

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

October 13, 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, Clark

MINUTES: September 21, 2009, Special Meeting -- Approved
September 28, 2009 -- Approved

COURTESIES -- Mayor Tussing thanked Councilmember Clark for filling in for him at recent events when he could not attend due to schedule conflicts.

PROCLAMATIONS -- None

ADMINISTRATOR REPORTS - TINA VOLEK

- Ms. Volek advised that additional comments were received from Council after Item I, the City Council Electronic Communications and Usage Policy, was distributed. She requested the item be delayed to the October 26, 2009, meeting. Ms. Volek advised that the item would be discussed at the October 19 work session.
- Ms. Volek referred to Item J and advised that Mr. Connell, President of the Billings Industrial Revitalization District, requested an amendment to provide an extension from January 31, 2010, to February 22, 2010, to submit the development agreements.
- Ms. Volek advised that the Annexation Resolution and Development Incentive Agreement for the East Billings Urban Renewal District for Item J were provided in the Friday Packet and available in the ex parte notebook at the back of the room.
- Ms. Volek advised that three emails of support for Item 3, the reallocation of CDBG funds, were provided in the Friday Packet and available in the ex parte notebook at the back of the room.
- Ms. Volek referenced Item 2 and advised that two emails in support and one in opposition of a pool in Sahara Park and the requested extension from the Better Billings Foundation were placed at council desks that evening and also available in the ex parte notebook at the back of the room.
- Ms. Volek advised that the Downtown Billings Association's Harvestfest was rescheduled from October 10, 2009, to October 17, 2009, due to inclement weather. She explained that a street closure was previously approved for the event, and with Council's approval, she could approve the date change for the closure of N. 28th from 1st to 3rd Avenues N. and 2nd Avenue N. from the alley west of N. 27th to N. 29th.

There were no objections to Ms. Volek's approval of that street closure request.

PUBLIC COMMENT on "NON-PUBLIC HEARING" Agenda Items: #1 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.

- **Greg Krueger, Development Director for Downtown Billings Association**, stated he was present to speak in favor of and answer questions for Items M, N, and O.
- **Lisa Harmon, Executive Director of Downtown Billings**, expressed appreciation for the Harvestfest schedule change. She stated she was available to answer questions for Item O, the BID expansion, and encouraged approval of the expansion. She distributed letters in support of the Safety Zone.

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

1. **CONSENT AGENDA**

A. **Bid Awards:**

1. **Purchase of eight (8) vehicles in the car and light truck class.** Opened 9/29/09.
Recommend:

- Schedules I & V without trades to Archie Cochrane Ford, Billings MT, \$54,592.00
- Schedules II, III, VI & VII without trades to Fremont Motor Co., Lander, WY, \$105,888.19
- Schedule IV without trade to Bison Ford, Great Falls, MT, \$15,242.01.

B. **Change Order #1** for Park I Parking Garage awning; Sign Products, Inc., \$6,840.

C. **Change Order #1 Final** for W.O. 03-04, Jackson Street Sidewalk, H.L. Ostermiller Construction, \$13,321.

D. **Approval of Amendments** to the Alternative Modes Coordinator Services contract with Darlene Tussing; \$40,800 PL (federal) funds, \$27,200 local match.

E. **Approval** of Scheduled Airline Operating Permit with Comair, Inc.

F. **Approval** of Scheduled Airline Operating Permit with Regional Elite Airline Services, LLC.

G. **Amendment #3** to the Scheduled Airline Operating Agreement with Northwest Airlines, Inc.; adding additional square footage, and extending the expiration date to June 30, 2010; total budgeted airline revenue \$2,659,909 for FY 2010.

H. **Amendment #5** to Scheduled Airline Operating Permit with United Airlines, Inc.; extending the expiration date to June 30, 2010; budgeted airline revenue \$2,659,909 for FY 2010.

I. **Approval** of City Council Electronic Communications and Usage Policy.

J. **Approval** of Development Agreement and Annexation Resolution for use in the East Billings Urban Renewal District.

K. **Approval** of donation of Graffiti Trailer to Rebuilding Together Yellowstone County, valued at \$1,000.

L. **SID 1387, Zimmerman Trail Subdivision Sanitary Sewer**

1. **SID 1387, Zimmerman Trail Subdivision Sanitary Sewer**, (Opened August 25, 2009) (Delayed from September 14 and September 28, 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 Sanitary Sewer, \$80,500. Delayed from 9/28/09.

M. **Subordination of Downtown Revolving Loan** to Beartooth Bank for Anderson Management Group Building (formerly Hospitality Concepts), \$352,000.

N. **Approval** of Downtown Billings Partnership Board request to fund five new projects in the N. 27th Street Tax Increment District, \$21,000, and **inclusion** of all previously incurred and approved expenses in the second quarter budget amendment for FY2010.

O. **Resolution #09-18883** approving petition to expand the Downtown Business Improvement District #0001 to establish a Safety Zone, maximum assessment of \$7,500 per year.

P. **Resolution #09-18884** approving the High Sierra Park Master Plan Update.

Q. **Approval and acceptance** of the Domestic Violence Unit and Victim Witness Assistance Program Grants awarded by the Montana Department of Justice and Board of Crime Control; Domestic Violence grant award \$52,000 with City's cash match of \$34,602.89 and in-kind match valued at \$4,891; Victim Witness Assistance grant award \$38,000 with City's cash match of \$34,483.13.

R. **Approval and acceptance** of the State of Montana General Fund Allocation and the US Department of Justice Grant for Billings Adult Misdemeanor Drug Court; 3-year allocation, \$77,433.

S. **Final Plat** of Goodwin Acres Subdivision, Amended Lot 2A.

T. **Bills and Payroll:**

1. September 11, 2009

2. September 18, 2009

3. May 1, 2009 - August 31, 2009, Municipal Court

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

Councilmember Astle moved for approval of Item D, seconded by Councilmember Veis. Mayor Tussing advised that he would recuse himself from the vote due to his wife's involvement. Councilmember Gaghen asked if the contract was for a three-quarter position. Planning and Community Services Director Candi Beaudry explained that the contract was for a specified dollar amount and the contractor kept track of her hours to ensure she did not exceed the allocation. Ms. Volek added that work hours for contract employees were not supervised. On a voice vote, the motion was approved 10-0.

Councilmember Astle moved for approval of Item I, seconded by Councilmember Ruegamer. Councilmember Clark moved to delay the item to October 26, 2009, seconded by Councilmember Veis. On a voice vote, the motion was unanimously approved.

Councilmember Astle moved for approval of Item J, seconded by Councilmember Pitman. Councilmember Veis offered a substitute motion to amend the resolution on the East Billings Urban Renewal District to allow submission of the development agreements until February 22, 2010, seconded by Councilmember Ruegamer. Councilmember Veis explained that January 31, 2010, was the deadline for the development agreements, but that timeline was contingent upon approval of the item at the September 28, 2009, Council meeting, which did not happen. He said the date change allowed the same amount of time to submit those agreements. On a voice vote, the motion was unanimously approved.

Councilmember Astle moved for approval of Item O, seconded by Councilmember Pitman. Councilmember Veis stated that he felt there were merits to it, but he had a problem with the three parks being in the zone because it created a burden on the taxpayers that did not live within the area to pay for services in that area. He added that it made the City the third largest landowner within the zone and he did not think that was right. He stated he had not been in favor of it from the beginning and also did not think the City should be signing it. On a voice vote, the motion was approved 9-2. Councilmembers Brewster and Veis voted 'No.'

