

REGULAR MEETING OF THE BILLINGS CITY COUNCIL
August 25, 2008

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

ROLL CALL – Councilmembers present on roll call were: Ronquillo, Gaghen, Pitman, Veis, Ruegamer, McCall, Ulledalen, Astle, and Clark. Councilmember Stevens was not present for roll call and was not excused.

MINUTES – August 11, 2008, approved as distributed

COURTESIES:

- Councilmember Pitman wished his daughter, Diandra Pitman; and his father-in-law, Darwin Paffrath, a happy birthday.
- Councilmember Veis said he toured the new westend PD3 (Police Department), and it was a nice facility. Mayor Tussing advised he was at the PD3 at 11:00, and the brats had not arrived. He said he was not able to eat because of other meetings he needed to attend.

PROCLAMATIONS - None

ADMINISTRATOR REPORTS:

- City Administrator Volek advised the following items were filed in the Ex-Parte Notebook in the back of the room for public reference.
 - ✓ Item 1A3 - Staff report regarding award of two new fire trucks, which was also distributed in the Friday packets.
 - ✓ Item B – Staff report regarding the Animal Shelter Privatization Contract, which was also distributed in the Friday packets.
 - ✓ E-mail from Mike and Traci Zankowski, sent to Council on July 21, 2008, in support of the YVAS proposal for privatizing the Animal Shelter.
 - ✓ Item 5 – Landfill Gas Sales Agreement with MDU, which was also distributed in the Friday packets.
- Ms. Volek reminded Council of the Agenda Review Meeting scheduled for the following evening at 5:30 p.m. in the City Hall Conference Room.
- Ms. Volek advised there were three items staff was asking to be removed from the agenda.
 - ✓ Item 1A3 – Postpone bid on current model year fire apparatus for two weeks to allow time to meet with the committee that wrote the specifications so she and the new Fire Chief could understand them better.

- ✓ Item C – Table indefinitely the Memorandum of Understanding with the Billings Heights Water District for resale water rates, due to concerns of the Heights Water Board that needed to be addressed.
- ✓ Item 4 – Table indefinitely the \$230,000 Pooled Sidewalk Funds, Series 2008, due to receipt of no bids.

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: 1, 4 and 5 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.

- **Rick Reid, 2205 Treasure Drive**, said he was the Region Manager for MDU, and was available to answer any questions on Item 5, the Landfill Gas Sales Agreement. He said the contract had been worked through by both legal departments and staff; and they felt it was a very fair and equitable contract.
- **Joe White, Billings, MT**, said he was not sure about the details of the contract. He said he supported the use of methane as an energy source, but was opposed to wind energy. He said he wanted to be sure all the proceeds would go back to the people (inaudible).
- **Dave Bovee, 424 Lewis Avenue**, referenced the possible delay of the contract for privatization of the Animal Shelter and said he was still very leery about taking a government function and turning it over to an unknown quality (inaudible). He said if there was a deficit, he encouraged the Council to find some way to heal it. He said essentially they would be destroying something and handing it over to someone who they did not know would actually perform the function.
- **Catherine Schaeffer, 2113 Walter Road**, said she was present to ask the Council to scrutinize the proposal to take over the Billings Animal Shelter. She said she believed the process was flawed from the beginning due to Ms. Stevens' involvement on both sides of the overall negotiation process from start to finish. Ms. Schaeffer said she hoped the Council would bear that in mind and not go forward with the contract.

Councilmember Ruegamer asked Ms. Schaeffer why she felt the process was flawed. Ms. Schaeffer said she had been in rescue in Billings for 13 years, has had her own 501(c)(3) for going on ten years, and was very familiar with the overall problems in the area and surrounding counties that overflowed into Billings. She said from what she had seen of the proposal, it had very unrealistic expectations on how they would handle everything. Councilmember Ruegamer asked Ms. Schaeffer if she was aware they would be doing things that currently were not being done. Ms. Schaeffer said she was aware they were going to attempt to do things that were not being done

now, but it took a very, very strong community commitment and a very, very large volunteer group to be able to do those things. She said after being here for 10 years and working in rescue, she did not see it happening.

Councilmember Ulledalen said in one of the Council packets they received an e-mail that had been forwarded around that said the City of Houston had posted a list of 10 parallels between animal addicts and substance abusers. He asked Ms. Schaeffer what that was all about. Ms. Schaeffer said she had no idea, and then said her idea was that they were trying to prove that there were people that had an animal addiction, as well as a substance abuse addiction; and that there were a lot of parallels to those addictions.

