

## **REGULAR MEETING OF THE BILLINGS CITY COUNCIL**

**November 14, 2011**

The Billings City Council met in regular session in the Council Chambers located on the second floor of the Police Facility, 220 North 27<sup>th</sup> 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 Cimmino gave the invocation.

### **ELECTION OF DEPUTY MAYOR (simple majority of the whole Council required)**

Attorney Brent Brooks provided the following five points concerning the election of the Deputy Mayor.

- Election conducted during the next regular meeting after a General Election.
- Deputy Mayor to serve a 2-year term under city ordinance.
- Vote conducted by a roll call voice vote per BMCC 2-204 and MCA 7-5-4121(2).
- Simple majority of entire council required to elect deputy mayor (at least 6 votes) per MCA 7-5-4121(1).
- If Mayor is unable to complete term of office, the Deputy Mayor shall serve unexpired term of Mayor per City Charter 3.09(D).

Councilmember Astle nominated Councilmember Ed Ulledalen, seconded by Councilmember Clark. Councilmember Ruegamer asked that anyone who wanted to be Deputy Mayor explain why. Councilmember Cimmino nominated Councilmember Denis Pitman, seconded by Councilmember Ronquillo. Councilmember Ulledalen said the one defined role was to function in the event of the inability of the Mayor to function and not something to further a future political campaign. He said the Deputy Mayor was someone the Council chose to represent them. He said an undefined role was the Deputy Mayor would speak for the Council in times of turmoil or difficulty. He said they had seen that in the not too distant past when problems arose and someone had to speak in somewhat of a unified voice. He said he would represent the Council in the best way he could. Councilmember Pitman said the role of Deputy Mayor was to assist the Mayor. He said the current Mayor was attending so many functions, and it was hard to be at different places at the same time. He said he attended a lot of functions and would like to continue representing the Council and the Mayor's Office in public. Councilmember Pitman said he thought Councilmember Ulledalen had done a great job. He said Councilmember Ulledalen was in his final term on the Council, but he felt it was time to allow someone else to fill those shoes. He said Councilmember Ulledalen also served on the Policy Coordinating Committee, and they were loading him up with quite a bit of responsibility so he would be happy to take some of the responsibility and be a representative for the people of Billings. On a roll call vote, Councilmembers Ronquillo, Pitman, Cimmino, McCall, and Mayor Hanel voted for Councilmember Pitman; and Councilmembers Gaghen, McFadden, Ruegamer, Ulledalen, Astle, and Clark voted for Councilmember Ulledalen. Councilmember McCall said she felt Councilmember

Ulledalen had done a tremendous job, and the main reason she would like to see a change was because other people on the Council should have an opportunity to be in leadership positions. She told Councilmember Ulledalen he had been an excellent City Councilmember and was in a very good position to mentor someone in his last two years because he had so much knowledge. Councilmember Ulledalen was elected on a 6 to 5 vote.

Councilmember Cimmino offered a City Council initiative. She said in light of the fact they just held the motion to nominate the Deputy Mayor, she would like to spearhead a pilot program for anyone on the governing body to serve as Mayor for the day. She said they could start the program next year with the provision that they understood all of the responsibilities Mayor Hanel faced on a daily basis. She said she thought it would be a wonderful learning experience. Mayor Hanel said he respected it and thought it deserved comments and conversation and asked if Council would prefer to act on it at that time or wait until the Initiatives portion of the agenda. After a brief discussion, it was decided to wait until the Initiatives portion of the agenda.

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

**MINUTES:** October 24, 2011 – Councilmember Cimmino moved for approval of the minutes as submitted, seconded by Councilmember Astle. On a voice vote, the motion was unanimously approved.

**COURTESIES:**

- Mayor Hanel introduced incoming Councilmembers Ken Crouch and Becky Bird who were in attendance.
- Mayor Hanel recognized Public Works Director Dave Mumford and his department for the recent completion of a portion of Rimrock Road and for the improvements of the intersections on 32<sup>nd</sup> Street West.
- Councilmember Cimmino extended congratulations to Councilmembers Pitman and McCall on their re-election.

**PROCLAMATIONS:**

- Councilmember McFadden announced that the City's winter parade would be held downtown on Friday, November 25.

**ADMINISTRATOR REPORTS - TINA VOLEK**

Ms. Volek referenced the following items:

- Item B1, Bid Award for Upgrades to the Airports West End Office Building and Item D, Approval of 5-Year Lease with TSA and Supplemental Agreement on the 2008 Lease. Ms. Volek advised the Airport was asking that action on both items be delayed until November 28, 2011.
- Item 3, Resolution of Intent to Create a City-Wide Park District. Ms. Volek advised as of 4 p.m. that day Mayor and Council had received seven e-mails

protesting the district and one e-mail in favor of the district. She said Councilmember Pitman had received two e-mails protesting the district that he forwarded to staff. She said copies of the e-mails were filed in the ex-parte notebook for the public's inspection. Councilmember Gaghen said she had received a copy of a letter from the Board of Realtors. She said she received it with her Friday packet. Several of the Councilmembers said they did not receive the letter. It was agreed the letter would be read with the agenda item.