REGULAR AGENDA:

2. **PUBLIC HEARING AND RESOLUTION #09-18885 AMENDING RESOLUTION #09-18799 ADOPTING THE SAHARA PARK MASTER PLAN**, extending the deadline for Plan A and Plan B of the resolution from September 30, 2009, to November 29, 2009. Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)

Ms. Volek advised that the public hearing and discussion for the item was the result of an initiative from the September 28, 2009, Council meeting and concerned a previous request to extend the deadline to November 23, 2009, for conclusion of an agreement with the Better Billings Foundation. She said the City had received two alternatives from the Better Billings Foundation, but because of staff absences at various meetings, staff had not had an opportunity to review them yet. She reported that she checked on a comment she made at the last work session regarding concerns about whether a Federal grant of \$220,000 for water and sewer improvements on Wicks Lane made mention of the pool. She assured Council that none of the applications made to the two senators or Representative Rehberg mentioned that pool, but focused entirely on planned growth for the area. Ms. Volek stated that Parks Department staff was attending a national conference in Idaho, but she was available to answer the questions she could, and Cemetery Director Lee Stadtmiller was present to represent the Parks Department. Mayor Tussing clarified that the action that evening was whether or not to extend the

deadline from September 30, 2009, to November 29, 2009, not whether or not an aquatic center would be built in Sahara Park. He confirmed that the September 30 deadline was established in March and that evening's action was only to consider an extension of that deadline.

The public hearing was opened.

- **Tom Iverson, 2717 Hoover**, stated he was the Chairman of the Parks Board and that it recently voted unanimously to recommend the extension. He said that what the Better Billings Foundation wanted to do was similar to what was being done at other parks such as Stewart Park, Amend Park, Dehler Park, and Par 3, and that an agreement was in place that allowed the hockey association to build an ice arena at Centennial Park at any time. He said the Parks Board realized that a good agreement was not in place yet and discussion was still needed. He noted that any time an undeveloped park was proposed for development, there would be a lot of neighbor concerns to address. He encouraged extending the deadline and said he believed something could be worked out with the Better Billings Foundation.

Councilmember Brewster asked why the Parks Board did not ask Heights residents where a pool should be located. Mr. Iverson responded that he did not know. He said he knew that Sahara Park was selected for its central location for the City.

Councilmember Astle asked if Stewart Park was donated with specific rules that it had to be used for baseball or softball. Councilmember Ruegamer stated that was part of the agreement when the land was donated.

Councilmember Pitman asked if a 60-day extension would provide enough time to go back through the Parks Board. Ms. Volek advised that it should.

- **John Shoff, 1188 Fantan**, said he was a regional manager for Dow HKM engineers and was present to speak in favor of extending the deadline for the proposal. He advised that Dow HKM was donating all the engineering services for the project and supported it. He said they were committed to the project and ready to produce final development drawings on an expedited schedule. He noted that site surveys, mapping and preliminary layout services had been performed to date. He stated it was a good location with good access and good utilities.

Councilmember Ruegamer asked Mr. Shoff if his company had ever done a pool. Mr. Shoff explained that they were not designing the pool, just the facilities that supported the pool such as parking, utilities, access, etc.

- **Steve Arveschoug, 1081 Strawberry**, stated he was testifying as a Heights resident and also as Executive Director of the Big Sky Economic Development Authority. He said the BSEDA Board had not yet reviewed the proposal but would do so to understand the quality-of-life projects. He stated that he had reviewed the project and felt it was good from an economic development perspective, and he felt the people that supported the project

and were working on it were sincere in their efforts to develop that amenity for the community. He added that whenever there was an opportunity to partner with a group for a quality-of-life amenity, it was a good option to consider. He stated he understood the ownership and maintenance limitations, but encouraged approval of the extension because he believed the group could partner effectively with the community.

- **Josh Gardner, 2041 Pryor Lane**, voiced his support for the pool project. He said that as a casual bystander, he had some concerns that the Better Billings Foundation was being called to audition, and he hoped it was being given the latitude to stub its toe. He explained that he meant there was no model to follow and it might be a lot to ask that all the t's were crossed on the first try. He referred to previous comments that the devil was in the details and the Council did not want any last-minute surprises. He stated he hoped it was a collaborative effort because it was a project that needed to move forward. He said he felt a project like that made people feel good and provided inspiration that good things could happen in Billings. He encouraged a collaborative partnership with the Foundation.

Councilmember Ruegamer asked Mr. Gardner if he felt the "no surprises" criterion was unfair for that project. Mr. Gardner said he felt the expectation to be perfect all the time was asking a lot. Councilmember Ruegamer commented that Mr. Gardner misinterpreted what he said. He said the Council did not want to plan on one thing, and then at the end when it was time to vote on it, things were changed. Mayor Tussing pointed out that he was one that was surprised with the proposal brought to the work session that the City would donate the land. He said he felt that was an example of what Councilmember Ruegamer was referring to, yet once the Council had time to digest it, it voted unanimously to have another public hearing. Councilmember Ulledalen advised that he had made a previous comment that he would not support anything that presented challenges or risks to the General Fund. He said the issue with a long-term lease was that if the organization was unable to continue, the obligation fell back on the City and he was surprised with the proposal after he clearly stated his views about what he would not support.

- **Pam Ask, 5320 High Trail Road**, said she was present as a businesswoman and Chairman of the Better Billings Foundation to ask serious consideration for extension of Plan A of the master plan. She reviewed her past development experience in the Heights. She said that at the September work session, the Foundation was only a few weeks away from having a plan ready for action, and all that was needed was time for the plan to work through the system. Ms. Ask referred to successful park partnerships with service groups in Sioux Falls, and the Fortune 500 magazine that listed Billings as the number one small city for launching new small businesses. She stated that the aquatic park would help make the community more attractive to investors and businesses. She said locations for the facility had been considered and Sahara Park consistently rose to the top. She advised that she liked the location because of the way it fit into the two objectives of the Better Billings Foundation to put a pool in the Heights and to use the pool as a way to build cohesiveness for the community. Ms. Ask said she was the co-chair of the fundraising committee and was encouraged by the support expressed by

- **Chuck Barthuly, 300 Eastlake Circle**, thanked the Council for the opportunity to speak on behalf of the motion to extend the development agreement. He said the project would be a collaborative effort between the City, the Better Billings Foundation and other community groups. He reviewed the process that the project had been through to date. He noted that consistent concerns of the Council throughout the process were about who would own, operate and build the facility, what it would look like, and whether there would be additional costs to the taxpayers. He said aquatic specialists were hired to complete a feasibility study, a development and operation plan, and a design. He explained that the feasibility study indicated that the initial proposal would not sustain itself, so an additional \$1 million was added to the design for Phase I. He said that based on the new design, the study indicated that there was a need in the community and enough users to support a facility of that size, and that it would more or less break even on an annual basis. He explained that the Foundation came to the conclusion that it would be best for the Foundation to build, own and operate the facility to limit the City's risk as much as possible. He said development agreements were in the hands of City staff and he hoped they would be presented to the Council soon.

Councilmember Pitman asked Mr. Barthuly how the people in the Heights were engaged in the project. Mr. Barthuly advised that public hearings were held about development of Master Plan A for Sahara Park. He said it came out at a work session that a Plan B should be included so there was not a plan in place that did not have a funding source. He noted that key issues identified by neighbors during the public hearings were addressed in the design. Mr. Barthuly added that he also attended two Heights Task Force meetings and an informational meeting was held the past Saturday. He said 350 residents that would be affected by an SID were invited to that Saturday meeting.