- **Angie Cook, 3420 Quinella**, said she was with Help for Homeless Pets, and had comments on the privatization of the Animal Shelter. Ms. Cook said it was very unrealistic to run the shelter with a majority of volunteers. She said from 18 years of experience and in talking to the people at the Animal Shelter, volunteers could not be depended on to show up; so it was a very unrealistic goal that needed to be looked at as far as how they would handle it if volunteers did not show up. Ms. Cook said the assets of the current shelter also needed to be protected because the City had spent a lot of money on it. She said there would be an extra cost of moving animal control and equipment to a different location.

Councilmember Ruegamer advised moving of the animal control officers was not going to happen.

- **Kevin Nelson, 4235 Bruce Avenue**, said state law prohibited any employee or official to use public time and money to further one's private interest. He suggested Council get the e-mails from last August where Councilmember Stevens requested revenue and expense reports and debt service information from the City Administrator. He said Ms. Stevens was given the information long before the public ever had the information and was already in contact with Ms. Volek days before it was ever made available for public review. He said Councilmember Stevens had an advantage using insider information to further her financial gain. Mr. Nelson advised Council if they voted and approved it, they too would be held statutorily because they would be violating state statute.
- **Michael Mansfield, 1125 Siesta Avenue**, distributed a handout explaining why privatization of the Animal Shelter was illegal based on the way it was handled. He said the proposal was totally incomplete because it did not contain rescue for birds, fish, and reptiles. He said there was a bird rescue that had been operating in Billings for many, many years. He said there had not been enough research into the feasibility of privatization.
- **Mike (last name inaudible), Shepherd, MT**, said he had people dropping animals off at his house all the time. He said he did not have an animal addiction. He said anytime he had seen a public agency privatized, it ended up costing the citizens much more and did not turn out to be the service it was meant to be. He said he was against privatizing the Animal Shelter. He said the City should fix what was there, work with people, let the public know what

it needed, and get more volunteers. Mike said he did not recommend privatizing.

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

CONSENT AGENDA:

1. A. Bid Awards

(1) Wastewater Plant Diffuser Replacement. (Opened 8/12/08) Recommend ITT - Sanitaire, \$45,160.

(2) Window Cleaning Services for Airport Terminal Building (3-year agreement). (Opened 8/12/08) Recommend Skyline Services, \$60,480.

(3) Two Current Model Year Fire Apparatus. (Opened 8/19/08) Recommend delay of award until September 22, 2008.

(4) W.O. 07-16, Shiloh Road Corridor Water and Sanitary Sewer Improvements. (Opened 8/12/08) Recommend COP Construction, LLC, \$2,051,510.

(5) W.O. 08-06, King Avenue Lift Station. (Opened 8/12/08) Recommend Williams Brother Construction, \$418,456.50.

B. Contract with Yellowstone Valley Animal Shelter, Inc. for City of Billings Animal Shelter Operations. (Delayed from 5/27/08 & 6/23/08) Recommend delay.

C. Memorandum of Understanding with Billings Heights Water District for resale water rates.

D. (1) Amendment of Federal Aviation Administration Airport Improvement Program (AIP) Grant 34.

(2) Airport Improvement Program (AIP) 34 Perimeter Security Fence Project, Amendment No. 5, Additional Engineering Services, Morrison-Maierle, Inc., \$38,165.

(3) Change Order No. 1, Airport Improvement Program (AIP) 34 Perimeter Security Fence Project, Frontier Fence, \$158,159.81.

E. Amendment No. 1, W.O. 07-16, Shiloh Road Corridor Utility Improvements, Professional Engineering Services, Engineering, Inc., not to exceed \$173,517.13.

F. Amendment No. 1, South Billings Boulevard and Midland Road Signal, Project Development and Construction Agreement, Montana Department of Transportation (MDT), amending the agreement for advertisement, award, and administration of the construction contract by MDT. City's financial responsibility – all additional costs exceeding the federal safety funding of \$491,519.

G. Amendment No. 1, Non-Commercial Aviation Ground Lease with First Interstate Bancsystem, Inc., with no financial impact to the City.

