

REGULAR MEETING OF THE BILLINGS CITY COUNCIL
January 26, 2009

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

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

MINUTES – January 12, 2009 – approved as distributed with one correction requested by Mayor Tussing.

COURTESIES – Councilmember Ruegamer presented a \$2,000 check to the Parks Department from the Billings Kiwanis. He explained that the City of Billings and the Billings Kiwanis partnered on the “Magic City” license plates; and for every license plate sold, \$10 was donated to the Billings Parks Department and \$10 was donated to the Kiwanis youth projects.

PROCLAMATIONS - None

ADMINISTRATOR REPORTS – Tina Volek – None

Councilmember Pitman moved to add the donation of 140 “Comfort Kits” to the Police Department from the Volunteers of America to the Consent Agenda as Item M, seconded by Councilmember Gaghen. On a voice vote, the motion to add the donation to the Consent Agenda was unanimously approved.

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: 1 and 8 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.)

- **Joe White, Billings, MT**, spoke on Item 8, the City Administrator’s Contract. He said he did not understand why it was on the agenda. He said there were so many failures within the City. He said they should sue for fraud.

There were no other speakers, and the Public Comment period was closed.

CONSENT AGENDA:

1. A. Bid Awards:

(1) High Speed Runway Broom (Opened 1/13/09) Recommend M-B Companies, \$503,298.

B. Change Order No. 2, W.O. 06-22, L-Structure Improvements, Williams Brother Construction, \$19,235; and authorize increasing the City Administrator's authority to approve change orders by \$100,000 to \$201,600.

C. Amendment #1, W.O. 07-15, General Engineering Services Contract, HDR Engineering, Inc., \$215,000.

D. Approval of 5-year Airport Business Park Building and Ground Lease with the State of Montana Department of Natural Resources and Conservation (11/1/08 through 10/31/2013); \$62,828.52 revenue first year; subsequent years adjusted according to the CPI-U.

E. Perpetual Right-of-Way Easement with South Billings Center, LLC; Cabela's Retail, Inc.; and Sam's Real Estate Business Trust for Lots 1-7 and Lots 9-10, Block 1, Miller Crossing Subdivision and Lots 2A through 3A and 2A through 4A, Block 1, Amended Miller Crossing Subdivision.

F. Quarterly Report for Pledged Collateral for First Interstate Bank Certificate of Deposit, US Bank Municipal Investor Accounts, US Bank Repurchase Account, and US Bank Certificates of Deposit.

G. Approval of Misdemeanor Probation Domestic Violence Grant application; required 25% City of Billings match – approximately \$18,000 to be paid for in soft match and from the 2010 Police Department Training Fund.

H. Approval and acceptance of FY2008 Assistance to Firefighters Grant Award for purchase of trench and confined space equipment - \$137,535. FEMA's share - \$110,028; City's share - \$27,507, to be paid from the Fire Department budget.

I. Approval and acceptance of Pass Thru Grant Funds from the State of Montana for Hazmat Regional Response Team; \$44,167 with no required match from the City.

J. Resolution of Intent #09-18788 creating SILMD 306; and setting a public hearing date of February 23, 2009.

K. Second/Final Reading Ordinance #09-5487 for Zone Change #852: A zone change from Entryway General Commercial (EGC) to Highway Commercial (HC) on Lots 1-3, Block 1, Cereus Subdivision located immediately east of 5021 Midland Road; Brumar Corporation (Motor Power Equipment) applicant, Engineering, Inc., agent.

L. Bills and Payroll

- (1) December 29, 2008
- (2) January 2, 2009

M. Approval and Acceptance of donation of 140 "Comfort Kits" to the Billings Police Department from the Volunteers of America, \$3,465.

(Action: approval or disapproval of Consent Agenda.)

Councilmember Pitman separated Consent Agenda Item B. Mayor Tussing separated Consent Agenda Item J. Councilmember Pitman moved for approval of the Consent Agenda with the exception of Items B and J, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

Councilmember Pitman moved for approval of Consent Agenda Item B, seconded by Councilmember Ruegamer. Councilmember Pitman asked the City Administrator to explain the need for authorization of an additional \$100,000. City Administrator Volek advised there was a current city resolution that capped her ability to approve contracts without council approval at \$100,000. She said the Public Works Department had asked that the additional authority be extended for the L Structure Improvements to the Water Treatment Plant project so approval of change orders would not have to wait for council's approval and work could continue. She said the authority would be for that project only. Councilmember Clark asked for the status of the project. Public Works Director, David Mumford, said they were currently working on repairing the damage they had to cause in order to keep water flowing during the ice and low water. He said they would need to re-modify the structure that had already been under construction. Mr. Mumford said the situation was unexpected and just before Christmas they had lost the water plant several times for up to seven to eight hours due to ice jams and low water. He said unfortunately in order to get back on-line, they had to tear out some of what the contractor had already done. On a voice vote, the motion was unanimously approved.

