

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

September 8, 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. Councilmember Ulledalen gave the invocation.

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

MINUTES – August 25, 2008, approved as corrected.

COURTESIES – Councilmember Gaghen acknowledged Recreation Superintendent Joe Fedin's photography for the Dehler Park commemorative envelope and stamp that was unveiled at the previous Friday evening Mustang game at Dehler Park.

PROCLAMATIONS – None

ADMINISTRATOR REPORTS – Tina Volek

- City Administrator Volek advised the following items were filed in the Ex-Parte Notebook in the back of the room for public reference.
 - ✓ Item 1A2 – Additional background for award of two new fire trucks, which was also distributed in the Friday packets.
 - ✓ Item J – Revised staff memo and grant application which reflected updated amounts.
 - ✓ Items 1K, 3 and 7 – Revised resolution and additional information regarding the terms of bond sales and the FY 2009 mill levy rates.
 - ✓ Item 4 – A letter from Special Review #862 applicant which outlined additional options that were acceptable to both landowners.
- Ms. Volek referenced an initiative approved at a previous Council meeting regarding discontinuing Agenda Review Meetings and advised that those meetings were not required by a resolution.

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: 1, 2, 3 and 11 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.)

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

CONSENT AGENDA:

1. A. Bid Awards:

(1) **Non-Commercial Aviation Building and Ground Lease** for City-Owned Hangar located at 2431 Overlook Drive. (Opened 8/26/08). Recommend delay of award to September 22, 2008.

(2) **Two Current Model Year Fire Apparatus.** (Opened 8/19/08) Delayed from 8/25/08. Recommend Sutphen Corporation, \$808,776.

B. Approval of annual Data Processing Agreement with Yellowstone County Sheriff's Department, July 1, 2008 -- June 30, 2009, \$89,761.00 annual revenue.

C. Approval of two West End Hangar Ground Leases with John M. and/or Marcia A. Nash, Lots 3 and 4, Taxilane "D"; \$2,044.24 total first-year revenue.

D. Approval of Assignment of John M. and/or Marcia A. Nash West End Hangar Ground Lease to Hat Creek Hangar Co., LLC; \$975.75 first year revenue.

E. Acknowledge Receipt of Petition to Annex #08-08: 55.45 acres described as Tracts 7-A and 6-A-1, Certificate of Survey 2314 and Tract 1-A-1, Certificate of Survey 2702, generally described as the south side of Grand Avenue between 30th Street West to just west of Zimmerman Trail. Yegen Grand Avenue Farms, owner and petitioner, and setting a public hearing for September 22, 2008.

F. Confirmation of Police Officers

- (1) Mark Kostinko
- (2) Brandon Ihde
- (3) Nathan West
- (4) Andrew Martian
- (5) Brandon Wooley
- (6) Tanner Buechler

G. SID 1372, Summerhill Subdivision

(1) Approval and Acceptance of utility easement, at no cost to the City. (2) Bid Award: Sanitary sewer, water, storm drain and street improvements. (Opened 8/26/08). Recommend Western Municipal, \$465,462.00.

H. Resolution #08-18748 creating subcommittee (Ruegamer, Gaghen, Pitman, Clark) on Councilmember replacement to review applications and make recommendation to Mayor for council seat vacated by Joy Stevens.

I. Street Closures:

(1) Billings Central High School's Homecoming Parade – September 20, 2008; 5:15 p.m. to 6:30 p.m.; Wyoming Avenue to Division Street, west on Broadwater to 5th Street West and north on 5th Street West through Grand Avenue to the parking entrance behind Senior High School.

(2) Skyview High School's Homecoming Parade – October 3, 2008; 12:30 p.m. to 2:30 p.m.; beginning at Skyview High School parking lot and proceeding down Wicks Lane to St. Bernard's Church.

(3) Leadership Montana "Rock the Vote" – October 4, 2008; 1:00 p.m. to 8:00 p.m.; N. Broadway between 1st Avenue North and 2nd Avenue North under Skypoint.

J. Approval of Preserve America Grant application from the Montana State Historic Preservation Office for the Old Town Neighbors, Inc., \$13,750.

K. Resolution #08-18749 relating to \$230,000 Pooled Sidewalk Bonds Series 2008, awarding the sale and prescribing the form and detail (W.O. 04-12, Alkali Creek and W.O. 06-18, Broadwater Subdivision).

L. Preliminary Subsequent Minor Plat of William D. Pierce Subdivision, located on approximately 15.35 acres on the southeast corner of the intersection of Shiloh Road and Pierce Parkway; conditional approval of the plat and adoption of the Findings of Fact.

M. Preliminary Subsequent Minor Plat of Superior Homes Subdivision, located on approximately 19,200 square feet of land on the south side of Jaque Lane, addressed as 420 Jaque Lane; conditional approval of the plat and adoption of the Findings of Fact.

N. Preliminary Subsequent Minor Plat of Sunnyside Subdivision, 3rd Filing, located on approximately 15,000 square feet of land on the southwest corner of the intersection of 10th Avenue North and North 22nd Street; conditional approval of the plat and adoption of the Findings of Fact.

O. Bills and Payroll

- (1) August 11, 2008
- (2) August 15, 2008

(Action: approval or disapproval of Consent Agenda.)