**PUBLIC COMMENT on "NON-PUBLIC HEARING" Agenda Items: #1 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. There were no speakers, and the public comment period was closed.

**1. CONSENT AGENDA**

**A. Boards and Commissions**

**1. Approval** of correction to term expiration date from 12/31/11 to 12/31/12 for Curtis Haney on the Exchange City Golf Corporation Board.

**B. Bid Awards:**

**1. Upgrades for the Airport's West End Office Building Project.** (Opened 10/25/2011) Recommend High Tech Construction & Properties, Inc.; \$45,400.

**2. W.O. 09-28, Water Treatment Facility Back-Up Power, Phase II.** (Opened 10/25/2011) Recommend delay of award until 11/28/2011.

**3. Seven (7) 2012 Truck Cabs and Chassis with Refuse Compactor Bodies.** (Opened 10/25/2011) Recommend Schedule I: 3 Autocar Truck and Wayne Curtender Body (Side Load) from Jack's; \$718,944; Schedule II: 2 Pete Truck and New Way Packer Body (Front Load) from Montana Peterbuilt; \$320,963; and Schedule III: 2 Freightliner Truck and Advantage Roll-Off Hoist from I-State; \$305,652.

**4. Tracked Excavator for Distribution and Collection Division, Public Works Department.** (Opened 10/25/2011) Recommend Tractor & Equipment; \$62,744.87.

**5. Two (2) 8-Yard Dump Trucks for Distribution and Collection Division, Public Works Department.** (Opened 10/25/2011) Recommend Motor Power Equipment Company; \$225,368.

**6. Purchase of five (5) city vehicles in the car and light truck class.** (Opened 11/1/11) Schedule I: Recommend Menholt Chevrolet without trade - \$71,396.80; Schedule II: Recommend Fremont Motors with trade - \$30,352.82.

**C. Contract** with Kompan, Inc. for design, procurement, and installation of playground equipment and fall protection materials for Yellowstone Family Park funded through SID 1392. No cost to City.

**D. Approval** of 5-year Building Lease with Transportation Security Administration for term of 12/1/2011-11/30/2016, total revenue - \$682,830.60; and Supplemental Agreement on the 2008 Lease restating term of 3/1/08-11/30/11.

**E. Approval** of the Yellowstone County All Risk Mutual Aid Agreement.

**F. Approval** of Downtown Revolving Loan Committee's recommendation of loan to Steven and Joni Harman for renovation of building located at 2511-2613 Minnesota Avenue; up to \$100,000.

**G. Approval** of Downtown Revolving Loan Committee's recommendation of loan to DB Squared for renovation of 2nd floor of Yellowstone Garage Building located at 2303 Montana Avenue; up to \$250,000.

**H. Resolution of Intent #11-19123** to de-annex Lots 26, 27, the west half of Lot 28, Lot 38, and Lot 40 of the Sunny Cove Fruit Farms from the Billings City Limits and set a public hearing for December 12, 2011.

**I. Second/Final Reading Ordinance #11-5545** for a permanent ordinance defining medical marijuana "storefront" businesses and prohibiting the operation of medical marijuana storefronts in the City of Billings.

**J. Amended Plat of Harvest Subdivision, 4th Filing, Block 40, Amended Lots 3 and 4,** generally located west of 32nd Street West off of King Avenue West.

**K. Final Plat Approval** of Montana Sapphire Subdivision, Block 1, Amended Lots 8 & 9A-5.

**L. Bills and Payroll:**

1. October 11, 2011
2. October 17, 2011
3. October 24, 2011
4. July 1, 2011 - September 30, 2011 (Municipal Court)

Councilmember Astle separated Consent Agenda Items B1, B3, and D. Councilmember Cimmino separated Consent Agenda Items L2 and L3. Councilmember Ronquillo moved for approval the Consent Agenda with the exception of Items B1, B3,

D, L2, and L3, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

Councilmember Astle referenced Schedule I of Item B3 and said he received a complaint there was a lower bid that did not quite meet the specifications. Public Works Director Dave Mumford advised there was a low bid that did not meet the specs of the arm weight, as well as other issues they had experienced in the past such as a low vision problem when turning and backing up. Mr. Mumford said they were going with vehicles they believed would operate more efficiently. Mayor Hanel also said the location of the air conditioning unit in the vehicle was a factor. Councilmember Astle moved for approval of Item B3, seconded by Councilmember Clark. On a voice vote, the motion was unanimously approved.

Councilmember Astle moved to delay Items B1 and D until the meeting of November 28, 2011, seconded by Councilmember Ronquillo. On a voice vote, the motion was unanimously approved.

Councilmember Cimmino referenced Item L2, Invoice #749792, and Item L3, Invoice #749978, and said she would be abstaining due to her employment.

Councilmember Pitman moved for approval of Items L2 and L3, seconded by Councilmember Ronquillo. On a voice vote, the motion was approved 10 to 0.

