

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

November 13, 2007

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.

ROLL CALL – Councilmembers present were Ronquillo, Gaghen, Brewster, Veis, Ruegamer, Ulledalen, Boyer, and Clark. Councilmembers Stevens and Jones were excused.

MINUTES – October 22, 2007, approved as distributed.

COURTESIES

- Mayor Tussing introduced and welcomed newly-elected Councilmember Denis Pitman.
- Councilmember Boyer introduced several of her family members.

PROCLAMATIONS

- Benjamin C. Steele Day – November 17, 2007
- Salvation Army Red Kettle Week – November 19-24, 2007

ADMINISTRATOR REPORTS – Tina Volek

- Ms. Volek noted letters from Carl Peters, President of the Lockwood Water & Sewer District; and Terry Seiffert, Attorney for the Lockwood Water & Sewer District, to City Attorney Brooks that were included in the Friday Packet regarding Agenda Item 5. She said both letters were in the Ex-Parte Notebook for public reference.
- Ms. Volek referenced a copy of a revised resolution for Agenda Item 6, the \$3.7 million General Obligation Note, included in the Friday Packet. She said a copy of the resolution was in the Ex-Parte Notebook for public reference.
- Ms. Volek noted a copy of a Development Agreement at each councilmember desk for Agenda Item F. She said Staff was asking that Agenda Item F be removed from the Consent Agenda and added to the Regular Agenda so a presentation could be made to include recent changes.
- Ms. Volek noted a copy of a letter to Juliet Spaulding in Planning from Attorney Michael Dockery regarding Agenda Item W. She said a copy of Attorney Dockery's letter was in the Ex-Parte Notebook for public reference.
- Ms. Volek noted Agenda Items 2 and 5 needed to be added to the Public Comment period on non-public hearing agenda items.
- Ms. Volek reminded Council of the Agenda Review Meeting scheduled for the following evening at 5:30 in the City Hall Conference Room.

Councilmember Brewster made a motion to move Consent Agenda Item F to the Regular Agenda as Item 7, seconded by Councilmember Boyer. On a voice vote, the motion was unanimously approved.

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: 1, 2, 5, 6(B), and 6(C), 7 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.)

- **DAVE BOVEE, 424 LEWIS AVENUE**, said he hoped that extraordinary diligence had been given to the Lockwood Sewer and Water contract so the present and future resident taxpayers of Billings did not end up with a huge surprise liability in the future.
- **CONNIE WARDELL, 1302 24TH STREET WEST**, said she felt it was inappropriate that the old Council elect a Deputy Mayor for the new Council, as stated in the current Charter, and hoped the Charter would be amended.
- **TOM ZURBUCHEN, 1747 WICKS LANE**, said there were still three things wrong with the Lockwood Sewer Agreement. He said the surcharge should be acknowledged, but the percentage amount should be left out; there was no provision forcing reserve negotiations between the City and Lockwood; and the reserve was too high. Mr. Zurbuchen also referenced Item 7 and said the City could have \$625,000 by eliminating the Downtown TIFD, which he said was developed to aid the Federal Government in building a court house, eliminating train whistles going through downtown, and eliminating one-way streets. Mr. Zurbuchen asked what Council thought was more important; firefighters putting out a fire in the new federal building, or aiding the Federal Government, or stopping train whistles. He said the City was here because the railroad tracks came here. Mr. Zurbuchen said the \$625,000 would make the first and second payment on the Koch loan for the firefighters' payment, and a \$100,000 plus payment on the Terry Park Fire Station.
- **JOE WHITE, 926 NORTH 30TH STREET**, said he did not wish to obstruct payment to the firefighters but objected to the settlement.
- **DICK LARSEN, 1733 PARKHILL**, said questions had been asked and responses had been given on the Lockwood Wastewater Agreement. He said there were items in the revised Agreement that were difficult to consider, and he and others in the audience were available to answer any questions.
- **TERRY SEIFFERT, 316 NORTH 33RD STREET**, said he was the attorney for the Lockwood Water and Sewer District. He advised the Mayor and Council he was available to answer any questions on Agenda Item 5.

- **CARL PETERS, 1548 ROSEBUD LANE**, said the Lockwood Water & Sewer District Agreement was the only practical alternative, and he would appreciate the Council's consideration.
- **IVAN ANDRICK, 1808 GREYSTONE**, said he was a Billings resident and owned property in Lockwood. He felt the changes and penalties highlighted in the Lockwood Water & Sewer Agreement appeared as threats. He said the changes should be noted in good faith and in negotiation. He said Lockwood wanted to do business with Billings, and the City did not have to threaten with penalties.
- **CARLOTTA HECKER, 3325 DOVE AVENUE**, said she lived in Lockwood and felt the same as Mr. Andrick. She said she would like the Agreement with Lockwood to be treated as fairly as any other interlocal agreement.
- **DON REGNIER, 40 MARSHALL DRIVE**, said the 2008 budget book indicated the City had \$83 million in reserve. He said of that reserve, \$4.3 million was in interest. Mr. Regnier said the City Council had the authority to move the interest to any fund in need, which currently was the General Fund. He commented that had the City paid the firefighters for all hours worked during the years, the money would have come from their budget. He said the money in reserves should be put into the firefighter budget.

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

CONSENT AGENDA:

1. A. Approval of Appointments to the Downtown Transit Center Ad Hoc Committee, Randy Hafer; Kim Barnett; Stephen Wahrlich; Geoffrey Parkins; Greg Krueger; and Kimberly Watson.

