

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

January 28, 2013

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 W. Hanel called the meeting to order at 6:30 p.m. and served as the meeting's presiding officer. Mayor Hanel gave the invocation.

ROLL CALL: Councilmembers present on roll call were: Ronquillo, Pitman, McFadden, Bird, McCall, Ulledalen, and Astle. Councilmembers Cromley, Cimmino, and Crouch were excused.

MINUTES: January 14, 2013 – Councilmember Astle moved for approval, seconded by Councilmember Pitman. On a voice vote, the motion was unanimously approved.

COURTESIES:

- Police Chief Rich St. John recognized the following Police Department 2012 Medal and Annual Awards Recipients:
 - ✓ Distinguished Service Medal – Mark Balter, Internal Services Specialist, for his consistent and significant performance beyond established standards.
 - ✓ Meritorious Service Medal – Todd McCrohan, Forensics Examiner, for becoming a forensics shoe and tire track examiner, and implementing new programs, techniques, and procedures with evidence.
 - ✓ Meritorious Service Medal – Officer Mike Yarina for resurrecting a 25-year-old cold homicide case from another state resulting in a successful prosecution.
 - ✓ Medal of Honor – Sergeant Shawn Mayo, Sergeant Shawn Finnegan, Officer Steve Hallam, Officer Marc Snider, and Officer Mike Yarina for performing selflessly and bravely while facing deadly gunfire at two downtown businesses on May 24, 2012.
 - ✓ Officer of the Year – Selective Traffic Enforcement Patrol Officer Brandon Ihde for excelling beyond expectations in citing violations and following up with citizen traffic complaints. Also a member of the Bike Program, a firearms instructor, and involved with Special Olympics.
 - ✓ Employee of the Year – Denise Hice, Administrative Secretary, for ensuring all department transactions and practices are within compliance of all city policies.
 - ✓ Respect for Law – Officer Tom Keightley assigned to the Crime Prevention Center as Public Relations Officer and nominated for the award by the Billings Optimist Club. Currently revitalizing the Adopt-A-Cop Program.
 - ✓ Team Award – Nancy Lindstrom, Kristal Ward, Jeremy Kehrer, and Chase Blaylock of Animal Control for serving the family of a deceased co-worker

with honor and distinction and coming together to perform day-to-day operations of Animal Control while being staffed at only 60%.

- ✓ Purple Heart Medal - Retired Police Officer Ladd Paulson, a police officer who retired in 2005. He was a pioneer in the early motorcycle program, and his career was sidetracked by a serious accident in 2002 when he was hit on his motorcycle by a vehicle while working traffic. After many months of painful rehabilitation Officer Paulson returned to the motorcycle program to instruct new motorcycle officers, but was again involved in a serious accident in 2005 while instructing officers. His injuries were significant and forced him into other ventures. He was recognized within the Department for his sacrifice with a certificate and his name on a plaque, but at that time the Department failed to present Officer Paulson with his Purple Heart Medal and recognize his service publicly. Chief St. John said they were correcting the oversight this evening by introducing Officer Paulson and presenting him with his Purple Heart Medal.

Mayor Hanel said the awards were an example of leadership and commended Chief St. John and his staff for doing a fine job.

- Mayor Hanel recognized the Billings Fire Department for their coat donations to Head Start. Head Start Director, Kathy Kelker, thanked the firefighters for coming to Head Start and teaching the children how to protect themselves from fire and providing every child with a warm coat. It was a wonderful gift to the children.
- Mayor Hanel commended members of the Mayor's Committee on Homelessness, the various social services, and all other participants for the successful Billings Community Connect recently held at the Shrine Auditorium that benefited a lot of less fortunate people.
- Councilmember Ronquillo said he had the privilege of traveling to Helena with a couple of people from the Boys and Girls Ranch and receiving a National Register of Historic Places that included Garfield School. He went on to say Garfield School was built in 1901 with six classrooms and an auditorium, and a third floor was added a year later. By 1906, 340 children attended Garfield School. The homesteading boom, growth of sugar manufacturing, and the first oil boom brought many people to the Billings south side and more students to Garfield School. In 1920 an addition designed by Billings Architect Chandler Cohagen doubled the school size at a cost of over \$65,000. Many students were children of Mexican sugar beet workers, and between 1923 and 1925 the Great Western Sugar Company paid half of the expenses for Mexican school held at Garfield. The program offered classes specifically for migrant workers' children. In 1934 Garfield School was further expanded and two wings were designed tripling the school size, and in 1948 the School District constructed a final 2-story brick addition to house more classrooms and a gymnasium, which reflected a modern, post-war sensibility while compelling the design of earlier additions. Demolition of the original 1901 building occurred in 1981, but the 1920, 1934 and 1948 additions still look much like they did in 1950 when Garfield teachers taught almost 900 students in the first through ninth grades. Councilmember Ronquillo

said the Boys and Girls Ranch took the building over a couple of year ago and had completed a lot of improvements. He said currently through MSU-B computer and GED courses were being held, as well as sewing classes through the Salvation Army. He said they hoped to continue with more positive changes.

