

## REGULAR MEETING OF THE BILLINGS CITY COUNCIL

July 22, 2013

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

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

**MINUTES:** July 8, 2013 – Councilmember Cimmino moved for approval as submitted, seconded by Councilmember Pitman. On a voice, the motion was unanimously approved.

### COURTESIES:

- Mayor Hanel said recently-held Summerfair, Relay for Life, and Big Sky State Games were all, once again, very well attended and huge successes. He thanked all of the organizers, volunteers, and participants.
- Councilmember Ronquillo announced Our Lady of Guadalupe Church would be holding its 60<sup>th</sup> Annual Fiesta in South Park on Saturday from 10 a.m. to 6 p.m. There would be food, classic cars, and activities for the kids.
- Councilmember McFadden reminded everyone that dogs suffer from summer heat; and hot streets, parking lots, and sidewalks can burn the pads on their feet. He said dogs left in a hot vehicle can die from the heat even with the windows down and asked everyone to be mindful of their dog's health.
- Deputy Police Chief Joel Slade announced the value of service hours given by the 80+ active volunteers at the Crime Prevention Center the past year totaled approximately \$330,986.23. He said he was not sure what hourly wage was used to calculate the amount. He presented a "check" payable to the Police Chief in the amount of \$330,986.23 representing the accumulation of volunteer hours. Councilmember Ronquillo asked Deputy Chief Slade to talk about what the volunteers did. Deputy Chief Slade said the volunteers took the cold calls that had no suspect information or evidence and worked with the victims. They patrolled the city looking for abandoned vehicles and trailers being stored on the streets. The volunteers also had a bike program where they rode the trails and the rims to have a presence and report crimes to the Police. Mayor Hanel thanked the volunteers for their contribution and savings to the taxpayers. Deputy Chief Slade noted a volunteer barbecue was held and the volunteers were recognized at a Mustangs game the previous week. He said each volunteer was presented a "check" for his or her time spent. Mayor Hanel recognized James Mariska, a Crime Prevention Center volunteer, who was in the audience. Mr. Mariska had been a volunteer for six years.

## **PROCLAMATIONS: ADA Celebration Day in Billings, MT – August 2, 2013**

### **ADMINISTRATOR REPORTS - TINA VOLEK**

Ms. Volek commented on the following items:

- **Item 4 – Public Hearing and Special Review #908: a special review for a beer and wine license with gaming in a Community Commercial zone on Lots 1 through 8, Block 15, Central Heights Subdivision, 5<sup>th</sup> Filing, (including Lots 6 & 7 of C/S 1716) located at 111 South 24<sup>th</sup> Street West, Suite 14, Rimrock Mini-Mall.**
  - ✓ Copies of e-mails sent to Mayor and Council from James Routson, Angela Carlton, Neil H. Clark, Mitch Carlton, and Samuel Boggess in favor of Special Review #908 were filed in the ex-parte notebook.
  - ✓ Copies of e-mails sent to Mayor and Council from Shawna Halsey, Barbara Mulvaney, Kay Brown, and Stephanie Orme in opposition to Special Review #908 were filed in the ex-parte notebook.
- **Item 7 – Public Hearing and Resolution accepting the offer from Asian Sea Grill to purchase an approximate 5,000 square feet of restaurant space located on the ground floor of the Empire Parking Garage for \$251,000.**
  - ✓ Copy of letter and Agreement to Purchase from William D. Honaker of Alley Cat Investments, LLC, offering to purchase the approximate 16,600 square feet of retail condo space in the Empire Parking Garage for \$500,000 was sent in the July 19 Friday Packet. Copy was filed in the ex-parte notebook.
- **Item 8 – MPEA/Police Union Contract effective 7/1/2013 – 6/30/2015.**
  - ✓ Copy of revised contract approved by the MPEA Billings Police Unit on July 18 was sent in the July 19 Friday Packet. Copy was filed in the ex-parte notebook.
- Ms. Volek noted the server had gone down that afternoon. As a result, AgendaQuick went down and access to the program was unavailable online. She said IT was working on restoring the server.

### **PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: #1 and #8 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.

- **AI Swanson, 2226 Remington Square, Billings, MT**, referenced Item 8 and asked what COLA was used and asked if it affected both base salary and benefits. Ms. Volek advised the 2.9% applied to base salary and to the extent that benefits were reliant on the base salary, it would apply to them as well. It did

not apply to health insurance. She said the 2.9% was a "bargained" amount. In years past they used to include a reference to the CPIU and relied on it only. At some point they ceased doing that and bargained for a specific number, which was how the 2.9% came to be. It was a lesser amount than was granted in most of the departments at the county and lesser than the amount granted to state employees.

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

**1. CONSENT AGENDA**

**A. Bid Awards:**

**1. Park Restroom Remodels (Pioneer, Veteran's, Gorham, Central, Optimist, North, Stewart, Sacajawea and Mountview Cemetery)** (Opened 7/9/13) Recommend Fisher Construction, Inc.; \$434,941.

**B. Pretreatment Service Agreement** with Phillips 66 identifying terms and conditions to permit Phillips 66 Refinery industrial wastewater discharge into the City of Billings wastewater collection system for treatment; fees and rates based on an outside service contract, a one-time System Development Fee, three year Industrial Permit Fees, and a monthly wastewater rate based on metered flow measurement.

**C. Amendment #1, W.O. 12-42: Water Treatment Plant Laboratory Renovation.** Professional Services Contract, A&E Architects, \$21,000; and **extension** of contract term to June 30, 2014.

**D. Amendment** to Subdivision Improvements Agreement for Montana Sapphire Subdivision, Lot 9A, Block 1, changing Section III (E)(3) to allow a right-in/right-out approach from S. Shiloh Road.

**E. Approval** to initiate a street name change for South 12th Street West south of Midland Road; and set a public hearing date for August 12, 2013.

**F. Resolution #13-19295** creating a Council Ad Hoc Strategic Planning Committee consisting of Councilmembers Becky Bird, Angela Cimmino, Ken Crouch, and Jani McCall.

**G. Preliminary Major Plat** of Grand Peaks Subdivision, 4th Filing, generally located on the east side of 54th Street West, north of Grand Avenue; J & S Development Company, owner; Sanderson Stewart, agent; conditional approval and adoption of the Findings of Fact.

**H. Preliminary Major Plat** of Copper Ridge Subdivision, 5th Filing, generally located on the north side of Rimrock Road, east of 70th Street West, west of the

existing Copper Ridge Subdivision; Copper Ridge Development Corp, owner; Sanderson Stewart, agent; conditional approval and adoption of the Findings of Fact.

**I. Preliminary Plan of Subdivision for Rent or Lease** creating 96 residential rental units in four buildings on Tract 2A-3, Partington Park Subdivision, Fifth Filing, generally located on the southeast corner of the intersection of Avenue D and 17th Street West; West Park Shopping Center, LLC, owner; Sanderson Stewart, engineer; conditional approval and adoption of the Findings of Fact.

**J. Bills and Payroll:**

1. June 24, 2013
2. July 1, 2013

Councilmember Bird separated Consent Agenda Item 1A1. Councilmember Cimmino separated Consent Agenda Item J2. Mayor Hanel separated Consent Agenda Item I. Councilmember Pitman moved for approval of the Consent Agenda with the exception of Items 1A1, I, and J2, seconded by Councilmember Ronquillo. On a voice vote, the motion was unanimously approved.

Councilmember Bird referenced Item 1A1, and asked Mike Whitaker, Parks Director, to explain which of the nine restrooms would be remodeled and which of the nine restrooms would be replaced. Mr. Whitaker said Gorham Park, North Park, Optimist Park, Pioneer Park, Stewart Park, and Veteran's Park would be remodeled. Central Park and Sacajawea Park would be replaced, and Mountview Cemetery would receive a new restroom. Councilmember Astle said the cemetery's restroom would be brand new because one currently did not exist. Councilmember McCall moved for approval of Item 1A1, seconded by Councilmember Bird. On a voice vote, the motion was unanimously approved.

