

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

September 23, 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. Councilmember Cimmino gave the invocation.

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

MINUTES: September 9, 2013 – Councilmember Cimmino moved for approval, as written, seconded by Councilmember Pitman. On a voice vote, the motion was unanimously approved.

COURTESIES:

- Police Chief St. John presented a Certificate of Appreciation to Don Blyton, the owner of Billings Towing, and his staff for pulling citizen and police vehicles from flooded areas in the downtown area at no charge following the recent rainstorms. Mr. Blyton recognized his grandson, D.J., who operated the tow truck; his son, Don, Jr.; and his wife, Joanne.
- Police Chief St. John presented David and Sara Schrader a Certificate of Appreciation for helping an elderly woman at the Billings Clinic on July 6th who was confused and looking for her husband. The Schraders learned her husband was on the third floor and helped re-unite them. Several hours later the Schraders recognized the same woman looking very confused in the area of 6th Avenue North and North 27th Street. They turned their vehicle around and found the woman in the Albertsons parking lot. The woman did not know her address and could not find her way home. A police officer took the woman home and then submitted a letter commending the Schraders for demonstrating kindness and great awareness. He said the Schraders actions were exemplary and if shared could encourage others to take the time to assist others in need.
- Police Chief St. John said on August 15th at 8:30 a.m. a citizen, Sherrie Cummings, observed an erratic driver northbound on Virginia Lane. She called 9-1-1 and continued to follow the car as it turned onto Rimrock and south onto Normal where it drove over a curb and onto the ditch bank where it became high-centered. Ms. Cummings was very concerned it was a DUI driver and remained on the phone with dispatch. After a few minutes, the grass underneath the vehicle caught fire. Lt. Mark Cady was the first to arrive on-scene and by that time the engine compartment was engulfed in flames. While Lt. Cady attempted to battle the blaze, Sgt. Justin Jagers arrived with a fire extinguisher and a tool to attempt to break out the window of the vehicle since the doors were locked, and the driver was making no attempt to get out. The flames grew thwarting the

officers' efforts to extract the driver from the vehicle. Officer Bob Ellison and Officer Rich Gilmore arrived with fire extinguishers to help push back the flames to allow the other officers time to attempt to unlock the door. Every time Lt. Cady reached into the vehicle, the driver pushed his hand away from the lock. Due to the intense heat, Lt. Cady had to abandon his efforts and other officers attempted to pry other doors open. The entire front of the vehicle was engulfed in flames which drove the officers back. MSU-B Campus Officer Ken Murphy and Assistant Chief Adam Davis arrived and used fire extinguishers to slow the fire and allow the officers one last chance to rescue the driver. The officers were able to pull the driver out right before the entire vehicle was engulfed in flames. Police Chief St. John showed a video taken from Lt. Cady's vehicle of the incident. He said they learned later the driver was not intoxicated but was suffering from dementia. Chief St. John presented Ms. Cummings with a Certificate of Appreciation for being a citizen who went over and above and preventing a fatality. He presented Officer Ellison, Officer Gilmore, Lt. Cady, and MSU-B Officer Murphy and MSU-B Assistant Chief Davis with the Billings Police Department Medal of Valor for their actions. He noted Sgt. Jagers would also receive the Medal of Valor, but he was unable to attend the council meeting that evening due to training. Police Chief St. John said the City's partnership with MSU-Billings was second to none, and it was a seamless transition when they helped each other. He noted MSU-B Police Chief Forshee was also in attendance representing the Chancellor who was not able to attend.

- Councilmember Bird recognized the Alzheimer's Walk that was held the previous Sunday at the Zoo. She said approximately 400 people participated to raise money to find a cure for Alzheimer's disease.

PROCLAMATIONS: None

ADMINISTRATOR REPORTS - TINA VOLEK

Ms. Volek commented on the following items:

- **Item 5: Public Hearing and Resolution authorizing the sale of city-owned property described as Lampman Parkland, Ramada Parkland, and Briarwood Parkland.** An incorrect public hearing date of October 15, 2013, was discovered in the resolution after the packet had been published and posted. The correct date was September 23, 2013, and the correction to the resolution had been made.
- **Item 6: Public Hearing and Resolution approving Park Maintenance District assessments for FY2014.** Copy of e-mail sent to Mayor and Council from George and Roberta Freeman, dated 9/18/13, asking for Council's support of the proposed resolution assessing all property owners the PMD fees. Copy was filed in the ex-parte notebook.
- **Reminder:** September 30 was a fifth Monday, so there would be no work session or regular council meeting that evening.