PROCLAMATIONS: There were no proclamations.

ADMINISTRATOR REPORTS - TINA VOLEK

Ms. Volek commented on the following items:

- **Item 4A, Empire Parking Garage Approval of Declaration of Unit Ownership and Owners Association Bylaws.** Final versions of Bylaws, Declaration of Unit Ownership, and Owners Association Articles of Incorporation were sent in the January 25th Friday Packet. Copies are filed in the ex-partie notebook.
- **Item 4B, Empire Parking Garage Approval of Amendment #1 to Northern Hotel Development Agreement.** Copy of Amendment to Development Agreement was sent in the January 25th Friday Packet. Copy is filed in the ex-partie notebook.
- **Item 4C, Empire Parking Garage Approval of Amendment to City-Zootist Option Agreement and Lease, Valet Parking Proposal, and Skybridge Operations and Maintenance Proposal.** Copy of Amendment to Option Agreement and Lease on Council's desk. Copy is filed in the ex-partie notebook.
- **Item 4D, Empire Parking Garage Parameters Resolution for Tax Increment Urban Renewal Revenue Bonds.** Final resolution sent in January 25th Friday Packet. Copy is filed in the ex-partie notebook.
- **Weekly Legislative Report.** Copy on Council's desk and filed in the ex-partie notebook.

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: #1, #3, #4A, #4B, #4C & #4D ONLY. Speaker sign-in required. (Comments offered here are limited to one (1) minute. Please sign in at the cart located at the back of the council chambers or 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. Bid Awards:

1. **W.O. 13-03, #1, 2013 Street Maintenance Program, City Overlay.** (Opened 1/22/2013) Recommend delay of award until February 11, 2013.

B. Professional Services Contract for System Development Fees and Water Re-Sale Rate Study; CDM Smith, Inc.; \$103,550.

C. Contract with High Tech Construction Company, Inc.; Rose Park Pool Improvements; not to exceed \$270,000.

D. Law Enforcement Officer Reimbursement Agreement #HSTS0213HSLR757 with Transportation Security Administration (TSA) **accepting** partial reimbursement for 3-year program and **authorizing** Mayor to execute Statement of Joint Objectives (SOJO); first year reimbursement - \$116,800.

E. Amendment #1, Airport Building and Ground Leases with State of Montana Department of Natural Resources (DNRC) and Department of Environmental Quality (DEQ); additional revenue for remaining year of leases - \$7,406.81.

F. Amendment #2, W.O. 10-29, Wastewater Treatment Plant West Mechanical Motor Control Centers (MCC) Replacement. Professional Services Contract, HDR Engineering, Inc.; \$10,900.

G. Recommendation of approval to Policy Coordinating Committee (PCC) for Amendment I of 2012-2016 Transportation Improvement Program (TIP).

H. Recommendation of approval to Policy Coordinating Committee (PCC) for Urban Boundary Update.

I. Approval and acceptance of additional United Way of Yellowstone County Grant Funds for Enforcing Underage Drinking Laws (EUDL); \$14,079.58.

J. Resolution of Intent #13-19239 to construct W.O. 09-20, Rimrock Road from Forsythia Boulevard to Shiloh Road; street widening, curb/gutter, sidewalk, drive approaches, street lights, and other miscellaneous items; and set a public hearing date for February 25, 2013.

K. Second/Final Reading Ordinance for Zone Change #906: A zone change from Residential Multi-family-Restricted (PD-RMF-R) to Planned Development – Neighborhood Commercial (PD-NC) on a 45,950 square foot parcel of land described as Lot 2, Block 28, Harvest Subdivision, 3rd Filing, generally located at 3225 Rosebud Drive. Terry Havener, Susan Havener, Brittany Evans, Kimberly Erbacher, John Erbacher, Folmer Christensen, and Mari Christensen, owners; R. L. McComish and Sanderson Stewart, agents. Approval of the zone change and adoption of the determinations of the 10 criteria.

L. Preliminary Major Plat of Trails West Subdivision, 2nd Filing, generally located on the south side of Grand Avenue just west of 56th Street West; conditional approval of the plat and adoption of the Findings of Fact.

M. Bills and Payroll:

1. January 7, 2013
2. January 14, 2013

There were no separations. Councilmember Pitman moved for approval of the Consent Agenda, seconded by Councilmember Astle. On a voice vote, the motion was unanimously approved.