Councilmember Astle asked Mr. Barthuly if he was aware that Dehler Park, Rose Park, and Par 3 all paid money to the City each year. Mr. Barthuly said he was aware of that but also knew that there were years that Rose Park did not make any money, and that there were numerous parks that did not generate any revenue. Councilmember Astle asked Mr. Barthuly if the engineering services donated by Dow HKM were included in the funds raised. Mr. Barthuly said they were not; \$2.2 million cash had been pledged and \$800,000 of it had been collected with the completion expected by December, 2010. Councilmember Astle asked if the project cost was \$6 million. Mr. Barthuly explained that Phase I of the project was \$4.5 million, the project that the feasibility study was based on; and Phase II was a \$1 million addition of a teaching facility, exercise area with a climbing wall, and expanded green space and decking. He said an estimate of the donated land was another \$1 million.

Councilmember Gaghen asked if the pledges and in-kind contributions were contingent on the Sahara Park location. Mr. Barthuly responded that the contributions were for a community aquatic facility, and people that contributed were aware of the site location, but the contributions were not contingent on it.

Mayor Tussing stated that he knew not everyone wanted to provide public testimony. He asked audience members that wanted to support the extension, but did not want to testify to stand. Mayor Tussing asked audience members that opposed the extension, but did not want to testify to stand.

- **Larry Seekins, 380 Camel Place**, advised that he was a retired engineer and had seven grandchildren that lived in the Heights and enjoyed the parks. He said it made him nervous when he heard that the City had said the only place to locate that pool was in Sahara Park. He provided a study he prepared that compared Sahara Park and Castlerock Park. He said he felt Castlerock Park was a better location for the reasons outlined in his study. He pointed out that Sahara Park had a 40-foot drop, and that high voltage electrical wires and a high pressure gas line bisected the park.

Councilmember Brewster asked Mr. Seekins for his assessment of Castlerock Park. Mr. Seekins explained that there was unused space at Castlerock and went on to review the two alternatives contained in his study. He said he felt Castlerock was a superior opportunity that could be created like Rose Park. He said he felt Sahara Park had a lot of serious problems.

Councilmember Pitman asked if Mr. Seekins looked at Castlerock utilities. Mr. Seekins responded that he did not, but knew there was development all around it. Councilmember Astle asked if he understood correctly that Mr. Seekins was in favor of the facility but not at Sahara Park. Mr. Seekins said he supported the facility but wanted to see a wise decision made on the location.

Councilmember Ruegamer explained that his vision of the pool was that it was for the City and the further from the City proper, the fewer people that would go to it from areas other than the Heights. He asked Mr. Seekins if he felt it was true that he was not thinking of it as a pool for the City, but one for the Heights. Mr. Seekins said he thought of it as both, because Castlerock was not much further than Sahara and there were opportunities there that did not exist at Sahara Park.

Councilmember Gaghen asked Mr. Seekins about the distance from Sahara Park to Castlerock. Mr. Seekins said it was probably about 1.6 miles from Sahara. Councilmember Gaghen said she did not think that was a daunting distance for someone that had the desire to go to an aquatic facility.

Councilmember McCall asked if Mr. Seekins was in support of the efforts of the Better Billings Foundation to provide that type of facility. Mr. Seekins said he was, but he felt bad that they had been working under the delusion that Sahara Park was the only location, and he would like them to have the freedom to consider other locations. He noted that he felt there would be more support for it if another location was considered. Councilmember McCall asked Mr. Seekins if he had spoken directly with any of the leaders of the Foundation. Mr. Seekins said he had told Mr. Barthuly he was with him 100% if the facility was located at Castlerock, but he could not support Sahara Park.

Councilmember Pitman asked if a staff member could address the utilities at Castlerock Park. He said he thought the lack of water and sewer was the reason the wading pool was dug out. Councilmember Brewster explained that the drain and water line for the spray park location was small so it had to be fed from Wicks Lane utilities. He added that when the pool study was done 12 years ago, Castlerock was the desired location. He noted there was adequate sewer and water that could support a pool at that location then and he did not think anything had changed.

- **Scott McCulloch, 611 Tabriz**, encouraged the Council to deny the deadline extension. He said he did not oppose a pool, but just wanted a neighborhood park. He advised that he and others met with Parks staff Mark Jarvis and Mike Whitaker about alternative Plan B and the costs to develop a neighborhood park. He explained that they visited with neighbors and collected a petition signed by 103 property owners that lived in the district, understood the ideas of PMDs and SIDs, and supported a neighborhood park only. He urged Councilmembers not to extend the deadline. *Mr. McCulloch provided the signed petition referenced in his testimony.*

Councilmember Ronquillo asked Mr. McCulloch if he opposed a pool at Castlerock Park. Mr. McCulloch said he thought that was an ideal location and he had a conversation about it with Todd Preston, Vice Chair of the Better Billings Foundation, who seemed interested in that location also. Councilmember Ronquillo asked if Mr. McCulloch would be interested in an SID to improve Castlerock. Mr. McCulloch said he would. Mayor Tussing confirmed that Mr. McCulloch indicated that the individuals that signed the petition to have Sahara Park developed as a neighborhood park understood that a park maintenance district would have to be formed for it. Mr. McCulloch said that was correct.

- **Monty Patterson, 1202 Bench**, said he was the compliance officer for the Local 30 Plumbers and Pipefitters Union. He said he was asked to look at the proposed development agreement to see if it applied to statutory requirements of prevailing wage law and statute, the Davis Bacon Act. He said it was a complicated issue, and with the limited amount of information he had, the funding source for the program was unclear. He said if the private funding was not available and public funds were used, it would then fall under the Davis Bacon statutes for wage protection. He explained that under federal regulations, lease agreements were taken on a case-by-case basis and various factors were considered, one being whether the contract was written to avoid Davis Bacon standards. He advised that the Montana Supreme Court had ruled that the Little Davis Bacon Act applied to buildings created through lease agreements. He said the City of Bozeman lost a ruling that the Davis Bacon statutes applied when a parking garage was built.

Mayor Tussing asked Mr. Patterson if he had spoken with anyone from the Better Billings Foundation. Mr. Patterson advised that he had not. Mayor Tussing confirmed that he was not saying that it was an attempt to circumvent it. Mr. Patterson said he just wanted to bring it to the City's attention if it entered into an agreement so there was no snarl down the road.

- **Tom Binon, 127 Antelope Trail**, said he expressed his support for the pool two weeks ago and did not advocate one location or another. He advised that he attended the Saturday informational meeting and came away knowing that the Better Billings Foundation was after a project that benefitted all of Billings and would address neighborhood concerns. He referred to a "Magic City Magazine" article and quoted statements made in it by Dan Carter.
- **Kathryn Hall, 460 Tabriz**, encouraged the Council to deny the extension. She said she was part of the crew that visited with neighbors regarding Plan A or Plan B. She said she attended meetings with the Parks Department regarding neighborhood park options and 103 people were in favor of that option. She said she supported a pool, but at a different site. She stated she was concerned with traffic and safety in the area.
- **Chris Bingley, 2303 Elsa**, expressed his support for the extension for the development agreement because he felt there was nothing to lose with the opportunity.
- **Julie Thomason, 265 Caravan**, said she was a neighbor that bordered Sahara Park and requested denial of the 60-day extension. She stated she felt that the guidelines for Plan A and Plan B should be kept. She said an indoor pool might be a better option because she had personal concerns with an aquatic facility in Sahara Park. She said one reason she bought her house 22 years ago was because of the neighborhood park that was to be developed. She referred to the power lines that would be close to the water park and mentioned existing water pressure problems at her house and the same at neighboring houses. She said her research about water parks indicated that planned expansion was necessary to keep people coming to the facility. She voiced other concerns about parking capacity, and the cost of using the facility because if it was too expensive, she and others could not afford to use it. She encouraged denying the extension and considering another location.