Councilmember Pitman moved for approval of Consent Agenda Item J, seconded by Councilmember Ruegamer. Mayor Tussing asked if he understood correctly that the streetlights were already installed. Mr. Mumford advised they were in the contract to be constructed. Mayor Tussing asked for the type of streetlights that would be constructed. Mr. Mumford said they were basic streetlights with a cut-off shield. Mayor Tussing asked if they would be LED or high pressure sodium. Mr. Mumford said they would be high pressure sodium. Mayor Tussing asked if there was any reason they would not be LED; he said they would cost more initially but they would save 50 percent of the energy

and last five times as long. Mr. Mumford said there was nothing that would prohibit them from using LED; but they were quite a bit more expensive. City Administrator Volek said she was aware that the Energy Commission had been discussing LED lighting. She said originally it had been discussed in context to the downtown lighting improvement district, which did not go forward. She said there were questions nationally about LED standards; and it was her understanding they were not completely adopted. Ms. Volek said she was aware that the City of Ann Arbor, Michigan, had enacted LED lighting through a \$600,000 grant. She said she had the documentation if council was interested in seeing it.

Councilmember Veis asked Mr. Mumford if it would be possible to provide the council with capital versus capital and some rough operating O & M versus LED O & M without doing a tremendous amount of new research. Mr. Mumford said it would not be much for them to do capital, but staff would need to do research on the O & M. Councilmember Veis said more than two hours of work was beyond the scope of what he was looking for. Mr. Mumford said the current agenda item was only the request to create the district. Councilmember Veis asked that staff provide the capital versus capital and a rough estimate on O & M versus O & M as the item came back before council. Mr. Mumford said it would be no problem providing the information. Mayor Tussing commented that the public hearing would be held on February 23, 2009; and said he would support the request to create the district that evening, but he would like to see the figures. He commented that Anchorage was doing the same thing.

On a voice vote, the motion was unanimously approved.

REGULAR AGENDA:

2. PUBLIC HEARING AND RESOLUTION #09-18789 establishing a Public Works Department Master Site Plan Review Fee in the amount of \$331. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Public Works Director, David Mumford, advised council that the proposed fee had been worked on in conjunction with the Planning Department. He said they had held discussions with the Homebuilders Association and the Development Process Advisory Review Board (DPARB), and they had not received any negative comments. He said the \$331 would be deducted from the future costs for the platting if the process continued all the way through. He said, as the Planning Department had indicated, the review fee would be payment for staff time when people started a project and then did not finish it.

Councilmember Veis asked if it would be possible to track employee time over the course of a year and come up with an exact figure of what the process actually cost. Mr. Mumford said the intent was to have staff keep an hourly timecard. He said they had only done an estimate of what they thought it cost for now. He said the results of the hourly timecard would allow them to adjust the fee if necessary. Councilmember Veis asked if it would be beneficial to add a provision to the resolution to require a review and approval of the fee every year. Mr. Mumford said he was comfortable with that because they only wanted to charge what it cost.

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

Councilmember Gaghen moved for approval of the \$331 Public Works Master Site Plan Review Fee of \$331 with a review of the fee within one year, seconded by Councilmember Brewster.

Councilmember Veis said he would like to see the resolution amended to include a sunset date one year from that evening so the fee would have to come back to the Council for authorization in the future. Mayor Tussing asked Councilmember Veis to offer an amendment to that nature. Councilmember Veis moved to add an additional item to the resolution to include a sunset clause stating the review fee would need to be re-authorized in one year. On a voice vote, the amendment passed 10 to 1. Councilmember Astle voted 'no'.

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

3. PUBLIC HEARING on the proposed Neighborhood Stabilization Plan, approval of the funding application to the State of Montana Department of Commerce, and approval to amend the FY2008-2009 Annual Action Plan to include the Neighborhood Stabilization Program. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Community Development Manager, Brenda Beckett, began her PowerPoint presentation with data from the State regarding trustee sales. She stated the funding was coming to the State of Montana Department of Commerce for intervention on the foreclosure crisis sweeping the nation. She said the action was to apply for the state funding and amend the current consolidated plan to accept and utilize the funding. Ms. Beckett outlined the eligible activities as: (1) establishing financing mechanisms for purchase and redevelopment of foreclosed homes and residential properties; (2) purchasing and rehabilitating homes and residential properties abandoned or foreclosed; (3) establishing land banks for foreclosed homes; (4) demolishing blighted structures; and (5) redeveloping demolished or vacant properties. She said it was very clear that properties had to be abandoned and/or foreclosed. She said there were many national groups asking the current administration to amend the Neighborhood Stabilization Plan to increase funding and to include a longer timeline for Neighborhood Stabilization Plan implementation.