Councilmember Clark separated Item 1A2. Councilmember McCall separated Item 1I3. Councilmember Gaghen moved for approval of the Consent Agenda with the exception of Items 1A2 and 1I3, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

Councilmember Gaghen moved for approval of Item 1A2, the two current model year fire apparatus, seconded by Councilmember Ruegamer. Councilmember Clark said he had previously asked to have the item separated because the former Fire Chief and the current Fire Chief had both talked about smaller units for the everyday runs. He asked if the Fire Chief could be given the opportunity to explain what he meant about the smaller fire engines.

Fire Chief Paul Dextras explained the concept of “right-sizing” apparatus that fire services in progressive departments throughout the county were doing. He noted that fire service was a multi-disciplinary organization that responded to structure fires, rescues, and medical alarms. He said about 70% of the alarms in Billings were medical assists, but the community still needed full-sized fire trucks to handle structure fires. He stated that quick-response vehicles were safer to operate, and cost significantly less to purchase, maintain and repair. Chief Dextras explained that the quick-response vehicles had the ability to respond to medical alarms, grass fires, car fires, spills, and utility calls. He added that the design included crew cabs, heavy duty suspension, better gas mileage than a full-sized truck, and had the ability to carry 300 gallons of water. He said the vehicle was large enough to carry four people along with their protective gear and clothing.

Chief Dextras advised that he recommended the purchase of the two full-sized fire trucks because something smaller at the current time would not provide adequate service to the community and the organization. He stated he would like to work with the City Administrator to develop a process for the quick-response vehicles to incrementally use some that the department currently had and to put them in the fire stations to utilize for the alarms they could handle.

Councilmember Stevens asked Chief Dextras what kind of timeline he was looking at to get the smaller apparatus. Chief Dextras responded that it would probably take two to three months to get one once the order was placed. Councilmember Stevens stated she thought he misunderstood her question; she wanted to know about the timeline to transition to the vehicles, not acquire them. Chief Dextras said the vehicles would be used as soon as they were acquired. He noted that the department had four brush trucks and he hoped to utilize them right away to see how they fit into the scheme even though they were a little dated.

Mayor Tussing asked when a bid would be expected for a smaller apparatus. Chief Dextras said it could take two to three months. City Administrator Volek advised that there was no money in the budget for those trucks at the present time. She said the ERP would be reviewed. She advised that the recommendation at that meeting represented the acquisition of the fourth and fifth fire trucks purchased to replace the large trucks that served their useful life, and one previous truck went to Station #7. She noted she was not certain if trucks were planned for the next budget cycle, but the five purchased created the underlying piece of the heavy trucks needed, and she anticipated consideration of the smaller trucks the next year or the one beyond it if funds were available. She explained that the ERP plan allowed the City to purchase vehicles in cash and then charged departments over a period of time to build a reserve so vehicles could be purchased. She said she would report back on that timetable. Mayor Tussing asked Chief Dextras if he agreed with what the City Administrator said. Chief Dextras responded that he did.

Councilmember Ulledalen stated that was a good move and sent a good signal to the community that the City paid attention to costs and was staying in tune with the times. He asked how Chief Dextras envisioned the concept being implemented into the community; if both units would be housed in the station and dispatched according to the type of call. Chief Dextras said he envisioned every fire station with a full-sized truck and a quick-response vehicle. He said internal policies would be developed in

conjunction with the dispatch center so the appropriate vehicle would be dispatched depending on the type of alarm.

City Administrator Volek pointed out that purchasing the quick-response vehicles would prolong the life of the larger trucks because they would not be doing the day-to-day work. She referenced the fire on the Heights around July 4th and noted that the large fire truck on the fire ground looked like a whale on the beach and smaller units that were more adaptable could be used in that type of setting. She said she concurred with the Chief's recommendation of two large trucks to continue the fleet upgrade and once a substantial hold was on that, attention could be turned to the quick-response vehicles to use them as well.

Councilmember Stevens advised it would be interesting to show the community the timeline of when the different vehicles were anticipated.

Councilmember Gaghen asked if there were three firefighters on a full-sized truck. Chief Dextras said that was correct and he would continue that practice even on the quick-response vehicles because stations were staffed with three personnel and he did not want to leave one firefighter at the station to operate another piece of apparatus alone. Councilmember Gaghen pointed out that the quick response vehicles had fewer tires to replace, which resulted in additional cost savings.

On a voice vote, the motion was unanimously approved.

Councilmember Gaghen moved for approval of Item 1I3, the Leadership Montana "Rock the Vote," seconded by Councilmember Pitman. Councilmember Veis stated he and Councilmember McCall were involved in the event so he recused himself from the vote. Councilmember McCall stated she recused herself from the vote as well because she and Councilmember Veis were Leadership Montana participants. On a voice vote, the motion was approved 9-0.

REGULAR AGENDA:

2. TRANSFER of Rehberg Ranch sanitary sewer lift station, force main, treatment lagoons, and effluent storage ponds and dispersal system to the City of Billings. Staff recommends approval. (Action: approval or disapproval of staff recommendation). City Administrator Volek advised that since the agenda was printed, a request was received from Rehberg Ranch to postpone the action until the next Council meeting on September 22, 2008. Councilmember Ronquillo moved for postponement of agenda Item 2 to September 22, 2008, seconded by Councilmember Ronquillo. Councilmember Stevens asked Ms. Volek if she knew why Rehberg Ranch representatives wanted to postpone the item. Ms. Volek responded it had been some time since they had reviewed the documents involved and they wanted more time to complete the review.