REGULAR AGENDA:

2. PUBLIC HEARING AND SPECIAL REVIEW #902: a special review to allow the demolition and reconstruction of a major portion of an existing church and installation of a new parking lot on property located in a Residential 7,000 zoning district legally described as Lots 1-7 & 15, Block 1, Lillis Subdivision, 2nd Filing, and Tracts 1 & 2, C/S 3112, and addressed as 1108 24th Street West. Lutheran Church of the Good Shepherd, owner; Alex Tommerup, AT Architecture, agent. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.) Zoning Coordinator, Nicole Cromwell, presented a zoning map of the subject property and surrounding properties, the site plan of the proposed construction, current photographs, and an aerial photo. She advised a new 47-space parking lot would replace the existing structure on the corner of Lewis Avenue and 24th Street West. A small first floor area would be added to the existing sanctuary; and a pre-school, which did not currently meet code, would be moved from the basement to the new area. The proposal for the new parking lot would require the south-end portion of the alley to become a 2-way but the remainder of the alley would be left a one-way running south. The current sanctuary building would remain, a new structure would be added to the north with some parking spaces lost, and a new covered entry to the building would allow for improved accessibility to the sanctuary. Ms. Cromwell pointed out the alley currently separating the subject property from residential properties to the west and reviewed the proposed building elevations. She said the first floor and second floor spaces would be approximately seven feet from the alley property line, and the third floor space would be almost 24 feet from the alley property line. Dormer windows on the first and second floors would be installed on the east and west sides of the building and only high windows for day-lighting purposes would be installed on the third floor and would not be accessible to look out onto the properties to the west. Ms. Cromwell showed the new location for the pre-school playground that would border the alley. She advised parents currently picked up and dropped off their pre-school children in the alley which caused a lot of congestion; and under the proposed plan they would enter and exit the new parking lot to safely access the front entrance to the building.

Councilmember Ronquillo asked if the current parking lot would remain. Ms. Cromwell said some existing parking spaces would be lost due to the new building, but a new, separate parking lot would be added near Lewis Avenue. The only way in and out of the new parking lot would be through the alley.

Ms. Cromwell advised the Zoning Commission was recommending approval based on the following conditions.

1. The special review approval shall be limited to Lots 1-7 & 15, Block 1 Lillis Subdivision 2nd Filing, Tracts 1 & 2, C/S 3112 a 2.63 acre parcel of land generally located at 1108 24th Street West.
2. The special review approval is for the construction of a new church addition of 23,051 gross square feet and the construction of a new 47-space parking lot. No other use is intended or implied by this approval.
3. Any expansion of the proposed building or off-street parking greater than 10 percent of what is shown on the submitted site plan will require an additional special review approval.
4. All exterior lighting shall have full cut-off shields so no part of the fixture or lens projects below the cut-off shield. The maximum height of any light pole in the parking or outdoor play areas shall be 20 feet above grade.
5. The proposed two-way traffic pattern for a portion of the alley north of Lewis Avenue shall be reviewed and approved by the City Traffic Engineer.
6. No outdoor announcement system is allowed on a permanent or temporary basis.
7. No construction or demolition activity will occur before 8 am or after 8 pm daily.
8. Any new sign will require sign permit approval from the Planning Division.
9. The site will be developed in substantial conformance with the submitted site plan including landscaping, parking and building location.
10. The exits from the new parking lot will be signed "Left Turn Only".
11. The owner will install a 6-foot sight-obscuring fence around the proposed play area. (Condition added by Zoning Commission)
12. The owner will install appropriately worded signs within the existing and proposed parking lot advising the public that no parking or access is allowed during overnight hours. (Condition added by Zoning Commission)
13. These conditions of special review approval shall run with the land described in this authorization and shall apply to all current and subsequent owners, operators, managers, lease holders, heirs and assigns.
14. The proposed development shall comply with all other limitations of Section 27-613 of the Unified Zoning Regulations concerning special review uses, and all other City of Billings regulations and ordinances that apply.

Councilmember Astle asked for the distance from the floor to the bottom of the third floor windows. Ms. Cromwell advised it was 5-1/2 feet.

The public hearing was opened.

- **Alex Tommerup, 848 Main Street, Suite 7, Billings, MT**, said he was the architect for the project. He said the two original structures on the south side of the building would be demolished for a number of reasons. He said the distance from the north parking lot to the current church entrances was about 450 feet and putting a parking lot to the south would bring parking closer to those entrances. Fire codes, building codes and security were some of the reasons for demolition

and reconstruction, and one main entry would be created for use during the week. He said the idea of the design was essentially a one-story building with a height of 39'6" to the peak, which was 4 feet lower than the existing building. Moving the pre-school play area from the 24th Street West side to the back side would provide better security for the children.