Councilmember McCall asked if the funding would be considered grant funds and once received, if the funds would go into refurbishment and revitalization with no pay back. Ms. Beckett said it was considered to be limited loan funding that would eventually be forgiven. She said there had to be some kind of affordability stipulations, so there would be a recapture provision put into place so if a home or property did not meet the affordability guidelines for up to 20 years, the funding would be recaptured. She said at the beginning everything should be a loan product, and the total amount of funding determined the amount of affordability. Ms. Beckett said it would be a fully forgiven loan after a period of time. Councilmember McCall asked if the primary properties they were looking at were foreclosed homes. Ms. Beckett said that was correct. Councilmember McCall asked if there would be the ability to look at foreclosed

business properties. Ms. Beckett said it would include foreclosed properties of any kind including commercial buildings, vacant land, and anything that could be redeveloped. She said the primary criteria for consideration for the program was abandoned and/or foreclosed properties; both of which had to have foreclosure proceedings in progress or foreclosure completed.

Councilmember Gaghen referenced the number of trustee sales given to Billings, MT and Yellowstone County and asked if the formula for the allocation was based on the two criteria. Ms. Beckett advised the City of Billings was not receiving an actual numbers allocation; she said they could not put a numbers allocation to the Department of Commerce because they wanted to approve project by project so their federal needs were met with income benefit. Ms. Beckett said the number of trustee sales information was taken from the revised MT Department of Commerce application to HUD in order to help identify priority communities. Ms. Beckett said Billings had a very high foreclosure risk score in the south side neighborhoods, which qualified Billings for the state funding.

Councilmember Ronquillo asked if the \$19 million would need to be divided among everyone. Ms. Beckett said that was correct, including the tribes.

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 Gaghen.

Mayor Tussing advised the council was given a presentation of Item 3 at last Monday's work session, so this was not the first time they had seen the information.

On a voice, the motion was unanimously approved.

4. PUBLIC HEARING FOR SPECIAL REVIEW #871: A special review to add an all-beverage license without gaming within the existing Rock Creek Coffee Roasters business located in the Babcock Building in the Central Business District zone; addressed as 124 North Broadway and legally described as Block 93, Lots 6-12, Billings Original Town. The Babcock, LLC, owner; Randy Heiser, agent. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.) Nicole Cromwell, Planner II and Zoning Coordinator, began her PowerPoint presentation showing the location of the subject property and the surrounding properties. She said Mr. Randy Heiser was the potential owner of the all-beverage license without gaming, and he was in negotiations with Rock Creek Coffee Roasters to locate the license inside the café. Ms. Cromwell advised there were 32 different types of liquor licenses approved by the City Council within the three-block area since 1981, so it was not an unusual application for the area. She said the required 600-foot separation from churches, schools, parks, and playgrounds did not apply within the Central Business District and would not be an issue in this particular case. Ms. Cromwell showed the interior site plan of Rock Creek Coffee Roasters, the approximate location of the all-beverage storage, and the area where the liquor would be served to customers of the café. She pointed out no alcoholic beverages would be allowed to leave the interior of the café so could not be served at their seasonal outdoor sidewalk seating. She said the owner and agent both understood

that if they wanted to extend the service of alcoholic beverages to their outdoor sidewalk seating, they would need to come back for another special review approval by City Council. Ms. Cromwell advised the Zoning Commission conducted a public hearing, and there were no comments from any of the surrounding property owners or from city departments concerning the application. She advised the Zoning Commission was recommending conditional approval based on the following five conditions:

1. The special review approval shall be limited to a fraction of Lot 6 & Lots 7-12, Block 93, Billings Original Town (BOT) generally located at 124 N Broadway.
2. Development of the site shall be in substantial conformance with the site plan submitted with this application and shown in this staff report. Deviations from the approved site plan that show additional square footage for all beverage service within the Babcock Building, the addition of an outdoor patio or the addition of another alcoholic beverage license with gaming will require additional special review approval.
3. As shown on the site plan submitted with the application, there shall be no outdoor patio. The addition of an outdoor patio will require an additional special review.
4. These conditions of special review approval shall run with the land described in this authorization and shall apply to all current and subsequent owners, operators, managers, lease holders, heirs and assigns.
5. The proposed development shall comply with all other limitations of Section 27-613 of the Unified Zoning Regulations concerning special review uses, and all other City of Billings, regulations and ordinances that apply.

Councilmember McCall commented that the Alberta Bair Theater sold beer, wine and champagne and asked if a similar arrangement could be set up between Rock Creek Coffee Roasters and the Babcock Theater or if the Babcock Theater would have to file for a separate license if they wanted to do something similar. Ms. Cromwell said the Babcock would need a separate license. She said the current special review restricted the license to the specific location within the Rock Creek Roasters floor area. She said if they wanted to expand into the existing theater or any other part of the building, they would need to come back to council and ask for another special review.

