REGULAR MEETING OF THE BILLINGS CITY COUNCIL
October 25, 2010

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 Thomas Hanel 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, Cimmino, McFadden, Ruegamer, McCall, Ulledalen, Astle, and Clark

MINUTES: October 12, 2010, approved as distributed

COURTESIES: Councilmember Clark presented Councilmember Ruegamer with the Montana League of Cities and Towns President's Plaque.

PROCLAMATIONS: "Pink Day", October 26, 2010.

Mayor Hanel asked those who had been affected in anyway by breast cancer to stand for a moment of silence. Mayor Hanel recognized breast cancer survivor, Vicki Carle, Skyview High School Volleyball Coach, who was in the audience. Ms. Carle thanked the Council for their support and for wearing pink. She said *Pack the Place in Pink* started four years ago at Skyview and had continued to grow. She said it was a positive event not only for Billings but for other communities in the state who would also be 'Packing the Place in Pink' during volleyball season. Ms. Carle thanked everyone on behalf of her friends, Skyview High School, and Skyview volleyball for their support and said she looked forward to everyone in pink next year. Rene' Beye said she was a breast cancer survivor and was grateful for the awareness of breast cancer and the 'Pink Day' proclamation.

ADMINISTRATOR REPORTS - TINA VOLEK

- Ms. Volek referenced Consent Agenda Item G, Approval of Communications With or Through the Media Policy, and said the resolution approving the policy was sent in the Friday Packets on October 22, 2010.
- Ms. Volek referenced Consent Agenda Item H, Approval of Teamster and Non-Bargaining Employee Random Drug and Alcohol Test Policy and said the Resolution approving the policy was sent in the Friday Packets on October 22, 2010.
- Ms. Volek referenced Regular Agenda Item 6, Special Review #887. She said a Memorandum to Mayor and City Council from Candi Beaudry, dated 10/21/2010, recommending that Council hold the public hearing and refer the application back to the Zoning Commission was included in the Friday Packets on October 22, 2010. She said on their desks that evening was a letter e-mailed to Mayor & Council on October 25, 2010, from Attorney Ryan K. Jackson requesting that City Council (1) move forward with the public hearing and not require that the application go back to the Zoning Commission; and (2) approve the project since it complied with the Unified Zoning Regulations and the Billings Heights Neighborhood Plan.
- Ms. Volek referenced Regular Agenda Item 8, Bresnan Franchise Transfer to Cablevision. She said she had sent an e-mail to the Mayor & Council on October 22, 2010, which included copies of Bresnan Front Range Final Report; Bresnan Front Range Cablevision Response; Bresnan City Transfer Agreement; and Bresnan Resolutions. She said on their desks that evening was the Transfer Agreement and Resolution approved by all parties that day at 4:45 p.m., and she would go over them when Item 8 was discussed.

Ms. Volek advised copies of all documents were in the ex-parte notebook in the back of the room for public inspection.

PUBLIC COMMENT on "NON-PUBLIC HEARING" Agenda Items: #1, #7, #8 and #9 ONLY. Speaker sign-in required. (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. 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 podium.)

The public comment period was opened.

- **Steve Prosinski, 401 N. Broadway,** said he was the Editor of the Billings Gazette, and asked that Item G, the Media Policy approval, be removed from the Consent Agenda and put on the Regular Agenda to allow for further discussion. He said during their 125 years, the Gazette had maintained a pretty good working relationship with City Managers, Department Heads, and City Employees who provided valuable information to residents through their news reports whether it was a water plant worker explaining his job or a street worker talking about how tough it was to work in sub-zero temperatures. He said at last year's journalist police academy Police Chief St. John said all officers were empowered to answer questions from reporters covering a news event. He said they appreciated that kind of commitment.
- **Kevin Nelson, 4235 Bruce Avenue,** referenced Item 9 and said he distinctly remembered the Council felt it would be a good idea to include education on the committee since they had the 'most skin in this game.' He said the school districts would lose probably $1.5 million in tax increment finance districts, and the local dollars would go to Cabela's and Wal-Mart instead. Mr. Nelson said he recommended someone representing the education community be included on the committee.

  Councilmember Ulledalen said they had found it almost impossible to schedule meetings with the School Board. He said they had tried. Mr. Nelson said it did not forgive the fact that Council could not include them. He said if they chose not to show-up that was fine; but they should be given the opportunity to be part of the process.

  Councilmember Ruegamer stated the Council had never agreed to anything like that, and it was a discussion and not a vote. He said education would not lose $1.5 million, they did not lose a nickel from tax increment districts, and they always received the same amount. He told Mr. Nelson they had gone over it a million times, and he came up to mislead everyone. Councilmember Ruegamer said he wanted to set the record straight.

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

1. <u>CONSENT AGENDA</u>

A. Professional Engineering Services Contract for design and construction administration of W.O. 11-01, 2011 Water Replacement Projects; Sanderson Stewart; $672,821.

B. Agreement with Sprint Nextel allowing exchange of one currently licensed 800 MHz frequency at no cost to the City.

C. Change Order #7, W.O. 04-12, Phase 3 - Alkali Creek Road Maintenance and Slope Reconstruction, CMG Construction, $50,340.

D. Amendment #2, Automobile Parking Concession Agreement; Standard Parking Corporation, extending term for one year through 10/31/2011; minimum annual revenue - $1,300,000.

E. Amendment #7, W.O. 02-10 6th Avenue North to Bench Boulevard Connection for design of a pedestrian tunnel; Morrison-Maierle, Inc.; $89,803.

F. Approval of waiver forms (2) reallocating $35,604,866 bonding authority to the State of Montana and University of Montana.

G. Resolution #10-19009 approving Communications With or Through the Media Policy.

H. Resolution #10-19010 approving of Teamster and Non-Bargaining Employee Random Drug and Alcohol Test Policy.

I. Resolution #10-19011 allocating up to $11,000 of Council Contingency Funds for installation of a 2-inch water meter at Centennial Park.

J. <u>Bills and Payroll:</u>

1. **September 24, 2010**
2. **October 1, 2010**

Councilmember Pitman separated Items E and G. Councilmember Cimmino separated Items C and J1.

Councilmember Pitman moved for approval of the Consent Agenda with the exceptions of Items C, E, G, and J1; seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

Councilmember Pitman moved for approval of Item E, seconded by Councilmember Astle. Councilmember Pitman asked for the location of the pedestrian tunnel. City Administrator Volek advised it was a pedestrian tunnel under Bench Boulevard near the Metra and Condition #2 of the Right-of-Way Agreement the Council approved with Yellowstone County on October 12. She said the cost would be within the present project budget, and the City and County obligation would be for the match and not the entire design or construction costs of the project. She said it was part of the agreement made with the Yellowstone County Commissioners in order to get their right-of-way dedicated to the road project. She said a presentation had been made at a work session, and documents had been included in the agenda packet.

On a voice vote, the motion to approve Item E was unanimously approved.