H. Appoint City Councilmember subcommittee (Ronquillo, Ruegamer, McCall, and Astle) to establish process and schedule for 2008 City Administrator Performance Review.

I. Street Closure: Montana Tow Truck Association Parade: 9/13/08, 5:30 p.m. – 7:00 p.m.; Commencing at the Billings Hotel & Convention Center, 1223 Mullowney Lane, proceeding north onto King Avenue West, east on Grand Avenue, south on Division Street, southwest on Montana Avenue to State Avenue to the Laurel Road, returning to the Billings Hotel & Convention Center.

J. Quarterly Report for Pledged Collateral for Wells Fargo Bank, First Interstate Bank, and US Bank.

K. Semi-Annual Investment Report.

L. Resolution #08-18745 temporarily suspending Section 24-411, BMCC, Parking for Camping Purposes, in the Shrine Auditorium parking lot during the Billings Big Sky Polka Fest, August 28-31, 2008.

M. Preliminary Plat of Marisela Subdivision generally located on the north side of Matador Drive and Annandale Road in Billings Heights; Dover Ranch, owner; conditional approval of the plat and adoption of the Findings of Fact.

N. Preliminary Subsequent Minor Plat of Gabel Subdivision, 4th Filing, generally located on the south side of Gabel Road directly south of the Gabel Road and Transtech Way intersection; Bottrell Family Investments, LP, owner; Engineering, Inc., agent; conditional approval of the plat and adoption of the Findings of Fact.

O. Preliminary Subsequent Minor Plat of Amended Lot 5E, Block 1, Shiloh Crossing Subdivision, generally located on the southeast corner of the intersection of Shiloh Road and King Avenue West; Shiloh Crossing, LLC, owner; Engineering, Inc., Agent; conditional approval of the plat and adoption of the Findings of Fact.

P. Bills and Payroll

- (1) July 25, 2008
- (2) August 1, 2008

Mayor Tussing separated ITEMS 1A3, B, and C. Councilmember Ruegamer separated ITEM H. Councilmember Pitman moved for approval of the Consent Agenda with the exception of ITEMS 1A3, B, C, and H, seconded by Councilmember Veis.

Councilmember McCall referenced ITEM 1A4, Shiloh Road Corridor Water and Sanitary Sewer Improvements, and asked for the expected timelines for completion of the utility updates. She also asked when the construction of Shiloh Road would begin if the utilities were completed this fall. Public Works Director, David Mumford, said the contractor would be moving in within the next two to three weeks if Council awarded the bid that evening. He said they were coordinating with NorthWestern Energy and to help expedite time, they would possibly start near Central Avenue. Mr. Mumford said they would be putting their resources into the north half from Central to Poly because that was where the State said it would begin. He said the State planned to bid in March and start construction in the spring.

On a voice vote, the motion was unanimously approved.

Councilmember Pitman moved to delay ITEM 1A3 for two weeks, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

Councilmember Pitman moved to delay ITEM B until September 22, 2008, seconded by Councilmember Gaghen.

City Administrator Volek said they were currently in negotiations with the Yellowstone Valley group. She said they held their first meeting last week, and the next meeting was scheduled for September 5 at 9:00 a.m. in the City Hall Conference Room. Councilmember Ruegamer asked Ms. Volek if the meetings were open to the public. Ms. Volek advised they were.

Mayor Tussing commented that it would be the last time he would vote to postpone the item. He said it had been postponed enough; and the fact that it was taking so much negotiation indicated there had to be problems. He said they had never heard from anybody on the Board and had only heard from opponents. He said Council needed a contract to look at and vote on; or they needed to give up on the idea or rebid it.

Councilmember McCall said she agreed with Mayor Tussing. She said it had taken far too long. She said she would vote for the delay that evening, but it really needed to be completed by September 22.

On a voice vote, the motion was unanimously approved.

(Councilmember Stevens entered the Council Chambers at 6:50 p.m.)

Councilmember Pitman moved to table ITEM C indefinitely, seconded by Councilmember Ronquillo. On a voice vote, the motion was unanimously approved.

Councilmember Pitman moved for approval of ITEM H, seconded by Councilmember Ruegamer.

Councilmember McCall reported that the Evaluation Committee met for the first time last Thursday and put together a series of recommendations for the Council. She said they would take the recommendations to the Work Session next week. She said they felt they could have it completed by the first of October if everything went as planned.