Councilmember McCall asked if she could ask additional questions of Mr. Shoff. Mayor Tussing suggested waiting until the public hearing was finished.

- **Eric Simonsen, 1110 N. 31st Street**, pointed out that he was not a Heights resident, but supported the extension for the Better Billings Foundation to move forward with a great amenity for the City. He said he thought there was a cost opportunity right now and waiting may result in higher costs. He said it was a benefit for the people in his neighborhood that lost the pool when Dehler Park was built. He said he could ride his bicycle to the facility at Sahara Park. He encouraged the extension.

Councilmember Gaghen asked Mr. Simonsen if he would bicycle further to Castlerock if the pool was located there. Mr. Simonsen said it would be further, and at that point, he could probably be at Rose Park. He said he preferred the Sahara Park location and would rely on the advice of engineers regarding the electrical and gas lines.

Mr. Brooks suggested redirecting questions to individuals that already testified while the public hearing was still open.

Councilmember McCall asked Mr. Shoff to respond to the concerns

expressed by Mr. Seekins. Mr. Shoff explained that there was a drop at the site, but the grade where the facility would be built was about 3%. He said there was adequate site distance for safe access; the power lines were far enough away that safety was not a concern, and the petroleum pipeline would be buried under the parking lot. He commented that Castlerock Park would be a good spot for a pool, but he did not think one could be located there without eliminating existing amenities. He said the exhibits he saw from the private study did not provide any room for expansion and although he applauded the citizen's involvement, he felt some of the information was misleading.

Councilmember Astle asked Mr. Shoff if he said the Castlerock proposal did not include expansion of any parking. Mr. Shoff said what he saw appeared to overlay the footprint of the pool portion, not the entire aquatic facility and did not necessarily address expanding the parking. He said the parking in Sahara would be designed to accommodate the aquatic facility and he did not know if the same thought was used in the Castlerock plan.

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

Councilmember Brewster moved to not extend the deadline, seconded by Councilmember Veis. Councilmember Brewster explained that he was concerned the pool would not be built because he first met with Harvest Church representatives about six years ago, and at the time, the completion goal was three years. He said he asked to have a Heights pool left on the Capital Improvement Plan. He commented that although there were a lot of guarantees from the Foundation, foundations could be like vapor. He expressed his concerns that the church had separated itself from the project legally, and with the Davis Bacon Act and what happened in Bozeman when the City leased land and allowed a public facility to be built and leased back. He stated that the Parks Department did not engage Heights citizens, but told the Foundation to build it in Sahara Park, which was not the Foundation's fault, but staff's fault. He pointed out that Castlerock Park was only ten minutes from Sahara Park. Councilmember Brewster explained that he would offer an initiative to have staff enter into some dialogue with Heights residents about a pool location, and he also wanted the Foundation to provide an estimate of what it felt it could legitimately raise and then Heights residents could be asked to fund the rest through an SID and creation of a maintenance district. He said if the residents wanted to fund what was not funded by the Foundation, a good deal of the concern would be eliminated because it would be owned by the City. He said he felt that could be done quickly to still take advantage of the low construction costs.

Councilmember Ruegamer asked if Councilmember Brewster was suggesting an SID. Councilmember Brewster said it would be for the balance of what the Foundation did not collect because he would not want construction started until the Foundation had the money in hand. Councilmember Ruegamer commented that he would want any contract with Better Billings Foundation to include language that the Foundation had to have the money in the bank or an irrevocable line of credit before the project could be started to alleviate the City's risk. He said he felt it could be a good idea to try the SID. Councilmember Ruegamer clarified that he did not want last-minute surprises.

Councilmember Pitman stated that he would not support Councilmember Brewster's

motion. He explained that the process had been started and could be extended, and if a development agreement did not pass, then the City would be in a position to work with the Foundation, but there was no harm in 60 more days. He mentioned that the Mustangs did not have to have every dollar before Dehler Park was started, and once the project was finalized and agreed upon, the fundraising increased. He referred to the privatization of the Animal Shelter and the fact that there were no guarantees with that either. He said he felt it was fair to allow the extension.

Councilmember McCall said she supported Councilmember Pitman and would not support the motion, even though it was an interesting notion and had it been suggested before, it would have made sense. She said the action that evening was extending the effort to come forward with a development agreement, not to approve it. She said that gave the Foundation the opportunity to look at what it could produce. She said she supported the project and felt the Foundation needed the opportunity to complete the development agreement.

Mayor Tussing said he would not support the motion on the floor either which did not mean he would vote for a development agreement when it was presented, hopefully by November 23, because he did not think he would support another extension. He commented that he did not think there was any harm in a 60-day extension now. He said he assumed that concern of the Council regarding ownership and operation was one of the reasons for the latest proposal from the Foundation and the reason for the extension request. He said that did not mean he believed Sahara Park was the best place, but he was interested to hear what Legal had to say about leasing or donating land.

Councilmember Brewster stated that he asked Mr. Barthuly after the last meeting if there would be changes to the agreement, but Mr. Barthuly refused to answer the question, so he suspected the same agreement would be presented. He said that if the extension was granted and the development agreement was later approved, it was a done deal and the City accepted the liabilities that went with it because if the Foundation went away, the City owned the land and the facility.

Councilmember Gaghen said it seemed there were still many questions regarding the best location and she was concerned about that. She stated that she felt the current council was the best prepared to make that decision but the timeframe was difficult with the upcoming elections and the holiday season. She said she liked the communication that had taken place and favored a facility in the Heights, but the location and support of the neighborhood still concerned her.

Councilmember Veis stated that he understood Councilmember Brewster's concerns. He said he felt it was good that a development agreement had to be ready to go; otherwise it would be open ended and it forced the Council to choose between Plan A and Plan B. He explained that the reason both plans were put in the master plan was to make sure there was not an open-ended Sahara Park Master Plan. He said he had mixed feelings, but would rather have a development agreement to approve or not approve, and that it did not mean that if the Council said 'no' that there would not be a facility in the Heights because one could be built in another park. He suggested getting a development agreement in front of the Council to get the process moved forward.

Ms. Volek stated that in fairness to the Park staff, this was not an initiative of the City, but one of the Better Billings Foundation that approached the City regarding the project. She explained that the Council's direction was to study replacement of Athletic Pool, not necessarily to put a Heights pool back in the CIP. She said staff did not have an obligation to hold public hearings about the location of a Heights pool when it was not a City initiative; however, staff led at least two public hearings on the issue of the Sahara Park Master Plan that included the aquatic facility. Ms. Volek asked for clarification about the future of Plan B.

Councilmember Brewster stated that it was his opinion that Plan B was currently in place unless Plan A was extended. Councilmember Veis said he felt it was at the will of the Council in place, unless someone was aware of any language in the document that would hold the Council accountable to one part of the document or another. Mayor Tussing said he thought Councilmember Brewster was correct that if the extension was not granted for Plan A, Plan B was in effect unless the Council went back to revisit it again. Mr. Brooks explained that was how he interpreted the resolution, but if the Council voted to extend the deadline for Plan A, that also extended the implementation of Plan B as an alternative. He added that if the motion passed to deny the resolution, Plan B was still in place.