Councilmember Pitman moved to remove Item G from the Consent Agenda and place it on the Regular Agenda for November 8, seconded by Councilmember Cimmino. Councilmember Astle asked if Council had previously received a memo on the subject that stated any city employee could be interviewed by any media if the employee was not speaking on behalf of the City. Ms. Volek advised that was her understanding. She said it was in response to a complaint received about a prior Fire Department Policy that was more restrictive. She said it was researched and worked through with the departments and Attorney Sutherland and Attorney Brooks; and asked Attorney Sutherland if she would like to comment. Attorney Sutherland advised that the pending policy stated that if an employee was going to communicate with the media on behalf of the City of Billings, it would need to be done through the media contact person determined by the City Administrator. Ms. Sutherland said an employee could speak on their own behalf as long as they were not speaking for the City of Billings. She said the policy clarified those rules. Councilmember Pitman said it did not define if Councilmembers were considered employees or elected officials; and he would like to see a finalized document because there was no one currently listed on the Media Contact list. He said it was appropriate for the Council to specify or at least know some of the people they were authorizing to be the contacts. City Administrator Volek said the City Council was being asked to adopt the policy and authorize Administration to create the procedures. She said the problem with having the Council approve a single list would be when an employee on the list left employment, the Council would again have to approve the list. She said it would be flexible, someone might be on vacation or sick, and the department heads would be who she would consult. Councilmember Pitman said he understood that, but his issue was the page was currently blank and he felt it important that specific people be listed. He said he felt the Council should have more say in it and more discussion on it. Ms. Volek strongly encouraged that the Council not adopt a list because it would be very difficult to administer down the road. She said they could more easily identify positions instead of names. Councilmember Pitman said that he was not looking for specific names but looking for who in the department would be doing it, how many from each department, etc. He said those were the details he would like to know. City Administrator Volek commented that in her administration they had spread out the media coverage far more than her predecessors, and she would certainly get a list from the departments. She said if the Council wanted to be exempted specifically, she did not think the policy contemplated that Council would be considered employees and they could certainly clarify that.

Councilmember Astle told Councilmember Pitman he disagreed with him and thought it became micro-managing the City Administrator. He said he felt Ms. Volek was very capable of taking care of the situation. He said the media was allowed to talk to any city worker who was willing to talk to them; they just could not speak for the City of Billings. Councilmember Astle said he liked the policy as stated.

Councilmember Cimmino suggested that all 16 department head positions be listed but not their names. She said the department heads were responsible for managing their own departments, which made it beneficial that they be the spokesperson for their divisions or department.

Councilmember Ronquillo said he agreed with Councilmember Astle. He said the City Administrator should call the shots. He said they needed to be careful of the legality issues and what was said. He said Ms. Volek worked with all the staff and she knew who she would pick and from which department. Councilmember Ronquillo said they had been sued in the past because of something someone said. He said he felt the proposed policy was the way to go.

Councilmember McCall said she agreed it should be in the hands of the Administrator. She said she felt the Council was separate as elected officials and had the right to speak with any media. She added that she attended a professional conference the prior week, and there was a lot of discussion on social media. She said she felt it would be interesting and helpful to have the Council receive training on the different methods of social media at a work session in the future because it was changing very rapidly.

Councilmember Ruegamer said he felt they should hold a public hearing. He said he did not want to personally change anything. He said he felt Ms. Volek had the responsibility.

Mayor Hanel said he had reviewed the policy and felt the language was very well prepared. He said his main concern was that it included Twitter and Facebook, which it did and he agreed with Councilmember Ruegamer's comment that there was no need to change anything; however, he was not opposed to allowing public comment.

Councilmember Clark said he thought they had allowed public comment already and he saw no reason to put it back out there for another public comment period.

Councilmember Pitman said he would like his motion to postpone Item G until November 8 to include a public hearing. Councilmember Cimmino, who seconded his motion, approved the addition of a public hearing. On a voice vote, the motion failed 6 to 5. Councilmembers Ronquillo, Gaghen, McFadden, Astle, Clark and Mayor Hanel voted against the motion. Councilmembers Pitman, Cimmino, Ruegamer, McCall and Ulledalen voted in favor of the motion.

Councilmember Clark moved for approval of Item G, seconded by Councilmember McFadden. Councilmember Cimmino said she would like to reiterate the importance of identifying the appropriate officials making statements on behalf of the departments. She said if there was a fire, they could call upon the Fire Chief for specifics or the Chief of Police for police related items, and it seemed to her they needed to add the appropriate officials under the purview of the City Administrator.

Councilmember Ulledalen stated they could debate it for hours. He said they hired the City Administrator who hired capable department heads. He said he thought there would be a lot of merit with holding a public hearing.

On a voice vote, the motion passed 6 to 5. Councilmembers Ronquillo, Gaghen, McFadden, Astle, Clark, and Mayor Hanel voted in favor of the motion. Councilmembers Pitman, Cimmino, Ruegamer, McCall, and Ulledalen voted against the motion.

Councilmember Cimmino referenced Agenda Item C. She said they had the opportunity to visit with Senator Jon Tester at the Alkali Creek project site on Friday afternoon, and said he was delighted with the progress of the project. Councilmember Cimmino said she noted that the majority of the project was being funded with arterial fees and asked Public Works Director Dave Mumford for a percentage breakdown. Mr. Mumford advised the majority of the project funding was through ARRA stimulus and a small portion was funded through arterial fees. He said he could not provide the exact numbers that evening, but would forward them to the Council. Councilmember Cimmino moved for approval of Item C, seconded by Councilmember Clark. Councilmember Pitman asked if the arterial fee money was being used to pay the $50,340 change order. Mr. Mumford said they were within the amount that was totally allocated for the project, but they were above the contract amount with CMG and they were trying to finalize out CMG's work. He said there was still some work that would go on with the landscaper until spring, the ARRA money had been spent, and they were now finalizing out with the arterial funding. Councilmember Pitman asked how the City got to the point where the project cost was more than the bid amount. Mr. Mumford advised with any project they did their best, but there were things they did not expect out there. He said if a project was designed to cover every single contingency, it would be very difficult and more expensive. He said they ran into a spring that was not anticipated that cost extra and several other issues that were not expected. Councilmember Pitman asked what the expenses were for the $50,340. Mr. Mumford said he did not know exactly, but part of it was a carryover of materials until spring and enclosure for the winter. Councilmember Gaghen asked Mr. Mumford to explain ARRA. Mr. Mumford said it was the American Recovery Act, which was Federal stimulus funding provided to the City for both the Alkali Creek and the pedestrian tunnel on Main Street. Mayor Hanel asked if some of the expense required was also for further extension of the path. Mr. Mumford advised there was some path extension done and slope stabilization that was not anticipated. Councilmember Ronquillo asked if there would be additional change orders on the project. Mr. Mumford said he was not anticipating any more other than the final reconciling change order closing out the project. Councilmember Ronquillo asked for a copy of the bid tabulation for the project. Mr. Mumford said CMG was the low bidder and the same change orders would have occurred except at a higher bid rate. Councilmember Pitman asked how they would know if a low bidder planned to add on change orders versus a higher bidder anticipating the additional costs and putting them in their bid. He asked if the City was always getting the best with the lowest bid. Mr. Mumford advised bids were done on a quantity basis and not on a wholesale price. He said all change orders were approved by the city staff based on whether it was necessary as part of the project. He said they bid on a cost basis and not on a lump sum basis. Councilmember Ruegamer told Mr. Mumford they trusted his judgment. Ms. Volek added that a running total was kept as each successive change order was brought in, and either she or Mr. McCandless scrutinized them. She said the project encountered a great number of difficulties and was an exception. She said seven was a very unusual number in terms of change orders. On a voice vote, the motion was unanimously approved.

Councilmember Cimmino referenced Item J1 and said for the record she needed to abstain from Invoice #737251, due to employment with the consulting firm. Councilmember Pitman moved for approval of J1, seconded by Councilmember Ronquillo. On a voice vote, the motion was approved 10 to 0.