B. Bid Awards:

(1) Cold Storage Steel Building. (Opened 10/23/07) Recommend Hardy Construction, \$88,000.00.

(2) Sale of Two (2) Aircraft Rescue Fire Fighting Trucks. (Opened 10/30/07). Recommend Crash Rescue Equipment Service, Inc., \$86,104.00.

C. Change Order No. 2 - W.O. 06-18 Broadwater Subdivision, Phase V, JTL Group, Inc., \$3,525.00.

D. Amendment No. 8 – SID 1379, Utility and Street Improvements to King Avenue West from S. 31st Street West to Shiloh Road, HDR Engineering, Inc., an amount not to exceed \$343,642.00.

E. Contract for Professional Services, W.O. 08-01 2008 Water and Sewer Replacement Project, Morrison-Maierle, Inc., an amount not to exceed \$926,713.00.

~~F. Resolution terminating the Downtown Tax Increment District and Allocating Funds and Development Agreement with Downtown Billings Partnership. Moved to Regular Agenda Item #7.~~

G. Annual Agreement with Yellowstone County to provide Law Enforcement Data Processing Services, \$85,779.00.

H. Annual Agreement with Yellowstone County for City-County Special Investigations Unit (CCSIU), with no additional cost to the City of Billings.

I. Construction Agreements (3) with MT Department of Transportation City Maintained Routes, with no cost to the City of Billings.

J. Vehicle Lease Agreement with Underriner Motors for an Internet Crimes Against Children (ICAC) Task Force Lease Vehicle, 12/1/07 – 2/29/09, \$5,250.00.

K. Assignment and Transfer of West End Hangar Ground Lease from John M. and/or Marcia A. Nash to Drew C. and/or Jennifer R. White.

L. Commercial Terminal Building Lease with ARINC Incorporated, 10/1/07 – 10/1/08, first year revenue \$3,110.48.

M. Limited Commercial Ground Lease with Aerotronics, Inc., 10/1/07 – 9/30/27, first year revenue \$17,456.52.

N. Amendment of Lease for office space to the Transportation Security Administration (TSA), additional revenue of \$15,705.96, for annual lease rental of \$52,598.07.

O. Airline Operating Permit with ExpressJet Airlines.

P. Acknowledging Receipt of Request to Annex #07-05: 13.4 acres of a portion of park land along Zimmerman Trail right-of-way and a portion of Zimmerman Trail right-of-way between Highway 3 and Rimrock Road; City of Billings, requester, and setting a public hearing date for 12/10/07.

Q. Acknowledging Receipt of Request to Annex #07-11: a 3.74-acre portion of Broadwater Avenue right-of-way west of 30th Street West; City of Billings, requester, and setting a public hearing date of 12/10/07.

R. Acknowledging Receipt of Request to Annex #07-12: a 1.69-acre portion of Bell Avenue right-of-way west of Shiloh Road; City of Billings, requester, and setting a public hearing date of 12/10/07.

S. Acknowledging Receipt of Request to Annex #07-13: a 1.89-acre portion of Grand Avenue and Zimmerman Trail right-of-way; City of Billings, requester, and setting a public hearing date of 12/10/07.

T. Acknowledging Receipt of Request to Annex #07-14: a 4.86-acre portion of Cove Avenue right-of-way between 46th and 50th Streets West; City of Billings, requester, and setting a public hearing date of 12/10/07.

U. Acknowledging Receipt of Request to Annex #07-16: a 0.359-acre portion of Grand Avenue right-of-way east of 56th Street West; City of Billings, requester, and setting a public hearing date of 12/10/07.

V. Acknowledging Receipt of Request to Annex #07-18: a portion of 56th Street West and Broadwater Avenue rights-of-way; City of Billings, requester, and setting a public hearing date of 12/10/07.

W. Acknowledging Receipt of Request to 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, and setting a public hearing date of 12/10/07.

X. Acknowledging Receipt of Request to Annex #07-25: a 2.457-acre portion of 44th Street West right-of-way south of King Avenue West; City of Billings, requester, and setting a public hearing date of 12/10/07.

Y. Acknowledging Receipt of Petition to Vacate a portion of Henry Road right-of-way fronting property located at 1125 Henry Road; John Glenn, owner and petitioner, and setting a public hearing date of 12/10/07.

Z. Acceptance of Donation: Approval and acceptance of donation from Northwestern Energy to the Cobb Field Fundraising Project, \$2,000.00.

AA. Resolution of Intent #07-18627 to create a South Billings Boulevard Urban Renewal District with tax increment authority; declaring the existence of blight within the South Billings Boulevard Urban Renewal Area; and setting a public hearing date of 11/26/07.

BB. Resolution #07-18628 relating to financing of the South Billings Boulevard Tax Increment Financing District; establishing compliance with reimbursement bond regulations under the Internal Revenue Code.

CC. Resolution of Intent #07-18629 to create Special Improvement District 1380, Terra West Subdivision, 3rd and 4th Filings, for Monad Road Street Frontage Improvements, and set a public hearing date of 12/10/07.

DD. Resolution of Intent #07-18630 to create Special Improvement Maintenance District No. 4038, Terra West Subdivision, 3rd and 4th Filings,

Monad Road Street Frontage Improvements, and set a public hearing date of 12/10/07.

EE. Resolution of Intent #07-18631 to create Park Maintenance District No. 4035, Bitterroot Heights Subdivision, and set a public hearing date of 12/10/07.