#### **REGULAR AGENDA:**

**2. PUBLIC HEARING AND RESOLUTION #11-19124 creating SILMD 310, Bench Boulevard from Main Street to approximately 1,000 feet east of the intersection. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** Public Works Director Dave Mumford said the streetlight maintenance district was for the new Bench Connector across MetraPark. He said the only property being assessed was Yellowstone County, and there was no protest. Councilmember Clark asked if it was county or city property. Mr. Mumford said once the project was completed, the State would be turning it over to the City for ownership.

The public hearing was opened. There were no speakers, and the public hearing was closed. Councilmember Cimmino moved for approval of the resolution creating SILMD 310, seconded by Councilmember Pitman. On a voice vote, the motion was unanimously approved.

**3. PUBLIC HEARING AND RESOLUTION OF INTENT #11-19125 to create a city-wide park district establishing an annual assessment to provide funding for a wide variety of park improvements and maintenance; and setting a second public hearing for the creation of the district for December 19, 2011. Staff and the Parks, Recreation and Cemetery Board recommend approval. (Action: approval or disapproval of staff and Parks, Recreation and Cemetery Board recommendation.)** Parks Director Mike Whitaker advised the Parks and Recreation Board had held five special meetings to discuss how to fund the deferred maintenance, and they had presented to the Council on two occasions. Mr. Whitaker recognized the following board members who were in attendance: Cathy Grott, Margy Bonner, Tom Iverson, Darwin George, Rick DeVore, and Rachael Cox.

Mr. DeVore said the goal that evening was to provide information on the problems in the parks and what they believed was a very strong solution towards repairing and maintaining the parks in the future. Mr. DeVore said the maintenance of the parks, skatepark, baseball stadium, Par 3, and the Senior Center was all done by 11 full-time employees and two supervisors. He said, in comparison, the City of Great Falls had half the park land of Billings and had the same number of full-time people maintaining its parks as Billings. Mr. DeVore began his PowerPoint presentation showing 2007 survey results of the use of the city's parks. He said according to the survey, the most used parks were Amend Park, Pioneer Park, Rose Park, Riverfront Park, and Stewart Park and said they were all maintained only through the General Fund. Mr. DeVore showed information provided by the Board of Realtors on the value of the parks and said property values were higher in areas with parks across the street or with an adjacent green belt. He said a developed park reduced storm water run-off issues, attracted business, prevented crime, and promoted an active lifestyle for all ages. Mr. DeVore said the 2009 Parks and Recreation Needs Assessment indicated that 97% of the households in Billings believed that well-maintained parks added to the quality of life and community. He said 83% of the households believed that Parks and Recreation was an essential service in the community; 54% felt that Parks and Recreation needed more funding to do a better job serving the community, 25% did not feel it needed more, and 21% did not know. Mr. DeVore said the last mill levy passed for parks was in 2002. He said the parks were supported 61% from the General Fund, 24% from fees and charges for the recreation programs, and 15% from park maintenance districts. Mr. DeVore said they could not adequately fund Parks and Recreation with the monies received from the General Fund, therefore, over time they had accumulated \$9 million worth of deferred maintenance. He said the maintenance levels continued to decrease and there was no present mechanism to fund any major maintenance or capital projects in the parks system; so as a result they had to remove the wading pool from South Park because of new swimming pool regulations and deteriorating conditions, the South Park gazebo was torn down because of safety issues, and the Castle Rock tennis courts had to be closed due to a large crack in the playing surface. He said in Pioneer Park the merry-go-round had to be removed because it had been repaired so many times it was no longer safe, a rocket ship had to be removed, a slide would soon be removed because the metal had fatigued and developed holes in the middle which was nothing that could be fixed, and the legs of a swing set arch had rusted away and broken from the foundation. Mr. DeVore said if the water slide at Rose Park was not fixed within the next couple of years, it would have to be closed because of stress and fatigue in the fiberglass. Mr. DeVore said 50% of parks restrooms did not meet current ADA requirements, and he showed pictures of restrooms in need of repair and maintenance.

Mr. DeVore said the solution the Parks Board and Parks staff came up with was a city-wide park maintenance assessment district. He said they would like to look at raising \$2 million for the first three years of the assessment based on property values. He said they looked at a 3-year spending plan and after that, the plan would be updated on a year-by-year basis and approved by Council. He said they wanted to begin knocking down the \$9 million worth of deferred maintenance the first three years and after that, the dollar amount could be changed at the Council's discretion. He said they

put together a priority matrix based on requirements and priorities. He said in the first year they would look at the water slide in Rose Park, playground equipment in South Park, tennis courts at Castle Rock, replacement of the batting cage at Stewart Park, general maintenance in the playground equipment at Pioneer Park, and renovation of nine restrooms. He said ongoing improvements would include a coordinator and money to keep the trails maintained, improved park maintenance with the addition of two staff people, keeping restrooms open for an additional three months a year, weed management, and picnic table replacement. He said in the second year they would add a spray ground at South Park, rebuild the Pioneer Park tennis courts, do water service upgrades at Amend Park, and upgrades to playground fall protection at 36 sites to meet ADA and Consumer Product Safety Commission standards. He said in the third year they would like a large event shelter at Pioneer Park, public restroom at the cemetery, emergency and general maintenance, and Stewart Park infrastructure improvements.

