

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

February 11, 2008

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

CALL TO ORDER – Mayor Tussing

PLEDGE OF ALLEGIANCE – Mayor Tussing recognized the Boy Scouts from Troop 27 who were present and asked them to lead the Pledge of Allegiance.

INVOCATION – Mayor Tussing

ROLL CALL – Councilmembers present on roll call were: Ronquillo, Pitman, Stevens, Veis, Ruegamer, McCall, Ulledalen, Astle, and Clark. Councilmember Gaghen was excused.

MINUTES – January 28, 2008, approved as distributed.

COURTESIES - Councilmember Veis extended thoughts and prayers to the residents of Kirkwood, Missouri, following the tragedy at their recent City Council meeting.

PROCLAMATIONS - None

ADMINISTRATOR REPORTS – Tina Volek

- City Administrator Tina Volek referenced the following items the Council received in their Friday packets.

- Agenda Item 1A1 - Additional names provided for the Bicycle and Pedestrian Advisory Committee
- Agenda Item J – Copy of the Project Development Termination Agreement with the State of Montana.
- Agenda Item P – Amendment to and extension of the current franchise agreement with Bresnan Communications. Ms. Volek advised the extension was for 90 days and not 60 days, as indicated in the agenda.
- Agenda Item T – Staff asked that Council pull the item from the Consent Agenda and place it on the Regular Agenda so a presentation could be made.
- Agenda Item 3 – Revisions to the fund transfer for landscaping at Fire Station #7.
- Agenda Item 4 – Additional information on the CDBG and homeWORD allocations.

Ms. Volek advised all items were available for public review in the Ex-Parte book in the back of the room.

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: 1, 2, 3, 4, and 9 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.

- **Carl Peters, 1548 Rosebud Lane**, asked for the City Council's support on Item 9, the Wastewater Agreement with Lockwood. He said it was a Contract for Services providing income to the City. Mr. Peters advised there were individuals present to answer any questions.
- **Terry Seiffert, 316 N. 33rd Street**, said he was present to answer any questions Council had on Item 9, the Wastewater Service Agreement with Lockwood.

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

CONSENT AGENDA:

1. A. Mayor's Appointments

Mayor Tussing recommends that Council confirm the following appointments:

	Name	Board/Commission	Term	
			Begins	Ends
1.	William Anderson	C/C Bicycle and Pedestrian Advisory Committee	02/11/08	12/31/09
2.	Jim Collins	C/C Bicycle and Pedestrian Advisory Committee	02/11/08	12/31/09
3.	Stella Fong	C/C Bicycle and Pedestrian Advisory Committee	02/11/08	12/31/10

B. Appointment of Work Force Housing Ad Hoc Committee members.

	Name	Representing
1	Jim Ronquillo	City Council
2	Bruce Simon	Central-Terry Task Force
3	Kim Gillan	Heights Task Force
4	vacant	North Park Task Force
5	David Goodridge	North Elevation Task Force
6	vacant	Southside Task Force

7	Barbara Prewitt	Southwest Corridor Task Force
8	vacant	West End Task Force
9	vacant	Highlands Neighborhood Planning Group
10	Tom Llewellyn	The Yellowstone Group
11	Steve Judd	Floberg Realty
12	Jeremiah Rouane	First Interstate Bank
13	Barbara Seeley	Intermountain Mortgage
14	vacant	Home Builders
15	vacant	Home Builders
16	Lucy Brown	Billings Housing Authority
17	Duane Loken	Community Development Board
18	Jean Neyrinck	Affordable Housing Task Force
19	Bruce MacIntyre	Billings Chamber of Commerce

C. Bid Awards:

(1) Scoreboard at New Baseball and Multi-Use Stadium, (Opened 2/5/08) Recommend delay of award until February 25, 2008.

(2) MET Transit Engine Overhauls (Opened 1/29/08) Recommend Interstate Power Systems, Sch. 1 - \$39,942.00; Sch. 2 - \$30,435.00; Sch. 3 - \$19,731.00, for a total bid of \$90,108.00.

(3) W.O. 07-19 – Yellowstone Country Club Sanitary Sewer Line Extension, (Opened 1/29/08) Recommend Western Municipal Construction, Inc., \$695,103.00.

D. Contracts for W.O. 07-15, General Engineering Services for Water and Wastewater Improvements, **HDR Engineering**, 3-year contract not to exceed \$250,000.00; **Brown and Caldwell Engineering**, 3-year contract not to exceed \$250,000.00,

E. Contract for W.O. 06-10, Bannister Drain Trail-Billings Design and Construction Administration Services, Engineering, Inc., \$64,067.00, contingent on CTEP concurrence.

F. Contract for W.O. 02-08, Milton Lane School Route, HKM Engineering, Inc., \$52,500.00, contingent on CTEP concurrence.

G. Contract for Groundwater and Landfill-Gas Monitoring Services, Tetra Tech, \$96,042.00, three year contract.

H. Memorandum of Agreement with the Montana Department of Transportation for W.O. 03-17, South 27th Street Quiet Zone.

I. Compensation Agreement with Montana Sapphire, LLC, for extension of water and sanitary sewer mains in King Avenue West, \$392,870.65.

J. Termination of Project Development Agreement with the State of Montana for MT 1036(1) Bench Boulevard-Billings Project.

K. Acknowledging Receipt of Petition to Annex #08-01: 114.3 acres of Tracts 1-5, C/S 2063, generally located north and west of the Shiloh Road and King Avenue West intersection, Lenhardt Property, LP; Lenhardt Enterprises, LLC; and Lenhardt Farm, LLC, owners and petitioners; and setting a public hearing date for 2/25/08.

L. Street Closures:

(1) St. Patrick's Day Parade and Street Fair. Parade: established downtown parade route, 11:00 a.m. – 12:00 noon. Street Fair: North Broadway between 1st and 3rd Avenues North, noon to 2:00 p.m. on 3/15/08.

(2) Yellowstone Rimrunners Shamrock Run, beginning at 3rd Street West and Avenue B, north onto 3rd Street West, west onto Parkhill to Nordbye, turning around going east on Parkhill, right on 3rd Street West, ending at Pioneer Park, 12:30 p.m. to 2:00 p.m. on 3/16/08.

M. Approval of Application and Acceptance of Stop Violence Against Women Act fund grant for domestic violence training and continuation of the Domestic Violence Investigator program, \$62,862.00, with 25% City match.

N. Approval and Acceptance of Donations:

(1) Ballpark Construction and Maintenance Funds, various donors, Construction Fund: \$250,470.00; Maintenance Fund: \$14,200.00.

(2) Billings Animal Shelter from the Donald and Carol Roberts Foundation in memory of Virginia K. Weston, Inc., \$500.00.

O. Resolution of Intent to create SILMD 304 in the downtown area and set a public hearing date of February 25, 2008.

P. Resolution extending current franchise agreement with Bresnan Communications an additional 60 days.

Q. Second/Final Reading Ordinance for Zone Change #827: A 44,644 square-foot property located north of Saturn Place in the Billings Heights. Dorn Property LLC, owner; Engineering, Inc., agent.

R. Second/Final Reading Ordinance for Zone Change #830: A 15,000 square foot vacant parcel legally described as the North Fraction 100 feet by 150 feet in Block 305 Billings, 1st Addition, and Sunnyside Subdivision, 3rd Filing, generally located on the southwest corner of the intersection of North 22nd Street and 10th Avenue North. Steve Kerns, owner/applicant.

S. Second/Final Reading Ordinance expanding the boundaries of Ward IV to include recently annexed property in Annex #07-19: a 6.832-acre

portion of Rimrock Road right-of-way from 62nd Street West to the city limits; City of Billings, requester.