REGULAR AGENDA:

2. **PUBLIC HEARING AND RESOLUTION #10-19012 adopting rates and fees for wastewater service to the Lockwood Water and Sewer District. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** Deputy Public Works Director Al Towlerton advised that in March 24, 2008, the City agreed to provide wastewater treatment services to the Lockwood Water and Sewer District. He said the agreement called for a rate study to be conducted, which was done by Paul Mathews of Red Oak Consulting. He said the rates and fees were designed to allocate and recover Lockwood's' share of the cost of the City providing the service in accordance with the terms of the agreement. Mr. Towlerton said Reserve Capacity provided a basis for some of the various cost allocations and was set at 0.73 mgd, which represented 80% of estimated design flow from the ultimate district. He said the BOD & TSS were measures of strength of the wastewater and also factored in. Mr. Towlerton advised the agreement called for a minimum 15% rate of return on investment. He said the wholesale rate, which was the rate the Lockwood District would be paying, consisted of a volume charge based on the amount of the discharge and fixed monthly charge to cover the fixed O&M and depreciation charges. He said the agreement also called for a 6% surcharge on the monthly billing charge but would not be charged to the System Development Fee (SDF) and franchise fee. Mr. Towlerton advised the 4% franchise fee would also apply to the monthly charge and was charged to all customers. He said both the surcharge fee and the franchise fee would go to the General Fund with an estimated first-year revenue of $23,000. Mr. Towlerton said the SDF was calculated on the same basis as the current City SDF, which was a 2-part fee; (1) the reimbursement portion that took into account past investments in the system; and (2) the improvement portion that looked at future CIP investments. He said in the

case of Lockwood, unlike the City where the entire system was taken into account for city customers, Lockwood would only be using the wastewater plant and a small portion of the interceptor sewer between their point of connection and the wastewater plant and those were the only facilities that factored into the rates and fees. He said they anticipated Lockwood would need to add more SDF on behalf of the system costs they had in building their system. Mr. Towlerton showed a table comparing the wastewater SDF calculated for Lockwood under the rate study and the current city wastewater SDF. He referenced the user rate and said there would be a $0.162 per Ccf charge based on the amount of the discharge, plus the monthly fixed cost of $18,506.

Councilmember Ruegamer asked if it was structured so it would not increase the bills of the Billings users. Mr. Towlerton said it was set to recover the fair share from Lockwood to provide the service and would not increase the cost to the Billings users.

Councilmember Pitman asked for the current charges to Lockwood. He said when he went to the Flying J to use the RV dump, he was told it was shut down because the City of Billings was charging them exorbitant rates. Mr. Towlerton said they were not currently being charged anything, and the proposed rates and fees would begin when they started discharging to the city. He said they had also heard the comment and were not sure what they were referring to.

Councilmember Astle asked how much an average household in Billings paid in wastewater fees and how much an average household in Lockwood would be paying for wastewater fees. Mr. Towlerton advised in Billings the city-wide average would be $17 per month. He said he did not know what the charges would be in Lockwood.

Councilmember Ulledalen asked how the 15% return was calculated and what items were included in it. Mr. Towlerton referred the question to the rate consultant, Mr. Mathews. Mr. Mathews said the 15% rate of return was specified in the contract and negotiated between the parties. He said the 15% rate of return was based on the book value of the facilities. Councilmember Ulledalen asked for a rough dollar amount on the 15% rate of return. Mr. Mathews and Mr. Towlerton said they would need to get back to the council with that amount.

Councilmember Pitman asked for the anticipated hook-up date. Mr. Towlerton said the latest he had heard was potentially the end of the year, which was when Lockwood would have their facilities ready. He said there were still some administrative items to be taken care of, as well.

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

Councilmember Ronquillo moved for approval of Item 2, seconded by Councilmember McCall.

Councilmember Cimmino stated she would abstain from voting on Item 2, due to employment with the consulting firm who worked on the rate study.

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

3. **PUBLIC HEARING AND RESOLUTION 10-19013 approving and adopting budget amendments for FY2009/2010 and FY2010/2011. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** City Administrator Volek advised staff had no presentation but was available for questions.

Mayor Hanel asked how much funding was donated by the Tennis Association. Ms. Volek said the amount was not readily available so she would get the amount and provide it to the Council.

Councilmember Pitman asked why the $4,200 donated for the upgrade to the hood suppression system at the Community Center was not just accepted as a donation instead of being brought into the General Fund. Ms. Volek advised the source of the funding was a donation, but it was not approved in the budget to change the hood. She said the funding source was not so much the issue as the spending authority.

Councilmember Pitman referenced the Sidewalk and Curb Debt Service delinquencies in the amount of $183,000 issued in 1994 and 1995 that were being transferred out into the Sidewalk and Curb District Fund for the deficit, yet in the second paragraph there was an excess amount of $15,100 from the Special Improvement District Debt Service being transferred elsewhere and asked for an explanation. Ms. Volek advised there was a revolving fund for the SID projects and whenever a curb, gutter or sidewalk bond was retired, they usually ended up with an over or under amount. She said if the account was short, the revolving fund made up the amount; and if the account was long, the money was transferred into the revolving fund to make up for future payments. She said it was impossible to know the precise dollar amount that would remain in the account on the last bond payment date. She said it should have been done in FY2010, but Finance missed it until after July 1, so the amendment was being taken care of now to balance the bond funds. Councilmember Pitman asked if the City missed $183,000. Ms. Volek advised people did not pay assessments so it was missed over a 15-year period. Councilmember Pitman asked if liens had been placed on the properties. Ms. Volek advised they should have been. Councilmember Pitman asked if liens were currently on the properties. Ms. Volek said there were. Assistant City Administrator Bruce McCandless explained that a lien was usually placed on the property, but if the property went to tax sale, as much of the taxes and the SIDs that could be collected were, but it was pretty rare that the City received any of the SID payments.

Councilmember Pitman asked about the $1,300 payment to Channel Seven to broadcast the work sessions. Ms. Volek advised it was an annual fee. She said it was based on $50 per session. She said coverage of the 26 work sessions was added and not contemplated with the original agreement.

Councilmember Pitman asked what the word 'arbitrage' meant. Ms. Volek advised arbitrage meant when a government issued bonds, the federal government prohibited investing and earning more on the bonds than it needed to pay. She said if the government earned more than they spent, there was usually a penalty from the federal government. Councilmember Pitman asked if there was a dollar amount. Councilmember Gaghen advised it was listed on the attachment in the amount of $10,953. Mr. McCandless advised the $10,953 was the amount of the arbitrage on the Parks and Recreation bond issued in 1998.

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

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

4. **PUBLIC HEARING AND RESOLUTION #10-19014 de-annexing a portion of the Briarwood Planned Unit Development property described as Tract 2A of C/S 2544 Amended. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** Planning Division Manager Wyeth Friday advised discussion on the petition had started several months ago with the property owner, city staff, and a potential buyer of the property. He said initially Public Works staff was interested in the property because of a potential, additional access to a reservoir that served the Briarwood area. He said it was later determined that the terrain was too rough and unsuitable for an access, but Public Works was still interested in maintaining access just to the east of the subject property. Mr. Friday advised that Council passed a Resolution of Intention to de-annex on September 27, 2010, a 20-day comment period followed, and no comments were received. Mr. Friday began his PowerPoint presentation showing the subject property, the existing Briarwood development, and the golf course. He said staff had reviewed the de-annexation request and found it conformed with most of the criteria as follows:

1. The property was not currently connected to City water, wastewater or storm drainage facilities, and could not connect to these facilities without a significant expenditure of personal or public funds, and

2. The property was not adjacent to public rights-of-way (however, the City was expected to condition this de-annexation to maintain a road right-of-way for a future connection between McMasters Blvd. and Colleen Drive), and
3. The property was not encumbered by any indebtedness of any improvement district of which the territory was a part, and
4. The property was located on the outer perimeter of the City limits and upon exclusion of the property would not result in a parcel wholly surrounded by City limits.