Councilmember Clark stated he did not have a problem with the extension. He said there was no guarantee the agreement would be accepted after the 60 days.

Councilmember Ruegamer asked about the timeline if an extension was approved. Ms. Volek explained it was customary to have the two December business meetings prior to the holidays by eliminating one work session, which would mean the December business meetings would likely be December 14th and 21st, and action could be taken at either meeting if an extension was granted to November 29 as recommended by staff.

Councilmember Pitman advised that the initial discussion about location happened when the park's master plan was discussed. He said the plan was either for development at Sahara Park or implementation of Plan B. He stated he believed the new Council would be a competent group that could make the decision if it was not done before the end of the year.

Councilmember Brewster clarified that the motion on the floor was to not approve the extension. On a voice vote, the motion failed 3-8. Councilmembers Ronquillo, Pitman, Veis, Ruegamer, McCall, Astle, Clark and Mayor Tussing voted 'no.'

Councilmember Pitman moved to extend the deadline for Plan A and Plan B from September 30, 2009, to November 29, 2009, seconded by Councilmember McCall. Councilmember Clark stated he felt that date was agreeable to the Foundation. Mayor Tussing asked if that did not preclude the Council from voting on it at a December meeting. Mr. Brooks suggested that clarification. Mayor Tussing asked Councilmember Pitman if it was his intention that the November 29 deadline was for submission of the development agreement. Councilmember Pitman said it was. Councilmember Veis said it was important to understand that a vote for the extension was not an implicit vote for the pool in the Heights. On a voice vote, the motion was approved 9-2. Councilmembers Brewster and Ulledalen voted 'no.'

A break was taken 8:21-8:30 p.m.

3. **PUBLIC HEARING AUTHORIZING REALLOCATION OF \$150,000 OF CDBG AFFORDABLE HOUSING SUPPORT FUNDS TO THE CITY'S FIRST TIME HOMEBUYERS PROGRAM.** Staff recommends approval. (**Action:** Approval or disapproval of staff recommendation.)

Ms. Volek advised that staff did not have a presentation for the item but was available to answer questions.

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

Councilmember Ulledalen moved for approval of Item 3, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.

4. **PUBLIC HEARING FOR WELCOME HOME BILLINGS, TEN-YEAR PLAN TO IMPACT HOMELESSNESS AND FY2009-2011 TWO-YEAR ACTION PLAN.** Action scheduled for October 26, 2009.

Community Development Manager Brenda Beckett provided a brief overview of the Welcome Home Billings plan for the benefit of the viewing audience that had not seen it. She noted that a copy of the plan could be viewed through the City's website or at the City Clerk's office. Ms. Volek clarified that action on the item was scheduled for October 26, 2009.

The public hearing was opened.

- **Adela Awner, 1123 17th Street West**, stated that she was the Director of Interfaith Hospitality Network and emphasized that the program did not just provide shelter, but worked with families to change their lives. Ms. Awner referred to homeless statistics for the City that were a stark reminder of the number of homeless adults and children. She advised that she was a member of the Mayor's Committee on Homelessness and encouraged adoption of the plan.

Councilmember Astle commended the job of the Interfaith Hospitality Network and the congregations involved in that effort.

Councilmember Gaghen asked about the statistics regarding homeless children in the school district. Ms. Awner explained that the data included students in grades K-12 and could include high school students that did not live with their families. She said to keep in mind that 20% of the homeless population was under the age of 5 and not yet in school.

- **Lisa Harmon, 2815 2nd Avenue N**, stated she was the immediate past chair of the Mayor's Committee on Homelessness. She explained that she learned about the homeless population living in the downtown after she was hired by the Downtown Alliance. She reported that the BID had employed homeless individuals since 2005, at \$2 above minimum wage which was still not enough for someone to maintain a home, family, car, etc. She said one homeless

individual hired by BID had worked there for over a year and recently moved to Independence Hall. She said the efforts of momentum that surrounded the plan contributed to his success. She encouraged support of that plan.

- **Kathie Shandera, 1109 N. 31st**, said she worked for United Way and was a member of the Mayor's Committee on Homelessness. She encouraged adoption of the plan that was a three-year effort by many volunteers. She commented that the chronic homeless consumed many of the police, fire, and jail services. She said the plan included economic numbers that supported action and no action would result in increased costs. Ms. Shandera reported that \$54 million was the estimated cost of homelessness in Billings, and the group tried to identify funding to help reverse that trend. She pointed out that the State of Montana received over \$1 million in Continue of Care funding from the Federal Government and currently, 90% of those funds went to communities west of Billings, with Billings receiving 10% of it, and communities east of Billings receiving nothing. She said one of the goals and policy recommendations was to allocate those funds according to the number of homeless individuals in the communities. She said Billings had one of the largest homeless communities in the State of Montana.
- **Amy Cowley, 546 Avenue F**, reiterated that as a registered nurse, she knew that many of the homeless had mental illness and drug or alcohol addictions. She said had seen that from a personal and professional view. She said she would like to see more alternatives and support for the plan.

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

Mayor Tussing commented that he was proud of the work of the committee. He noted that there was very little turnover among the members and when there was an opening, it was not difficult to fill. He stated he knew the document took a lot of effort and the group had his thanks and appreciation.

5. **PUBLIC HEARING AND RESOLUTION #09-18886 AUTHORIZING THE SALE OF CITY-OWNED PROPERTY**; a resolution that authorizes staff to market the Park IV Parking Garage; sets a minimum price for the property; and directs staff to submit qualified offers to the City Council for final approval. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Ms. Volek advised that staff did not have a report but was available for questions. Councilmember Clark asked for an explanation for the benefit of the public. Assistant City Administrator Bruce McCandless reported that in 2008, the City engaged a company, Strategy 5, to complete a market analysis for Park IV after it was suggested that the City might consider disposing of a parking garage. He said the market analysis indicated there could be a market for the garage and since then work had been done toward marketing the garage. He reported that Strategy 5 was engaged for the second phase of the project to prepare a market plan and to get the property on the streets. Mr. McCandless said national advertisements would start soon if Council approved the resolution. He explained that the resolution allowed staff to proceed with the marketing and to present a negotiated deal at a future Council meeting. Councilmember Pitman clarified that the minimum price was already set. Mr. McCandless stated that the minimum price was set at \$4.75 million. Councilmember Clark clarified that it was the parking garage next to First Interstate Tower. Councilmember Ulledalen explained that the idea came about due to the need for

additional parking structures in downtown and it was determined that the only way to pay for one was to sell an existing structure. He added that the recent parking study identified that structure as an asset the City did not need.

The public hearing was opened.

- **Greg Krueger, 2815 2nd Avenue North**, spoke in favor of divesting the City's ownership of Park IV. He said it was probably built in the wrong place and separate from the other garages used regularly in the Central Business District. He advised that it was probably the best time to sell the facility, not necessarily because of the sale price, but because of the cost to build a new facility. He said he learned at a recent conference that it had never been a better time, pricewise, to construct a parking facility. He pointed out that if the structure became publicly-owned, it would go on the tax roles and the increment gained in the tax increment district could go toward construction of a new garage. He said it was a win-win for the downtown. He noted that he felt the minimum price was fair and he urged support of the sale.