T. Preliminary Subsequent Minor Plat of Amended Lot 5, Block 1, Shiloh Crossing Subdivision.

U. Preliminary Minor Plat of Riverfront Business Park Subdivision.

V. Bills and Payroll

- (1) January 11, 2008
- (2) January 18, 2008

Councilmember Stevens separated Item 1A. Mayor Tussing separated Items 1E and 1T. Councilmember Ronquillo separated Item 1H.

Councilmember Ruegamer made a motion to approve the Consent Agenda with the exception of Items 1A, 1E, 1H, and 1T; and to move Item 1T to Item 2 of the Regular Agenda, seconded by Councilmember Veis.

Councilmember Veis referenced Item 1B and asked why the names on the staff report and the names on the agenda did not match. Planning Director Candi Beaudry advised the list of names had been updated, and Council must not have received the current agenda. She said the names on the staff report were correct, and she read the current appointments to the Work Force Housing Ad Hoc Committee from the staff report, as follows:

1. Jim Ronquillo	City Council
2. Bruce Simon	Central-Terry Task Force
3. Kim Gillan	Heights Task Force
4. Vacant	North Park Task Force
5. David Goodridge	North Elevation Task Force
6. Vacant	Southside Task Force
7. Barbara Prewitt	Southwest Corridor Task Force
8. Vacant	West End Task Force
9. Vacant	Highlands Neighborhood Planning Group
10. Tom Llewellyn	The Yellowstone Group
11. Steve Judd	Floberg Realty
12. Jeremiah Rouane	First Interstate Bank
13. Barbara Seeley	Intermountain Mortgage
14. Vacant	Home Builders
15. Vacant	Home Builders
16. Lucy Brown	Billings Housing Authority
17. Duane Loken	Community Development Board
18. Jean Neyrinck	Affordable Housing Task Force
19. Bruce MacIntyre	Billings Chamber of Commerce

Councilmember Veis said the list on the agenda showed #14 and #15 were filled, and asked why the list on the staff report showed them vacant. Ms. Beaudry

said, on the advice of the Legal Department, Staff re-advertised to accept additional applicants. She said the application deadline would remain open until all positions were filled, and additional appointment recommendations would come before Council at a later date.

Mayor Tussing asked Ms. Beaudry if he was to be appointing the positions because he had not seen any of the applications. Ms. Beaudry advised the appointments were specific to representation of the community, so the recommendations would come from Staff.

On a voice vote, the motion was unanimously approved.

Councilmember Ruegamer moved for approval of Item 1A, seconded by Councilmember Veis.

Councilmember Stevens asked if there were only three applicants for the Bicycle and Pedestrian Advisory Board because Council received copies of only three applications. Mayor Tussing said he thought there were at least 20 applicants. City Administrator Volek said, in the future, all applications would be provided; and the applicants being recommended would be separated for Council's review prior to approval.

Mayor Tussing said he appreciated everyone who volunteered for the Boards and Commissions. He said the Bicycle and Pedestrian Advisory Committee selection was very difficult because there were so many qualified applicants

Councilmember Veis requested that all applications for the Boards and Commissions vacancies be scanned and e-mailed to Council instead of Council receiving paper copies.

On a voice vote, the motion for Item 1A was unanimously approved.

Councilmember Ruegamer moved for approval of Item 1E, seconded by Councilmember Clark.

Mayor Tussing advised the only reason he separated Item 1E was to recuse himself from the vote because his wife was involved in the Bannister Drain Trail.

On a voice vote, the motion for Item 1E was approved 9 to 0.

Councilmember Ruegamer moved for approval of Item 1H, seconded by Councilmember Stevens.

Councilmember Ronquillo asked Staff if the City was liable for injuries or property damage at the 27th Street railroad crossing and if the City would have the money to maintain needed repairs. Public Works Director David Mumford advised the City currently paid MRL to maintain the tracks from the Public Works budget. He said the City would continue to pay for the maintenance because the road crossed the railroad, and the railroad had control over it. He said the railroad was there first, and anyone owning a road crossing the railroad was automatically responsible.

On a voice vote, the motion for Item 1H passed 9 to 1. Councilmember Ronquillo voted 'no'.

REGULAR AGENDA:

2. PRELIMINARY SUBSEQUENT MINOR PLAT of amended Lot 5, Block 1, Shiloh Crossing Subdivision (Moved from Consent Agenda.) Staff recommends approval. (Action: approval or disapproval of Staff recommendation.) Planning

Director Candi Beaudry explained the reason Council received a revised memo in the Friday packet was because Staff realized one of the conditions of approval violated regulations. She said they advised the subdivider that, due to a Staff oversight, he would need to request a variance from the regulation. She said the regulation stated that easements were not allowed to split a lot; but in this particular case, it was for public utilities. She said there was a blanket reciprocal easement on the entire subdivision that would cover the access. Ms. Beaudry advised the variance was acceptable, and there would be no harm done to public health and safety.

Councilmember Veis asked Ms. Beaudry if Council was being asked to amend the item with the amendment included in the revised memo. Ms. Beaudry said that was correct and suggested Council conditionally approve the preliminary plat by removing Condition #4, adopting the variance, and adopting the Findings of Fact.

Councilmember Veis moved for approval of the preliminary subsequent plat with the amendments recommended by Staff to remove Condition #4, adopt the variance, and adopt the Findings of Fact, seconded by Councilmember McCall. On a voice vote, the motion was unanimously approved.

3. RESOLUTION #08- approving reimbursement of temporary funding for water and sewer replacement expenses incurred prior to DNRC issuance of revenue bonds. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.) City Administrator Volek advised there was no presentation, but Staff was available for questions.

Councilmember Stevens moved for approval, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

4. RESOLUTION #08- approving and adopting second quarter budget amendments for Fiscal Year 2007/2008. Delayed from 1/28/08. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.) Assistant City Administrator Bruce McCandless advised the format for budget amendment presentations had been changed to avoid the confusion experienced at the previous council meeting. He said if the new format met Council's approval, Staff would continue to use it in the future. Mr. McCandless referenced the second item, the Fire Station #7 Construction Fund, and said the revenues and expenses did not balance because the funds were being transferred from the General Fund to the Public Safety & Construction Fund; and there was no offsetting revenue in the General Fund. Mr. McCandless referenced the fourth item, the Arterial Streets Fund, and advised there was no increase in revenue. He said there was sufficient cash in the account to allow for the budget amendment, and only expenses were listed because no additional revenue was generated in order to support the expenses. Mr. McCandless referenced the sixth item, the Gas Tax Fund, and said there was sufficient cash in the account, so a revenue item was not budgeted to offset the expense. He said that was also true in the Parks General Obligation 2000 Construction Fund, the Interlachen SID, and the Animal Shelter Spay/Neuter Relief Fund.

Councilmember Veis thanked Mr. McCandless for the new format and asked that it be continued. He said the explanations helped immensely.

Mayor Tussing advised he would be recusing himself from the vote because some of the amendments funded projects his wife worked on.

Councilmember Pitman moved for approval, seconded by Councilmember Ruegamer. On a voice vote, the motion was approved 9 to 0.

5. ADDITIONAL FUNDS REQUEST from homeWORD in the amount of \$200,000.00. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) City Administrator Volek advised there was no presentation, but Staff and the homeWORD Staff were available for questions.

Councilmember Ronquillo moved for approval, seconded by Councilmember McCall.

Councilmember Ronquillo offered his congratulations to homeWORD for the Southern Lights facility on South 28th Street. He said the bricks they sold were in place, artwork was on the walls, the community room was almost ready for use, and the South Side Task Force would be moving to the facility. Councilmember Ronquillo advised there were 80 applicants for the 20 units, so there was definitely a need in the City for more affordable housing. Councilmember Ronquillo offered to give tours of the new facility.

On a voice vote, the motion was unanimously approved.

6. PUBLIC HEARING on Reallocation of CDBG and HOME Funds. Community Development Board and Staff recommend approval. (Action: approval or disapproval of Community Development Board and Staff recommendation.) City Administrator Volek advised there was no presentation, but Staff was available for questions.

