

## REGULAR MEETING OF THE BILLINGS CITY COUNCIL

### October 22, 2007

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

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

**MINUTES** – October 9, 2007, approved.

**COURTESIES** – Debbie Singer presented a \$2,000 donation to the Cobb Field fundraising project on behalf of the Northwestern Energy Employee Contribution Committee.

#### **PROCLAMATIONS**

- None

#### **ADMINISTRATOR REPORTS – Bruce McCandless**

- Assistant City Administrator Bruce McCandless thanked Northwestern Energy for the donation and noted the donation would be brought before Council on November 13<sup>th</sup> for approval and acceptance.
- Mr. McCandless noted staff was recommending that Agenda Item 7, the Agreement with the Lockwood Area/Yellowstone County Water and Sewer District, be tabled until the meeting of November 13<sup>th</sup>.
- Mr. McCandless noted a communication on Agenda Item 6, Zone Change #822, had been distributed and was included in the Ex-parte notebook for public reference.
- Mr. McCandless reminded Council of the City/County meeting with the City of Laurel, City of Billings, and the Yellowstone County Commissioners scheduled for Thursday, October 25, 5:30 p.m., at the Owl Café, 203 East Main, Laurel, and asked Council to RSVP if they had not already done so.

Councilmember Veis made a motion to move Agenda Item 7 to Agenda Item 2 in order to delay action until November 13<sup>th</sup>, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

**PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: 1, 5b, and 6 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.)*

- **STAN MCINTIRE, 1425 BITTERROOT**, said the compliance report for Cherry Creek Subdivision prepared by the Planning Department indicated the waterline improvements had been satisfactorily completed, and advised the Heights Water District had to go to court for a restraining order to prevent the developer from using the water before complying with the district's construction requirements. Mr. McIntire asked Council to limit the development to a total of 300 units.
- **TOM ZURBUCHEN, 1747 WICKS LANE**, said the storm water detention had been a disaster in Phase I of Cherry Creek Subdivision. He said runoff caused flooding of two homes and the ruin of septic systems on the eastern boundary of Riverview Drive. He said the past summer Cherry Creek Development built a third detention pond along the north side and a dike at the east end of the pond, which was a violation of the SIA. Mr. Zurbuchen asked Council to look at the existing detention ponds before making a decision.

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

## **CONSENT AGENDA:**

1. **A. Billings Business Improvement District Board Appointment Recommendations** of Gene Burgad, Allison O'Donnell, and Michael Gregory to the Montana Avenue Sign Review Committee.
2. **B. Change Order No. 5 - W.O. 04-13, Water Treatment Plant Maintenance Building, Schedule II**, Williams Brother Construction, \$1,296.00.
3. **C. Contract for Professional Services** with Engineering, Inc. for engineering design services for W.O. 07-16, Shiloh Road Corridor Water and Sanitary Sewer System Improvements not to exceed \$456,005.25.
4. **D. Professional Services Agreement (5-year)** with LSC Transportation Consultants, Inc., for transit operations review, \$128,777.00 approximate FY08 expense; subsequent years to be negotiated.
5. **E. Approval of License Agreement** with Big Sky Floral Supply, LLC, and Big Sky Transition Exchange, LLC, for bike and pedestrian trail.
6. **F. Approval and Acceptance** of Homeland Security Grant to the Police Department Bomb Squad, \$10,000.00.
7. **G. Approval and Acceptance** of a supplemental award to the 2007 High Intensity Drug Trafficking Area (HIDTA) award for the Native American Project, \$50,000.00.

**H. Amendment #1, W.O. 07-19 Yellowstone Country Club Sewer Extension and Services, Professional Services Contract, Engineering, Inc., \$250,913.53.**

**I. Acceptance of Quitclaim Deed** from E & S, Inc. for Lot 10B, Holling Ranch Subdivision, at no cost to the City.

**J. Second/final reading Ordinance #07-5434 expanding Ward II (Annexation #07-10)** for 400.94 acres generally located northwest of the Lake Hills Golf Course and north of Matador Avenue in Billings Heights, Frank Sindelar, owner.

**K. Second/final reading Ordinance #07-5435 expanding Ward V (Annexation #07-21)** for an approximate 8.868-acre parcel legally described as Tract 1C, Certificate of Survey 2991, generally located west of the intersection of Central Avenue and 29<sup>th</sup> Street West; Raymond and Douglas Kramer, Powers of Attorney for the Lydia Kramer Real Estate Management Trust, owners.

**L. Second/final reading Ordinance #07-5436 expanding Ward V (Annexation #07-22)** for an approximate 8.868-acre parcel legally described as Tract 1B, Certificate of Survey 2991, generally located on the southwest corner of the intersection of Central Avenue and 29<sup>th</sup> Street West; Todd Icopini, Legacy Homes, owner.

**M. Second/final reading Ordinance #07-5437** for Zone Change #820, a text amendment to Section 17-705(C), BMCC, Commercial Sign Regulations.

**N. Second/final reading Ordinance #07-5438** for Zone Change #821, a text amendment to City Sign Code amending Sections 27-703, 27-705(c), 27-706(b), and 27-708.

**O. Final Plat** of High Sierra Subdivision, 2<sup>nd</sup> Filing, Amended Lot 1, Block 3.

**P. Bills and Payroll**

- (1) September 21, 2007
- (2) September 28, 2007
- (3) September 1, 2007 – September 30, 2007 (Municipal Court)

**(Action:** approval or disapproval of Consent Agenda)

Mayor Tussing separated Consent Agenda Item E. Councilmember Stevens moved for approval of the Consent Agenda, with the exception of Item E, seconded by Councilmember Ulledalen. On a voice vote, the motion was unanimously approved.

Mayor Tussing advised he was recusing himself from voting on Item E because his wife was involved in the project.

Councilmember Stevens moved for approval of Consent Agenda Item E, seconded by Councilmember Boyer. On a voice vote, the motion passed 9 to 0.

## **REGULAR AGENDA:**

**2. AGREEMENT with Lockwood Area/Yellowstone County Water and Sewer District for treatment and disposal of wastewater. (Delayed from 10/9/07 following the public hearing.) Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** Councilmember Gaghen moved to table Item # 2 until the November 13, 2007, council meeting, seconded by Councilmember Stevens.

Councilmember Veis asked City Attorney Brooks for an update on the Agreement. City Attorney Brooks stated he had met with Deputy Public Works Director, Al Towlerton, and Public Works Director, Dave Mumford, on October 22, 2007, to incorporate the suggestions made by Council at a previous work session. Attorney Brooks stated staff had sent a revised draft to the Lockwood Water and Sewer District and was expecting their comments by the next afternoon.