FF. Second/Final Reading Ordinance # 07-5439 for Zone Change #822: A zone change from Residential 9600 to Residential 7000 Restricted on a 400-acre property north and west of High Sierra Subdivision and Lake Hills Subdivision. Dover Ranch, owner.

GG. Final Plat of Grand Avenue School Subdivision, Amended Lot 1, Block 1.

HH. Bills and payroll.

- (1) October 5, 2007
- (2) October 12, 2007
- (3) October 19, 2007

(Action: approval or disapproval of Consent Agenda)

Councilmember Veis separated Consent Agenda Item I. Councilmember Gaghen moved for approval of the Consent Agenda, with the exception of Item I, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

Councilmember Veis noted that Item 1A was in reference to the Downtown Transit Center Ad Hoc Committee. He said the City would be looking for individuals to serve on the Boards and Commissions and encouraged those interested to check the City's website and submit an application before the mid-December deadline.

Councilmember Gaghen moved for approval of Item I, seconded by Councilmember Brewster.

Councilmember Veis asked why there was a signature page for Councilmembers on the Resolutions included with the three State contracts. Dave Mumford, Public Works Director, said the signature page was not noticed during the review of the contract. He advised the Charter gave the Mayor the authority to sign for the Council, so he recommended an amendment to remove the signature page from the contract. City Attorney Brent Brooks said an amendment would be acceptable.

Councilmember Gaghen amended the motion to remove the signature page of the Council from each of the three State contracts, seconded by Councilmember Veis. On a voice vote, the amended motion was unanimously approved.

On a voice vote, the original motion was unanimously approved.

REGULAR AGENDA:

2. ELECTION of Deputy Mayor. Mayor Tussing asked for nominations for Deputy Mayor. Councilmember Boyer moved to nominate Councilmember Ulledalen, seconded by Councilmember Brewster. Mayor Tussing asked for nominations two additional times; and there were none. Councilmember Veis moved that the nominations for Deputy Mayor be closed, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

Mayor Tussing said he agreed with Ms. Wardell that the potential existed that the majority of the Council might not get to vote on the nomination, and Council needed to review the language in the Charter. Councilmember Veis said there was intent and language in the Charter; and if Council started hedging upon what that language meant, other language would be hedged upon.

Councilmember Boyer said she agreed with Councilmember Veis. Mayor Tussing said he agreed that Council had to follow the Charter but should think about changing it. Mayor Tussing asked why in previous years Council waited until January to nominate a Deputy Mayor. Councilmember Brewster said he felt it had more to do with tradition. He said the Charter was the people's document and the way the people governed the Council. He said reviewing the Charter every ten years was the appropriate time for making changes.

Councilmember Ruegamer said the Charter was a wisely written document, and Council should follow its direction until someone found out why it was written the way it was.

On a voice vote, the motion nominating Councilmember Ulledalen passed 8 to 1. Councilmember Ruegamer voted 'no'.

3. PUBLIC HEARING AND FIRST READING ORDINANCE expanding the boundaries of Ward II to include recently annexed property: a 5-acre parcel described as: Tract 1B, Certificate of Survey 1335, Amended, Hanser Capital Holdings LLC, owner. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) City Administrator Volek advised there was no staff presentation, but staff was available to answer questions.

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 Brewster. There was no further discussion. On a voice vote, the motion was unanimously approved.

4. PUBLIC HEARING AND RESOLUTION #07-18632 exchanging property described as Lots 19-24, Block 60, Original Town of Billings, with Yellowstone County for adjacent property owned by Yellowstone County to facilitate the construction of a MET Transit Transfer Center. Staff recommends approval. (Action: approval or disapproval of staff

recommendation.) City Administrator Volek advised there was no staff presentation, but staff was available to answer questions.

The public hearing was opened.

- **LONNEY WHITE, 2146 FAIRVIEW PLACE**, said Council's approval of the proposed exchange of certain City and County property would facilitate the construction of a Met Transit Transfer Center. He said, although it was not stated, Council's approval was also key to help facilitate the creation of a land grant needed for a GSA Federal Courthouse project. He said it was his understanding that was the reason the City and County were exchanging properties. Mr. White said the White Family, LLC, was the only private property owner within the GSA proposed Federal Courthouse site and he asked that his family be allowed to be a participating party.

Mayor Tussing asked Mr. White if he was opposed to Item # 4, or if he would just like to be involved in the process. Mr. White replied he and his family would like to be involved.

Mayor Tussing asked City Administrator Volek how Item #4 had been placed on the agenda. Ms. Volek said the County and City had been working toward a land swap for at least three or four months. She said it was discovered when looking into some other items that there had not been a formal hearing held on the matter, so the exchange of the documents had been postponed until the public hearing could be held. Ms. Volek said they needed to proceed as expeditiously as possible on the land swap so the design phase could begin on the new transfer center, and grant funds for the project needed to be used within the appropriate period of time.

- **JOE WHITE, 926 NORTH 30TH STREET**, said he felt the land swap and development was very critical but recommended Council put the item on hold.

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

Councilmember Clark moved for approval of Item #4, seconded by Councilmember Ruegamer. There was no further discussion. On a voice vote, the motion was unanimously approved.

5. AGREEMENT with Lockwood Area/Yellowstone County Water and Sewer District for treatment and disposal of wastewater. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Dave Mumford, Public Works Director, said Attorney Brent Brooks and Al Towlerton had worked very diligently at incorporating comments from the Council Work Session into the new agreement. Mr. Mumford said the agreement had been given to the Lockwood Sewer District for review, and comments had been received back from them.