The public hearing was opened.

- **Chuck Platt, 610 30th Street West**, said he was a partner in Real Estate Dynamics, Inc., which was a public/private partnership that worked with the Community Development Department to develop Kings Green Subdivision. He said they had built and sold 25 houses in Kings Green Subdivision. He said 24 of the 25 homebuyers utilized the First Time Homebuyer Program. Mr. Platt said it was a tremendous program that was used throughout the City and recommended the money be made available.

Councilmember Ronquillo asked if the 14 additional lots were pre-sold. Mr. Platt advised the subdivision would be done in four phases, and the 14 lots would be for sale in the next phase.

- **Tim Hudson, 3780 Heritage Drive**, said he was a realtor in Billings and a partner with Mr. Platt. He said they served a lot of clients with affordable housing options in the Kings Green Subdivision project and other projects. He said the reallocation of funds would provide stable dollars for assisting the clients throughout the year.

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

Councilmember Clark moved for approval, seconded by Councilmember Pitman. On a voice vote, the motion was unanimously approved.

7. PUBLIC HEARING AND FIRST READING ORDINANCE expanding the boundaries of Ward I to include recently annexed property in Annex #08-02: 54 acres legally described as Tract 2-B-1, Certificate of Survey 1121, generally located west of Washington Street, south of Interstate 90, and north of the Yellowstone River, King Business Park LLC; Richard Dorn, Samuel Rankin, and Hannah Elletson, owners and petitioners. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) City Administrator Volek advised there was no presentation, but Staff was available for questions.

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

Councilmember Astle moved for approval, seconded by Councilmember Ronquillo. On a voice vote, the motion was unanimously approved.

8. PUBLIC HEARING AND RESOLUTION #08-18677 FOR ANNEXATION #08-05: Property described as Lot 1, Sylvia Subdivision, 1094 Lincoln Lane, generally located on the west side of Lincoln Lane, north of the Target Shopping Center in Billings Heights, First Citizens Bank, owner and petitioner. Staff recommends conditional approval. (Action: approval or disapproval of Staff recommendation.) Planner II Juliet Spaulding began her PowerPoint presentation showing the location of the subject property. She said the property was a county island located on the west side of Lincoln Lane, and the property owner was requesting annexation in order to obtain City services. Ms. Spaulding advised the annexation request followed all of the annexation policy criteria, promoted infill development, and would provide more business opportunities to the area. She said Staff was recommending conditional approval subject to a Development Agreement or Subdivision Improvements Agreement being entered into prior to development of the site.

Councilmember Pitman asked what the specific infrastructure improvements would be. Ms. Spaulding advised it would be curb, gutter, and sidewalk currently missing along Lincoln Lane; sanitary sewer; and storm drain improvements.

The public hearing was opened.

- **Mary Jo Depner** said she represented the former First Citizens Bank now known as Western Security Bank. She said they developed the property in between 1999 and 2000 with the idea of beautifying Main Street. She said she was involved in the original project and felt they had achieved their goal in starting a trend on Main Street with trees and

grass. Ms. Depner said Lot 1 of Sylvia Subdivision needed to be annexed into the City to facilitate the sale of the property.

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

Councilmember Pitman asked Ms. Depner what the plans were for the property. Ms. Depner said she was not at liberty to say.

Councilmember Ulledalen moved for approval, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

9. PUBLIC HEARING AND RESOLUTION placing a county-wide planning mill levy increase on the June 2008 Election Ballot. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)
Planning Director Candi Beaudry advised she did not have a PowerPoint presentation and read the following statement.

The City-County Planning Department is requesting the support of the City Council for an increase in the City-County Planning Mill Levy. The mill levy is currently set at 1.17 and is valued at about \$267,185. An increase of one mill, or \$225,000 will accomplish 3 objectives:

1. *Continue to provide community planning services to Yellowstone County and the City of Billings*
2. *Leverage more federal planning funds, and*
3. *Create a reliable funding source to sustain the planning program*

*A common perception of the Planning Department is that it is strictly a regulatory agency. It is true that a very visible part of our job is to process subdivision, zoning, and annexation requests. The City Council is well acquainted with the mandatory responsibilities of our current planning activities. Less visible, though no less critical, are the other services Planning provides. Generally speaking, the Planning Department is responsible for **engaging** the community in discussions on how to grow and develop; **preparing** plans to guide growth and development; and **facilitating** growth and development consistent with those plans.*

Planners are educated in techniques and practices to improve quality of life, enhance economic development, and maintain or increase property values, but it is the public needs and preferences that actually shape the community. Planning skills are used most successfully when they are used to assess the needs of the community by soliciting public input. The broader the input, the more successful the plan. In all our planning efforts, we try to engage the public in a number of ways – through mail or email

communication, notice of meetings, public meetings, surveys, and comment cards. Engaging the public is time consuming and costly, but unquestionably necessary.

Many 100's of hours are spent by Planners working with stakeholders to develop plans for their neighborhoods, or regulations for development. Planners bring to bear knowledge of land use, transportation systems, social patterns, economic development, environmental protection, and political sensitivities when preparing plans. Plans are substantiated by a myriad of data, compellingly displayed in tables, charts and maps. Drafts are written and rewritten, comments and edits are solicited, and finally Planning Board recommendations are sought, and governing body action is scheduled. From beginning to end, a typical neighborhood plan takes a single planner over a year and a half to complete. During that time a number of things could happen to derail the process requiring the process to begin again – dissension among the stakeholders, pursuing dead-end strategies, or rapidly changing existing conditions. Planning requires resources to move swiftly and definitely on a successful path.

Finally, as an outcome of the Plan, actions are initiated, lands are annexed, subdivisions are platted, properties rezoned, and buildings constructed. All this happens within the proscribed time frame with minimum disruption because the landowner or developer was involved in the planning, helped draft the regulations, and met with staff to understand the process. The developer encountered what has been described as a “well-oiled development conduit as opposed to a regulatory chokepoint”. This level of customer service requires patience, commitment, and time - attributes of an educated, well-trained, and sufficiently staffed Planning Department.

We have reached a point when the reliance on a small amount of property tax and a fluctuating fee structure is not meeting the economic needs of the Department and consequently, the Planning needs of the community. More importantly, the increasing costs of providing services and the unreliability of development fees have reduced our ability to leverage federal funds. Last year, we were eligible for approximately \$1.1 million in transportation planning funds, but we were able to match only \$446,000. The additional mill levy could increase the federal contribution by another \$60,000 to \$100,000. This community should not leave this money on the table.

Leaving money on the table is exactly what we do when we are unable to match the Federal Planning Grant. The grant, plus the local match, helps fund all aspects of the Planning Department work program – from developing growth management tools to facilitating economic development. If we don't have a reliable local source for matching funds, we will not be able to fund many activities. Property tax provides our only reliable source of local revenue.

The Planning Department is committed to efficiently using public resources, maintaining public health and safety, preserving property values and preserving a high quality of life for the residents of Billings and Yellowstone County. We are asking City Council to acknowledge the benefits of the planning program by supporting a single mill levy increase and approve the resolution.

Ms. Beaudry thanked the Council and said she would be happy to answer any questions.

Councilmember Clark asked if the resolution was to support the County in placing the mill levy on the ballot. Ms. Beaudry said that was correct. She advised the County Commissioners held a meeting that day and approved a resolution of intent to hold a public hearing to decide if it should be placed on the ballot. Ms. Beaudry said Staff was merely asking the City Council for support. Councilmember Clark asked when the meeting would be held. Ms. Beaudry said the public hearing was scheduled for Tuesday, February 26th, at 9:30 a.m.

Mayor Tussing advised the City Council had heard previous presentations from the Planning Department at the Joint City/County Meeting and at the last Work Session.