Councilmember Astle asked if the batting cage at Stewart Park and the slides at Rose Park made money. Mr. Whitaker advised on a good year they made roughly \$35,000 at the batting cage and \$40,000 to \$45,000 at the water slides. Councilmember Astle asked if the two facilities would need additional help if the revenue was kept instead of putting it into the regular park fund. Mr. Whitaker said both facilities could be self-funded if they could keep the revenue.

Mr. DeVore continued his presentation with discussion of park maintenance districts. He said they would ask the Parks Board to study and provide to Council a plan within a 3-year period on how to dissolve or reduce the current park maintenance districts. He said their first intent and goal was to come up with a plan to fund the deferred maintenance. He said he hoped to have Council move forward with the intent to create the district that evening and if that happened a letter would be sent out on November 16 to all property owners within the district who would have 30 days in which to respond. He said if 50%, plus one vote was received during the protest period against the initiative, the proposal would automatically fail. He said if that did not happen, on December 19 another public hearing would be held and Council would have to take action to create the district.

Mayor Hanel asked who would receive and tabulate the responses. Mr. Whitaker advised the responses would be received by the City Clerk. He said the Parks and Recreation Department would assist her, if necessary.

Councilmember Cimmino referenced the 2007 survey and asked how many people actually responded. Mr. Whitaker advised it was considered a statistically valid survey, and they had approximately 16% return the survey. Councilmember Cimmino said the replacement cost of the gazebo in South Park was \$180,000 and the playground equipment would also cost another \$180,000. She asked who came up with the prices. Mr. Whitaker said Parks staff worked together to come up with a budget number. He said until it was actually bid, there was no exact number. He said they had several bad experiences trying to find replacement parts for the playground equipment at South Park and the fall protection was sand, so it needed major rehab.

Councilmember Gaghen asked for the life of playground equipment. Mr. Whitaker said older playground equipment lasted 15 to 20 years or more because it was made from steel. He said the new playground equipment was made out of plastic, and they were replacing slide parts in 8 to 10 years because the longevity was no longer there.

Councilmember Gaghen asked if it was no longer possible because of safety regulations to get the older, sturdier types of equipment. Mr. Whitaker said they could get metal slides, but metal held heat and it was easy for kids to get burned so they had turned to plastic.

Councilmember Pitman asked if a notice was ready to be mailed if the resolution of intent was passed that evening. Mr. Whitaker said a notice was ready, and he would give the mailing service the go-ahead if the resolution passed.

Councilmember Ulledalen pointed out because there were safety, ADA, and legal issues, equipment was not something that could be purchased at Wal-Mart and put in the parks. He said there were standards to maintain, which meant it would be much costlier than what could be installed at a home.

Councilmember McCall said she had talked with several people by phone about the protest process, and the question was how many times there really was a majority of homeowners who actually responded. Mr. Whitaker advised roughly 35 to 38 percent responded with the recent Yellowstone Family Park.

Councilmember Astle asked Mr. Whitaker to explain the fall protection material. Mr. Whitaker advised there were two good choices. He said one was an engineered wood fiber that was a clean wood chip that met ADA specs; and the second was a rubberized surface, which they currently had at Central Park and were looking at putting in at Yellowstone Family Park. He said the engineered wood fiber was initially cheaper, but required more ongoing maintenance. He said the rubberized surface was good for 25 to 30 years and required maintenance every two to three years.

Councilmember Pitman asked if the vote would be a one person, one vote or a weighted vote. City Attorney Brooks advised it was a weighted vote per property value. Attorney Brooks advised a written protest must be submitted in order for it to be considered a valid protest.

Councilmember McFadden asked if it would be possible for the Council to decide to do that type of vote only switch it around so that those who did not respond would be giving a 'no' vote instead of a 'yes' vote. Attorney Brooks said it would not be possible because they were restricted to what the statute provided.

Finance Director Pat Weber advised it was a weighted average and in proportion to the amount of the assessment. He said in order to come up with the percentage they would take all of the protests and the dollar amounts being assessed.

Councilmember Ulledalen asked about the homeowners in existing park maintenance districts already supporting neighborhood parks. He said they were talking about more expensive homes, so those people not wanting another park district assessment would get a higher valuation of their protest than others. Mr. Weber said that was correct. He said the value of a home would give more weight toward the vote. Mr. DeVore commented it was the General Fund maintenance parks that needed the help and not the parks getting the special treatment people were paying extra for.