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: 1, 9, 10, and 11

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.

- **Kelly McCarthy, 625 Yellowstone Avenue, Billings, MT**, said he was the Treasurer of the Billings Industrial Revitalization District (BIRD) and referenced Item D. He said the BIRD had an agreement with the City to review the applications, and he wanted to point out the Boyer Group had been a wonderful partner. Their building was gorgeous; it was a great addition to the neighborhood; and it would bring an additional \$300,000 in tax revenue to the city, county, and state. He thanked the Boyers for investing in the city; welcomed them to the neighborhood, and requested approval of Item D.

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

1. CONSENT AGENDA

A. Bid Awards:

1. **W.O. 09-12, Inner Belt Loop, Phase I.** (Opened 9/10/2013) Recommend Riverside Contracting, Inc.; \$2,169,126.

B. Billings Public Library Moving Services Agreement with Hallet & Sons Expert Movers, Inc.; \$62,860.

C. CTEP Project Specific Agreement with Montana Department of Transportation for the Hope Church Path; CTEP Grant - \$84,197; City of Billings - \$13,051; total funds available - \$97,248.

D. Development Agreement with Billings GSA, LC, providing partial reimbursement from the East Billings Tax Increment Finance District (TIF) for certain public improvements.

E. Declaring Surplus Property and amending the current Surplus Property Disposal Procedure allowing City staff, in conjunction with the Purchasing Agent, to make immediate determinations on the disposal of Library, Planning Department, and Community Development Division surplus property.

F. Preliminary Minor Plat of Amended Lot 2A, Block 1, Western Sky Subdivision, generally located on the west side of South 44th Street West south of King Avenue

West; King Meadows LLC/Cal Kunkel, owner and subdivider; Blue Line Engineering, agent; conditional approval and adoption of the Findings of Fact.

G. Preliminary Major Plat of Emma Jean Heights Subdivision, 2nd Filing, generally located on the west side of Bitterroot Drive, south of Wicks Lane in northeast Billings Heights; Felton Associates, Inc., owner; Interstate Engineering, agent; conditional approval and adoption of the Findings of Fact.

H. Bills and Payroll:

1. August 26, 2013
2. September 3, 2013

Councilmember Pitman separated Consent Agenda Item 1A1. Councilmember Cimmino separated Consent Agenda Items C, D, F, G, H1 and H2. Councilmember McCall moved for approval of the Consent Agenda with the exception of Items 1A1, C, D, F, G, H1 and H2, seconded by Councilmember Pitman. On a voice vote, the motion was unanimously approved.

Councilmember Pitman referenced Item 1A1 and said it was a project that had been in the works for almost two decades. He said he separated the item to make sure everyone understood how important the road was and how excited they were to begin the process of the Inner Belt Loop. He pointed out the bid came in almost \$800,000 below their expected cost. He asked for Council's support. Councilmember Pitman moved for approval of the first phase of the Inner Belt Loop, seconded by Councilmember Ronquillo. Councilmember Cimmino advised she had been directed by her employer to abstain from all Public Works Department projects involving engineering and architectural companies, so she would be abstaining from voting on Item 1A1. On a voice vote, the motion was approved 9 to 0.

Councilmember Cimmino referenced Item C and said she needed to abstain for any potential or perception of conflict of interest. Councilmember Pitman moved for approval of Item C, seconded by Councilmember Ronquillo. On a voice vote, the motion was approved 9 to 0.

Councilmember Cimmino referenced Item D and said because it was considered another architectural project she needed to abstain for any conflict of interest. Councilmember Pitman moved for approval of Item D, seconded by Councilmember Ronquillo. On a voice vote, the motion was approved 9 to 0.

Councilmember Cimmino referenced Item F and said because an engineering firm was involved she needed to abstain. Councilmember Pitman moved for approval of Item F, seconded by Councilmember Ronquillo. On a voice vote, the motion was approved 9 to 0.

Councilmember Cimmino referenced Item G and said because an engineering firm was involved she needed to abstain. Councilmember Pitman moved for approval of Item G, seconded by Councilmember Ronquillo. On a voice vote, the motion was approved 9 to 0.