Councilmember Cimmino referenced Item J2, Invoice #767151, and said she needed to abstain due to her employment. Councilmember Astle moved for approval of Item J2, seconded by Councilmember Pitman. On a voice vote, the motion was approved 10 to 0.

Mayor Hanel referenced Item I and said there seemed to be questions and confusion on traffic and parking. He said according to what he had read, there was more than sufficient parking for the number of units proposed and asked Nicole Cromwell, Planner II, if that was correct. Ms. Cromwell said that was correct. They had applied to reduce the arterial setback to 17<sup>th</sup> Street West from the required 60 feet to centerline to 54 feet to centerline because of the way the units were laid out on the property. As far as she knew, they had met the off-street parking requirements for the reduced area of the mall and for the new apartments. Mayor Hanel said there was language regarding a lease agreement over some parking spaces presently being leased with the Mental Health Center and asked if it came into play with the current request or if it was a civil matter. Ms. Cromwell said it would be an agreement between the Mental Health Center and West Park Plaza. She said she thought they were working on the issues.

Councilmember Bird asked what the parking space requirement was for 96 residential rental units and four buildings. Ms. Cromwell said the off-street parking requirement would be based on the number of bedrooms in each of the units; one-bedroom would require one off-street parking space and two or more bedrooms would require one and a half spaces. Councilmember Bird asked how many spaces would be required for the particular development. Ms. Cromwell said she did not have the site plan in front of her so she could not say, but it was reviewed during the subdivision process.

Councilmember McCall moved for approval of Item I, seconded by Councilmember McFadden.

Councilmember Bird said given the request for the variance and the fact the Mental Health Center could potentially have a parking problem, it might be reasonable to hold off on the item until they worked out the differences. Ms. Volek said she had been advised by staff there was a deadline coming very soon, and postponement could end up preventing it from moving forward. Candi Millar, Planning Director, said if Council would like to apply a condition to the approval, they could as long as they could find there was a negative impact to the criteria such as local services, public safety, etc.

On a voice vote, the motion was approved 9 to 2. Councilmembers Ronquillo and Bird voted in opposition.

#### **REGULAR AGENDA:**

**2. PUBLIC HEARING AND RESOLUTION #13-19296 vacating a 10-foot right-of-way between Lots 10 and 11, Block 5, Wanigan Subdivision; Gerald Watson, petitioner. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** City Administrator, Tina Volek, advised there was no presentation, but staff was available to answer questions.

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

Councilmember Cimmino moved to accept the price of \$6,300 for the 10-foot right-of-way, seconded by Councilmember Pitman. On a voice vote, the motion was unanimously approved.

**3. PUBLIC HEARING AND SPECIAL REVIEW #907: a special review to allow the expansion of an existing outdoor patio from 1,200 square feet to 1,575 square feet in a Community Commercial zone on Lot 2, Block 1; the south 150 feet of the east 52 feet and the west 96 feet of Lot 3, Block 1; and the south 150 feet of the west 23 feet of Lot 4, Block 1, Van Ornum Subdivision, located at 1525 Broadwater Avenue. Jeff & JoLynne Flatness and Paul DeVerniero, owners; A & E Architects, agent. Zoning Commission recommends conditional approval and granting the waiver of the 600-foot separation. (Action: approval or disapproval of Zoning Commission recommendation.)** Nicole Cromwell, Planner II, began her presentation showing a zoning map of the subject property and surrounding properties, an aerial view, site plan of the proposed expansion, and photographs. She noted the expansion would be between an existing garage and the existing patio, there was no alley to the north so properties abutted each other by property line, and there was

adequate off-street parking for the proposed additional patio area. Ms. Cromwell said when the previous patio and liquor license were approved, it was not noted by staff that the location was within 600 feet of the Apostolic Church on 15<sup>th</sup> Street West south of Broadwater Avenue and Berg Park with playground equipment west of the location. She said one of several criteria the Council could use to determine when a waiver was appropriate was if the location where the alcohol was served was completely obscured from view from a park, church, or school. In this case, both the park and the church were on the edge of the 600-foot radius. The Squire Lounge could not be seen from the park or church, and the park or church could not be seen from the Squire Lounge. She said staff recommended to the Zoning Commission that the waiver be granted and the Zoning Commission concurred. The Zoning Commission was recommending the following eight conditions for approval of the patio expansion. She said the conditions were fairly standard for outdoor patios where there was alcohol service.

1. The special review approval shall be limited to Lot 2, Block 1; the south 150' of the east 52' and the south 150' of the west 96' of Lot 3, Block 1; and the south 150' of the west 23' of Lot 4, Block 1, Van Ornum Subdivision, generally located at 1525 Broadwater Avenue.
2. Development of the site shall be in substantial conformance with the site plan submitted with this application and shown in this staff report. Deviations from the approved site plan that show additional patio area greater than 10% of the total approved patio area of 1,575 square feet, or a building addition greater than 10% of the existing building or new parking areas will require additional special review approval.
3. The owner is allowed to have background music and un-amplified live outdoor entertainment on the outdoor patio lounge. Background music is amplified music not audible beyond the outdoor patio lounge.
4. All new exterior lighting with the exception of sign lighting shall have full cut-off shields so light is directed to the ground and not onto adjacent property.
5. The patio shall have a minimum of a 4 foot tall fence enclosing the patio. Access to the patio shall be from the interior of the existing building. There shall be an emergency exit gate from the patio to the parking lot.
6. The applicant must provide drawings at the time of building permit submittal showing the property can meet the required parking for the existing business and new patio area of 375 square feet, and meet all requirements of site development and zoning.
7. 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.
8. 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.

Ms. Cromwell noted there was a concern and written testimony received about the outdoor concerts not on the patio but in the parking lot. On advice from the City Attorney and normal operation of special reviews, they were confining themselves to the area being requested, which was the patio; so the conditions applied to the patio and did not apply to the parking area. The City had a revised noise waiver ordinance and

criteria for granting the waivers, and the Police Department and City Administrator's Office were going to work on the time limits and conditions of the waivers when they were granted.

Councilmember Astle asked if the building had been in existence with a full liquor license longer than the Apostolic Church. Ms. Cromwell said she believed they came into existence before the special review requirement was in place. Councilmember Astle said former Councilmember Vince Ruegamer had contacted him and his complaint was that the patio had amped music. Ms. Cromwell said that would be a violation of their previous special review. She said they could have an amplifier as long as the music could not be heard from the exterior of the property. She said if she were standing out in the parking lot, she should not be able to hear the music playing on the patio. Councilmember Astle said Mr. Ruegamer lived about two and a half blocks southeast of the Armory, and he was complaining he could hear their music.

Councilmember Ronquillo asked if the proposed patio would butt up against the casino on the corner of 17<sup>th</sup> and Wyoming. Ms. Cromwell said it would not. The patio expansion was only to the existing vacant garage and would not connect. He asked if they planned to leave the garage. Ms. Cromwell said they did.

Councilmember Ulledalen said it seemed like on most of the other patio approvals, they had said there would be no amplified music on the patio and asked for the difference between background music and unamplified music. Ms. Cromwell said unamplified, live outdoor entertainment such as a piano or guitar was permitted. They could have amplified music as background music, but it could not be heard beyond the patio. Background music was not meant to be loud entertainment. Councilmember Ulledalen asked if there was any way to enforce it and if the new noise ordinance applied. Mr. Ruegamer had also contacted him and his concern was he could hear the music from the patio in the homes quite a ways away. Did the City have any way of enforcing it and what would be the mechanism now with the new noise ordinance? Ms. Volek advised under the noise ordinance the City would, by permit, allow an individual to host a band with a closing time of 10:00 p.m. A process had been put in place to allow the people at dispatch to be made aware of the approved events so individuals who called in to complain could be told it would end at 10:00 p.m. If it did not conclude at 10:00 p.m., police would be dispatched to handle it. Councilmember Ulledalen asked about patio noise. Ms. Volek said the patio would not be allowed. Ms. Cromwell said if they received complaints about a normal night event that was in violation of a special review condition, it would be enforced the same as any other zoning violation.