Mayor Hanel asked Mr. Whitaker to explain how the parks ended up in the condition they were in and why it was now necessary to come forward to the citizens for the funding to bring them back to standard. Mr. Whitaker advised for the past ten years they had not had a major increase in their operation and maintenance except for gas and energy. He said other than through Supplemental Budget Requests for special projects, they had not been able to address major maintenance in the parks because

the funding had not been made available. Ms. Volek advised the City Council and the City of Billings could not vote to increase the city's general fund mill levy. She said it had been capped for many, many years at 74 mills and could be addressed only by a special election that amended the charter. She said 55% of the General Fund went immediately to Public Safety to supplement adopted mill levies and the remaining funds were split among the Administrative Departments, Municipal Court, and the Parks and Recreation Department. She said the Council had routinely adopted a 5-year Capital Improvements Plan for departments such as Airport and Public Works that had other sources of funding who could identify reasonable projects and could fund the projects on an organized basis. She said Parks and Recreation could come into the Capital Improvements Plan with a large number of projects and only one or two may be able to be funded. She said Parks and Recreation was competing for the limited amount of money remaining. Mr. Whitaker said another reason they were in the current situation was because they had an aging park infrastructure that was at least 40 to 50 years old. He said over the past several years they had added several miles of trails with no additional funds to help maintain them. He said as they brought on new park land through Park Maintenance Districts (PMD), they had not added more employees but instead taken employees from the General Fund parks and moved them to the PMD parks. Mayor Hanel asked if the funds would be used specifically for the purposes being described. Ms. Volek said they would.

Councilmember Ulledalen said previous Councils had not made Parks a priority so the parks had been allowed by deliberate decision to degrade and now they were faced with a mess that would take a lot of money to fix. He said former Councils had given raises to other departments and transferred money from Parks to other departments, and they needed to determine if it was their responsibility to fix. He asked if they needed to step up to the plate and fix it or come up with a new strategic initiative about parks to say the model they inherited was not the model they wanted to carry forward.

Councilmember Ruegamer asked how many acres of City park land they had that could not or would not be developed. Mr. Whitaker said currently they had roughly 2,700 acres, and 1,100 acres were developed. Councilmember Ruegamer asked how much they were worth. Mr. Whitaker said it was hard to say. He said there were parcels that no one wanted because they could not be developed or had no commercial value. He said they did have some parcels with commercial value. Councilmember Ruegamer asked if it would be right to say they had from \$0 to \$5,000 an acre value. Mr. Whitaker said it was very hypothetical. Councilmember Ruegamer asked how many acres of park land they had sold the last six years. Mr. Whitaker said they had sold one to one and a half acres.

Councilmember Ronquillo commented South Park had lost the wading pool and the gazebo mainly because the maintenance was never done. He said vandalism also contributed to the problem and cost a lot of money. He said if they wanted quality parks, they needed to step up to the plate and put money back into them.

Mr. DeVore finished his presentation with a recommendation to approve the resolution of intent to create a city-wide park district and set a public hearing for December 19, 2011, with the idea that the resolution would provide the Council and Councils to come the ultimate flexibility on an annual basis to increase or decrease the

dollar amount to provide the maintenance of the parks in the future. He said if they fixed the problem with no maintenance fund, they would end up with deferred maintenance again.

Councilmember Ulledalen said he wanted to make it clear the Council directed the Parks Board to prioritize the issues in the parks because they recognized there was a problem. He said the Parks Board came up with the matrix and priorities and Council asked them to look at all parts of town so the money would be spread around. He said they had held three or four meetings on it previously, and it was not a new issue.

Councilmember Gaghen said she had heard from a number of people that the timing and getting the information to the public was not terribly wise in light of the new library bond issue and receipt of tax statements. Mr. DeVore commented they first came to the Council on February 22. He said they had been to a work session, another Council session, and met with the Library Board. He said they graciously deferred to the Library Board because the Parks Board understood the need for a quality community and the need for a library. He said they felt they did not want to fight the library election but they already had their plan in place by the time they met with the Library Board. He said they also wanted to make sure the plan was brought back to the current council.

Councilmember Cimmino said she understood the dilemma but technically it was an entirely different process. She said the library initiative went to the vote of the people. Mr. DeVore said it was also going to the vote of the people. He said every property owner in the district would receive a letter. He said it was no different than sending out a ballot except they were saving money.

Councilmember McCall said she supported Mr. DeVore's statement. She said many people preferred it go to a vote of the people but once the valid protest process was explained they began to understand it. She said the article in the Gazette did not explain it very well. She said the key was communication.

Ms. Volek said since the issue of an election had been raised, she felt Council needed to be aware of the very unusual parameters of the district collection by election that were set out in the same statutes that authorized the protest period. She asked Attorney Brooks to explain. Attorney Brooks referenced MCA 7-11-1011 that said Council could submit the issue of the special district to election and likely pass a resolution. He said the statute also provided the ballot language and determined who could or could not vote. Attorney Brooks said he would forward the entire statute to the Council.

Councilmember Clark asked if the proposed process meant only property owners in the district could protest but if it was put to an actual ballot, people who did not own property or pay property taxes could vote. Ms. Volek said that was correct.

Councilmember Clark asked if there was a way to guarantee that the same percentage of General Funds would continue to go to Parks if the proposed district passed.