On a voice vote, the motion was unanimously approved.

3. RESOLUTION #08-18750 relating to \$1,075,000 Pooled Special Improvements District Bonds Series 2008A, awarding the sale and prescribing covenants (SIDs 1378, 1379, 1380, and 1383). Bids received September 8, 2008. Staff will present recommendation at meeting. (Action: approval or disapproval of staff recommendation). Financial Services Manager Pat Weber reported that one

bid was received that day from DA Davidson for the \$1 million pooled SID issuance. He said an attempt was made to get the bonds rated, but rating agencies were taking four to five weeks to respond so the bonds did not get rated. He said staff recommended acceptance of the bid received from DA Davidson. He noted the rate was favorable at 5.1% which was less than the financial advisor's estimate of 5.16%.

Councilmember Clark moved for approval of the resolution related to pooled special improvements district bonds and the sale to DA Davidson, seconded by Councilmember Astle. On a voice vote, the motion was unanimously approved.

4. CONTINUATION OF PUBLIC HEARING FOR SPECIAL REVIEW #862: A special review to remove a condition of approval from Special Review #836 and Special Review #841 restricting vehicle access across the west property line to adjacent property on a 2.303 acre parcel of land in a Controlled Industrial (CI) zone on Lot 11A-1, CBH Industrial Park Subdivision at 1911 King Avenue West. KRP, LLC, owner, Blueline Engineering, agent. Action delayed from June 23; public hearing continued from July 14, 2008, at applicant's request. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation). Planner David Green advised that the special review was originally presented June 23, 2008, and delayed to July 14 and then to September 8, at the request of the applicant to work out concerns with the adjacent property owner. He noted that a resolution between the parties was reached. He referenced the letter from the applicant which indicated that both parties were in agreement with the resolution reached.

Mr. Green reviewed the subject property and the amended site plan. He said the Police Department was concerned with drivers using the Holiday Service Station parking lot to get from Carbon Street to 20th Street West which resulted in closure of the access to that parking lot. Mr. Green said the amended plan provided a route to exit the property parking lot without driving through the Holiday Service Station. He noted that the Zoning Commission's conditional approval was amended to reflect the current site plan and the City Engineering Department felt it was a workable solution.

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

Councilmember Astle moved for approval of Special Review #862 at 1911 King Avenue West, seconded by Councilmember Veis. On a voice vote, the motion was unanimously approved.

5. PUBLIC HEARING AND RESOLUTION #08-18751 levying and assessing the original assessment for Sidewalk, Curb and Gutter 2601. Staff recommends approval. (Action: approval or disapproval of staff recommendation). City Administrator Volek advised that there was no staff presentation for Items 5 and 6, but staff was available to answer questions.

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

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

6. PUBLIC HEARING AND RESOLUTION #08-18752 levying and assessing the original assessment for Sidewalk, Curb and Gutter 2602. Staff recommends approval. (Action: approval or disapproval of staff recommendation). City Administrator Volek said staff was available for questions.

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

Councilmember McCall moved for approval of Item 6, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

7. PUBLIC HEARING AND RESOLUTION #08-17853 setting FY 2009 mill levy rates for the Public Safety Fund, General Obligation Debt Service Parks, General Obligation Debt Service Streets, and General Obligation Debt Service Baseball Stadium. Staff recommends approval. (Action: approval or disapproval of staff recommendation). Financial Services Manager Pat Weber stated he wanted to clarify why the Council was asked to approve the mill levy rates. He explained that the City was used to a set mill levy rate for the General Fund, Library and Transit. He said State law changed when the public safety levy was passed and a dollar levy amount had to be put in so when budget time came, the City knew how much it could collect and spending was adjusted accordingly. He said until certified value was received from the Department of Revenue, the mill levy rate could not be determined to get the money needed for the voter-approved public safety fund.

Mr. Weber explained there were three general obligation bonds approved by voters. He explained that the amount of money needed was known, but the interest rate was unknown. He said there was a fixed semi-annual principal and interest payment and the revenue amount was known, so when the certified value was received, the number of mills was set in order to collect the appropriate tax dollars. He noted that the request for Council approval was late due to the wait for the certified taxable value from the Department of Revenue.

Mayor Tussing said he heard something on a news media and wanted to point out that the Council was not raising taxes, but what was put in place was what voters approved and no additional revenue was being authorized by the Council. He added that the dollar amount was put into mills so the Treasurer knew how much to collect. City Administrator Volek advised that the City of Billings mills were capped by the City Charter, so it would not be possible for the Council to change the mill levy without a vote of the people. She added that all four of those items were voted on: the public safety fund, the debt service for parks that was originally used for playground equipment and supplemented additional projects, the streets levy paid for major street projects and the debt service for the baseball stadium was also approved about the same time as the retention of the public safety levy. She said she believed the 6.32 mill represented an additional tax of \$22.42 on a \$200,000 home.

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

Councilmember Ruegamer moved for approval of Item 7, seconded by Councilmember Veis. On a voice vote, the motion was unanimously approved.