Mayor Tussing asked Mr. Krueger why he felt the minimum price of \$4.75 million was fair. Mr. Krueger explained that the City's parking rates were low and if market rates were implemented based on what it cost to build a structure; it would not be affordable in Billings. He said the City agreed to subsidize parking years ago when it allowed property owners to build on 100% of the lot. He advised that two private garages were struggling to get open and stay open based on the \$50/month rental rate. He said the City needed to look at what a private owner would get in revenue versus what it cost to build a garage. Mayor Tussing said he accepted Mr. Krueger's answer, but did not agree with it. Councilmember Pitman asked what the original cost was. Mr. Krueger said he did not know.

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

Councilmember McCall moved for approval of Item 5, seconded by Councilmember Pitman. Councilmember Gaghen commented that she heard from local realtors that felt they could have marketed the property to local and national markets. Councilmember Ulledalen said one of the comments heard all along was that they did not want someone to get a sweetheart deal and a national market was preferred to get the best price. Councilmember Veis expressed his hope that staff would listen and have an open mind if someone made a build/swap offer. Councilmember Ruegamer stated he agreed with Councilmembers Ulledalen and Veis and wanted to be kept apprised through the process.

Mayor Tussing advised he would not support the motion because he felt the minimum bid should be closer to the cost to construct the facility. Councilmember Ulledalen asked if Mayor Tussing was suggesting an increase in parking rates to make the return on capital more competitive. Mayor Tussing said that would be a good idea. Mr. McCandless advised that it would be a negotiated sale and the minimum price set a floor to start negotiations. Mr. Brooks advised that it would be clear in the documents that any and all offers could be rejected at the discretion of the Council. Mayor Tussing said he was still concerned that the language was not specific enough. On a voice vote, the motion was approved 10-1. Mayor Tussing voted 'no.'

6. **CONTINUANCE OF PUBLIC HEARING AND RESOLUTION #09-18887** making original spread assessment on SID 1387, Zimmerman Trail Subdivision Sanitary Sewer. (Continued from 9/28/09.) Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)

Ms. Volek explained that the item was postponed in order to allow notice to the property owners regarding a revision of the cost of the Intercap Loan from the State of Montana to finance the sanitary sewer improvement. She noted that with approval of the Consent Agenda, the bid was awarded for the project and the submission of the Intercap Loan application was approved. She noted that the item was creation of the special improvement district to finance that assessment on the remainder of the properties that had not already paid the assessment in full.

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

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

7. **PUBLIC HEARING AND RESOLUTION #09-18888 APPROVING AND ADOPTING BUDGET AMENDMENTS FOR FISCAL YEAR 2009-2010.** Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)

Ms. Volek advised that a detailed list of the budget amendments was included in the agenda materials and there was no additional staff report.

The public hearing was opened.

- **Amy Cowley, 546 Avenue F**, stated that the public should have the opportunity to review the budget in order to have resolution and adopt a budget. She said she did not feel something that was next to impossible to read should be approved and the public should have a copy of the same agenda given out to the Council.

Ms. Volek advised that the City's budget that was approved in June was on the City website for public review, along with the agenda item. She noted that a copy of the document was also available for review at the Library or at the City Clerk's office.

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

Councilmember Veis moved for approval of the resolution adopting budget amendments for FY2009-2010, seconded by Councilmember Ronquillo. Councilmember Clark commented that the amendment contained items that had been approved and the amendment just provided the ability to spend the funds. 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.)

- **Joseph Sands, 2512 Terry and 530 S. 27th Street**, said he was aware that some of the Councilmembers had questions about the union's endorsement procedure and policy, so he was available for questions.

Councilmember Ulledalen asked Mr. Sands to explain it since he was present. Mr. Sands said it was their policy to invite members, based either on their current or previous voting records or who held the firefighter issues in high regard, through an interview process with the Political Action Committee, and then the Political Action Committee suggested to the body which candidates should be endorsed for office. Councilmember Ulledalen asked how voting records determined which candidates were invited. Mr. Sands explained that they looked at voting records on firefighter issues; what the issue was, and whether the vote was 'yes' or 'no.'

Councilmember Ruegamer stated that he was unclear about that and asked how they could know in advance how candidates would vote. Mr. Sands advised that they checked background information, talked with people and other labor unions about what they had done for that union or affiliation with other organizations within the community.

Councilmember Clark asked if any incumbents from the current Council were interviewed. Mr. Sands responded that they were not, and it was an initiative brought forth through the body because they felt the record of supporting local firefighters spoke for itself.

Councilmember Ulledalen said he was not invited, so he wanted to know how he voted that indicated he did not support the Fire Department. Mr. Sands said the major reason was adoption, without seeking another option, to use the public safety mill levy to pay the firefighter lawsuit and to divert those funds rather than hiring the eight individuals through the public safety mill levy. Councilmember Ulledalen asked what he suggested should have been done differently. Mr. Sands said the City Administrator was given ideas in a meeting that was facilitated by Richard McFadden, candidate for Ward III. Ms. Volek pointed out that the meeting was held after the endorsements were made.

Councilmember Astle said he was appointed two years ago, which was after the lawsuit and the decision regarding how to pay for it. He said Mr. Sands was the first firefighter he had ever talked with, so he wanted to know why his opponent was endorsed and he was not. Mr. Sands stated that although the Council may not think so, the firefighters were spread out in the community and had friends spread through the community that talked with them on a regular basis. He said that it was because Councilmember Astle was appointed and did not seek the other side of the story from the firefighters about their opinion on the lawsuit, but had already passed judgment about how wrong the firefighters were and voiced it in an open meeting which came back to them. He said he knew an individual that had a personal conversation with Councilmember Astle about the issue.

Councilmember Astle asked Mr. Sands to be more specific about the individual. Mr. Sands responded that he would tell him off the record. Councilmember Astle stated that he was on the record right then telling him he would not be endorsed, so why would he not tell him who said that about him. Mr. Sands stated he would not do that to that individual.

Councilmember Gaghen asked Mr. Sands if he suggested that all candidates go to each union to try to get the story to see how they should be responding to a biased viewpoint because each union would have its own bias or interpretation. She stated that the Council represented the whole public and tried to be as fiscally responsible as possible. She said she had some problem with how they seemed to denote their job of judging the people who voted for the best interest of not only the firefighters. She explained that as far as the budget monies that were required to settle the lawsuit, there was no other pool unless it was taken from other departments. She said she was puzzled by that interpretation.

Councilmember Ruegamer said he did not know if Mr. Sands recalled, but he went to the union hall the last time he ran for office and talked with the firefighters. He advised that he talked with a retired firefighter about the lawsuit and never received one suggestion from the firefighters about where the money was to come from unless it was to come from the police or parks budgets. He added that the money did not come from the public safety fund; it came from the general fund. He said Mr. Sands was misspeaking by saying it came from the public safety fund. Mr. Sands asked if the eight firefighters whose job offers were rescinded were part of the public safety levy. Councilmember Ruegamer stated that was splitting hairs. He said it came from the general fund and the public safety levy was a separate fund and no money was taken from an accounting standpoint. Mr. Sands asked 'were they not?' Councilmember Ruegamer responded that they were.

Councilmember Ulledalen stated that he was still giving Mr. Sands an opportunity to say it was a difficult decision. He said he was not discussing the verdict of the lawsuit, but was saying that the Council had to vote on a budget, so he wanted to know where Mr. Sands thought the money should have come from in the budget. He asked Mr. Sands to come out and say where he thought the money should have been taken. Mr. Sands said he did not know, and if he really wanted to know that he would be sitting in Councilmember Ulledalen's seat. Councilmember Ulledalen responded that was not a very complete answer.

