REGULAR MEETING OF THE BILLINGS CITY COUNCIL
September 28, 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 Ronquillo gave the invocation.

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

MINUTES – September 14, 2009, approved as presented

COURTESIES – None

PROCLAMATIONS – None

ADMINISTRATOR REPORTS – Tina Volek

- Ms. Volek advised Channel 7 was back on the air and broadcasting the meeting live that evening.
- Ms. Volek referenced Agenda Items J1, J2, and 2. She said staff had been advised that the interest rate would be changing on the Intercap Loan. She asked Council to postpone Items J1 and J2 until the meeting of 10/13/09, and to open the advertised public hearing on Item 2 and continue it to the meeting of 10/13/09.
- Ms. Volek referenced the article in Monday's Billings Gazette regarding the potential topic involving the pool at Sahara Park. She said there were 23 separate individual comments sent to Council and staff on the councilmembers' desks and in the ex-parte notebook in the back of the room.

Councilmember Veis said he thought the East End Annexation Agreement was scheduled to be on the agenda that evening. He said it was very structured, and he thought this meeting was when the Council was to 'give its blessing.' Councilmember Veis said the time in the resolution would need to be adjusted. Ms. Volek advised she would work with Mr. Connell, make the adjustments, and bring it to Council at the next meeting.

PUBLIC COMMENT on "NON-PUBLIC HEARING" Agenda Items: 1 and 2 ONLY. Speaker sign-in required.
(Comments offered here are limited to 1 minute per speaker. Please sign up on the clipboard located at the podium. Comment on items listed as public hearing items will be heard ONLY during the designated public hearing time for each respective item.)
(NOTE: For Items not on this agenda, public comment will be taken at the end of the agenda. Please sign up on the clipboard located at the back of the room.)

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

CONSENT AGENDA:

A. City Council Electronic Communications and Usage Policy.

B. Mayor Tussing recommends that Council confirm the following appointments:

	Name	Board/Commission	Term	
			Begins	Ends
1.	Bill Lamdin	Library Board	9/28/09	12/31/11
2.	Daniel Lewis	EMS Commission	9/28/09	12/31/09

1. Unexpired term of Jean Warner
2. Unexpired term of Dr. John Kominsky

C. Bid Awards:

1. **Snow Plow Blades for Airport** (Opened 9/15/09) Recommend Wausau Everest, $55,974.

D. Approval of Scheduled Airline Operating Permit with Compass Airlines, Inc.

E. Amendment #3 to Scheduled Airline Operating Agreement with Horizon Air Industries, Inc., extending the expiration date to June 30, 2010; $2,659,909 revenue for FY2010.

F. Amendment #3 to Scheduled Airline Operating Agreement with Horizon Air Industries, Inc., extending the expiration date to June 30, 2010; $2,659,909 revenue for FY2010.

G. Change Order #1, Well Pump Replacements at the Wastewater Treatment Plant, Star Service, $27,500, and extending the contract by 60 days; and **authorization for the City Administrator** to approve up to $10,000 of additional changes.

H. Declaring surplus property and authorizing the Police Department to transfer a 1981 Ford Parcel Delivery Van to the Laurel Police Department.

I. Declaring surplus property and authorizing the Police Department to transfer a 1981 Ford Parcel Delivery Van to the Laurel Police Department.

J. SID 1387, Zimmerman Trail Subdivision Sanitary Sewer

1. **SID 1387, Zimmerman Trail Subdivision Sanitary Sewer**, (Opened August 25, 2009) (Delayed from September 14, 2009) Recommend Four Beers, Inc., dba Stillwater Excavating, $87,163.

2. **Approval** of submission of Intercap Loan Program application for financing SID 1387, Zimmerman Trail Subdivision Sanitary Sewer, $80,500.

K. __Street Closures:__

1. **Billings Central High School's Homecoming Parade** - October 3, 2009, 5:15 p.m. to 6:30 p.m.; Wyoming Avenue to Division Street, west on Broadwater to 5th Street West, and north on 5th Street West through Grand Avenue to the parking entrance behind Senior High School.

L. **Approval and acceptance** of the State Highway Traffic Safety Billings STEP Overtime Grant for traffic enforcement funding, October 1, 2009 - September 30, 2010, $15,000.

M. __Bills and Payroll:__

1. **August 28, 2009**
2. **September 4, 2009**

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

Mayor Tussing separated Items 1J1 and 1J2, and Councilmember Veis separated Item 1A. Councilmember Clark moved for approval of the Consent Agenda with the exception of Items 1A, 1J1 and 1J2, seconded by Councilmember Astle. On a voice vote, the motion was unanimously approved.

Councilmember Clark moved for approval of Item 1A, seconded by Councilmember Ruegamer. Councilmember Veis said he was not able to be at the August 17th work session, so he had questions for Attorney Brooks. He referenced the "Policy" section in Attachment A, which stated "Council Members are prohibited from engaging in any electronic communications with any other party during Council meetings" and asked if he would be in violation of the agreement if he took a phone call from his brother during a council meeting on an issue not related to Council business. Attorney Brooks advised he would not be in violation, and said they had talked about the rare, but likely, occurrence where a family member or something important unrelated to the council meeting would require a councilmember to take a call during the council meeting. Attorney Brooks said it would be appropriate for the councilmember to advise the presiding officer ahead of time that he or she may receive an important call during a meeting that could not be delayed. He said it was staff's consensus that it would not be a violation of the policy. Councilmember Veis said it was not expressly written. Attorney Brooks said it could be added. Councilmember Veis said the policy needed to be very explicit to avoid confusion in the future. Attorney Brooks said it was Council's policy, and they could add anything to it that they felt was necessary. Councilmember Veis made a substitute motion to delay action for two weeks in order to work on specific language, seconded by Councilmember Brewster. Mayor Tussing said he did not think the delay was necessary. Councilmember Pitman said he felt it would be just as easy to incorporate the language that evening. On a voice vote, the substitute motion to delay passed 7 to 4. Councilmembers McCall, Gaghen, Pitman and Mayor Tussing voted 'no'.

