11 Portion of Broadwater Avenue west of 30<sup>th</sup> Street West
- #07-12 Bell Avenue west of Shiloh Road
- #07-13 Portions of Zimmerman Trail between Poly and Grand
- #07-14 Cove Avenue between 46<sup>th</sup> Street West and 50<sup>th</sup> Street West
- #07-16 Portion of Grand Avenue east of 56<sup>th</sup> Street West
- #07-18 Portions of 56<sup>th</sup> Street West and Broadwater Avenue
- #07-19 Rimrock Road from 62<sup>nd</sup> Street West to City limits

Mr. Friday advised there were two pieces of regulation moving the annexations forward. He said some of the annexations were being driven by a law passed by the Montana Legislature in 2003 requiring that a city, whenever

annexing property, annex the entire adjacent road right-of-way at the same time; and that the City could annex road right-of-way in order to maintain adequate levels of service in terms of street maintenance, maintenance of sewer and water lines within the streets, and adequate provisions for emergency services.

Mr. Friday advised that #07-05, #07-11, #07-12, #07-13, and #07-14 were rights-of-way that had been owned by the City for several years or recently deeded to the City by the County. He said #07-16, #07-18, #07-19 were very old road easements the County had interest in but the City wanted because of adjacent annexations. He said there were property owners where the easements were located, and staff notified each property owner of the City's interest in annexation. He said the property owners had the option of quitclaiming their interest to the City and having that portion removed from their taxes; or doing nothing and having the City annex the easements to remain on their property and being taxed at city levels. Mr. Friday advised #07-16 was quitclaimed by the property owner; #07-18 generated some inquiries from multiple property owners, but no action was taken; and #07-19 was protested by the property owner through an attorney. He said staff offered to meet with them prior to the meeting, and nothing more had been heard from them.

Mr. Friday advised all of the annexations complied with the annexation policy as follows:

- The areas were located within or adjacent to the Limits of Annexation Area.
- It was the City's intention to continue to use the properties for their present use as road rights-of-way.
- Any proposed road improvements would meet City standards.
- The proposed annexations met at least one goal of the City-County Growth Policy.

The public hearing for Annexation #07-05 was opened. There were no speakers, and the public hearing was closed.

Councilmember Ulledalen moved for approval of Annexation #07-05, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

**8. PUBLIC HEARING AND RESOLUTION #07-18653 FOR ANNEXATION #07-18: Property described as a portion of 56<sup>th</sup> Street West and Broadwater Avenue rights-of-way; City of Billings, requester. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** The public hearing for Annexation #07-18 was opened. There were no speakers, and the public hearing was closed.

Councilmember Ruegamer moved for approval of Annexation #07-18, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.

**9. PUBLIC HEARING AND RESOLUTION #07-18654 FOR ANNEXATION #07-19: Property described as a 6.832-acre portion of Rimrock Road right-of-**

way from 62<sup>nd</sup> Street West to the city limits; City of Billings, requester. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) The public hearing was opened. There were no speakers, and the public hearing was closed.

Councilmember Veis moved for approval of Annexation #07-19, seconded by Councilmember Brewster.

Councilmember Ulledalen asked City Attorney Brooks if it was legal to approve the annexation at that time or if it would be better to table it until clarification of the landowner's position was known. Attorney Brooks advised that the City had provided the property owner's attorney with copies of documents from the Clerk & Recorder's Office dating back to the fall of 1908 indicating that a public road had been created with a 60-foot width. He said since then he had heard nothing further from them disputing the information. Attorney Brooks said it was his recommendation to vote on the issue.

On a voice vote, the motion was unanimously approved.

**10. PUBLIC HEARING AND RESOLUTION #07-18655 FOR ANNEXATION #07-25: Property described as a 2.457-acre portion of 44<sup>th</sup> Street West right-of-way south of King Avenue West; City of Billings, requester. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** Planner II Aura Lindstrand advised that #07-25 was not to be included with the other annexations that evening, and it just happened to follow the same timeline. Ms. Lindstrand began her PowerPoint presentation showing the location of the subject property near the recently annexed property for King Meadows Subdivision. She said the portion of 44th Street West right-of-way was not annexed because it was identified as a tract owned by the County. Ms. Lindstrand advised it was not until a developer wanted to develop 44th Street West and needed more right-of-way that it was determined the County needed to quitclaim it to the City. She said on November 27, 2007, the Board of County Commissioners quitclaimed 44th Street West to the City.

