

REGULAR MEETING OF THE BILLINGS CITY COUNCIL
June 27, 2011

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 McFadden gave the invocation.

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

MINUTES: June 13, 2011 – Councilmember Cimmino moved for approval of the minutes, seconded by Councilmember Astle. On a voice vote, the motion was unanimously approved.

COURTESIES: Mayor Hanel said he would like to recognize city staff, specifically Human Resources, who was behind the recent Wellness Run. He said there was very good attendance and it was very well managed. He asked Ms. Volek to pass the compliments onto staff. Ms. Volek said the Wellness Committee also needed to be recognized for its involvement and with the health campaign that was going on throughout the city to help reduce health insurance costs. Mayor Hanel extended a personal thank you to all of the volunteers for their assistance in the Twister 2-mile event. Councilmember Ruegamer recognized Bruce Putnam, the former Aviation and Transit Director, who was in the audience.

PROCLAMATIONS: None

ADMINISTRATOR REPORTS - TINA VOLEK

Ms. Volek commented on the following items.

- Item N – Resolution Accepting the Terms and Conditions of the InterCap Loan obtained to finance SIDs 1369 & 1391:
 - ✓ The original staff report included SID 1360, Gabel Road, which was an error; and the only two SIDs were SID 1369, Moore Lane, and SID 1391, Lynn Avenue.
- Item P – Second & Final Reading of Amended Animal Control Ordinance:
 - ✓ E-Mails to Mayor and Council from Carol Tasset, Janice Linn, and Jennifer Olsen opposing the language in the ordinance defining a “potentially dangerous animal”. Copies were filed in the ex-parte notebook.
- Item 2 – Emergency Ordinance Banning Medical Marijuana Storefronts:
 - ✓ E-Mail to Mayor and Council from Joshua Nichols in support of the emergency ordinance. Copy was filed in the ex-parte notebook.
 - ✓ E-Mails to Mayor and Council from Elizabeth Pincolini and Kathy Adler in opposition of the emergency ordinance. Copies were filed in the ex-parte notebook.
- Item 3 – Public Hearing and Resolution to submit to City Voters in November the issue of general obligation bonds for new downtown library:
 - ✓ Updated Resolution changing the amount of bonds from ‘up to \$16,690,000’ to ‘up to \$16,300,000’ - sent in June 24 Friday Packet. Copy was filed in the ex-parte notebook.

- Item 5 – Resolution Approving and Adopting FY2012 City of Billings Budget:
 - ✓ Updated pages from Pat Weber to the questions and answers that were distributed at June 20 work session - sent in June 24 Friday Packet. Copy was filed in the ex-parte notebook.
- Item 6 – Resolutions Setting Annual FY2012 Assessments:
 - ✓ Memorandum from Dave Mumford regarding FY2012 Street Maintenance Fee - sent in June 24 Friday Packet. Copy was filed in the ex-parte notebook.
- Item 9 – Public Hearing and Approval of New Subdivision Improvements Agreement for King Place Subdivision:
 - ✓ E-Mail sent to Mayor and Council from Larry Brewster in opposition of the new SIA. Copy was filed in the ex-parte notebook.
- Item 11 – Approval of the sale of Lots 9-12, Block 142, Original Town of Billings to RiverStone Health:
 - ✓ Letter from RiverStone Health, dated June 24, 2011, on Councils' desk. Copy was filed in the ex-parte notebook.
- Item 12 – MPEA Contract:
 - ✓ Memorandum from City Administrator, dated June 23, and copy of Contract sent in June 24 Friday Packet. Copy was filed in the ex-parte notebook.

Councilmember Clark made a motion to move Item 12, the MPEA/Police Union Contract, to Item 5 and renumber the agenda accordingly, seconded by Councilmember Cimmino. On a voice vote, the motion was approved 10 to 1. Councilmember Pitman voted 'no'.

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: #1, #2, #5, #6, #7, #8, and #12 ONLY. Speaker sign-in required. (Comments offered here are limited to one (1) minute. 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.)

The public comment period was opened.

- **Janice Linn, Hwy 3, Billings, MT**, referenced Item P and asked that “growling” and “raised hackles” be removed from the ordinance.
- **Jerry Hudson, 11 Prairie View Drive, Billings, MT**, referenced Item 2 and said contrary to a previous testimony, the affects of Agent Orange could not be passed down or inherited. He said marijuana was illegal, and there were signs posted in every room at the VA that any doctor found prescribing medical marijuana would be subject to prosecution.
- **Dave Kenat, 25 Avenue B, Billings, MT**, referenced Item P and said he had concerns with the wording “intentional provocation” in the ordinance. He asked that more research be done on dog behavior.
- **Kevin Nelson, 4235 Bruce, Billings, MT**, referenced Item 6 and recommended setting aside a Capital Improvement Project and moving the money into the Street Maintenance Fund.

- **Joe Bailey, 1631 Avenue E, Billings, MT**, referenced Item P and said he opposed the proposed animal control ordinance.
- **Brian Kenat, 345 Miles Avenue, Billings, MT**, referenced Item P and advised being careful of the proposed animal control ordinance.
- **Sandy Price, 2507 Kimble Drive, Billings, MT**, referenced Item P and advised taking another look at the proposed animal control ordinance.
- **Doug Ruebke, 110 S. 31st Street**, referenced Item P and said he was a member of the Animal Control Board who had worked on the proposed ordinance for a couple of years. He asked Council to approve the ordinance.

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

1. **CONSENT AGENDA**

A. **Mayor Hanel recommends that Council confirm the following appointments:**

| | Name | Board/Commission | Term | |
|---|---------------|-------------------|----------|----------|
| | | | Begins | Ends |
| 1 | Ronald Spence | Tourism BID Board | 07/01/11 | 06/30/15 |
| 2 | Chris Johnson | Tourism BID Board | 07/01/11 | 06/30/15 |

B. **Bid Awards:**

1. IP-9 Elevator Project, Billings Logan International Airport. (Opened 6/14/2011) Recommend Fisher Construction; \$223,500.

2. SID 1369, Moore Lane Improvements. (Opened 5/24/2011) (Delayed from 6/13/2011) Recommend HL Ostermiller; \$882,956.90.

3. W.O. 10-29 Wastewater Treatment Plant West Mechanical MCC Replacement and Improvements. (Opened 6/14/2011) Recommend delay of award until July 11, 2011.

4. 2011 Flatbed Truck with Hydraulic Telescoping Crane for Street/Traffic Division. (Opened 6/14/2011) Recommend I-State; \$91,919.

5. W.O. 11-05, Chapple Area Water Main Improvements. (Opened 6/14/2011) Recommend Ahanu Construction; \$830,065.

C. Change Order #2 (Final), W.O. 09-14 Wicks Lane and St. Andrews Drive Traffic Signal, Ace Electric, \$5,491.53.

D. Contract with Reporter Big Sky for paper and office supplies; three-year contract with three, 1-year options to renew.

