

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

December 14, 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 Ruegamer gave the invocation.

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

MINUTES: November 23, 2009 -- approved as distributed

COURTESIES:

- Mayor Tussing congratulated Councilmember Pitman and his family on their recent adoption of three children.
- Councilmember Astle announced that he and Councilmember Gaghen had a small bet and Councilmember Gaghen lost. He said both were making donations to the Billings Food Bank and invited other Councilmembers to do the same.

PROCLAMATIONS: None

ADMINISTRATOR REPORTS - TINA VOLEK

- Ms. Volek referred to an email placed on councilmembers' desks and in the ex-parté notebook in the back of the room from Aviation and Transit that requested pulling Item #1E from the agenda. She said the vendor decided not to proceed with a fresh flower stand at the Airport.
- Ms. Volek advised that information from Chuck Barthuly of Better Billings Foundation, and a draft copy of a funding and development agreement for Item #4 were placed on councilmembers' desks and in the ex-parté notebook in the back of the room.
- Ms. Volek advised that the resolution for Item #6 was not available when the agenda packet was created, and a copy of it was placed on councilmembers' desks and in the ex-parté notebook in the back of the room.
- Ms. Volek referred to an email from Ray McLean of Prestige Toyota requesting withdrawal of the application for tax abatement. She said a copy of the email was placed on councilmembers' desks and in the ex-parté notebook in the back of the room.
- Ms. Volek advised that a copy of an October 19 letter from the Billings Gazette regarding the Council's email policy was placed at councilmembers' desks and in the ex-parté notebook in the back of the room. She noted that the letter had been reviewed previously when it was received, but another copy was provided because the email policy was on the agenda that evening.
- Ms. Volek advised that a memo from Library Director Bill Cochran and an email from her regarding the Library Board's recommendation concerning Item #5 were sent in the Friday Packet and in the ex-parté notebook in the back of the room.

- Ms. Volek advised that the protest period for Item #3 ended Friday, December 11, 2009. She said the City Clerk reported that no protests were received.

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 of Downtown Billings Partnership**, expressed his support of approval of two Downtown Revolving Loans for Babcock, LLC. He said he felt that was the best procedure for that project. He also spoke in favor of Item #1L, acceptance of a donation from the Billings Police Foundation for Honor Guard and Bike Patrol equipment. He said downtown officer Shane Winden was instrumental in the development of the Honor Guard and he was supportive of it.

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

1. CONSENT AGENDA

A. Bid Awards:

1. **MET Operations Center Bus Wash Facility and Pavement Upgrades.** (Opened 12/1/09). Recommend Langlas and Associates, \$ 343,200.
2. **Refuse Packer Truck** for Parks Department. (Opened 11/24/09). Recommend Solid Waste Systems, 2007 Refuse Packer with EPA Emissions Standards engine, \$133,094 (contingent upon availability); or 2010 Refuse Packer with EPA Emissions Standards engine, \$139,094.

B. Change Order #2, W.O. 09-03, 2009 Street Maintenance City Crack Seal Project; Z & Z Seal Coating; \$27,540.

C. Approval of Modification #4 to Law Enforcement Officer Reimbursement Agreement with the Transportation Security Administration, October 1, 2009 - September 30, 2010, with reimbursement to the City up to \$163,286.40.

D. Assignment of three (3) Commercial Aviation Ground Leases with Edwards Jet Center Montana, Inc. and Lynch Flying Service, Inc. to Stockman Bank for financing purposes, with no financial impact to the City.

- E. Approval** of Airport Concession Agreement with Botanical Designs and Services, November 1, 2009 - April 30, 2010, with an option to renew for an additional six-month period, \$1,275.72 revenue for the first six-month period.
- F. Approval** of lease renewal with KTVQ Communications, Inc., for space at the Black Otter Trail tower, 5-year term retroactive to September 1, 2009, \$3,937 annual revenue.
- G. Approval** of compensation agreement for Private Contract No. 608, M&K Blue One, LLC, for water, sanitary sewer and storm drain on King Avenue West from Montana Sapphire Drive to 44th Street West, \$231,834.50.
- H. Acceptance** of easements from Montana Department of Transportation for Parcels 6 and 7, and a sale deed for Parcel 8 at the intersection of 13th Street West and Parkhill, at no cost to the City.
- I. Approval** of Downtown Revolving Loan Fund for two loans to Babcock, LLC, for remodeling of the Babcock Building at 115 N. Broadway, totaling no more than \$400,000.
- J. Acceptance of Donation** from Rathbun Family for purchase and installation of a bench at Descro Park, \$1,000.
- K. Acceptance of Donation** from Alarm Association of Yellowstone County to Police Department for purchase of micro digital recorders or other police equipment, \$1,100.
- L. Acceptance of Donation** from Billings Police Foundation to Police Department for Honor Guard and Bike Patrol equipment, \$4,393.
- M. Resolution #09-18900** accepting the terms and conditions of the Intercap Loan obtained to finance SID 1387, Zimmerman Trail Sanitary Sewer.
- N. Preliminary Subsequent Minor Plat** of Miller Crossing Subdivision, 3rd Filing, located on approximately 14.355 acres on the south side of King Avenue East and on the west side of Orchard Lane at the site of the nearly-completed Sam's Club, conditional approval of the preliminary plat and adoption of the Findings of Fact.

O. Bills and Payroll:

1. November 9, 2009
2. November 13, 2009
3. November 20, 2009

(Action: Approval or disapproval of Consent Agenda).

Mayor Tussing moved for removal of Item #1E and Item #7 from the agenda, seconded by Councilmember McCall. Councilmember Veis noted that Item #7 was

scheduled for a public hearing and one should be opened. City Attorney Brent Brooks advised that if the item was withdrawn at the request of the applicant, a public hearing did not have to be held for it, but if a public hearing was going to be held, the item had to be kept on the agenda. Mayor Tussing asked if anyone in the audience was present to testify on that item. *There was no response.* On a voice vote, the motion was unanimously approved.

Councilmember Veis separated Item #1A2. Councilmember Ruegamer moved for approval of the Consent Agenda with the exception of Item #1A2, seconded by Councilmember Astle. On a voice vote, the motion was unanimously approved.

Councilmember Ruegamer moved for approval of Item #1A2, seconded by Councilmember Astle. Councilmember Veis said it seemed to make sense to spend the extra \$6,000 to buy the 2010 engine since the money was available to meet that EPA standard. Parks Superintendent Jon Thompson explained that the delivery time was the reason the item was presented that way. He said the 2007 engines could be delivered sooner than the 2010 models. He explained that it could be a difference of about 60 days to get the newer model, but it did not matter to the Parks Department which engine was purchased. Councilmember Veis asked if it had anything to do with the grant that made the funds available. Mr. Thompson explained that \$144,000 was available to purchase the unit so it was not a problem since the newer truck was \$139,000. Councilmember Gaghen asked about the urgency of obtaining the truck. Mr. Thompson said the delivery date was about 180 days for the 2007 model and 60 days later for the 2010 model, which would be beginning of summer when the refuse was being picked up in the parks. He said that was the park garbage truck and was used daily starting in the spring. He advised that an order could be placed right away after Council action and the supplier would be able to provide a more accurate delivery date. Councilmember Gaghen advised that she agreed that it was more practical to purchase the newer engine if the Council action could be flexible. Councilmember Veis explained that the staff's recommendation was to purchase either engine, but he would amend his motion that the 2010 model be the one purchased, seconded by Councilmember Clark. Councilmember Ulledalen asked about a difference in the EPA specifications between the two years. Mr. Thompson explained that there was quite a bit of difference between the 2007 and 2010 guidelines, with the 2010 engines more pollution free. He said the components of the engines were the same; the difference between the two models was the EPA standards. Ms. Volek advised that Mr. Whitaker informed her that the Parks Department had a vehicle to use until the new one arrived. Mayor Tussing asked for confirmation that it would not cost taxpayers an additional \$6,000 to get the newer model. Ms. Volek confirmed that it was fully funded by the grant. On a voice vote, the amendment was unanimously approved. On a voice vote, the amended motion was unanimously approved.

2. PUBLIC HEARING AND RESOLUTION #09-18901 vacating the alley located in Block 141, Billings Old Town, bounded by 1st Avenue South, 2nd Avenue South, South 26th Street, and South 27th Street; Riverstone Health, petitioner. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Ms. Volek advised that staff did not have a presentation but was available to answer questions. Councilmember Veis asked about the sewer in the alley. Public Works Director Dave Mumford explained there was a sewer service for that facility in the alley and all sewer services on private property were maintained by the property owner. He said it was old clay tile that should be replaced if a structure was

built over it. He noted there were no mains; it was a large service. Councilmember Ronquillo asked for clarification of the location. He said he was concerned about services to the apartment house on the corner of 3rd Avenue South and the two houses to the north. Mr. Mumford responded that anything of the City's would be replaced if necessary. He said the petitioner planned to do some work in that area and could provide a better explanation during the public hearing. Councilmember Veis asked if staff's recommendation was to donate, not sell the land. Mr. Mumford responded 'yes.' Ms. Volek advised that staff did not provide a recommendation whether the right-of-way would be at a cost to Riverstone Health, but provided the established value of the land. She noted that the last right-of-way granted to Riverstone Health was at no cost.