Councilmember Clark moved to delay Items 1J1 and 1J2 until October 13, 2009, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.

__**REGULAR AGENDA:**__

2. __**PUBLIC HEARING AND APPROVAL OF RESOLUTION making original spread assessment on SID 1387, Zimmerman Trail Subdivision Sanitary Sewer. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**__ Ms. Volek advised there was no presentation and said staff recommended that, because the public hearing had been advertised, the public hearing be opened and continued until October 13, 2009.

The public hearing was opened. There were no speakers.

Councilmember Astle moved to delay action and continue the public hearing until October 13, 2009, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.

3. __**PUBLIC HEARING AND RESOLUTION #09-18880 setting FY2010 mill levy rates for the Public Safety Fund, General Obligation Debt Service Parks, General Obligation Debt Service Streets, and General Obligation Debt Service Baseball Stadium. Staff recommends approval. (Action: approval or disapproval of staff recommendation).**__ Ms. Volek advised there was no staff presentation, and staff was available to answer questions.

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

Councilmember Ulledalen moved for approval, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

4. __PUBLIC HEARING AND RESOLUTIONS **levying and assessing FY2010 assessments:**__

a. **Encumbrances, Obstructions, or Encroachments on, over, across or above the streets, avenues, sidewalks, or alleys of the City of Billings.**

b. **Cost of cutting and/or exterminating weeds.**

Staff recommends approval. (Action: approval or disapproval of staff recommendation).

Attorney Brooks advised one public hearing could be held with the speakers identifying for which item they were testifying. Ms. Volek advised there was no staff presentation for Item 4a., but Ms. Beaudry had a short presentation for Item 4b.

Ms. Beaudry said they had a 93% compliance rate for weed assessments in 2009 compared to 88% last year. She said last year a private contractor mowed the weeds, and this year the Parks Department was hired for the mowing. Ms. Beaudry advised the number of complaints received and the number of properties that needed to be cut had decreased from last year. She said a lot of the bills had already been paid by property owners, and she only had to void nine bills due to confusion on addresses. She added that she reduced the amount of one bill because it was incorrectly charged. Ms. Beaudry advised Council would be approving the assessment on 62 properties that evening, down from 104 the previous year.

Councilmember Ulledalen asked how this year's assessments compared to last year's in terms of how many properties were actually assessed because the list last year was a lot longer. He said some of the names on the list were the same, and asked if the charges for some were for more than one mowing. Ms. Beaudry advised they were typically only for one mowing.

Councilmember McCall asked if there were fewer complaints from property owners who received bills for mowing. Ms. Beaudry advised there had been fewer complaints about the billing. She said she could count on one hand the number of complaints this year as compared to the dozens received in past years. She said the reduction in the charges removed a lot of issues, and they had a very good system of taking before and after pictures.

Councilmember Gaghen asked Ms. Beaudry to discuss the comparative costs per individual for this year compared to last year. Ms. Beaudry advised the average bill last year was $525, and the average this year was $350.

The public hearing was opened.

- **Jerry Wolf, 2108 Clubhouse Way,** said he owned the property for ten years and he wondered why his lot was always flagged for mowing. He said he mowed the weeds every year and paid his taxes every year. He said this year he was out of town and when he went to mow the weeds, the City had mowed them the day before. Mr. Wolf said it usually took him an hour and a half to mow the property with a push mower, and he was billed $631.25. Mr. Wolf said he tried to rezone the property at one time, but was shot down. He said he felt his lot was singled out every year.

  Councilmember Ulledalen advised that someone had to specifically complain about the weeds on his lot. Mayor Tussing asked Mr. Wolf if it was the first time he had been billed. Mr. Wolf said it was the first time he had been billed because he had always cut the weeds. Mayor Tussing asked if he had spoken to anyone at the Planning Department prior to the meeting. Mr. Wolf said he had not, but received a letter about the meeting and that was why he was there.

  Councilmember Ruegamer asked Mr. Wolf if his complaint was about the amount billed. Mr. Wolf said he wanted to know when it started and when it ended, and if it was only because someone complained. Councilmember Ruegamer told Mr. Wolf it was complaint driven, that the City was not in the business to mow other people's weeds, and it was expensive to drive to his property out in the Heights and mow the weeds and come back.

  City Administrator Volek said she felt Mr. Wolf had asked two questions. She said from May 1 to September 30 all property owners had an obligation to keep their vegetation below 12 inches, but the City only mowed when a complaint was received. Mr. Wolf said he had mowed the weeds for ten years, and this was the first year he missed.

  Councilmember Pitman asked Mr. Wolf if he only mowed once. Mr. Wolf said he mowed it again after the City mowed it.

  Mayor Tussing asked Mr. Wolf if he had received the letter but was out of town and by the time he went to mow the weeds, the City had already mowed them. Mr. Wolf said that was correct.

  Councilmember Gaghen asked when the letter was mailed to Mr. Wolf. Ms. Beaudry advised the notice was sent on June 1, 2009, he was given until June 11th to mow the weeds, and the City mowed the weeds on June 19th.

There were no other speakers, and the public comment period was closed. Councilmember McCall moved for approval of Item 4a, seconded by Councilmember Ruegamer.

Another speaker appeared at the podium to testify on a weed assessment and said he did not hear the Mayor close the public hearing.

Councilmember Astle moved to reopen the public hearing, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.

The public hearing was reopened.