Councilmember Brewster said his intent was that the 80% would trigger negotiations, not the penalty; and the penalty would not be triggered until 100% had been reached. He asked if that portion of the agreement could be amended.

Councilmember Veis asked Mr. Mumford to explain the percentages and rates. Mr. Mumford said, within the City, a franchise fee of 4% would be charged, in addition to system development fees. He said the other fees would be an additional surcharge. Councilmember Veis asked if the original agreement included the 4% franchise fee and the 6% surcharge. Mr. Mumford said the franchise fee had always been included. Deputy Public Works Director, Al Towleron, advised there was language added to clarify that the franchise fee would be applicable, as well as the surcharge of 6%. He said they were trying to get to the 10% talked about by Councilmember Brewster at the Work Session.

Councilmember Brewster said what he wanted was to delineate on what was implied in the original agreement that stated they would comply with all the requirements the City had already placed on everyone else. He said he did not feel the language was clear.

Councilmember Veis asked if it was Councilmember Brewster's intent to have a 15%, a 4% and a 6%, for a total of 25%. Councilmember Brewster said if they would have agreed to a 15% premium and the other conditions provided to entities outside the City. Councilmember Ruegamer asked Mr. Mumford to address Mr. Zurbuchen's comment on the surcharge. Mr. Mumford stated there currently was no surcharge on City residents, just a franchise fee; and people outside the City paid the surcharge.

Mayor Tussing asked Attorney Brooks if he had any comments on the concerns expressed in Mr. Seiffert's letter and in Mr. Peters' letter. Mr. Brooks advised most of the comments related to a policy decision as to how strict Council wanted the agreement to reflect. Attorney Brooks said he sent Mr. Seiffert an e-mail message responding to his letter and advised that it was common for the City to have a liquidated damage provision in all contracts, depending on the amount and complexity of the contract. He said he had met with Mr. Towleron, and they felt \$3,000 per day was a fair liquidated damage amount. He said the language in the contracts always state the parties agree to a liquidated damage clause in a certain amount. Mr. Brooks said the amounts were provided at the Council's direction from a Work Session, and Council could adjust the amounts. Mr. Brooks said included in the Work Session discussion was an additional guarantee or performance bond that Lockwood would keep its end of the contract because of its long-term nature. He said, based on the Council's direction, he checked with Hoiness LaBar Insurance; who suggested the financial guaranteed bond provision currently included in the draft. Mr. Brooks said he had e-mailed Mr. Seiffert a copy of the one-page financial security bond that Hoiness LaBar's bond specialist recommended.

Councilmember Brewster said he had talked to Mr. Larson, and he had indicated the performance bond had a liquidity ratio of 3:1. Councilmember Brewster asked Attorney Brooks what the financial burden would be. Attorney Brooks said Council had the authority to determine the amount of the financial guarantee bond. He said if the Council felt comfortable in lowering the amount of

the performance bond, he could check with Hoiness LaBar and see how much it would cost Lockwood Water & Sewer. Mr. Brooks stated that performance bonds were almost always included in any contractual agreement with the City.

Councilmember Boyer said her concern was that Lockwood Water & Sewer would not be able to obtain a performance bond. Attorney Brooks said when talking with Hoiness LaBar the amount was not addressed, as he was unclear as to the amount the Council wanted stipulated. Mr. Brooks said in most performance bonds, the amount equaled the amount of the contract.

Councilmember Brewster asked if there were other options, because he felt Lockwood could not provide those kinds of reserves. Attorney Brooks said he was unaware of their financial situation, and he and Mr. Seiffert could meet with an insurance underwriter and decide what amount would be appropriate or if there were other alternatives.

Councilmember Ulledalen said the point of requiring the bond was in case Lockwood was not able to pay the fines. He asked if the State would forgo the fines and penalties if Lockwood was unable to pay. Councilmember Veis said he thought the State would not care, the City of Billings would be in violation of DEQ standards, and the fines would be levied on the City of Billings.

Councilmember Gaghen asked Councilmember Veis if there was an alternative other than a performance bond. Councilmember Veis said he did not know but felt there were risks involved, and that Council did not have much room to negotiate.

Councilmember Ruegamer asked Attorney Brooks if Attorney Seiffert was questioning the legality of the contract in his letter. Mr. Brooks said he felt Mr. Seiffert objected to the \$25,000 penalty provision based on a policy decision and based on their concern that if the DEQ did not assess a fine or penalty against the City, would Lockwood still be responsible. He said the \$3,000 amount Mr. Seiffert mentioned was related to liquidated damages. He said he thought Mr. Seiffert understood what had been discussed and was agreeable to trying to arrive at a negotiated amount of liquidated damages for non-regulatory violations.

Councilmember Ruegamer said he needed to know that Mr. Seiffert understood and agreed. Mr. Seiffert approached the podium and advised that he and Mr. Brooks had discussed the two provisions, and the first time he had seen the amended contract was last week. Mr. Seiffert said he just wanted to know where the \$3,000 amount came from. He said he did have concerns with the \$25,000 and felt the language could be incorporated into the indemnity clause. Councilmember Ruegamer asked Mr. Seiffert if he was in agreement with Attorney Brooks. Mr. Seiffert said he was.

Councilmember Boyer asked how Council was supposed to vote on a contract that night that had not been agreed upon and that Council was questioning. Attorney Brooks said he could take further direction from Council on specific paragraphs; Council could propose amendments to specific paragraphs; and staff could meet again with Hoiness LaBar and inquire about the financial guarantee.