Councilmember Ronquillo asked if the portion of 44th Street West would be paved. Ms. Lindstrand advised that the developers of King Meadows would pave a half-width portion of it.

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

Councilmember Veis moved for approval of Annexation #07-25, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

**11. PUBLIC HEARING AND RESOLUTION #07-18656 FOR ANNEXATION #07-11: Property described as a 3.74-acre portion of Broadwater Avenue right-of-way west of 30<sup>th</sup> Street West; City of Billings, requester. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** The public hearing was opened. There were no speakers, and the public hearing was closed.

Councilmember Brewster moved for approval of Annexation #07-11, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

**12. PUBLIC HEARING AND RESOLUTION #07-18657 FOR ANNEXATION #07-12: Property described as a 1.69-acre portion of Bell Avenue right-of-way west of Shiloh Road; City of Billings, requester. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** The public hearing was opened. There were no speakers, and the public hearing was closed.

Councilmember Stevens moved for approval of accepting the quitclaim deed from the County and the approval of Annexation #07-12, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

**13. PUBLIC HEARING AND RESOLUTION #07-18658 FOR ANNEXATION #07-13: Property described as a 0.92-acre portion of Zimmerman Trail right-of-way; City of Billings, requester. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** The public hearing was opened. There were no speakers, and the public hearing was closed.

Councilmember Gaghen moved for approval of Annexation #07-13, seconded by Councilmember Stevens. On a voice vote, the motion was unanimously approved.

**14. PUBLIC HEARING AND RESOLUTION #07-18659 FOR ANNEXATION #07-14: Property described as a 4.86-acre portion of Cove Avenue right-of-way between 46<sup>th</sup> and 50<sup>th</sup> Streets West; City of Billings, requester. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** The public hearing was opened. There were no speakers, and the public hearing was closed.

Councilmember Ronquillo moved for approval of Annexation #07-14, seconded by Councilmember Jones. On a voice vote, the motion was unanimously approved.

**15. PUBLIC HEARING AND RESOLUTION #07-18660 FOR ANNEXATION #07-16: Property described as a 0.359-acre portion of Grand Avenue right-of-way east of 56<sup>th</sup> Street West; City of Billings, requester. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** The public hearing was opened. There were no speakers, and the public hearing was closed.

Councilmember Clark moved for approval of Annexation #07-16, seconded by Councilmember Boyer. On a voice vote, the motion was unanimously approved.

**16. PUBLIC COMMENT on Non-Agenda Items -- Speaker sign-in required. (Restricted to ONLY items not on this printed agenda; comments limited to 3 minutes per speaker. Please sign up on the clipboard located at the back of the Council Chambers.)**

The public comment period was opened.

- **CARL HOWARD, 4312 BROCKTON AVENUE SW**, said the number of handicapped parking spaces in Billings was becoming less and less. He said the big box stores were using some of their designated handicapped parking spaces for storage for shopping carts, etc. Mr. Howard said the City Engineer's Office needed to start visiting the areas and start bringing back the parking for the handicapped. He said the City was abusing the handicapped and the elderly by restricting handicapped parking spaces. He said there was very little handicapped parking in public areas and asked what percentage of handicapped parking spaces was figured into the design of parking lots. He said there were people who abused the use of the handicapped tags and license plates and used them even if they were not handicapped. He said people that were not handicapped appeared to be driving cars owned by people who were handicapped and using the handicapped spaces anyway. He asked the City to start enforcing the use of the handicapped tags and license plates.

Councilmember Ulledalen asked Mr. Howard if stores were using their designated handicapped parking spaces for storage. Mr. Howard told Councilmember Ulledalen to drive around and take a look. He said he did not know who in the City was to take care of it, and asked who went back a year after a new building was approved.

Mayor Tussing asked Mr. Howard to give City Administrator Volek a list of stores using their designated handicapped spaces for storage of carts, etc., and staff would certainly look into it.

Councilmember Veis suggested that Mr. Howard notify Code Enforcement when he saw a violation at a box store, and Code Enforcement would act upon it.