- **James Hogan, 4145 Vaughn Lane,** said he received his notice during the last day of two and a half weeks of daily rainstorms. He said the day after it dried, it was mowed; and the next thing he knew he received a bill for $380 for mowing weeds that were not on his property. He said the weeds the City mowed were in the alley behind his property.

  Mayor Tussing asked if the weeds on Mr. Hogan's property did not need to be mowed. Mr. Hogan said the City did no mowing on his property whatsoever.

  Ms. Beaudry advised adjacent property owners were required to maintain the alleyway up to the centerline of the alley. She said the alley was 20 feet wide, so a property owner would be responsible for 10 feet. She said it was similar to the property owner being responsible for the sidewalk and boulevard in front of the property.

  Mayor Tussing asked Ms. Beaudry if she had documentation that the weeds in the alley were mowed. Ms. Beaudry provided pictures. Mr. Hogan referenced the picture of the entire alley and said only he and one other property owner were assessed. Ms. Beaudry said there were several properties noticed and two property owners complied with the notice. She said parts of the alley were taken care of before the City got out there. Ms. Beaudry showed before and after pictures of the weeds that were mowed. Councilmember Astle said he felt Mr. Hogan was stating that no one came onto his property to mow weeds. Ms. Beaudry said they only mowed the alley. Mr. Hogan said he sprayed the weeds in the alley every year because there was too much debris to use a lawnmower. Councilmember Gaghen asked if the Solid Waste Division used the alley for garbage pick-up. Mr. Hogan said it did not. Mayor Tussing asked Mr. Hogan if he received a notice to cut the weeds. Mr. Hogan said he received the notice, but Billings had received so much rain, it was too wet to mow. He said the day after it stopped raining, he mowed the weeds in his yard and sprayed the weeds in the alley. Mr. Hogan said the letter he received from Mr. Vegge specifically said the weeds on his property, not in the alley. He said that right after that he was assessed $380. He pointed out that the alley of the neighbor directly behind him on the right-hand side of the picture could not be mowed because of a huge pile of garbage. Councilmember Astle asked Mr. Hogan if he was aware that it was complaint driven so someone complained about his weeds. Mr. Hogan said he felt it was strange that of the five houses on that street, only two houses received assessments. Mr. Hogan asked who filed the complaint. Councilmember Astle advised Council did not have access to that information.

  Mayor Tussing asked Ms. Beaudry what would happen if a complaint was received and the person contacted her office to say he wanted to mow the weeds but had been unable to because it had been raining. Ms. Beaudry said an extension would be granted. Councilmember Ruegamer asked what happened if a complaint was received about weeds in an alley behind one house and when the code enforcement officer went to check, the weeds were high all the way down the alley. Ms. Beaudry explained that notices would be issued to everyone, which was the case in that situation, where one complaint was received for one property, but all the properties were noticed, and some of the properties came into compliance. Councilmember Ronquillo asked if that was a public right-of-way. Ms. Beaudry said it was. Councilmember Ronquillo asked if it had been mowed in prior years. Ms. Beaudry said she did not know. Councilmember Ronquillo asked who took care of the public right-of-way. Ms. Beaudry explained that adjoining property owners were responsible for the ten feet adjoining their property in the alley, and in the front, they took care of the boulevard behind the curb line. Councilmember Ronquillo said he still did not understand why the homeowner had to take care of that. Mr. Mumford advised that it was a City Code requirement.

Councilmember Gaghen asked if Mr. Hogan was saying that the property to the right of the marker on the photo belonged to the neighbor. Mr. Hogan said that was correct. Mr. Hogan said the picture showed that the weeds had been sprayed, but the City did not give him enough time to let them drop all the way down before he could cut them. Mayor Tussing asked if he was saying that he never received a letter from the City that said he had to cut the weeds. Mr. Hogan said he did not receive one for the alley. He said the only letter he got was for his property and by the time he got it, all the weeds had been taken care of on his property and the weeds in the alley had been sprayed. Mayor Tussing asked if Mr. Hogan was saying that he did not understand that the letter he received made it necessary for him to mow the alley. Mr. Hogan said nothing in the letter referred to the alley. Mayor Tussing asked Ms. Beaudry to comment on that because he could see that it could be confusing. Ms. Beaudry said it did not mention the alley specifically, just the property. Mayor Tussing asked if others voluntarily mowed the alley because they understood that the notice they received concerned the alley. Ms. Beaudry said they did. She said that generally, if it was not obvious what needed to be mowed, it was indicated in the notice, but it was not done in Mr. Hogan's case. Mayor Tussing said he would probably have called the City to ask what the notice was for if he did not think he had weeds that needed to be mowed, and asked Mr. Hogan if he considered doing that. Mr. Hogan said that in the time it took to get the letter to him, his property was mowed and he felt that he took care of what the letter meant. Mayor Tussing asked if he had weeds on his property and thought that was why he received the notice. Mr. Hogan said that was correct.

There were no other speakers, and the public hearing was closed. Mayor Tussing advised that since a vote was not taken prior to reopening the public hearing, he would like Councilmember McCall to remake her motion. Councilmember McCall moved for approval of Item 4a, seconded by Councilmember Ruegamer. On a voice vote the motion was unanimously approved.

Councilmember McCall moved for approval of Item 4b, and a waiver of the assessment to Mr. Hogan, seconded by Councilmember Ronquillo. Councilmember Ruegamer said he would vote for it because it was obvious that Mr. Hogan did what the notice said and it was not clear. He said ignorance was no excuse for the law, but even he was not aware that he had to maintain his alley. He said it was obvious that Mr. Hogan poisoned the weeds in the alley and was confused about what he was supposed to mow. On a voice vote, the motion was unanimously approved.