Councilmember Gaghen amended her motion to "delay" Item #2, not "table" the item, until November 13, 2007, seconded by Councilmember Brewster.

Councilmember Boyer said it was her understanding Council would receive the final draft agreement prior to the November 13<sup>th</sup> council meeting in order to have time to review it. City Attorney Brooks advised the final draft agreement would be sent to Council before the November 13, 2007, meeting.

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

**3. CHERRY CREEK ESTATES DEVELOPMENT AGREEMENT compliance approval of Phase I and conditional approval of Phase II. Staff recommends conditional approval. (Action: approval or disapproval of staff recommendation.)**

Planner II, Juliet Spalding, began her presentation reviewing Phase I of the Cherry Creek Estates Manufactured Home Park. Ms. Spalding advised the Cherry Creek Subdivision was approved in April of 2003, with five lots; two of which were to be developed as a manufactured home park. Ms. Spalding referenced the Subdivision Improvements Agreement and the Development Agreement, which contained further stipulations on the subdivision and the manufactured home park, such as building permit reviews, installation and maintenance of infrastructure, landscaping, and fence line. She stated the agreement also stipulated the Traffic Accessibility Study (TAS) was to be revisited after development of Phase I to ensure the initial figures reported were within 10% of accuracy. Ms. Spalding advised the developer had requested a review for compliance of Phase I, so development of Phase II could be considered by Council. Ms. Spalding advised staff and the Heights Water District had reviewed the compliance requirements and found that all street, storm water, water, and sanitary improvements had been made for Phase I. She said fire hydrants and an emergency access gate had also been installed.

Councilmember Brewster asked Ms. Spalding if the emergency access gate was to be secured. Ms. Spalding said it was. Councilmember Brewster advised the gate was being used regularly as an access for construction. Ms. Spalding said she was aware of an initial problem with the gate, and the Fire Department had made the developer chain and secure the gate. Mr. Brewster reported he continued to receive complaints regarding the gate.

Ms. Spalding stated there were two permits related to the manufactured home park; the first was for electrical and sewer permits, and the second was for setbacks for zoning. She said the permitting process had gone smoothly, and the developer had met all of the requirements. Ms. Spalding advised the developer was required to plant one street tree per unit and install a fence line. She said the fence line for the upper phase had been completed; but some of the areas of the fence had been compromised. She stated the developer had financially secured funding through a letter of credit to complete the fence requirements. Ms. Spalding advised there had been several trees planted in the spring, but some vacant sites did not have trees and other previously-planted trees had died. She said the fencing and the tree requirements still needed to be addressed.

Ms. Spalding reported the Traffic Accessibility Study was revisited in May of 2007, and traffic counters had been installed to obtain the actual traffic flow in and out of the site. She stated, to date, all of the traffic flows were out of the site at the Erin Street location, but an additional street was planned for access to Yellowstone River Road. Ms. Spalding reported the traffic counts came in 27% greater than originally projected, and the Development Agreement stipulated there could be no more than a 10% increase. She advised that City Traffic Engineer, Terry Smith, was present to answer any specific questions.

Ms. Spalding added that Code Enforcement had also reviewed the compliance of Phase I, and they found there were a number of code enforcement violations, with the vast majority of the violations being 'junk vehicles'.

Ms. Spalding said Staff was recommending conditional approval of Phase II that would allow for an additional 174 units, contingent upon the following conditions:

1. All required sewer, water, storm water, street, sidewalk, park, landscaping, and fencing improvements, and any other improvements stipulated in the recorded SIA for Phase II shall be installed or financially guaranteed prior to issuance of any home placement or building permits for Phase II.
2. Open Code Enforcement cases shall be resolved prior to issuance of any home placement or building permits for Phase II.
3. Missing street trees for Phase I shall be installed and any required street trees that are dead shall be replaced prior to issuance of any home placement or building permits for Phase II.
4. An updated cost estimate for off-site intersection contributions for both Phases I and II shall be submitted by the developer, and reviewed and approved by City Engineering based on the updated TAS provided on May 21, 2007. The outstanding contribution amounts shall be made to the City prior to issuance of any home placement or building permits for Phase II.

Ms. Spalding stated the developer was responsible for the improvements to the intersections of Hawthorne and Yellowstone River Road and Bench Boulevard and Wicks Lane; and the City Traffic Engineer had proposed that the developer pay 27% more than was originally configured for those contributions. Ms. Spalding stated another option would be to limit the number of units to 111 in Phase II instead of the requested 174.

Councilmember Boyer asked how the developer's additional 27% contribution would help the neighborhoods deal with the traffic issues. Mr. Smith stated there was nothing in the review that indicated the additional traffic would cause failure of the intersections. He said the original contribution was calculated on the developer's portion of traffic using the intersections. Mr. Smith stated the second intersection was Hilltop Road and Bench Boulevard and not Bench Boulevard and Wicks Lane as referenced earlier.

Councilmember Gaghen asked if there were any stipulations in the Agreement to prevent water and sewer roadblocks from happening in Phase II. Ms. Spalding stated she was not aware of the Heights Water District lawsuit.

Councilmember Stevens asked Mr. Smith if capping the number of units to 300 would maintain the ten percent from the original traffic study. Mr. Smith said slightly less than 300 units would generate the predicted amount in the original study, and the Development Agreement stated the development could be capped at no less than 300 units.

Councilmember Ulledalen asked Mr. Smith why the Traffic Accessibility Study was so far off. Mr. Smith indicated he did not think it was far off. He stated they compared national averages and said he thought the study was within the acceptable range.

Councilmember Stevens asked Mr. Smith if the study was based on the golf course that the developer was originally planning to build. Mr. Smith said it was not. Councilmember Stevens asked which two studies caused the 27% increase. Mr. Smith stated they compared the trip generation rate that was predicted from national averages in 2002 against a study conducted by HKM. He said the study was conducted last spring, and the report was completed in May of 2007.

Councilmember Boyer asked what the affect would be on traffic if Council capped the total number of units to 300. Mr. Smith said it was obvious if there were fewer units, there would be less traffic.

Councilmember Veis asked if there were any graphics available for the subdivision in regard to the original water line layout. Ms. Spalding said she did not have any graphics in the file because the water line layout was done after the planning phase and through the Heights Water District. Councilmember Veis asked about the storm water detention facilities; what they stated they would do, what they actually did, and why a third pond was required. Ms. Spalding said she did not have that information, but the Engineering Division should have a storm water report in their files. Deputy Public Works Director, Vern Heisler, advised there were issues with off-site flooding. He said Staff worked with the developer on the storm water issue, and he was informed the problem had been solved. Councilmember Veis asked Mr. Heisler how what they had on the ground currently differed from what they had planned. Mr. Heisler stated he did not have the plans in front of him, so he was not able to answer the question.