The public hearing was opened.

- **Douglas Carr, Riverstone Health**, advised he was Chairman of the Board of Health and wanted to verify that the alley in question was the parking lot of the current facility and the utilities went only to Riverstone Health. He advised that the property Councilmember Ronquillo questioned was a block south. He explained that Riverstone Health was a governmental agency, a health district under an interlocal agreement with Yellowstone County, the City of Billings and the City of Laurel, and was a DBA of the Yellowstone City-County Health Department. He said the City of Billings was a member of Riverstone Health and appointed a board member. He explained that as part of the construction, the City required vacation of the alley so Riverstone Health would be responsible for the sewer. He added that Riverstone had already replaced the clay sewer line and was prepared to assume the financial burden of maintaining it in the future. He stated that they would like to vacate the alley at no cost if possible and pointed out that the City had already received the benefit of not being responsible for the sewer. He advised that Riverstone Health provided care to underinsured and homeless patients, most of which reside in Billings, and was a member of the Community Crisis Center that provided services that allowed police officers to spend more time on the streets. He requested approval of the vacation of the alley and asked for a waiver of any cost.

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

Councilmember Veis moved for approval of the resolution vacating the alley located in Block 141, bounded by 1st Avenue South and 2nd Avenue South between 26th Street and 27th Street to petitioner at no cost, seconded by Councilmember McCall. On a voice vote, the motion was unanimously approved.

3. PUBLIC HEARING AND RESOLUTION #09-18902 CREATING SID 1389, public improvements on Clubhouse Way between Greenbriar Road and Cherry Hills Road, and approval of the Professional Services Contract with Sanderson Stewart in the amount of \$114,801.80. Staff recommends approval.
(Action: approval or disapproval of staff recommendation.) Ms. Volek advised that staff did not have a presentation but was available to answer questions.

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

Councilmember Brewster moved for approval of the resolution creating SID 1389, seconded by Councilmember Pitman. On a voice vote, the motion was unanimously approved.

4. PUBLIC HEARING FOR DONATION, SALE, OR LEASE OF LAND TO THE BETTER BILLINGS FOUNDATION FOR DEVELOPMANT OF A FAMILY AQUATIC FACILITY IN SAHARA PARK. Staff recommends donation of land. (Action: approval or disapproval of staff recommendation.) Parks, Recreation and Public Lands Director Mike Whitaker provided a history of the project that started over a year ago. He said part of the process included development of a master plan for Sahara Park. He reviewed the schedule of public meetings held regarding the master plan, with the first one in November, 2008. He explained that staff also reviewed proposed sale and lease agreements from the Better Billings Foundation and, for liability reasons, recommended approval of amendment B1 and to donate or sell the pool site to the Better Billings Foundation. He said the Planning Department recently reviewed section two of the sale/donation agreement. Planning and Community Services Director Candi Beaudry explained that staff's review found that the proposed division of land was characterized as an amended subdivision, while the original parcel was a certificate of survey. She said the language changes in Section 2 actually referred to the fact that it was a subdivision instead of an amended subdivision. She added that the rest of the language was consistent with that idea. Councilmember Brewster asked if the land would have to be rezoned if it was privately owned. Ms. Beaudry said it would not because it was zoned public and public swimming pools were allowed, but the condition was that the pool had to be open to the public.

Mayor Tussing stated he would hate to have people misled by something they read on the Gazette editorial page, and asked Mr. Whitaker if he was saying that almost 13 months ago there were meetings, the first of seven, and at that time, the possibility of a pool in Sahara Park was discussed. Mr. Whitaker responded that was correct. He said what prompted the department to look at creating a master plan for Sahara Park was the request from the Better Billings Foundation to possibly locate a pool there. Mayor Tussing commented that the neighbors would have had an opportunity to know that, contrary to the opinion expressed that nobody had a clue that it was being proposed. Mr. Whitaker said that was correct. Councilmember Brewster stated that most of the people who attended the meetings were told they could not comment on any other use except the master plan. He said Councilmember Pitman was the one that made that statement at the meeting.

Councilmember Ruegamer referred to the Satisfaction of Funding Contingency section of the contract. Mr. Whitaker advised that staff recommended including the number of \$4 million in that section. Councilmember Ruegamer stated he would not vote for anything that included pledges because they were promises that did not come true. He said the contract should read that the cash had to be in the bank. He asked if he was correct that the contract allowed the Better Billings Foundation three years to raise the money. Mr. Whitaker said that was correct. Councilmember Ruegamer asked how long the construction was allowed. Mr. Whitaker explained that one year was allowed for construction, but if weather conditions or other items caused delays, the Foundation could request an extension. Ms. Volek added that in contract B1, the staff's recommended contract, the City was required to transfer ownership within 60 days of notice from the Foundation that the funding contingency had been met and that the Foundation could begin construction within 90 days of that transfer.

Councilmember Ronquillo advised that he attended three of the public meetings and people there were also looking at Plan B of the master plan. He said he knew people spoke about it quite a bit, but he guessed it was not being considered any

longer. Mr. Whitaker said Master Plan A was in effect and Plan B would be in effect if the timelines were not met for Plan A. Mr. Whitaker explained that staff brought Master Plan A to Council and the Council asked staff to determine what the area would look like if a neighborhood park was developed, so the third public meeting was held for input and Master Plan B was developed.

Councilmember Pitman asked about the purpose of the \$100,000 if the land was sold to the Foundation. Mr. Whitaker explained there was not a high profit margin with an outdoor pool, so there would be a limited market if it had to be sold. Councilmember Pitman said he was puzzled because very few people bought something and had to set aside \$100,000 in case things did not work out. Ms. Volek explained that the pool would be the only asset of the relatively-new Better Billings Foundation. She said in the event the Foundation decided not to continue with the operation of the pool, the agreement provided that it returned to the City and the City needed to be in the position that it could repair or raze it if necessary. She said the \$100,000 irrevocable letter of credit was security for the City. She noted that staff had discussed alternatives with the Better Billings Foundation because there could be other ways to address that. She confirmed it was staff's recommendation to provide some kind of coverage for the future. Councilmember McCall asked Ms. Volek to briefly describe other options to establish that \$100,000 security. Ms. Volek advised that one option was a maintenance fund, whereby the Council could set a deadline and an amount for a fund. She said staff would recommend about \$100,000 in that fund and that it did not necessarily have to be accrued by the opening of the facility. She advised that some discussion was held with Mr. Barthuly and Ms. Ask about that type of fund. She noted that major maintenance fees were not typically high during the first few years of operation, but there could be a situation where the liability insurance was challenged. Councilmember McCall asked if options other than the letter of credit could be accomplished at that night's meeting. City Attorney Brent Brooks advised that it depended on how far away from the agreement that would be. He said if it was something that had not been discussed previously; he would suggest allowing more time for the public to comment on it.

Mayor Tussing stated that he would try to address Councilmember Pitman's question the same way he responded to a citizen. He stated that it was not normal practice to put money up for something purchased, but the City would not be selling the facility for its fair market value. He used the example of the Naval Reserve Center that the City obtained free from the Federal Government, but because of the asbestos, it could not be used or destroyed, and that was why he believed the City should be protected. Councilmember Clark stated that selling or donating the land to the Foundation was supposed to lessen the City's liability, but he asked if adding the conditions that tied it to the pool increased the City's liability. Mr. Brooks said the plan as presented provided some security to the City, but there was a deed restriction that said if the land was not used for an aquatic facility, it reverted back to the City. He said those two things were intertwined in the event the property was reverted back, and the financial security would be there to repair it or demolish it if necessary. He stated he did not think that increased the City's liability. He said he felt the agreement made it clear that the Foundation had to have appropriate insurance. Councilmember Astle asked Mr. Whitaker if the \$100,000 would be used if the construction started before the pledges were received and the Foundation ran out of money to complete it, so the money would be used to restore the land. Mr. Whitaker responded that the agreement required the Foundation to provide a performance bond, which insured completion of

the construction. He said the \$100,000 was in the event the facility reverted to the City and major repairs were needed or it needed to be razed.

The public hearing was opened.

- **Tom Iverson, Parks Board**, stated that the Parks Board recommended approval of the City's development agreement to donate the park land. He said the Board liked the idea of the donation rather than a lease to relieve liability. He said they also talked about a contingency fund where they were required to come up with \$4 million within three years, and if that did not happen, the agreement was null and void so it would not go on forever like Centennial Park. He said it also required a \$100,000 letter of credit in case there was a problem. He said the Board did not care which mechanism was used as long as something was in place in case the project failed. Mr. Iverson stated that the Better Billings Foundation had been involved in City parks for a long time and reviewed its participation in projects at South Park, the Zimmerman Center, Rose Park, Mountview Cemetery, and a variety of other parks. He said the Board wanted some kind of agreement because the Foundation wanted to build an aquatic facility in a park and the City did not have the money to do the same thing. He noted that if a mill levy was proposed to build a pool in the Heights, it would fail. He said the City needed that partnership.