City Administrator Volek advised that Mr. Peters stated this was the only practical alternative for development of sewer in Lockwood and said he

appreciated Council's consideration. Ms. Volek suggested asking Mr. Peters to address the issue further. She stated it appeared the options were to approve the contract 'as is' and allow Lockwood to determine if they wanted to take it forward to the Lockwood residents. Ms. Volek said an option would be to send the contract back to staff and postpone; however, Lockwood had indicated time was of the essence and delay of any kind would make it very difficult for them to complete their contractual obligations within their grant agreement. Ms. Volek advised Council could also simply deny the approval of the agreement.

Councilmember Boyer moved for approval of Item # 5, seconded by Councilmember Gaghen.

Councilmember Brewster amended the motion to have staff change the language in the contract to reflect that at the 80% level, they would negotiate rates, and at the 100% level, the penalty would kick in, seconded by Councilmember Veis. On a voice vote, motion passed 8 to 1. Councilmember Ulledalen voted 'no'.

Mayor Tussing said he thought the Lockwood Water and Sewer situation was a disaster waiting to happen; however, he also needed to protect the constituents.

Councilmember Boyer said Council had put some strict expectations into the contract that would provide protection.

Councilmember Ulledalen said he would still vote 'no' on the issue. He said it was inconsistent, which was bad policy; and the discussion that evening demonstrated why it was bad policy.

Councilmember Ruegamer said he agreed with the Mayor, and his first concern was for the taxpayers of Billings. He said the other side of it was the pollution that would ultimately happen, so it was a tough decision.

Councilmember Veis asked Attorney Brooks if Council could amend the contract at any point. Mr. Brooks said once the contract was approved, both parties would have to agree to any amendment.

Councilmember Brewster asked that if Lockwood came back with a recommendation on liquidated damages that made sense, would Mr. Brooks bring the contract back to Council. Mr. Brooks said he would; but at some point, Council would have to determine how much negotiation they wanted to do and whether the amendments were acceptable. He said Council would be approving their proposed provisions that evening and sending them to Lockwood for their consideration. He said Lockwood could then propose amendments and send them back to Council.

Councilmember Brewster said he felt it was important to at least have a contract in place, even if Lockwood wanted changes. Councilmember Gaghen said she agreed, and that environmental issues were of great concern. She said the State Government or Federal Government could come in and demand higher standards that could be more costly.

Councilmember Clark asked if the DEQ were to make it more difficult for the City to meet their standards and it cost the City of Billings more money, would the City have the right to raise the rates for Lockwood residents under the contract. Mr. Mumford said it would have to be an amendment to the contract,

and a rate study would have to be conducted. Councilmember Clark asked who would pay for the initial cost. Mr. Mumford said the City of Billings would initially be responsible until there was a rate study conducted. Mr. Mumford said the chance of the DEQ imposing penalties was remote, because the river was a physical land barrier between the two.

Councilmember Ulledalen said Council was sending a clear signal to future developers that if they built a subdivision on the fringe of the City with its own sewer system and it failed, the City of Billings would bail them out.

Councilmember Veis said he agreed the chances of the State imposing penalties were remote, but the City could get backed into a corner and look bad if they did not assist Lockwood. He said Lockwood would eventually get to a point where something would have to be done, and the cheapest alternative would be to hook into the City's sewer.

Attorney Brooks asked for direction from the Council concerning the non-regulatory liquidated damage penalty amount of \$3,000. He said the penalty could remain at \$3,000 or could be reduced to \$500 to \$1,000 a day.

On a voice vote, the original motion, as amended, passed 6 to 3. Councilmembers Ulledalen, Ronquillo and Clark voted 'no'.

6. (A) PUBLIC HEARING AND RESOLUTION #07-18633 approving and adopting a budget amendment for Fiscal Year 2007/2008. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) Assistant City Administrator, Bruce McCandless, advised that Council had already received the material, and his PowerPoint presentation was more for the public. Mr. McCandless referenced the budget amendment and said anytime the bottom line budget was changed substantially, Council had to approve it. He said it was the same process used for originally adopting the budget. Mr. McCandless said there was a \$4.85 million judgment against the City and a general obligation debt of 10% of the general fund budget with a limit of \$3.72 million. He said the present proposal was to use that amount to pay a large portion of the judgment and use \$1.13 million in reserves. He said the City was proposing to use \$471,000 of General Fund Reserves to pay off the existing unvoted general obligation debt and \$1.3 million, which would take the monies out of the reserves and the General Fund and would make it a Public Safety fund revenue. Mr. McCandless also showed the loan, as well as the reserve into the Public Safety Fund, as a revenue, making the \$4.85 million judgment an expense of the Public Safety Fund. Mr. McCandless said there was also a half year debt service payment included coming out of the Public Safety Fund.

Councilmember Veis said the General Budget limit was at \$3.72 million; and the City would be paying the judgment over several years. He asked if the debt limit could be raised or if it was stuck in the current fiscal year. Mr. McCandless said the debt limit was based on the lower of the two previous fiscal years' budgets. He said the City was limited to the time that the bond was issued.

Mayor Tussing asked Mr. McCandless if the \$4.85 million was the total amount the City owed for back wages, 50% penalty, attorney fees, and costs for appeal; but did not include any interest on any payments. Mr. McCandless said

that was correct, and most reports missed the benefit portion of the settlement. He said the City was obligated to pay retirement contribution, Medicare for some of the firefighters, Workers' Compensation, and Unemployment Insurance; so by the time all of the benefit amounts were added, the total ended up at \$4.85 million.