- E. Agreement** between City of Billings and American Medical Response (January 2011 - December 2011 renewable annually).
- F. Agreement** with Billings Housing Authority to fund one Police Officer; 7/1/2011 - 12/31/2011.
- G. Development Agreement** with homeWORD for acquisition of property and construction of a low-income, multi-family housing complex.
- H. Annual Agreements** for Landfill Use with Bighorn County, Carbon County, Musselshell County, Stillwater County, Treasure County, Town of Columbus, Town of Fromberg, Town of Hysham, Town of Bridger, Town of Joliet, City of Laurel, City of Big Timber, and City of Red Lodge (7/1/11 – 6/30/12); and 3-year Landfill Use Agreement with Yellowstone County (7/1/11 – 6/30/14, with annual amendments).
- I. Approval** of 5-year lease agreement with the Crime Prevention Center to occupy space in the Park I Garage at \$0 rent.
- J. Approval of Sublease Agreement** by and between Edwards Jet Center Montana, Inc. and Rocky Mountain College; and **Airport Operating Permit** by and between City of Billings and Rocky Mountain College.
- K. Amendment #16, Airport Terminal Circle Road Paving Project.** Engineering Design Services Contract, Morrison-Maierle, Inc., \$9,761.
- L. Street Closures:**
- 1. Magic City Soul Run 3K & 10K** - Saturday, August 13, 2011, 6:30 a.m. to 1:00 p.m., South Park starting at 6 Ave. S., to S. 34th, to 4 Ave. S., to S. 35th and back to South Park (3K ends). 10K continues from S. 35th to State Ave., to Jackson St., to Monroe St., to Bruce St., to Phillip St., to S. Billings Blvd; turning around and following course in reverse back to South Park.
 - 2. Billings Clinic Classic Street Party** - N. 28th between 3rd Ave. N and 4th Ave. N; Alley at North 27th/28th between 3rd Ave. N. and 4th Ave N.; and Alley at North 28th/29th between 3rd Ave. N. and 4th Ave. N.; Midnight 8/26/11 through 5:00 a.m. 8/28/2011.
 - 3. Harvest Church Freedom 5K Walk/Run;** Saturday, July 2, 2011; 7:00 a.m. to 11:00 a.m.; commencing at Harvest Church and proceeding northwest on West Wicks Lane, east on Matador, south on Vesca Way, east on Sierra Grande Boulevard, south on Fantan Street, west on Wicks Lane, ending at Harvest Church.
- M. Resolution #11-19070** authorizing closure of Debt Service Funds for SID 1315 - Lampman Sub. Water Improvements; SID 1326 Pemberton Sub. Sewer; and SID 1338 Agate Avenue Sanitary Sewer to the SID Revolving Fund.

N. Resolution #11-19071 accepting the terms and conditions of the InterCap Loan obtained to finance SIDs 1369 & 1391.

O. Resolution #11-19072 adjusting fees charged at the Animal Shelter.

P. Second/Final Reading Ordinance #11-5536 providing that the BMCC be amended by revising portions of Sections 4-300 and 4-400 of said code updating language for definitions; keeping of wild animals; impoundment of abused, mistreated, or neglected animals; potentially dangerous animals; small animals at large; small animals in city parks or public lands; loosing of animals; vaccination of dogs/cats for rabies; small animal owner's promise to appear; registration; proof of vaccination; animal control officer, disposition of unclaimed animals, and penalties.

Q. Preliminary Minor Subsequent Plat of Amended Lot 9-A, Block 1, Montana Sapphire Subdivision described as five lots on approximately 11 acres of land for commercial or industrial development generally located on the southwest corner of Shiloh Road and King Avenue West; Montana Sapphire, LLC, owner; Rimrock II, LLC, subdivider; Sanderson Stewart, representing agent; conditional approval and adoption of the findings of fact.

R. Cancellation of Checks and Warrants, \$5,223.17.

S. Bills and Payroll:

1. May 27, 2011
2. June 23, 2011

Councilmember Pitman separated Items I, O, and P. Councilmember Cimmino separated Items B3, S1 and S2. Councilmember McCall moved for approval of the Consent Agenda with the exception of Items I, O, P, B3, S1 and S2, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

Councilmember Pitman referenced Item I and asked why a 5-year lease instead of a year-to-year lease. Assistant City Administrator McCandless said the reason for the 5-year lease was because the Crime Prevention Center (CPC) had been bumped from space to space, and they were looking for stability and a place they could stay for a number of years. Councilmember Clark asked if there would be some expense involved for remodeling. Mr. McCandless said there would be some remodeling expense but nothing drastic. He said the space was previously occupied by ConocoPhillips who had done a fair amount of remodeling when they moved in, and they left it in relatively good condition when they moved out. Councilmember Cimmino asked if the Crime Prevention Center was considered a non-profit corporation. Mr. McCandless said they were not an incorporated non-profit corporation. He said the City had not been very successful at renting the space, which was why the Parking staff recommended the space for the Crime Prevention Center.

Police Chief St. John commented that he felt the location downtown was a very good find for them because in past discussions with Councilmember Ronquillo, they had talked about a more centralized location. He said although they were not paying rent (only utilities); they generated revenue for the City. He said they were paying for ten parking spots in the parking garage, and the volunteer patrol unit extended parking enforcement of handicap zones, fire zones, and regular parking violations outside the normal area of the Parking Division. He said last year the volunteer patrol wrote as many tickets, if not more, than the downtown parking officers and generated significant revenue. He said they were asking for rent-free, long-term stability, and they paid their way with revenue generation.

Councilmember Ulledalen said he felt the downtown location would be much more convenient for people to use. Councilmember Pitman asked if Planning could move into the space if the new Library was built. Chief St. John said they were willing to co-locate to make it work; but he did not think there would be enough room for another entire division. City Administrator Volek said the Downtown Partnership was very pleased to hear the Crime Prevention Center would be moving downtown. She said the Crime Prevention Center enabled the City to not have to hire at least one police officer. She said the decision about when Planning would move had not been made. She said it could be very soon, or it could be a couple of years down the road.

Councilmember Ronquillo said five years ago his recommendation was to move the Cop Shop to the old Galles Building on Montana and South 26th, but Chief St. John said it would not work because it would be too close to the Police Station. He said the proposed space was closer to the Police Station than the Galles Building. Councilmember Ronquillo also said when they moved to Hallowell, they had 19 volunteers but they could not get a cop; and it did not cost the City a dime for three years. He said now they were planning to take up ten parking spots, and they would only be a block away from the Police Department. He said the Galles Building was still vacant, and he felt it would still be a good location. Chief St. John said they now know that most of the business was not walk-in and when he and Councilmember Ronquillo had that discussion he was new to the Chief's position and his prediction had proven to be wrong.

Councilmember Astle asked if Code Enforcement also worked out of the Crime Prevention Center. Chief St. John said they did not have an office there, but because of some of the overlap, they were there at times. Councilmember Astle commented that the Billings Kiwanis had worked hard to turn the Galles Building into a center for the Skate Park, but the building was a disaster and nothing could be done with it. He said it needed to be torn down. Councilmember McCall said she agreed with Councilmember Astle and felt it was a great collaboration. She said the dynamics downtown had changed over the past five years, and she felt they may see an increase in walk-in traffic.

Councilmember Gaghen asked if the Crime Prevention Center would be willing to relocate if another business wanted the space. Chief St. John said they would.

Councilmember Cimmino commented when she was the chair for the Heights Task Force, there was a Cop Shop on Main Street at Albertson's Bakery. She said it was decided it did not warrant enough traffic for anybody to go see a cop by a doughnut shop. She said the south side Cop Shop also closed down because they were told there

was not much of a demand. She said the beauty of volunteer work was that volunteers were not paid; but in this case one particular division would be paying \$164,000 for the next five years. She said she understood it was wonderful to have the private and public partnership, but it seemed to her it was not just the Planning Department that would be displaced. She said Building, Community Development, and Code Enforcement would also need office space in the event a new library was built.