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

Councilmember McCall moved for approval of Item 8, seconded by Councilmember Ronquillo.

Councilmember Ruegamer moved to amend the motion to include that the levy expire in two years, seconded by Councilmember Veis.

Councilmember Ruegamer said he was concerned because the Cost of Services Study had not been done, and he felt the levy was premature. He said if the housing market dropped within two years, the Planning Department would probably have a lot less work. He said with the two-year expiration, the need for the levy could be re-evaluated. Councilmember Ruegamer said he spoke with Attorney Brooks, who told him the City could not just take part of it, they had to take all of it; so the City could be “stuck with it for infinity.” He said he was concerned because the Cost of Services Study had not been completed and with the questionable markets ahead.

Councilmember Veis said he agreed with some of what Councilmember Ruegamer said, and he would like to have seen a Cost of Services Study before moving forward. He said it was uncertain if one-half mill, one mill, or even two mills

were needed. Councilmember Veis commented the mill levy needed to be done right the first time. He said he had a problem with the sunset of two years because personnel would be hired with the money, and the money could then go away at some point in the future.

City Administrator Volek commented that the request had always been for up to one mill on City projects, which meant if a lesser amount was needed, a lesser amount could be levied. She also pointed out the City could not impose a two-year cap and could only ask the County Commissioners to do so.

Mayor Tussing asked Attorney Brooks if the City would be "stuck with it for infinity" or if the levy could be removed in two or three years. Attorney Brent Brooks advised the mill levy was being presented to the voters by the County, and the County could increase the mill by asking the voters in the future. Mayor Tussing asked Attorney Brooks if the City could ask the County to remove the levy from the tax roles if it were no longer needed. Attorney Brooks advised the Commissioners would have to decide to sunset the mill, reduce the mill, or not levy it for a particular year. He said he was unsure of what the Commissioners were legally authorized to do with the mill; but Council, through resolution, could urge the Commissioners to sunset the mill or not levy it for a particular year.

Councilmember Stevens said she felt the mill levy, prior to the Cost of Services Study, was premature.

City Administrator Volek advised the Cost of Services Study would be completed sometime within the coming budget year; and if the levy was not adopted, two Planning Department positions would be eliminated prior to completion. Ms. Volek advised the Planning Department reserves had been taken down to almost nothing, and they would not be able to support the current staff positions.

Councilmember McCall asked when the Cost of Services Study would be completed. City Administrator Volek advised the full project should be completed mid-summer in preparation for the 2010 budget.

Councilmember Veis confirmed with Attorney Brooks that the Council had no ability whatsoever to levy or un-levy the tax since it was up to the County Commissioners; and that the County Commissioners could completely ignore the City's requests. Attorney Brooks advised that was correct.

Councilmember Ruegamer asked the City Clerk to read back his amendment. The City Clerk read "Councilmember Ruegamer moved to amend the motion that the levy expire in two years, seconded by Councilmember Veis." Councilmember Ruegamer said he thought he said "recommend to the County Commissioners" and asked to clarify his motion. He said his intent was to move it forward with the recommendation that it sunset, or expire, in two years. Councilmember Veis said he was fine with the clarified motion.

Councilmember Ulledalen said he would not support the amendment because he was concerned it was a planning-related issue. He asked how well the levy could be planned if it was only for two years.

Councilmember McCall said she agreed with Councilmember Ulledalen, and she would not support the amendment.

On a voice vote, the amendment recommending to the County that the levy be suspended after two years failed 8 to 2. Councilmembers Ruegamer and Pitman voted in favor of the amendment. Councilmembers Ronquillo, Stevens, Veis, McCall, Ulledalen, Clark, and Astle, and Mayor Tussing voted against the amendment.

Councilmember Clark said he felt the motion should be stated that it was a recommendation to the County to put the levy on their ballot. He said the original motion stated that Council put it on the ballot, and Council could not do that.

Mayor Tussing asked the City Clerk to read back Councilmember McCall's motion. The City Clerk read that Councilmember McCall "moved for approval of Item 8, the mill levy." Mayor Tussing asked Councilmember McCall to clarify her motion.

Councilmember McCall clarified her motion to "move for approval of the resolution recommending to Yellowstone County to place a county-wide Planning mill levy increase on the June 2008 election ballot." Councilmember Ronquillo seconded the clarified motion.

Councilmember Ulledalen said the Cost of Services Study was being done to figure out where the City needed to be, and he was having a hard time dealing with it as a 'yes' or 'no' vote. He said the City did not even know where it should be, and the Cost of Services Study would give some guidance. He said for Council to ask for more money now not knowing what was actually needed was premature.

Councilmember Ulledalen entered a substitute motion to table the item pending completion of the Cost of Services Study, seconded by Councilmember Ruegamer.

Mayor Tussing said he would not support the substitute motion because, in the meantime, federal money would be left on the table, staff would be laid off, and Council had the option to ask for less than one mill.

Councilmember Veis said it was easy for Council to understand what Planning did but not as easy for the public to understand. He said it worried him that the levy would be put on the ballot, it would fail, and then the Cost of Services Study would come back indicating that a 2.5 mill was needed. Councilmember Veis said he had watched the Planning Department reserves whittle away to nothing, and he knew there were serious problems. He said he did not want to put the mill levy out there, have it go down, and then watch the impact in the future. Councilmember Veis said it was a very tough decision to make.

Councilmember Astle asked (inaudible). Ms. Beaudry advised the agenda packet included a breakdown of the cost of the mill (\$225,000). She said the needs of the department had been identified to include filling the vacant Senior Planner position; filling a vacant Planner II position; filling a half-time clerk for Code Enforcement; operation and maintenance for the positions; and building up reserves. Ms. Beaudry said the local match was \$192,000; however, the County GIS, who prepared all the maps for their reports, automatically received 15% off the top. She explained subtracting the 15% from the \$225,000 equaled the \$192,000. Ms. Beaudry said she felt that was the amount needed to maintain current service levels.

Ms. Beaudry said she shared Council's confidence that the Cost of Services Study would be comprehensive enough to address Planning's needs. She reminded Council that the increase of fees would fall on the backs of the developers; and, in the end, it would be the voters who would decide. Ms. Beaudry said she hoped the Council would provide the opportunity to present it to the voters.

Councilmember McCall stated that the levy may fail, and several mill levies had failed in the past but succeeded over time. She said it was an educational matter, and it needed to get out to the public. She said she was concerned about the limitations in the budget going forward, and she would support it.

Councilmember Stevens asked Mayor Tussing if the item was a conflict for him since there was talk of possible layoffs, and his wife worked in the department.

Mayor Tussing asked Ms. Beaudry if the levy would potentially fund his wife's position. Ms. Beaudry said it would not. She said Darlene Tussing was the Alternative Mode Coordinator, and her half-time position was already funded through the Transportation Planning Grant. Ms. Beaudry said they did not expect that any of the additional funding was needed to continue her position. She said they would try to maximize the positions that were most funded through the Planning Grant, which would be the Transportation positions like the Alternative Mode Coordinator and the Transportation Planner.

Councilmember Stevens said she was even more confused. Councilmember Stevens told Ms. Beaudry that she had just said Ms. Tussing was funded through Transportation money, and the mill would then be used to leverage those monies. Ms. Beaudry advised that Ms. Tussing was currently funded through the Transportation Grant at approximately 55%, which was one of the higher reimbursement rates they received. Ms. Beaudry said what they would try to do was maximize the federal grant reimbursement by supporting a lower position that was reimbursed at a lower rate. She said the simple answer was that they did not plan on the mill levy affecting Darlene Tussing's job. Councilmember Clark asked Ms. Beaudry if she could specifically say it would not affect Ms. Tussing's position. Ms. Beaudry said, in truth, all of their jobs could be in jeopardy in one way or another.