8. PUBLIC HEARING AND FIRST READING ORDINANCE AMENDMENT FOR ARTERIAL CONSTRUCTION FEES: Two ordinance amendments to: (1) clarify that rates are set annually by resolution, and (2) to allow Residential Manufactured Home-zoned property owners to petition for a reduction of arterial construction fee assessments. Staff recommends approval. (Action: approval or disapproval of staff recommendation). City Administrator Volek advised that Items 8, 9 and 10 represented housekeeping matters to clean up language in the existing ordinances. She said staff did not have a presentation but was available to answer questions.

Councilmember Stevens asked if there would be follow-up for individuals who asked about reductions after the resolution was in place. Public Works Director Dave Mumford responded that there had only been a couple of requests and follow-up could be done with those individuals if they had left their names. He added that people would be notified of the opportunity and it would be posted on the City's web site. Councilmember Stevens noted that mention of that in a newspaper article would be helpful to get the word out.

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

Councilmember Veis moved for approval of the amendments of the arterial construction fee ordinance, seconded by Councilmember Stevens. On a voice vote, the motion was unanimously approved.

9. PUBLIC HEARING AND FIRST READING ORDINANCE AMENDMENT FOR STORM SEWERS: An ordinance amendment for clarification purposes of the City's organizational structure or recent past practices within the Public Works Department. Staff recommends approval. (Action: approval or disapproval of staff recommendation). City Administrator Volek advised that the item was primarily a correction which assigned correct or revised titles within the various departments and was a housekeeping ordinance.

Councilmember Clark asked if there was no Finance Director. Ms. Volek explained the Finance Director was now the Financial Services Manager. Councilmember Clark asked if there was a financial impact for that change. Ms. Volek responded that there was not.

Mr. Mumford explained that ordinances were reviewed when Council requested review of the arterial construction fees. He said staff was trying to update the language of ordinances with any changes that occurred.

Councilmember Stevens stated she was glad to see staff looked at those things and was proactive about making changes.

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

Councilmember Stevens moved for approval of agenda Item 9, seconded by Councilmember Pitman. On a voice vote, the motion was unanimously approved.

10. PUBLIC HEARING AND FIRST READING ORDINANCE AMENDMENT FOR STREET MAINTENANCE DISTRICT: An ordinance amendment to clarify the maximum assessment rate for vacant parcels. Staff recommends approval.

(Action: approval or disapproval of staff recommendation). City Administrator Volek advised that was the third of the housekeeping items and there was no additional staff presentation.

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

Councilmember Pitman moved for approval of agenda Item 10, seconded by Councilmember Stevens. On a voice vote, the motion was unanimously approved.

11. MEDIATION OFFER FROM MMIA. Staff recommends agreement to mediation. **(Action: approval or disapproval of staff recommendation).** City Administrator Volek advised there was a presentation about a month ago in which the Council declined to participate in the settlement in the case of Feuerstein vs. the City of Billings et al. She stated the item was returned to the MMIA Board which, in turn, sent a letter offering mediation.

Councilmember Veis asked if there was an estimate on the number of days the issue would be mediated. City Attorney Brent Brooks responded that he estimated two days of mediation. He said given the status of the legal issues and the clear authority in Montana, he felt it could be done in two days maximum.

Councilmember Clark asked if mediation resulted in anything binding of the Council. Mr. Brooks responded that anything mediated would be subject to final approval by the Council. He noted it would be similar to traditional litigation mediation in that if the parties agreed, a final document would be signed to reflect what the parties would do, but final approval came from the City Council and any agreement would be contingent upon that. Councilmember Clark confirmed that mediation could not bind the City to any settlement of cash from the budget. Mr. Brooks said that was correct.

Councilmember Stevens asked if the mediation would be open to the public. Mr. Brooks responded that he would check on that. He said that with two public bodies involved, it probably was open to the public. He noted there could be times when the individual bodies had a third party right of privacy that could require closure but it would be taken as it came.

Mayor Tussing said the item was not scheduled for a public hearing but he wanted to clarify that in the event the City agreed to mediation that could cost money, it would return to the Council for a vote and most probably a public hearing at that time. Mr. Brooks asked if he was asking if a vote was needed to pay the cost of mediation. Mayor Tussing said he was talking about a settlement that resulted from mediation, if it was approved by Council. He said he wanted to clarify that for anyone who wondered why there was not a public hearing on the item. He noted that agreeing to mediation did not authorize any kind of settlement. Mr. Brooks stated that any amount that any group of City representatives contingently or conditionally recommended had to go before the Council for a majority vote and approval and nothing could be finally and fully approved during the mediation session.

Councilmember Clark asked if the City was responsible for half of the cost of mediation even though it was initially declined. He said he thought MMIA should be responsible for the cost. Mr. Brooks explained that mediation costs were traditionally borne equally by each party. He noted that if the Council wanted a different arrangement, that could be communicated to MMIA.

Councilmember Gaghen moved for agreement to mediation as proposed by the MMIA, seconded by Councilmember Veis.

Councilmember Ruegamer said that back in 1995, before any of the current Council or most of the administrative staff were there, the firefighters came to the Council and said they were not getting paid enough and someone from the City told them to sue us. He said if someone had come forward then and suggested mediation; it could have saved the City a lot of money. He said this was another opportunity and they could learn from that mistake by going through mediation.