5. **PUBLIC HEARING for the FY2009-2010 Draft Comprehensive Annual Performance Evaluation Report (CAPER) Community Development Block Grant (CDBG) and HOME Programs.** Community Development Manager Brenda Beckett provided a brief overview of the Draft Comprehensive Annual Performance Evaluation Report. She explained that budget allocations primarily funded programs that provided home repair improvements, first-time homebuyer assistance, and affordable housing development. She said that included an additional $116,000 in older funding that the Council approved for the Housing Authority of Billings for infrastructure in the Lake Elmo Subdivision.

Ms. Beckett reviewed Consolidated Plan strategies and how the funding was allocated. She said this was a banner year for new affordable housing and existing affordable housing projects. She reported that over $6 million was leveraged for the last year, which was a 1:4 leveraging ratio for CDBG and HOME programs.

Ms. Beckett's PowerPoint presentation included photos of housing rehabilitation projects, homes purchased through the First-Time Homebuyer Program, and new and upcoming affordable housing opportunities.

Ms. Beckett reviewed the partnerships with non-profit groups, neighborhood groups, and others to address housing, community and neighborhood needs. She stated that total grant funding outside of the CDBG funds was $1.2 million.

The public hearing was opened. There were no speakers and the public hearing was closed. Ms. Volek advised that no further action was needed on the item.

6. **PUBLIC HEARING FOR SITE DEVELOPMENT ORDINANCE VARIANCE # OP-09-03. A variance from Section 6-1203(a) and Section 6-1203(j) allowing a reduced number of off-street parking spaces at an existing building to be occupied by Yellowstone County Council on Aging, Inc. at 1505 Avenue D, Lots 20 – 24 & 23A, Amended Block 8, Partington Park Subdivision, 8th Filing, generally located on the northwest corner of Avenue D and 15th Street West. Yellowstone County, owner, Schutz Foss, agent. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** Ms. Volek advised that staff did not have a presentation, but was available for questions.

The public hearing was opened.

- **Allen Rapacz, President of Schutz Foss Architects**, said he was present to explain Phase I of the building at 1505 Avenue D which consisted of remodeling upstairs offices. He advised that Phase I was completed a few months ago and Phase II was beginning, which triggered a change in use of the property. He said the site permit had 45 parking spaces and the change in use required 62 spaces. He explained that with additional handicapped parking spaces and some other changes, there were 44 available parking spaces. He said he supported the variance mainly because the primary user group was senior citizens that were less impacted with parking and vehicle traffic. He advised there was an agreement with a taxi-cab service to provide transportation for the residents to the facility, in addition to MET transportation and transportation provided by staff.
- **Joan Kimble, 910 Maywood,** said she was there to present a letter from the Executive Director of the Yellowstone County Council on Aging who was unable to be there. Ms. Kimble read a letter of support from Bea Ann Melichar, and explained the services provided to residents.
- **Bill Kennedy, 902 Parkhill Drive,** thanked the Council, Ms. Volek and staff members that had visited the facility and provided assistance with areas that needed work. He said the YCCOA had made sure the new kitchen was on track with the requirements. He explained that the YCCOA served all the meal sites in the City and around the County, but all of the meal sites were served through the kitchen in Laurel. He said they were anxious to get the kitchen up and running in the new building and to move the meal site to that facility on Avenue D. He reported that they were working with neighborhood businesses regarding parking and did not plan on any congestion in that residential area. He said they were anxious to get the project started. He asked for approval of the variance.
- **Diane Boyet, 1534 Forest Meadow Place**, said she was a volunteer board member of the Yellowstone County Council on Aging and also wanted to acknowledge the support and assistance from the City administration and

staff from other departments. She stated that the mission of the Council on Aging was to provide services to senior citizens throughout the City and was committed to ensuring the safety and well-being of everyone who visited the office, and to provide safe and convenient parking. She said the YCCOA hoped that with the reciprocal parking agreements with the neighboring businesses that the City Council would vote in favor of the variance.

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

Councilmember Ruegamer moved for approval of Item 6, seconded by Councilmember McCall. Councilmember Clark said he would support the variance. He said he visited the facility and there were a lot of issues that they worked on and all were taken care of except that one. He said there was a lot of extra parking around the facility and he did not think parking would be a problem. Councilmember Gaghen mentioned that with the reciprocal agreements in place, there should not be a negative impact on area residents, and she felt it was practical to grant the variance. Councilmember McCall stated she thought it was a good thing to support and was a long-time coming. She congratulated the Council on Aging for finding its dream home. On a voice vote, the motion was unanimously approved.

7. **2010 UNIFIED PLANNING WORK PROGRAM (UPWP) for the Billings Metropolitan Planning Organization. Staff recommends approval of the Draft 2010 UPWP and authorizing the Council designee to take the recommendation to the Policy Coordinating Committee (PCC) meeting on September 29, 2009. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** Ms. Volek advised that the item was a topic of one of the most recent work sessions and staff did not have an additional presentation that evening, but could answer questions. Councilmember Veis moved for approval of the 2010 Unified Planning Work Program, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

8. **PUBLIC COMMENT on Non-Agenda Items -- Speaker sign-in required.** ***(Restricted to ONLY items not on this printed agenda; comments limited to 3 minutes per speaker. Please sign up on the clipboard located at the back of the Council Chambers.)***

The public comment period was opened.