Councilmember Cimmino referenced Items H1 and H2 and said she would be abstaining from all invoices submitted by any architectural firms, construction

companies, and any and all firms within the region. (H1 - #768681; #768684; #768685; #768698, #768724, #768773, #768789, #768794, #768815, #768836)(H2 - #768844, #768868, #768870, #76888, #768893, #768905, #768924, #768929, #768933, #768938, #768952, #768955, #768978). Councilmember Pitman moved for approval of Items H1 and H2, seconded by Councilmember Ronquillo. On a voice vote, the motion was approved 9 to 0.

REGULAR AGENDA:

2. PUBLIC HEARING AND SPECIAL REVIEW #911: a special review to allow expansion of Trinity Church of the Nazarene in a Residential 9,600 (R-96) zoning district on a 3.5-acre parcel of land legally described as Lot 28, Block 2, Howard Heights Subdivision, and addressed as 25 Hilltop Road. Trinity Church of the Nazarene, owner; J.D. Shanahan and Durward Sobek, agents. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.) Planner II, Nicole Cromwell, began her presentation showing a zoning map and photographs of the subject property and the surrounding properties. She noted the owner was proposing to remodel the front of the building and expand it beyond the 10% expansion allowed without a special review. They would add a new entryway, a covered porte-cochere, new bathrooms, and a seating area. The remodel would address some of their accessibility requirements, as well as add new office space. Ms. Cromwell showed the proposed site plan, which also included anticipated future expansions, an artist's rendering of the addition, and aerial photos of the property.

Councilmember Pitman said it was important to point out that just to the east the property was owned by the Baptist Church. Ms. Cromwell said the two churches were right next door to each other, and each had 5-acre parcels with lots of room for expansion.

Ms. Cromwell said the Zoning Commission was recommending approval based on the following 10 conditions.

1. The special review approval shall be limited to Lot 28, Block 2 Howard Heights Subdivision generally located at 25 Hilltop Road.
2. The special review approval is for the construction of an addition to an existing church. The addition to be constructed now is 1,500 square feet with 2 future building additions and future parking lots as shown on the submitted site plan. 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, including the current a future expansion, 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 future

parking lot or any new light pole will be 15 feet or less above grade.

5. No outdoor announcement system is allowed on a permanent or temporary basis.
6. No construction or demolition activity will occur before 7 am or after 8 pm daily.
7. Any new sign will require sign permit approval from the Planning Division.
8. The site will be developed in substantial conformance with the submitted site plan including landscaping, parking and building location.
9. 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.
10. 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 pointed out in Condition #3 that the 10% expansion allowance under the special review approval included the future additions and parking lot, so it was not just for the current expansion.

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

Councilmember Pitman moved for approval of Special Review 911, seconded by Councilmember Ronquillo. On a voice vote, the motion was unanimously approved.

3. PUBLIC HEARING AND RESOLUTION #13-19313 modifying Street Light Maintenance District 301, Josephine Crossing Subdivision, to extend street lighting to the remainder of the subdivision. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) City Administrator 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 for approval of Item 3, seconded by Councilmember Bird. On a voice vote, the motion was unanimously approved.

4. PUBLIC HEARING to receive input on the City's 2012-2013 Draft Comprehensive Annual Performance Evaluation Report (CAPER) for Community Development Block Grant (CDBG) and HOME Programs. No action is required. Community Development Manager, Brenda Beckett, began her PowerPoint presentation explaining that each year the City of Billings was required to report on the results of its federally funded CDBG and HOME Programs and submit a report to HUD. She said they were in the third year of their 5-year Consolidated Planning Process. Ms. Beckett discussed the following five strategies that primarily targeted lower income

households and affordable housing; and reviewed their accomplishments for the current year.

Strategy #1: Promote the preservation of the existing supply of safe, affordable housing in the community.

Strategy #2: Promote new affordable housing opportunities.

Strategy #3: Work as an active partner with non-profits, neighborhood groups, and others to address housing and community development specific to lower income and special needs households.

Strategy #4: Promote the preservation and revitalization of the community's older neighborhoods.

Strategy #5: Provide assistance to agencies serving lower income households and special needs populations to assist the homeless, the elderly, minorities and those with disabilities.