Mayor Hanel asked for the age of the building to be demolished. Mr. Tommerup said it was built in 1956.

- **Richard Clark, 1207 25th Street West, Billings, MT**, said his home was directly behind the new section. He attended the Zoning Commission meeting and was given two items he wanted; a fence around the play area and help keeping the kids from partying in the parking lot. It was a 3-story building being set back seven feet from the alley and with a third floor the building needed to be moved two feet further from the property line for every foot above the allowed height. Mr. Clark distributed a copy of the code to the Council and said the 3-story building was being set too close to the alley.
- **Jim Shaffer, 2419 Lewis Avenue, Billings, MT**, said he had lived west of the church since 1996 and on a weekly basis and on holidays or special church events he was prevented from parking in front of his house while the north parking lot of the church was underutilized. He questioned the need for the proposed parking lot on the south side of the church and said he would accept additional building construction or open space on the south end of the church but not the proposed parking lot. Mr. Shaffer asked Council to defer approval of the church's application and require the church to conduct a detailed, photo-documented, 4-month parking study of unused parking spaces in the north parking lot to include on-street parking on Lewis Avenue and 25th Street West with results being shared with the residents living along the alley. He said there were near misses and accidents by drivers not observing the one-way south traffic sign at the alley, and the one-way south alley sign did not require a right-turn only causing backups into the alley. The City and the church should consider an exit from the north end of the lot onto Lillis Lane to allow traffic to flow away from Lewis Avenue and 24th Street West. Mr. Shaffer said prior to the alley being paved and established as a one-way south, the residents experienced heavy nighttime traffic and the throwing of garbage into their yards by "cruisers," and he feared the proposed parking lot would become a new place for "cruisers" to congregate. The residents had damage and drive-offs to their fiberglass fencing from the public and city-owned vehicles using the narrow, congested alley; and the church plowed the alley and pushed snow against the fences and gates not allowing access to the alley and garbage dumpsters. Mr. Shaffer said should the City grant the church's application the following conditions should be imposed. (1) Require the parking lot be chained off, closed to all access other than during ongoing church-related activities; (2) Change the alley to one-way north; (3) An entrance/exit onto Lillis Lane be added to the north lot; (4) Replacement of current fencing along the alley at church expense to include a 3-foot high concrete jersey barrier topped by fiberglass fencing to a height of eight feet, including gates; (5) Utility poles and overhead wiring along the alley be removed and installed underground at church expense; (6) New and existing exterior

lighting serving the parking lot and new construction be deflected away from adjacent residential properties; (7) Proposed south parking lot should be designed to include vegetative landscaping; and (8) Snow removal practices limiting residential uses should be corrected. Mr. Shaffer distributed a copy of his presentation to the Council.

Councilmember McFadden asked Mr. Shaffer if he felt the proposed parking lot would alleviate the problem of people parking in front of his house and if there were any other churches in Billings required to go to such extraordinary efforts to shield themselves from their neighbors. Mr. Shaffer said the neighbors had not been invited to comment on the church's plans so there had been no community involvement, and with the underutilization of the north parking lot there was no need for the new south parking lot. Councilmember McFadden said he felt putting a parking lot closer to the church entrances would help alleviate some of the on-street parking.

- **Kathryn Kelker, 2438 Rimrock Road, Billings, MT**, said as a member of the church she was in favor of the plan. It was a growing church, and they had done improvements to the building over the years. The plan for many years had been to address the needs of children, families, and the elderly. They had the opportunity to build a new building outside the city limits but chose to stay in the current location. Their plan was to consolidate the major functions of the church with closer parking on both sides to service the elderly, and the children's services would be taken out of the basement that did not meet current code. She said the extensive area of green the church provided on 24th Street West was also important for the City of Billings.
- **Ron McClenning, 1203 25th Street West, Billings, MT**, said he was against the expansion and wanted the church to stick to the current zoning of R7000. It was a 3-story building that would block the sun from his back yard until after 11:00. When the alley was paved, the heavy equipment vibrated the houses, caused pictures to fall on the floor, caved in a neighbor's well, and loosened fence posts. The church construction could cause additional damage. The alley needed to have speed bumps to slow traffic.
- **Mark Ball, 2502 Burlington Avenue, Billings, MT**, said the traffic on Lewis Avenue and 24th Street West was congested. When the church took away Lillis Avenue it limited the ingress and egress of the subdivision. The bulb-outs at the intersection cut traffic down to two lanes and made turning left impossible. He said the crosswalk was acceptable the way it was but asked that the bulb-outs be removed.
- **Neil Morsch, 4150 Audubon Way, Billings, MT**, said he was a 20-year member of the church and was in favor of the plan. The church had made upgrades to the sanctuary in the past but the long term dream was to do something for the Sunday School, pre-school, and older adults. He said the church offered a lot of community service and enjoyed the current location.