Councilmember McFadden said Mr. Ruegamer was not the only person he had received complaints from but he was the most vocal. He said he lived four blocks away, could hear the music loud and clear at his house, it did not shut off at 10:00, and it looked like they used the patio for their mobile speakers. The neighbors were concerned the noise problem would get bigger if the patio got bigger. Ms. Cromwell said they could have an officer visit with the owners.

The public hearing was opened.

- **Jerry Richter, 1601 Custer Avenue, Billings, MT**, said he lived about 400 feet from the Squire Bar. He said he had lived in his home since 1977, and he was a lot older than the Squire Bar. He said he knew Mr. Ruegamer and thought he

was more concerned about the band than the patio. Mr. Richter said when he sat in his backyard and the band was playing, he had to listen to it regardless if he liked it or not. On July 12 the band played until 10:20 p.m. The following night he could hear the patio music and crowd noise from his house until at least 1:00 a.m. He said last Saturday, July 20, it sounded like they had amplified music on the patio that went quite late. Some people on Wyoming told him when the Squire had their shindigs, the residents could not park on their street because of the traffic and the next morning they had to pick up beer cans and trash. Mr. Richter said he was not trying to kill their business; but if they wanted to be a neighbor, they needed to be a good neighbor and comply with the regulations. They had clearly shown him they were not compliant because the music was going later and it was loud. He said he was opposed to the whole thing.

Councilmember McFadden asked how many yards were between his property and the Squire Lounge. Mr. Richter said it was about 400 feet to his back gate, and there were no fences or shrubbery to block the noise.

Councilmember Cromley asked if he was aware if anyone had filed complaints about the noise and what the response was. Mr. Richter said he was not sure but undoubtedly someone had called. He invited Council to sit in his backyard to see what he was up against.

- **Paul DeVerniero, 2979 Millice Avenue, Billings, MT**, said he was one of the owners of the Squire Lounge, and they were not doing this to offend any of their neighbors. The Squire Lounge had been at that location since 1973, and the patio had been there for approximately five years. When they had music on the patio, they bought a permit to have live entertainment until 10:00 and then they shut it off. There may have been a few times when it had gone past 10:00; they were not trying to offend anyone, they were just trying to run their business. They had some parking lot parties and most of the functions with live entertainment were fundraisers where they obtained permits. Fix at Six was scheduled for August 2, and they had upcoming functions for the animal shelter and bikers for babies. He said the music currently on the patio was on Thursdays and Fridays during the summer. The music on the patio came from a speaker but the music could not be heard from the parking lot. The proposed expansion was not to get more music and get louder, it was to add more tables for steak night on Thursdays, expand their business, and provide more services to their customers. They were not trying to offend their neighbors and they tried to abide to the permitted curfew of 10:00 p.m. It cost them \$35 every time they had entertainment on the patio.

Councilmember Ronquillo referenced the 4-foot high fence and asked if a higher fence would block some of the noise. Mr. DeVerniero said with the expansion they planned a 6-foot solid fence to help with noise. Councilmember Ronquillo asked if the expansion would butt up against the garage. Mr. DeVerniero said the drive-through currently between the garage and patio was originally designed so a fire truck could get to the back; however, he thought it would be virtually impossible. The new proposal would make the new roadway come from behind the garage so a fire truck could actually get to the back in case of an emergency.

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

Councilmember Astle moved for approval of Special Review #907, seconded by Councilmember Pitman.

Mayor Hanel addressed Mr. DeVerniero and said he had also received complaints not only from Mr. Ruegamer but others who lived on the 1600 block of Wyoming. He said he appreciated and admired their efforts and fundraising and respected the fact that the business had been there for many, many years and was a well-established business in the community. He said he was concerned about the noise and the failure to shut it off when it should have been shut off. He asked if they were prepared to pay a fine. Mr. DeVerniero said since he bought into the business the past year they had only one occasion when a police officer came by and asked them to lower the music, which was around 10:00 p.m. and they told the officer they were done at 10:00 p.m. He said he had no problem paying a fine if they went past 10:00 p.m. Mayor Hanel asked if he was normally there in the evenings. Mr. DeVerniero said he tried to be there when they held functions.

Councilmember Ulledalen asked what about the litter issue where people were carrying cans and bottles out of the establishment, especially after the concerts. He asked Mr. DeVerniero if he could make a point of having someone check out the neighborhood in the morning. Mr. DeVerniero said he usually policed the surrounding area himself almost every day, but there was also a Kwik Way across the street and another gas station on the other side of them that sold packaged liquor, and it might not be coming from the Squire. He said unfortunately he could not control it once it left his property. He said he would gladly police more of the area if there was a major issue of bottles and cans anywhere.

Councilmember McCall asked what the fine was for breaching the noise level. City Attorney Brooks said he believed it was a municipal infraction, and the first offense was \$110.

Councilmember Ulledalen asked Ms. Cromwell what she had heard about the live entertainment on the patio, not talking about the Fix at Six or any other fundraisers. Were they in compliance with the existing codes? Ms. Cromwell said with their existing special review from 2008 they would not be in compliance if they had amplified outdoor entertainment on the patio. They could move it into the parking lot, and it could be amplified there.

Councilmember Bird asked Ms. Cromwell if Council was being asked to vote for or against granting the 600-foot separation. Ms. Cromwell said that was one of the issues. Councilmember Bird asked for clarification on exactly what they were voting on. Ms. Cromwell said there were two items: (1) waiving the 600-foot separation for alcohol service from Berg Park and the Apostolic Church; and (2) granting conditional approval to expand the existing patio. Councilmember Bird asked if the 600-foot separation was not an issue at the time the patio was first approved. Ms. Cromwell said it was apparently not caught in the mapping; it was an oversight.

Councilmember Cimmino asked Ms. Cromwell to clarify that it was an all-beverage liquor license and not just a beer and wine license. Ms. Cromwell confirmed it was an all-beverage license.

Councilmember Pitman said they kept hearing there was a lot of complaining about the noise and asked if there were any official police reports to back it up. Ms. Cromwell said they did not have any zoning complaints in their office, but noise complaints would come in through dispatch when the noise was happening and an officer would be assigned.

Attorney Brent Brooks commented they could check dispatch records to see what calls, if any, had come in because of noise; but he was personally not aware of any.

Councilmember Pitman said they needed to focus on noise coming from the patio. Attorney Brooks said that was correct. There were two basic issues: (1) special review approval with the conditions or additional conditions Council believed appropriate to mitigate any impacts; and (2) code enforcement complaint-driven reports to the Police Department, which was a totally separate issue. It would be appropriate to have the Police Department or dispatch record the complaints.

Councilmember Ulledalen said the point of the special review was to mitigate impacts. He asked if they were already in violation of the existing special review by having amplified music on the patio. Ms. Cromwell said as long as the music could be heard beyond the patio, they would be in violation of Condition #3. Councilmember Ulledalen said they should know "loud and clear" right now that it had to stop because they were violating an existing condition of their current patio.

Councilmember Bird said the struggle she had was certainly not against the property owner and the expansion of the business; but it seemed to her five years ago when the original patio was approved someone dropped the ball, and the neighbors at that point had no opportunity to voice their concerns. She did not feel she could support it because there was a 600-foot separation issue, and the establishment was surrounded by a sea of asphalt and cement with no barriers to protect people living in the area from the sound.

On a voice vote, the motion was approved 8 to 3. Councilmembers Bird, McFadden, and McCall voted in opposition.