On a voice vote, the motion was unanimously approved.

REGULAR AGENDA:

2. PUBLIC HEARING AND RESOLUTION #08-18746 vacating a portion of North 19th Street from 6th Avenue North to the rail tracks for a value of \$19,603.75. Aaron Sparboe, owner and petitioner. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) City Administrator Volek advised staff had no presentation but was available for questions.

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

Councilmember Gaghen moved for approval of ITEM 2, seconded by Councilmember Ronquillo. On a voice vote, the motion was unanimously approved.

3. PUBLIC HEARING AND RESOLUTION #08-18747 relating to SID 1380, making certain findings with respect to the pledge of the revolving fund. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) City Administrator Volek advised the item corrected a resolution approved by Council earlier, which did not include the dollar amount of the Revolving Fund Contribution and the Engineer's Estimate, Exhibit D.

Councilmember Veis said the resolution listed SIDs 1378, 1379, 1380 and 1383 and asked if SID 1380 was the only one that needed corrected. Ms. Volek said the other districts were correct, and the Revolving Fund portion was left out only on SID 1380.

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

Councilmember Ronquillo moved for approval of ITEM 3, seconded by Councilmember Pitman. On a voice vote, the motion was unanimously approved.

4. \$230,000 POOLED SIDEWALK BONDS, SERIES 2008. (Opened 8/25/08) Recommendation to be made at meeting. (Action: approval or disapproval of staff recommendation.) City Administrator Volek advised no bids were received, and staff was recommending the item be tabled indefinitely.

Councilmember Clark moved to table ITEM 4 indefinitely, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

5. LANDFILL GAS SALES AGREEMENT with Montana Dakota Utilities, (Delayed from 6/23/08 & 7/28/08). Staff recommends approval. (Action: approval or disapproval of staff recommendation.) Public Works Director, David Mumford, advised the contract with Montana Dakota Utilities (MDU) was to deal with the methane gas underneath the existing landfill. He said the City of Billings has had to carry reserve accounts in case it became necessary to comply with Department of Environmental Quality (DEQ) regulations concerning disposal of the methane gas. He said in an attempt to take a liability and move it into an asset, Public Works started evaluating over a year ago what could be done with the

methane gas as an energy source. Mr. Mumford said they joint-ventured with MDU to conduct a study of options. He said the most economical option for the City was to remove the gas, clean it, and sell it to MDU to use in their system for homes and businesses. Mr. Mumford said the contract was originally brought to Council a month ago and, at that time, many good questions were brought forward that needed to be resolved. He said, as a result, Public Works hired Crowley Law Firm to look at the contract and work with Deputy City Attorney Kelly Addy and MDU's attorneys. Mr. Mumford said, as a result of Council's concerns, the contract had been changed to a 10-year contract with renewable terms of 10 years, so the City would not be in a 40-year contract. He said the contract would still hold MDU financially responsible for all of the testing, design, construction, and operation of the systems. He said the contract had also been changed to reflect that the City would retain 15% of the carbon credits, renewable energy credits, and emission credits once the values were determined. Mr. Mumford advised the City Attorney's Office had reviewed all of the insurances, and the insurances were beyond what would normally be required. He said the contract also required that, at the time the operation ceased in the future, MDU would dismantle the plant, plug the holes, and restore the surface to its original ground. He said the only thing that would be abandoned in place would be the underground pipes. Mr. Mumford said the contract had gone through extensive review. He said the Oil and Gas Commission was not interested and did not believe it would involve them. Mr. Mumford advised there was little case law on methane gas extraction. He said Crowley Law Firm had provided the City an opinion letter stating that, based on the fact that there was a separation or physical barrier that the City of Billings had installed between the existing ground and the garbage above it, the mineral and gas rights belonged to the City. Mr. Mumford said he felt it was a good contract and would bring revenue to the City based on the value of the gas at the time it was cleaned.

Mayor Tussing asked Mr. Mumford if it was safe to assume that landfill methane was not nearly as controversial as coal bed methane. He said he would anticipate if the City was drilling for coal bed methane on city property, there would be people not wanting that to happen. He said there had been no one opposed to it for environmental reasons, and Mr. Reid had assured him if there were any environmental issues other than something caused by a natural disaster, such as an earthquake, that MDU would be responsible for the mitigating of it. Mr. Mumford said he was not an expert at all on coal methane gas extraction except that it was considerably a different process. He said they were taking methane gas out of a controlled area with a liner generated from the trash. He said it was actually a hazardous material that the DEQ wanted the City to keep track of and to get rid of. He said the City had not heard from any environmental groups in opposition and in researching carbon credits, it was one of the renewable resource items that was very positive and thought very highly of across the country. Mr. Mumford said they were on the leading edge nationally because there were not a lot of cities doing it.