Councilmember McCall asked if there were any dissenting votes among the Parks Board. Mr. Iverson stated that dissenting votes concerned the issue of selling or leasing. He explained some members felt selling or donating land would set a precedent, while some felt that was a good precedent. He said when it came to the final agreement, it was unanimous that the project should proceed.

Councilmember Ronquillo stated that the Parks Department was asked to look at selling some unused parks and Mr. Iverson just mentioned precedence. He asked if the Parks Board was going to start making recommendations to give land away to groups that wanted it, because at some point, the City needed to make money on the land. He said he hoped the Parks Board took a good look at the precedence it set by giving a good chunk of ground away. Mr. Iverson explained it would be reviewed on a case-by-case basis. He noted that Sahara had been undeveloped for more than 20 years. He provided the example that a little league was going to build a baseball field at one park and that was the type of thing that belonged in parks. He said he did not think a precedent was being set.

Councilmember Gaghen said some of neighbors wanted Plan B and she asked if the Parks Board recommended some development prior to the completion of the aquatic facility. Mr. Iverson said the neighbors would have to create a district if a neighborhood park was to be developed on the other portion of the park land. Councilmember Gaghen asked if there was anything that would preclude that. Mr. Iverson said he felt it would be encouraged.

Councilmember Brewster asked if Mr. Iverson was saying that the Parks Board was opposed to undeveloped areas in the City. Mr. Iverson said he was not saying that, but the Board wanted to see parkland developed in most cases unless the City established an open land policy. Ms. Volek pointed out that staff brought preliminary guidelines for sale of public land to a work session a couple of months ago and they would be reviewed again at another work session in February. She advised that there were park funds for many of the undeveloped parks that contained

contributions from developers, but those contributions were not sufficient to develop those parks without a major infusion of cash. Councilmember Ulledalen said it was unknown what precedence was set until later when someone wanted the same treatment. He said he felt a policy should be established for consistency. He commented that if the project was approved, they were kind of running roughshod over the immediate neighbors of the park, and it should be done consistently throughout the community. Mr. Iverson said he agreed there should be a policy for undeveloped parks and the Parks Board would be happy to work on one.

- **Makenzie Barrett, 720 Key City Drive**, stated it would be nice for the Heights to have the aquatic center for both youth and adults. She said there was not much in the Heights and parents did not want to drive to the west end for swimming or other things for kids to do. She added that swimming was good exercise and good entertainment. She said the aquatic facility would be convenient.

Councilmember Pitman asked Ms. Barrett if kids were talking about it at school. Ms. Barrett said kids mostly wanted something to do in the summer.

- **Kelsie Field, 325 Laurie Lane**, stated that having an aquatic facility in the Heights would be a good thing. She said kids did not get to do much during the summer when their parents were working, so a pool in the Heights would be convenient because kids could walk, ride bikes or ride the MET bus. She stated that it could be used for swimming lessons or water aerobics for kids and adults. She said kids just wanted to have a place to hang out in the summer.

Councilmember McCall asked Ms. Field her age and what school she attended. Ms. Field responded she was 13 and attended Castlerock Middle School.

- **Rachel Cox, 2015 Azalea**, advised she was also a Parks and Recreation Board member and felt that partnerships with other organizations provided the biggest bang for the buck and were the smartest things that happened in Billings. She said Par 3 and Little League were examples of partnerships and without those organizations, the parks would not be what they were today. She said she was in the real estate business and the parks were something she pointed out to prospective residents, which helped Billings in the long run.

- **Dale Harr, 3589 Spalding Avenue**, spoke in favor of the aquatic center. He said he moved to Billings from the Flathead Valley about 15 years ago and missed being near water. He said he supported the public/private partnership opportunity. He compared it to the recent ballpark project that he initially opposed because it was used by so few people in the community, but as soon as people started stepping up and putting private dollars into it, he began supporting it. He said it made sense to have an aquatic center in the Heights.

- **Pamela Ask, 5329 Trail Road**, said she was present as a businesswoman and chairman of the Better Billings Foundation to ask for a favorable vote on the development plan. She advised that City staff and Foundation members looked at several possible locations and Sahara Park consistently rose to the top. She said she especially liked the location because it met two major objectives which were to get a pool in the Heights and to use the pool to build cohesiveness in the City. She noted that Sahara Park sat in the hub and was convenient for outlying areas like Shepherd and Huntley. She said there were very few people more than 15 minutes away. Ms. Ask stated that the facility would be visible from the air which would be impressive. She said the facility would be an attraction in itself, and was accessible from the interstate and could draw out-of-town guests for overnight stays. She said

she felt it would be an asset from an economic development standpoint and could lend credibility to the Heights and spur further development. Ms. Ask advised that as co-chair of the fundraising committee, she saw the aquatic park as a high probability. She said she had spoken with other business leaders and saw their interest and support.

Mayor Tussing asked Ms. Ask if she had an opinion about the City's recommendation for a performance bond. Ms. Ask stated that she did not think it was necessary. She said they were a group of business people that had a number of successful business ventures in the community. She added that a question in her mind was why this and why now. She said Ms. Volek made a good point about the liability and insurance issue. She said the bottom line was if they needed to come to an agreement and the Foundation had to put up \$100,000 in some way shape or form to get a pool built in the Heights, they would gladly do it to see it done.

- **Chuck Barthuly, 300 Eastlake Circle**, said everyone could agree by that point that providing an outdoor aquatic facility for the Heights community was a commendable goal and one expressed by the City government in its Capital Improvement Plan and by the citizens in the recent parks study. He said to imagine 440,000 moms, dads, kids and youth enjoying a public facility; 5,000 swimming lessons; over 400 good-paying part-time jobs for young adults; abundant laughter and countless smiles; and an investment in the job market of a \$4.5 million construction project that were just a few of the benefits the investment in the Sahara Park aquatic facility would bring in ten years. He said they had the opportunity to change the face of the Billings Heights for the better, and the City would benefit for years to come by finding the solution to accomplish a task that had evaded it for years. He stated that he had previously spoken about the attributes and importance of the Sahara Park location. He said the most critical issue was the Better Billings Foundation's ability to raise the funds for the project, and for that very reason, the location was strategic. He said Sahara Park was an integral and decisive factor in determining and getting community-wide support and buy-in. He pointed out it was one-third mile from Airport Road, a 12-minute drive from Rimrock and Shiloh, and a 10-minute bike ride on the bike path from Sahara Park to Dehler Park. He said an investment in the community and improving the quality of life for the citizens of Billings and the surrounding area was an objective they could all agree on. He added that as leaders of the community, the Council was entrusted to better the community, and as opportunities were presented, they must be evaluated through a risk and reward assessment. He said there was a risk and reward correlation with any investment and a decision had to be made based on that analysis. He listed families recreating together, learning life skills of swimming, job opportunities, and a community investment of infrastructure as expected rewards with zero capital investment from the City. He said it was the best investment with the least amount of downside that any council had been presented, and worthy of a vote to assist them in developing the development agreement and moving the project forward whether it was with a sale or a lease of the Sahara Park facility.

Councilmember Ruegamer asked Mr. Barthuly about the ten-year reference. Mr. Barthuly said that was what could be accomplished in ten years. Councilmember Gaghen asked if anyone knew the current attendance numbers at Rose Park Pool. Mr. Whitaker reported that the average was 500-550 people per day. Mr. Barthuly advised that he used that data for his projections. Mr. Whitaker added that it was

about a 10-1/2 week season, with about 500 people per day. Mr. Barthuly said those numbers were consistent with the feasibility study for Sahara Park.

Councilmember Clark asked Mr. Barthuly what he thought it would cost to get the \$100,000 letter of credit. Mr. Barthuly advised that he had spoken with some bankers and it would be viewed that the money was drawn on as soon as the letter of credit was established because it was assumed it could be used any time and had to be available. He said if there was no collateral available, which was debatable, it would be at a high interest rate of 8-10%, so the annual interest expense would be \$8,000-10,000. Councilmember Clark stated that if the project was approved and the Foundation put \$8,000 in a trust fund each year, it would not cost any more than the letter of credit and interest would be gained on it. Mr. Barthuly said that was an opportunity, but the first objective was to get it built and any money that did not go into the construction, took away amenities that would be used to facilitate the project. He said there was money in an endowment that was gaining interest and the interest could be used for maintenance. He said they were working on those types of things and with donors. He stated that the Foundation was willing to work to figure out a way to minimize the risk, even though he still felt it was an investment that could not be overlooked even without the \$100,000. He said it would be agreeable to him if \$20,000 was put in each year for five years and held for long-term maintenance. Councilmember Clark commented that he would rather see that than to have it just thrown away to buy the letter of credit because it was possible that it would never be of use to the City but would cost the Foundation over time. Mr. Barthuly said that was what he tried to convey in his communication.