Councilmember Ulledalen said several months ago he had asked Ms. Volek for a presentation on projected budget deficits by department, and they still had not received it. Ms. Volek said she thought they had. Councilmember Ulledalen said what they received concerned him because there was a bold line between FY15 and FY16 which indicated a major shift. He said in FY16 and FY17 it indicated a 46% reduction in the General Fund transfer to the Parks Department. He said it was Ms. Volek's answer for

balancing the budget, but that was not what he had asked for. Councilmember Ulledalen asked how they would firewall the money to make sure it was not siphoned off into another department to meet pay raise demands or cost of employees if the parks district was passed. He said they needed to make a deal with the public that the money would go to exactly what it was intended for. Ms. Volek said as Council was aware they were looking at Priority Based Budgeting that would address some of the issues and help Council and staff to identify priority items. Mayor Hanel said in simple terms they were exploring future budgetary matters and with the changes in budgeting procedures with Priority Based Budgeting, at this time it was a question that could not be answered and there was no guarantee based on the decisions of the Council. Ms. Volek said that was correct.

Mayor Hanel read a letter, dated November 8, 2011, addressed to the City Council from the Billings Association of Realtors generally in support of the city-wide park district. The letter indicated they had the following concerns with implementation of the resolution.

- Double taxation of those within the 36 existing park maintenance districts and no clear path for dissolving those districts.
- Undeveloped park land that was either unusable or not planned for development that could be sold.
- The need to address the requirement for park land dedication or cash in lieu policy.

Councilmember Ulledalen commented that he felt it would be somewhat difficult to make the existing park maintenance districts just go away. He said they were contracts between the City and neighborhoods, master plans were done, and maintenance requirements and standards were set in place. He said he felt they would have an equity issue to those already supporting parks at a higher level than what the city-wide level would apply.

Councilmember McCall said she agreed but they needed to keep in mind that the 36 park maintenance districts were for neighborhood parks that had a different use than the community regional parks.

The public hearing was opened.

- **Joe White, Billings, MT**, said he supported the parks but was concerned about public health diseases in the parks. He said diseased birds were in Riverfront Park, and he would like to see flush toilets and running water in the parks. He said he felt the resolution of intent should be delayed. He said parks attracted drugs and vandalism, and they needed programs on how to prevent crime.
- **David Sellers, 3903 Palisades Park Drive, Billings, MT**, said he was a property owner. He said it was a tough situation for Parks and Recreation, the Council, and property owners. Mr. Sellers said there was fiscal irresponsibility and neglect going on as a result of poor management. He said as a taxpayer, the burden was becoming unbearable.

- **Al Koelzer, 2828 Westwood, Billings, MT**, said he was aware of the tremendous amount of activity in the city parks. He said they were popular places and were getting worn out. Mr. Koelzer said he was representing the Billings Park Foundation whose job was to raise money for parks and park improvements, and his message was not to count on them. He said their job was to raise money and in the last nine years they had raised \$400,000, but the last year they had raised none. He said they were building a better team, had ideas, and were working harder but they would be raising money for picnic tables, trees and shelters and not \$9 million. He encouraged Council to support the formation of the district.
- **Trish Rugg, 1021 Burlington, Billings, MT**, asked where the money already budgeted for Parks would go. She asked if in three years the assessment would go down after the improvements or continue to go up. She said she was confused about the 50% vote and opposed the method used to gather the votes. Mayor Hanel advised the existing funds currently sustained what they already had and the funds generated through the proposed district would be for future and existing maintenance. Attorney Brooks said in order to be counted as a protest, a protest letter needed to be submitted. He said state law dictated the process.
- **Jim Berg, 233 Wicks Lane, Billings, MT**, said during the current period of economic stress and stagnant home values, Billings voters approved bond issues for new technology at the high schools and a new library. Mr. Berg mentioned the recent increase in deferred street maintenance and asked what other unfunded liabilities were not yet disclosed and would be relying on homeowners to pay. Mr. Berg said they needed to chose carefully between wants and needs and said he opposed the voting process.
- **John Brewer, President of Billings Chamber of Commerce Convention and Visitors Bureau**, thanked Council for looking at the plan. He said a community with a vibrant and well-maintained park system would attract businesses and economic growth. Mr. Brewer said the Chamber had spent two months visiting with Park staff examining and understanding the proposal. He said they endorsed the implementation with the following.
  - City Council should have the authority to develop the district provided there was due process involving the public;
  - Funds generated from the district should not supplant existing parks funds received from the General Fund;
  - Parks and Recreation should submit a 3-year plan to Council showing annual proposed adjustments to the tax and how the revenue would be expended.
  - Following the third year, the open, due process involving the public would be required to renew the parks district for another three years;
  - The financial impact to homeowners in existing park maintenance districts must be resolved. The 3-year plan must show the dissolution of the 31 general (non-unique enhancement) park maintenance districts within the first three years.

Councilmember McFadden asked if business properties would be affected in addition to the homeowners. Ms. Volek advised it would affect every taxable property. Mr. Brewer said they felt the value and impact to future growth and opportunities significantly outweighed the assessment.

Councilmember Cimmino asked if Mr. Brewer was endorsing that the 1,200 businesses pay the assessment, as well. Mr. Brewer said that was correct. He said developing the park system and trails was a priority because it created a viable workforce, drew people to the community and grew business opportunities.

Councilmember McCall asked Mr. Brewer if he supported the formal protest process that had been established. Mr. Brewer said he did. Councilmember McCall asked if he was indicating he would like to see a 3-year sunset or if it should be part of the plan to review at the end of three years and look forward to the next three. Mr. Brewer said it should be reviewed every three years and analyzed for effectiveness and opportunities for the next three years.