**4. PUBLIC HEARING AND SPECIAL REVIEW #908: a special review for a beer & wine license with gaming in a Community Commercial zone on Lots 1 through 8 (including Lots 6 & 7 of C/S 1716), Block 15, Central Heights Subdivision, 5th Filing, generally located at 111 South 24th Street West, Suite 14, Rimrock Mini-Mall. Rimrock Mini-Mall, LLC, owner; Blueline Engineering, agent. Zoning Commission recommends denial. (Action: approval or disapproval of Zoning Commission recommendation.)** Nicole Cromwell, Planner II, advised the City Council had recently re-zoned the subject property from Neighborhood Commercial to Community Commercial. She showed a zoning map of the subject property and surrounding properties, an aerial view, an interior floor plan of the proposed remodel, and photographs of the subject property and surrounding properties. She showed the location of Suite 14, the proposed location for the restaurant with beer, wine and gaming. She noted there were several breaks between buildings of the mini mall and no vehicular access from the mall to the alley. All buildings had rear doors; some were fire doors and some were access for staff to take out garbage or bring in supplies. She noted parking along the front of the mini mall, a drive approach on Eldorado Drive, and

several drive approaches along 24<sup>th</sup> Street West. She pointed out the location of Central Heights Elementary School, a sidewalk all the way around it, and access points to the sidewalk from the building itself. Ms. Cromwell showed a 600-foot radius map and where the subject property was within 600 feet of Central Heights Elementary School. The Zoning Commission questioned previous special reviews that were granted waivers from the 600-foot separation from Stewart Park because there were several locations in the Rimrock Mall that had either beer and wine licenses with gaming or all-beverage licenses with gaming. Ms. Cromwell said those waivers were granted before the current regulations in the zoning were updated and based on the facts that most of the locations were on the east side of the mall with no direct visibility between them and Stewart Park, no direct access, no alcohol or gaming advertisements, and because Stewart Park was a location where beer permits were sold by the Parks Department for events in the park. Ms. Cromwell showed the location of the Jackpot Casino at 2274 Central Avenue that was granted a waiver from the 600-foot separation from the church to the north on St. John's Avenue but not to the school. She said their mapping system had obviously improved since then because at that time it had been determined that there was not a separation requirement from the school when, in fact, the casino was clearly within 600 feet of the school. Ms. Cromwell noted the city code listed criteria to use for considering a waiver; one of which was there be no direct view of the subject building and it be completely blocked by other buildings from a school, church, or public playground; or be separated by an arterial street with no pedestrian, signalized intersection to cross the street; and there be no direct access between the two properties. She said Eldorado Drive fronted the school, there were sidewalks that connected the subject property to the school property, they were not separated by an arterial street, and the back of the subject building was visible from the school property. Ms. Cromwell advised that before a recommendation of approval or conditional approval could be made, a special review request must demonstrate conformance with the following three primary criteria: (1) The application complies with all parts of the Unified Zoning Regulations, (2) The application is consistent with the objectives and purposes of the Unified Zoning Regulations and the 2008 Growth Policy, and (3) The application is compatible with surrounding land uses and is otherwise screened and separated from adjacent land to minimize adverse impacts. Ms. Cromwell advised the application conformed to the first criteria in so far that it was within a CC district where on premise consumption of alcoholic beverages may be allowed by special review approval. The application did not conform to the second and third criteria. The Zoning Commission conducted a public hearing and was recommending that City Council not grant the waiver of the 600-foot separation from Central Heights Elementary School and deny the requested special review. Ms. Cromwell said the Planning Division was also recommending denial.

Councilmember Astle asked to see the slide of the interior floor plan. He said it appeared there would be 20 gaming machines, which was the maximum allowed by state law. He asked if there were any parking requirements. He said casinos, with or without food, were typically open from 8 a.m. to 2 a.m. Ms. Cromwell said the hours of operation were set by the Department of Revenue, so 2:00 a.m. was closing time. She said the off-street parking requirement was the same regardless of whether a restaurant had a beer and wine license or not. The parking requirement had previously been

approved when the building permit was approved for the Hawaiian BBQ Restaurant, so they could meet the off-street parking requirement.

Councilmember Ulledalen asked if the special review were approved that evening but the business failed after a year and the owners wanted to do something else with the liquor license, would Staff or City Council have any say over what they did once the location had been permitted. Ms. Cromwell said the approval went with the subject property and subject space so the conditions would go with that space. Councilmember Ulledalen said if they did not change the dimensions of the space, they could do whatever they wanted with the liquor license and Staff and City Council would not have any process in place to evaluate it or attach any conditions as long as they stayed in the confines of their existing location. Ms. Cromwell said that was correct.

Ms. Cromwell said she also wanted to state the Zoning Commission tried to think of conditions of approval that would mitigate some of the potential impacts to the surrounding property owners, particularly those who lived right on the alley. There were no real zoning-type conditions that they could place on it that would mitigate those potential impacts; such as not allowing any exiting out of rear doors for customers, or setting hours of operation since the hours were trumped by the state, or requiring so many seats that were only for food service, or limiting the number of gaming machines. Those types of conditions could not be enforced through zoning. The Zoning Commission was also concerned there was no significant barrier between the subject property and the school; and there were children who walked past the location on a daily basis to go to the bus transfer station to go to school outside their neighborhood.

Councilmember Cimmino asked Ms. Cromwell if there was vehicle access in the alley. Ms. Cromwell said there was vehicle access, and she thought there were some residences that had garages that came off the alley.

The public hearing was opened.

- **Kay Brown, 116 Pueblo, Billings, MT**, said it was her home and not a barrier. She sent an e-mail and photos to City Council earlier that day with her concerns so she would not reiterate. She said all of the photos she sent were taken on Sunday. She said "once you permit you allow" and the owners and management have permitted those types of things to happen in their neighborhood that would only be amplified if Council allowed the liquor license and casino to come into the area. Ms. Brown encouraged Council to deny the request for the community and safety of the children.
- **Connie Wardell, 514 64<sup>th</sup> Street West, Billings, MT**, said she was concerned about a casino near Central Heights School because children from her neighborhood were bused to that school. Central Heights had more busing than any other school in the school district, so it would affect not just the children of that specific neighborhood, but children from all over Billings. Every time she saw one of these requests, it made her sad. She wondered what it was that made people willing to encroach upon children and said she did not feel 600 feet was far enough to allow a casino and liquor license. While she was on the School Board she observed that kids paid attention to everything, and they tried to look inside what was going on in the casinos as they walked to and from school. Ms.

Wardell asked that Council uphold the denial and in the future not even consider a special review where it encroached upon children.

- **Marjean Narum, 2248 Alamo Drive, Billings, MT**, said she lived across the street from the school, and her neighbors along the mini mall did not deserve to have any more traffic to deal with in the alley where they liked to use their backyards. A greater concern was the school children. The 600-foot distance was there for a good, good reason. She asked Council to deny the waiver.
- **Kylan Coghlan, 3037 Gloxinia Drive, Billings, MT**, said he watched his children go the school, and they had zoning for a reason. There was no reason that the request should be granted. Six hundred feet was not that far. Children would walk by it and see it and not just during school hours. Children played in the area, and there would be additional vehicular and walking traffic. It was not just during school that they needed to worry about. The school bus drop off and pick up was on that side, so they would be very close to the structure. Kids would be walking and seeing what was going on at all times. Three hundred feet was not that far. He said it was not a good idea, and there were plenty of other locations for bars and casinos. If the property was sold and they did not know how it was zoned, it was not the City's responsibility to recoup business loss or expenses and pay for their mistake. He asked Council to uphold the Zoning Commission's recommendation. He said he may go as far as petitioning to get it zoned back to the previous zoning so they did not have to meet again on the subject. Casinos were money makers; and he did not feel it was that important to make money so close a school.
- **Marshall Phil, 2110 Overland Drive, #119B, Billings, MT**, said he represented the applicant and distributed packets to the Council. He said there were earlier questions about the MT Code Annotated, and the 600-foot separation between front doors did not really impact the decision simply because they had their 600-foot separation from property line to property line. The distance between the business itself and the walking distance to the school was about 780 feet from the front door of the business, up to Eldorado, across, and to the west entrance of the school; 980 feet to the north entrance of the school, and approximately 1,215 feet to the main entrance of the school on the east. Mr. Phil referenced the photos in the packet and said the subject building was obscured from the school property by homes and vegetation; all that could be seen was the back side of an earth tone building and the mechanical and HVAC systems. There was no signage on the back of the property or access with the exceptions of delivery and garbage. He also showed photos taken from the school property north to the Jackpot Casino. He said the casino could be seen from the school property, which was more visible than any component of the current request. The Jackpot Casino had a full liquor license, and they would only have a beer and wine license. Mr. Phil referenced the copy of the menu for the grill included in the packet. There were other places in Billings with similar situations such as the casino across Grand from Lewis and Clark Middle School and liquor sales close to the Bench School, so their request was not unique.