- **Jim Thompson, 609 Aronson,** said he understood the Council might consider an initiative to reopen the extension on the pool project at Sahara Park due to the flurry of emails received during the last week. He commented that it seemed nobody was concerned with the residents and what it would be like in the neighborhood after the pool was built. He said the neighborhood came up with a plan for a neighborhood park with a wide margin over the current pool. He stated that during the discussion, it was indicated that the pool was for the kids but if that was the case, it should be more centrally located than in the Heights, and if it was to be used by the schools, it should be located closer to the schools, yet the proposal seemed to be opposite that. He referred to a newspaper article that stated that the Harvest Church and the Foundation had been working on the project since 2004, and as far as he knew, this was the third change to the project. He said the first proposal he knew of was that the church planned to build the pool on its land and would offer use of it to the community, then the second proposal was that the City would donate the park land to the church and once the pool was built, it would be donated back to the City, and the latest change he heard was that the church would operate it with the City paying the utilities. He said it seemed like the church had five and a half years to get organized and come up with a plan compared to what they had up to this point. He asked if the Council would give the same consideration to another developer that wanted to use the land. He commented that it seemed like the City was bending over backwards to let the church and foundation build a pool in the neighborhood. He said the neighborhood had recently been disrupted with the two projects that opened Aronson Avenue to Alkali Creek, and then when it was continued under the underpass. He added that those projects increased the traffic flow on Aronson without much consideration to try to control the traffic problem in the neighborhood. He said another disruption was not needed.
- **John Brewer, 815 S. 27th Street, Billings Chamber of Commerce Convention and Visitor Bureau,** said he was present to express support for allowing the extension to Better Billings Foundation to explore building an aquatic facility at Sahara Park. He said the Council's great work of conducting the recent recreation needs assessment and citizen survey and taking the results back to the community through the community sessions was much appreciated. He stated that the feedback from those sessions emphasized the public's strong desire to improve trails, green space and facilities such as pools, rest areas, and shelters. He said it was also clear that the citizens were concerned with revenue shortfalls in the City's budget. He suggested considering three points: 1) the need for a community facility and seasonal pool in the Heights was identified in the 2006 Master Plan; 2) following the demolition of the downtown pool to make room for Dehler Park, it was understood that a community pool should be built elsewhere; and 3) without a local option tax or other funding mechanisms, those projects would fall back on the property owners via property taxes. He said if those facilities were going to be built and residents were asking for them, the City should consider options that did not require bonds or other property tax increases. He stated that if the option to do that without any cost to the City was on the table, adequate time should be allowed to understand the options because he knew the Council's desire was to see the best outcome for the project for the community. He said through his involvement with the Chamber and the Better Billings Foundation, he knew that all parties' passions were for the betterment of Billings; there were no hidden agendas, it was just a civic organization trying to make Billings a better place to live. He encouraged an extension to develop a plan to build a free pool for the citizens of Billings.
- **Alex Tommerup, 170 Erickson Court,** testified that he lived about six blocks from Sahara Park and looked forward to taking his future grandchildren to that park. He stated that there was an advantage to the location due to the soil conditions, that the wind would typically blow the sounds away from the neighborhood, and because it was easily accessible from other parts of the City. He reported that during the six month period following the Council's approval of Plan A, the consultants were contacted to complete a feasibility study and a business plan was prepared for the project. He said the $4.5 million project was basically designed and ready to go at that point. He encouraged support of the project.

  Councilmember Astle asked Mr. Tommerup if he was on the Board. Mr. Tommerup responded that he was the architect for the project. Councilmember Ulledalen asked when the start of construction was anticipated since it was stated that it was designed and ready to go. Mr. Tommerup said there would probably be a two-month period to allow submission of the necessary construction documents for review before construction could start. Councilmember Ulledalen asked if they had funding for the project. Mr. Tommerup advised that he could not speak to the funding. Councilmember Ruegamer asked if a business plan had been developed. Mr. Tommerup responded that it was part of the feasibility study and Mr. Barthuly could speak about it. Councilmember Brewster asked Mr. Tommerup if he was saying it could begin when the funding was ready and it would take three months to begin. Mr. Tommerup advised that he was ready to go when he was told to start working on the documents. Councilmember Gaghen said that although Mr. Tommerup indicated he could not address the funding structure, she asked if he had any projection about how long it would take to have the pool ready for use after the funding was in place. Mr. Tommerup advised they hoped to have the facility ready to open right after school dismissed for the summer. Councilmember Gaghen asked what year. Mr. Tommerup said he did not know and someone else would have to speak to that.

Councilmember Pitman asked Mr. Tommerup if he had been actively working with the City. Mr. Tommerup responded that they had worked with the Parks and Recreation Department and Engineering Department and the consultants had been working with the City as well. Councilmember Astle asked how long it would take to construct the pool from start to finish. Mr. Tommerup responded that it would probably take about 12 months, and it depended on weather conditions.

- **Todd Preston, 2620 Highwood Drive,** began his testimony by thanking Councilmembers for their service. He said he was not a member of Harvest Church but was a Board member of Better Billings Foundation and was a co-chair of the fundraising committee. He offered assurance that the Board was fully committed to raising the needed funds. He said a professional fundraising consultant was hired, and in order to encourage community support, several community leaders had been asked to become part of the fundraising committee. He stated that Sam McDonald agreed to serve as Honorary Chairman of the fundraising committee. He said that 500 families had made a financial commitment totaling $2.2 million, of which $800,000 had been received, with the remaining pledges expected within the set timeline. He said the fundraising committee was ready to launch a capital campaign to raise the remaining funds needed, but to do so required a specific location. He said discussions had begun with business owners and individuals who were interested in contributing, but again, a specific location was needed before commitments were made. He explained that several major grant requests had been drafted, but could not be submitted without a determined location. He noted that Sahara Park was the most attractive location.

  Councilmember Astle asked who the other co-chair was. Mr. Preston advised it was Pam Ask.
- **Chuck Barthuly 300 Eastlake Circle**, stated he was the Executive Director of the Better Billings Foundation. He said he hoped the previous testimonies in favor of the extension provided a context for the Council to consider a proposed initiative to grant an extension for Plan A of Sahara Park Master Plan. He said he continued to be optimistic that a partnership with the City was the best way the Better Billings Foundation could build an aquatic facility that would benefit the entire city. He shared a story about a woman that came to his office after the previous Council meeting and contributed $1,000 to the pool project. He said she indicated that if 1000 other people believed what she did and donated what she did, they would have $1 million for the project. He noted that she also indicated she hoped to do that two more times. He said he had conversations with many individuals that wanted to see that happen and in respect for Council's time, he asked the members of the audience that were in support of the project and in support of granting an extension to the six month timeline to stand. He also presented a petition signed only by neighbors that would be involved in an SID for Sahara Park if Plan B of the master plan was implemented and funding was needed.