He said the only piece that did not follow the de-annexation policy was that the property was adjacent on the west side to acceptable limits of annexation as defined on the most recent update of the Limits of Annexation Map. He said the only non-significant issue would be that the golf course would become the boundary for the City. Mr. Friday advised staff was recommending approval with the following two conditions.

1. An easement shall be executed and recorded by the petitioners that establishes public access for future road and utility infrastructure across the subject property; and
2. The petitioners agree to execute a new five (5) year agreement with the City to continue to provide access across Certificate of Survey 2165 for city personnel, approved contractors, and vehicles to service and inspect the Briarwood Water Storage Reservoir as stipulated in the access agreement between the City and the petitioners dated February 6, 2007.

Mr. Friday showed the location of the proposed easement that would provide a second access to the reservoir as the Briarwood area developed. Councilmember Gaghen asked if access to the reservoir would be renewed after the 5-year agreement expired. Mr. Friday said it would need to be revisited by the property owner and the City.

Councilmember Pitman asked for the amount of loss in tax revenue. Mr. Friday said the property was completely undeveloped, and he did not know what the current tax value was. Councilmember Pitman asked if the de-annexed property would become part of the BUFSA. Mr. Friday said it would be either BUFSA or the Blue Creek Fire Department.

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

Councilmember McCall moved for approval of Item 4, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

5. **PUBLIC HEARING AND SPECIAL REVIEW #886: a special review for the location of a 60-foot wireless communication support structure for Verizon Wireless in a Controlled Industrial zone legally described as Lots 14-26, Block 2, Industrial Subdivision and generally located in the 900 block of 2nd Ave North; Green Leaf Land and Livestock, owner; Kevin Howell, agent. Zoning Commission recommends conditional approval and approval of the waiver of the 1-mile separation requirement. (Action: approval or disapproval of Zoning Commission recommendation.)** Planner II Nicole Cromwell began her PowerPoint presentation showing the location of the subject property and describing the zoning of the surrounding properties. She also reviewed several site plans for the proposed 60-foot tower. She said there was a lightning prevention device on the top of the structure that was not included in the tower height. She said an equipment shelter and shed with air conditioning units and a back-up power generator would be installed on the ground with a fence surrounding it to prevent unauthorized access. Ms. Cromwell said the leased area would be approximately 2,400 square feet of the property. She showed photographs of the subject property and surrounding properties. She said the subject property had been used intermittently for auto and trailer sales in the past. Ms. Cromwell advised the Zoning Commission conducted a public hearing on October 5 and was recommending conditional approval and a waiver of the 1-mile separation requirement from any other communication tower over 50 feet in height. She said there was a communication tower approximately .9 miles from the subject location on the 2100 block of 4th Avenue North, which was approved for 180 feet. Ms. Cromwell advised the applicant, Verizon Wireless, provided a letter to the Zoning Commission stating that this particular area of Billings had some intermittent coverage because of the geography, they felt the location was good for their station, and a 60-foot height was required to achieve the coverage they needed. Ms. Cromwell outlined the recommended nine conditions, as follows:

1. The special review approval shall be limited to the 2,400 square foot leased area shown on the site plan for a portion of Lots 14-26, Block 2, Industrial Subdivision located in the 900 block of 2nd Avenue North.
2. Any expansion of the proposed ground equipment building, relocation to another area on the property, or the addition of tower height more than 10% of the proposed 60-foot height will require an additional special review approval.
3. The development of the wireless communication tower and ground equipment shall be in substantial conformance with the submitted site plan with any exceptions noted in the conditions.
4. All new site lighting on the building and within the fenced lease area shall have full cut-off shields so lighting is projected to the ground and not on to adjacent properties. Lighting on the tower structure shall conform to all FAA/FCC standards that apply. The tower shall have a red light installed that will operate only during non-daylight hours.
5. The owner shall provide a 7-foot, split-face block wall around the leased area with a closing gate in lieu of a chain link fence with perimeter landscaping.
6. The footing and foundation pad under the equipment enclosure shall be elevated above current grade to prevent to the maximum extent possible any street or parking area flooding from equipment damage or disruption of service.
7. The applicant shall submit a building permit for the facility within 6 months of this approval and complete the construction project within 12 months of approval. The City Council has the options of granting one (1) 6-month extension of time to start construction. A failure to begin or complete the project as approved will void the approval and require a new application for this location.
8. These conditions of special review approval shall run with the land described in this authorization and shall apply to all current and subsequent owners, operators, managers, lease holders, heirs and assigns.
9. The proposed development shall comply with all other limitations of Section 27-613 of the Unified Zoning Regulations concerning special review uses, and all other City of Billings regulations and ordinances that apply.

Councilmember Pitman asked if any other options were presented other than a standard tower as far as appearance. Ms. Cromwell said there was not.

Councilmember Clark asked if the Zoning Commission vote was unanimous. Ms. Cromwell advised it was conditionally approved on a 4 to 0 vote.

Councilmember Cimmino asked if the applicant would need a concurrent application with the City Board of Adjustment for a height variance if they wanted to go higher than 60 feet. Ms. Cromwell advised they would not because it was within the limitation of the Controlled Industrial District.

The public hearing was opened.

- **Joe White, Billings, MT,** asked what the cause was for the 1-mile requirement versus being waived. He said it seemed it would be a substantial condition because it was a highly electrically probed neighborhood and electrical discharges would not comply with regulations. Mr. White said he was not objecting but they should be cautious because of the heavy flooding at the intersection following the tornado.

  Mayor Hanel advised the owners of the other tower that was less than a mile away were contacted and were not in opposition. He said the Zoning Commission gave it serious condition before recommendation. He said the electronic field was also studied and deemed not to be a hazard.

  Mr. White asked for the location of the other tower. Mayor Hanel said it was located at 21st and 4th Avenue. Mr. White said he did not know what was going to happen, but it was proven to be potentially very dangerous. Councilmember Gaghen told Mr. White that a tenth of a mile was not even a full two blocks.
- **Kevin Howell, address not given,** said he was the applicant and was available to answer any questions.

  Councilmember Ulledalen asked Mr. Howell how he felt about the light requirement. Mr. Howell said they had substantial discussion about the light. He said anything over 200 feet was required nationwide by the FAA to be lit. He said the high tension power lines that ran north and south between 12th and 13th were higher than 60 feet and were not lit. He said he did not feel the light requirement was appropriate but they would go either way.

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

Councilmember Gaghen moved for approval of Item 5, seconded by Councilmember Ronquillo. Councilmember Astle moved to amend the motion to eliminate the red light requirement, seconded by Councilmember Ruegamer. On a voice vote, the amended motion was unanimously approvec. On a voice vote, the original motion was unanimously approved.