Councilmember Ruegamer asked what affect the Babcock remodeling would have on Rock Creek Coffee Roasters. Ms. Cromwell said she was not certain but a representative from The Babcock LLC was present to answer questions.

The public hearing was opened.

- **Joe White, Billings, MT**, said there was currently alcohol on both sides of the street. He said it was moving closer to the MSU downtown campus. He said he and his wife were looking into putting in a text book store in one of the empty spaces, so he was extremely opposed to any more alcohol in the neighborhood.

He said he used to walk on the other side of the street, and there were a lot of heavy disease and urine smells.

- **Randy Heiser, 3295 Granger Avenue**, said he was the agent who had applied for the liquor license. He said an agreement had been signed with the owner of the Babcock Building and their tenant, Rock Creek Coffee Roasters. He said the license would be beneficial to all properties involved, it would allow the current patrons of Rock Creek Coffee Roasters to enjoy a beverage of their choice, and it would help sustain the popular downtown business. Mr. Heiser said there were no construction projects planned in conjunction with the liquor license. Mr. Heiser said the proposal was consistent with the goals of the 2008 Growth Policy, especially the goal to create uses that were compatible with the character of the adjacent use patterns. Mr. Heiser said he had no problem with the Zoning Commission's approval conditions.

Mayor Tussing asked Mr. Heiser if the name would be changed or the hours expanded. Mr. Heiser said he had a concession agreement with Rock Creek Coffee Roasters, and the name would not be changed. He said they planned to remain low key and just serve beer to their current patrons as it was right now.

Councilmember Ruegamer asked Mr. Heiser to confirm that they would not do a big remodel and turn it into a bar. Mr. Heiser said there were no plans to do that.

Councilmember Gaghen asked if they would only serve beer or if there would be other types of beverages served. Mr. Heiser said it was an all beverage license, and they might have a few liquor choices that would complement the coffee industry. Councilmember Gaghen asked if they planned to expand their menu and operate into the evening hours. Mr. Heiser said they were taking one step at a time, but there was a possibility they would down the road.

- **Don Olsen, 2112 Fairview Place**, said they wanted to make sure the liquor license would not preclude the Babcock from pursuing the same liquor arrangement as the Alberta Bair Theater. Mr. Olsen said as long as they were physically separated from Rock Creek Coffee Roasters with no common restrooms or doorways, the liquor license would not affect them. He said they had no involvement in the liquor license whatsoever. Mr. Olsen said they still planned to do some minor remodeling to the store front, and that was it as far as their involvement. Councilmember Gaghen commended Mr. Olsen on the remarkable strides they were making in the renovation and updating of the Babcock facility.

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

Councilmember Clark moved for approval of Special Review #871 subject to the five conditions, seconded by Councilmember Astle.

Councilmember Ulledalen said he would abstain from the vote. He said he did not have any involvement in it or any interest in it, but said Mr. Heiser offices with him, and he wanted to avoid any appearance of conflict.

On a voice vote, the motion was approved 10 to 0.

5. PUBLIC HEARING FOR SPECIAL REVIEW #872: A special review to allow a sandblasting operation in an existing building in a Controlled Industrial zone located at 2224 Minnesota; legally described as Lots 7-18, Block 134, Billings Original Town. Midland West Manufacturing, owner; PowderKote Unlimited, agent. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.) Nicole Cromwell, Planner II and Zoning Coordinator, explained the special review was as a result of a complaint about sandblasting being done semi outdoors and the dust and noise from the operation. She said the owner and operator of PowderKote was contacted about the complaint, and he was unaware of the fact that they needed a special review application and that air handling and filtering equipment was required. She said the owner had installed the air handling and filtering equipment, and all sandblasting for their customers was moved indoors with the proper filtration. She began her PowerPoint presentation showing the location of the subject property, the interior floor plan of the existing building, and the surrounding properties. She advised the Zoning Commission was recommending conditional approval based on the following seven conditions:

1. The special review approval for sandblasting is for Lots 7-18 of Block 134 of BOT generally located at 2224 Minnesota Avenue and no other special review use is approved or implied by this application.
2. Development of the site shall be in substantial conformance with the site plan submitted with this application and shown in this staff report. Deviations from the approved site plan that show addition of floor area for sandblasting greater than 10% of the existing area or outdoor sandblasting will require additional special review approval.
3. The applicant shall comply with all requirements of state and federal regulations, codes and statutes regarding the operation of the sandblasting business including but not limited to regulations administered by the Yellowstone County Air Pollution Control Board, the Montana Department of Environmental Quality, the U.S EPA and OSHA.
4. All sandblasting conducted on the property shall be conducted within an enclosed building.
5. The applicant shall maintain the property so as to minimize fugitive dust including but not limited to spraying down exterior ground, paved or unpaved, with water or other dust control measures.
6. These conditions of special review approval shall run with the land described in this authorization and shall apply to all current and subsequent owners, operators, managers, lease holders, heirs and assigns.