  Councilmember Brewster asked if the petition meant that those residents did not support a neighborhood park portion. Mr. Barthuly said the petition just said that the people that signed it supported Master Plan A. Councilmember Brewster asked what kinds of things would be changed in the agreement that would be presented between that night and two weeks from then. Mr. Barthuly responded there were creative ideas that needed to be discussed so he hoped the extension was approved to be able to iron out some details. He said he believed that the Council would see there were good plans in place to alleviate some of the concerns if a development agreement was reached.

  Councilmember Pitman asked if he believed something solid would be presented for discussion within the time period if the extension was granted. Mr. Barthuly answered that he did. He explained that the land needed to be surveyed because they did not want the entire park; a portion of it would remain for development of a neighborhood park. He said there were creative solutions that needed to be discussed and he felt there were ideas to address some of the concerns. Councilmember Pitman asked if part of the reason for the extension was that it had to go back to the Park Board. Ms. Volek advised that it was her understanding that it did not, and asked Mr. Whitaker to report on the Park Board recommendation. Mr. Whitaker reported that the Park Board recommended moving the project forward, and when it did, the Board wanted to see the agreement. Mayor Tussing asked how much of an extension would be needed by staff, including the Legal Department, to determine the method of leasing or selling the land if that was decided. Mr. Whitaker stated that staff had discussed it and felt 60 days would be adequate time to move forward with a recommendation. Mr. Brooks said he agreed with that.

  Councilmember Ulledalen asked Mr. Barthuly what comments Harvest Church and Better Billings Foundation had for the neighbors that opposed the idea. Mr. Barthuly said the neighbors requested a neighborhood park and only a portion of the park was identified for the aquatic components, which left a considerable amount of land for a neighborhood park. He said most of the concerns seemed to be related to traffic. He explained that the aquatic portion of the park would be a seasonal facility open three months of the year. He said the feasibility study indicated about 500 patrons there on an average day and if 400 showed up by car, that was an average of ten cars per hour.

  Councilmember Gaghen said she had anxiety about a 60-day extension that went to the end of November, due to anticipated changes in the Council seats that would occur with the election. She said the current Council was best equipped with the background information to deal with the final decision that had future ramifications.

  Councilmember Astle said he was confused about whether the Better Billings Foundation was part of the Harvest Church. Mr. Barthuly responded that legally the Foundation was a separate 501(c) entity. He said the vision and mission came from the Harvest Church Pastor. Councilmember Astle referred to Mr. Barthuly's statement that the aquatic portion of the park would be open three months and asked what other portion was there. Mr. Barthuly said a pool house was part of the design along with a 3500 square-foot community gathering place that would be available for community gatherings. He said that facility would include a kitchen and a meeting room.

  Councilmember Pitman asked how the project got to Sahara Park from the Harvest Church land. Mr. Barthuly explained that when he started as Executive Director of Better Billings Foundation, he saw successes with public/private partnerships with the City and was encouraged to pursue that avenue. He said discussions with the Parks Department indicated bond issues would be proposed for other projects and there would not be a timely opportunity for that proposal, so other locations were considered. He said other potential locations were identified, but Parks Department staff and others did not feel those would be good locations and when Aronson was to be opened, it was determined Sahara was a better location.

  Mayor Tussing said he appreciated Mr. Barthuly's consideration to not have repetitive testimony even though everyone was welcome to come up and talk. He asked Mr. Barthuly if he knew how many people stood up in support of Plan A. Mr. Barthuly said he did not. Mayor Tussing said he quickly counted at least two dozen and wanted the record to reflect at least 25 or so.

Councilmember Pitman asked how many times the neighbors had tried to develop the park since it was established in 1975. Mr. Whitaker advised that he had not found any records of the neighborhood moving forward in the past, but there was a current group that had contacted staff and requested information. He said the group was talking with the neighbors to determine if there was enough interest to move forward.

Councilmember Ulledalen asked Mr. Whitaker about expected annual costs and funding to pay those expenses. Mr. Whitaker responded that the current proposal was that the Better Billings Foundation would operate it and the City would not subsidize it. Mayor Tussing asked about the water. Mr. Whitaker said that the Foundation intended to pay all utilities. Mr. Barthuly said the Foundation wanted to partner with the City on the water, but if that was a problem, the Foundation would pay for it as well. Councilmember Clark asked if that area was on City water. Mr. Barthuly said it was. Councilmember Brewster asked Mr. Barthuly if any outreach had been done with the neighbors. Mr. Barthuly said he had attended two Heights Task Force meetings, and had numerous phone conversations with people. He said traffic seemed to be the major concern, but he did not have a solution for that problem.

- **Samantha Morris, 491 Tabriz Drive**, said she was a neighbor of the project and supported it. She said she had small children and there was no place in the neighborhood to take the children for some fun and the nearest park was across Hilltop, which was a busy street. She said she circulated the petition around the neighborhood and even though not everyone that signed it was in the neighborhood that would be affected by an SID, of the 32 signatures, about 27 were her neighbors. Ms. Morris said the signatures were gathered in about 2-1/2 hours the day before. She said she wanted to see how everyone in the neighborhood felt about having the park developed and she found out a number of people in the neighborhood supported the project and about half of the ones who opposed it were very misinformed about the information from the way the paper had written articles and how the television stations had reported. She said it was intended to be a gift and she hoped that the neighbors she visited with understood that was the only motive. She said she was a Harvest Church attendee and was recently inducted as a member of the Better Billings Board. She said she came to the Council as a neighbor that supported the project.