Councilmember Gaghen asked if it would be assessed each year and if Council would see a progress report each year. Mr. Whitaker advised every year during the budget cycle, staff would bring a recommendation to Council as it related to the district.

- **Marion Dozier, 3923 3<sup>rd</sup> Avenue South, Billings, MT**, said she was concerned because the park district assessment was open-ended; unlike the Library where she knew she would be paying \$17 for 20 years. Ms. Dozier talked about the increase in her streetlight district and street maintenance fees each year. She said she opposed the process and felt the public should vote by ballot like they did for the Library and the ball park.

- **Tom Zurbuchen, 1747 Wicks Lane, Billings, MT**, acknowledged that he knew the parks were in a horrible situation and needed lots of attention that equated to money. He said the city-wide district was not appropriate. He said the City Charter was capped and said raising taxes needed to be voted on by the people.

- **Larry Seekins, 380 Camel Place, Billings, MT**, said he would vote for a city-wide recreation district. He said he was impressed with the Board's presentation; however, he was very concerned about the process being proposed. He said it appeared to be a clever way to fund a city project without the support of the majority of the taxpayers. He said if they were going to do it right, they needed to do it with the vote of the people.

- **Connie Wardell, 1302 24<sup>th</sup> Street West, Billings, MT**, said she was pleased with the process because she owned properties that she rented out and managed rental properties for others. She said property owners would have the opportunity to object. She said it was a vote that included far more people and the people who would pay the tax.

- **Bill Cole, 3733 Tommy Armour Circle, Billings, MT**, said he wanted to support the proposition because they all knew the desperate need the parks were in. He said he wanted to make a suggestion to the recommendation proposed by the Parks Board and the Chamber. He said the recommendation called for a review after three years about what to do with the existing park

maintenance districts. He said his neighborhood currently had a park construction district assessment and a neighborhood park assessment, and this would be #3. He said he was concerned the Council would find out what it meant to have things hit the fan when people realized they had gone from two assessments to three, not to mention the Library and accelerated pace with which it was coming before the community. Mr. Cole recommended that they not wait three years but give authority in the resolution to the Parks Board to examine the issue no later than three years. He said if things became a real concern, they could come back and have the resolution modified if necessary. He said his concern was basic fairness.

- **Tom Iverson, Parks Board Chairman**, said the recommendation was coming from the Parks Board. He said they worked a long time and very hard on it. He publicly thanked the members of the Board and city staff for all the work. He said parks could not stay the way they were, and asked Council to pass the resolution of intent to get the conversation going to take the next step.

Councilmember Pitman said they have had the problem for a long time and asked how urgent it was. Mr. Iverson said they were at the point where they were going to discuss the priorities of the Parks Department and it needed to be decided. He said they could not keep putting it off and now was the time.

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

Councilmember Cimmino moved that the City Council put the park maintenance district to the vote of the people for the June 2012 primary ballot, seconded by Councilmember Pitman. On a voice vote, the motion failed 8 to 3. Councilmembers Pitman, Cimmino, and McFadden voted in favor. Councilmembers Ronquillo, Gaghen, Ruegamer, McCall, Ulledalen, Astle, Clark and Mayor Hanel voted in opposition.

Councilmember Ulledalen asked staff how they even knew it was a priority. He said he was a skeptic on the priority based budgeting. He asked if it made sense to do the priority based budgeting first, decide if it were a priority, get a broader look at the General Fund, and then come back and possibly still have time to put it on the June ballot. Attorney Brooks said he could check with Bret Rutherford the following morning regarding the deadline to put something on the June ballot. Ms. Volek said it was normally 70 days out from ballot, so they would be backing up to the beginning of March. Councilmember Ulledalen asked how long the process would take. Ms. Volek said they would need to talk to whoever was selected for the priority based budgeting services. She said it would be a 3-year plan that would at least address the immediate deferred maintenance. She said the question was if they should defer maintenance now and close facilities because they were waiting to see how operations were going to change. Mayor Hanel said the priority based budgeting was very involved and not a simple process evaluating programs and budgetary matters related to the programs. He said after sitting through the training and knowing what he knew about deferred maintenance with the parks, he felt it would probably rise to the top of priority based budgeting.

Finance Director Pat Weber said he wanted to clarify that it would be like all other assessments, such as street maintenance, and every year Council would have the

opportunity to lower the fee. He said his intention was to put the money into its own fund so it was not mingled with the General Fund and anyone from the public could come in and see how it was being spent.

Councilmember Pitman asked how bound they were to valid protests. Mr. Weber advised anything over 50% and it was done. He said if it came in under 50%, Council still had the opportunity to vote no.

Councilmember Cimmino asked how many households and how many businesses made up the City of Billings jurisdiction that could actually write a letter in opposition or in favor. Mr. Whitaker said a little over 39,000 that would receive letters. Councilmember Cimmino asked for the current population of Billings. Mr. Whitaker said roughly around 103,000.