Mayor Hanel asked Chief St. John how much time they were provided to move out of Rimrock Mall. Chief St. John said about three weeks. Mayor Hanel asked Chief St. John how many volunteers they had and for a few examples of the programs that they provided to the community. Chief St. John said there were approximately 100 volunteers. He said the Volunteer Patrol took care of abandoned vehicles and had almost eradicated them. He said they wrote parking tickets; and took cold calls and wrote reports in cases where there were no suspects, witnesses or evidence that freed up more time for police officers. He said the Crime Prevention branch conducted the Neighborhood Watch and Business Watch downtown programs. He said they had a wide variety of talent that had saved thousands of man hours for the Police Department. Chief St. John said the annual report for the Police Department was on their desks that evening that included a report on the Crime Prevention Center and its programs. Mayor Hanel asked if the Crime Prevention Center also provided a meeting space for other entities. Chief St. John said that was correct; he said they provided free space for community use.

Councilmember Pitman said his concern and future vision was that as they moved forward to a new library, it could be used as an arrangement to accommodate a lot of people who used the same resources.

Councilmember Ulledalen asked if there was other vacant space in the parking garage. Assistant City Administrator McCandless said there was.

City Administrator Volek said according to Planning Director Candi Beaudry, they would need 12,000 to 15,000 square feet to accommodate Building, Code Enforcement, Planning, and Community Development.

Councilmember Pitman moved for approval of Item I, seconded by Councilmember Ruegamer. The motion was approved 9 to 2. Councilmembers Cimmino and Ronquillo voted 'no'.

Councilmember Pitman referenced Item O and asked for the purpose of the fee increase. City Administrator Volek advised there was a slight increase of \$8,000 to \$9,000 that was budgeted already. She said a portion of the fees for licensing, etc. would be returned to the City, and the remainder would go toward the Yellowstone Valley Animal Shelter's operations. Councilmember Pitman moved for approval of Item O, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

Councilmember Pitman referenced Item P and moved for approval with the exclusion of "growling", seconded by Councilmember McFadden. Councilmember Ruegamer said he could tell when a dog was coming after him by the growling, and it was put in the ordinance for a reason. Councilmember McCall said she agreed with Councilmember Ruegamer. She said the board had spent two years working on the policy, it was qualified in a threatening fashion, and it would be very short-sighted for the Council on a quick decision to pull part of the policy.

Councilmember Ulledalen suggested it would be cleaner to have Councilmember Pitman withdraw his motion; have someone make a motion for approval, and then have Councilmember Pitman move to amend it. Councilmember Pitman withdrew his motion, approved by Councilmember McFadden, who was the second.

Councilmember Gaghen moved for approval of Item P, seconded by Councilmember McCall.

Councilmember Pitman moved to amend the motion to exclude "growling". The amended motion died for lack of a second.

Councilmember Cimmino made a substitute motion to delay action on the second reading for another 30 days, seconded by Councilmember Pitman. Councilmember Cimmino said any dog owners who potentially had animals as described in the proposed ordinance needed to come up with a half million dollar liability insurance policy and name the City as a co-insured. On a roll call vote, the substitute motion failed 8 to 3. Councilmembers Ronquillo, Gaghen, Ruegamer, McCall, Ulledalen, Astle, Clark and Mayor Hanel voted in opposition. Councilmembers Pitman, Cimmino and McFadden voted in favor.

On a voice vote, the original motion was approved 9 to 2. Councilmembers Pitman and Cimmino voted 'no'.

Councilmember Cimmino referenced Item B3 and said she would abstain from the item due to employment with the consulting firm involved in the bid award.

Councilmember Pitman moved for approval of Item B3, seconded by Councilmember Ronquillo. On a voice vote, the motion was approved 10 to 0.

Councilmember Cimmino referenced Item S1, Invoice #744949, and Item S2, Invoice #745153, and said she would abstain from both items. Councilmember Pitman moved for approval of Items S1 and S2, seconded by Councilmember Ronquillo. On a voice vote, the motion was approved 10 to 0.

REGULAR AGENDA:

2. EMERGENCY ORDINANCE BANNING MEDICAL MARIJUANA STOREFRONTS in the City of Billings. (1) If the preliminary injunction in the Lewis and Clark County case is denied and SB 423 becomes effective, staff recommends approval of the emergency ordinance banning the sale of medical marijuana or marijuana-infused products in Billings storefronts. (2) If a decision on the preliminary injunction is not made by June 27, staff recommends postponing action on the emergency ordinance to a meeting on July 1 or later. (3) If the preliminary injunction is approved, staff recommends denial of the emergency ordinance on storefronts and direction to staff to begin working on extending the moratorium emergency ordinance when it expires in November 2011. (Action: approval or disapproval of staff recommendation.) City Administrator Tina Volek advised that the ordinance banning medical marijuana storefronts in the City of Billings had been the subject of much discussion and public comment. She said if the Council decided to wait until the judge in Lewis and Clark County ruled on the matter, which would be by June 30th, staff suggested scheduling a special meeting on July 1st or on July 5th prior to the regularly-scheduled work session.

Councilmember Astle moved to delay Item 2 until a July 5th special session as the only item on the agenda, seconded by Councilmember Ulledalen.

Mayor Hanel commented that Billings had always been a leader in the state and he felt delaying the item was nothing more than procrastination.

Councilmember Clark made a substitute motion to put the storefront ban into an ordinance that would be effective if the judge ruled in favor of the state law that would go into effect July 1, seconded by Councilmember Gaghen.

Councilmember Ruegamer asked Attorney Brooks if it would put the city in the way of any kind of lawsuit. Attorney Brooks said it possibly could, but their best information would be the judge's ruling. He said the threat of litigation was always possible. Councilmember Ruegamer said they received threats of lawsuits on almost every decision they made, and it did not scare him. He said he just did not think they should go out looking for a fight if they did not have to.

Mayor Hanel said Council had put the duty on staff to research and prepare the emergency ordinance and they also put the responsibility on the lawmakers in Helena to do something, and they did. He said he felt Council should show its support and to sit back now and not be prepared, depending on the outcome of the judge's ruling, would be a mistake. Mayor Hanel said Billings had the opportunity to step forward and be a leader in the State of Montana, and if the judge struck down the law, the ordinance would be null and void. He said he was in favor of the substitute motion.

Councilmember Pitman spoke in opposition of the motion. He said he did not want to pass something when waiting a week for more clarity made more sense than passing something on an 'if' or 'maybe' basis.

Attorney Brooks advised the substitute motion must pass by 2/3 of the entire body or a total of 8 votes.

On a roll call vote, the substitute motion failed 7 to 4 for lack of a 2/3 majority. Councilmembers Ronquillo, Gaghen, McCall, Ulledalen, Astle, Clark, and Mayor Hanel voted in favor. Councilmembers Pitman, Cimmino, McFadden, and Ruegamer voted in opposition.

On a voice vote, the original motion passed on a 10 to 1 vote. Councilmember Cimmino voted 'no'.

3. PUBLIC HEARING AND RESOLUTION #11-19073 for submitting to City voters in November 2011 the issue of general obligation bonds in the amount of up to \$16,300,000 for the purpose of paying costs of designing, constructing, and equipping a new downtown Library building. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Library Director Bill Cochran introduced Leslie Modrow, Development Director of the Parnly Billings Library Foundation. Ms. Modrow advised the Capital Campaign had received over \$3.4 million in cash and pledges for the new library leaving only \$1.6 million left to raise to reach their \$5 million commitment. Ms. Modrow thanked everyone for their hard work and contributions to the project.