6. **PUBLIC HEARING AND SPECIAL REVIEW #887: a special review to allow three new multi-family buildings, including one 5-plex and two 4-plex buildings for a total of 13 dwelling units, in a Residential 6,000 (R-60) zone on a 28,902 square foot parcel legally described as Lots 14A, 14B and 14D of Mattson Acres Subdivision and generally located at 711 Mattson Lane just west of the intersection of Bench Boulevard and Mattson Lane; Ben Nistler, NHB, LLC, agent for the landowner. Zoning Commission makes no recommendation, as a result of a tie vote. (Action: approval or disapproval of Special Review request)** Planner II Nicole Cromwell advised that last Friday Council received a memorandum from Planning Director Candi Beaudry regarding a lot area error calculation that was the result of a Planning Division staff oversight. She said the error was brought to their attention by the applicant's agent, Mr. Ryan Jackson, who was counsel for Ben Nistler. Ms. Cromwell said as a result, the Planning Division was recommending that Council refer the special review back to the Zoning Commission for a re-hearing on a compliant site plan. She said the math error was due in part to a concept plan reviewed by the Planning staff in August that showed one 8-plex and one 5-plex, for a total of 13 dwelling units. She said the 8-plex required 16,000 square feet of lot area, and the 5-plex required 11,500 square feet of lot area, and at that time the concept plan was compliant with the lot area requirements. Ms. Cromwell advised when the plan was submitted, it was submitted as two 4-plexes and one 5-plex. She said it was the same number of dwelling units; however, each 4-plex required 10,000 square feet of lot area and the 5-plex required 11,500 square feet of lot area, for a total required lot area of 31,500 square feet. She said the lot was only 28,902 square feet. Ms. Cromwell said the Planning Division was very conservative when it came to process errors, which was why they were recommending that Council send it back to the Zoning Commission for a re-hearing on a compliant site plan. She said it was not likely that the Planning Division staff's recommendation to the Zoning Commission would change due to the discovery of the error, but they liked to have the process be as perfect as possible to preserve the rights of both the applicants and the surrounding property owners. Ms. Cromwell said the Council received a request from the applicant's agent that day that they preferred to submit an amended site plan that evening that showed two 4-plexes and one 3-plex, for a total of 11 units and three structures, which would be compliant with the lot area requirements. Ms. Cromwell indicated that would be an option. Ms. Cromwell advised the Zoning Commission forwarded no recommendation for conditional approval due to a tie vote, and the error was not discovered until after the Zoning Commission's hearing. She said it was staff's recommendation to send it back to the Zoning Commission for a re-hearing, new notice to the surrounding property owners, a compliant site plan, a new legal notice, and a new posting of the property. Ms. Cromwell advised the Council had several other options available such as delaying the hearing for 30 days in order to consider the new information; approving the application as submitted; conditionally approving the application as submitted with a recommendation to add a condition of approval to reduce the number of units from 13 to 11; considering the conditions the Planning staff recommended to the Zoning Commission; or denying the application.

Councilmember McFadden asked if conditional approval was given, would the applicant need to be compliant with all laws and regulations. Ms. Cromwell said that was correct. Councilmember McFadden asked if there would be any stumbling blocks or problems if conditional approval was given. Ms. Cromwell said the only problem would be if a surrounding property owner or owners could contend that the application was not compliant with zoning as presented originally. She said generally when the density was reduced in a special review application, the impact on the neighborhood would be less so it would not necessarily need to go back for another hearing before the Zoning Commission.

Councilmember Astle asked if there were protests. Ms. Cromwell said there were several testimonies of opposition at the hearing, as well as letters of opposition and a petition received after the hearing, all which were included with the staff report.

Councilmember Gaghen said there were 34 signatures on the petition and asked if it constituted a valid protest. Ms. Cromwell advised valid protests were applicable to zone changes only.

Mayor Hanel asked about the number of garages allowed in the square footage area if the number of units was reduced from 13 to 11. Ms. Cromwell said they had replaced some of the footprint of the 5-plex with additional parking spaces, but the original application was compliant with the off-street parking requirements.

Councilmember Ulledalen asked what the point would be to sending it back to the Zoning Commission for an additional hearing if they could condition it and pass it without any great heartburn to the Planning staff. He asked Ms. Cromwell how she would characterize the opposition at the hearing. Ms. Cromwell said some of the folks were present that evening and testimony was summarized in the staff report. She said she thought that any dwelling unit development containing more than a duplex would probably meet with the same opposition from the surrounding property owners. She said it was a neighborhood annexed into the City in the 80's and on large lot county tracts, so a lot of the lots were well over the minimum required, some more than twice the required lot area, because of original septic systems and wells. She said there had been some development in the area, which were mostly duplexes.

Councilmember Pitman asked if mobile homes would be allowed. Ms. Cromwell said they would not be allowed. Councilmember Pitman asked how Highway Commercial ended up in an R6000 neighborhood. Ms. Cromwell said the Highway Commercial zoning was accomplished prior to annexation and by application of the lot owners. She said it had probably been that way for 30 years.

Councilmember Astle asked what was east and west of the subject property. Ms. Cromwell advised there were single family dwellings, a mobile home, and several duplexes. She said the larger lots were subdivided by deed and not shown as actual subdivided lots.

Councilmember McCall asked Ms. Cromwell, considering the two-two split of the Zoning Commission, if coming back with a revised site plan would address some of the concerns. Ms. Cromwell said from what she was able to review that afternoon on the revised site plan, she believed it addressed some of the concerns but not all of them.

The public hearing was opened.

- **Joe White, Billings, MT,** said he supported referring it back to the Zoning Commission on the grounds of what he planned to speak on anyway. He said there was concern about the multiple complexes and the air supply. He said there needed to be required, specific, detailed air testing with regards to the maximum amount of occupants. Mr. White said he had a specific concern about being right across the street from the Wal-Mart Subdivision and what they had to draw on because they were losing air from Wal-Mart. He said people would be breathing off of their neighbors.
- **Ryan Jackson, 225 E. Mendenhall, Bozeman, MT,** said he was the agent for the applicant. Mr. Jackson said he agreed with the earlier question of what the benefit would be of going back to the Zoning Commission. He said the sentiment was illustrated that there was no benefit. He said it troubled him that the Planning Division recommended a plan to the Zoning Commission that was not compliant with the zoning to begin with and then two members of the Zoning Commission approved the plan. He said it was not until last week after they sat down and actually discovered it was not in compliance with zoning that they went to the Planning Division and asked what they needed to do. Mr. Jackson said he felt the Council needed to address whether they needed to go back to the Zoning Commission. He said he felt the answer was no. He said one of the criteria with the Heights Neighborhood Plan was to have new developments co-mingle with existing properties, and he felt their project fit into those criteria. He said a number of issues raised by the residents dealt with traffic. He said he provided a traffic analysis demonstrating the impact of the project to the infrastructure was minimal at best. He said the increased revenue for the City of Billings would be $65,000. Mr. Jackson also requested he be allowed to rebut some of the testimony he expected to be forthcoming. He asked Council not to compel Mr. Nistler to go back to the Zoning Commission and to approve the plan with conditions as presented and in compliance with zoning as it currently existed. Councilmember Ruegamer commented that rebuttals were not allowed.

  Councilmember McFadden asked Mr. Jackson if the property was in compliance with his client's plans to build the multi-use dwellings at the time of purchase or if he bought the property speculating that he could change things around in order to build them. Mr. Jackson said it was, and they were not asking for a zone change. He said it was zoned R6000, which allowed medium to high density residential units, and they were simply going through the special review process to get conditional approval to move forward.