Councilmember McFadden asked if the proposed changes would make it easier or harder for the neighbors. Mr. Morsch said there would not be much change in the alley, and there was no room to widen it. The alley had always been a problem.

- **Mary Beth Shaffer, 2419 Lewis Avenue, Billings, MT**, said she was not so concerned about the parking on the public street but with the volume of traffic that would come through the alley and turn onto Lewis Avenue. Their fence had been hit several times and increased traffic would cause more damage. The easy fix would be to make the alley a one-way north and decrease the number of parking spaces in the proposed lot. They have had a great relationship with the church over the years. She agreed the bulb-outs needed to be removed.
- **Erika Morsch, 4150 Audubon Way, Billings, MT**, said she had been a member of the church since 1989 and previously served as Church Council President. She said the church was growing and was committed to being good neighbors. The church would cooperate with any changes that needed to be addressed in order to facilitate a continued good relationship with the neighborhood. The church desired to continue to reach out to the community through IHN and Scouts, but their outreach ministries were constrained by the size of the current facility. The pre-school had a waiting list, and they needed a safe place to nurture the children. Ms. Morsch asked Council to approve the proposed Special Review.
- **Stanley Burns, 1113 25th Street West, Billings, MT**, said they were not trying to slow the church's growth. It all boiled down to the safety and privacy concerns of the neighbors. He said the off-set intersection of Lewis Avenue and 24th Street West was very dangerous and a high accident area. The reason he was testifying was more for a privacy issue because he would now be exposed to more night-time white noise and 24th Street West noise. Mr. Burns encouraged the Council to consider the safety and liability issue from the church's standpoint. He suggested concrete barriers and fences be erected to protect the neighbors' privacy and safety and encouraged the church to meet with the neighbors in an organized fashion to discuss the options.
- **Keith Weatherford, 411 Cedar Avenue, Laurel, MT**, said he was the current Congregational President of the church. He said most of what they had heard was concerns of safety and noise. He said the plan had been very well thought out and meticulously gone over. The proposed parking lot to the south would help relieve the on-street parking. The church also had the same frustrations with the teenagers using their parking lot, leaving garbage, and emptying ashtrays. It was an ongoing problem because of the location. Mr. Weatherford asked the Council for their blessing and consideration so the church's mission and outreach could continue.

Councilmember Astle asked Mr. Weatherford how many registered members the church had, how many services were conducted, and how many children attended the pre-school. Mr. Weatherford said they had approximately 1,027 confirmed members. The church held a Saturday evening service from 5:00 to 6:00 with approximately 50 to 60 people in attendance and one service was held on Sunday morning from 9:00 to 10:00 with approximately 275 to 325 people in attendance, followed by adult bible study and Sunday School. He said approximately 80 children were enrolled in the pre-school.

Councilmember Ronquillo asked Deputy Public Works Director, Vern Heisler, to explain what intersection improvements had been made at Lewis

Avenue and 24th Street West in the past and if having a portion of the alley a one-way and another portion of the alley a two-way would cause more problems. Mr. Heisler advised the intersection had been studied and re-studied, discussed and re-discussed, by the City for many years. The latest change was the crosswalk on 24th Street West for the children going to school. He said it was safe to say a lot of thought went into the current intersection, and it could be looked at again. He said the alley had been a one-way south for quite a while and had been paved. Councilmember Ronquillo said he remembered in the past the City had tried to purchase the property on the southwest corner in order to straighten the intersection, but the sale price was very expensive.

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

Councilmember Astle asked Mr. Heisler if the south bulb-out at the intersection could be removed to provide for a right-turn lane. Mr. Heisler advised there was room to remove it but suggested that staff look back at the history of why it was installed. Councilmember Astle said former Councilmember Clark initiated squaring off the crosswalk with the offset of west Lewis to make it safer for the children. Mr. Heisler confirmed the crosswalk had been shifted to the south.

Mayor Hanel asked Mr. Heisler to explain the purpose for the bulb-outs. Mr. Heisler said the typical reason bulb-outs were installed was to shorten the distance for people crossing the street, and they also helped with on-street parking.

Councilmember Bird commented whoever approved the intersection at 24th Street West and Lewis Avenue was "obviously asleep at the wheel." She asked why the City would not re-analyze the intersection even though it had been studied many times before because former studies did not include the proposed 47-space parking lot at the corner.

City Administrator Volek commented studies were done using considerable staff time, energy, and expense. Council could create an initiative to direct staff and staff would respond, but to shift other projects to do another study within five years would be something staff would be hard pressed to do.

Councilmember Bird asked if the light at the crosswalk could be programmed so the pedestrians had a chance to cross and then there was still additional time for cars to turn after the pedestrians. Mr. Heisler said there were ways to time intersections that would fall under the intersection study.