Councilmember Brewster asked if Council could deny approval. Ms. Spalding advised Council could cap the unit total to 300; but according to the Development Agreement, could not deny the development.

Mayor Tussing said he did not want to approve the staff recommendation because of the non-complying issues of fencing, traffic, trees, and the code

enforcement violations. He asked Ms. Spalding to confirm that Council did not have a choice in the approval and could only place a cap on the amount of units. Ms. Spalding referred the question to City Attorney Brooks. City Attorney Brooks referenced Page 3, Item #7, Sub Item #5, of the Development Agreement, which stated that if compliance criteria did not fall into Phase I, the City Council could restrict the total number of units in the entire development to 300. Mr. Brooks stated he did not see any other specific restrictions, with the exceptions of Paragraphs 8 and 9, regarding the tree requirement and the construction of a fence around the exterior boundaries of the lots. He said if those conditions had not been met, Council could declare the developer in breach of the Agreement and direct the Legal Department to go to court to specifically enforce the items that were not in compliance.

Councilmember Brewster asked Attorney Brooks if issuance of all future building permits could be restricted until Phase I had been brought into compliance if the Council approved staff's recommendation and restricted the number of lots. Attorney Brooks stated he would have to look at the Agreement, but said his initial response would be 'no'. He said it was difficult to tie the denial of building permits to subdivision approval, based in part to a similar case the City of Billings was involved in approximately 20 years ago. Mr. Brooks urged caution in the matter.

Mayor Tussing asked Attorney Brooks what incentive the developer had to comply with the requirements. Attorney Brooks advised that Council could direct him to go to District Court to enforce the rest of the Agreement. He said Council had certain authority and leverage to enforce a Development Agreement, which was a binding contract.

Councilmember Stevens asked why the City of Billings was entering into Development Agreements with no recourse if initial conditions were not met. Mr. Brooks stated he had not seen many breaches of Development or Subdivision Agreements and most of the requirements had been complied with prior to moving on with subsequent phases. Councilmember Stevens asked if legal staff reviewed legal binding contracts prior to the City entering into the Agreements. Attorney Brooks responded that legal staff reviewed contracts and could enforce the Agreement if Council directed them to do so. He said if there were facts to support the failure of the developer to follow the provisions of the Agreement, action could be filed in District Court.

Councilmember Ulledalen asked Attorney Brooks if Council could proceed with legal action pending the approval of Phase I. Mr. Brooks stated he did not think there was a specific timeframe because it was a Development Agreement issue as opposed to preliminary or plat approval.

Councilmember Brewster moved to delay action on Item #2 until Phase I was brought into compliance to include stipulation that the development could not exceed 300 units, seconded by Councilmember Stevens.

Attorney Brooks advised he would meet with Ms. Spalding to develop a list of items the developer had not completed under Phase I and a list of alternatives legally available to Council for action. He said the information would be presented to Council on November 13, 2007. Ms. Spalding advised more time would be needed to prepare the lists.

Councilmember Brewster made a substitute motion for conditional approval with a limitation of 300 units, seconded by Councilmember Boyer.

Councilmember Jones asked for the difference between a letter of credit and a bond. Mr. Brooks advised a letter of credit was from a financial institution that stated an individual had the financial capability of providing a certain amount of money for a project. He said an irrevocable letter of credit was somewhat stronger and stated an individual had a specific amount of money, and the financial institution would work with the developer to ensure the amount of money was always maintained. He said a bond was more forceful and stated the developer would earmark a certain amount of money and not spend the funds until they actually did the project. Councilmember Jones said he would like the developer to have an actual bond as opposed to a letter of credit.

Councilmember Stevens asked if Council had the authority to require a bond as opposed to a letter of credit. Attorney Brooks stated both forms of credit were acceptable under the subdivision regulations.

Mayor Tussing stated he would not support either motion, as he felt Council needed to allow staff more time to review the issue and inform Council of their options.

Councilmember Jones asked if the wording "financially guaranteed" in the Agreement could be made more specific without changing the Agreement. Mr. Brooks stated Council could do so for future agreements. He said, based upon the Council's approval of the current Agreement in 2003, there was a more generalized option available to the developer at that time under the then existing subdivision laws, and a letter of credit was the security chosen by the developer.

Councilmember Brewster advised that approximately ten years ago the City Council rejected an annexation request so the developer obtained a zone change. He said the County re-zoned the land for manufactured homes, and the developer re-petitioned the City for annexation. Councilmember Brewster said on a 6-5 vote the annexation was approved despite the density of the development. He said he felt the developer was continuing with Phase II and ignoring the direction the Council had given him. Councilmember Brewster commented that he felt the developer was doing the minimum just to get by and to get Phase II approved.

Councilmember Stevens asked Attorney Brooks to review the third clause on Page 2 of the Agreement that stated, *'This agreement shall remain in effect until such time as determined obsolete by changes in zoning regulations, or by the Billings City Council'*, and asked how the Council could declare the Agreement obsolete. Attorney Brooks said he had looked at the clause and had no idea what 'obsolete' meant. He said it could mean possible changes in the law that would remove some of the requirements of the contract, but it would be very rare. Attorney Brooks stated he would like to meet with Planning to get clarification of the clause, and develop a list of alternatives for Council to consider. Councilmember Stevens said, based upon the language of the clause, she felt Council could unilaterally determine the Agreement obsolete, and renegotiate a new Agreement.

Councilmember Ulledalen asked for clarification of the substitute motion. The City Clerk responded that the substitute motion was *'for conditional approval with a limitation of 300 units'*. Councilmember Brewster withdrew his substitute motion, seconded by Councilmember Stevens.

Mayor Tussing asked for clarification of the original motion. The City Clerk responded that the original motion was *'to delay action until Phase I was in compliance, to include the stipulation of no growth beyond 300 units'*.

Councilmember Brewster made a substitute motion to delay action until November 26, 2007, and direct Staff to bring Council an alternate proposal, seconded by Councilmember Stevens.

Councilmember Veis stated he would like to see drawings of what the water lines were supposed to be and what they were now, and the engineering plans/specifications on what the storm water was supposed to be and what it was now.

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

**4. PUBLIC HEARING AND RESOLUTION #07-18624 approving expansion of Downtown Business Improvement District No. 0001 to include Stockman Bank property located at the corner of 4<sup>th</sup> Avenue North and North Broadway. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** Assistant City Administrator Bruce McCandless advised there was no staff presentation, but staff was available for questions.