- **The following people said they lived in the neighborhood and spoke in opposition to Special Review #887 citing increased traffic, lack of parking, increased noise elevations, lack of egress and ingress, unfavorable garbage dumpster and deck locations, and unwanted changes to the nature of the neighborhood.**

  1. **Brenda Bowles, 649 Mattson Lane (distributed map and 2 additional protest letters)**
  2. **Mark Boyd, 1925 Lake Elmo Drive**
  3. **Melissa Chevalir, 744 Lambrecht Lane**
  4. **Terry (inaudible – did not sign-in), 643 Mattson Lane**
  5. **Mike Bowles, 659 Mattson Lane**
  6. **Joe Clevenger, 707 Mattson Lane**

- **Ben Nistler,** said he was the applicant and thanked the Council for taking the time to hear the special review. Mr. Nistler advised that Mr. Jackson had covered several points that were very crucial to the project. He said a lot of the objections he had encountered were merely subjective. He said he had followed all of the rules and regulations that had been set out for and by the population of Billings Heights as far as setbacks, building heights, unit numbers, and parking spaces. He said he could appreciate the concern of many of the neighbors wanting the field in their backyard to remain vacant, and he had refuted all of the subjective arguments with facts. He advised many of the people who signed the petition were renters, and one had only rented for a year at the most. Mr. Nistler said he had more than the required parking, so parking would not be an issue. He said he had spoken with an appraiser in Billings, who told him that the values of the properties around Wal-Mart had increased 20% over the last four years, and their values would not change with the proposed project. He said the heights of the units were 23 to 24 feet, and not 27 to 29 feet as had been mentioned. Mr. Nistler asked the Council to approve the project.

  Councilmember Ronquillo asked if there would be entrances from Lambrecht Lane and Mattson Lane. Mr. Nistler advised the Fire Department was not interested in allowing him to travel through Lambrecht Lane due to safety issues and access and due to the fact that Lambrecht was dirt and not an improved street. He said there was a right-of-way easement he would be landscaping because there were no anticipated improvements for Lambrecht.

  Mayor Hanel asked Mr. Nistler to explain his decision for the 11 current units. Mr. Nistler said the reason was for the land use. He said R6000 was a designated zoning district for medium to high density housing and said he was within all the rights.

  Councilmember McFadden asked how many bedrooms would be in each unit. Mr. Nistler said the 3-plexes would be one-bedroom, and the two 4-plexes would be three-bedroom, two-bath units.
- **Al Koelzer, 2828 Westwood,** said when he sold the property to Mr. Nistler he thought it was a great idea because he was a young guy from Bozeman coming to Billings to spend some of his money and do a nice project. He said considering the dirt street behind the property, any kind of new construction would be an improvement to the neighborhood. Mr. Koelzer said an apartment house provided a good buffer between residential and commercial and one of the functions of multi-family was to provide the buffer. He said there were apartments all over town embedded in residential neighborhoods. Mr. Koelzer said, as a real estate agent, it was not easy to find multi-family land and if they wanted to have apartments, they needed places to build them.

  Councilmember Pitman said a buffer would be more horizontal along Mattson and not dividing a neighborhood. He asked Mr. Koelzer how it would be a positive to the neighborhood. Mr. Koelzer asked if anyone would build a house there. Councilmember Pitman said someone was building a house just two lots down.

  Councilmember Cimmino asked Mr. Koelzer how many potential cars would be parked at the units. Mr. Koelzer said he was not a developer, so could not answer the question.

Mayor Hanel asked Ms. Cromwell if the proposal fit within zoning. Ms. Cromwell advised the proposed 11 units that were submitted via Mr. Jackson's letter did. Mayor Hanel asked if the proposal complied with the 2008 Growth Policy. Ms. Cromwell said their analysis indicated it did. She said one part of the Growth Policy was the incorporation of an adopted neighborhood plan and the neighborhood plan for Billings Heights designated a preferred land use between Bench and Main Street as mix-use, which included both retail mixed with residential or commercial with residential or higher density residential uses.

Councilmember Ulledalen said one positive in sending it back to the Zoning Commission would be to allow time to review the site plan with the adjusted size of the units. Ms. Cromwell said it made sense but she did not think it would greatly affect their original recommendation and conditions they had forwarded to the Zoning Commission.

Councilmember Ronquillo asked if they could get out on Lambrecht anywhere. Ms. Cromwell said they could and one of the issues discussed at the concept meeting level was that the City might require the developer to do the improvements all the way to Bench Boulevard. Councilmember Ronquillo asked if only one entrance would be allowed coming in on Mattson Lane. Ms. Cromwell advised the Fire Department reviewed it for safety, for getting a truck in and out of the property, and the distance from Mattson Lane to the furthest point of the duplexes, and they were not concerned with the safety of access issues, and neither was Engineering.

Councilmember Astle asked Ms. Cromwell if the Fire Department would use Lambrecht Lane if there was a fire. Ms. Cromwell said they would but they might get the truck stuck depending on the time of year.

Mayor Hanel asked if the garbage dumpster would be enclosed. Ms. Cromwell said it would be and it was indicated on the site plan. She said the location was just unusual.

Councilmember Pitman said if they required access on Lambrecht, they would have to improve the whole road so the issue of the fire truck getting stuck would not exist. Ms. Cromwell said it depended on what the Engineering Division would require.

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

Councilmember Pitman moved that Item 6 be referred back to the Zoning Commission, seconded by Councilmember Ronquillo. Councilmember Ronquillo said he still had a problem with only one entrance. He said if there was a fire or major wreck, there would only be one way in and one way out. He also said he was concerned with the children in the area having a place to play. Councilmember Pitman said the school was located just across the street and the children were not going to walk over to Mattson and down; they were going to cut through the back, which created a problem. He also said he did not see the project as a buffer but as a divider slicing the neighborhood in half. Councilmember Pitman said those were the two items he would like the Zoning Commission to take a look at.

Councilmember Clark asked if there would be any other fees to the applicant if it was referred back to the Zoning Commission. Ms. Cromwell said there would be no more fees, but the applicant's agent had advised their time on the purchase and sale would expire the end of November. Ms. Cromwell advised the re-hearing at the Zoning Commission would be the first week in December, and Council would hear it the first meeting in January.

On a voice vote, the motion passed 10 to 1. Councilmembers Ronquillo, Gaghen, Pitman, McFadden, Ruegamer, McCall, Ulledalen, Astle, Clark, and Mayor Hanel voted in favor of the motion. Councilmember Cimmino voted in opposition of the motion.

Mayor Hanel called for a short recess at 9:00 p.m.
Mayor Hanel called the meeting back to order at 9:10 p.m.

7. **RECONSIDERATION OF APPROVAL of Settlement Agreement with Alternatives, Inc. dismissing the annual $40,000 payment in lieu of tax assessment associated with Special Review #813, dated 5/22/06. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** Mayor Hanel advised he would recuse himself from the discussion and vote to avoid a conflict of interest and turned Item 7 over to Deputy Mayor Ulledalen. City Administrator Volek gave a brief history of the item. She said in May 2006 the City Council considered Special Review #813, which permitted Alternatives to operate a treatment program on the second floor of its facility called Passages located in the former Howard Johnson Hotel on South 27th Street. She said the payment in lieu of taxes was added as a special condition during the council meeting at which the special review was approved. She said Alternatives later challenged the legality of the condition and filed a lawsuit against the City arguing the payment in lieu of taxes had no relationship to mitigating any negative land use impacts from the second floor program. She said on September 27, 2010, the City Council considered a proposed settlement with Alternatives and rejected it by a 5 to 3 vote. She said on October 4 at a special meeting the Council voted to reconsider the denial on October 25. Ms. Volek advised staff was recommending approval of the settlement agreement and dismissal of the case currently before them.

Councilmember McFadden asked if the matter would be closed forever if they approved it and if the City had ever seen a dime from them. Ms. Volek advised it was contested almost immediately, so they had not seen any payment.

Councilmember Cimmino advised she would be abstaining from the discussion and vote.

Councilmember Ronquillo asked what would happen if the special condition was pulled. Ms. Volek advised the agreement proposed that the remainder of the special review continue forward and both sides agree to absorb their own legal fees. She said she was not a lawyer but presumed if the entire special review was removed, Alternatives, Inc. would challenge it legally. She noted Bill Cole, the attorney for Alternatives, was present at the meeting.