Ms. Beckett said they had a Community Development Board made up of nine members, and currently they had two vacancies. Their financial resources for the current year were pretty small for the HOME and CDBG side. They had nearly \$850,000 in CDBG, and they had spent \$647,394; which included leftover funding from the prior year, and they had nearly \$450,000 in the HOME budget. She said they had drawn down \$1.3 million for all of their grant programs. They also had a Council Reinvestment Fund allocation of \$250,000, which was made available for disbursement on May 1, 2013. As of today's date, 14 households had been committed to the fund, or 74%, to include \$13,000 in assistance and \$124,000 in mortgages with an average payment of \$675, including taxes and insurance. The average household income was \$30,700; average household size was 2.8 family members; and the interest rate was 3.44%. Ms. Beckett reviewed pie charts of their budget allocations by program and type. Ms. Beckett said their leveraging ratio was 1:3, which was much less than last year because they were doing more loan programs. The biggest leveraging amount was in the First Time Homebuyer area. They leveraged \$3.7 million with the available funding from last year, including \$143,571 of cash and in-kind resources generated in one year for the VISTA Program. Ms. Beckett commented the Southside Senior Center was one of their best sub-recipients, who had raised an additional \$50,000 for their remodel and kitchen equipment.

Ms. Beckett said total grant awards generated for the City through the Community Development Division since July 2005, outside of CDBG and HOME, was \$3,696,873.

The public hearing was opened. There were no speakers, and the public hearing was closed. No action was required by the City Council.

5. PUBLIC HEARING AND RESOLUTION #13-19314 authorizing the sale of city-owned property described as Lampman Parkland, Ramada Parkland, and Briarwood Parkland. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) Park Planner, Mark Jarvis, said staff and the Sale of Parkland Committee had been working the past year and a half analyzing parklands and trying to determine which parcels could be sold. At the June 17th work

session they received direction to proceed with the sale of Lampman and Ramada Parks. He noted there were also three parkland parcels in Briarwood Subdivision that had been reviewed and had not yet been brought to Council; however, Parks had been contacted by an individual from Briarwood asking about purchasing one of the three parcels, so staff was also including that parcel. Mr. Jarvis indicated the subcommittee had recommended to the Parks, Recreation and Cemetery Board (PRC Board) that the proceeds from the parkland sales be used to (1) pay for costs incurred in the sale process; (2) pay for park improvements in the area where the land was sold; and (3) pay for development of community and regional parks in Billings; and the PRC Board adopted the recommendations.

Lampman Parkland

Mr. Jarvis said Lampman Park had been in existence since 1955. Staff held a public meeting on January 24, 2013, to discuss options for the park and those in attendance were amenable to development but wanted to know costs. Councilmember Bird asked how many people attended the meeting. Mr. Jarvis said there were approximately 50 people in attendance. Councilmember Bird asked what the boundary requirements were for noticing people of the meeting. Mr. Jarvis said they noticed all of Lampman Subdivision. He said staff developed the following four options with costs:

- Full development of Lampman Park and Lampman Strip Park - \$1,885,000
- Full development of Lampman Strip Park and sale of Lampman Park - \$941,000
- Full development of Lampman Park and no development of Lampman Strip Park - \$710,000
- No development of either park.

Mr. Jarvis said a non-binding straw poll was sent out to over 612 properties in Lampman Subdivision and north of Monad. They had a 32.7% return with approximately 60% of the respondents not wanting any type of development, and the remainder wanting some type of development split between the other three options. A comparative market valuation was done on the property in June 2013, and the estimated value was \$210,000. The recommendation would be that the proceeds from the sale of Lampman Park are used to pay for the costs incurred to sell the parcel, and the remainder be used for additional improvements to Lampman Strip Park.

Councilmember Bird asked if staff had received any expressed interest from potential buyers and any indication of their intended use for the property. Mr. Jarvis said he had received one letter from a developer and one letter from a church congregation. Councilmember Bird asked what the property would be zoned once it was sold. Mr. Jarvis said it could be a detail of the sale, or the purchaser could make the zone change.

Councilmember Crouch asked what kind of development would be planned for the Lampman Strip Park. Mr. Jarvis indicated the improvements would be in accordance with the master plan, such as a picnic shelter; additional trails; or an open, grassy field for recreational purposes. Councilmember Crouch asked about playground equipment. Mr. Jarvis said he believed playground equipment was also in the master plan.

Councilmember Ulledalen asked if there would be any issues if someone bought Lampman Park and retained the underlying Public zoning. Planning Director Candi Millar said Public zoning would allow uses such as churches, schools, or recreational uses. Councilmember Ulledalen asked if commercial could come in under the existing Public zone. Ms. Millar said it could not.