Councilmember Ronquillo stated that a lot of opposition from people in the surrounding area had been voiced at prior meetings, so he wondered if more meetings had been held to sway them to the Foundation's side. He said the last news he heard was that the majority of the surrounding neighbors did not want it. Mr. Barthuly said he would have to ask what Councilmember Ronquillo meant about a majority because he had not seen a majority. He said he sent a letter to the people that would be in an SID district. He explained that the letter was factual and he asked for a response, but he received only about 17 responses and about half of them were opposed to the project. He noted that was the last communication, although a meeting was held at Alkali School and about half of the people that attended were in favor of the project and the other half opposed it. He added that emotions were high going into the meeting and they tried to address concerns. He stated that traffic was a number one concern and the Foundation and Dowl HKM agreed to conduct a traffic study so that concern could be addressed with facts.

Councilmember Ulledalen referred to Mr. Barthuly's email to Ms. Volek that stated, "After several discussions with councilmembers and further investigation into the irrevocable letter of credit, the Better Billings Foundation is reluctant to provide an irrevocable letter of credit as the expense would be too great and it is not convinced it is a critical issue to councilmembers." Councilmember Ulledalen asked what councilmembers Mr. Barthuly had met with and which councilmembers had led him to believe that. Mr. Barthuly said he had talked about it with Councilmembers Clark, McCall and Pitman. He said his point was that they did not know if it was an important issue and were not convinced it was a critical issue to address. He stated he was not convinced because they did not know and that was part of why it was difficult to move the development agreement forward because staff tried to guess what was important to the Council and what would be a concern, and then they

heard other concerns. He said the \$100,000 was something that everyone thought would be nice, but he did not know if it was critical or a deal breaker. Councilmember Ulledalen said he had been consistent with that and did not want the taxpayers at risk in any way to have to clean up a stumble the Foundation made or a failure down the road and would not support anything that did not have that contingency. He said it was interesting that Mr. Barthuly cited a letter of credit at 8% when the going rate for a letter of credit in Billings was about 2%, so the bankers were assuming it was a high-risk venture and he thought the City had to make the same assumption. Councilmember Ulledalen stated he questioned whether the Foundation could get a letter of credit. He suggested, for discussion, that \$100,000 be set aside to meet the City's contingency if necessary and at some point, it could become part of the capital replacement program for the facility. He said it was important to protect the taxpayers in the event the project failed and the City had to take it over. He stated that having the taxpayers covered was important. Councilmember Gaghen agreed and said they tried not to burden future councils, but if things went awry, the worst thing would be to have to spend money the City did not have to take something that became an albatross. She added that she could see the valid concerns about safeguarding the taxpayer's obligations. She said she did not care whether it was a letter of credit or something else, but agreed a contingency needed to be set aside in case the worst scenario occurred.

- **Tom Binon, 127 Antelope Trail**, stated that a performance bond or letter of credit would be a positive thing during the construction phase in case the Foundation fell out of the contract before it was built. He said he would like to see a dedicated maintenance fund in lieu of a performance bond. He said the maintenance fund could be tapped into or forfeited to the City if the Better Billings Foundation failed to continue to operate the facility.

Councilmember Ruegamer asked where the money would come from because he did not see any difference between a letter of credit and a maintenance fund since there still had to be money in it. Mr. Binon explained a maintenance fund would be established after the facility was up and running. Councilmember Ruegamer said it could take a long time to build up. Mr. Binon stated that during the initial operation of a new facility, the maintenance requirements were low, but if the money was dedicated over time, as things broke down, the funds would be available. Councilmember Ruegamer stated he was making a good point. Councilmember Ulledalen stated that it was not just about maintenance, but if it turned into a money loser and became an issue of draining the Foundation's resources, it might want to walk away from it and the facility would revert to the City. He said that was where the City had to make sure taxpayers were protected, not just in the construction, but in the operation. Mr. Binon said that was where the dedicated maintenance fund would come in if the City had to continue to operate it or raze it. Councilmember Pitman clarified that a performance bond made sure the facility was built and a maintenance fund would make sure money was there after the construction for other things that could happen. He said the performance bond would get it completed and a separate fund would be kept for maintenance.

- **Samantha Morris, 491 Tabriz**, stated she supported the aquatic center and wanted to save time by asking the people present that supported the aquatic center to stand to show their support of the project without providing public comment.

- **Scott McCullough, 611 Tabriz**, stated that he agreed with the youth and agreed with most of what Mr. Barthuly said, but they differed on the location because he did not believe Sahara Park was the ideal location. He stated that he was representing himself and engineer Larry Seekins who had testified at a previous meeting. Mr. McCullough stated he would present information from Mr. Seekins. He explained that Mr. Seekins' presentation provided reasons that Castlerock was a better location for a pool. He referred to the alternatives listed on pages 12 and 13 of Mr. Seekins' presentation, and noted that page 10 provided a sense of proximity of its location. He said Castlerock was closer to the proposed inner belt loop. Mr. McCullough advised he had three recommendations for consideration: 1) reject the proposed funding and development agreement and have Sahara Park revert back to Plan B. He said the residents had met with Mr. Whitaker about development of a park maintenance district; 2) develop a council initiative to direct City staff, along with the Parks and Recreation Department, to work with the Foundation to develop a plan for a pool at Castlerock Park. He said they applauded the efforts of the Foundation, but felt the Parks Department chose a bad site. He said he had lived in the neighborhood for many years and reminded Council that the last time he spoke he had 102 signatures from neighbors that supported a pool in a different location. He said he supported Mr. Seekins' proposal and had some concerns from a public policy perspective. Mayor Tussing advised Mr. McCullough his time was up.

Councilmember Brewster asked Mr. McCullough if he had looked at the agreements and if he had opinions on them. Mr. McCullough stated he had concerns from a public policy perspective. He referred to a copy of Attachment B1, the agreement recommended by staff, that Ms. Volek was distributing for him that included highlighted areas he would address. He referred to the second page about the provision that the pool reverted to the City if it was unsuccessful. He referred to the funding provision on page three, which allowed three years for the Foundation to raise funds, and said by then his son would be 13 and there still would not be a park in the neighborhood. Mr. McCullough commented on the provision that allowed pledges and asked what happened if the pledges did not come in and the construction started but was halted because pledges were not met. Mr. McCullough said his last concern was on page 4 that indicated the Foundation was responsible for payment of utilities and said the numbers did not seem to add up. He referred to pages 42 and 38 of the Foundation's document that showed the City's cost for water and sewer at other pools, but that expenditure was not in the study. He asked what would happen if it did not turn a profit and whether the Foundation would support it if it continued to lose money or if it would be turned back to the City. He asked the Council to consider his request to reject the agreement so they could develop a neighborhood park and to pass a council initiative to designate Castlerock. Mayor Tussing informed Mr. McCullough his time for testimony was up. Mayor Tussing apologized to Mr. McCullough for not having had a chance to get together with him during the past two months, and noted that he did not get together with Mr. Barthuly either. He said he appreciated what he was doing.

Councilmember Ronquillo stated that the problems Mr. McCullough mentioned could occur at Castlerock Park also. Mr. McCullough said that was true from a public policy perspective, but not from an engineering standpoint as Mr. Seekins pointed out in his information regarding the overhead high voltage lines and the high pressure gas line that would have to be cordoned off in the parking lot. He said they

would like to work with the Foundation to find a better location other than Sahara Park. He said they all lived in the Heights and supported a pool, but just thought Sahara Park was a bad location.

- **Julie Thomason, 265 Caravan**, said she lived across the street from the proposed park. She stated that at the first public meeting, the Parks Department had already come up with Plan A, and she did not feel the neighborhood had input regarding that park as a location for the pool. She said there were many opportunities at subsequent meetings to raise concerns, which they did, but they still felt their concerns were not addressed. She noted that one of the main things they wanted addressed was that the natural trees and vegetation remained, but in all the plans they had seen, that was all gone. She said they had an opportunity, but were not included in the initial Plan A. She pointed out that there was not any Heights representation on the Parks Board and encouraged Heights residents to get involved. She stated that she was concerned that a problem/issue statement on line from Mr. Whitaker stated that the plan was developed with the intent that Sahara Park would function as a large urban or special-use park on the scale of Pioneer Park, with facilities that would meet the needs of the entire city. She said that she was not sure of the exact size of Pioneer Park, but thought it was about ten times the size of Sahara Park. She stated that, as mentioned, the neighbors were for a park and a pool, but felt the best answer was not an outdoor facility, but an indoor facility that could provide the kinds of things the kids present that evening were asking for. She added that when she heard 440,000 people using the facility, she was concerned because the traffic on Aronson was bad already without a pool. She said the neighbors were concerned about the traffic and the location chosen. She added that they felt Castlerock was a better location and better designed for the development.
- **Catherine Hall, 460 Tabriz**, stated that she supported the development of an aquatic center in the Heights but firmly believed that Sahara Park was not the appropriate site for a center. She strongly encouraged the Council to revert Sahara Park to Plan B. She said she was part of the group that collected 102 signatures from people in the neighborhood that wanted Plan B. She suggested considering Castlerock because of safety, accessibility and its proximity to the school. She said it was near the high school, the street was wide, and drivers were used to traveling slow in that area. She said if anyone had traveled on Aronson to see the location of Sahara Park, they should imagine the amount of traffic that would be there and that safety would be a huge issue.
- **Andrew Bilstein, 614 Crawford**, said he wanted to respond to some of the testimony of the people opposed to the aquatic center at Sahara Park. He reminded the Council of the history of the project to date. He stated that Mr. McCullough presented some valid points from a credible engineer that had some concerns about Sahara Park. He stated that Dowl HKM was a credible engineering firm that believed so strongly that Sahara Park was a good place for a pool that the firm was donating its design time. He spoke about concerns of the Foundation's ability to make it happen. He referred to the information presented earlier about what the Foundation had done at parks, especially ones on the South Side. He referred to the petition mentioned earlier and said that there were several people that stepped forward afterward and stated that the petition was misleading and they thought the question was whether they supported a park at that location. He said it was

construed to the Council to mean that the people supported a neighborhood park and opposed a pool, yet the petition did not say it that way. He noted that they certainly tried to respond to neighborhood concerns. He said staff had the suggestion of reserving a portion of the park for a neighborhood park which could be developed any time, and they would be happy to help with that to get it done as quickly as possible. He noted it was important to remember that it had been setting there vacant and the choice was a vacant park or to allow a group that wanted to raise \$4.5 million in private funds an opportunity to do that.