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

## **Council Initiatives**

- **GAGHEN:** Suggested that the current Council purchase a commemorative brick or a plaque out of their own pockets to be displayed at the new ballpark since they had been directly involved with the creation of the new facility. Councilmember Ruegamer said the plaque needed to indicate that the Councilmembers paid for it out of their own pockets.
- **RONQUILLO:** MOVED to have staff work with the Council on Aging and the County Commissioners to start the search for a new home for a Community Center, seconded by Councilmember Ulledalen. Councilmember Boyer asked where the money would come from for the Community Center. Councilmember Ronquillo said it would come from the Council on Aging and a private individual who would try to swap land with the City and, in turn,

start building the Community Center. On a voice vote, the motion was unanimously approved.

- **ULLEDALEN:** Advised there were dead trees in the recently-annexed Zimmerman Trail right-of-way and asked who would be responsible for removing them. City Administrator Volek said she thought it would be the City's responsibility, and staff would check on it and report back.
- **TUSSING:** MOVED to extend the appointment deadline for all the boards and commissions vacancies until December 31, 2007, due to the lack of current applicants, seconded by Councilmember Veis. Mayor Tussing said there were 27 openings on the boards and commissions, and a third of them did not have applicants. Councilmember Ulledalen said he thought he was told there were only two left. Mayor Tussing said there were 27 openings, and 18 applicants, and the list he was given had nine slots unfilled. Councilmember Ulledalen asked for clarification because he knew people who might be interested. Councilmember Ronquillo said he had received a letter from the Southside Task Force with concerns that they received no recognition to serve on the boards and received no communication. On a voice vote, the motion was unanimously approved.
- **TUSSING:** MOVED to use an outside source to make a legal recommendation regarding Mayor and Council boundaries for contact with City employees as outlined in the Charter, seconded by Councilmember Ronquillo. Mayor Tussing said there was disagreement on the Council because he had done something that some of the Council and City Administrator Volek felt was inappropriate. Mayor Tussing said at the time he did not feel it was inappropriate. He said he had tried to investigate the matter on his own and contacted two individuals who had written the charter but both had different opinions; one person said it was never the intention to limit employee contact with elected officials but that elected officials could not direct them to perform any specific action; and the other person said it meant that it was inappropriate to have any contact with employees. Mayor Tussing said he felt there may be possible constitutional and first amendment issues present. He asked if City employees had fewer rights than other citizens to talk to their elected officials or if elected officials had fewer rights than any other citizen to talk to City employees. Mayor Tussing said the plain language of the Charter indicated, other than for purposes of inquiry or investigation, all contact had to be through the City Administrator. Mayor Tussing said he had a copy of the Intent Statement from the Charter, and it said inquiry or investigation was defined in the MT Code Annotated, but he could not find it. Mayor Tussing said since Attorney Brooks was an employee and worked for the City Administrator, he did not think it was appropriate for him to give the opinion, and an outside opinion was needed.

Councilmember Ronquillo said he knew a lot of people who worked for the Street Department, and he did not feel he was stepping out of bounds by talking to them one on one. He said a lot of City employees lived in his ward and were voters who brought problems or issues to him.

Councilmember Ronquillo said that was what Council was for, and he had no problem with it.

Councilmember Veis asked Attorney Brooks how it would be determined if someone had violated the statute of the Charter and what the punishment would be if the violation was found to be true. Attorney Brooks advised a fact-driven investigation would be conducted; what happened, who talked to whom. He said there would be no consequence for the violation, and one thing Council could consider would be passing a resolution or ordinance under Title 2 of the City Code that provided a process for conducting an inquiry or investigation. Attorney Brooks said staff would be willing to look at the legislative history of the Charter and the Charter Commission that was appointed in 1974 or 1975 to see if there were any notes, meeting minutes, etc. as to what the Commission meant. He said if Council preferred to have an outside legal counsel look at it, that would be fine, too; but he guaranteed there were about 25 lawyers in the state that were familiar with a city charter form of government, and Council would be paying handsomely for a lawyer to educate himself or herself.

Mayor Tussing said other people commented that if he would have taken other people with him, it would have been okay. He said it had to be either okay or not okay, and if the entire Council had gone with him, it still could have been a violation of the Charter. Mayor Tussing advised that City Administrator Volek said it was okay if he or Council talked to Department Heads, but the Charter did not say that. He said the Charter stated that any interaction with employees, other than inquiry or investigation, had to come through the City Administrator. Mayor Tussing asked if that meant the City Administrator had the authority to say "you can talk to these employees, but you can't talk to these employees."