Councilmember Ulledalen asked if there were any pre-payment penalties with the note from Koch. Mr. McCandless said there would be a prepayment penalty of 2% if the City prepaid within the first five years of the note. He said after the first five years, there would be no pre-pay penalty. He said the Resolution was direction to Staff on how to pay the judgment, when to pay it, and how to go about paying in the long term. Mr. McCandless said when Staff prepared the FY-09 budget, the staff budget in the Fire Department would be adjusted accordingly. He said the other item was to establish a loan authority for the City to issue a general obligation note of \$3.72 million. Mr. McCandless advised there was a negotiated sale of the note to Koch Financial Corporation, which would create a first lien on the General Fund revenues that would not create a tax pledge. He said the loan had a 10-year term with a 4.85% interest rate and established an annual debt service payment of approximately \$475,000.

Councilmember Veis asked what other alternatives were discussed by Staff to pay for the lawsuit. Mr. McCandless said the entire judgment could be paid for out of General Fund reserves, which would deplete the reserves and cause the City to have to borrow funds to meet cash flow needs between major tax collection cycles. He said other reserve funds could be used in some cases. He said the repayment of the debt would not have to come from the Fire Department budget. Councilmember Veis asked about using General Fund reserves, and if the City had an estimate on the interest it would cost to borrow the funds if the City would come up short before tax levies came in. Mr. McCandless said the amounts and timing would be variable, and he could not say what the interest rate would be. Councilmember Veis asked how many months the City would have to operate in the red in the General Fund if the City used General Fund reserves. Mr. McCandless said the budget staff reports that Council received last week at the Work Session showed, in the first three months of the fiscal year, the General Fund was already into a \$2 Million deficit position. Councilmember Veis asked if the City would be issuing a debt payment every six months. Mr. McCandless said the City would issue the tax anticipation notes as they were needed for operations, and it would not be every six months.

Councilmember Gaghen said Mr. Regnier made it sound so simple that the City could take from an \$80 million reserve fund, \$4.5 million that had been garnered in interest, and use the interest without making an impact. Mr. McCandless said it would be legitimate for City Council to pull some interest earnings from some funds and use those funds for different intentions other than what they had been created; however, it was not recommended because those funds were for long-term spending priorities or for cash flow needs. Councilmember Gaghen said it was important for the public to hear the different options available, so they understood the options were limited.

City Administrator Volek said in reference to the statement the City was putting money aside and saving it because the firefighters were not being paid; past Councils would have realized the City was going to have to pay a certain number of firefighters a certain salary and may have chosen not to fund as many firefighting positions as they did. She advised saying the money would have automatically rolled into that account was not necessarily correct. She also said the reductions being proposed in the Fire Department were through attrition. She said other departments would have to make reductions through cuts of existing employees, and she felt that to be a very serious matter.

Councilmember Boyer asked if there were cuts that would have to be made in the Parks Department of up to 14 people. Mr. McCandless said the report indicated that because of the Fire Department staff pay and benefits, the City was looking at having to reduce the number of firefighters to a total of ten; which was equivalent to 14 Parks Department employees.

Councilmember Veis asked if Staff looked at other department budgets besides the Parks Department. Mr. McCandless said they did not look at other departments; and the positions they looked at in the Parks Department were equipment operators. Councilmember Veis asked if the 14 position cuts could be spread out into other departments. Mr. McCandless said that could be an option. Councilmember Veis asked Mr. McCandless if there were any other options Staff considered. Mr. McCandless said no other alternatives were considered except that there could be a combination of the items mentioned. Councilmember Veis asked if there was any discussion regarding levies or raising revenue. Mr. McCandless said it was discussed internally, but said it was nothing they could recommend to Council.

Mayor Tussing asked about Agenda Item 6(C) and the \$4.85 million amount. City Administrator Volek said Staff contacted Koch Financial because of the relatively short time constraint they were under and the fact the City had until November 30, 2007, to make the payment before accruing a higher penalty and additional interest. She said in order to meet the deadline, they contacted Koch, as they had dealt with them in the past.

John Staley, Assistant Fire Chief, said the Fire Department's immediate priority was to get Fire Station 7 opened and staffed by December 15th. He said the next priority was to provide the least impact on operations. Deputy Chief Staley said seven job offers had been rescinded, the Deputy Chief position would not be filled, and three more cuts were expected in December, bringing the total to 10. He said in addition to those cuts, they would curtail operations of the ladder truck unless there was sufficient staff to operate it. Mr. Staley said the operations would then send four engines to all major incidents, rather than the three they presently sent with the ladder truck, and the same number of personnel would respond.

Councilmember Ruegamer asked Mr. Staley how long the City had the ladder truck and how often it was used. Mr. Staley said the ladder truck pre-dated him, so he had no idea. He said the ladder truck was their least used piece of apparatus. Councilmember Ruegamer asked if the ladder truck had been used in the last year or two. Mr. Staley said it had been used approximately once a

month for structure fires. Councilmember Ruegamer asked if the City needed the ladder truck and it was not being manned, how long it would take to get it into operation. Mr. Staley said if they did not have staff available, they would use a call in crew, which could take from ten to thirty minutes.