7. The proposed development shall comply with all other limitations of Section 27-613 of the Unified Zoning Regulations concerning special review uses, and all other City of Billings, regulations and ordinances that apply.

Ms. Cromwell advised there were no letters received or testimony at the public hearing from surrounding property owners, and there had been no further complaints since the original complaint in October.

The public hearing was opened.

- **C.W. McCarthy, 8463 Highway 3, Acton**, said he was the agent for PowderKote Unlimited, and he agreed with all of the conditions of the Zoning Commission. He said he was available to answer any questions.

Councilmember Brewster asked Mr. McCarthy for the size of the pieces he worked on. Mr. McCarthy said his oven was 10 feet wide, 10 feet tall, and 25 feet long. He said he had done numerous trailers and car frames.

Councilmember Gaghen commented that there had been some major problems with sandblasting in other areas that had been a true contaminant problem. She told Mr. McCarthy it was very gratifying to see that he had done all of the necessary things to confine the dust, etc. without more pressure than was necessary.

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

Councilmember Astle moved for approval of Special Review #872 subject to the seven conditions, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

6. PUBLIC HEARING AND SPECIAL REVIEW #873: A special review to allow a drive-through window for Albertson's Pharmacy in a Community Commercial zone adjacent to a Residential 7000 zone, described as Tract A of Certificate of Survey 2192, and located at 1212 Grand Avenue. Albertsons, applicant; CTA Architects and Engineers, agent. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.) Nicole Cromwell, Planner II and Zoning Coordinator, said the item was a proposal by Albertsons to take off the existing, vacant portion of the building that formerly housed the Rite Aid Pharmacy on the west end of the building. She began her PowerPoint presentation showing the location of the subject property and the surrounding properties. She explained that both the CVS Pharmacy and Walgreens located nearby had drive-through windows but were not located adjacent to a residential zone. She explained the property directly across the alley in the back of the subject building was zoned R7000, which was why a special review was required in order to protect the residential nature of the properties. Ms. Cromwell advised that 13th Street West was designated as a collector street, Grand Avenue was designated as an arterial

street, and both had the capacity to handle traffic from the shopping center. Ms. Cromwell advised the site plan submitted by the applicant and agent had been modified by the proposed conditions based on discussions with city departments, particularly the Engineering Division. She said since the property was already covered by rooftop and there were no storm water concerns, the Engineering Division recommended that the proposed storm water retention be eliminated. She said there was a proposal to allow exiting of traffic from the drive-through onto 13th Street West, but it would have allowed a third drive approach onto 13th Street West, and the property did not have enough street frontage to allow three drive approaches. She said because there was an additional concern that alley traffic could interfere with other existing traffic, the plan was modified to eliminate one of the proposed approaches onto 13th Street West, landscape that area along the street, and exit traffic from the drive-through onto the alley. Ms. Cromwell said there was also concern that there may not be enough queuing area for three vehicles waiting to go through the drive-through without interfering with the crosswalk and the existing entryway drive on 13th Street West, so a condition was proposed that there be queuing for at least three vehicles. Ms. Cromwell showed photographs of the subject property and the alley behind Albertsons. She said the alley was heavily used by all retailers in the mall for deliveries and pick-ups on a continuous basis. Ms. Cromwell pointed out the fencing along the adjacent properties and explained that one of the recommended conditions was that Albertsons be responsible for continuously maintaining the site-obscuring fences for the first and second properties off the alley so interference from headlights and traffic from the drive-through would be completely mitigated regardless of ownership of the residential properties. Ms. Cromwell advised the Zoning Commission held a public hearing, and there was no negative testimony from any of the surrounding property owners. She advised the Zoning Commission was recommending conditional approval based on the following seven conditions:

1. The special review approval for a drive through window shall be limited to Tract A of C/S 2192 as shown on the site plans submitted with this application.
2. Any new lighting within the parking lot or drive through areas shall have full cut-off shields so light is directed to the ground and not onto adjacent property.
3. The drive through location shall be constructed as shown on the submitted site plan with the following modifications: 1) the drive through exit shall be to the existing alley south of the building - no new drive approach or exit will be allowed directly on to 13th Street West; 2) the storm water retention pond is eliminated; and 3) the queue for the drive through window shall have enough linear feet for 3 waiting vehicles without intruding on the drive lane and approach from 13th Street West.
4. The applicant is required to continuously maintain and replace as necessary the sight-obscuring fencing that runs along the south boundary of the alley adjacent to the residential properties. This requirement is limited to the first two residential properties south of the alley and east of 13th Street West.