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

Councilmember Clark moved for approval of Agenda Item 4, seconded by Councilmember Veis. Councilmember Clark asked if the property included just the Stockman Bank property or if it also included the Library property. Mr. McCandless stated it included only the Stockman Bank property.

On a voice vote, the motion was unanimously approved.

**5. PUBLIC HEARING AND RESOLUTION #07-18625 approving and adopting first quarter budget amendments for Fiscal Year 2007/2008 for Teamster Contract Wage Package, General Fund Departments, and other funds: Building, Street/Traffic, Planning, Library, Community Services (Fair Housing, Home Program, and CDBG), Water, Wastewater, Solid Waste, Airport, Transit, and Motor Pool. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** Assistant City Administrator Bruce McCandless advised there was no staff presentation, but staff was available for questions.

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

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

**6. PUBLIC HEARING AND RESOLUTION #07-18626 FOR ANNEXATION #07-24: Property described as Tract 1B, Certificate of Survey 1335, Amended, located in the NE1/4, Section 23, Township 1N, Range 26E, south of the intersection of Wicks Lane and Hawthorne Lane. Hanser Capital Holdings, owner and petitioner. Staff recommends conditional approval. (Action: approval or disapproval of staff recommendation.)** Planner II, Juliet Spalding, began her PowerPoint presentation showing the location of the subject property. She advised the annexation request was for a 5-acre parcel located on the east side of Hawthorne Lane, south of Wicks Lane. She said the property to the south and east of the parcel had been annexed earlier that year for the Emma Jean Heights Subdivision. She said most of the properties located to the northwest had been developed into urban residential areas, and the proposed

annexation complied with the City's annexation policy. Ms. Spalding advised any improvements within the proposed development would need to be up to City standards, and the owners would be required to sign a Development Agreement or Subdivision Improvements Agreement with a waiver of right to protest any future SIDs. She said the existing zoning of Residential 7000 would accommodate urban density development with five units per acre. Ms. Spalding said staff was recommending approval of the annexation request conditional upon a Development Agreement between the owner and the City stipulating specific infrastructure improvements and providing guarantees for such improvements; or a Subdivision Improvements Agreement and waiver of right to protest creation of an SID stipulating specific infrastructure improvements and providing guarantees for such improvements. Ms. Spalding stated the developer would like to construct condominium developments, which would preclude going through subdivision reviews.

Councilmember Stevens asked if R7000 residential was considered medium density. Ms. Spalding said it was, allowing one single family unit per 7,000 feet. Councilmember Stevens asked if the land was currently zoned R7000 or R7000 Restricted. Ms. Spalding said it was currently zoned R7000.

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

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

**7. PUBLIC HEARING AND 1<sup>ST</sup> READING ORDINANCE FOR ZONE CHANGE**  
**#822: A zone change from Residential 9,600 to Residential 7,000 Restricted on a 400-acre property located north and west of the High Sierra Subdivision and Lake Hills Subdivision. Dover Ranch, owner; Oakland Companies, developer; and Engineering, Inc., representing agent. Zoning Commission recommends approval except for a 100-foot strip of land that borders Lake Hills Subdivision and adoption of the determination of the 12 criteria. (Action: approval or disapproval of Zoning Commission recommendation.)** Planner II, Juliet Spalding, began her PowerPoint presentation showing the location of the subject property. She said the developer was requesting the zone change to restrict the lots to single family dwellings only. She said the Zoning Commission was recommending a 100-foot buffer zone adjacent to the R9600 lots. Ms. Spalding referenced the Master Plan and advised the project would be done in a number of phases over a 10 to 15-year period. She commented a large number of major intersections would be alleviated from high volume traffic with the proposed development.

Councilmember Veis asked where the R9600 zoning was located. Ms. Spalding pointed out the location of all R9600 zoning and identified the buffer zone. Mayor Tussing asked if Matador was currently zoned R7000, and Ms. Spalding replied it was.

Ms. Spalding said there was a protest petition signed by approximately 30 property owners in the area; but only 8% of the signatures made up property owners within 150 feet of the subject property. She said a valid protest required 25%.

Ms. Spalding said the developer presented the Master Plan to the Planning Staff and they concurred. Mayor Tussing asked if the developer was obligated to stick with the Master Plan. Ms. Spalding said the Master Plan was reviewed at a very detailed

level on the first filing and recorded; and at that point, the developer could not deviate from the Master Plan without considerable review.

Councilmember Stevens asked if there had been any neighborhood meetings. Ms. Spalding said she believed the developer had held a number of meetings with adjacent neighbors. Councilmember Stevens asked if Councilmembers were automatically included in the mailing for neighborhood meetings in their Ward; and if not, could they be included. Ms. Spalding advised they could be.

Councilmember Gaghen said Mr. Oakland's correspondence to the Zoning Commission and City Council indicated there had been good meetings held with the community. Ms. Spalding reported there were a number of proponents of the development that spoke at the Zoning Commission public hearing. She said there were a number of positive comments, as well as concerns, regarding lot size.

Ms. Spalding said the Zoning Commission's recommendation of approval was based on the following 12 criteria.

*1. Is the new zoning designed in accordance with the Growth Policy?*

The proposed development is consistent with the following goals and objectives of the 2003 Growth Policy:

- *New developments that are sensitive to and compatible with the character of adjacent City neighborhoods and County townsites. (Land Use Element #2, pg. 6)*

The proposed zone change would enable a single-family subdivision with similar lot sizes and residential densities to those existing developments to the south and east.

- *More housing and business choices within each neighborhood. (Land Use Element #6, pg. 6)*

The developer proposes to offer an affordable housing supply similar to what they have been successfully offering in adjacent lots within High Sierra Subdivision.

- *Safe and efficient traffic circulation around and through the City. (Transportation Element #2, pg. 9)*

Once this development is fully built out, several key street connections to the south and east will have been completed allowing additional traffic circulation options in this part of the Heights.

- *Increased circulation connections for improved traffic flow. (Transportation Element #10, pg. 10)*

*2. Is the new zoning designed to lessen congestion in the streets?*

Any change of use of the ranch property will add additional traffic to the network, regardless of the zoning. However, with the opportunity to review the entire 400-acre property, existing and future traffic concerns in this area can be mitigated. There are several existing dead end streets that will be connected to offer more traffic flow options into and out of the entire area. For example, Annandale Rd., a proposed minor arterial, would be connected to Gleneagles Blvd., a principal arterial street, and eventually connected to Wicks Lane, another principal arterial. Also, High Sierra Blvd. would be connected to the north and Matador Ave. to the east.