Councilmember Veis asked if the only thing the public would see from the reduction of service would be the ladder truck not responding. Mr. Staley said once Station 7 was opened, that would be a correct. Councilmember Veis asked what it meant to the Fire Department to lose ten positions. Deputy Chief Staley said the impacts would mean being short staffed and requesting staff to work longer hours and extra shifts. Councilmember Veis asked what the impact would be a year from now from not filling the ten positions. Deputy Chief Staley said primarily the ladder truck response and the backfill areas for sick leave and vacations.

City Administrator Volek asked Mr. Staley to identify what the department had now that they did not have prior to the mill levy. Deputy Chief Staley said 15 positions were added as a result of the mill levy being passed and considering the reduction of nine firefighters and the deputy chief position, the Fire Department still gained five more people, plus a new station, and a new fire truck.

Councilmember Ruegamer said if the Mill Levy had not passed, the Fire Department would have had to lay off approximately 35 – 40 firefighters. City Administrator Volek said it was actually 37 firefighters and 44 police officers.

Mayor Tussing asked how many employees would be needed in order to staff the ladder truck like it was currently staffed and still have Station 7 open on December 15. Mr. Staley said the department would need a minimum of seven more firefighters.

Councilmember Ulledalen asked what the main mission was of the ladder truck. Mr. Staley said it carried bulk equipment, a number of spare generators, air equipment, extrication equipment, additional personnel, and was also used for BUFSAs to obtain water for the areas that did not have hydrants.

Councilmember Veis asked what kind of risk it would pose on the firefighters if the ladder truck was not available for the ten to thirty minutes. Mr. Staley said the immediate impact would be staffing, extra equipment, and ventilation equipment.

The public hearing was opened.

- **CONNIE WARDELL, 1302 24th STREET WEST**, complimented City Administrator Tina Volek and said she had gone to her with several questions, which Ms. Volek was able to answer. Ms. Wardell said the City would be taking \$1.1 Million out of the reserves and asked how it would affect the City's financial position, how it would affect the Police portion of the Safety Levy, and if the Kelly shift would be retained and why.

City Administrator Tina Volek said the affect on the Police portion of the Mill Levy through this action would be none, and the Police Department

would continue to add personnel, as pledged in the levy. She said, in reference to if the Kelly shift would be retained, that was a bargaining item and the way to shorten the Kelly shift would be to increase work hours, which could end up costing the City more in the long-run. Ms. Volek said taking the \$1.1 million out of the reserves would take the City below the recommended reserve for the General Fund, and Staff did not want to have to borrow funds to pay salaries because the interest paid on that money would have to be deducted from the Operations and Maintenance budgets. Ms. Volek said the City Departments had not had an across-the-board increase in the O&M in approximately seven years, leaving most departments with very limited funds.

- **TOM ZURBUCHEN, 1747 WICKS LANE**, said the horror in all of this was the option to raise taxes. He said when all items in Item #6 were done, the personnel voted for in the last public safety mill levy would not be there. Mr. Zurbuchen said the average pay of a firefighter, including benefits, was \$67,000 per year. He said when that was multiplied by 10, there would be \$670,000 per year in cuts to make a \$475,000 annual payment. Mr. Zurbuchen asked where the excess would go. He said the other option would be to go to the voters and have a mill levy increase. He said this was a major emergency, and he felt it needed to go to the voters.

City Administrator Volek said that was the reason staff was discussing reducing the number to seven or eight, as opposed to ten.

Mayor Tussing asked how soon it could be placed on the ballot and how soon the City would get the revenue. Ms. Volek said she had not talked to the Election Commissioner but was sure they had a 75-day window to create an election. She said if there was something adopted at the end of November, it would be at least another year to receive revenue.

Councilmember Boyer asked if any of the other Councilmember's constituents had brought up the idea of additional taxes as a solution. Councilmember Veis said he had someone ask why the City of Billings did not just run a levy to pay for it, and said he thought it was an option worth discussing.

- **DON REGNIER, 40 MARSHALL**, asked for clarification on the \$4.3 Million lawsuit and where the money was to come from.

City Administrator Tina Volek said there were three parts to the issue: (a) the budget transfer, which would transfer the money taken from the various sources and put it into the firefighter's budget to pay for the law suit, (b) would direct Staff to make the appropriate actions to handle it in the way it was recommended, and (c) was the actual loan from Koch Financial. She said the public hearing was only in reference to part (a).

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

Councilmember Ulledalen moved for approval of Agenda Item 6(A), seconded by Councilmember Boyer. On a voice vote, the motion passed 8 to 1. Mayor Tussing voted 'no'.

Mayor Tussing called for a brief recess at 8:30 p.m. The meeting was called back to order at 8:40 p.m.

(B) RESOLUTION #07-18634 directing payment and budgeting for the Firefighter Lawsuit Judgment. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) City Administrator, Tina Volek, advised Council had already received the presentation from Assistant City Administrator Bruce McCandless, and that staff was available for questions.

Councilmember Ulledalen moved for approval of Agenda Item 6(B), seconded by Councilmember Clark.

Councilmember Veis said he would like Council to take additional time with Item 6 (B) to talk with the community about what the impacts would be, as well as discuss the different options available. He said doing a levy was not the greatest idea; however, it had been mentioned twice so he felt Council needed to explore the option. Councilmember Veis said he did not have a deadline date in mind, but thought it could be done by the last week in December.

City Administrator Volek reminded everyone the City Council would not be meeting on Christmas Eve or New Year's Eve, so the last meeting of the year would be on December 17, 2007.