Councilmember Stevens referenced Section 4.3.3 – Production Taxes of the Agreement and asked why they were continuing to try to have it declared not natural gas for purposes of taxation because the City was exempt from production taxes for natural gas. Mr. Mumford said the tax attorneys from the Crowley Law

Firm had looked at it with MDU's attorneys, and it was his understanding the method still protected the City but allowed MDU the best opportunities for their tax situations. Councilmember Stevens referenced Section 5.1.4 – Curtailments and said there was no time period for how long MDU could curtail. She said in a traditional oil and gas lease, curtailment was for a certain period of time and then some type of royalty in lieu of production had to be paid. She said without a timeline, they could curtail in the first year and go on for nine more years. Mr. Mumford said Section 2.1- Interim Term stated they needed to be in operation within two years. Councilmember Stevens said they could then curtail in the third year and go on for seven more years. Mr. Mumford advised the thought was that once MDU invested \$9 million to \$14 million worth of infrastructure, they would want to continue forward. Councilmember Stevens said if it took them 12 years to get the return on their investment, there would be no incentive to continue. Mr. Mumford said the contract was for 10 years, and then it would have to be renewed and renegotiated. He said in 12 years they would be looking at how much methane was left. Councilmember Stevens said they would then be in the second 10-year period, so they could still curtail for eight years. She said she was concerned there was not a certain time period. Mr. Mumford asked Councilmember Stevens if she had a time period in mind, and he would check with Mr. Reid. Councilmember Stevens suggested a period of one year and then they would pay something in lieu. She said she did not want to cancel the contract but felt there needed to be some incentive for them to bring it back on. Mr. Mumford advised they would need to go back to MDU and re-negotiate.

Councilmember Ruegamer asked why they would care if they curtailed in 12 years. Councilmember Stevens explained that if they curtailed and the natural gas continued to build up, the City may have a problem with the DEQ or EPA. She said they could curtail at their sole discretion, and there would be no incentive for them to bring it back on.

Mr. Reid advised if they had to shut down, it would be for equipment upgrades or replacement and not to stop production. Mr. Reid said their purpose was to have the gas flow and not to curtail.

Mayor Tussing said the agreement referenced "market conditions" and said it indicated to him that if MDU felt they were not making enough money, they could decide to curtail, shut down operations, and the City would still have a binding contract in limbo for several years. Mr. Reid said they had two years to get it in and operating and if they were not making any money, they would know it after the first three test wells were in. He said part of the contract was to run three test wells and if the wells did not produce, there would be no contract. Mayor Tussing asked Mr. Reid what would happen if they found cheaper energy from somewhere other than the landfill. He said it appeared to him that MDU could decide to curtail. Mr. Reid said that was not the intent of that portion of the contract.

Councilmember Astle said he understood the City would be paid 15 percent and asked Mr. Reid if the City would always receive 15 percent of what MDU was selling the gas for regardless of the market price. Mr. Reid advised the City would be paid 15 percent of the CIG Index, which was the market value of the gas. Councilmember Astle asked Mr. Reid if it would still be as cheap as or cheaper for

MDU to pump the gas from the landfill to their refinery than it would be to bring it from Williston. Mr. Reid said they would have a fixed cost of gas here for what they hoped for the next 40 years; so it really did not matter what the index did to them. He said there would be a fixed source and a fixed cost for the customers of Billings. Mr. Mumford stated that, under the contract, MDU would clean the gas at the site and then put it directly into their system so it would be a finished product as it entered the system.

Councilmember Ruegamer asked what the worst case scenario would be for what it would cost the City. Mr. Mumford said there would be no cost.

City Administrator Volek referenced Section 8.2 – Effect of Termination and pointed out that, if the City were to terminate the contract less than 40 years from the commissioning date, the City would be liable to pay MDU either the appraised fair market value of the facilities or the net book value of the facilities at the time of termination. She said, otherwise, there would be no cost to the City for the installation of the facility.