Councilmember Astle said he would "vote to get rid of this distastefully." He said he felt the Montana penal system was laying a large burden through Alternatives on the City of Billings, and every time there was a fight or any altercation of any kind at Alternatives or Passages, they did not handle it themselves, although they were getting paid to take care of their people. He said instead they called 911 and multiple officers responded, were put in harm's way, and abandoned the rest of the City of Billings. Councilmember Astle said Alternatives was a lousy neighbor as far as he was concerned but he would vote to get rid of it.

Councilmember McFadden said he recently found out that Alternatives was no longer a half-way house, or pre-release center, as it used to be. He said the court system was now sending people directly to Alternatives, and they did not even spend one day in prison. He said they were turning our town into a prison system, and he did not think it was right. He said he agreed with Councilmember Ronquillo that it was not right that the police should have to run down there twice a day and be taken off the beat of the south side in order to deal with the squabbles, and the City did not get a nickel back to reimburse the Police Department. He said he agreed the City was being cheated in that area.

Councilmember Gaghen asked if acceptance would preclude them in the future should Council look at payment for services from non-profits. Ms. Volek advised that there were some organizations, such as Southern Lights, who voluntarily agreed to make a commitment to the City of what the property taxes would have been. She said she would presume that voluntary payments could be included. Ms. Volek said there was no current policy but if Council felt staff should look at creating one, they would.

Councilmember McCall moved for approval of the settlement agreement with Alternatives dismissing the $40,000 payment in lieu of taxes, seconded by Councilmember Ruegamer.

Councilmember Ruegamer said he would vote for it and he voted for it last time, and in his opinion if they did anything else, it would be a butting of heads rather than thinking. He said they would not win this one, it was $40,000, and they needed to "turn mother's picture to the wall and leave." Councilmember Ruegamer said he sat and listened to the man who ran Alternatives who agreed to the $40,000; then walked out and disagreed without ever coming back to the City and telling them. Councilmember Ruegamer said he would never forget, and that was not the way they wanted to do business. He said in the future when the City did business with Alternatives, Inc., they needed to do it at an arm's length, with everything written down, making sure their Board was on board with what the City asked and said; because otherwise, all they would get would be "yes, yes, yes" and when they walked out the door it would be "no, no, no". Councilmember Ruegamer said if there was a fight at the Women's Prison or the men's jail, the prison and jail had staff to take care of it. He said Alternatives did not have the staff and he did not believe the City police should have to respond. He said Alternatives did not pay property taxes and put no money into the public safety levy.

Councilmember McCall said she brought it back for re-consideration right after she voted against it last time because she realized the City did not have legal standing. She said she felt they were making the right decision and understood the frustration around the services the City provided. She said one thing they had to remember was that Alternatives provided good services to people who would otherwise be in prison and she felt they needed to keep it in perspective. She said if there were no programs like it around the state, they would be building more prison cells.

On a voice vote, the motion was approved 8 to 1. Councilmembers Gaghen, Pitman, McFadden, Ruegamer, McCall, Ulledalen, Astle, and Clark voted in favor of the motion. Councilmember Ronquillo voted in opposition of the motion.

8. **RESOLUTION #10-19015 approving the Transfer Agreement of the Billings cable television franchise from Bresnan to Cablevision. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** City Administrator Tina Volek advised that Bresnan had a 5-year non-exclusive television franchise agreement with the City approved by Council in 2008. She said Bresnan Communications had agreed to merge with CSC Holdings, LLC, which was a subsidiary of Cablevision, Inc. out of New York; and the major control of the franchise would be changed to CSC Holdings. Ms. Volek advised that staff and the representatives from Bresnan and Cablevision had worked long and hard on the issue and the lengthy documents Council received via e-mail on Friday evening were supplanted yesterday afternoon by an agreement proposed by the Bresnan representatives. Ms. Volek acknowledged Sean O'Donnell, the Regional Vice President for Bresnan, and Shawn Beqaj, the Vice President of Public Relations for Bresnan in New York, who were in the audience and said they were both very instrumental in the discussions. Ms. Volek said as a result of the opportunity presented yesterday afternoon the discussion was renewed and revived. She briefly reviewed some of the pertinent pieces in the Transfer Agreement in front of the Council that evening and explained the application was filed with the City on July 2, 2010, and the City Council must act on it within 120 days or the resolution would be deemed approved. She referenced Page 2 of the Transfer Agreement and said as the result of an audit, there was belief there was an underpayment of franchise fees for calendar years 2007-2009, and the company had agreed to make payment for that in the amount of $23,575; although the franchisee was not admitting any liability. She said the franchisee agreed to pay a sum equal to $0.25/month/subscriber for the remaining term of the franchise provided the City adopted a separate resolution authorizing the fee before March 2011. Ms. Volek said under the terms of the current franchise agreement, the City may ask the cable company to levy an amount up to $0.85/customer; a quarter per customer would go through the City directly to Channel 7 to be used to help support their operations in addition to the money they received from the City through the franchise agreement. She said it would be brought forward as a separate item to the City Council. Ms. Volek advised the City was currently on Channel 7 and the franchisee would offer Channel 7, on the City's channel line-up, high definition format at no cost to the City upon receipt of 90 days notice from the City no earlier than June 1, 2011. She said as long as they offered analog programming, they would offer Channel 7 in analog format with advanced notice. Ms. Volek advised if Council approved the $0.25 fee, the franchisee would, at no cost to the City, provide the transportation of material, transmissions in multiple format, including high definition to and from City to the City's playback/control center and from the Yellowstone County Courthouse to the playback/control center. Ms. Volek referenced Items 2.8 and 2.9 of the Agreement, and said there was a provision for a future study at no cost to the City for the cost of extending a dedicated fiber-optic connection from City Hall and the 911 Emergency Center for a redundant connection. She said they currently had city-owned fiber that operated, but there had been two or three occasions in the past eight years in which it had not been available. She noted Bresnan had employees living in Billings to produce the connection. She said the estimate would be at no cost to the City; however if a fiber line needed to be constructed, they would offer their lower cost construction and supply contracts, but the City would be responsible for payment. She said it would be the same with service to the water treatment facility where the City ran its GIS operation. Ms. Volek said the consummation of the transaction would not cause an increase in cable rates other than the $0.25 referenced earlier, and the companies were not planning to increase rates but reserved the right to normal rate increases. She said the contract became effective upon the signature of all parties. Ms. Volek referenced the resolution accepting the application consenting it was conditional upon the execution of the Transfer Agreement, and effective as of the date of passage.

Councilmember Ulledalen moved for approval of Item 8, seconded by Councilmember Astle.

Mayor Hanel acknowledged Bresnan's contributions to the community for, not only their service but their employment and financial factors.

Councilmember Gaghen asked how long it would be before cost increases were passed along to the consumer. Mr. Beqaj said he was Vice President of Public Affairs in the New York office of Bresnan. He said Cablevision's intent was to be more competitive with satellite and as they generated more customers, who would pay more franchise fees, it would generate more monies and they could avoid rate increases.

Councilmember Ulledalen said he had a real problem with the Front Range report and thought there were unrealistic assumptions that made it difficult to assign any credibility to the report.

Councilmember McFadden asked if they currently had other fiber optics in the area. Mr. Beqaj said they had quite a bit of fiber and had invested about $1.3 billion in fiber in Montana, Wyoming, Colorado and Utah. He said they were currently working on a plan to expand but could not speak to the specifics at that time.