Councilmember Veis said, if the current Council had to make the decision, he felt it could be done by December 17th; and if they felt it was okay to let the next Council make a decision, they could extend the deadline. Councilmember Clark said Item 6(B) was directing the City to pay the firefighters, and the deadline was November 30, 2007. Councilmember Veis said he would like to have a discussion as to how the lawsuit would be budgeted. Councilmember Clark said that was not what Item 6(B) referenced.

Mr. McCandless said when the resolution had been prepared, all items were included, and the City was under order from the District Court Judge to make the payment by November 30, 2007.

Councilmember Boyer said they needed to show leadership and needed to move on with the issue. Councilmember Ruegamer said the message he had received from the public was partially silence, which told him Council needed to do what they needed to do and pay it out of the firefighter's budget. He agreed with Councilmember Boyer and said he would like to get it paid and move on.

Councilmember Brewster said there would be opportunities in the future to change the budget, and the only item that was a real issue was the 2% penalty. He said Council could implement a tax increase next year if necessary.

Councilmember Ulledalen said with the 2% penalty, the City could raise the money in escrow and pay it off in the next five years.

On a voice vote, the motion passed 7 to 2. Mayor Tussing and Councilmember Veis voted 'no'.

(C) PROPOSAL (Resolution #07-18635) from Koch Financial Corporation to finance the majority of the Firefighter lawsuit. Staff recommends approval. (Action: approval or disapproval of staff recommendation. Councilmember Ulledalen moved to approve Item #6(C), seconded by Councilmember Boyer. On a voice vote, the motion was unanimously approved.

7. (Previous Consent Agenda Item F) Resolution #07-18636 terminating the Downtown Tax Increment District and Allocating Funds and Development Agreement with Downtown Billings Partnership. Assistant City Administrator, Bruce McCandless, said the Tax Increment District sunset was established in 1976 and only lasted as long as the bonds lasted. He said the bond payoff was March 1, 2008. He said State law required that any funds left in the tax increment account after the termination be distributed back to the tax jurisdictions unless the City adopted a Resolution designating the funds for specific projects that could be used for a loan commitment, construction contract, or a development agreement. Mr. McCandless said what Council had in front of them was a Resolution that stated when the District sunsets, the dollars would be captured and committed to specific projects.

Councilmember Clark asked what percentage of the leftover money the City would receive. Mr. McCandless said the majority would go to the State, County, and School District; and the City would receive approximately 25%. Mr. McCandless said there were four major projects listed, and it was a cascade effect, as project one would use most of the funding, and if there were any funds left, they would go towards following projects. He said the number one priority would be the GSA Courthouse with an estimated cost of almost \$2 million; the second priority was to create permanent County parking, which would be on the property currently occupied by the Wells Fargo drive-up bank for an estimated cost of \$567,000.00; and the third priority was the railroad quiet zone, with an estimated cost of \$1 million. He said the final project would be converting some of the one-way streets downtown to two-way streets, with estimated cost of \$500,000.00 per intersection.

City Attorney Brent Brooks said he had reviewed the agreement and made some revisions to Sections 4.2 and 4.3, regarding insurance. He said he added \$1.5 million per claim for professional liability and requirement of the City's approval of contractors. Mr. Brooks said he added an indemnification clause on Page 5, Section 4.4., and reviewed Sections 7.1 and 7.4, which referred to provisions that were very common in most contracts Council had reviewed and approved in the past.

Councilmember Veis asked where Schedule 1 was for Item 7. Assistant City Administrator Bruce McCandless said Schedule 1 had not been prepared; however, it would mirror what was in the development agreement.

Councilmember Ruegamer moved to approve Item 7, seconded by Councilmember Boyer.

Councilmember Veis made an amended motion to delay the item for two weeks in order to review the development agreement and for preparation of Schedule 1, seconded by Councilmember Brewster.

Mr. McCandless said there would be no problem delaying Item 7, except for the land exchange that was approved earlier in the evening. He believed the exchange of property would be conditional upon the City's commitment to provide the full funding for the permanent parking lot construction in the event the GSA courthouse did not proceed.

Greg Krueger, President of the Downtown Billings Association, said they had been working on the project for the last two years and any substantial changes in the document were not going to be made within the next two weeks.

Councilmember Boyer asked what affect a two-week delay would have on the Transit Center. Tom Binford, Director of Aviation and Transit, said they were used to delays on the project and thought another two weeks would not be a huge impact. Councilmember Boyer said they had at least three or four Work Session meetings on the subject, and she felt it was time to make a decision.

Councilmember Veis said it was unacceptable being expected to come to a Council meeting prepared to vote on two items without ever having reviewed them. City Administrator Tina Volek apologized and said staff was still working on the agreement late that afternoon and should have delivered it to Council earlier.

Mayor Tussing stated that before he signed any agreement, City Attorney Brent Brooks had read it and the City Administrator had read it. He said Council needed to have faith in Staff reviews and decisions.

On a voice vote, the amended motion failed 7 to 2. Councilmembers Ronquillo, Gaghen, Ruegamer, Ulledalen, Boyer, Clark, and Mayor Tussing voted 'no'.

On a voice vote, the original motion passed 8 to 1. Councilmember Veis voted 'no'.

8. 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).

There were no speakers.

Council Initiatives

- **Ronquillo** thanked the Public Works Department for cleaning the 6th Street Underpass of bird droppings.
- **Clark** advised the Council the Ballpark Steering Committee would be bringing forth several items in the next few weeks.

ADJOURN – The meeting adjourned at 9:04 p.m.