Councilmember Astle commented they should not be discussing it without a motion, so he made a motion to approve the resolution of intent to create a city-wide park district, seconded by Councilmember McCall.

City Attorney Brooks pointed out that if the Council chose the protest option and there was sufficient protest, no further action could be taken for 12 months.

Councilmember Ulledalen asked when the assessments would be collected. Ms. Volek advised the assessments would go on the taxes in November 2012.

Councilmember Ruegamer said the double taxation issue needed addressed. He said they needed to know how much it would cost if the other park maintenance districts were eliminated. Mr. Whitaker said currently they received \$772,000 through park maintenance assessments. Councilmember Ruegamer said he was concerned about the way they were going about the vote and he was not against putting it on the ballot. He said he would rather do a regular vote. He said the timing was bad, but asked when the timing would be good. He said they had 450 acres of parks that could be sold and they needed to try to sell them before asking for more tax money. He said he would not support it until they took positive steps to sell the 450 acres.

Councilmember McFadden said he would support a general vote of the people because he did not think the return of a negative letter would constitute a vote. He said he did not feel it was a democratic process.

Councilmember Astle asked if a ballot vote would be restricted to the property owners only. Attorney Brooks said an election of the people had to follow the statute, which allowed residents and/or owners of taxable real property to vote.

Councilmember Gaghen asked if a regular ballot vote sent in June would be based on one person, one vote and not be a weighted ballot. Attorney Brooks said as far as he could tell, that was correct but he would need to check.

Councilmember Pitman asked for the cost and staff time and asked if valid protests would become public documents. Attorney Brooks said the protests would become public documents. Mr. Whitaker said the direct cost of the mailing would be a little under \$10,000. He said the City Clerk and Parks staff felt they could work through it. Councilmember Cimmino asked where the \$10,000 would be coming from. Mr. Whitaker said it would come from the Parks Department. Councilmember Cimmino said the City Clerk worked by herself and decided this year in the budget process not to hire an assistant. She asked if help would come from the Parks support staff. Mr. Whitaker said that was correct.

Councilmember McCall said Mr. DeVore had indicated that if it were to go to a ballot initiative, it would be about four times the cost. Mr. Whitaker said \$40,000 was the number he had. Ms. Volek advised if it were on a general election ballot, it would be a proportionate amount.

Councilmember Cimmino said she would not be supporting the measure because every single member of the Council was voted in by the people. She referenced a postcard her son received in the mail as a registered voter before the election last week asking him to vote yes for the library endorsed by Mayor Hanel and unanimously supported by the Billings City Council. She said she also received her tax bill, and she paid \$4,000 per year which meant she had to budget \$334 a month in order to pay her taxes. Councilmember Cimmino said they lived in a democratic society where the vote of the people counted and they were not going that route, which was why she was voting against the particular motion.

On a roll call vote, the motion was approved 9 to 2. Councilmembers Ronquillo, Gaghen, Pitman, Ruegamer, McCall, Ulledalen, Astle, Clark and Mayor Hanel voted in favor. Councilmembers Cimmino and McFadden voted in opposition.

**PUBLIC COMMENT** on Non-Agenda Items -- Speaker Sign-in required. (Restricted to ONLY items not on this printed agenda. Comments here are limited to 3 minutes. 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**

- **Cimmino:** Advised she would bring forward the Mayor for the day initiative at a later date.
- **Ruegamer:** Moved to receive Police reports in 90-day increments on the number of warnings and tickets issued for use of cell phones while driving, seconded by Councilmember Gaghen. He said the reason was because he was receiving complaints that they had gone back to where they were before. He said if that was so, the Police needed to be directed to start issuing tickets. On a voice vote, the motion was unanimously approved.
- **Ulldalen:** Moved to receive a presentation from Public Works regarding MDT construction issues with Shiloh Road and State Avenue, seconded by Councilmember Astle. He said the Public Works Director informed him of significant issues and he said MDT needed to explain to them what they looked at when designing a project and explain if it was an intelligent use of public money. On a voice vote, the motion was unanimously approved.
- **Astle:** Asked Ms. Volek to ask Mr. Mumford if there was anything that could be done with the intersection of 17<sup>th</sup> Street West and Grand Avenue. He said the intersection had become quite rutted and was dangerous.
- **Hanel:** Asked Ms. Volek if there had been any discussion about the project at 17<sup>th</sup> and Poly regarding sufficient parking, the size, and the occupancy expected in the building. He said he had been told there was a request for a parking

variance for additional on-street parking. Ms. Volek advised the variance was scheduled for the next agenda. Assistant City Administrator McCandless advised the owner of the property had requested a variance from 42 to 37 on-site parking spaces, not on-street parking. Councilmember Ulledalen said there was also a bit of an issue whether it would be two or three stories. He said in reality it was three stories and because of the design they used, they were able to get three stories within the 34 feet. He said that was another part of the whole process upfront that was loose in terms of how they handled the approval.

There was no further business, and the meeting adjourned at 9:32 p.m.



CITY OF BILLINGS

BY Thomas W. Hanel  
Thomas W. Hanel, Mayor

ATTEST:

BY: Cari Martin  
Cari Martin, City Clerk