  Councilmember Clark asked how far Ms. Morris lived from Sahara Park. Ms. Morris advised that she lived three blocks away. Councilmember Pitman asked Ms. Morris how many people opposed the project as she was circulating the petition. Ms. Morris said it was probably six to ten houses of the people that answered the door. She said she did not keep track of the exact number, but was able to change the opinion of three people after providing them with the information. Councilmember Gaghen asked Ms. Morris for a general projection of what percentage the 32 neighbors that signed the petition were of the whole neighborhood. Ms. Morris said she only walked around for 2-1/2 hours and that it would not be very many because it was a large neighborhood.
- **James Knox, 661 Garnet Avenue**, said for the past two weeks he had been campaigning hard in the Heights and about 80% of people he ran into asked about the pool. He said other than about 10-14 families in that neighborhood, he had not heard anyone say they were not for it. He said most of what he heard was that people did not know what the plan encompassed. He suggested having information available so people could find out what was going on with the project. Councilmember Ulledalen asked how Mr. Knox suggested working with the immediate neighbors that were not happy about the idea. Mr. Knox stated that was a tough call. He said it was a City issue, and it would be nice to have a pool in the Heights. He commented that the Inner Belt Loop could alleviate some of the traffic. He said there was overwhelming support for a pool somewhere in the Heights.
- **Amy Cowley, 546 Avenue F**, said she came before the Council as a citizen and a candidate for Ward I City Council. She stated that no matter how trivial and far-fetched one's concerns were when approaching the Council, they were legitimate. She said she regularly attended the Council meetings because she cared about what was going on in the community, and had voiced numerous concerns, but had not yet gotten any resolutions. She said she had been regularly humiliated by different members of the Council when she voiced her concerns. She stated she felt the treatment was a grave disservice to the community related to the lack of professionalism in answering or replying to public concern. She said when elected, she would never publicly or privately humiliate anyone of the community when they came forward with a question or chose to become involved. She commented it was her expectation that the Council remain professional at all times.

There were no other speakers, and the public comment period was closed. Another speaker raised his hand that he wanted to testify. Mayor Tussing advised that a motion was needed to reopen the public comment period. Councilmember Gaghen moved to reopen the public comment period, seconded by Councilmember McCall. On a voice vote, the motion was approved 10-1. Mayor Tussing voted 'No.'

The public comment period was reopened.

- **Tom Binon, 127 Antelope Trail,** stated that he lived downwind from Sahara Park, had a 13 year old child, and was firmly in favor of the noise, traffic and inconvenience that went along with the pool. He said he had lived in Billings for too many years to count and the Heights had always been left out when it came to facilities for kids. He stated he supported the pool with great enthusiasm.

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

Council Initiatives

- **Councilmember McCall** stated she had an initiative regarding the Sahara Park Pool project but wanted to make a couple of comments before making a motion. She apologized to the Council for not being able to attend the meeting the previous Monday due to illness. She said she was not able to see it first hand, but because of the information she received and phone calls and conversations, it became clear there was a great deal of confusion about what the project entailed from both sides of the issue. She advised that based on that, she felt it was important that the Council had the opportunity to discuss the project in a public forum. She explained there were two steps in the process, and her motion was only to get the project back on a future agenda, and had nothing to do with a motion to extend the agreement. She advised that the first step would be an extension, and if that was granted, the second step would be approval of a development agreement. Councilmember McCall moved to return the resolution for approving adoption of the Sahara Park Master Plan to the October 13 agenda for the City Council meeting for the purpose of a public hearing, council discussion and possible amendment of the deadlines of Plan A and Plan B of the resolution, seconded by Councilmember Veis. Councilmember Brewster said he had two issues;

he wanted staff to explain why that was a legal motion and how it qualified to be placed on the parent agenda. He said normally if an item that required action was added to the agenda, it had to be added that evening. Mr. Brooks asked Councilmember Brewster if his question was about the procedural way an item was added to a future agenda. Councilmember Brewster explained that he wondered about when an issue was being discussed that would expire in two days. Mr. Brooks advised that the Council could direct staff to add anything to a future agenda which he assumed was part of the motion on the floor. He said the Council also had the authority to amend, repeal or leave a resolution unchanged. He said in that case, the Council had a deadline but had discretion to add an item to a future agenda to consider extending the deadline. He cautioned that if there was a contract or another binding agreement that the City had executed based on timelines, it could affect the rights and obligations of the parties, but he was not aware of anything in that case that would be impacted by considering future timelines. Ms. Volek added that the City Code was specific that an item could only be added to that evening's agenda by a three-quarters vote of the members present, and only if the item was primarily ministerial or not of significant public interest. She said that item was clearly of significant public interest and she did not believe it was qualified to be added to that evening's agenda due to notification requirements. Councilmember Astle asked if what was proposed was to put the item on the October 13 agenda, and if an extension was granted, the new deadline would be December 13. Councilmember Veis stated that the resolution could be amended to any date the Council chose. Mayor Tussing clarified that the motion was just to have a public hearing to consider an extension on October 13, and it did not suggest a date of an extension. Mayor Tussing asked if it was okay that the deadline would have passed before the hearing to consider an extension. Mr. Brooks advised that it was within the Council's authority to revisit the resolution any time.

Mayor Tussing disclosed that he had many more ex-parte communications than what was contained in that list. He said many of them were available to anyone by getting them off the City e-mail. He said he also had a couple of ex-parte conversations with Mr. Barthuly regarding procedures for the evening's meeting, and he also had a conversation with another Board member, John Brewer.