Councilmember Cimmino said she noted in the application they had measured the walking distance with a special instrument. Mr. Phil said it was a

tape measure with a wheel. She asked if the 1,215 feet to the east entrance was walking feet. Mr. Phil said the tape measured by feet. Pace wise it would be less than 1,200 paces.

- **Doris Mills, 3900 Arapahoe Trail, Billings, MT**, said she had owned and operated Le Boutique Gift Shops for 37 years. She moved to the Rimrock Mini Mall about three years ago shortly before it was bought out. The new owners gave it a facelift, did some remodeling, and it took a week just to clean the alley. The landlords were first class and would not put up with any “hanky-pank” and Rob Veltkamp, the leasing manager, was easy to get a hold of. She heard that Red’s Grill had the best hamburgers in Billings, and she was looking forward to a nice place to eat. Mr. Veltkamp had done a good job at getting a good mixture of people in the mall, and she was 99.9% sure the shopping center manager would not allow any noise or “hanky-pank.”
- **Rob Veltkamp, 2971 Spring Meadow Court, Billings, MT**, said he was the property manager for Rimrock Mini Mall. He said it looked pretty straight forward to him, and asked if there were any questions. They had followed Ms. Cromwell’s instruction. She knew they passed the state code but told them the city code trumped the state code and they were within 600 feet of the school. Ms. Cromwell instructed them of the three criteria to meet a waiver and said they would have to be able to prove there was enough barrier created from the school. Both he and the owner of the mini mall raised kids in the community, and they loved and were concerned about kids. The last thing they wanted to do was put a full-out bar and casino in the location. He told the applicants if they were planning on a full bar and casino it was not the place, but if they were willing to buy the entire restaurant equipment package from Hawaiian BBQ and were willing to have a grill and casino machines, the owners of the mini mall might be interested because they were looking for other food in the mall. He said they thought it would be a nice quiet fit for the mall and it would be a different concept from the 1-800 Casino that operated in Rimrock Mall for over ten years. They felt with Pueblo and the front yards, all the residences, all the trees, the fence line, the alley, and their big back wall, there was a big enough buffer and barrier to have a restaurant/casino facing the main arterial street in the front. Mr. Veltkamp said he walked the school grounds, and all that could be seen was the roof line, roof, and HVAC units that would not be going away. There was no signage on the back of the building, and the only things that happened in the alley were deliveries and the garbage truck twice a week. They had spent over \$6,200 since buying the property on alley cleanup, and they paid \$480/month to have security drive the alley twice a night. They had tried to be good neighbors.
- **Stuart Ellison, 11 W. Main, Belgrade, MT**, said he represented the ownership. They picked the location because of the high traffic volume. They checked on other similar locations that were actually much closer to a school and much more visible. They did not think there would be a huge issue, but obviously they were there that evening. Mr. Ellison said the property owners did not change the zoning knowing they would be following that closely. He did it separately and the reason he chose to go ahead was because they had several employees whose livelihood was based on their business, and he did not want downtime. It did not

have anything to do with the property owners trying to sneak something in ahead. He advised the back doors were all alarmed, and no one would be out in the alley.

- **Emilio Campos, 1448 Granite Avenue, Billings, MT**, said he represented the Hawaiian BBQ. He was told the restaurant/casino would be very low key, and he did not feel there would be a problem. It was a great location.
- **Penny Walton, 2236 Alamo Drive, Billings, MT**, said she would have a student going to Central Heights Elementary, and her husband went to Central Heights Elementary. The school had been there long before Rimrock Mini Mall and would be there a long time after. A waiver was a way to bend rules that were put in place for a reason. They were asking Council to bend the rules, which was not a good thing. She asked that the request be denied.

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

Councilmember Cromley moved to uphold the decision of the Zoning Commission to recommend denial, seconded by Councilmember Ronquillo.

Councilmember Pitman said he was having a struggle with their definition of a barrier and why the neighborhood was not acceptable to the Zoning Commission as a legitimate barrier.

Ms. Cromwell said one of the barriers described in the zoning code was that buildings block the entire view between the two uses; and since the homes on Alamo Drive were single story or story and one-half, they did not block the entire view of building to building. The Council could consider any barrier they wanted, and that was one of the barriers it could consider.

Councilmember Bird said she had four points to make. (1) When it was first brought before Council she remembered quite clearly that it was stated there were no plans to have gaming at the location; yet at the very same meeting Ms. Cromwell advised there had already been an application submitted for the property. The proponents for the special review really downplayed gaming, so the information Council initially received appeared to be a little disingenuous. (2) Precedent was not an item for consideration based on the approval of the Jackpot Casino within the 600-foot barrier because someone had dropped the ball. It was not a good precedent to use in making the decision. (3) As a Council, they had policies and ordinances for a reason, and they needed to be somewhat consistent how they dealt with the situation. (4) If they were to approve and go against the Zoning Commission they would be opening the door for the Rimrock Mini Mall to have events similar to those they just finished discussing with the Squire Lounge, and there were neighbors right next to the building. Based on what she knew and what they had heard, she had to support the Zoning Commission's recommendation to deny.

Councilmember McFadden agreed with Councilmember Bird and reminded everyone the school district was not in favor of putting a casino next to one of their schools.

Mayor Hanel stated he had also received a number of calls from teachers, and he and the City Council had received a letter from the school district expressing

opposition to allowing the casino so close to the school. He would be speaking in favor of the motion to deny.

Councilmember Cimmino said, in summary, it was a beer and wine license and also a place where burgers and beers would be served. She thought the general public expected to have something to wash down a hamburger. She said for the record, she went to the location twice; once she was driving in her vehicle and also on foot. She actually walked to the school from that location and as far as the potential for outdoor events she did not see any space where they could even have a patio.

City Administrator Volek asked for clarification that the motion was agreeing with the Zoning Commission for the reasons outlined and that Council concurred with the reasons. Councilmember Cromley said that was his intent.

On a voice vote, the motion to deny the special review request was approved 10 to 1. Councilmember Cimmino voted in favor of approving the special review request.

**5. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE**  
**#913: a zone change from Community Commercial (CC) to Residential Manufactured Home (RMH) on an 8,832 square foot parcel of land described as Lot 13, Kuhlman Subdivision. Duane and Carol Long, owners; Heather Long, agent. Zoning Commission recommends approval of the zone change and adoption of the 10 criteria. (Action: approval or disapproval of Zoning Commission recommendation.)** Nicole Cromwell, Planner II, commented it was an unusual zone change in that they were going from commercial zoning to residential zoning. The owners had a manufactured home on the property for many years prior to its annexation into the city. The county changed the zoning to Community Commercial to facilitate Mr. Long's business at the location on Josephine Drive, and Mr. Long was advised at that time his manufactured home would be non-conforming but legal. Approximately two and one-half years ago the vacant manufactured home became dilapidated, and Mr. Long removed it from the property. Mr. Long would now like to relocate a manufactured home on the property, and the only way to do so was to change the zoning to Residential Manufactured Home. Ms. Cromwell showed a zoning map, photographs, and an aerial view of the subject property and surrounding properties. She noted the zoning really did not match the uses in the whole neighborhood; there were many manufactured homes on Kuhlman Drive in Multi-Family zoning, a manufactured home court on the west side of Lake Elmo Drive, and an apartment building across the street. Ms. Cromwell said Mr. Long currently used the property for a shop building and storage lot for his construction business, and his daughter planned to live in the manufactured home to provide on-site security 24 hours a day.