Councilmember Boyer commented that the Charter was a wonderful document, and she had talked with people who wrote the Charter originally. She told Mayor Tussing when he ended up on the front page of the paper discussing a legal issue that involved the decision making of the whole policy body, he had stepped out of bounds. Councilmember Boyer told Mayor Tussing that he had constitutional rights and if he wanted to have lunch with employees where they brought issues to him, he could; but when he circumvented the Council and talked about legal issues, policy body issues, he had overstepped his boundaries. Councilmember Boyer told Mayor Tussing the press was present, and his picture was on the front page of the paper. Mayor Tussing replied the press was not there. Councilmember Boyer said then she did not know how it got in the Gazette, but it did. She said the point being was that none of the Councilmembers knew about it, it was a policy body issue, and the legal situation could have been jeopardized by conversations with the union.

Councilmember Ulledalen said he had no problem sending an e-mail to Dave Mumford and copying Ms. Volek asking for an update on the status of the Rimrock Road improvements from Shiloh Road to the country club; but he could not corner Dave Mumford on the street and tell him he had to

get the road done and make it a top priority. Councilmember Ulledalen said he felt it was clear to most of them what the boundaries were. He said he had customers that were City employees and spouses of customers that were City employees, so there was no way someone could say he could not have a business relationship with a City employee.

Councilmember Clark said part of the controversy involved Councilmember Stevens and himself. He said they went to a public meeting attended by City staff and citizens. He said they were sitting in the back of the room listening and were invited to the table to understand what happened at the Crime Prevention Bureau and what their programs were. Councilmember Clark said no one at the meeting was directed to do anything for them, and he did not understand why all of a sudden there was a controversy that they went to a public meeting attended by both City staff and citizens.

Councilmember Stevens followed up by saying it was a meeting that Chief St. John invited them to attend. She said the Mayor and Council all received letters that the meetings were open, and they had an invitation to attend any and all of them.

Mayor Tussing advised his intent was not to defend his actions or for anyone else to be in a position where they needed to defend their position. He said he felt what Councilmember Stevens had done, such as asking why a car was not towed or asking for documents and criticizing an employee, went beyond the Charter. Mayor Tussing said that was his opinion, and Councilmember Stevens obviously disagreed. Councilmember Stevens and Councilmember Clark both said none of that happened.

Councilmember Ruegamer stated he would not vote for hiring somebody to tell them how to conduct themselves. He said they were all adults and should know those things. Councilmember Ruegamer said it was the City Administrator's call, and if she felt they were stepping out of line, it was her job to tell them.

Councilmember Brewster said there were appropriate times to talk to City employees and one time would be during campaigning. He said it was not against the rules to talk to an employee individually, but meeting with the leadership of the union over an issue that was before the Council would be a problem. He said none of the Council had individual authority, only collective, and the only authority was the majority. Councilmember Brewster said if any of them were out running around and asking staff to do anything outside the direction of the Council, they were out of line and violated the Charter. He said if any of them perceived that one of them had developed a pattern and were not keeping in line with the Charter, it was Council's obligation to mention it and bring it back where it belonged.

Councilmember Jones said the bottom line was that they had to be careful not to undercut the authority of the City Administrator and the governing body.

Mayor Tussing said his point was that they all had different opinions and if they could all be on the same page, the same mistakes would not be made again.

On a voice vote, the motion failed 10 to 1. Councilmembers Ronquillo, Gaghen, Stevens, Brewster, Veis, Ruegamer, Ulledalen, Boyer, Jones and Clark voted 'no'. Mayor Tussing voted 'yes'.

- **VEIS:** Asked if the Mission Statement on top of the agenda was supposed to be changed. Councilmember Boyer said she thought it was the Vision Statement that was changed. City Administrator Volek said the new Vision Statement would be placed on top of the agenda for the new year.
- **JONES:** Announced with great reservation that he would be moving to Salt Lake City, and December 31, 2007, would be his last day as councilmember.
- **TUSSING:** MOVED to appoint a selection committee comprised of Councilmembers Clark, Ruegamer, and Gaghen and begin accepting applicants as soon as possible to replace Councilmember Jones, seconded by Councilmember Ronquillo. On a voice vote, the motion was unanimously approved.
- **VEIS:** Said he would like it on the record that a letter was received from Attorney Gerald Christensen and a letter from the owners of Cherry Creek Estates asking for reconsideration of Council's action to limit the number of lots to 300 and to re-instate its original plan for 363 lots.

**ADJOURN** – The meeting adjourned at 9:11 p.m.

*(NOTE: Additional information on any of these items is available in the City Clerk's Office)*