3. Will the new zoning secure safety from fire, panic and other dangers?

The nearest fire station is located nearby at 1601 St. Andrew's Drive. The property will also be served by City water and sewer services when development occurs. No public health or safety issues have been raised with this application.

4. *Will the new zoning promote health and general welfare?*

The new zoning would allow single-family residences to be built with City services. No public health or safety issues have been raised with this application.

5. *Will the new zoning provide adequate light and air?*

The new zoning provides for sufficient setbacks for structures to allow for adequate light and air.

6. *Will the new zoning prevent overcrowding of land?*

The new zoning would allow the development of single family homes on lots that are a minimum of 7,000 square feet. The master plan submitted with the zoning application indicates a variety of lots sizes with parkland intermixed. It also indicates that the average lot size would be approximately 8,200 square feet. At the time of development, setbacks, lot coverage, height, and other requirements will help to prevent overcrowding of the land.

7. *Will the new zoning avoid undue concentration of population?*

The new zoning would allow the development of single family homes on lots that are a minimum of 7,000 square feet. The master plan submitted indicates that the average lot size would be approximately 8,200 square feet. It also proposes over 36 acres of parkland intermixed throughout, which would make up 11% of the net lot area. The R-70R zoning is set up to avoid undue concentrations of population.

8. *Will the new zoning facilitate the adequate provisions of transportation, water, sewerage, schools, parks, fire, police, and other public requirements?*

As noted above in #2, there are a number of transportation connections proposed that will facilitate more efficient traffic flow throughout the entire area. Additionally, there are existing sewer and water mains that will be extended and looped throughout the development.

The southern portion of the subject property is within School District #2 for all ages of school children, while the northern part is within Independent School District #52

for elementary school, and School District #2 for middle and high school students. Given the projected 10-15 year build-out for the property, the schools should have time plan for the gradual addition of students. Also, SD#2 owns a parcel of land adjacent to the south of the subject property that could eventually be developed with an additional elementary school if needed.

Parkland will be dedicated as the property is platted. The master plan indicates that approximately 11% of the net area is proposed for parkland that will connect linearly throughout the blocks and to the existing school-owned property to the south.

Police and fire provisions are to be provided by the City. These public services are always of special concern as properties develop. The nearest fire station is located nearby at 1601 St. Andrew's Drive. Access and service availability to the proposed development will be reviewed with the subdivision, however, given the 10-15 year build-out time frame, the police and fire departments may be adequately equipped over time to handle additional roof tops.

9. *Does the new zoning give reasonable consideration to the character of the district?*  
Staff is comfortable that the new zoning does give reasonable consideration to the character of the surrounding community in that it would allow development of similarly-sized single-family lots. The developer reports that they have had conversations with adjacent property owners, particularly to the east in the Lake Hills Subdivision, who have concern over the potential smaller lot sizes. The developer has offered to maintain larger lot sizes within the vicinity of these existing R-96 zoned lots through the platting process. In order to solidify this agreement, the Zoning Commission voted to recommend approval of the zone change with the exception of a 100-foot wide portion of land that fronts the existing R-96 development on the far eastern segment of the subject property (see Attachment B). This 100-foot wide buffer would remain R-96 zoning, requiring a minimum lot size of 9,600 square feet.
10. *Does the new zoning give consideration to peculiar suitability of the property for particular uses?*  
The subject property is dryland pasture land that is adjacent to the existing City limits. It would seem to be a suitable location for expanding the existing residential neighborhood, and continuing a number of proposed street connections throughout the area. The proposed zoning would make this use physically and economically viable.
11. *Was the new zoning adopted with a view to conserving the value of buildings?*  
As noted in #9 above, the new zoning would seem to conserve the value of the similarly priced residences to the south of the subject property. The developer intends to use a "coved" layout to design a variety of lot sizes while preserving neighborhood views and parkland connections. This design concept has been utilized in other parts of town and has successfully maintained and protected

property values. The proposed R-96 buffer would further help to formalize conserving of lot sizes similar to those adjacent properties to the east.

*12. Will the new zoning encourage the most appropriate use of land throughout such county or municipal area?*

The subject property is currently dryland pasture adjacent to the City limits on the south and east. The developer indicates that properties to the south in the High Sierra Subdivision (3<sup>rd</sup> and 4<sup>th</sup> Filings) are quickly being sold for entry to mid-level homes, and that there is demand for more similar lots. Expanding this residential use and adding community amenities such as parks, trails and transportation connections would seem to be an appropriate use of this non-irrigated land.

Ms. Spalding advised, in addition to the 12 criteria, the traffic flow would improve as the critical connections were made; there would be a variety of lots sizes for middle-income families; and the 10 to 15-year build-out would allow the City services to be phased in and properly installed. She advised the Zoning Commission was also recommending approval with the exception of the 100 foot buffer area on the east side of the property.

Councilmember Veis asked if any lot that touched the 100-foot buffer had to be zoned R9600. Ms. Spalding said, according to the Zoning Commission, if the majority (51% or more) of the lot was within the Residential 9600, it would need to follow the R9600 standards. Ms. Spalding stated the developer was willing to comply with the recommendation.

The public hearing was opened.

- KERRY ASHMENT, 2435 LAKE HEIGHTS DRIVE, said he owned one of the lots that bordered the 100-foot buffer zone. Mr. Ashment stated he would like to have the buffer zone increased to 200 feet. He stated there would also be a traffic issue with only two exits, and he recommended there be at least three exits from the area.
- LYNN MURPHY, 2441 LAKE HEIGHTS DRIVE, said he would like the 100-foot buffer zone increased, and he was concerned about property value.

Councilmember Veis asked Mr. Murphy if he had attended the Zoning Commission Public Hearing. Mr. Murphy replied he had not, but his wife had attended. Mr. Veis asked if Ms. Murphy had requested a 200-foot buffer at the public hearing. Mr. Murphy said his wife actually wanted a 400-foot buffer zone. Councilmember Boyer asked Mr. Murphy if he had met with the developer. Mr. Murphy stated he was out of town, and his wife would testify regarding the issue.

- MARGARET MURPHY, 2441 LAKE HEIGHTS DRIVE, said she attended the Zoning Commission Public Hearing, and would like to challenge the claim that Mr. Oakland met with the neighborhoods. She said she had contacted his office to schedule a neighborhood meeting and was told they did not want to meet with the neighborhood, but would meet with her. Ms. Murphy said the time of the

scheduled meeting did not work out for her, and there was no attempt to reschedule. Ms. Murphy stated she was concerned about the traffic, especially around the school.

Councilmember Ruegamer asked Ms. Murphy if she tried to reschedule the meeting with Mr. Oakland. Ms. Murphy said she contacted his office to advise she could not make the scheduled meeting, and there was no further communication regarding rescheduling the meeting.