City Administrator Volek pointed out that Mr. Hulse, MMIA CEO, suggested that the two parties agree upon a Montana mediator familiar with both the law and judicial climate in Montana and that the costs be split between the City and MMIA. She said that the Council traditionally did not approve the mediator, but left that to the staff in order to allow the process to move forward expeditiously. She said a list of mediators would likely be drawn from a national organization with an emphasis on local individuals and efforts would be made to get a list of people acceptable to both sides. She advised that the traditional practice was that each side struck a name until they came to a name that was mutually acceptable. She said she agreed with MMIA's recommendation to seek someone from Montana who understood the unique legal environment.

Mr. Brooks advised it could take a few days to go through a few names on an informal basis between the City and MMIA. He explained that quite often mediators were practicing litigation attorneys and their availability could depend on their own caseload and it would likely take several days to arrive at a particular person.

Councilmember Astle pointed out that everyone should know what mediation was about and they were through it recently with the Fire Department. He said that even though it did not work all the time, it was better than a lawsuit. He said from his experience, if something was mediated, it ended up as a compromise which meant nobody won; everyone got something, everyone got out of there and the lawyers did not get wealthy from it. He said he was in favor of mediation.

Councilmember McCall said she wanted to indicate that she felt the staff could do a very good job selecting a mediator and she did not want the selection to come back to the Council. Mayor Tussing noted that an amendment had not been made to the motion. Councilmember Stevens asked if Councilmember McCall's idea was part of the original motion. Mayor Tussing said it was not.

Mayor Tussing said he was in favor of mediation before and was still in favor of it.

Councilmember Clark asked who sat in on the mediation and who did the mediation for the City. Ms. Volek responded that she believed two or three staff would attend, and if it was a public meeting, the Council could attend, but notice would have to be made if a quorum was expected. She said she expected that she, Mr. Brooks, and possibly the Police Chief would represent the City. Mayor Tussing stated that anyone could listen, but Ms. Volek would designate which City representatives spoke to the mediator.

Councilmember Veis advised he would like to be there if the schedule worked out. He said he felt it was helpful to know what was said between the two parties because even though the Council received advice from Mr. Brooks, he felt there were times when it was good to hear the other side of the story too.

Councilmember Ruegamer said he remembered that during recent mediation with the firefighters, there were Councilmembers present who had input. Ms. Volek said that occurred during the firefighter lawsuit.

Councilmember Ruegamer said he would like to provide a couple of names and wondered if they would be considered. Mr. Brooks said he would welcome any suggestions. He said he remembered in the past that Bob Sheridan of Garlington, Lohn and Robinson of Missoula was recommended. Councilmember Ruegamer said that was correct, and he also recommended Ron Lodders of Billings as well. Councilmember Astle said Mr. Lodders was retired.

Councilmember Clark said whatever committee represented the City during the mediation needed to remember that the Council voted that it did not think it owed any part of that payment to the lawsuit.

Councilmember Pitman asked which fund paid for the mediation. Ms. Volek said it came from the Legal Department.

On a voice vote, the motion was approved 9-2. Councilmembers Ulledalen and Clark voted 'No.'

**12. 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.)**

Council Initiatives

- **Councilmember Veis** advised that he, Councilmember McCall and Councilmember Ronquillo met with the Board of County Commissioners earlier that day to talk about PCC. He moved for an initiative to have staff present two proposals: 1) change the PCC bylaws to read "City Council designee" instead of "Mayor," and 2) allow three members of the City Council and three members of the County Commissioners to be on it with the caveat that both the MDT and the County Planning Board may have to change their membership, seconded by Councilmember Ruegamer.

Councilmember Clark asked how receptive the County Commissioners were to the three and three proposal. Councilmember Veis said his sense was that they were lukewarm to it because they saw good points and points they did not like too much. He said they really liked that they would see more City Councilmembers at the PCC meetings with more input. He said their questions were the same that Council had discussed about voting; whether there was a difference if each had three votes opposed to each having just one. He said if the changes were made and there was an example of what the bylaws looked like with three and three or more, details could be flushed out. He said they did not say 'no,' but they were not enthusiastic either.

Councilmember McCall said she agreed with Councilmember Veis that it was lukewarm. She stated she thought they all agreed more communication was needed between the two bodies and they wanted to see more Councilmembers at the meetings on a regular basis. She noted that the next PCC meeting was September 26 and it was agreed to bring the proposals to that meeting if possible. Mayor

Tussing said he was unable to attend that meeting but someone could represent him there.

Councilmember Stevens asked if there was any effect in that the County Commissioners had a quorum on the PCC but the City Council would not. She said the three Councilmembers would represent the Council as a whole and the whole BOCC was there. Councilmember Veis said he believed that was the BOCC hesitation at that point but he wanted to put those changes into the bylaws to flush it out more. He said another question that had to be flushed out was if the Commissioners could all vote differently and if the City Councilmembers were obligated to vote that way. Councilmember Stevens asked if that was the point they were at now. Councilmember Veis said 'yes.'

Mayor Tussing said he could see all kinds of questions with the three and three, but that could be discussed later and he was fine with staff bringing it back.