Councilmember Gaghen asked if he was inferring that the Foundation would not support building an aquatic facility if the location changed. Mr. Bilstein stated he was not saying that, but fundraising experts had advised that Sahara Park opened up a base of support that may not exist for other parts of the Heights. He noted that Sahara was much more accessible than other locations in the Heights.

- **Tom Zurbuchen, 1747 Wicks Lane**, said he wanted to address the contingency fund because he heard it was only going to be there while the pool was being built, then would go away. He stated that he read the agreement and it was there in case the pool came back. He said he heard people say it was not necessary, but he figured that back in the horse and buggy days when the U.S. Navy built the Reserve Center, people said the same thing that the U.S. Navy would never leave the City high and dry. He said the City was able to contact Senators and Congressmen to obtain funds to demolish what the Navy left, but he asked where the Council would get funds to demolish a pool. He said it would come back because it would wear out. He urged the Council to tie the contingency fund to something that escalated in value, because \$100,000 would be enough now to demolish what was left, but in 100 years, it would not be enough. He asked for protection if it was passed.

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

Councilmember Pitman **moved** for approval for the donation of the Sahara Park as presented by the development agreement submitted by the Better Billings Foundation for the development of a family aquatic facility with the language changed by staff in section 2, Subdivision Plat and Review, and that a \$100,000 maintenance contingency fund be accrued over the next five years, and a contingency fund of \$4 million as stated in section 7, seconded by Councilmember McCall. Councilmember Astle asked Councilmember Pitman to explain the maintenance fund. Councilmember Pitman stated that he felt the maintenance fund needed to be as a perpetual fund. He said he felt it needed to be accrued because within five years the pool would be in progress or done and a performance bond would make sure it was built, but the maintenance fund would have a minimum of \$100,000. He added that it would be money that could be drawn on for maintenance, and then the fund could be replenished to \$100,000. Councilmember Clark asked about having up to \$100,000 put in a trust fund and anything over that put into a maintenance fund. Councilmember Astle commented that he could vote for that. Councilmember Brewster stated that the whole idea of the \$100,000 was not for maintenance, but to protect the City in the future. He pointed out that if it was intended for maintenance and could be drawn down; it defeated the purpose of what it was intended to do. He said the way Councilmember Pitman presented it, the City was not protected the way it was envisioned. Councilmember Astle stated that he could not vote for the motion as presented, but if it was escrowed to

the City, he could support it. Councilmember McCall asked if Councilmember Astle was saying that it had to be escrowed for the life of the pool. Councilmember Astle responded that was correct. Councilmember Ruegamer asked if that would be similar to a 25-cent per-ticket surcharge. He said that was exactly what it would be. Councilmember Ruegamer asked if voting for the motion was a vote for a contract. Mayor Tussing said he had the same question and thought there were more issues than just the trust fund because staff had other issues with Contract B and he thought Councilmember Pitman's motion would be for Contract A. Mr. Brooks advised that it needed to clear which attachment was considered. He explained that an alternative suggested was some type of escrow agreement that allowed installment payments over a period of years and interest would accrue. He added that some type of surety or performance bond over a period of years was discussed with a local insurance agent and the agent suggested that after a couple of years of operation, the Foundation could obtain a more traditional surety bond in lieu of a letter of credit or another type of performance instrument if the City required one. Mr. Brooks advised that the agent explained that without a track record, it would be more difficult to obtain a surety bond now. He said at the end of the day, it was the Council's decision whether it wanted a performance instrument and what type. Mr. Brooks reiterated that Council needed to identify which agreement it was voting on and if it accepted all of the terms or wanted to change some. Councilmember Ulledalen stated that he would not vote for the motion because there was too much wiggle room on the front end of the deal. He said that if down the road it became a cash-flowing entity and made sense, there was the ability to negotiate other types of bonds but that was not possible now. He said he felt it made sense to ask them to escrow \$100,000 that the City could claim if the property had to be demised or the City had to control it. Mayor Tussing commented that B1 was his preference because he thought there were more issues other than the bonding or endowment. He said he felt staff's recommendation needed to be followed and the \$100,000 modified if necessary. Councilmember Pitman stated that the \$100,000 was an issue that could be worked out and if that was the selling point, he would entertain a motion. Councilmember Ulledalen said the point was that \$800,000 had been raised to date, \$2 million had been pledged, and another \$2 million would be raised over two years and the City was asking that \$100,000 of the \$800,000 be committed to it in the event that it ended up back in the City's lap. He said he questioned whether or not the Foundation could get a letter of credit and it was just fantasy whether the other bonds could be bought. He said that if it got up and running and had cash flow, other ways to cover that contingency could be considered. Ms. Volek advised that one thing not included in either agreement was some kind of re-visit clause. She suggested consideration of adding a clause to review the agreement in a designated period of time. Ms. Volek advised that the \$100,000 number was determined based on what it cost to demolish Cobb Field.

Councilmember McCall asked Councilmember Pitman if his motion was intended for the B1 agreement. Mayor Tussing advised that Councilmember Pitman could make that clarification. Councilmember Pitman clarified that his motion referred to agreement B1. Councilmember Brewster suggested clarification of the changes referred to in the motion also. Councilmember Pitman explained that he referred to the changes in Section 2 as presented by Ms. Beaudry and also referred to the changes in Section 7, now numbered as 6, which was a change from the Better Billings Foundation's proposal.

Councilmember Astle asked what effect the proposed aquatic facility would have on Rose Park. Mr. Whitaker advised that there would be a decrease in usage at Rose Park, but he could not predict the numbers. He stated that he felt the City could use three Rose Parks. Councilmember Astle asked about Mr. McCullough's comments about whether the City would pay the cost of the water. Mr. Whitaker explained that in the feasibility study prepared by the Foundation, the cost of the water was not included in the business plan.

Councilmember Ulledalen referred to Section 7 about allowing construction to proceed with sufficient cash, loans, pledges, and in-kind donations equal to the cost of the project. He asked if staff's recommendation would allow construction to begin if the Foundation had \$4 million in pledges and \$800,000 in cash. Ms. Volek stated that she thought it was contemplated that they already had the \$800,000 cash, and there were potential donors which would have value. She said she did not think staff would recommend it if it all came from pledges. Councilmember Ulledalen stated that was not defined and he would feel better if it was required that all money was in hand before construction started. Councilmember Ruegamer agreed with Councilmember Ulledalen and said he felt pledges should be removed from that section. He referred to a situation at the YMCA several years ago when construction began based on pledges and then the pledges pulled out. He added that a similar situation happened with a ball park in Missoula. He stated he would not support the project if pledges were left in the contract. Mr. Whitaker explained that the key was the performance bond because one could not be secured until there were enough funds to complete construction and the Foundation was required to provide the City with a copy of its performance bond. Mayor Tussing suggested clarification of the terminology and explained that a performance bond was totally different from a letter of credit. Councilmember Pitman confirmed that a performance bond would not be issued unless someone believed the project could be completed. He said that was not an issue the Council had to worry about and he was not sure why they were fixated on it since it could not be built without it, and it could not be issued unless the money was there. He said another thing that could happen was what was done with Dehler Park when there was a grandiose idea and it was value-engineered down to a million dollar project, and then when construction started, amenities were added. He said the Foundation could be doing a shell game and do that as well, but it seemed like it was being up front with what it wanted to build and what would be there when it was done. Councilmember Ruegamer said that sounded good on the surface, but the performance bond was issued by an insurance company and if the project was not completed and the insurance company had to finish it, the City would end up owning it and then the City was hanging out there. He stated that the performance bond only insured that it was built. He said it was not even known how much it would cost to run it and it was still a risk to taxpayers. Councilmember Brewster stated that performance bonds were always subject to litigation. He asked who determined what level of performance for the trigger of the bond, because the City could decide the Foundation had not met the performance needed and the Foundation could say it did, and then it would end up in court. He said that was why the irrevocable letter of credit was needed because it was far less litigious than a performance bond.