- STUART BRIGGS, 2430 GREENBRIAR ROAD, said his concerns were traffic flow; the building of smaller homes, which would reduce his property value; and the 100-foot buffer zone. Mr. Briggs said he would like the 100-foot buffer zone increased to 200 feet, and he would like some assurance from the builder as to a minimum square footage requirement per house.

Councilmember Gaghen asked Mr. Briggs if he wanted the increased buffer zone around the whole subdivision or just the area that was crosshatched. Mr. Briggs stated he would like the buffer zone increased from 100 feet to 200 feet along the eastern and southern borders.

- ANTHONY (last name inaudible), 2436 GREENBRIAR ROAD, said he opposed the annexation, and he was opposing the zone change. He said the 100-foot buffer zone was a joke, and he was concerned with the increase in traffic flow, the school zones, the police, fire, sewer, and water that would come with building a large subdivision.
- NANCY DOERR, 2417 GREENBRIAR ROAD, said her main concern was with the traffic, and she would like the subdivision to be done in an orderly fashion. Ms. Doerr said she was concerned about her property value and wanted the neighborhood to remain nice.
- GARY OAKLAND, 900 WELLS FARGO CENTER, advised he was the CEO of the Oakland Company, and said the company had made efforts to meet with all neighborhood members in smaller groups. He said approving the 100-foot buffer zone was reasonable, and he was proposing a wide variety of lot sizes. Mr. Oakland stated the R7000 was a minimum, not a maximum, and not even the average. He advised one of the first examples of R7000-R zoning within the City of Billings was Copper Ridge. He said the lots averaged 8,900 square feet, and the subdivision had received national attention for its visionary design. He stated the Oakland Company planned to do a similar project, but with smaller lots. Mr. Oakland said there was a huge demand on lots priced in the low \$40,000 price range. He said when the lot size increased, so did the price, and when the price of the lot went up, it forced the price of the house to go up.

Councilmember Veis asked Mr. Oakland which lots would be affected by the 100-foot buffer zone. Mr. Oakland said the drawing was only a schematic. He said a full blown design would cost several hundred thousand dollars in design work, and there was no established zoning to date. He stated his intention was to have large lots

around the border of the subdivision, averaging the lot sizes down to approximately 8,200 feet. He said the intent was to offer smaller lots and homes that the average family could afford. He noted there was a big difference between density and space; density referenced the number of houses per acre, and space referenced the design of a house.

Councilmember Veis asked Mr. Oakland if the 100-foot buffer zone and R9600 would fit into what the subdivision was trying to accomplish. Mr. Oakland said they would. Mr. Oakland said they embraced buffer zones and felt they were making the necessary compromises.

Councilmember Brewster asked Mr. Oakland if the strips of open land would be dedicated to a park. Mr. Oakland said they were proposing 36 acres of park in the subdivision and an elementary school in the future.

Mayor Tussing asked Mr. Oakland for the average cost of a home on an R7000 lot compared to a home on an R9600 lot. Mr. Oakland advised the average cost of an R7000 lot was between \$38,000 and \$45,000, with the average price of the home being \$180,000 to \$225,000. He said the average price of an R9600 lot would be at least \$10,000 more, and the average price of a home would be at least \$40,000 more.

Councilmember Boyer stated she had concerns with a 400-acre development, because of traffic and school issues. She asked the developer to address issues such as traffic, number of people, and the density of the plan. Mr. Oakland said traffic would increase with the subdivision development; however, the Master Plan would provide connectivity to major intersections, which would alleviate some of the traffic concerns. Ms. Boyer asked how long it would take to do some of the connectivity. Mr. Oakland said that was more of a planning question instead of a zoning question, because water and sewer connections would have to be analyzed.

Councilmember Veis asked Mr. Oakland what the depth of the lots would be. Mr. Oakland responded they would be over 100 feet. Mr. Veis asked Mr. Oakland if the lots bordering the 100-foot buffer zone would be zoned 9600. Mr. Oakland said they would.

Councilmember Ulledalen asked if the subdivision was similar to the boundary between Gregory Hills and Wilshire Heights in terms of lot size and home values. Mr. Oakland stated a development could have a wide variety of lot sizes, and he did not feel property values were compromised by the difference. He said there was a wide variety of lot sizes all over town.

Councilmember Stevens asked Mr. Oakland if he was familiar with the DNRC property to the west of Castle Rock Middle School that had been recently approved. Mr. Oakland said he was somewhat familiar. Ms. Stevens advised the zoning was included with the master plan when it was brought before Council. She asked Mr. Oakland if he would be opposed to going back out and working with the neighbors and developing a master plan to be presented to Council. Mr. Oakland said he would not be able to do so, because he felt he could not please everyone, and it would be almost impossible to develop a master plan at the current stage.

- DJ SMITH, 2520 LAKE HEIGHTS DR., stated he felt the buffer zone should be increased and would like Council to address his concern.
- MILES EGAN, 2690 S. RIDGE DRIVE, stated he was a friendly competitor of Mr. Oakland and was there to speak for the entry level home buyer. He

complimented the Oakland Company for their state-of-the-art design and development within the community. Mr. Egan requested the Council's support of the zone change.

Mayor Tussing asked Mr. Egan what the average price of a home was in the City of Billings. Mr. Egan said the overall average would be between \$176,000 and \$178,000. Councilmember Stevens stated she agreed the City needed affordable housing for everyone, and said she wondered why the Heights was always referred to and not the west end for affordable housing. Mr. Egan said the affordable housing market was spread across the entire city, not just in the Heights.

- JUSTIN LEMON, 2220 ST. JOHNS AVENUE, said he was a mortgage lender for American Mortgage of Montana; and said if lot sizes were increased, the price of the house would go up and make it more difficult for a middle-income family to obtain affordable housing. Mr. Lemon asked Council to approve the zoning request.
- JASON (last name inaudible), 234 SHARRON LANE, stated he was a realtor and a part-time homebuilder. He said having access to smaller lots was essential not only to his business, but also to middle-income families.
- MARTHA RIDGEWAY, 1215 CAROLINE STREET, said she was the owner of Martha's Homes, and she marketed homes with a contractor in the High Sierra Subdivision. Ms. Ridgeway stated her company offered four types of ranch-style homes in the \$175,000 to \$265,000 range. She said she tried to make a variety of homes and lot sizes available to the consumer. Ms. Ridgeway encouraged Council to approve the zone change.

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

Mayor Tussing called for a brief recess at 8:40 p.m. The meeting was called back to order at 8:47 p.m.