Mayor Tussing asked for Attorney Brooks' opinion. Attorney Brooks told Mayor Tussing the resolution referenced additional Federal Transportation Planning Grant monies being maximized in part by the mill levy, and he was not sure to what degree it would affect his wife's position. Attorney Brooks advised that if there was any doubt, Mayor Tussing should recuse himself.

Mayor Tussing advised he would recuse himself from the vote.

Councilmember Stevens asked to have the substitute motion re-read. The City Clerk read "Councilmember Ulledalen made a substitute motion to table the item pending completion of the Cost of Services Study."

On a voice vote, the substitute motion passed 5 to 4. Councilmembers Astle, McCall, Ronquillo, and Veis voted 'no'.

Councilmember Veis asked Attorney Brooks if there needed to be a date certain on the substitute motion. Attorney Brooks said it could be raised again at a future agenda; but if it were tabled indefinitely, the issue would be defeated and

could not be raised in the future. Attorney Brooks advised that Council could enact another resolution supporting a mill levy increase once the Cost of Services Study was completed. He advised that linking the tabling of the item to the completion of the Cost of Services Study would be sufficient enough to place it on the next available agenda.

10. WASTEWATER SERVICE AGREEMENT with Lockwood Water and Sewer District. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.) City Administrator Volek advised that the City Attorney had comments.

Attorney Brooks suggested, based on the corrections and additions outlined in the staff memo, that the sentence at the bottom of Page 13 of the Agreement that read "*The Court shall be authorized to award the prevailing party reasonable attorney fees and costs should the parties proceed with litigation as described above in District Court*" be deleted in order to be consistent with Section 33, Page 17, that indicated both sides would be responsible for their own attorney fees. He advised any motion made approving the agreement should include striking the sentence in order for the document to be internally consistent.

Councilmember Veis verified with Attorney Brooks that Item 1, Approve as Requested, in the staff memo was for approval of the document Council currently had in front of them. Attorney Brooks said that was correct.

City Administrator Volek pointed out the document included modifications made by the Council at the Work Session.

Councilmember Veis verified that all of the modifications made by City Council and Lockwood Water & Sewer were included in the Council packet and as described under Item 1. Attorney Brooks said that was correct.

Councilmember Veis verified that Item 2, Approve with Modifications, would be to make changes, including the one Attorney Brooks had already suggested, and any other additions or deletions Council felt necessary. Attorney Brooks said that was correct.

Councilmember Veis verified that Item 3, Do not Approve, would be to not approve anything. He said they had approved it at one time, and asked if they now had the ability to disapprove it. Attorney Brooks said because there had been so many modifications and because both sides had not signed the Agreement, Council was at liberty to disapprove it. Councilmember Veis asked if one of their options was to choose not to allow the Agreement at all. Attorney Brooks said that was correct. Attorney Brooks added that he had spoken with Terry Seiffert, the attorney for the Lockwood District, about the one sentence deletion; and he was aware of it and agreed with it.

Councilmember Stevens referenced the fixed sum payment in the event of a breach of the contract and asked Public Works Director Dave Mumford if the \$3,000 per day for each day the district was not in compliance was sufficient for all contingencies and for ten years in the future. Mr. Mumford advised it was their best estimate at the current time.

Councilmember Veis asked if the \$25,000 provision that was removed had gone into another section of the contract. Mr. Mumford said that was correct.

Councilmember Veis asked if the \$3,000 owed the City would be in addition to any penalties the City incurred. Mr. Mumford said that was his understanding.

Councilmember Clark asked if Attorney Brooks would answer the same question. Attorney Brooks advised that regulatory fines would be through the other provisions of the Agreement. He said if the conduct errors or omissions of the Lockwood District caused the City to incur liability and the Lockwood District refused to honor the City's request to be reimbursed, the City could execute upon Lockwood's performance bond and liability insurance they were required to carry.

Mayor Tussing asked Attorney Brooks if he was convinced the citizens of Billings were protected from any unnecessary costs and from any potential of being sued by Lockwood. Attorney Brooks advised he was not aware of any agreement that would contain a fail-safe like that, but that Staff had looked at the agreement numerous times and had done their best. He said it was a very unusual relationship providing a service on a long-term basis; and given the subject matter and the relationship between the City and Lockwood, it was about as protective of an agreement that Staff could provide. Attorney Brooks said performance bonds came from Staff as an idea to maximize the City's protection, but he could not guarantee that something negative would not happen to the City or to Lockwood.

Mayor Tussing said when the agreement was passed the first time, people were coming "out of the woodwork" wanting to hook up to City water and sewer. He asked Attorney Brooks if it would set a legal precedent requiring the City to accommodate others. Attorney Brooks advised the agreement would be viewed similar to an annexation. He said there would be no rights guaranteed to anyone outside the City; and it would be totally within the discretion of the City Council.

Councilmember Ruegamer moved for approval of Item 9 with the deletion of the sentence "*The Court shall be authorized to award the prevailing party reasonable attorney fees and costs should the parties proceed with litigation as described above in District Court*" located at the bottom of Page 13, seconded by Councilmember Veis.

Councilmember Veis said when the agreement was passed the first time everyone agreed it was not the perfect agreement. He said both parties had gone through the agreement and updated items that would make it better. Councilmember Veis said he thought the current agreement was better than the previous agreement.

Councilmember Ulledalen said he thought it was a better agreement but felt it was still a bad idea and he would vote 'no'.

Councilmember Clark asked if there was a sunset in the agreement. Deputy Public Works Director Al Towleron referenced the provision under Section 25. Milestones on Page 13 that stated the District would have two years from the date of the agreement to successfully approve a financing program allowing construction and three years from the date of the agreement to commence with improvements. Mr. Towleron advised if the District failed to meet either of the milestones, the agreement would be terminated.

Mayor Tussing said the agreement had been through several iterations, and he was not sure if that was good or bad. He said maybe it had been fine-tuned to the point of being as fail-safe as possible, or maybe it had become so complicated

and different from anything the City had ever done that they should not do it. Mayor Tussing said he was torn between which way to go this time.

Councilmember Stevens said she felt it was a better contract, but she was still concerned about the overall concept and, for that reason, she would not be supporting it.

On a roll call vote, the motion failed 5 to 5. Councilmembers Ronquillo, Stevens, Ulledalen, and Clark, and Mayor Tussing voted 'no.' Councilmembers Pitman, Veis, Ruegamer, McCall, and Astle voted 'yes.'

11. 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.)

- **Francis Harris, The Terrace**, said she was speaking on the Quiet Zone. Mayor Tussing advised Ms. Harris the Quiet Zone was Item H on the agenda, Council had already voted on it, but told her to continue. She said the railroad had been in Billings for 100 years, and in Montana and Wyoming the trains blew their whistles before reaching a crossing. She said Council should sit on the corner of Montana Avenue and 27th and count how many trucks, cars, buses, and pedestrians crossed there. Ms. Harris said the train could be seen coming from the south side, but not from the north side; and Council was inviting total disaster. She said it was foolhardy to ask the trains to stop blowing their whistles. She said the people who bought places down there should have thought about it. Ms. Harris advised Billings thrived very well for many, many years with the trains blowing their whistles. She asked the Council to use common sense because sooner or later they would invite disaster, and they would be responsible.

Councilmember Stevens commented that currently there was one arm on either side of the road that allowed people to sneak through. She said with the quiet zone, there would be two arms on each side making it impossible for a vehicle to sneak through. Ms. Harris said it did not make any difference, and the trains should blow their whistles.