Mayor Tussing **moved to amend** Councilmember Pitman's motion to require an irrevocable letter of credit rather than a maintenance fund, seconded by Councilmember Gaghen. Mayor Tussing said he supported approval of agreement B1 which was part of Councilmember Pitman's motion. Councilmember Ruegamer stated he wanted to make

his standpoint clear. He said there was a lot of testimony that evening from people that supported a pool and he felt the entire Council was probably for a pool, but it was not a question of pro or con for a pool, but a question of keeping the risk out of the laps of the taxpayers. He said he hoped there was a pool, and although he did not want to put roadblocks in front of one, he did not have the right to risk taxpayer money. He pointed out that it was not about trust, it was a business deal and trust did not belong in business deals, and the courts were full of deals where there was a lot of trust. He said he fully trusted the Better Billings Foundation and everyone involved, but it was not about trust, it was business and he wanted to make sure the taxpayers were not left hanging, and he would not vote for anything until he was sure they were not. Councilmember Ulledalen stated that he felt the irrevocable letter of credit was fine, but he questioned whether the Foundation could get one and if they were willing to pay for it at the level it would be issued. He suggested an alternative of escrowing \$100,000 cash. Mayor Tussing stated he would **amend his motion** to include that potential. Councilmember Ulledalen suggested that kind of discussion between staff and the Foundation to provide some flexibility in the negotiations. Mr. Brooks advised that an amendment to the original motion was pending and a vote on it was needed. He added that a high degree of specificity would be needed on a letter of credit. Councilmember Astle suggested that the money had to be up front, either escrowed or as a letter of credit. Mayor Tussing stated that was his intention when he made the motion for the amendment and he was willing to include the escrow as long as \$100,000 was set aside in some way so that it was up front and the City was protected from the beginning. Mr. Brooks asked if that would start at the time of construction. Mayor Tussing stated it was his intention that it started at the time of construction. Councilmember Clark asked if that was before they broke ground. Mayor Tussing responded that it was and explained that it would stay in perpetuity in the event the Foundation folded or was unable to run it. Ms. Volek clarified that the performance bond guaranteed the construction which was included in the agreement, and the \$100,000 fund was in addition to the performance bond. She said the \$100,000 would be in the form of a letter of credit or escrow account that would be in perpetuity or if the Council wished to insert a review at a certain time. She said the money would be available to use however the City chose. Councilmember Pitman asked Councilmember Ruegamer if he was referring to an escrow account. Councilmember Ruegamer responded it should be anything that was ironclad.

Councilmember Gaghen referred to the information presented by Mr. McCullough and asked Mr. Whitaker why it was determined that Sahara Park was a better location than Castlerock Park. Mr. Whitaker advised that when the Foundation approached the Parks Department, it wanted to look at all possible park sites owned by the City in Heights. He said all green space was shown and his preference was that it selected a spot that did not have infrastructure in place already. He said the foundation created a matrix of possible sites and determined that Sahara Park was the best location. Councilmember Gaghen stated she felt it needed to be addressed when there was credible information that presented a different view. Councilmember Ulledalen stated that in Billings, there was always someone with a better idea at the last minute, but at some time, it just needed to move forward. He said Mr. Whitaker made a good point as to why the other park did not make sense.

Mr. Brooks suggested having the motion restated so it was clear. Mayor Tussing stated that he was not a financial expert, but the intent of his amendment was to protect the City to the tune of \$100,000 that the Better Billings Foundation would have to put in

some type of account such as an escrow account or trust account or provide an irrevocable letter of credit. He said he did not care what it was called, but wanted to make sure his intention was clear that the City was protected in a way that could be proved so that the money was paid by the bank or the money was in an account that could not be accessed for any other reason. He added that interest on an account could be used if necessary. Mr. Brooks stated that he felt that was clear. Councilmember Veis asked if the amount would be left at \$100,000 because in 15 or 20 years, that might not be sufficient. Mayor Tussing stated his intention was to leave it at \$100,000 for now. Councilmember Ulledalen stated that could be part of another amendment that established a review date. On a voice vote, Mayor Tussing's amendment to the original motion was unanimously approved.

Councilmember Brewster **moved to strike** the word 'pledges' from Section 7, now 6, Satisfaction of Funding Contingency, of Agreement B1, seconded by Councilmember Gaghen. Councilmember Astle stated that if the performance bond was obtained based on pledges, the performance bond issuer had to worry about the pledges. Councilmember Brewster stated that he thought the City did. Councilmember Astle said it had nothing to do with the construction of the pool. Councilmember Brewster responded that could be said, but eventually it could fall apart and end up in the middle of litigation and be left there for years. He said if was fine if they had the money to start it, but he did not understand why anyone would be opposed to having them have the money to start the pool. He commented that pledges were vapor. On a voice vote, the amendment passed 8-3. Councilmembers Astle and Pitman and Mayor Tussing voted 'No.'

Ms. Volek advised that the current contract with the Mustangs called for a review in ten years. She said that same arrangement could be included in the agreement for the pool. Mayor Tussing stated he felt there were bigger issues than that now because he was not sure there would be an agreement based on the recent amendment.

Councilmember Brewster stated that all the other master planning processes he was involved in started with a survey of the people affected by the park, but this one did not. He said for those people to be suddenly faced with a master plan that was somewhat pre-ordained, and not having had input on the front end as others had in other parts, was a little strange to him, and was one of the problems he had with it all along. He stated that when Pioneer Park started, there would be a lot of public input on the front end, not just review of what someone decided on the back end, which was what happened there. He said he hoped that did not happen again, no matter who wanted the park. He commented that the people in the area should have input in the process on the front. He said it was almost a fraud to shove it down their throats whether they liked it or not, and shame on the City for doing that.

Councilmember Veis stated it seemed like it had become overcomplicated. He said if the City was going to sell land, it should just sell land and he did not know why it would be done through this process. He said they were working on a process to sell parkland and the land should just be sold and performance bonds and pledges forgotten. He said the process was overly complicated and seemed to put the City on the line, and there was an easier way to handle that. Councilmember Ulledalen said he felt the discussion was needed because of the number of undeveloped parcels that could be sold in the future. He said in the case of Sahara, it was an exchange of the parkland for public good and it was more complicated than just selling it and potential contingencies for the future needed to be covered. Councilmember Brewster commented that his guess would be if the park properties to be sold were catalogued,

Sahara would not be one. He stated he liked open space and the valley around Alkali Creek was a nice, open space. Mayor Tussing asked if the last amendment required all the money before construction. Councilmember Brewster added that in-kind contributions were included. Mayor Tussing stated that he was not sure there would be an agreement with that recent amendment.

Councilmember Ulledalen **moved to amend** the motion that the agreement be reviewed in ten years, seconded by Councilmember Ruegamer. On a voice vote, the amendment unanimously passed.

Mayor Tussing stated he would support the amended motion, but was not convinced it would ever happen under those circumstances, but if that was the best that could be done because the majority wanted it that way, he would support it. On a voice vote, the motion as amended was approved 9-2. Councilmembers Brewster and Veis voted 'No.'

A brief recess was taken 8:45-9:00 p.m.

5. PUBLIC HEARING FOR CONSIDERATION OF DOWNTOWN LIBRARY FACILITY PROJECT OPTIONS. Consideration of three options for the Parmly Library: 1) relocation to the former Gainan's site; 2) renovation of the existing facility, or 3) demolition of the existing facility and construction of a new library at that site. Action delayed from 11/23/09. Staff recommends approval of the Gainan's option as the least expensive option. (Action: approval or disapproval of staff recommendation.) Library Director Bill Cochran referred to information from the October Library Board about the year-long study and review of the possibility of acquiring and renovating the Gainan's facility for a new downtown library. He said the Gainan's site was determined to be the least expensive option and the Board's recommendation was to put the item on a March 2010 election ballot to seek a bond issue. He said action on the item was delayed at the November 23 Council meeting to allow Gainan's more time to secure its own financing, and to advertise a public hearing to allow public input. He reported that the Library Board held a regular meeting the previous Thursday, and upon receipt and review of a final offer for sale the morning of that meeting and feedback from the community about the option and alternatives, the Board withdrew its previous recommendation and presented a new one to form a committee to explore options for a downtown library and to report back to the Council no later than October 1. He advised that Library Board Chair Tony Hines was present and would provide more detailed information during the public hearing.

Councilmember Veis asked Mr. Cochran to talk about the vision the Library Board had for the group that would explore options and how the Council could mesh with that. Mr. Cochran said the Library Board desired to work with the Council and Mr. Hines would address that further. He explained that the Library Board wanted to integrate the input received during the community conversations and from focus groups of the strategic planning process. He said it was evident through the course of the evening that representation from the entire community was critical for any site selection of a new facility. Mr. Cochran advised that during the recent Library Board meeting, a number of options were discussed at length and the Board did not specify the composition of the committee other than it wanted Council and community involvement.