Mr. Cochran said he had talked in detail at last week's work session, but he wanted to briefly go over the numbers one more time regarding the bond funding. He began his presentation stating \$13,383,684 had been in the Capital Improvement Program since 2006 and was the result of a study performed by A&E after the bond

issue in 2002 was unsuccessful. He said that amount was A&E's estimate to fix the first, second and third floors of the building. He said a separate study indicated it would cost \$1.5 million to fix the fourth floor. Mr. Cochran advised last October a \$5 million campaign was announced to move forward with remodeling or constructing a new building, creating a total funding amount of \$18,383,684. He said the architect had held steady for the last six months to an \$18 million ceiling on the project budget that had been given to them, and they were recommending the reduction of the bonding in the amount of \$383,684 because it exceeded the project budget of \$18 million. Mr. Cochran referenced the resolution with the adjusted amount that was sent in the Friday packet. He said taking into consideration the \$2 million anonymous donation, the target for funding the project would be \$16 million. Mr. Cochran said with adding \$300,000 for the cost of issuing bonds, the total net funding required would be \$16,300,000 and the amount the taxpayers would likely see on the ballot.

The public hearing was opened.

The following individuals testified in favor of the resolution submitting to the taxpayers the question of issuing GO bonds in the amount of \$16,300,000 on the November ballot.

- **Bruce MacIntyre, 1209 18th Street West, Billings, MT**
- **Connie Wardell, 1302 24th Street West, Billings, MT**
- **Steve Arveschoug, Big Sky Economic Development Authority, Billings, MT**
- **Deb Singer, 44 Corbin Drive, Billings, MT**
- **Paul Miller, 1109 Delphinium, Billings, MT**

- **Kevin Nelson, 4235 Bruce Avenue, Billings, MT**, asked where the 12,000 to 15,000 square feet of Planning would go and the cost of it. He said the voters would obligate the taxpayers to retire the bond, if approved. He asked if his taxes assessed for the obligation of the bond would retire the bond or would the mills that were increased to cover the obligation of the bond be captured in the tax increment district he lived in. He said he felt it needed to be clarified in the ballot language.

Financial Services Manager Pat Weber advised the resolution ballot language stated that what would be levied for taxes by law had to be used for general obligation bonds and could not be siphoned off into tax increment.

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

Councilmember Astle moved for approval of the resolution submitting to the taxpayers the question of issuing \$16,300,000 in GO Bonds for a new library, seconded by Councilmember Clark. On a voice vote, the motion was unanimously approved.

Mayor Hanel called for a brief recess at 8:15 p.m. The meeting was called back to order at 8:25 p.m.

4. PUBLIC HEARING AND RESOLUTION #11-19074 approving and adopting Fourth Quarter Budget Amendments for Fiscal Year 2010/2011. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) City

Administrator Tina Volek advised there was no presentation, but staff was available for questions.

Councilmember Clark asked if the money going into the health insurance fund came from the General Fund. Financial Services Manager Pat Weber advised 2010 was a bad year for the health insurance. He said the funds were coming from the health fund reserves.

Councilmember Pitman asked if the items were taken into account when they were reviewing the budget. Mr. Weber advised they increased the FY12 budget accordingly. Councilmember Pitman asked about the rest of the amendments that were going into reserves. Assistant City Administrator Bruce McCandless advised the primary effect in the FY12 budget was if they were ongoing expenses. He said many were not ongoing and were for Capital projects or one-time expenses. He said it affected the reserves if that was the source of funding for the amendments, but it did not affect the spending pattern for the FY12 budget.

Councilmember Cimmino asked what the backup funding source would be when the reserves ran out. Mr. McCandless advised there would be no funding source other than the ongoing revenue source for that particular fund. He said as far as he knew, they had never hit zero in a reserve unless they had intended to.

Mayor Hanel asked for the recommended amount of reserves. City Administrator Volek advised there was a recommended reserve for every fund in the City, and those funds currently were not approaching zero. She said the Council was aware there was a long-range concern about the General Fund reserves, and staff had proposed some actions that would be examined with the Council to make sufficient adjustments.

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

Councilmember Astle moved for approval of Item 4, seconded by Councilmember Ruegamer. On a voice vote, the motion was approved 10 to 1. Councilmember Cimmino voted 'no'.

5. MPEA/POLICE 7/1/2011 - 6/30/2013 UNION CONTRACT. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.) City

Administrator Tina Volek advised a tentative agreement was reached on a 2-year contract with the Police unit on June 15th and it was overwhelmingly approved last week. She said in the first year the Police unit would receive a 0% cost of living and in the second year they would receive a 2.5% cost of living. She said the Police unit would join the city's firefighters in participating in a city-paid monthly health insurance premium to be paid through their salary, increasing pre-tax contributions to retirement by the employee, the city, and the state. She said the contract, in the first year, would create a step at Year 22 of the hourly police pay schedule with a 2% increase over Year 20, which meant the Police Department would have 13 steps in 22 years. She said it would increase the compensatory time for field training officers of five hours for Phases 1 through 3, with no change for Phase 4. Ms. Volek advised there was additional,

clarifying language involving longevity, use of clothing and equipment reimbursement allowance, and disciplinary investigations. She said in the second year of the contract they would receive 2.5% COLA, the health insurance premium paid through the employees' salary would be increased to \$800 per month, and new employees would become eligible for the city's longevity payment in the sixth year of employment, which was two years later than the current contract. She said it was the second time the Police Association had agreed to move back the starting time for new hires. Ms. Volek advised some members of the Council had received an anonymous letter that she had not seen until that evening. She said the letter stated that the Montana Public Employee Retirement System was chronically underfunded and suggested that the proposed health insurance to retirement for the Police Union would inflate retirement accounts and add to an already unfunded liability. Ms. Volek said the Police Department was not in the Montana Public Retirement System. She said it was a separate system dedicated solely to the Police Department. She said the letter also stated that overtime rates would dramatically increase by adding health insurance dollars to base salaries, workers comp and other fringe benefits paid by the taxpayers. She said the letter suggested that if the health insurance premium went to the individual employee's base pay, the city could not force employees to purchase health insurance with their own money. Ms. Volek said it was required of every employee in the city from the newest hire to the longest-term employee to belong to the health insurance plan, and there was no option out of the plan. She said Mr. McCandless had looked into the pension plan and found the plan may be somewhat underfunded but the city and employees would be paying into the fund. She said for the Police Department employees who were not covered by Social Security, it would add to their retirement.

Councilmember Ulledalen said he thought the whole issue of insufficient funding was an anvil hanging over their heads for future budget years. He said once the legislature acted on it, the city could potentially have to come up with more money to meet the problem.

Councilmember Astle said he had heard the underfunded figure was \$163 million and asked if Mr. McCandless had a different amount. Mr. McCandless said he believed the dollar figure was accurate according to the 2010 report of the Montana Police Officers Association. He said the level of funding was in the upper 50 percent range.

Councilmember Ulledalen said he did not feel the police officers were over paid for what they did and what they put up with but when he looked at the 44-page contract he asked himself where the next lawsuit would be. He said they negotiate with the union, come to an agreement, and then some time down the road a small calculation that was not typed correctly could potentially lead to a lawsuit. He asked if there was something they could do such as having someone else go through the contracts to make sure everything was covered. Ms. Volek advised the particular contract in which the error occurred that was now in litigation was not reviewed by the city's Legal Department and should have been. She said the city now had a bargaining committee that included a member of the Legal Department, the Human Resources Director, the City Administrator, and several department heads who were trying to do a much better job of proofing contracts. She said they had on occasion asked an expert in the field of labor law to look at contracts and specific language to ensure the contracts were as safe as they could make them. Ms. Volek advised the current lawsuit was not with the

union but individuals. City Attorney Brent Brooks said they had learned lessons in years past and there was now a much more aggressive and intensive look at contract language.