5. There shall be no outdoor public address system or outside announcement system of any kind. The drive through may have an outdoor private address system as standard for all drive through services.
6. Demolition of the existing structure on the property will provide for site security, debris and trash containment, dust control during and after structure demolition, and no demolition work shall occur prior to 8 am or after 8 pm daily. A demolition permit from the Building Division is required.
7. The proposed development shall comply with all other limitations of Section 27-613 of the Unified Zoning Regulations concerning special review uses, all landscaping requirements specified on Section 27-1101, and all other City regulations that apply.

The public hearing was opened.

- **Nicole (inaudible), 344 Holland Drive, Nampa, ID**, said she was the applicant. She said she wanted to state for the record that they agreed with the approval conditions. She said the proposed drive-through and landscaping was definitely an improvement to the site and an added service to Albertson's existing customers.

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

Councilmember Ulledalen moved for approval of Special Review #873 subject to the seven conditions, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

7. PUBLIC HEARING AND FIRST READING ORDINANCE expanding the boundaries of Ward I to include recently annexed property in Annexation #08-09: Property described as Lots 1-3, Block 1, Cereus Subdivision, located on the north side of Midland Road east of the Motor Power Equipment business, including unannexed portions of the I-90 and South Billings Boulevard interchange. Brumar Corporation, owner and petitioner; Bruce Sunwall, representative. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) City Administrator Volek advised there would be no staff presentation, but staff was available to answer any questions.

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

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

8. CITY ADMINISTRATOR CONTRACT with Tina Volek. (Action: approval or disapproval of contract.) Councilmember McCall stated that the contract was for two more years. She said they went through an extensive evaluation process with written evaluations from each of the councilmembers and department heads. She said Ms. Volek

also provided a self evaluation. Councilmember McCall said an evaluation committee was formed made up of Councilmembers Ruegamer, Ronquillo, Astle, and herself, who would be meeting with Ms. Volek on a quarterly basis. Councilmember McCall said Ms. Volek was doing an excellent job overall, they appreciated the work she was doing very much, and they looked forward to working with her in the future. She said there were some items and priorities they were going to work on together.

Councilmember Veis referenced the evaluation summary titled Attachment A and said the last attachment was also titled Attachment A. He asked if they were the same and how they interacted with the contract. Councilmember McCall said the summary was a separate document but part of the evaluation.

City Attorney Brooks said Attachment A was referenced and included in the contract. Councilmember Veis said the first item was Attachment A and the very last item was Attachment A, and asked if they were the same. City Attorney Brooks said they were different, and the reason they were that way was because the staff memo referenced the two attachments. He said the bottom line was that the Attachment A entitled CA Administrator Evaluation Summary for 2008 would be included with the contract and referenced in the contract. Councilmember Veis confirmed that the Attachment A at the end was just part of the staff memorandum. Attorney Brooks said that was correct.

Councilmember Astle asked for clarification that anything behind the signature page was not part of the contract. Attorney Brooks said that was correct if he fully understood the question. Attorney Brooks said all of the provisions of the contract were included in the attachment as part of the contract. Councilmember Astle asked about the quarterly review attachment. Mayor Tussing advised the quarterly review attachment was not technically part of the contract but was what would be used for future evaluation.

Councilmember Brewster said it was not unusual for public administrators to have an evaluation document included as part of the contract so they would have a predictable evaluation document. Mayor Tussing asked Attorney Brooks to clarify if the quarterly review attachment was or was not part of the contract. Attorney Brooks said the document that would be proposed to be included in the contract was the CA Administrator Evaluation Summary for 2008. He said it was in last year's contract and was proposed and intended to be in this year's contract. Mayor Tussing said there was a place he was assuming for the City Administrator to sign at the end of the second Attachment A, which would be the Performance Evaluation Criteria; but no place for the Mayor to sign and asked if it was still part of the contract. Attorney Brooks said it could be proposed to be part of the contract.

Councilmember Veis asked if the Attachment A at the end of the contract was what the committee of four would use to evaluate the City Administrator. Councilmember McCall stated that it was the format used two years ago, it was used again this time, and there was agreement with the committee and Ms. Volek to continue to use that same format yearly. Mayor Tussing asked if the quarterly review would be based on the items that were identified as concerns or issues and not necessarily address all of the items on the annual performance criteria. Councilmember McCall said that was correct.

Councilmember McCall moved for approval of the City Administrator contract with Tina Volek, seconded by Councilmember Ruegamer.

Councilmember Veis said he felt it was not a great idea to only have four councilmembers interacting with the City Administrator. He said he felt there should be a rotation of councilmembers through the evaluation committee not only for the City Council but also for Ms. Volek. He said having interaction with the same four councilmembers may not give Ms. Volek a great picture of how the rest of the council felt. Councilmember McCall said she felt it was a very good idea to do a rotation.