Mr. Jarvis said the recommendation of staff and the Sale of Parkland Committee was to move forward with the sale of Lampman Park.

Ramada Parkland

Mr. Jarvis said Ramada Park consisted of two parcels in two separate subdivisions (Silverwood and Pineview) currently zoned as R9600. An attempt was made in 1997 to sell the parkland but a petition protesting the sale was received from property owners, and it was not sold. Creation of a park maintenance district was started in 2003 or 2004, but it was never completed for an unknown reason. A comparative market analysis was done in August 2013 with a value ranging from \$80,000 to \$140,000 depending on the marketing decisions.

- Sell as one parcel \$80,000
- Sell as 2 parcels \$125,000
- Sell as 4 parcels \$140,000

Mr. Jarvis indicated two letters of interest had been received for purchase of the two parcels south of the ditch. Council's direction to staff was to sell Ramada Park, and the Sale of Parkland Committee's recommendation was to sell Ramada Park with the proceeds used to pay for costs incurred in the sale process and construction of up to two picnic shelters in Veterans Park, which was the closest, larger park to the subdivision.

Briarwood Parkland

Mr. Jarvis showed a triangular piece of parkland totaling .15 acres in Briarwood Subdivision and said it had been in existence since 1982. It was being brought to Council because of a recent inquiry to purchase it. The Sale of Parkland Committee was recommending sale with proceeds used to pay costs incurred in the sale process and to upgrade Shelter #2 at Riverfront Park, which was the closest developed park to Briarwood Subdivision. He said Shelters #1 and #3 had been upgraded through Boy Scout projects; so it would be a good opportunity to use the proceeds to upgrade Shelter #2.

Councilmember McCall asked if that particular piece of parkland was the only parkland in Briarwood. Mr. Jarvis said there were several others and showed their locations on the map. Councilmember McCall said previously there had been a lot of discussion about one of the natural parks in Briarwood and the amount of development. She asked if that was the same property. Mr. Jarvis said it was not.

Councilmember Ulledalen asked if the triangular piece was separate from the other piece of parkland so if it were sold, it would not impair the value of the other parcel. Mr. Jarvis said that was correct.

Mayor Hanel asked if the value identified for Lampman Park was the result of an appraisal or a market analysis. Mr. Jarvis said it was a comparative market analysis. Mayor Hanel asked if only one had been done. Mr. Jarvis said that was correct. Mayor Hanel said he thought the value seemed quite low to him.

Councilmember Bird asked if Mr. Jarvis knew what the proposers' intended use was for Ramada Park. Mr. Jarvis said the owners of the two adjacent properties were proposing to purchase the land up to the centerline of the ditch to increase the size of their lots.

Councilmember Pitman asked if any of the parkland in Briarwood would be developed. Mr. Jarvis said a master plan was done several years ago and at that time there did not seem to be an interest to develop the parks.

Councilmember Ronquillo said there had been meetings, and the majority of the people in Briarwood wanted their parks left natural. He said he distinctly remembered being told "leave it alone and good-bye."

Councilmember Cimmino asked if there had been any responses from surrounding property owners over the sale of Ramada Park because she had received phone calls; and seven or so of the people who called indicated they wanted to see it remain a natural park because their children, grandchildren, and great grandchildren enjoyed it as a natural park. Mr. Jarvis said he had received two phone calls requesting that it not be sold.

The public hearing was opened.

- **Gene A. Herbert, Sr., 3014 Morledge Street, Billings, MT,** said he lived directly across the street from Ramada Park. He said the natural park was a real plus in their decision to purchase their home 36 years ago. The natural park was very important to them and their subdivision, as it was a safe place to walk their dogs, for their children to play and for families to gather. During the spring and summer the active ditch attracted different wildlife and many ducks and wild birds built their nests on the banks. Ramada Park needed to be left alone as a natural park.
- **John McFadden, 711 Grand Avenue, Billings, MT,** asked Councilmember Ronquillo why the people in Briarwood took the attitude towards him and asked him to leave. Councilmember Ronquillo said they were trying to present the property owners with a master plan and ask what they wanted done; and they said they wanted their parkland left alone. Mr. McFadden asked if they gave any reason why they did not want to take advantage of what was being offered. Councilmember Ronquillo said they wanted it left natural.
- **Everett Jones, 3027 Morledge Street, Billings, MT,** said he lived next to the natural Ramada Park. He felt he was misled when he was sold his property because he was told at that time that Ramada Park was a dedicated park and no one would ever build next to him, so he designed his home to overlook the park. He said the last time the city tried to sell the park, he remembered being told the park would be left a natural park if they could maintain it. That was when he took over the maintenance of the park, and he did not know of anyone who had

complained about the park since then. He said it was much better cared for now than when the city maintained it. The park was used daily, and it was not a throw-away, no-use park. Mr. Jones asked for the definition of a "Park."