Councilmember Cimmino referenced Section B, Compensation, and asked if the date should read effective July 1, 2011 instead of July 1, 2009. Ms. Cimmino referenced Page 45 and said the same date correction was needed, as well as a date correction on the signature page. Ms. Volek said the date corrections would be made.

Councilmember Gaghen asked for the date of the contract that contained the loop hole involved in the current lawsuit. Ms. Volek advised it was 2003.

Councilmember Clark asked for the total additional cost to the city for the proposed contract over last year. Ms. Volek advised it would be \$153,600 in the first year of the contract and \$188,130 in the second year of the contract.

Councilmember Astle moved for approval of Item 5 with the noted date corrections, seconded by Councilmember Ruegamer.

Mayor Hanel spoke in favor of the motion and commended staff and the Police Union for their involvement and cooperation.

Councilmember Pitman said he would vote in opposition, and it was not because he did not support the police officers or anything they were doing, but he was not in support of the longevity item. He also said he felt there was definitely a need for someone else to review the contracts to make sure all the T's were crossed and I's were dotted.

On a voice vote, the motion was approved 10 to 1. Councilmember Pitman voted 'no'.

6. RESOLUTION approving and adopting the Fiscal Year 2012 City of Billings Budget. Public Hearing held on 6/13/2011. Staff recommends approval and adoption. (Action: approval or disapproval of staff recommendation.) City Administrator Volek advised staff had no additional presentation but was available to answer questions.

Councilmember Clark moved to postpone approving the budget until August 8, 2011, when they would know what the actual budget would be after contract negotiations were finished with the two remaining unions, seconded by Councilmember McCall.

Mayor Hanel asked if the contract negotiations could carry on for several months. Ms. Volek advised that was correct, especially if they went to arbitration. Attorney Brooks said Council could postpone to a second date if necessary.

City Administrator Volek advised staff had worked very hard on negotiations and invited anyone to attend to see how difficult and long they were. She said Council was putting more pressure on the bargaining group than any other group. She said there were two meetings scheduled with the firefighters that week, and the Teamsters would not be available to resume negotiations until July 20 and July 21. She said if they did not have a budget, they would not be comfortable awarding or starting contracts on projects. She said delay would have detriments to the city. She said they had held public hearings and gone over the complete budget with the Council and she felt it was being subjected to things beyond their immediate control and asked Council to

reconsider adopting the budget at that time. She said there was nothing in the budget that contemplated any salary increases for any employees.

Councilmember Clark asked if the budget could be broken down so they could approve parts of it and postpone other parts. Ms. Volek advised Public Works and Public Utilities had better than half of the Teamsters, and the contract was still in negotiation. She said she thought it might be possible, but it would be a very unusual step and she was very concerned about the impact. Mr. Weber advised the budget used to be adopted by line item but now it was adopted by funds. He said they would have to go back and break down the funds to present to Council, and would create more work for Council and expense for the city. Ms. Volek advised they would need to seek legal opinion on adopting the budget by line item.

Councilmember Astle asked Ms. Volek if the City, Fire Department, or Teamsters had missed or cancelled any of the negotiations. He said there was word on the street that the Teamsters were just about done but it had blown up. He asked if there was a reason a new contract could not be settled before the end of the old contract. Ms. Volek advised she was bound by the rules of engagement that state the city would not issue news releases without the cooperation of each other. She said they had held four meetings with IAFF and at least eight meetings with the Teamsters. She said they had held six meetings with the Police Union and there was a commitment on both sides to meet weekly until it was done. She said for the first time this year they were involved with interest-based bargaining with the firefighters, which relied upon both sides presenting their views on issues and getting it thoroughly documented before beginning discussion. She said the Teamsters were straight-forward bargaining, and she thought they were making good progress with them.

Councilmember Ulledalen commented that Denny Rehberg was running for the US Senate on the platform that people were overtaxed and over-litigated, yet he was suing the city because he did not feel the city provided enough service to his subdivision. He said that was the type of environment the city was wrestling with. Councilmember Ulledalen said he asked a few weeks ago for a best case projection of the deficit by department. He said he got a breakdown of the deficit by department up through FY2015 but beyond that, it was something really different. He asked for an explanation. City Administrator Volek advised in FY2015 the city currently anticipated the General Fund would face a lack of reserves, which meant the city would need to borrow to meet payroll and other obligations. She said it was hard to predict accurately. Councilmember Ulledalen said he agreed they could not forecast accurately and the million dollar deficit in FY2014 could actually be in FY2013. He said he was concerned with all of the hits to the Parks Department shown in FY2016, and they needed to look at and understand the trends as best as they could. He said they needed to be very forthright and discuss it at the council level to make reasonable decisions and guide staff accordingly.

Councilmember McFadden asked if not passing the budget would be detrimental to contract negotiations. Ms. Volek advised she hesitated to speak for the unions, but if she were in their place, she would be very disturbed.

Councilmember Clark asked what would happen if the budget was not approved by July 1st. City Administrator Volek advised the city would continue to operate under the old budget. Councilmember Pitman said the big difference would be no new hires.

Ms. Volek advised another concern would be the capital projects not going forward and losing a construction season.

Mayor Hanel commented that over the past several months, the Council has had presentations and an enormous amount of printed material to review with many opportunities to ask the staff questions. He said he felt a delay would cause complications for staff, Council, and union employees.

After further discussion, Councilmember Pitman called for the question.

On a roll call vote, the motion to postpone action on the proposed budget until August 8, 2011, passed 7 to 4. Councilmembers Ronquillo, Pitman, Cimmino, Ruegamer, McCall, Ulledalen, and Clark voted in favor of the postponement. Councilmembers Gaghen, McFadden, Astle, and Mayor Hanel voted in opposition of the motion.

7. RESOLUTIONS setting annual FY2012 assessments for Park Maintenance Districts-RES #11-19075; Light Maintenance Districts-RES #11-19076; Fire Hydrant Maintenance-RES #11-19077; Street Maintenance-RES #11-19078; Storm Sewer-RES #11-19079; Tourism Business Improvement District-RES #19080; Business Improvement District-#11-19081; and imposing annual all-purpose mill levy and mill levies for Library operation, Transit operation, and Public Safety Funds-RES #11-19082. Delayed from 6/13/2011. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

City Administrator Volek advised the public hearing had already been held on June 13, 2011, and there was no further staff presentation. She recommended voting on each resolution separately.

Councilmember Ronquillo moved for approval of all assessments with the exception of Street Maintenance, seconded by Councilmember Pitman. Attorney Brooks advised it would be better to approve each separately. Councilmember Ronquillo withdrew his motion, which was approved by Councilmember Pitman, the 2nd to the motion.

Councilmember Ronquillo moved for approval of the Park Maintenance District assessments, seconded by Councilmember Pitman. On a voice vote, the motion was unanimously approved.

Councilmember Ronquillo moved for approval of the Light Maintenance District assessments, seconded by Councilmember Astle. Councilmember Clark asked if in the future Council could receive information on the costs of each light maintenance district. Ms. Volek advised there were in excess of 100 districts, but they would look into providing an analysis. On a voice vote, the motion was unanimously approved.

Councilmember Ronquillo moved for approval of the Fire Hydrant Maintenance District, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

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

Councilmember Ronquillo moved for approval of the Business Improvement District assessments, seconded by Councilmember McCall. On a voice vote, the motion was unanimously approved.

Councilmember Ronquillo moved for approval of the Tourism Business Improvement District assessments, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.