Councilmember Brewster asked for clarification of the motion. Councilmember McCall explained that the motion was to put the resolution on the October 13 agenda for a public hearing. Councilmember Brewster asked if action would be taken on that resolution and if it had to be noticed. Mr. Brooks explained that the motion was aimed at staff and Ms. Volek to place that item on the agenda to consider whether or not the two deadlines under Plan A and Plan B should be extended, not whether or not a development agreement should be entered into that evening. He noted that the consideration could only be whether or not those deadlines were extended. Councilmember Pitman said he did not think that time was of the essence and that delaying the item a couple of weeks would be a problem. He said what was heard over and over through the Citizen Survey was to keep the lines of communication open. Councilmember McCall mentioned that when she introduced the item, she separated it into two steps, and one would be extension of the master plan and a separate step would be approval of a development plan. Councilmember Clark stated he would support the motion because he did not think people understood when they could comment on the issue at the previous work session. Mayor Tussing agreed and said he was confused because he inadvertently did not see that the Sahara Park issue was on the agenda. He said he felt that putting it on the October 13 agenda was the appropriate venue to discuss the issue, as opposed to a meeting where action was not taken, it was not televised, and most people did not even know what was happening. He said he would support Councilmember McCall's motion. Councilmember Clark advised that during the work session, Mr. Brooks advised Council not to allow testimony during the later part of the meeting because the public comment period had been closed and some people who were at the meeting had already left. Councilmember Ruegamer said he would support the motion and commented that time was never of the essence in government. He cautioned Mr. Barthuly and his group not to surprise him with something the day before because if they did, he would say 'no.' He said his main concern was the risk to the City and until he saw the numbers, he could not vote for it. Councilmember Veis echoed Councilmember Ruegamer's comments. He said he supported the motion because he did not think the City had done a very good job in the process of moving it forward, but that did not mean there were not serious issues to consider. He commented that he had said from the beginning that it was a great vision, but the "devil was in the details" and the Council had not yet even seen the details. He said he did not appreciate that the Council would be made the bad guy and that would happen again if and when the details came out and were not for the good of the City. He said if it was turned down, it would appear that the Council turned down a free pool in the Heights when there were a lot more issues to consider besides it being a free pool. He advised he would support it but it was not as simple as the City being given a free pool. Councilmember McCall commented that there had been a lot of confusion and agreed that the devil was in the details, but at the same time, it was a tremendous opportunity. She said many people had put a lot of hard work, energy and creativity into the potential and she did not think it should be thrown down the drain without looking at it. Councilmember Ulledalen stated he heard "free aquatic center." He said he was in favor of the public hearing because it was a reasonable step. He commented that he did not know if that would change his mind, but felt there were procedural things to discuss in terms of other deadlines. He said there had to be a drop-dead date at some time. He noted that other major land-use change issues required neighborhood meetings.

Mayor Tussing said he could not believe that anyone still believed what they read in the Billings Gazette. He commented that what happened the previous Monday was not "pulling the plug" on the pool. He said he asked if there was sentiment to put the item on the agenda for the September 28 meeting and nobody spoke up. He said to him that did not mean that the Council was against a pool in the Heights. He stated he wanted to make it clear that when the details were discussed, the Council was concerned with the ramifications. He clarified that a pool in the Heights was not voted down at the previous Monday work session.

Councilmember Gaghen stated that there had been a couple of instances in the past when the City tried to make special considerations for worthy projects, such as in the case of the rescue mission, which was a project that had not come to fruition and likely would not. She said she did not want to be skeptical of the group's capabilities, but the Council needed very definite ideas of what could be accomplished without tying the City into a financial obligation.

Councilmember Pitman clarified that there was not a vote at the work session, more of a straw poll and he was one that raised his hand in favor of putting the item on the agenda. He added that the City had continued to extend deadlines for other groups, and had extended the agreement with Yellowstone Valley Animal Shelter six times to deal with the details. He said it was within the Council's realm to reconsider the resolution.

Councilmember Brewster advised that someone told him earlier that day that he did not support the pool, but he said he actually did. He said he worked hard over the years at three different attempts to build one and had been unsuccessful each time for lots of reasons. He said if he seemed coarse about it, it was because he wanted it done right and did not want a failure. On a voice vote, the motion was unanimously approved.

A brief break was taken from 8:25 pm to 8:30 pm to allow audience members to leave if they wished.

- **Councilmember Brewster** reported that he attended a meeting of the Yellowstone County Emergency Management Committee that included representatives from the County, City and hospitals. He said a volunteer certified dive team in Billings attended the meeting and requested being added to the call list. He said for some reason, the group had not been called during accidents or drownings. He advised he did not want to make a motion, but wanted to know if staff could look into it. Ms. Volek suggested bringing it up during the joint City-County meeting at the end of the week. Councilmember Ulledalen said he wondered if there was a protocol issue for not utilizing that group and a straight answer about it was needed. Councilmember Gaghen said it seemed like there could be liability factors if a resource like that was available but not used.
- **Councilmember Ruegamer** stated that any Councilmember attending the League of Cities and Towns meeting the following week could travel with him if they wanted to leave early on October 7.
- **Mayor Tussing** apologized for the joke he made at the expense of the Gazette and said he was not casting aspersions at Matt Hagengruber. He stated that he thought the headline was misleading even though he knew Matt did not write it. He said several emails he received referred to the Gazette article and he did not believe it was an accurate statement that the plug was pulled on the pool in Sahara Park because the group still had nine days before the deadline at that time. He stated he was willing to talk with Matt after the meeting.

ADJOURN

The meeting adjourned at 8:45 p.m.

CITY OF BILLINGS

CITY OF BILLINGS • YELLOWSTONE COUNTY, MONTANA • SEAL

By: ______
Ron Tussing, Mayor

ATTEST:

By: Cari Martin
Cari Martin, City Clerk