Mayor Tussing said he voted against the contract last year with the five percent raise; but cost of living raises, which had averaged around three percent if not more for employees, had been automatic and Ms. Volek was not asking for that this year nor for any kind of merit raise. He said the second increase in retirement contributions was still contingent upon a satisfactory evaluation before they took effect in 2010. Mayor Tussing said he did not feel the contract was unreasonable, and he would vote in favor of it.

Councilmember Veis asked Attorney Brooks if they needed to change the City Administrator Evaluation Summary for 2008 to reflect a rotation of councilmembers on the evaluation committee. Attorney Brooks said they could, or the minutes of the meeting would reflect the council's intent.

Councilmember Veis moved to amend the City Administrator Evaluation Summary for 2008 document to state that the evaluation committee would not be an ongoing committee but would be a rotating committee of councilmembers, seconded by Councilmember Astle. On a voice vote, the motion to add text for rotation of councilmembers on the evaluation committee was approved 10 to 1. Councilmember Ulledalen voted 'no'.

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

9. 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.)

- **Matt Hagengruber of the Billings Gazette** stated he felt the closed meeting scheduled to be held in Bozeman on January 28, 2009, between MMIA and city representatives regarding the Feuerstein judgment should be an open meeting. He distributed a letter from Martha Sheehy of the Sheehy Law Firm stating that it was her opinion the meeting was subject to the Open Meeting Law. Mr. Hagengruber summarized the content of the letter for those in attendance and the television viewers at the request of Councilmember Ulledalen. Mr. Hagengruber said the Gazette would be looking forward to a response from the city.

Councilmember Brewster asked Mr. Hagengruber if the Gazette would have the same opinion if the city's insurance carrier was a private carrier. Mr. Hagengruber said he was not a lawyer so he could not really say. He referenced the firefighter negotiations during the mediation sessions. He said the firefighters, as a private union, had the right to keep the Gazette out of their private meetings, but they chose to let them in. He said the City chose not to let the Gazette into their private meetings, which the Gazette still contended to have been improper. Mr.

Hagengruber said he felt Attorney Sheehy would be better qualified to answer Councilmember Brewster's question.

Mayor Tussing asked Attorney Brooks to explain why initially the city said discussions with MMIA were not open to the public and then reversed the position and decided that they were. Mayor Tussing asked for the difference in this case. Attorney Brooks advised the Legal Department for the city did not reverse itself. He said the MMIA initially felt that it was not an agency open to the public. He said the MMIA changed its mind, not the city. Attorney Brooks said he had not had a chance to read Attorney Sheehy's letter; but said, by statute, any agencies involved in litigation or potential litigation with each other or in discussions on strategy with respect to litigation had to be open to the public. Attorney Brooks said it was his understanding the General Counsel for MMIA, Stan Kaleczyc of Helena, was fully aware of it and agreed with it. Attorney Brooks said following the meeting that evening, he would fax Attorney Sheehy's letter to Mr. Kaleczyc for his comments. Mayor Tussing said he understood Mr. Hagengruber to say that the city Legal Department said it was not open to the public and asked if that was correct. Attorney Brooks said that was correct in terms of the upcoming meeting. Attorney Brooks commented that reasonable minds could differ over the interpretation of what case law said in Montana. Attorney Brooks said the case law would be reviewed, communication with Mr. Kaleczyc and the MMIA would occur, and they would be in contact with the Mayor and City Council about the matter at the earliest opportunity the next morning. Mayor Tussing asked Attorney Brooks if he would let them know the following morning as soon as possible in case they had questions in an effort to avoid getting sued by the Gazette. Attorney Brooks said he would.

City Administrator Volek advised the council that the item was scheduled for a full discussion at the work session of February 2, 2009. She said any outcome of the meeting in Bozeman would be fully discussed with the council at that time. Mayor Tussing asked if the press would be able to attend. Ms. Volek said it would be an open meeting.

Councilmember Brewster asked if he understood correctly that the insurance company was willing to have an open meeting. Attorney Brooks said he had no idea, and he needed to talk to them. Councilmember Brewster said he thought Attorney Brooks had talked to them about it. Attorney Brooks said he had not in response to Attorney Sheehy's letter because they had just received it right before the meeting. Councilmember Brewster asked if it was the city who was suggesting the meeting should be closed. Attorney Brooks said both the city and MMIA had suggested that the particular meeting in Bozeman be closed and then a report and discussion of strategy would occur in the open pursuant to statute at the February 2nd work session. City Administrator Volek said, at one time, MMIA came to the City of Billings and held a closed session with the City Council. She said, upon later discussion, they determined that they would not do that again because they were a public entity, and two public governing bodies could not have a closed meeting. Councilmember Brewster asked Attorney Brooks if he would contact them after his discussion with MMIA. Attorney Brooks said he would.