Councilmember Ruegamer commented that if Mr. Sands was fighting a fire and he came to tell him how to do it, he'd probably be arrested, and would deserve to be. Councilmember Ruegamer said he had worked with budgets most of his adult life and now he had the firefighter union telling him how to do a budget. He said that tweaked his mind because maybe the firefighters thought budgets were simpler than fighting fires.

Councilmember Ulledalen said that one of the ideas out there was that more staffing could be used in both police and fire so he wondered what Mr. Sands thought they should do. He asked if the public should be asked for another safety levy. Mr. Sands said he did not know if the public would support that. He said a 2003 staffing study adopted by the Council indicated the City was three fire stations behind and adding one did not make up for the two that were still missing.

Councilmember Brewster stated that it made him sad that the firefighters were going to create a lot of ill will with community leaders. He said he had run for a number of offices and the unions involved always interviewed both candidates, which provided an opportunity for candidates to express their views and discuss the issues with the union leaders. He said for the fire union to do it willy nilly was

kind of cowardly. He added that the incumbents should have been given a chance to represent themselves. He said it was easy to kiss everyone's butt as a candidate, but it was much harder sitting in the Council seats dealing with the realities of running the City. He added that when the teachers went on strike, it caused a lot of ill will in the community. Mr. Sands stated that was probably the main reason they could not go on strike. Councilmember Brewster responded they could not because they were public safety. He said his point was he did not know if the firefighters wanted to create all that ill will, that they may win the battle but would not win the war. He said it was sad because he respected the work of the firefighters. Councilmember Gaghen commented that they all did.

Councilmember Ulledalen echoed that and said the police and fire were the most critical elements of what the City provided, but it needed to be understood that Councilmembers heard negative comments from voters about the unreasonable demands made. Mr. Sands said they heard the same comments. Councilmember Ulledalen stated that the City hired almost 900 people and needed people that were happy in their jobs and content because they provided services expected by the community so it had to be a collaborative effort. Mr. Sands stated that because Councilmember Ulledalen was a staunch supporter of the private ambulance service in Billings, he should put himself in Mr. Sands' shoes, when as a paramedic on a medical call, he knew that he had the knowledge and all the talent in the world to help a patient, but was hindered to do that. Councilmember Ulledalen said there was any number of levels of technicality that could be added to any staffing level in any department, but the problem was that there was an optimum level of what could be provided. He said the community established an ordinance in 1994 that governed it. He said he also felt there were people in the Fire Department that were not totally sold on the idea that they wanted everyone to go to a paramedic service. Mr. Sands stated that he did not think there was anything in that statute that allowed the City to not allow the 21 individuals hired within the department to function at that level. Councilmember Ulledalen said it was back to dollars and cents and the question of what it would take to get that done, but the community had decided to fund the paramedic service in the current manner. He said he understood Mr. Sands had frustrations as a paramedic and did not feel he could fully execute his role within the organization, but there were constraints with what the City could do with the money it had. Mr. Sands asked if Councilmember Ulledalen was saying that someone's life in the City of Billings was not worth the 88 cents per hour. Councilmember Ulledalen stated that France put doctors on every ambulance and asked if Mr. Sands was saying that Billings should not put a doctor on every ambulance.

Councilmember Astle said he did not see that questions were asked, but argument was going back and forth and it seemed that Mr. Sands' three minutes were up. Mayor Tussing stated that Mr. Sands was responding to questions.

Councilmember Ulledalen commented that it was a good opportunity to get information out to the public.

- **Amy Cowley, 546 Avenue F**, stated that she did not feel the dialogue she just witnessed was very appropriate. She said that while she believed everyone deserved to be given a second chance, she was puzzled why the City continued to budget programs for criminals. She referred to questions asked of Mr. Sands when he was trying to bring up an issue, and said she felt it was not the duty of Council to ask the questions, but to come up with the answers. She commented

that words like 'willy nilly' were not professional. She said the City needed to take care of its firefighters and police that were proactive against crime and for public safety. She said she still had not gotten an appropriate comment on that subject, but that was all she had to say.

Councilmember Ruegamer asked what Ms. Cowley was referring to that she had not gotten a comment. Ms. Cowley said when the subject came up about needs of the firefighters and police, she always heard the argument about public safety levy versus who did what and who should have done what. She said the City Council needed to come together in a professional way and the last thing that should be said was they should 'bring it on' and they would go to court. She said that was not appropriate. Councilmember Ruegamer noted that the lawsuit went as far back as the 1960s and was initiated in about 1995 when none of the current members were on the Council. He said it came down to dollars and cents, period. He added that he had never evaded a question and did not think anyone had. Ms. Cowley said she was saying that the public safety was the fruit of the community and there were appropriate ways to handle it and there were two sides.

Councilmember Ulledalen said Councilmembers received comments from citizens after Council meetings and were asked why they did not respond to some of the public comment. He said people wanted information and that was why discussions were held to make emails and other communication more accessible. He said the point was that the City was in challenging economic times and everything it did cost more money every year. He asked what the likelihood was that voters could be asked for tax increases in the next two to five years to cover increased costs. He said that although police and fire were the most critical services, there was only so much money the City had to work with and care was needed in how it was allocated. He explained that each department was preparing business plans to evaluate how things were done and if changes were needed. He said the budget was okay for the current year, but the City was facing major problems in future years and either nothing could be done now or adjustments could begin so it was not quite so bad. He said he did not think anyone was happy that public safety could not be increased because those departments were stretched, but there were limits with what the City had.

Ms. Cowley said she felt there were things in the budget that could have been allocated more toward public safety. She stated she had a budget plan but would not review it right then. Mayor Tussing said he would be happy to look at Ms. Cowley's plan if it had answers to some of the dilemmas the city had faced. Councilmember Gaghen advised that she and Councilmember Clark had previously served on the Alternative Revenue Committee established in the mid 1980s and it looked at communities of all sizes to try to identify alternative funding sources. She said those alternatives were minimal, but the city finally supported a right-of-way fee that would have been a pass-through from utilities that would impact customers that had utility lines in the public right-of-way. She said it was extremely volatile in its presentation. She said through the years the City had tried to be as innovative and creative as possible within the limits of the Charter. Ms. Cowley said she would like to be given a chance to share her plan. Councilmember Ruegamer suggested providing it to the Billings Gazette.

Ms. Cowley stated she had two items to discuss and was not finished. Mayor Tussing noted that she was still allowed only three minutes and she should have

said so at the beginning of her testimony. Mayor Tussing allowed her to continue.

Ms. Cowley stated that she heard concerns expressed that evening about public engagement and was curious why the neighborhood around Pioneer Park was not asked if disc golf was wanted. She asked why the discussion of finding another area for that activity had not occurred. Ms. Volek explained that disc golf had been in that park for about a decade and started unbidden by the City because of the terrain. She said that at one time, the City Council held a meeting with the disc golf players and the neighborhood to try to resolve the issue. She said the master plan update process that was due to start soon would include public meetings.

- **James Knox, 661 Garnet Avenue**, said he hoped to be on the Council next year and would like the challenge of dealing with public safety. He said he thought everyone agreed that more fire and police were needed, so he invited the public and everyone involved to put politics aside and try to come up with ideas to reach the goals and find solutions to the issues. He noted that too often misinformation came from both sides. He invited the public to contact City Councilmembers with ideas.

Councilmember Clark commented that that would take dialogue from both sides no matter what the votes were on the issues. Mr. Knox agreed and said there should be an opportunity to explain why decisions were made.