- **James Healow, 536 Highland Park**, said he was a lawyer in Billings who did a lot of liquor licensing work. He said he was currently in the process of putting a liquor license in the Yellowstone Art Museum, which had proven problematic over a number of years because the location of the First Congregational Church across the street was within 600 feet. Mr. Healow advised the State and the Zoning Code had a statute addressing the proximity to churches and schools. He said there were two loopholes to the State statute and Zoning Code. He said the State loophole was the use of the word 'exclusively.' He said he had been trying to get the State to give him a commitment that the First Congregational Church building was not used exclusively as a church, but the State was "passing the buck" and would not give him an answer. Mr. Healow referenced a letter he distributed to Council from the First Congregational Church stating the building was not used exclusively as a

church. He advised that his client had until Friday to submit the application for that particular liquor license. He said he had another placement for the license, if needed, but his client preferred to put it in the Yellowstone Art Museum. Mr. Heallow referenced the second loophole involving Section 27-612(a)(1)a of the Zoning Code. He said that State law allowed the City to declare that various portions of the City were suitable for alcoholic beverage service and allowed the City to supersede the State's proximity rule. He advised Section 27-612(a)(1)a said the Central Business District was suitable for alcoholic beverages. Mr. Heallow said it was his belief that when the City adopted Section 27-612(a)(1)a, it intended to supersede the State law.

Councilmember Stevens advised that Mr. Heallow had called her that afternoon and brought the issue to her attention. She said she asked him to come to the meeting, and she would like to hear further from him.

Mr. Heallow said he talked with the City Clerk to find out if the City had ever certified to the State the intention to supersede the rule. He said the City Clerk did not know if the City ever had. He said he talked to one of Attorney Brooks' staff, and he was unaware that it had ever happened. Mr. Heallow advised the City Clerk sent him a model of a resolution, and he drafted the resolution that was on the top of the packet he had distributed. He said the manager of the Art Beyond the Palette Restaurant had already signed a lease, and the art museum had approved the lease in writing.

Councilmember Veis asked Mr. Heallow if he needed it done by Friday. Mr. Heallow said he did not need it done by Friday. He said the reason he was in attendance was to see if Council had any vigorous opposition.

Councilmember Ruegamer clarified with Mr. Heallow that it was a full liquor license and not a cabaret license. Mr. Heallow said it was a full liquor license without gambling.

Mayor Tussing said he had been to the museum in the past where there was beer and wine served and asked if a licensed vendor came in. Mr. Heallow said there was a very cumbersome mechanism in place where they used four or five different licensed establishments with catering endorsements.

Councilmember Ronquillo asked how late the liquor would be served and if it would be served on Sunday. Mr. Heallow said Art Beyond the Palette was opened from 11:00 a.m. to 3:00 p.m. every day and on Thursday nights until 8:00 p.m.

Councilmember Clark said he thought all full liquor licenses had the right to gambling. Mr. Heallow advised the back page of his handout was a form from the State saying there was no right to gamble. Councilmember Clark asked if the permit was from outside the City of Billings. Mr. Heallow said the license was coming from Judith Basin County.

Councilmember Astle asked if there was a year to put the license to use. Mr. Heallow said it would be until October of this year. Councilmember Astle asked why Friday was the drop-dead date. Mr. Heallow said it was because they were given 60 days to apply for the license and then given an additional 60-day extension. He said the extension expired on the 15th and the application had to be in the mail by the 15th.

Councilmember Stevens asked Mr. Heallow to explain the advantage to the museum. Mr. Heallow advised his client intended to donate any profits after covering her expenses to charitable institutions throughout town, and he was sure the museum would be one of them. He also advised Art Beyond the Palette was a marginal operation that benefited the museum because it provided daily lunch service for the patrons and catered many of the museum events. Mr. Heallow said if the liquor license was in the museum, there would be no need to have four or five different bars catering events.

Councilmember Astle said a full liquor license was worth approximately \$1.1 million. Mr. Heallow said it was worth significantly less than that because it did not have the right for gambling.

Councilmember Veis said he did not have any significant objections, but he would like to hear more about it at a Work Session.

Mayor Tussing asked Attorney Brooks if Council could even do what Mr. Heallow was asking. Attorney Brooks said the Council passed an ordinance a year or two prior amending the location of liquor licenses and stating the 600-foot restriction did not apply in the Central Business District. Attorney Brooks said, to him, a governing body passing an ordinance enacting that exception would be as good a certification as possible. Attorney Brooks suggested that a phone call between Mr. Heallow, Ms. Beaudry, himself, and the Department of Revenue would be in order.

Mayor Tussing asked Mr. Heallow if he was willing to go that route. Mr. Heallow said he was willing to do anything, and the reason he proposed a resolution was because that was what the State statute provided. Mayor Tussing advised if they had a conversation with the Department of Revenue, the resolution may not be necessary. He advised the Council could not pass a resolution that evening without notice and a hearing.

Mr. Heallow said he believed one of the reasons he was getting ambiguity from the Department of Revenue was because the City created a little bit of ambiguity by passing Section 27-612(a)(1)a and not referencing the State statute.

Councilmember Stevens said she felt Mr. Heallow was trying to gauge how the Council felt about the matter. She said she would bring up an initiative to ask Staff to work with Mr. Heallow.

Councilmember Clark said he felt the Council would be wrong to state either way on the matter before first hearing from the citizens. He said he had a problem with Council circumventing the process.

Councilmember Stevens said the intent was not to circumvent the process. She said the intent was to get the process moving forward. She said there were no guarantees, but it could be handled at the Staff level with the Department of Revenue. Councilmember Stevens said it was already on the books, and it was just a matter of convincing the Department of Revenue. She said if that was not the case, a public hearing would occur.

- **Joe White, Billings, MT**, said he did not approve of the liquor license for the Yellowstone Art Museum. He said people coming down to look at the art would have to walk through a saloon, especially the school children. He said he did

not approve of the liquor sold at the Alberta Bair Theater. (inaudible)

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

Council Initiatives

- **Stevens:** MOVED to direct staff to work with Mr. Heallow and his client on the liquor license for the Yellowstone Art Museum; and, if necessary, bring forward a resolution specifying that the ordinance intended to supplant the state ordinance on the particular issue, seconded by Councilmember Ruegamer. On a voice vote, the motion passed 8 to 2. Councilmembers Astle and Clark voted 'no'.
- **Veis:** MOVED to add the Mustangs contract to a Work Session agenda seconded by Councilmember Stevens. Councilmember Clark advised he would be out of town for the February 19th Work Session, and he would like to be there for the discussion.

Councilmember Ronquillo said there was a Steering Committee meeting scheduled for February 12th at 3:00 p.m. that Councilmember Veis could attend and ask questions.

Councilmember Ruegamer asked about the possibility of holding a special meeting. He said if Councilmember Veis had eleven items, it could be a three to four-hour session.

City Administrator Volek advised the next regular business meeting had 23 or 24 regular agenda items, many of significance that would take a considerable amount of time.

Councilmember Ruegamer said he did not want to sit for three hours to wordsmith the contract. He said he could not see an end to it.

Councilmember Ulledalen said he agreed with Councilmember Ruegamer. He said attending the Steering Committee meeting scheduled for tomorrow seemed reasonable, or he would support taking it to a Work Session.

Councilmember Stevens said it was Council's responsibility to go through contracts because they were protecting the City. She said missing the details was what always got them in trouble.

Councilmember Ruegamer said he agreed it was Council's responsibility and that was why he read it about four times. He said if he would have had questions, he would have called the appropriate person and talked to them. He said Councilmember Clark had worked on it for two years, and he knew it inside and out. He said Ms. Volek understood it and Attorney Brooks understood it, and asked why eleven people should be subjected to wordsmithing a contract.

Councilmember Clark asked if there was a clause that the contract could be re-opened in two years. Ms. Volek advised the clause was discussed, and she believed it was contained in the current contract.

Councilmember Ruegamer advised there was a clause that said the contract could be reopened with the agreement of both. He said the City had

never done this before with the Mustangs, and there would be issues to resolve. He said the contract needed to run a year or two to see what the problems were going to be.

City Administrator Volek advised the clause was included in the contract because the first season would be one in which the University and the American Legion would not be playing. She said they would have one abbreviated season and one entire season with all teams playing in order to get a feel for how things were going. There was discussion that if there was a need, the contract could be reopened.