Councilmember Ulledalen said it seemed there was inconsistency on what was allowed in alleys, and obviously the alley proposal was taking access to the church and putting it into the backyards of the people next door. He said he was struggling with the whole issue of closing off Lillis, restricting access, and forcing everyone back on Lewis. He asked if there would be any merit to opening Lillis back onto Arnold and making it a condition of approval. Mr. Heisler said it would be a very complex issue to reopen Lillis, and a review of the history as to why it was done in the first place would be necessary.

Councilmember McCall asked Ms. Cromwell to address the setback and height of the building again. Ms. Cromwell said Section 27-310 of the code allowed institutional or assembly uses such as churches, schools, hospitals, etc. to exceed the height of the district as long as an additional two feet of setback was provided for an additional one-

foot of height proposed over the maximum. Councilmember McCall asked Ms. Cromwell if it was a 3-story building. Ms. Cromwell commented height was not measured in stories. The drawing showed a third floor, second floor, and a main floor.

Councilmember Pitman said the number of stories became irrelevant because the current library was four stories, but the new library would be two stories and almost the same height. What is considered a one-story? Is there a height that defined it, or was it irrelevant? Ms. Cromwell said they were talking feet and not the number of stories.

Councilmember Astle asked for the current zoning of the church property. Ms. Cromwell said it was zoned Residential 7000 in 1971 after the church had been built.

City Attorney Brooks said according to Section 27-1503 of the code Council could (1) conditionally approve the application, (2) deny the application, (3) allow withdrawal of the application, or (4) delay for a period of time.

Councilmember Astle moved for approval of Special Review #902 as presented and with conditions as recommended by the Zoning Commission, seconded by Councilmember McFadden.

Councilmember Astle said he felt the church was a good neighbor and the nicest property on 24th Street West. He said there were 80 children in the basement, and he could not think of a good reason to say 'no' to moving them to ground level and into a safe environment. He said the requests during the public hearing for 3-foot barriers and 8-foot fences and having the church pay for burying all of the utility lines were unreasonable.

Councilmember McFadden said most of the issues brought up should be addressed by the City Traffic Engineer, and it seemed as though they were blaming the victim. He felt the alley would have far less traffic, the neighborhood would be safer for children, and what went on with mischievous teenagers should not be blamed on the church. Councilmember McFadden said he supported the proposal, and the improvements would make traffic situations in the neighborhood better instead of worse.

Councilmember Ulledalen said conditions could be attached to a special review to mitigate impacts. Councilmember Ulledalen made a substitute motion to delay at least a month so he could receive feedback on his previous questions on traffic in the alley and the merit of considering opening up access onto Arnold Lane, seconded by Councilmember Ronquillo.

Councilmember Bird said she agreed. She thought the neighborhood brought up some really good points that were not trivial concerns. The church had a great project but it was important to take the concerns of the neighbors. The delay would give the church and the neighbors time to sit down and have a discussion.

Councilmember Pitman asked Council not to support the substitute motion. The issues mitigating the neighborhood were part of the city growing, and the church could not be blamed for wanting to remodel. There were a lot of other things going on in the neighborhood that had nothing to do with the remodel.

City Administrator Volek asked if the meeting date of February 25 would be acceptable should the substitute motion pass. Councilmember Ulledalen said it would be reasonable for the discussion at hand. He would like feedback from staff and the church on reasonable ways to adjust the footprint and mitigate some of the impacts and address some of the current neighborhood concerns.

Mayor Hanel said he would oppose the substitute motion. He believed there had been sufficient testimony in favor and in opposition that evening and felt the testimony in favor far outweighed the opposition. He agreed the church was a good neighbor and believed a delay would not accomplish much of anything. A traffic study could be conducted regardless and agreed one should be initiated again. It is a bad intersection with poor alignment. Opening up Arnold would allow even more traffic through the area.

Councilmember McFadden said the substitute motion made sense to him in theory but when looking at the practicality and reality of the situation he disagreed with it. Taking the traffic problems and dumping them into the lap of the church's zoning request would create problems the church had no control over. Councilmember McFadden said he would support the original motion.

Councilmember Bird said it was the city's responsibility to deal with the issue. If they wanted to deal with the traffic issue, Council should support the substitute motion and deal with it now.

On a roll call vote, the substitute motion failed 2 to 6. Councilmembers Ronquillo, Pitman, McFadden, McCall, Astle and Mayor Hanel voted in opposition. Councilmembers Bird and Ulledalen voted in favor.

On a voice vote, the original motion was approved 6 to 2. Councilmembers Ronquillo, Pitman, McFadden, McCall, Astle and Mayor Hanel voted in favor. Councilmembers Bird and Ulledalen voted in opposition.