Councilmember McCall asked Ms. Volek if staff had enough time to work on the proposal to be able to get it to the PCC by the 26th. Ms. Volek said it would have to be ready for Council review by the September 15 work session and that could be pushing it. She said she would consult with staff.

Councilmember Ulledalen asked Councilmember Veis if he would change the motion to separate the items so they could be voted on separately. Councilmember Veis stated he presented the motion that way because that was the discussion with the Commissioners that day. He said separating the items could shut the door on either issue without their say so. He said he did not think the Commissioners cared if it was the Mayor or Council designee but the discussion was needed about the three and three. He stated he felt it needed to move forward as a whole package, but if Council wanted them separated, it could be done that way.

Councilmember Stevens said when she attended the meetings, it seemed like more than one Commissioner participated in the meeting. She asked if that was driving the three and three thing, or if the issue was to clarify who was supposed to participate and if only one commissioner was to participate, they should be limited to that one. Councilmember Veis said that was true and the reason to go forward with the three and three was to clarify with the Commissioners about how much input all three of them should have at any one time. He said he felt the Commissioners wanted to see three dedicated members of the City Council attend the meetings. He said the discussion was flushing out how much influence the Commissioners should have and moving forward would clarify that.

Mayor Tussing said he had questioned that in his mind before when he was the only City Council representative there, although other Councilmembers had attended as well. He said more than one Commissioner was usually there and he brought it up to the chairman whether they participated as members or could only speak as members of the public. He said it should be fair and nothing precluded additional Councilmembers from attending as well. He said he was all for having the interested person or persons attend those meetings and the Councilmembers were bound to vote the way the Council voted.

Councilmember McCall said she agreed that a better balance of participation was needed. She said a Commissioner's suggestion was if they stayed with the Mayor

or designee concept, it would be good to have two alternates so other people on the Council were connected to it and saw it as part of their responsibility.

Ms. Volek said staff just consulted with Planning Director Candi Beaudry about drafting the proposed changes. Assistant City Administrator Bruce McCandless reported that Ms. Beaudry believed something could be ready for discussion by the September 15 work session, but it would not be polished, complete nor would it cover all the issues that had been discussed. Mr. McCandless said Transportation Planner Scott Walker was out of the office during the week and the Planning Director and Planning Manager had time limitations during the week. He noted that legal assistance would be needed as well and it was uncertain of legal staff availability.

Councilmember Veis said the idea was to bring the discussion to the PCC at the September 26 meeting, not a decision. He said he did not feel that the Planning Department had to have something by the work session. He said he felt that as long as the discussion could begin on the 26th, it was not something that had to be decided then. Councilmember McCall said she felt the discussion was needed at the September 15 work session to flush out a little more even if there was no material from the Planning Department.

Ms. Volek said the staff wanted to seek out the federal mandates regarding who could serve because PCC was the Metropolitan Planning Organization. She said she felt staff needed to address that before a document could be put together.

Councilmember Gaghen said she did not feel there would be much value from further discussion when there were so many variables. She said whatever planned could be wiped away with one stroke after reviewing the federal mandates.

Councilmember Ronquillo said he felt the County Commissioners were enthused at the meeting that day and really wanted to have some kind of outline by the September 26 meeting so they could discuss it at that time. Mayor Tussing asked if the joint meeting on September 18 would be a good time to discuss that. Councilmembers agreed that was a good idea. Councilmember McCall said she agreed with that but did not want to leave that evening's meeting and go to a meeting with Commissioners on September 26 when it was not known who would attend or what would be said. She said attending the City/County planning meeting would be great.

On a voice vote, the motion was unanimously approved.

- **Councilmember Stevens** said she was in the process of purchasing a house in Casper, Wyoming, and one reason she chose the house was because of its proximity to downtown, events centers, drug stores and a neighborhood grocery store. She noted that neighborhood grocery stores had been looked at a while back and attempts were made to make them fit within the framework of existing zoning ordinances which drug in a myriad of other uses not wanted in neighborhoods. She said she thought the intent back then was to look at an ordinance just for neighborhood grocery stores and not have the other uses involved. She asked if Council wanted to revisit that. She said the owners of the neighborhood store in Casper had carved out a niche which showed they were viable and people wanted to live near them. She noted a neighborhood grocery store could be limited to floor space for alcohol. She moved to have staff draft a zoning ordinance for

neighborhood grocery stores only, seconded by Councilmember Astle. Mayor Tussing noted that he hoped the initiative would include the legality of singling out one particular entity and eliminating other entities.

Councilmember Ruegamer asked how much work staff would have to do on that. He said he could not see wasting a lot of time on it. He said he knew neighborhood grocery stores worked in some cities because there were transportation problems, but Billings did not have transportation issues and people drove where they wanted to go. He said he hated to direct staff to a job that took time and one that he did not think would work here. He noted that several neighborhood grocery stores had closed. Councilmember Clark said he did not see it working either because he knew of stores in various locations that were all gone now.

City Administrator Volek advised that Planning Director Candi Beaudry said it could be looked at, but given the constraints in the Planning Department, it could not be accomplished for a period of time, so if the leeway was granted by Council, staff could work on it in the future. Ms. Volek pointed out that the Neighborhood Planner was moved to a Transportation Planner because that enhanced transportation project funding and with the loss of that position, the capacity to conduct studies had been affected.