Councilmember Stevens commented that the price could go down so far that their costs could exceed their revenues and that was what she was afraid of.

Councilmember Pitman said there actually could be another cost to the City if, at some point, the City would have to do it themselves. He said it could cost millions of dollars.

Councilmember Astle moved for approval of the Landfill Gas Sales Agreement, seconded by Councilmember Ronquillo.

Councilmember Ruegamer pointed out that he really appreciated some of the Councilmembers giving information to help achieve a good contract, but he felt enough was enough. He said there was a risk in anything they did. He said they were treading new ground with the landfill project, just as they were treading new ground with the Animal Shelter, and he was willing to take the risks. He pointed out every contract was two-way and needed to protect all parties. He said MDU was a good neighbor and had a very good reputation in the area, and they could not afford to do something that was not good. Councilmember Ruegamer said he was 100 percent behind the landfill project, and it was time to move it along.

Councilmember Ronquillo said he had been acquainted with MDU for 30 plus years, and MDU was in the community to serve. He said they were here to make money and to help the City make money. He said it was a win-win for everyone.

Mayor Tussing said in the worst case scenario that MDU was not making any money, the City would be no worse off than it would have been if it did not try it in the first place. Mayor Tussing said he would support the project and congratulated the staff on being able to get it done.

Councilmember McCall said she was very pleased there was a compromise in going from a 40-year contract to 10-year continuing contracts, and that the carbon credits were discussed and a compromise was arrived at going from a zero value to a 15 percent value to the City. She said she felt the jury was out in what the value would be in the future, but she appreciated the efforts and would support the project.

Councilmember Gaghen said she felt it was gratifying that MDU came to the City with the proposal. She said it was nice to have Billings on the cutting edge of doing something worthwhile for the environment.

Councilmember Stevens said she would support it, but she did not like the clause she discussed earlier. She said she disagreed that they were plowing new ground because it was just biogenic natural gas that was formed in the same way that it was formed in other reservoirs around the world. She said there was a lot of case law on it, and just because it was being done in the landfill did not make it new ground. She said a lot of the same had been done around the world by petroleum engineers since the turn of the century, and it was just a slightly different application. She said she would support it and not ask for an amendment but said she hoped it did not come back and "bite us".

On a voice vote, the motion was unanimously approved.

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

Council Initiatives

- **VEIS:** Moved to direct staff to bring back a resolution that would discontinue the Agenda Review Meetings, seconded by Councilmember Pitman. He said they had discussed it several times, and they needed to decide where they were with it.

Mayor Tussing asked Ms. Volek how many people attended the meetings. Ms. Volek said the attendance had been declining. She said only two people attended the meeting held two weeks ago.

Councilmember Veis said there would need to be a change in the operating resolution. He said there would be two to three agenda setting meetings in the meantime; but at some point, the meetings would come to an end if the resolution passed.

Mayor Tussing asked Ms. Volek if the Agenda Review Meetings were valuable to her or if they were just a service to the Council. Ms. Volek said if the meetings were informational and helpful to Council, staff would be happy to continue; but staff had many other evening meetings during the week, so they would probably not mind eliminating them.

Councilmember Stevens asked Ms. Volek how long it took her to prepare for the Agenda Review Meetings. Ms. Volek advised a staff meeting was held Monday mornings at 9:00 a.m. where she asked questions and the documents were handed back for revisions, so her preparation for the Agenda Review Meetings was done at that time. Councilmember Stevens

asked Ms. Volek if she would continue to do the morning meeting. Ms. Volek said she would.

On a voice vote, the motion was unanimously approved.

- **CLARK:** Asked for the status of the photo cop cameras. City Administrator Volek advised the Police Chief had done a background review on them, and it would be scheduled for a work session.
- **GAGHEN:** Said she received a call from a constituent who had been motivated by the letter to the editor from Ziggy Ziegler commenting on all of the trash he encountered driving to and from his residence in Briarwood. She said a "tarp law" should be enforced to restrain debris from blowing out of the back of vehicles.

Councilmember Ronquillo advised there was already an ordinance of that nature in place. He said it was at the discretion of the man who ran the weigh station to cite someone if he saw objects falling out of the back of vehicles.