Councilmembers Bird and McFadden left the room at 8:15 p.m.

3. 2012 CTEP PROJECT RECOMMENDATIONS TO POLICY COORDINATING COMMITTEE (PCC) for funding of the Shiloh Conservation Area, Hope Church Sidewalk, Arrowhead School Safe Routes to School Trail, Poly Drive School Safe Routes to School, City-Wide Wayfaring and Directional Signage, Swords Park Trail Outlet (Boothill to Intersection of 6th Ave. N. & Hwy 87), and Ponderosa School Safe Routes to School Trail. Staff recommends formulating a recommendation of the CTEP projects to be taken to the Policy Coordinating Committee (PCC) meeting on February 19, 2013, by the City's PCC representative. (Action: approval or disapproval of staff recommendation.) Planner II, Lora Mattox, told Council they had received a presentation on the CTEP applications last week at the work session, and the projects were listed in the staff report.

Councilmember Pitman moved for approval of the CTEP project recommendations, seconded by Councilmember Astle. On a voice vote, the motion was 6 to 0.

Councilmembers Bird and McFadden returned to the room at 8:20 p.m. after the vote of Item #3 had been taken.

Mayor Hanel called for a brief recess at 8:20 p.m. and called the meeting back to order at 8:30 p.m.

4. EMPIRE PARKING GARAGE

A. APPROVAL OF DECLARATION OF UNIT OWNERSHIP AND OWNERS

ASSOCIATION BYLAWS. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) Assistant City Administrator, Bruce McCandless, advised his presentation would include Items 4A, 4B, and 4C. He showed the final drawing of the proposed garage and provided the following overview.

- 2009 - Need and approximate location were established by a Parking Needs Assessment.
- April 2011 - City purchased the Windsor Court and surface parking lot from Alley Cat, LLC; and the Northern Hotel Garage from Zootist.
- May 2012 - City contracted with OAC Services to manage the proposed design-build parking structure project.
- October 2012 - City Council approved a contract with Sletten Construction to build the parking structure.

He said a Purchase Agreement, Option and Lease Agreement, and Development Agreement were currently in place with Zootist, and a Purchase Agreement and Option and Lease Agreement were currently in place with Alley Cat, LLC. The Purchase Agreements and Option and Lease Agreements outlined most everything and called out items such as the City would lease the parking properties back to the former owners with option to purchase parking spaces and retail space in the new garage; the option to repurchase the property if the City did not build the garage at all or within two years; design and approval authority; and the right of first refusal if the City would sell the property and not build the parking garage. The Development Agreement with Zootist outlined the public improvements as part of the hotel remodeling such as the facade, landscaping, sidewalks, environmental remediation, etc.

Mr. McCandless said the new document was for the condominiums. From the outset it was anticipated the garage would be a unit ownership or condominium and there would be at least four different owners - (1) Public Parking Unit; (2) Hotel Parking Unit; (3) Alley Cat Parking Unit; and (4) Retail Spaces. The document created the Owner's Association, outlined the responsibilities, identified the percentage of ownership, identified the responsibilities for maintenance, and placed restrictions on splitting up, transferring, and the use of the parking. He said the City had always believed the reason for putting the garage in the proposed location and establishing unit ownership was to help support two projects – the Securities Building and the Northern Hotel. He said the Northern Hotel would be allowed to lease up to 30 spaces to non-tenants for customers of the hotel and up to four spaces for Alley Cat. The change to the Zootist Lease and Option Agreement covered the parking arrangements; a proposed \$420,000 payment over 12 months; and use of the Minnesota Avenue Parking Lot between the L & L Building and the Galles Building. The last item in the Lease and Option Agreement change had to do with the skybridge and that the City would make its best effort to construct it as part of the total project. After construction the declarations would determine how the skybridge would be managed and operated in the future. The proposal was to turn the skybridge over to the Northern Hotel. The

proposed change to the Zootist Development Agreement would be that the payments going to the hotel as part of the Development Agreement would be split between the City and the hotel until the General Fund loan to the project was repaid either by sale of the retail units, by the tax increment district, or a combination of both.

Mr. McCandless advised if Council approved the agreements that evening, staff was prepared to have the documents signed as early as tomorrow. He noted the Windsor Court building was already down, and the Northern Hotel garage was scheduled for demolition as early as February 15. The bond sale to fund the majority of the construction was planned for February, the bond proceeds would be in-hand in March, and construction would start in March or April 2013 and be completed the middle of February 2014. Mr. McCandless advised Bill Honaker of Alley Cat, LLC; Mike Nelson of Zootist; their attorneys; Carol Hardy, the author of the condominium documents; and Jeff Hunnes, the attorney for Downtown Billings Partnership, were in attendance.