Councilmember Pitman said he had a lot of people ask him where Councilmember Stevens' residency was. Mayor Tussing said that was not pertinent to the motion and could be discussed later.

Mayor Tussing said he would support the motion because if he could walk to a grocery store, he would do it even if he had to pay 10% more. Councilmember Stevens said that was why she found Councilmember Ruegamer's comments a little odd since the Council spent a lot of time talking about walkable neighborhoods and having amenities close to housing to get people walking, not driving, yet when she brought something up, people said it would not work. She said they were not in that business so it was difficult to say if it would work or not.

Councilmember McCall said it was a good thing to look at and she was not in a hurry for it. She said the City wanted to promote infill and there could be a different way of promoting that kind of business. She said a more specialized entity may be what would work and was worth looking at.

Councilmember Astle asked about parking because that was an issue with the store at 8th and Yellowstone with no off-street parking available. Councilmember Stevens said the store in Casper did not have one off-street parking spot, but it was in a residential area and people parked along the street. She said it did not seem busy because of that since many people walked to it.

Councilmember Ulledalen said he would not support it because he had issues with the economics of it and every situation was different. He said there were neighborhood stores in the community that were closed, and it would be tough to resurrect them. He said he felt staff had other priorities.

Councilmember Ruegamer said he rode his bike to shop and had seen only one person walking to the grocery store located in the middle of a huge residential area. He said people in Montana liked to drive and drove where they needed to go. He said those neighborhood stores would be in Ward I or Ward III. Councilmember

Stevens asked if that would be a bad thing. Councilmember Ruegamer said people still wanted to go to Costco or WalMart. He said if the zoning ordinance could be done quickly and easily he would support it, but he did not agree with it and hated to put staff on jobs that were endless and fruitless.

Mayor Tussing commented that staff already presented something similar, and unless he was wrong and it would be an insurmountable task and they had to put everything else on the back burner, he would be willing to revisit it provided the motion passed.

Councilmember Gaghen said the contrast between tattoo parlors and grocery stores was mentioned, but there were positive things in between that were excluded such as neighborhood coffee shops and bakeries. She said some had been in place and had an established clientele and she was troubled whether it was legal to specify one industry. Councilmember Pitman said that the discussion opened up the questions about what could be sold.

Ms. Volek read an email from Ms. Beaudry which indicated the Planning Department could undertake the project at year end or the beginning of 2009. Ms. Volek read the description of a neighborhood convenience store.

Mayor Tussing asked if anyone remembered the vote from the previous discussion. Councilmember Veis said Wards I, III and V voted against it. Councilmember Clark said Council just addressed this topic and staff had put a lot of time into it then.

Councilmember Astle said the definition read precluded a butcher shop in the store. Councilmember Stevens said it would mean redefining what they were looking at. She said she was thinking of more of a grocery store or specialty food shop. Councilmember Ulledalen said the other point that was made with the previous discussion was to limit the alcohol and tobacco sales, and in a convenience store, virtually all the profitability came from those items and without them, the store did not stand.

Mayor Tussing asked Councilmember Stevens how much she intended to limit the definition of what Ms. Volek gave. Councilmember Stevens responded that she intended to include something food-related that attracted people to that store. Councilmember Veis pointed out that they had done several planned unit developments and many of those allowed places like that so if that was a trend that would catch on, it would catch on in those places and he did not know why some of the older neighborhoods should be burdened with them because they were littered throughout the older neighborhoods and were now empty. Councilmember Veis said if that was the concept the Council wanted, he suggested going through the PUD process. Councilmember Stevens said the reason she thought of it was because there were properties in those neighborhoods such as the one at 8th and Yellowstone. She said there was difficulty in doing anything with those buildings because certain things were not allowed in that zoning and that resulted in empty buildings. She said that was one way to allow the building owners to do something with the older buildings.

Councilmember Clark said a realtor told him a property was available and they wanted to do exactly what Councilmember Stevens was talking about but could not find anyone to take the building because nobody wanted to put the money into that

type of operation. Mayor Tussing said he did not buy the argument that it would inevitably fail because that was not the Council's problem and it would fail if they did not have a chance to try.

Councilmember Gaghen stated that Billings did not really have competition among the larger stores and she was amazed there was not more ability to compete on the larger scale.

Councilmember Stevens commented that as Mayor Tussing pointed out, whether a business was financially successful was not the Council's decision, but it provided the vehicle to allow someone to try. She said the specialty niches could be successful if someone had the vision and wanted to work at it.

On a roll call vote, the motion failed 6-5. Councilmembers Ronquillo, Stevens, McCall, Astle and Mayor Tussing voted 'Yes.' Councilmembers Gaghen, Pitman, Veis, Ruegamer, Ulledalen and Clark voted 'No.'

- **Councilmember Veis** said in light of City Administrator Volek's information earlier in the meeting regarding the Agenda Setting Meetings, he moved to discontinue the Agenda Setting Meetings effectively immediately, seconded by Councilmember McCall. Councilmember Ulledalen said there had only been two Councilmembers at the last two meetings and there was no point in having staff there for the little that was accomplished because the people not there asked the same questions later that were answered at the meetings. He said it was best to discontinue them immediately.