- **Kevin Nelson, 4235 Bruce Avenue**, said he strongly encouraged and demanded that the city hold an open meeting on the Feuerstein judgment. He said they had already set a precedent by closing it once and then opening it to the public, so it would be going backwards. He said it was clear by statute, the constitution, and even Montana law reviews dictated the fact that the meetings were to be open to the public. He said current cursory of the District Court docket would not indicate any litigation currently in place, so the city was not impending litigation. Mr. Nelson said he strongly encouraged that both bodies were open for transparency, and the public had the right to view public deliberations in an open format.

Attorney Brooks said he wanted to make it clear that the meetings were of staff and not of the MMIA Board of Directors or the City Council. He said the ultimate decision that the City Council and the MMIA Board of Directors arrived at would clearly have to be made in the public and advice from the attorneys to the respective governing bodies would have to be made in the public. He said it was a staff meeting and not the convening of the quorum of either governing bodies.

Mayor Tussing said he was not even aware the meeting was taking place unless he missed it somehow. Several of the councilmembers said they knew of the meeting. City Administrator Volek advised that several councilmembers had inquired and were told about it.

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

Council Initiatives

There were no Council Initiatives.

- **Councilmember Ulledalen** said council was receiving e-mails of support for the Sahara Park Master Plan. He said he was under the impression that Harvest Church was going to deliver \$5,000,000 to the City to build a swimming pool. He said Mr. Whitaker had suggested that the plans they presented were for almost a \$7,000,000 facility, and he had heard they had pledges of less than \$2,000,000. Councilmember Ulledalen said he felt that before the city got too far down the road with the process, the city should see the money and have some idea of what they were realistically trying to present. He said he did not want a lot of work done only to find out later there was not the amount of money implied. City Administrator Volek advised that Mr. Whitaker was not present that evening and that she would try to answer a question or two. She said the staff held a public meeting about the proposed Sahara Master Site Plan and presented a drawing that the Better Billings Foundation had paid to have drafted. She said there was considerable concern at the public meeting about other options for the park, so the Better Billings Foundation created a second master plan for the park that did not include the facilities. Ms. Volek said there was an indication from the Better Billings Foundation that they intended to build a pool; but the question was where. She said they had a location of their own. She said they felt the Sahara

Park site was less exposed to wind and was less high a point, so they would prefer that location. Ms. Volek said they had originally talked with the city about Castlerock Park, and the city had proposed Sahara Park as an alternative. Ms. Volek said staff received very clearly from the City Council at the work session in which the topic was discussed that before pledges were taken, the City Council needed to see the plans and some alternative plans, and they should be cautious in undertaking too much of a fundraising effort. Ms. Volek said she did not know the current status of their fundraising, and said they were to come back to the council at the last work session in February to discuss the issue. Mayor Tussing said he thought they were going to build the pool rather than give the city the money to build the pool. Ms. Volek said she did not know if those exact details had been worked out, and it was another charge to staff from the council to come back with an agreement. Councilmember Ulledalen said part of the problem was that it was not clear. He said his point was that he was hearing they had less than \$2,000,000 in pledges, and they were implying that they had \$5,000,000 for the city. He said they needed feedback, and the February meeting would be fine. Councilmember Ulledalen said, at some point, the city should see the money and not be "whipped around" over something that may not be financially feasible where staff and council ended up doing a lot of work for something they did not have the money for.

- **Councilmember Veis** asked if staff had made any progress on having the budget sessions held in the council chambers so they could be televised. City Administrator Volek apologized and said she had not made any progress, but she would have a report on it by the next work session.
- **Councilmember Ruegamer** said he agreed with Councilmember Ulledalen that they needed to see the money for the pool. He said one of the things that concerned him was that the more it cost, the more it would cost to maintain. He said they needed to know all of that before they started building something or gave the city money. Councilmember Ruegamer said it really needed a lot of study. Councilmember Brewster said he felt it would be appropriate for a couple council people to sit down and find out what the facts really were and what their intentions were. He said there was a desire for the facility in the Heights, but whether people would pay for it was another issue. Councilmember Brewster said if the council wished, he and Councilmember Pitman would sit down with them and ask what their intentions were, what they were going to do to move forward, what their timeframe was, and what they thought would happen. Councilmember Ulledalen said if they were coming back in February, it was close enough for him, but he was hearing less than \$2,000,000 in pledges, which was a big difference in having a tangible number to work for moving forward. Councilmember Brewster said the last time he had talked to them, they indicated they had \$2,500,000 on hand; but it still would not build an \$8,000,000 pool. Councilmember Pitman said it was important to remember it was the master plan and not the construction of the pool. He said it was just the concept and what possibly could go into a park. Councilmember Pitman cautioned about putting the

cart before the horse. Councilmember Brewster said he had questions for the Parks Department about the park and why they chose it, and said he looked forward to talking to them at the work session.

ADJOURN - The meeting adjourned at 7:52 p.m.