Councilmember Ronquillo moved for approval of the mill levy rates for Library, Transit, and Public Safety I assessments, seconded by Councilmember Astle. On a voice vote, the motion was unanimously approved.

Councilmember Ulledalen referenced the city's loss of the MDT Street Maintenance Contract for state roadways within the City of Billings and asked Public Works Director Dave Mumford what level of service the city could expect from the state and the financial impact to the city without the contract in terms of having to lay people off. Mr. Mumford advised they had budgeted \$512,000 for the contract with the state, but it actually cost the city approximately \$800,000. He said since the 1970's the city had contracted with the state on a three-year basis; but due to budget constraints, the state decided not to renew the contract with the city and to perform the maintenance itself. Mr. Mumford said the city would have approximately 11,000 hours less work without the contract and would require reduction of staff by three to four people in street maintenance. Councilmember Ulledalen said it sounded like the state did not know what level of service it would be able to provide, and one of his concerns was the median on Shiloh Road north of Central that was not being maintained. Mr. Mumford said the state felt they could provide the same level of service; however, the citizens of Billings did not know what streets were actually county, city or state. Mr. Mumford said there would now be maintenance timing issues with the state-owned streets; especially Main Street, Airport Road, North 27th, and Montana Avenue.

Councilmember Astle asked who would sweep the streets because he had never seen a state sweeper. Mr. Mumford advised the state had two sweepers for the entire region. He said the other issue would be signal maintenance, as the state just hired their first signal maintenance person for this area. He said the state would be taking over about 25% of the traffic signals in town. He said the city would provide emergency backup under contract for time and materials.

Councilmember McCall said she thought she had read an article where MDT was stating they felt they would not need to add staff. Mr. Mumford advised that was stated by a public relations person out of Helena. He said Mr. Streeter with MDT had indicated the state was in the process of hiring a signal maintenance person.

Councilmember Ronquillo asked who would maintain the South 27th Street median. Mr. Mumford advised it was MDT's right-of-way. Councilmember Ronquillo said the city had its own sprinkler system installed and asked if the state was charged for the water. Mr. Mumford said they were. Councilmember Ronquillo asked about State Avenue. Mr. Mumford advised the city would maintain State Avenue. Mr. Mumford added Rimrock Road from the curve out just past 54th Street West belonged to MDT.

Councilmember Ulledalen said the other dynamic was the arterial snow removal and an increase of approximately \$200,000. He asked if it was still important to receive the \$200,000 or if the city had people and resources to put back into the city arterials now. Mr. Mumford advised it would depend on the level of service asked for. He said they hoped to provide better service but with less staffing, the services would still have issues. He said losing four people would create a situation of having less ability because the city had gained 33% more roads the past ten years, and they were about

to get Shiloh and Bench Boulevard later this year. He said even though they would be doing less work for the state; he believed the city roads had been suffering because they had been providing a high level of maintenance on the state roads because they were being paid. Mr. Mumford said it all depended on the quality of service the community wanted to see.

Councilmember Pitman said the reason they separated street maintenance was to find out if it was adequate or if it needed to be adjusted from the recommendation. Mr. Mumford advised 2-1/2% was not enough and would not keep up with inflation. He said if they wanted to keep up regular maintenance of the streets, his recommendation would be inflation of 5%. He said the PAVER program should be brought up to spend \$2.5 million annually on contract labor. He said with snow removal on arterials and keeping the four employees, it would increase the average household to \$29.10 a year. He said at that point the community would truly see a difference in the maintenance.

City Administrator Volek advised the other item to consider was the residential snow removal portion, which was an additional \$8.43 for the average home.

Councilmember Cimmino moved to adopt the resolution for the total amount of \$37.53 as is, seconded by Councilmember Pitman.

Councilmember Ulledalen said he would prefer a separate motion for the residential snowplowing.

Councilmember Ulledalen made a substitute motion to adopt the \$29.10 increase which would include 5% inflation, arterial snow removal improvement, increase in the PAVER program, and coverage of the MDT loss, seconded by Councilmember Astle. On a voice vote, the motion was unanimously approved. Councilmember Ulledalen indicated if Public Works got up to speed, there was no reason why the fees could not be reduced.

Councilmember Astle moved for approval of the \$8.43 residential snowplowing fee, seconded by Councilmember Pitman. Councilmember Ruegamer said he would not support the motion because people's driveways and sidewalks would be blocked with snow. Councilmember Gaghen said she was hearing far more favorable comment on putting additional funding into filling potholes. Councilmember McFadden said he would not support the motion. Councilmember Ronquillo said he agreed with Councilmember Gaghen because they had heard a lot of comments about not wanting snowplowing.

Councilmember Ulledalen commented it was not a done deal because last year was an unusual year for snowfall and it may not happen again for many years. He said it was an allocation of money Public Works may not necessarily use. He said they would need to look at keeping a certain amount in reserves for several years and possibly putting some back into street maintenance.

Councilmember McCall said she had heard pros and cons but agreed with Councilmember Ulledalen and would support the motion. She said she would not be opposed to setting up a trial in a certain ward.

Councilmember Astle asked how many miles of streets, minus the arterials, were in Billings and how long it would take to plow them. Mr. Mumford advised there were 533 miles of streets and to plow out the entire city using four sets of two plows would take three to four days.

Councilmember Pitman said he thought it was worth the investment.

Mayor Hanel said he was opposed to residential street plowing. He said it would be nice to have snow plowed off the streets, but it would create many more nightmares for the public.

Ms. Volek clarified it anticipated having up to seven snowfalls of four inches or more per storm. She said the plowing would not take place with every snowfall.

On a roll call vote, the motion for residential snow plowing failed 6 to 5. Councilmembers Ronquillo, Gaghen, McFadden, Ruegamer, Clark and Mayor Hanel voted in opposition. Councilmembers Pitman, Cimmino, McCall, Ulledalen, and Astle voted in favor.

8. RESOLUTION #11-19083 setting annual FY2012 assessments for Arterial Construction Fees. Delayed from 6/13/2011. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) City Administrator Tina Volek advised there was no additional presentation but staff was available for questions.

Councilmember McCall moved for approval of Item 8, seconded by Councilmember Cimmino. On a roll call vote, the motion was unanimously approved 11 to 0.

9. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #876: A zone change from Residential 7,000 to Residential Multi-Family Restricted on a 20,235 square foot parcel of land containing an existing 4-plex multi-family dwelling originally constructed in 1955. The subject property is legally described as Lot 25 and the west 14 feet of Lot 26, Block 1, Arrowhead Subdivision generally located at 519 Crow Lane in Billings Heights; Trenton Parks, applicant. Zoning Commission recommends approval and adoption of the determinations of the 12 criteria. (Action: approval or disapproval of Zoning Commission recommendation.) Planning Director Candi Beaudry began her presentation showing a map and photos of the subject property. She advised the Zoning Commission held a public hearing and was recommending approval based on the following 12 criteria.

1. Is the new zoning designed in accordance with the Growth Policy?

The proposed zoning is generally consistent with the following goals of the Growth Policy and the Billings Heights Neighborhood Plan:

- Predictable land use decisions that are consistent with neighborhood character and land use patterns. (Land Use Element Goal, page 5)

The existing 4-plex on this property is consistent with the 4-plexes south of this location on Flathead Street and with other multi-family apartments to the west along Lake Elmo Drive. The proposed use will also be in conformance with the Heights Neighborhood Plan.

- New developments that are sensitive to and compatible with the character of adjacent City Neighborhoods and County Townsites. (Land Use Element Goal, page 6)

The proposed zoning will be compatible with the surrounding duplexes and commercial property to the north and east.