Councilmember Ulledalen asked if a specific community-wide survey was ever conducted. Mr. Cochran explained that one was done in 2001 by a political action committee that identified a significant undecided vote and predicted that about 40% of

the community would vote in favor of a new library. Councilmember Ulledalen stated he sensed that about half of the community was indifferent about the Library and opinions ranged from not needing one to thinking that the current one was fine. He commented that his sense was that the majority of people that supported a new facility did not want anything real fancy. He said the dilemma was how to get 51% of the people to vote for something during the current economic climate. Mr. Cochran advised that the site selection process was complicated because different groups were involved at different stages. Councilmember Ulledalen said he would like to task the group to cast as wide a net in the community as possible. He said he wanted to convey the message that a broad range of alternatives would be considered.

The public hearing was opened.

- **Tony Hines, 1801 Darlene**, stated he was present as Chair of the Library Board of Trustees and wanted to provide an update of where the Board stood and how it hoped to go forward. He explained that the primary reason for the recommendation to consider the Gainan's building as a library site was because the Board found out the project could be eligible for zone recovery bonds and there was a cost savings to utilize that building. He advised that since then, the bond market had changed so that municipal bond rates were competitive, and there had also been other ideas from the community, along with some passionate debate. He advised that at the recent meeting, it was decided to not proceed with the Gainan's option and to continue with the original timeline that included a library project as proposed in the Capital Improvement Plan for FY2012. He added that the Board wanted to establish a community committee that included councilmembers to vet the ideas and options that were out there. He said he would also like to include people on the committee that had been critical of the library project. He explained that the charge for the committee would be to have it in a very public format and to seek input from the community. He asked that the Council take no action that evening and allow the Library Board to return by October, 2010, with a final recommendation.

Councilmember Veis stated that it might work best if the Council formed an ad-hoc committee to work with the library because he felt that was the way to get Council buy-in. Mr. Hines stated the Board envisioned at least two councilmembers on the committee. Councilmember Astle suggested representation from community members from each ward. Councilmember McCall advised she was impressed with the Board's work and felt it was a wise decision to withdraw the proposal that evening. She suggested including students, both college and high school level. She also stated that she was pleased the library would be on the CIP timeline because the community needed a good library.

Councilmember Ruegamer stated he also wanted to commend the Library Board and agreed a library was needed. He reported that what he heard from the community was 'no' to the deal, but 'yes' to a library. He said he made a motion to create an ad-hoc committee a couple of weeks ago but it did not pass. He said he felt the council should direct it, but was not sold on that. He noted that when the transit center first came up, 4th and Broadway was being pushed as the location and the five new members on the council opposed that so an ad-hoc committee was appointed. He said the committee was being steered to the 4th and Broadway location and the council had to keep directing it because that was not what the committee was appointed to do. He urged caution with the library project so that

same thing would not happen again. Mr. Hines said it was the Board's intent to build consensus and it was energized by hearing from people that supported a better library.

Councilmember Ulledalen voiced his concern with the council setting up an ad-hoc committee because there was so much complexity with the library and he felt the library Board and staff could handle that. He said it was probably a good idea to have a Plan B in the event the proposal presented to the community failed.

- **Joe White, Billings, MT**, said he supported the Library Board's continued study. He said he felt the Gainan's site failed the compression test. He suggested considering the amount of air downtown. *The rest of Mr. White's testimony was inaudible.*
- **Tom Zurbuchen, 1747 Wicks Lane**, stated that when the library was new 40 years ago, everyone bragged about how well the building had been constructed and maintained, but now that beautiful building was falling down. He said there was no maintenance money to fix the leaky roof or the heating system, and one department moved from the 4th floor for a cheaper rent elsewhere. He said a complete package that included maintenance money needed to be presented when something was put forward to the voters. He stated that if 20 year bonds were put out to build the library, it would be ridiculous if there was no maintenance money too. He pointed out that the Gainan's facility was smaller than the current library and that obviously indicated that the City would be back to building more branch libraries before those bonds were paid. He said that as a taxpayer, he wanted a total plan because he did not want taxes increased continually for the same project. He stated the project had to last at least twice the term of the bonds and the maintenance funds had to be there so the same mistake was not made again. Mr. Zurbuchen added that he understood a library was needed, but felt it had to be something that was affordable and could be maintained. He said it was no longer adequate to scramble when something had to be fixed and a business could not operate that way.

Councilmember Ulledalen asked Mr. Zurbuchen what the Heights' solution was to the Library situation. He noted that the Heights was the single largest user group and he wondered how to get people to support it. Mr. Zurbuchen said he did not have any ideas. Councilmember Ulledalen asked if a branch library was needed in the Heights. Mr. Zurbuchen said branch libraries did not make sense to him; he felt one library was enough and he just wanted a total package when it was proposed. He said people could not be fired up for a building that would not be maintained.

- **Shari Nault, 732 Burlington**, advised that the library had been under review and studied for several years. She assured the Council that the Library Board was aware that it had to go into the community and a full plan had to be prepared. She said the lure of the bonds and the offer from Gainan's probably sped up the process, but the Board was not back in the planning mode.

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

Councilmember Veis moved to table indefinitely consideration for downtown library facility project options, seconded by Councilmember Brewster. Ms. Volek suggested an alternative of tabling the motion to October, 2010, since the Library Board intended to report back at that time. Councilmember Veis pointed out that meant the same options had to be considered and tabling it indefinitely allowed a new agenda item at a later date. Mr. Brooks said that was correct. On a voice vote, the motion was unanimously approved.

6. PUBLIC HEARING AND RESOLUTION #09-18903 FOR CONDITIONAL APPROVAL OF TAX ABATEMENT FOR BRUMAR COPORATION, OWNER, AND MOTOR POWER EQUIPMENT, OPERATOR, for building expansion at 4941 Midland Road. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) Ms. Volek advised that staff did not have a presentation, but was available to answer questions.

The public hearing was opened.

- **Kevin Nelson, 4235 Bruce Avenue**, encouraged Council to not abate the taxes because by the Council's own admission, the City was heading toward a financial cliff. He said it made no sense that a corporation of that size did not know it was responsible for the taxes. He stated that all tax revenue was needed to run the City and abating taxes was not how to operate. He said everyone should pay, but if it was an economic development boon, then everyone's taxes should be abated.
- **Brandon Berger, 3615 Hayden Drive and Big Sky Economic Development Authority**, reminded Council that the tax abatement was only on the improvements made to the building and, by statute, was available to any business that expanded its property. He said jobs would be created and it was an economic development tool. He explained that the abatement on the improvements was for four years and the taxes would still be due on the base. He said added that the company would pay full taxes on the property in the fifth year.

Councilmember Gaghen asked about employee wages. Mr. Berger explained that the current facility had about 54 employees and would have 62 with the expansion. Councilmember Clark asked about the amount of the requested abatement. Assistant City Administrator Bruce McCandless explained the formula used to determine the abatement of \$16,900 for the first year and said he expected it would remain fairly stable for the four years.

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

Councilmember Gaghen moved to not approve the tax abatement for Motor Power Equipment, seconded by Councilmember Ronquillo. Mayor Tussing stated that tax abatements were routinely granted and asked Mr. Brooks what type of legal trouble the City could get into if this one was not approved. Mr. Brooks explained that related case law indicated it was discretionary, but that did not mean there would not be the chance of legal action. Mayor Tussing asked if Council had to articulate its reasons for denial. Mr. Brooks encouraged articulation if it was denied in case there would be litigation.

Councilmember Clark asked about the process to get to that point. Mr. McCandless explained that the City and County were authorized to abate taxes in this manner. He said the application for property within the City limits was made to the City and only the City taxes and local school taxes could be abated. He noted that the property owner could also apply to the County for abatement of County taxes. Councilmember Gaghen explained that some of her reasoning was because Mr. McLean of Prestige Toyota withdrew his application because he did not want to reduce any taxes paid to the school district. She said the City's taxes were approximately one-third of the business's total taxes and she was concerned about abating them due to the current economic times. Councilmember Brewster explained that the schools levied a

budget, not mills like the City did. He said the County Commissioners levied adequate mills each year to cover the school budget approved by the voters, so the impact was on the taxpayers because the County would levy enough mills to cover the school budget.

Councilmember Veis offered a substitute motion to conditionally approve a tax abatement for Brumar Corporation, Motor Power Equipment, operator, seconded by Councilmember Brewster. Mayor Tussing stated he would support that motion because even though he understood the City needed money, if it arbitrarily decided not to approve the abatement, businesses could be discouraged from expanding in the future. He said the eight more employees could more than offset the tax abatement. Councilmember McCall stated she agreed and felt it was an effective economic development tool that brought more jobs to the community. She urged support of the substitute motion. Councilmember Ulledalen commented that criticism of economic development efforts was that things were offered to new businesses and the abatement was an option for existing businesses. He said if the City wanted businesses to expand, it needed to do its part unless it wanted a clear signal sent to the community that it did not want that. He added that he did not agree with changing the rules at that point in the process.

Councilmember Brewster reviewed the past practice and said he felt the City had been fairly consistent in applying that policy. Councilmember Ruegamer stated that approving the request added \$2 million to the tax base in four years, which was the whole idea behind encouraging businesses to expand and remain in the City. Councilmember Gaghen said she was glad to know how the abatement impacted the schools and would support the motion to approve it. On a voice vote, the substitute motion was unanimously approved.