Councilmember Stevens said the discussion could be at a Work Session, which was voluntary. She said if certain councilmembers were happy with the contract, they would not have to attend; but there were councilmembers who had read the contract and had concerns.

Councilmember Astle called for the question, seconded by Councilmember Ronquillo. On a voice vote, the motion to place the item on the March 3, 2008, Work Session failed. Councilmembers Ronquillo, Ruegamer, McCall, Ulledalen, Astle, and Clark, and Mayor Tussing voted 'no'.

- **Clark:** Said he would like the Council to discuss the matter in which the City negotiated with the union. He said currently Staff negotiated the union contracts that also affected their salaries. Councilmember Clark said if the union contract got a 3% or 4%, then usually the Staff got 3% or 4%. He said he talked with City Administrator Volek about it and because of the expense of bringing someone in, she said she would be willing to be the lead negotiator when the salary portion of the contract was negotiated. Councilmember Clark asked how the rest of the Council felt about it.

City Administrator Volek advised she had worked with nine different unions during previous employments, and said she would be happy to step in. She said they had a very fine team that included a representative from the Legal Department, the HR Director, and the Assistant City Administrator, who had done an excellent job working together to come up with preparations for the next contract, which would be with the Firefighters Union. Ms. Volek said she would be glad to take that portion of the negotiations since her salary was set by the Council.

Mayor Tussing asked if it would virtually eliminate anyone else on the Staff, such as the Assistant City Administrator, any Department Head, the HR Director, and the Legal Staff. Ms. Volek said that was correct, and at that point, she might even seek outside counsel.

Councilmember Veis asked if there should be a discussion or if Council should just do it. Councilmember Clark said if Council wanted to discuss it that evening, that was fine; or they could have a discussion at some other time. He said contract negotiations would be starting very soon with the Fire Department, and the Council needed to know where they stood. He said there had been times in the past when the contracts had come back to bite them and hopefully having staff from the City Attorney's Office on the negotiating team would help.

Mayor Tussing said he would like to have Ms. Volek report back with the pros and cons of negotiating with and without Staff and the possible costs involved.

Councilmember Clark said he did not think it would preclude Staff giving input to Ms. Volek, such as the HR Director or Legal Staff. Councilmember Clark said someone needed to be there during the salary part of the negotiations that was not also negotiating their own salary. Councilmember Clark said it would also be okay with him if an outside person was hired.

City Administrator Volek advised a report would be prepared for the Council for a Work Session.

- **Ronquillo:** Asked if there was an Agenda Setting Meeting scheduled for the following evening. City Administrator Volek thanked Councilmember Ronquillo for asking and advised there would be a meeting and attendance would be helpful because the February 25th agenda was very lengthy.
- **Pitman:** MOVED to have Staff draft a policy for the use of electronic devices during council meetings, seconded by Councilmember Stevens. Councilmember Stevens said at the MMIA meeting held in Laurel there was discussion about the use of electronic devices during meetings. She said it was brought up that the Missoula City Council all had laptops and were instant-messaging between each other, which was considered discussion outside of the public hearing. She commented the Missoula City Council got into quite a bit of trouble over it.

Councilmember Ruegamer left the Council Chambers at 8:30 p.m.

On a voice vote, the motion was approved 9 to 0.

- **Veis:** Councilmember Veis referenced the petition from Broadwater School included in the Friday packet and MOVED to have Staff bring back options for improving the traffic safety around Broadwater Elementary School, seconded by Councilmember Stevens. He said one of the options discussed at the Central-Terry Task Force meeting was closing off 4th Street at Broadwater Avenue because it bordered the school and a church, and no one actually lived there.

Councilmember Ruegamer returned to the Council Chambers at 8:33 p.m.

City Administrator Volek advised it was her understanding from Staff that the City had applied for a grant to develop a comprehensive Safe Route to School plan. She said Staff had been contacted by other schools with similar concerns, but it was part of the limited funding situation. Ms. Volek said Staff would move forward with the task, and help from the grant would be very useful.

Public Works Director David Mumford asked if the petition being referenced was signed by second and third graders from Broadwater. Mr. Mumford advised the petition did not come from the school, but Staff was addressing the issue with the PTA.

Councilmember Veis said there were items listed that the petitioners want the City to accomplish. He said the Central-Terry Task Force had also

talked about closing off 4th Street near Broadwater Avenue and not allowing traffic to go through. Councilmember Veis said he would like to have discussion at a Work Session about the pros and cons. He said he only wanted discussions at that time and not solutions. Mr. Mumford said the issue would be talking about circulation in the neighborhood and how it affected other people. Councilmember Veis asked if a discussion could be held on what the impacts would be if Council instructed the Traffic Engineer to do certain things so Council could understand what they were really asking. Councilmember Veis said he did not feel it would take Staff more than four hours to frame the question so Council could discuss it. Mr. Mumford said it would be a very complex discussion for what was being asked, and Staff was currently trying to find out from the school where the petition actually came from. He said the majority of the petition was signed by second and third graders and some parents. He said he called the principal, who hemmed and hawed as to whether it was actually from the school.

Councilmember Astle said the principal actually signed the petition.

City Administrator Volek suggested finding another school where a similar study had been done. Mr. Mumford advised they had never been asked to close whole streets and divert traffic around a school before.

City Administrator Volek advised the requests were the result of an accident that occurred when a student ran out into the street and into the side of a car.

Councilmember Veis said he did not want a full-blown study conducted.

Councilmember Astle asked if there was anything that could be done in the interim, such as using temporary barricades to slow traffic or having an officer on street patrol in the area.

Mr. Mumford advised flashing lights were a very expensive proposition. Councilmember Astle said he understood that, but felt a police car with its yellow lights flashing in the area one-half hour before and after school would help temporarily.

Mr. Mumford said he was not sure if it was a real problem or a perceived problem. He said the parents were causing the problem, and the school had a responsibility to deal with their students and the parents. He said it would mean closing streets to the general public to solve a 15 minute problem that the School District did not want to address. Councilmember Astle said he understood, and he was opposed to closing streets.

City Administrator Volek advised Council that Staff would schedule the discussion at a Work Session as soon as possible; possibly the second meeting in March. She said, in the meantime, she would ask the Police Department to install the speed trailer at the location that would help slow down some of the traffic.

Councilmember Clark said he agreed with Mr. Mumford that the only traffic on 4th Street West was the parents picking up their kids from school.

He said the general public did not drive down 4th Street because there was no place to go.

On a voice vote, the motion was unanimously approved.

- **Ulledalen:** Said he had attended a meeting in Helena the prior week, and he found out that something they had originally been told was not true involving the earmark the City received for Zimmerman Trail. He said they were told that the City would have to escrow \$5 million to hold the earmark. Councilmember Ulledalen said as he dug into it further, he was encouraged to go before the committee in Helena. He said Director Lynch was there, and the result was that the City did not have to escrow \$5 million up front. Councilmember Ulledalen said when the condition was thrown at the City, Staff's response was to move the Zimmerman money to Shiloh, which was under funded, because it did not make sense to escrow \$5 million. He asked if they should still support moving the Zimmerman money to Shiloh or step back and take a look at it and continue fixing Zimmerman based on the new information. Councilmember Ulledalen asked Mr. Mumford if the City had a year before having to commit to the Zimmerman money. Mr. Mumford said the last time he spoke with the State, it was his understanding it would take a year for the federal appropriations committees to come back around to re-appropriate the funding. Mr. Mumford said the money was still committed to Zimmerman.

City Administrator Volek advised a written request had already been made to the delegation to move the money to Shiloh. Councilmember Ulledalen asked if it was a done deal or if there was still latitude on it. Mr. Mumford advised it had not moved yet. Ms. Volek said they would check with the delegation and report back.