Mayor Tussing said it was helpful for him to see the agenda earlier than when the agenda packets were distributed. He said it would be helpful to get a tentative agenda prior to the packets. Councilmember Veis asked if the agenda used to come in the Friday Packet. Ms. Volek agreed that an agenda could be sent in the Friday packet. Councilmember Ulledalen asked if it could be emailed. Councilmembers agreed that was the best solution. Ms. Volek said she would check with the City Clerk to make sure that worked for her as well.

On a voice vote, the motion was unanimously approved.

- **Councilmember Ronquillo** stated he wanted an ordinance that required newly-hired employees to live in the City limits. He said he knew an ordinance was in effect in 1955 and it was unclear when it was dropped. He moved to direct staff to draft an ordinance that required any new employees hired by the City to live within the City limits, seconded by Councilmember Stevens.

Councilmember Ulledalen referenced Assistant City Attorney Bonnie Sutherland's memo that indicated in 1999, 4% of the City's employees lived outside the City limits and today it was 30%. He asked what it would accomplish and why City government would be better if an ordinance was passed. Councilmember Ronquillo said he felt employees would feel more committed to the City. He said he talked with quite a few City employees who told him that would be a good thing. He said one example was that a lead worker lived outside the City limits and never had to pull on-call. He said he had the same problems during his employment with MDU when people who lived a distance took time off due to bad weather and then the burden was put on someone else who had to cover their shift.

Councilmember McCall said she was opposed to it because she thought it was punitive and would cause resentment instead of commitment. She said the employees should have the freedom to live outside the City if they preferred. She urged the Council to oppose it.

Councilmember Ruegamer said he could see Councilmember Ronquillo's reasoning, but if there was anything, it should be a mileage rule so that people who tended to be called during an emergency lived within a reasonable distance from Billings. He said he had three issues with telling people they had to live within the City: 1) how it would be monitored; 2) it narrowed the labor pool; and 3) he did not care where people lived. He said Billings had suburbs it did not have years ago, such as Huntley, Shepherd, Laurel and even Broadview. He said Billings people traveled to other communities to work and he did not hear those communities say anything about that. He said he did not see where it hurt anything.

Mayor Tussing said when he was in charge of employees, he could not tell a difference between the ones who lived in the City and the ones who did not as far as their dedication to the job. He said if it came down to one side or the other, he would prefer to have the best qualified employees. He said he agreed it was best that they lived in town and paid property taxes, but he would rather have the best qualified people.

Councilmember Stevens said she was not in support of it, but was concerned with City vehicles going home with employees who lived in other counties. She said that was a perception issue and she was concerned that the City paid the employee's commute out of the City.

Councilmember Pitman said he would reiterate what he said at the work session that he opposed it and thought it came down to hiring. He said if everything was equal and it was between someone who lived in the City and someone who did not, that could be a trump card. He said all other things remaining equal, he did not support it.

Councilmember Clark said he would like to know what the citizens thought and wanted the question included in the citizen survey.

Councilmember Astle referenced Councilmember Stevens' comment about City vehicles that went outside the City. He said he thought that was somewhat resolved in that the truck would be left in Billings at the nearest City facility. He said the only way he would support an ordinance was if there was a dire need for first responders to live within a timeframe of when they could report in.

Councilmember McCall said she knew Councilmember Ronquillo was talking about a particular case and agreed there were probably situations where there was misuse of vehicles, but she felt that should be dealt with through management and supervision, not a sweeping sort of motion.

Councilmember Pitman said he felt the Council should be cautioned because the discussion was creating uneasiness among the City employees. He said there were employees who thought they would lose their jobs if they did not move into the City or could not buy property outside the City limits because they would not be welcomed. He said a huge uneasiness was created for the employees and he was not sure it was necessary.

Councilmember Gaghen said since the requirement would be for new hires, she hoped that would relieve some of the concern of current employees. She said she understood Councilmember Ronquillo's feelings. She stated it could almost become an infringement on personal rights so it would be an extremely difficult thing. She commented that she thought a requirement of that nature was already part of union negotiations for first responders for fire and police. Ms. Volek responded that it was not.

On a voice vote, the motion failed 10-1. Councilmembers Gaghen, Pitman, Stevens, Veis, Ruegamer, McCall, Ulledalen, Astle, Clark and Mayor Tussing voted 'No.'

- **Councilmember Clark** moved to include the question whether City employees should live within the City in the citizen survey, seconded by Councilmember Gaghen. Councilmember Veis asked if the question would be general or detailed about first responders, etc. Councilmember Clark said he just wanted to make sure it was in the survey and withdrew his motion. Councilmember Gaghen withdrew her second.
- **Councilmember Pitman** stated he did not have an initiative but a follow-up to previous discussion regarding Councilmember Stevens' residency. Councilmember Stevens advised she owned a home in Billings, paid taxes in Billings, and Billings was her primary address. She said she did not own a home yet in Casper and was registered to vote in Billings.
- **Councilmember Veis** asked staff for the current status of amending the sexually-oriented business ordinance. City Administrator Volek advised that a draft was being circulated for comments among City departments. She said she believed it would be back to Council in October.

ADJOURN

The meeting adjourned at 8:18 p.m.

CITY OF BILLINGS:

Ron Tussing, Mayor

ATTEST:

Cari Martin, City Clerk