Councilmember Ulledalen asked Mr. Jones how much of the park he mowed. Mr. Jones said he mowed all of it, including the ditch banks. He bought a tractor so he could mow it, and people around him gave him cash to buy the gas. He cut out about 12 Russian Olive trees, and he hauled the garbage to the dump.

Parks Director, Mike Whitaker, said the definition of a park was "Public space that is set aside for the enjoyment of the community." He said there were several categories of parks, i.e. natural parks; neighborhood parks that were more developed and mainly served specific neighborhoods; community parks that served an approximate 3-mile radius; and regional parks like Rose Park with services the whole community used.

- **Carole Jones, 3027 Morledge Street, Billings, MT**, said she was speaking against selling Ramada Park. She said Billings was currently marketing their family-friendly environment. Riverstone Health's latest health survey revealed 80 to 85% of adults living in Billings were obese or overweight. A natural park offered varied uses such as seasonal activities, dog and owner exercise, and communal gatherings. The City Council's citizen survey reported that neighborhood parks and large parks were very high on the priority of community services that were used. Ms. Jones said she could not find a Parks and Recreation Mission Statement on the website, nor could she get one when she called. She said selling Ramada Park would be contradicting the City's mission statement and asked Council to vote against selling the park.
- **Dane Bradford, 3118 Comyn Coulee, Billings, MT**, said he lived in Briarwood and asked to confirm that the only proposed park to be sold was the small triangular piece. Mr. Jarvis confirmed it was just the small triangular park area. Mr. Bradford said he was the president of the Comyn Coulee Private Drive Association, and the small park area being sold was adjacent to Comyn Coulee Drive. He wanted to be assured that if the property sold the responsibility of the private drive association dues for road maintenance would fall on the new owners.
- **Cathy Inglett, 3045 Canyon Drive, Billings, MT**, said their backyard was Lampman Park. She said one of the parties interested in the property was a church and asked about the second party. Mr. Jarvis said he had been contacted by a developer, but he was not told of the intended use. Ms. Inglett said she was concerned about housing prices if an apartment was built on the six acres.
- **Tom Smith, 3008 Ramada Drive, Billings, MT**, said the visualization of the park was a bit off because the ditch was a little more southern. He said he lived adjacent to Ramada Park, and he had made an offer to purchase the land immediately adjacent to his property and below the centerline of the ditch. He said Ramada Park had been in existence since 1967, and the other half on the Morledge side came many years later; they were actually segregated into two parcels. His concern was how the sale would be managed and the character of the neighborhood because the covenants, conditions, and restrictions that

affected the rest of the neighborhood were not on the parkland. He requested that the parcel on the Ramada side, if sold, have the covenants, conditions, and restrictions that everyone else in the Pineview Subdivision had; and the land on the Morledge side be subject to the covenants, conditions, and restrictions that everyone in the Silverwood Subdivision had. Mr. Smith requested that the resolution be amended to make it a public bid and auction.

Councilmember Cimmino asked Mr. Smith if his offer was based on one parcel, two parcels, or four parcels. Mr. Smith said he offered a 4-parcel approach - the centerline of the ditch to the south on the Ramada side; the Morledge side and then the two parcels on the north side of the ditch.

Councilmember Cimmino asked Attorney Brooks if covenants, conditions, and restrictions were privately enforced. Attorney Brooks said it depended, and he would need to look at them and report back to the Council. He said as a deed restriction the covenants, conditions, and restrictions could be attached as an exhibit to any deed if the property was sold.

Councilmember Ulledalen commented if the neighbors purchased the property themselves, they would not really care; but the issue was how to protect the neighbors if the property was sold to a developer with another idea. Attorney Brooks said if they did conduct a public auction, it would be wise for the Council to decide on and articulate what conditions of the sale it would like before the sale was advertised and immediately before the auction.