The Zoning Commission held a public hearing and was recommending approval based on the following 10 criteria.

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

The proposed zone change is consistent with the following goals of the Growth Policy:

- Predictable land use decisions that are consistent with neighborhood character and land use patterns. (Land Use Element Goal, page 6)

The proposed zoning would permit the owner to re-establish a manufactured home on this lot in an area that has a mixture of manufactured homes and multi-family

residences. The proposed zoning is consistent with the neighborhood character and land use patterns between Main Street and Lake Elmo Drive. The proposed zoning is compatible with the existing uses on Josephine Drive and Kuhlman Drive to the north.

- More housing and business choices with each neighborhood. (Land Use Element Goal, page 6)

The existing zoning is restricted to commercial uses and site-built residential homes. The proposed zoning will allow the owner to re-establish a manufactured home on the lot while retaining the commercial zoning and uses to the west.

**2. Is the new zoning designed to secure from fire and other dangers?**

The new zoning requires minimum setbacks, open and landscaped areas, and building separations. The new zoning, as do all zoning districts, provides adequate building separations and density limits to provide security from fire and other dangers.

**3. Whether the new zoning will promote public health, public safety and general welfare?**

Public health, safety and general welfare will be promoted by the proposed zoning. The owner will have the opportunity to establish a conforming use of the lot. The resident of the manufactured home will be able to observe the activity on the commercial lot during non-business hours and this will enhance public safety.

**4. Will the new zoning will facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirement?**

Transportation: The proposed zoning will have no impact on the surrounding streets.

Water and Sewer: The City provides sewer to the property and water is provided by Billings Heights Water District.

Schools and Parks: There should not be any impact to schools from the proposed zone change.

Fire and Police: The subject property is currently served by the city Public Safety Services.

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

The proposed zoning provides for sufficient setbacks to allow for adequate separation between structures and adequate light and air.

**6. Will the new zoning effect motorized and non-motorized transportation?**

Traffic generation from a single family residence averages between 8 and 10 vehicle trips per day. This includes deliveries to the residence in addition to trips to and from by the occupants. The site is currently developed and the change in zoning should not have any effect on existing traffic patterns.

**7. Will the new zoning will promote compatible urban growth?**

The new zoning does promote compatibility with urban growth. The new zoning will

allow a manufactured home to be established in an area of mixed uses and mixed housing choices.

8. Does the new zoning consider the character of the district and the peculiar suitability of the property for particular uses?

The proposed zoning does consider the character of district and the suitability of the property for residential uses.

9. Will the new zoning conserve the value of buildings?

The existing commercial building and development to the west of Lot 13 will be conserved by the new zoning.

10. Will the new zoning encourage the most appropriate use of land throughout the City of Billings?

The proposed zoning will permit manufactured homes to locate in an area that has many lots developed with manufactured homes and is the most appropriate use of the property.

Councilmember Ronquillo commented he received a call from one of the neighbors stating the applicant had put up a new fence that really improved the property and asked that the request be approved.

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

Councilmember Pitman moved for approval of Zone Change 913, seconded by Councilmember Cimmino. On a voice vote, the motion was unanimously approved.

**6. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #914: a zone change from Residential 9,600 (R-96) to Residential 8,000 (R-80) on a 1.67 acre parcel of land described as proposed Lot 1, Block 4, Falcon Ridge Estates Subdivision, 2nd Filing. Falcon Ridge II, LLC, owner; Dennis Buscher, agent. Zoning Commission recommends approval and adoption of the 10 criteria. (Action: approval or disapproval of Zoning Commission recommendation.)** Nicole Cromwell, Planner II, said this was a new subdivision east of Copper Ridge Subdivision. The proposed zoning would allow two additional, single family patio homes on the property. Ms. Cromwell showed a zoning map and photographs of the subject property and surrounding properties.

The Zoning Commission held a public hearing and was recommending approval based on the following 10 criteria.

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

The proposed zone change is consistent with the following goals of the Growth Policy:

- Predictable land use decisions that are consistent with neighborhood character and land use patterns. (Land Use Element Goal, page 6)

The proposed zoning would permit the owner to increase the density of dwellings on the lot from 7 to as many as 14 units. The proposal is for 9 dwelling units. The proposed

zoning is consistent with the neighborhood character and land use patterns. The proposed zoning is compatible with the existing and proposed uses.

- More housing and business choices with each neighborhood. (Land Use Element Goal, page 6)

The existing zoning is restricted to single family residences on lots of at least 9,600 square feet. The proposed R-80 can allow single family dwellings on lots of at least 8,000 square feet or two-family dwellings (attached or detached on undivided lots) on lots of at least 10,000 square feet. The proposed zoning will allow more housing choices in this area.

**2. Is the new zoning designed to secure from fire and other dangers?**

The new zoning requires minimum setbacks, open and landscaped areas and building separations. The new zoning, as do all zoning districts, provides adequate building separations and density limits to provide security from fire and other dangers.

**3. Whether the new zoning will promote public health, public safety and general welfare?**

Public health, safety and general welfare will be promoted by the proposed zoning. The owner will have the opportunity to establish a block of patio homes that will have common area around the homes. The homes will be connected to city services and have access to city streets.

**4. Will the new zoning will facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirement?**

Transportation: The proposed zoning will have no impact on the surrounding streets.

Water and Sewer: The City will provide sewer and water to the property.

Schools and Parks: There should not be any impact to schools from the proposed zone change.

Fire and Police: The subject property is currently served by the city Public Safety Services.

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

The proposed zoning provides for sufficient setbacks to allow for adequate separation between structures and adequate light and air.

**6. Will the new zoning effect motorized and non-motorized transportation?**

Traffic generation from a single family residence averages between 8 and 10 vehicle trips per day. This includes deliveries to the residence in addition to trips to and from by the occupants. The site will be developed to include access to streets, sidewalks and the off-street trail system in the area. The new zoning should not have any effect on existing traffic patterns.

**7. Will the new zoning will promote compatible urban growth?**

The new zoning does promote compatibility with urban growth. The new zoning will allow an increase in density that is compatible with urban growth.

8. Does the new zoning consider the character of the district and the peculiar suitability of the property for particular uses?

The proposed zoning does consider the character of district and the suitability of the property for residential uses.

9. Will the new zoning conserve the value of buildings?

The proposed zoning will have a positive effect on the value of buildings in the area.

10. Will the new zoning encourage the most appropriate use of land throughout the City of Billings?

The proposed zoning will permit single family or two-family dwellings and is the most appropriate use of the property.

The public hearing was opened.

- **Dennis Buscher, 3671 Spalding Avenue, Billings, MT**, distributed maps of the area. He said Stan Helgeson of Helgeson Builders built the 18 existing high-end patio homes and wanted to build more. Mr. Buscher showed the current park area and proposed park area between the homes currently being built and the proposed homes. A neighborhood meeting was held at Yellowstone Country Club and a few people representing the patio home association attended and were in favor of it. They had received no opposition.

There were other speakers, and the public hearing was closed.

Councilmember McCall moved for approval of Zone Change 914, seconded by Councilmember Astle. On a voice vote, the motion was unanimously approved.

Mayor Hanel called for a recess at 8:25 p.m. Mayor Hanel called the meeting back to order at 8:35 p.m.