Councilmember Ruegamer said he had talked with Mr. Ziegler, Ms. Volek, and another resident of Briarwood about it. He said Silver Bow County had a similar ordinance. He said the speed vehicles traveled on South Billings Boulevard was definitely a factor. He said Ms. Volek was going to follow-up on Silver Bow County's ordinance. He said if people came to the landfill with an uncovered load, Silver Bow County fined them \$50, and Billings could do the same thing.

Mayor Tussing asked if a person could be cited under the current ordinance if a citizen and/or a Police Officer observed the violation and was willing to testify. Ms. Volek said they could be cited. She said she would be talking with the staff about what could be done to enforce the ordinance; and it would require someone willing to file a complaint or observe the violation directly. She said it would be hard to identify the violator.

Councilmember Astle referenced an e-mail from Shane Gundlach. He said building materials from contractors had been blown all over, and the Kiwanis Club had gone out and cleaned up Grand Avenue from 32nd to Shiloh. He said the contractors were hauling their debris to the landfill uncovered, as well as not controlling their own construction sites, and they should be held accountable for their litter.

- **STEVENS:** Said she would be resigning her position on the Council and October 6, 2008, would be her last meeting. She also advised she would not be able to attend the September 22, 2008, meeting.

Mayor Tussing asked City Administrator Volek to begin advertising for Councilmember Stevens' position. Ms. Volek advised the position, by ordinance, had to be filled within 30 days of Ms. Stevens' departure. Mayor Tussing asked if it would be appropriate to appoint a committee of councilmembers that evening for Council approval on September 8th to interview candidates and provide him with recommendations of two applicants. Ms. Volek said it would.

Councilmember Clark asked Mayor Tussing if he would be appointing a committee of three Councilmembers as had been done in the past.

Mayor Tussing asked for committee volunteers. Councilmembers Ruegamer, Pitman, Gaghen, and Clark volunteered. Mayor Tussing said it was okay with him to have four members on the committee and asked that a resolution approving the four-member committee be placed on the September 8, 2008, consent agenda.

Councilmembers Ruegamer and Clark said they had heard there would be a lot of applicants.

Note: The following day Councilmember Stevens advised, via e-mail, that her last regular Council meeting would be October 14, and not October 6, as indicated at the meeting.

- **RUEGAMER:** Said if the City was going to go into mediation with the MMIA, he wanted the Council to have input on the list of mediators. He said he was not crazy about out-of-state mediators. He said he had spoken with a couple of mediators from Montana and said he felt they were qualified and less expensive.

Councilmember Gaghen said she knew Councilmember Ruegamer was referring to an earlier comment she had made. She said she would not say there were no people in Montana with adequate credentials to do mediation. She said, because the MMIA served the entire state, she thought there could be a need for someone from Wyoming or Idaho. She said she did not mean there was no one in Montana qualified.

Mayor Tussing asked Ms. Volek if there would be discussion at the next meeting whether to accept MMIA's suggestion for mediation. Ms. Volek said she received a message from Mr. Hulse, the CEO of MMIA, that day and would be speaking with him the following morning. She said if they were to receive a letter, mediation would be put on the agenda for consideration September 8, 2008.

Councilmember Astle commented the selection of a mediator was not by just one party. He said the selected mediator had to be approved by both parties. He said it would be advantageous to have a mediator who was well versed in Montana law.

Councilmember Ruegamer said, for the record, that Councilmember Gaghen's comments did not precipitate his comments. He said if MMIA wanted an out-of-state mediator and Council wanted an in-state mediator, MMIA should pay the difference in price.

Councilmember Veis said he felt they should be open to the use of someone from outside of Montana. He said he felt it would be difficult for someone from Montana to come into it without knowing the City of Billings or the MMIA. He said someone from outside the area with no ties to the City of Billings or the MMIA would make the best decision they could. He said there may be people in Montana who would do just fine and maybe the best people would excuse themselves because they did not want to be in the middle of mediation between Montana's largest city and its insurer.

Mayor Tussing said he felt the discussion was somewhat premature not knowing if the MMIA was going to request mediation and if Council would agree to it.

Councilmember Ruegamer said he knew it was premature, but he did not want someone to tell him they had picked the mediator because he wanted to have input.

The meeting adjourned at 7:40 p.m.

Additional information on any of these items is available in the City Clerk's Office.

Reasonable accommodations will be made to enable individuals with disabilities to attend this meeting. Please contact Cari Martin, City Clerk, at 657-8210.

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