2. Is the new zoning designed to lessen congestion in the streets?

The proposed zoning is not expected to generate additional traffic in this area, as the 4-plex has been in existence since 1955. Additional units might be expected to generate about 8-10 new trips per day per dwelling unit.

3. Will the new zoning secure safety from fire, panic and other dangers?

The lot has public street frontage and is served by the City Fire Department. The duplex has been in existence since 1955 and the proposed zoning will not affect the emergency services to this property.

4. Will the new zoning promote health and general welfare?

The proposed zoning would allow for the 4-plex to remain on the lot and should not have an effect on the general health and welfare of surrounding properties. If the owner re-develops the property or adds additional dwelling units, this may have some impact on the surrounding neighborhood.

5. Will the new zoning provide adequate light and air?

The proposed zoning provides for sufficient setbacks to allow for adequate separation between structures and adequate light and air. The new zoning has less front setback required but the existing structure will remain in its current location.

6. Will the new zoning prevent overcrowding of land?

The proposed zoning, as well as all zoning districts, contain limitations on the maximum percentage of the lot area that can be covered with structures. This requirement will help prevent overcrowding of land. The current zoning allows up to 30% lot coverage or 6,076 square feet. Existing structures cover about 12% of the lot area. The proposed zoning allows up to 55% lot coverage or 11,139 square feet.

7. Will the new zoning avoid undue concentration of population?

The proposed uses should not cause an undue concentration of population, as there is surrounding residentially developed properties of similar density.

8. Will the new zoning facilitate the adequate provisions of transportation, water, sewerage, schools, parks, fire, police, and other public requirements?

Transportation: The proposed zoning will not increase traffic.

Water and Sewer: The City has adequate facilities to serve this property.

Schools and Parks: This proposed re-zone should have no substantial effect on schools or parks.

Fire and Police: The subject property is currently served by the City of Billings fire and police departments.

9. Does the new zoning give reasonable consideration to the character of the district?

The proposed zoning will be similar in character with the adjacent residential uses.

10. Does the new zoning give consideration to peculiar suitability of the property for particular uses?

The subject property is suitable for the requested zoning district.

11. Was the new zoning adopted with a view to conserving the value of buildings?
The new zoning should not have significant effect on the value of residential buildings in the area.

12. Will the new zoning encourage the most appropriate use of land throughout such county or municipal area?

The proposed zoning will permit single-family, two-family and multi-family residences and is an appropriate zoning in this densely developed area between Main Street and Lake Elmo Drive.

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

Councilmember Pitman moved for approval of Zone Change #876, seconded by Councilmember Cimmino. On a voice vote, the motion was unanimously approved.

10. PUBLIC HEARING AND APPROVAL of a new Subdivision Improvements Agreement for King Place Subdivision, Amended Lot 1A, Block 1. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Planning Director Candi Beaudry said the original King Place Subdivision was approved in 2005. She said it followed several public meetings where the residents voiced concerns over having multi-family units in the area. She said Council approved a zone change to Neighborhood Commercial, which would have allowed multi-family units. She said because zone changes could not be conditioned, Council opted to put the condition of restricting multi-family units in the SIA, which was a very unusual step. She said in 2008 the original subdivision was re-platted, and it incorporated adjoining Neighborhood Commercial. She said a new SIA was not written and approved by Council at that time because it was an amended plat that was only adjusting a boundary. Ms. Beaudry advised the applicant was requesting the restriction of multi-family be lifted. She said he had searched throughout the city to find property that would accommodate the proposed independent living facility. She said she understood the funding was mostly secured but the title company had turned over the condition in the SIA. She said because an SIA was approved at preliminary plat stage through notification of neighbors and a public hearing, staff recommended that a public hearing be held to put a new SIA in place. She said they had notified all of the residents within 300 feet, and staff was recommending that Council adopt a new SIA for the amended plat; removing the restriction for multi-family housing.

The public hearing was opened.

- **John Coble, 835 Wicks Lane, Billings, MT**, said the last time the zoning was changed, there was a public meeting held and a lot of people were against it. He said they decided on Neighborhood Commercial with some restrictions. He said they were told by the Council and city staff that it would be good and never change. Mr. Coble held up a picture for the Council to see and said as of right now, the picture only showed one-third of the building to be built, and there would

be another building built, as well. He said Larry Brewster had gotten them altogether and they hashed it out. He said he would like to delay the decision until Mr. Brewster could be present. He said his first exception would be the multi-family residential use and asked how many families and units would be allowed.

Councilmember Cimmino told Mr. Coble that Mr. Brewster had e-mailed a message to the Mayor and City Council regarding the matter. (It was determined a copy of Mr. Brewster's e-mail was filed in the ex-parte notebook in the back of the room.) Councilmember Pitman read from Mr. Brewster's e-mail as follows: "The agreement with the developer was put together to keep some development away from the subdivision. To allow this change is a clear violation of the spirit of the agreement. Those folks did not attend the second meeting because they were told it was the same. Please deny this change in zoning and keep the city's promise to the folks on Wicks Lane – Larry Brewster."

- **Dan Billmark, Director of Real Estate Development with Accessible Space, Inc. (ASI), 2550 University Avenue, St. Paul, MN.** He said ASI was a national, 501c3 non-profit corporation that provided affordable, accessible, independent living opportunities for adults with physical disabilities. He said the proposed financing was through the HUD Section 811 Program through annual application, and the application period was short. He said the housing they would be providing would be 100% wheelchair accessible, and the residents would have to have a qualifying physical disability diagnosed by a physician. Mr. Billmark said the application, if approved, would provide \$2.7 million in development for the project. He said equally important was the Project Rental Assistance Contract, which provided assistance for residents with severe physical disabilities who would pay no more than 30% of their adjusted gross income for rent and provided for the ongoing maintenance of the building, including a live-in caretaker, for a period of not less than 40 years. Mr. Billmark said in order to qualify for the funding the site had to be properly zoned, which it was. He said they were asking for a change in the SIA that caught everyone by surprise. He said the project was for 25 units. Mr. Billmark said ASI was the nation's largest provider of this type of housing and their second development in Billings. He said they also owned and operated Grandview Apartments at 115 28th Street West. He said it would be a very quiet development and would be a two-story building designed to meld into the neighborhood. He said a large part of the site would be used for open air to help preserve the quietness of the neighborhood.

Councilmember McFadden asked Mr. Billmark if they experienced a lot of resistance to placing handicapped individuals in neighborhoods. Mr. Billmark said it was very rare. He said the residents had to show they could handle their own affairs and met strict requirements. He said they made great neighbors and were extremely appreciative to live independently when their only other option would be living in a nursing home or relying on someone else.

Councilmember Pitman asked if, taking into consideration the short application timeframe, they would have time for a 30-day delay to meet with the neighbors. He said he was not sure it was about being against handicapped people in the neighborhood but more about a conversation explaining what they

were planning to do. Mr. Billmark said he wished there would be time, but the fact was the application deadline was last Thursday. He said the application had already been submitted. He said when the title deficiency came up they considered it a curable deficiency; and when HUD saw it, they would have a very short time to show evidence it was not a problem.

- **Tim Hudson, 3780 Heritage Drive, Billings, MT**, said he was president of Real Estate Dynamics, who developed affordable housing in Billings for people in low income categories. He said the largest portion of people who came to them were people with disabilities. Mr. Hudson said the proposed 25-unit building would be two-story and would cover less than 20% of the 2-acre piece of land. He said it was designed to be free of traffic with the entrance to the facility to the back of the property. He said there would be a small parking area, and the rest would be maintained in green areas. Mr. Hudson said he supported the development because of the need and he said Billings was lucky to have the opportunity because communities across the nation competed for HUD programs just like it. Mr. Hudson said ASI had been a proven success with 144 facilities across the nation.