Sean O'Donnell said he was located in Billings, and Bresnan had 120 miles of fiber throughout the City of Billings and serviced 35 of the elementary, middle and high schools with fiber services. He said their large scale commercial business was in fiber. Mr. Beqaj said Bresnan was the first cable company in history to be awarded a state-wide data fiber-based contract.

On a voice vote, the motion was unanimously approved.

9. **APPROVAL of County-proposed Accord addressing Urban Renewal Tax Increment Financing District (TIFD) formation and amendment. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** City Administrator Tina Volek advised the County Commissioners had proposed an Accord dealing with how TIFD districts would be created or expanded, and the City Council had discussion at work sessions last month

and agreed after discussion it wished to go forward with the Accord and with the committee as originally proposed by the County to include the three County Commissioners and the eleven members of the Mayor and City Council.

Councilmember Ulledalen moved for approval of Item 9, seconded by Councilmember McCall.

Councilmember Ruegamer said he felt it was the best way to do it. He said someone had testified earlier that a representative from the education community should be included, but he thought all that would do was muddy the water. He said it would be the Council ultimately making the decision, and it was not rocket science.

Councilmember Pitman said he felt having a school board member included would allow them to say they had covered all of their bases and at least they had been invited. Councilmember Pitman amended the motion to add a school district member, seconded by Councilmember Cimmino.

Councilmember Ulledalen said he would not support the amendment because he thought the school board had analyzed TIFD districts and did not have an issue with them. He said he thought the BEA had looked at TIFD districts and did not have issues with them. Councilmember Ulledalen said the only people who had issues with TIFD districts were the County Commissioners because they felt they were not in the loop, so they would be brought into the loop. He said it would not be a working committee and only a way to bring the Commissioners in to explain it to them one-on-one.

Councilmember Ruegamer said he would not support the amendment either. He said they had reached out to the School Board several times, and they never showed up. He said he did not know what the School Board would even add. He said they could come anytime they wanted to the meetings and provide input, but he did not want to add a lot of people to it. He said too many people muddied the water and he thought they could handle it with the County Commissioners.

Councilmember McCall said she would not support the amendment. She said they needed to keep it clean and get it done.

Councilmember Cimmino said she wanted to echo what was said at previous meetings that the three layers of government were the City, County and School District 2; and they had actually made an overture welcoming Doctor Beeman to be part of it and he gladly accepted. She said it was just a gesture to include School District 2.

Councilmember Ulledalen said Ms. Volek had been working between a month and a month and a half to schedule a one-hour meeting with the school board and the council, and had not been able to get it scheduled. He said it would delay things, and they had already expressed they did not have an issue with it.

Councilmember Gaghen said there was nothing to preclude the school district being brought in and if there was an appropriate issue that came up, that might be the time to seek their advice or input. She said she would not support the amendment.

On a voice vote, the amended motion failed 9 to 2. Councilmembers Ronquillo, Gaghen, McFadden, Ruegamer, McCall, Ulledalen, Astle, and Clark and Mayor Hanel voted 'no'. Councilmembers Pitman and Cimmino voted 'yes'.

Councilmember McFadden advised he had spoken with Bruce MacIntyre with the Chamber of Commerce and he was in favor of the Accord because it would smooth out the process and allow everyone's input.

Councilmember Cimmino said the last time they had discussed it, there was an overwhelming desire to streamline the process by not having all eleven members of the Mayor and Council serve on the committee and asked what caused the change of heart.

Councilmember Ulledalen said he did not feel it was overwhelming, and they had gotten caught in a curve ball that created a lot of strange discussions. He said they needed to focus on the fact that it was not a working committee that would meet every two weeks to discuss something. He said after all the entities had done their work to put the TIFD district together, made the issue, and made the case, it would be presented to the County Commissioners and provide the opportunity for them to sit down with Council and staff to hear the presentation. He said he envisioned there would be a meeting on a Monday night and whoever wanted to show up would be there, and there would be a vote. He said it was more symbolic than anything.

Councilmember Ruegamer said he agreed with Councilmember Ulledalen, and he felt it had been streamlined by making it the Council because they had to be there on a Monday night anyway.

Mayor Hanel said he wanted to speak in favor of the motion. He said it displayed the City's willingness to work with the County Commissioners and showed a good working relationship between the City and County showing professionalism and displaying to the public that they were receiving what they elected and were paying for.

On a voice vote, the motion was unanimously approved.

PUBLIC COMMENT on Non-Agenda Items -- Speaker Sign-in required. (*Restricted to ONLY items not on this printed agenda. Please sign up on the clipboard located at the podium.)*

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

COUNCIL INITIATIVES – There were no initiatives.

Mayor Hanel recognized Deputy City Attorney Bonnie Sutherland and thanked her for attending in the unexpected absence of Attorney Brent Brooks.

Councilmember Astle asked about the Skate Park Restroom. Ms. Volek advised she received information on Friday and would forward it to Council that week.

Councilmember McFadden commented that he had a discussion with a probation officer at Alternatives who said the local bad boys would play the system by going to halfway houses and think it was one big joke but once the prison cell door shut behind them it got their attention. He said maybe we needed more prisons and less half-way houses.

Councilmember Ulledalen said he and Councilmember McCall had a lingering mess with Waivers of Protest that were put into Subdivision Development Agreements. He said it would probably only happen in the Heights and in parts of Wards IV and V. He said the developers signed on with the City to do whatever needed to be done to get the subdivision annexed and approved and there were lingering issues with parks, etc. that were not implemented at the time. He said they currently had a situation with Rush Park located at Poly Drive west of Shiloh. He said there were seven or eight different subdivisions that fed into that location and 12 to 15 different sets of agreements. He said the initial filing went back to the 1950's and people who had owned houses for over 25 to 30 years were now receiving notice it was time to trigger the park that was initially envisioned when the property was annexed. He said it did not show up readily on the title report and was not being disclosed by the realtors, so the owners were completely unaware of it. Councilmember Ulledalen said he would like a joint meeting with someone from the Billings Association of Realtors to discuss how a better job could be done to disclose it. He said it was hard to explain to people why they were being assessed for a park that was created 30 years ago in a Subdivision Improvements Agreement (SIA). Councilmember McCall said they were in continuous debate and in e-mail conversations with numerous people, and there was not a right answer. She said somehow they needed to get a handle on it and disclose it in the initial process and on the title report. Mayor Hanel said he agreed and respected their concern, but he said to be careful not to generalize that agents did not share the information because they did. He said it was called an extended title commitment. He said believing an SIA did not exist was a matter of not doing the homework. Councilmember Ulledalen said they were actually being harangued by a realtor and felt it was very rarely done. City Administrator Volek advised there was a Development Process Advisory Review Board that reported to the City Administrator's Office which included someone from the title companies, contractors, and the realtors' association, and if it was acceptable to Council she would like to bring the issue to them. Councilmember Ulledalen said all he was looking for was guidance on where to start. Councilmember Ruegamer said the point was the City was always blamed, and they needed to fix it. Councilmember Ronquillo said just the opposite had happened with the older parks. The City was supposed to pay for them out of the General Fund, but a past Council put a stop to paying for the parks. Councilmember Ulledalen said that was a whole different problem, and said maybe the City should look into a city-wide park maintenance district.

Councilmember Pitman advised the Billings Gazette had started a series on becoming a Billings Police Officer, and said it was important because it gave a lot of credibility to the Billings Police Department.

There was no further business, and the meeting adjourned at 9:53 p.m.

CITY OF BILLINGS

Thomas W. Hanel

Thomas W. Hanel, Mayor

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SEAL

ATTEST:

Cari Martin

Cari Martin, City Clerk