Councilmember Ulledalen moved for conditional approval of Item #7, seconded by Councilmember Ruegamer.

Councilmember Veis asked how it was determined if the lots would be zoned 9600. Planning Director Candi Beaudry said the determination was based on if the majority of lot was covered by 9600 zoning. Councilmember Clark asked if the 100-foot barrier was incorporated into the lot and not included in the street. Ms. Beaudry said that was correct, and the district boundary would go to the center line of the street. Councilmember Jones asked Ms. Beaudry if the buffer zone for Fox Tail Subdivision on Grand Avenue was similar. Ms. Beaudry said it was, and the zoning was consistent with previous subdivision approvals.

Councilmember Veis asked if Planning would re-zone after the subdivision process had been completed and the lots were more defined. Ms. Beaudry said that would be the best solution, and Council could initiate a zone change at that time.

Councilmember Ulledalen asked Ms. Beaudry what the merit was in getting the subdivision underway. Ms. Beaudry said it was not only for the traffic connections, but

also for the sewer and water connections. She said looping the water would provide more water pressure, and the overall water quality would improve.

Councilmember Brewster asked if approval of the zone change would trigger the need for a traffic light at St. Andrews. Ms. Beaudry said it could, and Mr. Oakland would be required to do a Traffic Accessibility Study to document the need for a traffic signal. Mr. Brewster asked if it would be advantageous to structure the 100-foot buffer zone to include adjacent lots. Ms. Beaudry reminded Council the current issue was a zone change, and a zone change could not be "conditioned".

Councilmember Brewster made an amended motion to extend the buffer zone on the east end of the subdivision to 200 feet, seconded by Councilmember Boyer.

Councilmember Stevens asked if the proposal was consistent with the neighborhood plan. Planner II, Juliet Spalding, said the goals and objectives fit into the neighborhood plan. Councilmember Boyer asked Ms. Spalding if anyone had made a presentation to the neighborhood task force regarding the development and how it impacted the neighborhood plan. Ms. Spalding said she was not aware of any meetings; however, notice of the proposed zone change was mailed.

Councilmember Stevens stated she would not support the motion or the amended motion because she felt the development was too broad, not planned well, and she was concerned about succession planning. Ms. Stevens said she thought Mr. Oakland's attitude was elitist in regard to the neighbors, as he stated they would never understand the master plan. Ms. Stevens said it was possible to educate people and said there was no attempt to do that.

On a voice vote, the amended motion to expand the buffer zone on the east side of the property from 100 feet to 200 feet passed 7 to 3. Councilmembers Stevens, Veis, and Ulledalen voted 'no'.

On a voice vote, the original motion, as amended, passed 9 to 1. Councilmember Stevens voted 'no'.

**13. 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.)*

- **MICHAEL BÜTZ, 349 FUTURE CIRCLE**, said he lived in Terra West Subdivision, 4<sup>th</sup> Filing, and had been in contact with the City since February 2006 concerning landscaping the frontage along Monad Road; installing sidewalks at Monad and 32<sup>nd</sup> Street West; installing speed bumps on Energy Boulevard; installing stop signs at Daystar and Energy Boulevard; and developing Lampman Park. He said nothing had been done despite promises the City had made. He said he was also concerned how the recent zone change on Brookshire Boulevard was changing the complexion of his neighborhood. He said he wrote a letter to the Zoning Commission that Ms. Volek hand-carried to a meeting, yet he heard nothing back.

Councilmember Boyer asked Mr. Bütz if there was a neighborhood task force in his area. Mr. Bütz said he was not aware of one. Mr. Bütz was advised of the West End Task Force. Mr. Bütz said he had been in discussions with Ms. Volek and Councilmembers Jones and Clark since February 2006.

Councilmember Veis asked Mr. Bütz if the items were supposed to be done by the developer or if he wanted the City to take care of them. Mr. Bütz said he had asked the City to complete the items in 2006. He said he had a whole variety of issues with the developer. Mr. Bütz said the re-zoning had made issues more difficult in the neighborhood. Councilmember Veis asked Mr. Bütz if he felt the developer had met the requirements of the Subdivision Improvement Agreement. Mr. Bütz replied "probably not." Mr. Bütz said he had provided the Council a very detailed accounting and a petition signed by 75% of area residents in May of 2007 outlining all of the items that had not been addressed by the developer and the City.

Councilmember Stevens said she felt a lot of the issues needed to be sent back to Staff to address. Councilmember Jones said the issues had been sent to staff, and Mr. Bütz's frustration was that staff was not solving the problems. Councilmember Jones said the park issue had been drug out, and he did not fully understand why. Assistant City Administrator Bruce McCandless said a tentative resolution of intent for creation of an SID and Park Maintenance District would come before Council on November 13<sup>th</sup>, with public hearings on December 10<sup>th</sup>.

Mayor Tussing asked Mr. McCandless if Lampman Park would be sold. Mr. McCandless said there had been some discussion between the Parks Department and the Fire Department.

Councilmember Clark said part of the delay problem was the administrative changeover in the Parks Department, and the Parks Department was currently working on the issue. He said it would take longer than what Mr. Bütz was originally told. Councilmember Jones added Mr. Bütz was given "bad" information by the Parks Department to begin with, and it had been very frustrating.

Councilmember Boyer asked how the church on Monad and 32<sup>nd</sup> got away without putting a sidewalk in. Councilmember Brewster suggested adding the church's portion of frontage to the next miscellaneous sidewalk program.

Councilmember Veis said he planned a council initiative to receive options for Lampman Park because he was tired of driving by a weed patch. Mr. Bütz said he had met with City Staff over and over again, and nothing had been done. He said he had been promised there would be frontage improvements made in the fall of 2006. He said nothing was done, and he was told there would be frontage improvements made by the fall of 2007. Mr. Bütz said fall was pretty much gone, and so he was back again that evening.

Councilmember Ruegamer said he recalled discussion that Lampman Park would be turned into a dog park. Mr. McCandless said Councilmember Veis had an initiative to explore selling Lampman Park and using the proceeds to improve Lampman Strip Park for a dog park. Councilmember Ruegamer said he did not know there was a difference between the two.

- **PAT NEARY, 322 FUTURE CIRCLE**, said he supported Mr. Bütz. He said he found it interesting he was not aware of the zone change at Brookshire and Central until after it was approved. Mr. Neary said homeowners buy property based on the assumptions that what was zoned would continue. He said he felt developments were very unequal in the City. He said if the developer was not required to develop the frontage strip, a mistake was made.