**7. PUBLIC HEARING AND RESOLUTION accepting the offer from Asian Sea Grill to purchase the approximate 5,000 square foot restaurant space located on the ground floor of the Empire Parking Garage in the amount of \$251,000. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

Assistant City Administrator, Bruce McCandless, showed an early 2011 sketch and a current sketch of the Empire Parking Garage and noted both sketches showed the retail space located on Montana Avenue frontage. He provided a brief review stating the City purchased the property in April 2011 and signed the design/build agreement in October 2012. The condominium agreements were approved by City Council in January 2013, and the City had been working with Mr. Honaker and Mr. Nelson since February to determine how to arrive at a purchase price under the

option agreements. He said the parking garage was on schedule, and they hoped it would open in April 2014. He showed a sketch of the first floor retail area and said it was designed for eight spaces based upon the column spacing, but more or less retail spaces were possible because none of the demising (separating) walls would be constructed prior to the actual construction of the shops. He said the space they were considering that evening had been designed from the outset as restaurant space, and it was between 4,500 and 5,000 square feet. On June 14, 2013, the City received an unsolicited offer from Asian Sea Grill; unsolicited from the standpoint that the City had not actively marketed the property because they had the option agreements in place with both of the former property owners. Mr. McCandless said after discussing the unsolicited offer with the City Administrator it was determined it was a legitimate offer, and it triggered City Code Section 22-902. In order to place the offer before City Council for consideration, staff needed to solicit bids or offers for the property, notify property owners within 300 feet of the property, and conduct an advertised public hearing. There was an offer deadline of July 16, 2013, and a second competitive offer from Alley Cat LLC was received. (Offer 1) The Asian Sea Grill's offer in the amount of \$251,000 was for about one-third of the space and represented about half of what the City needed to obtain from the sale of the retail units. The parking garage budget anticipated receiving at least \$500,000 for the retail units, and anything above that amount would lessen the reliance on the Tax Increment Fund. Advantages of selling to the Asian Sea Grill would be a known purchaser and a known use for the property. A potential disadvantage would be it may make the remaining interior units more difficult to sell. The corner piece was the most desirable piece on the frontage. Until the garage was completed, Alley Cat LLC had the first right of refusal on the property. (Offer 2) The offer from Alley Cat LLC was for the entire retail space at \$500,000. Advantages would be they would be completely done with the sale of the retail space, there would be a known developer, and the amount met the minimum budget requirements. A disadvantage would be the unknown uses for the remainder of the property. Mr. McCandless advised City Council could approve either one of the offers or reject both offers. He said if the City Council rejected both offers, staff would request instruction on what to do from that point forward. He said staff believed the property should be actively marketed either by the City or by a real estate professional.

Councilmember McCall said frankly she did not want to accept the offer that evening, and it needed to be sent back to staff to actively bid the property. It was an excellent property and given the opportunity and if advertised aggressively, they would receive a much better response. Her recommendation was not to accept the offer.

Councilmember Astle asked how the sale of the property was publicized. Mr. McCandless advised the solicitation and notice of public hearing were advertised in the Billings Times and posted on the City's website. The only other advertising done was in late 2010 or early 2011 by the Downtown Billings Partnership (DBP) before the project had started. The DBP prepared and distributed a Request for Proposals, and he understood they only received one response. At that time they really had nothing to sell so it was a broad solicitation, and the response received was also broad.

Councilmember Bird asked if staff had started working on a marketing plan for the property. Mr. McCandless said they had not.

Councilmember Cromley said there must be something special about the property in order for an unsolicited offer to trigger the procedure. Mr. McCandless said the process was set in the city code. Councilmember Cromley asked if the same process would be triggered if he offered to buy City Hall for \$100,000. Mr. McCandless said probably not because City Hall was not for sale; the retail units were for sale. Councilmember Cromley asked if the units were known to be for sale. Mr. McCandless said it was known by some but he did not know how widely it was known. Councilmember Cromley asked how the decision to sell the retail units was made. Mr. McCandless said the City Council made the decision two or more years ago. The City was not particularly interested in or good at being a landlord; so the idea was to sell the units to get them into private hands and become taxable, which would help support construction of the parking garage.

Councilmember McCall asked Mr. McCandless to review how the agreement occurred that gave Alley Cat the first right of refusal. Mr. McCandless said the basic agreements were principally negotiated between the DBP and the property owners and then the City came into it to get everything down into the fine detail and print. The City Council approved the agreements at the time the City purchased the properties in April 2011. Both property owners had the desire to at least be offered the opportunity to purchase some or all of the properties, and both property owners had options on the corner pieces and first right of refusal. If the City received a legitimate offer, until the construction was completed they would have the option to take the property for that same offered price. Councilmember McCall asked if there would be any legal barriers based on the original agreements if the Council wanted to go back out to an open bid and aggressively advertise the sale of the units. Mr. McCandless said he did not believe so, but they should do a more careful review just to make sure.

Councilmember Astle asked for clarification of Mr. McCandless' statement that until construction was completed, the first right of refusal would still exist. He asked if there could be no building concurrent with the building of the garage. Mr. McCandless said that was correct, and Sletten Construction would not turn the property over to anyone else until they had the property inspected and accepted as a complete structure. He said there may be some opportunity for some interior work prior to the entire structure opening or being completed, but it would be very limited. Until the construction was completed and as-built plans were filed, there was nothing there for the City to legally convey to anyone. He said property could not be legally conveyed until the structure was complete, and he did not feel a potential purchaser of the property would want to put a lot of money into something they did not actually own.

Councilmember Cromley asked for clarification. If Council approved the sale to Asian Sea Grill for \$251,000, Alley Cat could still purchase it for \$251,000. Mr. McCandless said that was correct.

Mayor Hanel noted they received only Page 1 of 8 of the commercial buy-sell agreement, and there were terms and conditions on the missing pages they should be aware of. Mr. McCandless said the terms and conditions were not very well outlined because they were not real certain what they had available for sale. It was an unsolicited offer so conditions for the sale had not been set by the City. Mr. McCandless advised he would send the remaining pages to the Mayor and Council.

City Attorney Brent Brooks told Councilmember Cromley that Mr. Sorenson of Moulton Bellingham had represented Mr. Honaker (Alley Cat) in the past with the Option Agreement, and he was not sure if Councilmember Cromley was aware of it. Councilmember Cromley advised he would recuse himself.

Councilmember Cimmino addressed Ms. Volek and said she had inquired through e-mail following the work session on Monday night because it was her understanding the way she read the agenda that the Asian Sea Grill's bid of \$251,000 was made public by publishing the agenda packet Monday at 12:39 p.m., so anybody had access to the bid amount because it was on the City website. It was her understanding the second offer was made the following day by the 2:00 p.m. deadline. The way she understood it Monday night from Mr. McCandless the second party could not reach an agreement with the City and decided not to bid as of Monday night. Ms. Volek said initially, and asked Mr. McCandless to respond. Mr. McCandless said if he indicated that Mr. Honaker, or Alley Cat, could not bid on the property, he misspoke. What he meant to say was that they did not exercise their option to purchase the property. Councilmember Cimmino said Mr. McCandless had indicated the square footage was appraised by an independent appraiser or realtor. Mr. McCandless said the price the City offered to Mr. Honaker and to Mr. Nelson was based on two pieces of evidence; (1) a real estate market analysis performed by a local commercial realtor; and, (2) a cost estimate prepared by OAC Services, the project manager, to estimate the cost to the City for the basic structure and then how much additional was necessary to make the space so it would accommodate retail or office usage (i.e. higher ceilings to reduce vibrations, delivery hallways, glass for a storefront system). Both estimates came out in the range of \$45 to \$50 per square foot. Councilmember Cimmino said following that particular price quote or evaluation; including the entire first floor, it would amount to \$747,000. Mr. McCandless said that was correct.

Councilmember McFadden asked if Mr. Honaker would have to match the Asian Sea Grill's offer of price per square foot if he wanted to exercise his first right of refusal. Mr. McCandless said that was correct. Mr. Honaker's offer was not an attempt to match what had previously been submitted in the unsolicited offer; it was an outright bid for the entire property and it equaled approximately \$30 per square foot versus the offer from the Asian Sea Grill of approximately \$50 per square foot.

The public hearing was opened.

- **Connie Wardell, 514 64<sup>th</sup> Street West, Billings, MT**, said it was a unique property for Billings because nothing quite like it had been attempted. She sat through a number of the Downtown Billings Partnership meetings as they worked through how it would work. She thought the real estate community was aware that the property was there and there was a first right of refusal. The fact that someone would come forward and submit an offer of that amount was pretty significant. She agreed with Councilmember McCall that they needed to really market the property. Generally, the price per square foot received on a large amount of space was less than the price per square foot received on a smaller amount of space. She said the Asian Sea Grill was a destination restaurant, and they were constantly full despite their current location on the edge of a

warehouse district. She said it would be wonderful to have them located downtown, and it would attract new dinner clientele to downtown. She felt from a financial standpoint for the City it was time to market the property at the current rate.