7. PUBLIC HEARING AND RESOLUTION FOR CONDITIONAL APPROVAL OF TAX ABATEMENT FOR PRESTIGE TOYOTA for commercial building expansion on property located at 1532 Grand Avenue. RM&S LLC, and Raymond McLean, owners. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) The item was removed from the agenda earlier in the meeting.

8. PUBLIC HEARING AND FIRST READING ORDINANCE FOR MUNICIPAL INFRACTIONS ORDINANCE. A new ordinance that decriminalizes certain minor misdemeanor offenses and classifies them as civil infractions. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) Mr. Brooks reminded Council that municipal infractions were authorized by State Statute. He advised that staff had met extensively on the draft ordinance, and meetings were held with law enforcement, Code Enforcement, Planning and Judge Knisely, and all unanimously supported the ordinance on first reading. He pointed out the delayed effective date that would be a few weeks more than the normal 30 days. He said the second reading was scheduled for January 11, 2010. He mentioned that other cities had enacted that type of ordinance, but had not really used that process extensively.

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

Councilmember Ronquillo moved for approval of the municipal infractions ordinance, seconded by Councilmember Gaghen. Mayor Tussing pointed out that the Council had reviewed the ordinance extensively at previous work sessions. Mr. Brooks

commended Deputy City Attorney Craig Hensel, Chief St. John, Judge Knisely, Planning and Community Services Director Candi Beaudry, Code Enforcement Supervisor Nicole Cromwell that worked extensively on the ordinance. On a voice vote, the motion was unanimously approved.

9. PUBLIC HEARING AND RESOLUTION #09-18904 ESTABLISHING A POLICY TO PROVIDE PUBLIC ACCESS TO CITY COUNCIL EMAIL CORRESPONDENCE.

Staff recommends approval. (Action: **approval or disapproval of staff recommendation.**) Mr. Brooks explained that the item had also been before the Council in the past and changes suggested by Council had been incorporated, along with suggestions from the Billings Gazette Editor. He mentioned that Billings was the first Montana City he was aware of that had a written policy regarding email access. He said Missoula was doing something similar but had not articulated a formal, written policy. He noted that even though a review was part of the policy, it could be amended any time because it was the Council's policy. Ms. Volek mentioned that intent of the ordinance was that an all-City Council email address would be available for the public to address questions, comments or concerns to the Council, and those emails would be posted to the City's website unless the Health Insurance Portability and Accountability Act (HIPAA) or privacy laws were violated. She noted that there was also a provision if an individual wanted to communicate only with the councilmember from his/her ward. She noted that the Council could broadcast information by sending an all-City Council email. Mayor Tussing asked about the effective date. Mr. Brooks advised that a resolution usually had an immediate effective date, but the Council could alter that if it wished. Mayor Tussing said he did not want it delayed. Councilmember Pitman mentioned the idea of trust, but verify, and asked if the Council would know if staff determined an email had to be pulled and if the Council would get the information regarding pulled emails. Mr. Brooks responded that he did not anticipate many pulled emails, but noted that staff would need to determine how to handle that.

Councilmember Ulledalen commented that from the Council's standpoint, it was an easy way to get information to the public. Councilmember Veis stated that even if the information was not released to the public, it should still be distributed to the Mayor and Council because that was the intention of the message. He said it could be noted that it was not published, but it should be distributed to the Mayor or Council. Mr. Brooks said he was only suggesting those types of emails would not be published for public view. Councilmember Veis said Council would not need a report because it would know which ones were not posted to the public if that notation was put on them. Councilmember Ulledalen said that was something that could be left for future review. He said an issue was what to do with anonymous emails that were received and the fact that the City would have no recourse. Councilmember Brewster stated he agreed, and if people made personal attacks on employees that were not related to job performance, he hoped there was some protection from anonymous attacks. Mr. Brooks stated that was one reason for the screening process. Councilmember Veis said that to be clear, if an email with that type of content was received, even though it would not be posted on the City's website, it would still be distributed to the Mayor and Council. Mr. Brooks explained that was how the policy was written, but he urged caution in terms of not further disseminating those types of emails. Councilmember McCall said she was curious if it would modify the public's behavior.

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

Councilmember Clark moved for approval of the resolution establishing a City Council email policy, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

10. 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.)

- **Kevin Nelson, 4235 Bruce**, stated that the roundabouts on Shiloh Road violated the City's clear vision standards. He said he did not believe the City could take control of those intersections until they were in compliance. He added that a precedent was being set where safer barriers were installed for bike trails on King and Monad, but nothing was in place at the roundabouts. He said it was impossible for a pedestrian to cross there and a car could not see the pedestrians until it was right on them. He commented that the roundabouts were a hazard, and urged City officials to require compliance by the Department of Transportation. Mr. Nelson advised Councilmember Brewster that SJR 61 would give him a good determination on mills and taxes and how mills were affected when taxes were not collected. Councilmember Brewster stated that he was aware of the process and had provided an explanation of how that worked.

Councilmember Clark stated he had not been on Shiloh since the roundabouts were constructed, but the one near Kohls was clear. Mr. Nelson referred to the one at Shiloh and Broadwater and said it was a hazard. Councilmember Ulledalen advised that he easily navigated the roundabout as a pedestrian. Ms. Volek advised that an underground pass-through was constructed on Shiloh for pedestrian and bike traffic. She noted that Mr. Nelson's comments had been passed along to the Department of Transportation but she had not heard back from them. Mayor Tussing advised that while the roundabout was being constructed near Kohls, he had some trouble getting through it on his bike, but part of the problem was that motorists were not watching for bicyclists or pedestrians because they were navigating the roundabout, so it was probably more a matter of education. Councilmember Ulledalen suggested keeping an eye on the use of the bike paths along Shiloh because he felt they would be heavily used.

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

COUNCIL INITIATIVES

- Councilmember Ronquillo moved to direct staff to present other options for use of \$85,000 proposed to be spent for restrooms at the Skate Park, seconded by Councilmember Ruegamer. He said he felt that was a waste of money and also knew there had been consideration of heat there as well, but during the past two weeks when it was cold, he had not seen anyone at the skate park. Councilmember Clark advised that he thought the restroom was already built offsite and would be delivered soon. Ms. Volek said that was her understanding, but she would check on that. On a voice vote, the motion was unanimously approved.
- Councilmember Astle stated that businesses along Grand Avenue and Broadwater did not seem to be complying with snow removal on the sidewalks. He asked if

something could be done to remind businesses the sidewalks had to be cleaned within 24 hours of a snowstorm. He stated that private lots were also plowing snow back onto the street after streets were plowed. Mayor Tussing said it seemed that Councilmember Astle was suggesting a preventative measure. Ms. Volek stated that a press release could be done.

- Councilmember Ulledalen asked Ms. Volek to relate their recent conversation about the frozen fire truck since the story was circulating. Ms. Volek advised that during the freeze in October, two fire trucks were parked at Station 7. She said one truck was a pumper truck that contained water, and both were left outside during the cold weather. She reported that the pumping mechanism on the pumper truck was frozen and damaged beyond repair. She said she understood it was a surplus truck that was to be used for training, but was no longer usable. She advised there was an investigation, numerous people were involved, and the investigation had been concluded, but there had not been any discipline. She noted that she observed the engine when it was outside, but was not aware there was water in the truck. She said the other engine was not harmed and was sold. Ms. Volek pointed out that her explanation was anecdotal. Councilmember Brewster stated that he knew the firefighter contract stated that the firefighters did not perform any maintenance and possibly someone should be hired to perform it. Ms. Volek said there was a Memorandum of Understanding that replaced a single maintenance mechanic in the Fire Department with two lower-paid teamster positions headquartered at the Billings Operation Center, and equipment was taken there for repair work. She advised that the agreement was that firefighters would not do any maintenance other than the normal day-to-day work. Councilmember Astle asked if the firefighters had to check the tanks and pumps to make sure water was in them, which was not maintenance. Ms. Volek said that was her understanding. Ms. Volek assured Council that the department now responsible for the maintenance had or would be developing a maintenance schedule for all City vehicles and she was certain the fire trucks would be included. Mr. McCandless advised that all the fire trucks had been to the fleet service shop. He pointed out that it was an operational issue, not a maintenance issue. He said the firefighters were responsible for daily fluid checks and daily care of the equipment. Ms. Volek stated that the trucks were normally housed indoors, but those two were surplus and due to be sold or used for training.
- Councilmember McCall reminded Council that Ms. Volek's quarterly evaluation would be held that coming Friday at 10 a.m. Ms. Volek requested a closed session and said she would issue a press release.
- Councilmember Ronquillo commented that the previous Tuesday he observed the arms of the train crossing go down on top of a car before a train crossed 27th Street. He said he thought there was some type of bumper on the crossing arms that caused them to rise if they hit something, along with something that sensed if a car was stuck on the track. He said Greg Krueger of the Downtown Business Association also thought there was supposed to be some type of sensor. Councilmember Ronquillo added that it was cold that day and a guy crawled under that railroad car and but was not injured when the train jerked forward. Councilmember Ronquillo expressed his concern about the City's liability with such a situation.

ADJOURN – The meeting adjourned at 10:24 p.m.