Councilmember Stevens asked Mr. Neary if he was aware of the neighborhood task force meetings. Mr. Neary said he was not. Councilmember Stevens asked Mr. McCandless to provide the task force information to Mr. Bütz and Mr. Neary. Councilmember Veis advised all of the task force meeting schedules were on the Community Development website.

Councilmember Ulledalen advised there were specific legal requirements notifying adjacent property owners within a certain distance of a re-zoning request. He said if a person was located outside the notification requirement, they would not be notified. Councilmember Ulledalen also advised there were state regulations regarding the warrant for a traffic signal, and the proper protocol had to be followed.

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

## **Council Initiatives**

- **Jones:** MOVED to have staff provide a written report to Council by December 3<sup>rd</sup> outlining Mr. Bütz's concerns and the City's plan for addressing the concerns, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.
- **Stevens:** Said she was concerned about the "pitfalls" with Development Agreements and asked staff to provide a written report to Council on how to improve the process. Planning Director, Candi Beaudry, advised the Subdivision Regulations had been revised, a template had been created for a Subdivision Improvement Agreement, and the Engineering Division had a template for Development Agreements. She said both documents had been reviewed by City legal staff. Ms. Beaudry said when Cherry Creek was put into place, a template was not available. Councilmember Stevens asked if the new Subdivision Improvement Agreement and Development Agreement templates addressed the succession of phases before conditions of the first phase had been met. Ms. Beaudry said both Agreements were very specific and stated all improvements must be completed prior to moving to the next phase. Ms. Beaudry said financial securities of bonds, irrevocable letters of credit, and letters of credit were allowed. Attorney Brooks advised he would attach the templates to the report he would be providing to Council on Cherry Creek. Councilmember Stevens said the information Ms. Beaudry provided had met the intent of her concern. Councilmember Ulledalen said he was more concerned with how to fix the problem and what could be done to get developers into compliance. Councilmember Jones said he would like to address the financial guarantees in greater depth and narrow them down. Councilmember Ulledalen said his concern was that a letter of credit could be revoked. Attorney Brooks advised the current Subdivision Regulations required an irrevocable letter of credit.
- **Clark:** Said he was irritated with the article in the *Billings Gazette* regarding Marv Jochems and said he had total faith in the way Mr. Jochems ran the Fire Department. Councilmember Jones asked how the lawsuit with the firefighters started and what the initial issue was. Attorney Brooks advised the original

complaint filed alleged that the so-called "Kelly Shift" violated the state constitution that said anything over eight hours per day was overtime, and it was unconstitutional to require Kelly Shift hours without paying for the overtime. Mr. Brooks stated when the district judge rendered his opinion, he denied relief on that basis but felt there may be extra pay due the firefighters because of additional language in the contract. Councilmember Jones said the suit actually did not evolve on the basis of the City's involvement but on the basis of the judge. Attorney Brooks said that was correct, and a summary judgment meant there was no actual dispute and just an interpretation of the law. He said the judge denied the relief sought by the plaintiffs on the basis of overtime over eight hours, but felt money was due the firefighters if some of the contract terms stated an hourly wage versus an annual salary. Councilmember Jones said there were firefighters that would say the extra four hours was paid in 1969, but that information was never allowed to be presented to the judge. Attorney Brooks stated that was correct, and the judge determined his summary judgment opinion on different grounds than had originally been alleged in the original complaint by the plaintiffs. Mr. McCandless advised there was never a full evidentiary hearing; the City never had an opportunity to present all of its evidence concerning the collective bargaining agreements back to 1969 to the judge or anyone else. Attorney Brooks stated that was one of the issues the City raised in its brief to the Supreme Court, and it was rejected by the Montana Supreme Court. Councilmember Veis said everyone seemed to be beating up on staff from Chief Jochems to City Administrator Volek. He said the reality was that the Council would make the ultimate decision on how the lawsuit was going to affect the community. He said the public needed to quit beating up on staff and contact the Council instead.

Councilmember Ulledalen asked if the firefighters could re-sue the City because the Kelly Shift was illegal. Attorney Brooks advised it was not that the Kelly Shift was illegal, it was that the Kelly Shift violated the constitutional provision that anything more than eight hours was overtime. He said it was originally ruled by the district judge as not being an appropriate mechanism of relief, so it had been dealt with.

Councilmember Boyer said the ads in the paper and the letters to the editor have all tried to put pressure on the Council but nothing had been received from constituents that would lead Council to support them. She said the community supported Chief Jochem and the Council; otherwise Council would be hearing from them. Councilmember Veis stated he had received only one phone call.

- **Ruegamer:** MOVED for a 100% vote of confidence in Marv Jochems, seconded by Councilmember Jones.

Mayor Tussing said he had received at least 20 phone calls, e-mails, or comments from constituents. Several councilmembers stated they had received very few, if any, comments. Mayor Tussing said he had been stopped on the street and in the grocery store; but he did not write down any of their names. Mayor Tussing said he wished the firefighters union had been informed of what the decision was and given the opportunity to come up with alternatives. Mayor

Tussing said he had heard City Council candidates talking about the settlement money coming from the Public Safety Levy, and not much information had been provided that the money was not coming from the Public Safety Levy. He said the money was coming from the General Fund, and the City could not spend Public Safety Levy funds to pay for the lawsuit. Mayor Tussing said he felt the Council had “bunkered up” over the controversial issue and had not done a good job of disseminating the correct information. Councilmember Boyer said the Council did not bunker up and had dealt with the issue head-on every step of the way. She said the Council was not hiding, not bunkering up, and was willing to talk to anyone; but no one had conversed with them. Mayor Tussing said it was the Council’s responsibility to inform the public.

Councilmember Ruegamer stated he did not know what “bunkering up” meant, but he did not bunker up, never had, and never would. He said he met with the firefighters twice; at their invitation once, and when they came to a task force meeting. He said it did not make him feel any better to have someone sue him and then tell him how to pay. He said he did not do that; it was a bunch of crap, and he would not do it. Councilmember Ruegamer said he did not feel he owed them any explanation. He said they sued us, they won, we will pay them; and how they are paid was none of their “damn” business. He said they would be paid the way we wanted to pay them.

Councilmember Boyer called for the question, seconded by Councilmember Stevens. On a voice vote, the motion was unanimously approved.

On a voice vote, the motion to support the fire chief and give him a 100%, absolute vote of confidence was unanimously approved.

- Councilmember Gaghen said she would like to applaud the group who wrote letters to the editor in Sunday’s paper explaining more fully the history of how the hands of the Council had been tied regarding the firefighter’s lawsuit. She said the Council had been hampered by the judicial system that had not allowed evidence to be brought in that supported the Council’s actions in the past.

**ADJOURN** – The meeting adjourned at 9:43 p.m.