Councilmember Ulledalen said the second comment from Mr. Lynch's testimony was relative to Airport Road. He said Mr. Lynch indicated there were some serious right-of-way acquisition issues, and he suggested there were two courses of action that could happen; one was that if the road was proven to be necessary, it would be one tract to take in condemnation; and if it was proven to not be necessary, it would be a long, long time before the road was ever built. Councilmember Ulledalen said it was puzzling to him and asked if there was anything the City could do to receive clarification. He said one of the senators suggested completing a public records request from the department for written records on any right-of-way discussions held.

Councilmember Veis said he had heard the same thing; that the hold-up on Airport Road was discussions with the City about the City's right-of-way. He said it really "blew his mind" that that could really be the hold-up.

Councilmember Ulledalen said during the rebuttal session, he commented that he was glad the Director had brought it up because it was puzzling to him that the major landowner in the project, which was the City of Billings, had not been contacted. Councilmember Ulledalen said after the hearing adjourned, he left and another hearing started. He said he heard after he left, Mr. Lynch commented it was a bunch of B.S., that they knew

the City property was there, that it was just an administrative act for them to get the right-of-way, and negotiating with the City was not an issue. Councilmember Ulledalen said it appeared the issue was hopelessly stalled and asked if there was anything the City could do to make the MDOT more accountable.

Mr. Mumford advised there was only one property on the Airport Road that was not City property. He said Airport, Parks, and Public Works all had property on Airport Road. He said there was a substantial portion of the interchange at Alkali Creek that the Parks Department had asked for a value on to determine if they would give it to the State. He said over nine months ago, Airport, Parks, and Public Works met with Bruce Barrett of MDOT and offered a resolution to accept whatever value the land was worth or to give it to them for free, so they could move forward. He said MDOT refused the offer at that time.

Councilmember Ulledalen said it was aggravating to him that regardless of what happened, the City was made the scapegoat. He said it was very clear in Mr. Lynch's testimony. Councilmember Ulledalen asked what the City could do to be more proactive and force the State's hand on some of the issues.

Mr. Mumford said he was not sure. He said there was one little section of road in discussion right now. He said when they did the original design, the Boot Hill Hotel did not have access onto Airport Road so anyone leaving would have to make a right turn onto Main Street, go down to Sixth, and up 27th Street to get back to the airport. He said at that time they were talking about building a little road from the slip ramp to 6th, through Boot Hill Cemetery next to the pump station to provide circulation. He said since then, EIS allowed the access to be put back onto Airport Road and the road from the slip ramp to 6th was never taken out. Mr. Mumford said he had concerns because he would have to lower a 24" water main and a 30" water main that fed the Heights. Mr. Mumford said he asked if the little road could be taken out of the design because it was no longer needed and it was mistakenly left in by the EIS. He said the discussion had been going on for the last couple of weeks. Mr. Mumford advised they had continually asked the State how much right-of-way they needed and how much they were offering for the property.

Councilmember Ulledalen said Mr. Lynch clearly stated that there were problems with the right-of-way negotiations. Mr. Mumford commented they had not had any negotiations to date.

Councilmember Veis asked what people and what actions were needed to get the issue resolved. Mr. Mumford said he could make another formal request to MDOT or the Council could make an initiative to request data on the right-of-way acquisitions.

Councilmember Ulledalen stated he came away from the meeting feeling that City Staff had been beaten back and forth and were always at the State's mercy. He said Bruce Bender from Missoula had similar comments. Councilmember Ulledalen said he felt it was a political action

and not a Staff action, and he was willing, if Council directed, to work with Staff to write a letter on behalf of the Council to Mr. Lynch. He said he was tired of the City being made the scapegoat every time something was delayed.

Mr. Mumford said they had the same situation with Shiloh. He said the State had not made the City aware of what land they needed to purchase.

Councilmember Ulledalen said he would entertain a motion from the Council to direct him to work with Mr. Mumford to write a letter to the MDOT.

Councilmember Astle MOVED to direct Councilmember Ulledalen to work with Mr. Mumford to draft a letter to the MDOT, with copies to the local delegation, seconded by Councilmember McCall.

Councilmember Pitman said he would be willing to sign the letter.

Councilmember Stevens asked if Mr. Lynch was the appropriate person to receive the letter. Councilmember Ulledalen said he felt they received Mr. Lynch's attention "big time" at the meeting on Friday. He said, at this stage, he felt Mr. Lynch was a good place to start, with a copy to the local delegation.

Mayor Tussing suggested including requests for written clarification of the escrow issue in the letter to avoid misunderstanding in the future. Councilmember Ulledalen said Mr. Lynch stated it about five times, so he felt he would have a pretty tough time backing away from it. Councilmember Ulledalen said he was told by Bill Kennedy that the reason the City had to do pay upfront was because of the 2006 Audit Report. He said he talked with the Legislative Fiscal Auditor, who said the City had several options. Councilmember Ulledalen said he read the audit report, and it said nothing about paying for anything upfront. He said the City was totally misled in terms of options.

Councilmember McCall said she agreed with the Mayor that the City needed to ask Mr. Lynch for clarification in writing.

Councilmember Veis suggested sending the letter, and if no response was received in two weeks, holding a meeting with the delegation and inviting the Director. He said he did not feel the letter would necessarily change the culture of MDT, and continuing to go the meetings and "putting their feet to the fire" was necessary.

Councilmember Ulledalen said before the hearing they talked with people from several groups who said they were glad someone was finally taking up the issue of getting communities certified. He said there was one representative from the American Congress of Engineering Companies from Great West Engineering in Missoula, who said they were instrumental in getting the legislation passed three years ago, but no one had asked for it.

Councilmember Stevens left the Council Chambers at 8:52 p.m.

Councilmember Astle suggested getting as much of the media involved as possible with the letter and the meetings. Councilmember Ulledalen said he met with the Gazette Editorial Board when the City had

gotten buried on the Zimmerman Appropriations. He said he met for an hour and a half with them and received zero attention.

Councilmember Stevens returned to the Council Chambers at 8:54 p.m.

Councilmember Veis asked if a copy of the letter should be sent to the federal representatives. Councilmember Ulledalen said he felt it was not necessary at that point.

On a voice vote, the motion was unanimously approved.

- **Tussing:** Asked Dave Mumford if he had received information from DNRC regarding accepting grant applications for promoting natural resource projects that benefited Montana citizens. Mr. Mumford said not to his knowledge. Ms. Beaudry advised she had received the letter and would share the information with Mr. Mumford. Mayor Tussing said there were several items in the letter he thought were possibilities for Billings. He noted Livingston received a glass crusher, and several people had asked him why the City did not recycle glass. Ms. Beaudry commented that the City received all of the information on the DNRC grants; and the Planning Department, depending on staff and time, would be applying for a grant for the West Billings Flood Mitigation Plan. She said they were currently not looking at all of the potential activities the grant could provide. Mayor Tussing asked Mr. Mumford if he was willing to check into the possibility of obtaining a glass crusher; or if he needed to include it in an initiative. Mr. Mumford said an initiative would not be necessary, and he would check into it.

City Administrator Volek advised glass crushing involved a great deal of hand sorting, and it could be a hazard working with glass at the landfill; but Staff would certainly look into it.

- **Tussing:** Said he received information from the Mayors' Institute on City Design offering alumni the potential of having experts come to Billings and look at city design issue. Mayor Tussing asked the Council if he should apply, as an alumnus, to pursue the offer. He said each City could receive up to \$25,000 and were asked to provide between \$5,000 to \$15,000 of matching cash or in-kind support. Mayor Tussing said the offer was being taken on a first come, first served basis.

Councilmember Ulledalen said his only concern was that the City had so many things up in the air now, and it would just complicate things.

Mayor Tussing said it appeared the offer would die from lack of interest.

ADJOURN: The meeting adjourned at 9:00 p.m.

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