Councilmember Ronquillo asked if there would be a caretaker living on site. Mr. Hudson said there would be maintenance people, caretakers, and management on site.

Councilmember Gaghen asked for the size of the facility on 28th Street West. Mr. Hudson said it had 25-units.

Councilmember Cimmino asked for a visual of what the development would look like. Mr. Hudson said he understood they would only have three minutes, so they did not prepare a visual but he had a picture of the facility, the site plan, and floor plans he would pass around.

Councilmember Pitman asked if there was any attempt to have a neighborhood meeting. Mr. Hudson said he had traveled the neighborhood and said the neighbors supported it. He said he knew Mr. Coble did not support it, but did not know anyone else who did not support it.

Councilmember McFadden confirmed it was a \$2.7 million project using local contractors to provide people with physical disabilities affordable housing. Mr. Hudson said that was correct.

- **Mr. Dan Marsich, 4231 Julaura Lane, Billings, MT**, said he was currently building units on another piece of property. He said for the past two years, he had built over 60 housing units for low income people. Mr. Hudson offered that Mr. Marsich was the developer of the subject property and he had agreed to come to the meeting because he strongly supported the project.

Councilmember McFadden asked how many local construction people would the project employ and for how long. Mr. Marsich said the last two years on another property he had employed 42 people. He said he was the ninth largest builder in Montana and hired a lot of people.

- **Jan Saffo, 1151 28th Street West, #105, Billings, MT**, said she was very grateful to have a wonderful, accessible place to live. She said as her MS worsened, she could not find a place to live that did not have stairs. She said she had been living in the Grandview Apartments for 12 years and just loved it. She

said she and the other residents appreciated the lack of stairs, wider doors, and lower kitchen counters. Ms. Saffo asked Council to approve the proposed project to provide much needed housing for physically handicapped people.

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

Councilmember Pitman asked Mr. Coble to return to the podium and asked him if he was still opposed to the facility after hearing what was actually proposed to be built. Mr. Coble said he wanted to withdraw his opposition. He said they had been told there would be low income high rise buildings built on the property. He said the proposed project was beautiful, and they were definitely not against handicapped people in their area and most of the neighbors were elderly anyway. Mr. Coble said he thought it would be just fine.

Councilmember Pitman moved for approval of a new Subdivision Improvements Agreement for King Place Subdivision, seconded by Councilmember Cimmino. On a voice vote, the motion was unanimously approved.

11. PUBLIC HEARING AND FIRST READING ORDINANCE approving the Empire Parking Garage and Northern Hotel Project as Urban Renewal Projects in the Expanded North 27th Street Urban Renewal Area - 2008. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) City

Administrator Tina Volek advised staff had no additional presentation but was available to answer questions.

Councilmember Ulledalen asked if the project had a timeframe. He said people had asked him how long the city would allow the streets to be blocked and asked if there was a termination date on the building permit. Planning Director Candi Beaudry advised there was a timeframe on the building permit, and if there was absolutely no activity for six months the building permit would expire. She said they had found a little bit of work was being done here and there and as it stood, the permit was active. Councilmember Ulledalen asked if it could go on for years with no completion of the project. Ms. Beaudry said there was an ordinance in place requiring that an exterior be completed in 18 months, and their exterior was intact. Councilmember Clark asked if there was a way to get the sidewalks open. Ms. Beaudry said she understood that there were vaults underneath the sidewalks that needed to be stabilized so it was not a simple matter of replacing the sidewalks and opening them. Ms. Volek advised that Mr. McCandless and Mr. Brooks were working on a response to a Council question that was raised, and it should be delivered to Council in the next Friday packet. Councilmember Ulledalen asked Ms. Volek if would be better to delay action until Council received the feedback from staff. Ms. Volek advised it would not hurt anything.

The public hearing was opened.

- **Kevin Nelson, 4235 Bruce Avenue, Billings, MT**, said taxes shall be levied by general laws for public purposes. He said the Northern Hotel project had qualifying improvements, such as asbestos demolition and abatement, new efficiency windows, repair of exterior masonry, upgrade and replacement of

exterior doors, and concrete work/rebar exterior. Mr. Nelson said that was where he got "crossed-up" with tax increment districts. He said the county gave up their tax dollars, the kids gave up their tax dollars, the city residents gave up their tax dollars for public improvements. He said the Northern was being provided with personal gain through the diversion of other people's taxes. Mr. Nelson said the city needed to take a strong look at it because it was not what tax increment did. He recommended re-writing the document.

There were no other speakers.

Councilmember Ulledalen moved to postpone action and continue the public hearing to the July 11 meeting, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.

12. APPROVAL of the sale of Lots 9-12, Block 142, Original Town of Billings, to RiverStone Health in the amount of \$70,000. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) City Administrator Tina Volek advised staff had no presentation but was available to answer questions. She said a letter from RiverStone Health had been placed on the Councils' desk for their review.

Councilmember Ronquillo moved for approval of the sale of Lots 9-12, Block 142, Original Town of Billings, in the amount of \$70,000 to RiverStone Health, seconded by Councilmember Gaghen.

Councilmember Ruegamer said RiverStone Health was not the highest bidder because the Montana Rescue Mission had bid \$5 more. He asked if it was just a coincidence and why was the city not taking the highest bid.

Assistant City Administrator Bruce McCandless said the sale was not advertised as a sealed bid with the city council accepting the highest bid. He said it was advertised as a proposal to purchase the property. He said the reasons for the recommendation for RiverStone Health, as stated in the staff report, was RiverStone's existing presence in the neighborhood and block where they had made a commitment and maintained their property. He said the Montana Rescue Mission had the opportunity to develop the property because they owned it for five years and failed to do so. He said the city would only be giving up \$5.

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

- **Ronquillo:** Reminded everyone of the 3rd Annual Firecracker Barbeque the following day at 4:30 p.m. and said he was still looking for volunteer cooks.
- **Cimmino:** Said she had promised former Councilmember Joy Stevens that she would talk about the e-mail Ms. Stevens sent Mayor and Council regarding the circumstances occurring at and near Walker's Grill. Councilmember Cimmino asked Ms. Volek if the Police Department could look into it. Ms. Volek advised she had already forwarded the e-mail to Chief St. John and she would try to have written comments available for the Council at the next work session. Councilmember Gaghen suggested making Lisa Harmon aware of the problems occurring around Walker's Grill because she was in constant contact with the bike cops.
- **McFadden:** Said Ms. Stevens' e-mail had also mentioned "Greyhound Bus Therapy" alleging that some cities, particularly Bozeman, actually had money in their budgets to bus homeless people to Billings. He said he spoke with Representative Knox about it and asked him if there was something the Legislature could do. He said Mr. Knox thought it was illegal. Councilmember McFadden asked if staff would check into it.
- **Hanel:** Said he had heard concerns from local residents about loose, falling rocks on Zimmerman Trail. He asked if the city would consider posting a sign at the bottom and maybe at the top cautioning people to be aware of falling rock. Ms. Volek said she thought there may be one sign posted already, and she would find out for sure.
- **Clark:** Said 24th Street West had been painted, and it looked really good. Ms. Volek said she would relay that message to Mr. Mumford.

There was no further business, and the meeting adjourned at 11:10 p.m.



CITY OF BILLINGS

BY: Thomas W. Hanel
Thomas W. Hanel, Mayor

ATTEST:

BY: Cari Martin
Cari Martin, City Clerk