Councilmember Ronquillo referenced information received in the Friday Packet that said the City would build the skybridge and the Northern would operate and maintain it; but the amendment received that evening did not say that. He asked if the proposed skybridge would only serve the Northern Hotel. He asked who owned and maintained the skybridge from the Crown Plaza. Parking Supervisor, Chris Mallow, said to his knowledge the Crown Plaza built, owned, and maintained the skybridge. Councilmember Ronquillo asked why the City would build the proposed skybridge if it would only serve the Northern Hotel. Mr. McCandless said the City had always anticipated, as part of the project that helped support the remodel and reopening of the Northern Hotel, that the skybridge would be part of the project with the cost included in the project. The skybridge would primarily benefit the Northern Hotel, and the Northern Hotel would be better at managing and operating it for its own self-interest. He said the amendment presented that evening had been in negotiation right up to that afternoon. He said the amendment did not call out the operation and maintenance arrangement but said the City would make its best efforts to build it. He said the Declaration of Unit Ownership called out that the City and Zootist intended to document the relationship with the City building the skybridge and the Northern Hotel operating and maintaining it.

Councilmember Bird asked how much the skybridge would cost. Mr. McCandless said that was hard to answer because there were special features of the parking garage that had to be accomplished in order to use the skybridge at the correct elevation into the Northern Hotel. Just the structure between the garage and hotel would run about \$100,000; but the parking garage itself needed to have special features such as an elevator opening on both sides to a mezzanine level at entry height of the hotel because the parking garage floors did not match up perfectly with the hotel's floor. Mr. McCandless said the skybridge had been in the project from the outset. He said he was 95% sure the skybridge would be built with the project, but if the funding were not available it could be installed at a later date.

Councilmember Pitman asked how they arrived at \$420,000 for one year of valet parking, as it seemed like a lot of money. Mr. McCandless said for some period of months there had been about \$450,000 to \$750,000 in the project budget for the replacement parking operation, both for construction workers and valet parking for customers and tenants. The \$420,000 was a negotiated amount with the Northern Hotel. He said even if the garage took 13 or 14 months to construct, there still would be

12 payments totaling \$420,000. Mr. McCandless agreed it was a lot of money, but there were a lot of unknowns as far as how many people would use the valet parking and how many people would have to be staffed on a 24-7 basis.

Councilmember Bird asked Ms. Volek for the status on the information related to using Park 3 as the valet parking garage and moving city employees into Park 1. Ms. Volek advised there were not sufficient spaces in Park 1 to accommodate city employees currently in Park 3. Mr. McCandless said the report was in draft form, and asked how current the statistics should be because they changed daily. Councilmember Bird said the whole purpose of her request was to see if it was relevant and reasonable to consider using Park 3 as the valet parking garage for the Northern Hotel because it seemed more practical and geographical to the hotel. Mr. McCandless said the parking garages all generated revenue and the proposal was to provide the valet parking at no cost to the Northern Hotel. If spaces were allowed in Park 3 for valet parking, the parking fund would need to be paid. They would not be paying the parking fund for the surface parking lot. He said it would be better utilization of parking assets to use a parking lot that did not generate any revenue rather than fill up parking garages. If they were not able to get all 110 spaces in the surface parking lot, the Downtown Billings Partnership had committed to use some of the spaces they had leased or reserved in the Park 1 Garage to make up any difference. Councilmember Bird said she agreed and the least amount paid for parking in the interim until the Empire Garage opened was what they needed to do. She said her point was to look into moving staff from a parking garage centrally located in the business district to another garage and open Park 3 for customers.

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

B. APPROVAL OF AMENDMENT #1 TO NORTHERN HOTEL DEVELOPMENT AGREEMENT. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) Councilmember Astle moved for approval of Item 4B, seconded by Councilmember McCall. On a voice vote, the motion was unanimously approved.

C. APPROVAL OF AMENDMENT TO CITY-ZOOTIST OPTION AGREEMENT AND LEASE, VALET PARKING PROPOSAL, AND SKYBRIDGE OPERATION AND MAINTENANCE PROPOSAL. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) Councilmember Astle moved for approval of Item 4C, seconded by Councilmember McCall. On a voice vote, the motion was unanimously approved.

D. RESOLUTION #13-19240 outlining parameters for Tax Increment Urban Renewal Revenue Bonds for Empire Garage. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) Councilmember Astle moved for approval of Item 4D, seconded by Councilmember McCall. 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. Comments here are limited to 3 minutes. Please sign in at the cart located at the back of the council chambers or at the podium.*)

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

COUNCIL INITIATIVES There were no initiatives.

There was no further business, and the meeting adjourned at 8:57 p.m.

CITY OF BILLINGS



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

ATTEST:

BY: Cari Martin
Cari Martin, City Clerk