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

COUNCIL INITIATIVES

- **Councilmember Ruegamer** commented that every community leader he spoke with at the recent Montana League of Cities and Towns conference agreed that their community had financial problems. Councilmember Ruegamer moved to have attendees of the recent Montana League of Cities and Town conference provide a brief report at the next work session, seconded by Councilmember Brewster. Councilmember Ulledalen expressed support of the motion because everyone attended different breakout sessions and obtained different information that should be shared. Councilmember Clark announced that Councilmember Ruegamer would be the chairman in 2011 when the MLCT conference would be held in Billings. On a voice vote, the motion was unanimously approved.
- **Councilmember Ruegamer** moved to appoint a replacement for Councilmember Veis on the Montana League of Cities and Towns Legislative Committee, seconded by Councilmember Pitman. Councilmember Ruegamer explained that since Councilmember Veis's term expired at the end of the year, a replacement for that committee appointment was needed right away. He stated that it was an important committee that worked on the legislative agenda and quarterly meetings would be held. Councilmember Veis advised that all Council appointments would have to be reviewed at the end of the year and suggested including that one with them. He asked Councilmember Ruegamer if he would support that process. Mayor Tussing stated that it should possibly wait until the new Council was seated and the Pro Tem selection was made. Councilmember Veis stated that the committee had not been meeting on a quarterly basis and felt an appointment could be made when the rest of the Council appointments were done. Mayor Tussing said he would not support the motion because he felt it should wait until after the election. On a voice vote, the motion failed unanimously.

- **Councilmember Pitman** moved to direct staff to work on requirements and costs the City could be facing regarding wastewater. Ms. Volek explained that she, Mr. Mumford and Mr. Towlerton had been working on that issue and were dealing with Department of Environment Quality regarding the initial requirements. She added that until the rest of the requirements were known, it would be difficult to assess exact costs. Mr. Mumford offered to provide general information about the regulations. He added that there would be a contract on the next Council agenda regarding professional services for an integrated water plan, but currently only general information was available. Councilmember Pitman said he was looking for general information. Councilmember Clark asked if it was known if it would be tested in pipe or in the river. Mr. Mumford explained that the current plan was to test it in the pipe.
- **Councilmember Brewster** moved to direct staff to provide a recommendation regarding the feasibility of forming a rural water district in conjunction with the County, seconded by Councilmember Gaghen. Councilmember Brewster explained that he felt it was a reasonable thing to do to make water was available for development outside the city limits so when the City annexed those developments, the densities were more in line with City requirements. Councilmember Ulledalen stated he had issues with that. He said he heard at a homebuilder's conference earlier that day that some of the costs of building in the rural areas were not competitive. He asked why a needed service would be extended to the County to allow development there. Councilmember Brewster stated that it would be done now or later. Councilmember Veis commented that it was a complex issue to deal with and he felt it was a can of worms. Councilmember Brewster said he felt staff could easily make a recommendation whether it was feasible. He commented that at some point, the water in the County would dry out and it would be a problem down the road, and this could be proactive for future water issues. Councilmember Veis asked if Councilmember Brewster foresaw the City divesting itself of its water system. Councilmember Brewster responded that he did not. He said he saw it as a situation similar to the Heights Water District; he did not intend that the City would give up any control of its water system. He stated that he believed there were developments adjacent the water system and if the residents paid utility costs to connect, that would be a revenue source. Councilmember Brewster stated that he would volunteer to serve on a committee if one was formed to work on the issue further. Councilmember Ulledalen suggested offering it to the Public Utilities Board to work with staff. Councilmember Gaghen asked Mr. Mumford if he had any basic information to share. Mr. Mumford explained that water could be supplied to areas outside the city limits, but the City had limited water rights, and there were jurisdictional issues concerning cost. Mr. Mumford said his biggest concern was that developments would not want to annex to the City if they already had City water. He pointed out that water was the limiting factor for growth. He said the question was whether the City wanted growth to occur outside the City limits that used all the City resources for free. Councilmember Brewster said there was still a lot of development around the City and people were hauling water and that type of development would eventually occur around the City. He used North Helena as an example of that type of situation. Councilmember Veis requested no more than six hours of staff time on the initiative. Ms. Volek suggested consulting with the Public Utilities Committee that would be meeting later in the week. On a voice vote, the motion was approved 7-4. Councilmembers Ruegamer, McCall, Ulledalen and Astle voted 'no.'
- **Councilmember Veis** moved to direct staff to provide a proposal to change the public comment procedure at work sessions to allow public comment at the end of each item. He said there were situations when people came to the work session and did not understand the procedure and were not able to comment when they thought they could. The motion

was seconded by Councilmember Clark. Councilmember Clark said he saw the same problem at the work sessions. Councilmember McCall stated she would support that as well because it was identified as an issue in the steering committee meetings and that would go a long way toward solving it. On a voice vote, the motion was unanimously approved.

- **Mayor Tussing** moved to allow Northwest Energy to disclose the City's billing or contract information, seconded by Councilmember Gaghen. Mayor Tussing explained that Russ Doty had studied the issue and stacks of information provided by Ms. Volek. He reported that Mr. Doty's preliminary research indicated that the City had not been overbilled, but had overpaid for many street light districts administered by Northwest Energy, possibly to the tune of millions of dollars. He said that did not mean NWE did not have the right to assess the tariffs allowed by the Public Service Commission, but there was a possibility that the City should be petitioning the PSC to amend those tariffs based on the fact that the equipment had been paid for years ago and the City was still paying for insurance to replace a pole if one was damaged. He said Mr. Doty wanted to know if Northwestern Energy had amendments to contracts that might change the billing. Mayor Tussing said if the City decided it did not want Northwest Energy to release the information, it made the City look bad. Ms. Volek advised that Mr. Doty submitted a public information request and was provided with the bills retained in accordance with records management requirements, so he had the first month of 1999 and the bills from the month that preceded his request, which was the most recent information available. She pointed out that the City had 172 lighting districts, so the stack of information was significant. Ms. Volek reported that years ago, Northwestern Energy provided contracts that dated back to the 1950's. She said she had not delved into those contracts, but was told by a representative of Northwestern Energy, that the records were not accrued in the way Mr. Doty requested them at that time. She added that the Open Records Law did not require the City to re-compile the information in the way Mr. Doty requested, but she still intended to provide Mr. Doty with a map of the lighting districts. Mayor Tussing said that was still not a good enough reason to not allow Northwestern Energy to provide the information to Mr. Doty. Councilmember Brewster advised that he would recuse himself from the item because he was employed by Northwestern Energy. On a voice vote, the motion was approved 10-0.
- **Councilmember Ulledalen** commented that he attended the homebuilder's conference earlier in the day and the data distributed basically indicated that the more homes built, the more money was put into the community. He said he questioned the source of some of the data and wondered if staff could review it to be prepared with a response. Councilmember Veis stated that the caveat with that was that jobs had to be created also, and that raised the question whether the development should be based on the number of jobs created in the previous six months. Councilmember Clark commented that part of the caveat was related to the price of homes, because houses over \$250,000 did not necessarily pay their own way. Councilmember Brewster said all the numbers had to be considered, not just the taxes. Ms. Volek offered to check into the source of the data provided.

ADJOURN

The meeting adjourned at 10:12 p.m.

*Additional information on any of these items is available in the City Clerk's Office.
Reasonable accommodations will be made to enable individuals with disabilities to attend this meeting. Please notify
Cari Martin, City Clerk, at 657-8210.*