- **Emilio Campos, 1448 Granite Drive, Billings, MT**, said most people knew the history of Montana Avenue and what it was like before, and Mike Schaer had made a big difference and helped bring in many different restaurants that had enhanced Montana Avenue. Mike Schaer offered lower prices because he wanted to change Montana Avenue. Independently-owned restaurants were quite an attraction and brought a lot of people downtown. The Asian Sea Grill would create approximately 40 new jobs downtown. He showed pictures of the proposed Asian Sea Grill and said it would complement the other businesses and attract new businesses. He said the Asian Sea Grill was offering a premium price.

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

Councilmember Astle moved to reject the offer presented from the Asian Sea Grill and to market the property through a real estate professional, seconded by Councilmember Ulledalen. Councilmember Ulledalen said he understood the motion was to reject both offers. Councilmember Astle said they did not have the second offer to reject or accept based upon what they had been given so he wanted to reject the offer and put it out under a professional and basically start over. Councilmember Astle said he wanted to disapprove and reject the offer and request a real estate professional through a Request for Proposal.

Mayor Hanel said there were two offers and asked if the motion was to reject any and all offers at the present time. Councilmember Astle said the agenda did not include the second offer and reflected only the approval or disapproval of the Asian Sea Grill offer. They could not approve or disapprove something not on the agenda because there had not been a public hearing for Mr. Honaker's proposal. City Attorney Brent Brooks said that was correct. It was totally within the Council's discretion as current owners of the property on how they wanted to proceed.

Councilmember Ulledalen said they needed to go back to square one because it was the kind of thing that made them look bad. If they accepted the offer at this point without actively marketing the property, there were people out there that would say they had no idea it was available. They needed to be as aggressive as they could about it and whether they did an RFP process or considered a multitude of bids on pieces, on the total, or a combination, there were a number of things they needed to do and be more aggressive about presenting it to the public.

Councilmember Cromley advised again he would abstain from voting on the motion.

Councilmember Pitman said it was important to thank Asian Sea Grill for making the offer and moving the process forward. He said he hoped they would re-submit a proposal and not give up on it. They were not saying 'no' to them, but were saying the process was a little messed up and they were going to go back to square one and start again. Councilmember Pitman said he would support the motion.

Councilmember Bird concurred with the previous comments. They had one shot to make the most of a unique and wonderful opportunity downtown, but they needed to do it with an eye toward equity and opportunity for all who may be interested.

Mayor Hanel said he was in favor of the motion but from the Council's standpoint and maybe through an initiative, they would like guidelines drafted with regards to marketing and acceptance of offers, and so forth.

Councilmember McCall said she was thinking along the same lines and, in addition, it would be helpful to have answers to questions brought up that evening that neither Bruce nor staff were able to answer to make sure they had everything clear.

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

**8. MPEA/POLICE 7/1/2013-6/30/2015 UNION CONTRACT. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** City Administrator Tina Volek advised on July 3 the representatives of the City and Montana Public Employees Association (MPEA), Billings Police Unit, reached tentative agreement on a contract. The contract was approved by the MPEA membership on July 18 and was before Council that evening for approval. The contract was for two years running retroactively from July 1, 2013, through June 30, 2015. The contract included a 2.9% cost of living adjustment (COLA) for each of the two years. The first year would cost \$249,400 and the next fiscal year would cost \$256,633. Two other significant pieces were agreements from the MPEA for two features that were new to the process. (1) a pay for performance feature in which an employee who did not earn at least a "meets expectation" rating in seven major areas during his or her annual performance evaluation would not be eligible for a pay step increase or for incentive certification pay for the next year and then only if they met the appropriate rating in that category. (2) an absence control agreement in which an employee may be subject to progressive discipline for using sick leave under false pretenses; for repetitive tardiness or sick leave use; or for using sick leave more than three times in conjunction with scheduled days off, legal holidays, weekends, and similar times. These were very different from the way they had normally worked their contracts, and she commended the MPEA for being willing to work with the City on those items. Ms. Volek advised Council had adopted the budget without COLA built in. She said there was enough for quite a period of time to cover payroll, but they would bring a quarterly budget adjustment for the increase that matched the COLA for that year if the contract were approved that evening.

Ms. Volek advised there were still two outstanding contracts. They had settled on a 3-year contract with the IAFF that would come to the Council for approval on August 12. They were continuing to negotiate with the Teamsters.

Councilmember Ronquillo complimented staff on the excellent job negotiating the contract. Ms. Volek said it was a good process, and MPEA and the City worked hard to resolve their differences.

Councilmember Ulledalen said the City currently had a budget shortfall of somewhere around \$120,000, so it would add an additional \$250,000 to the shortfall. He said they were dealing with a deficit of around \$400,000. Ms. Volek said that was correct. His said it was not a bad raise, and it was a group of people they could not pay too much for what they were doing. The problem he had was they were doing nothing to

deal with the budget shortfall and “kicking the can down the street” to three or four people who would be new to the Council and asking them to solve the problem. They were taking money out of savings. They knew they had about \$9 million in savings, but they did not know how much they should keep for perpetual savings. They had no guidance from staff on what was an appropriate amount. They knew they would need an additional public safety levy and they knew they needed additional police officers. He thought they were compounding their fiscal problem and “kicking it down the street” to someone else. Ms. Volek said it was closer to \$10 million, and it was beyond the budgeted reserves. It was an unbudgeted reserve that was compiled, in part, with direction from Council not to put money into operations. It was compiled with the concept that the City would need to move forward on the public safety levy, which was currently being discussed. They were also working on the new strategic plan with a sub-committee meeting scheduled for Thursday at 5:30 p.m. With the strategic plan they could re-evaluate their priority based budgeting activity, adjust their results, and use the tool more effectively. They had always anticipated, because of the flat mill levy and because of re-appraisal and its impact, they were going to have issues they needed to find a way to resolve. The public safety levy was certainly one way to do it.

Councilmember Bird referenced the new absence policy and said she assumed it was added in the contract because of problems in that area. Ms. Volek said she did not think it was an excessive problem but it was an issue that was raised with MPEA. Councilmember Bird asked if the 2.9% was a COLA. Ms. Volek said it was a COLA.

Mayor Hanel said a minute was added for the time allowed for the physical agility test. He asked if it complied with the state. Ms. Volek said the state added one minute to the amount of time to complete the Montana physical fitness test and because of that, the City matched it. Mayor Hanel said Councilmember Ulledalen had brought up some good points. In light of the unrestricted reserves available, Mayor Hanel asked if there would be a chance that the union or one of the other unions would seek arbitration if the contract was rejected, considered unfair, or re-negotiated for a lesser amount. Ms. Volek said only Police and Fire could go to arbitration. The Mayor and Council had been provided in the past with information on past results of arbitrations in the State of Montana. She said the evidence was there was a leaning toward the organized unions.

Councilmember Ulledalen asked what the final outcome was for Kalispell when they lost their arbitration. Ms. Volek said Kalispell had threatened cuts in their staffing. She thought they ended up re-negotiating, and they took a lesser increase.

Councilmember Bird asked if it was the absolute cost of the contract or if they were also looking at costs related to any other benefits part of a larger package in terms of the real costs for the contract. Ms. Volek said the other item they had negotiated that had a potential financial impact was the cost of a program called Health Insurance to Retirement, which meant the City would continue to pay the health insurance for the employee but by passing it through their salary. They could not predict what the cost would be. The health insurance program was working very well as a result of several steps taken last year that drastically cut costs. They bargained an increase in the benefit to the additional dollar amount the City had to pay, which was approximately \$800, but not more than 15% of that as a cap. Councilmember Bird asked if it was new. Ms. Volek said it was bargained last contract with the police and two years ago with the