Councilmember Bird asked Mr. Smith what his interest would be for purchasing the property. Mr. Smith said he would do a boundary line adjustment and make it part of his lot. Councilmember Bird asked Mr. Smith if he would be supportive of the City selling the property if he were not interested in the property. Mr. Smith said he did not know. The park had been there a long time, and it was a valued part of the neighborhood. Mr. Jones had done a wonderful job caring for the park in recent years, and he and Mr. Legare had helped maintain the south side.

Councilmember Ulledalen asked Mr. Smith if he knew any history on the creation of the PMD in 2003-2004 that was never completed. Mr. Smith said it died due to lack of neighborhood interest.

- **David Legare, 3009 Morledge Street, Billings, MT**, said he lived right behind Mr. Smith, and he had made an offer to purchase the small triangle north of his home. In 2003 or 2004, the City was going to sell the park, and everyone became upset and did not want it sold, so he tried to figure out a way to eliminate costs and liability for the City. It was at that time Mr. Jones decided to maintain the north part, and he and Mr. Smith maintained the south part; and that was the primary reason the park maintenance district did not go anywhere because no one had to do anything. Mr. Legare said his intent would be to invest in the park district and hopefully put in grass, sprinklers, and one or two park benches, which would maintain its current use. They would like to keep their park in some fashion.

Councilmember Ulledalen asked about the ditch easement. Mr. Legare said he and Mr. Smith had a survey done in 2003 to address the City's concerns and at that time the records showed the High Ditch had a 20-foot easement from

center on each side for maintenance and other purposes. His concern was the City would sell it to a developer and then they would have litigation regarding the covenants.

- **Dale Inglett, 3045 Canyon Drive, Billings, MT**, said when they moved into their home in 1983 Monad was just a gravel road with little traffic. Eventually a bridge was put over the canal and traffic increased significantly. An apartment complex was built on the north side of Monad, and the traffic became almost unbearable. Mr. Inglett asked how another apartment complex would impact the current traffic on Monad and 32nd Street West.

Councilmember McCall asked Mr. Inglett if he would have a problem with the sale of the park if the property were used for single family or a church and not for a multi-family apartment building. Mr. Inglett said probably not. When he bought his house, he was told it was dedicated parkland. The only development he had ever seen was a sign saying "Lampman Park" but someone ran over it.

Councilmember Bird asked if there was a neighborhood park within a reasonable distance from his home. Mr. Inglett said there was not, so he and his grandson used Rose Park or the school off 32nd Street West. Councilmember Bird asked if he felt there should be a developed park or more homes in his neighborhood. Mr. Inglett said he was seeing a shift in the neighborhood where more families were moving in with younger children. He thought a developed park would be great; they had been promised one for many years.

- **Bill Cole, 3733 Tommy Armour, Billings, MT**, said he was on the Park Sale Committee and was available to answer questions. He said the committee was tasked with the job of getting several dozen properties off high center that had been there for decades. His understanding was that Council was not being asked to make any final decisions on the sale of any of the particular properties but to authorize staff to move ahead with the sale process consistent with the ordinance describing the procedure. He said he was "almost shocked" that even though hundreds of people lived around Lampman Park, not one single person had said they were willing to pay for development of a park. He felt it was important the City try to maximize the value of Lampman Park, so the Council may want to consider doing its own zone change if it would add to the value of the park. He said he agreed with the Mayor's comment that the \$210,000 price seemed very low. Mr. Cole said Ramada Park had difficult issues, and Council might want to consider whether there was a solvent-like approach, particularly the sale of the two south parcels to the interested parties. It would still maintain a lot of the value of the property to the north of the ditch, which was the majority of property.

Councilmember Ulledalen commented they were in the quagmire that their predecessors left in 1995, which was it was a lot easier to just not talk about selling off land they had no plans for. Regarding Lampman Park, doing a zone change upfront made a lot of sense because Council would have some control over what went in, and it would take away some of the questions of the surrounding neighbors. Regarding Ramada Park, it was indicative of a lot of other parks that were old county dedications in the 1960's, and there were question marks when the land was platted that were still question marks today.

Councilmember Bird said she did not understand why selling Lampman Park seemed to be a no-brainer. Mr. Cole said it depended on what the alternative would be. He asked if she was thinking about moving ahead with a park maintenance district. Councilmember Bird said the parks were a pretty serious topic for the City and one of her areas of interest. They had a master plan, and people had expected a park for decades. Previous Councils, for whatever reason, did not implement anything. It seemed to her, just because people previously had not done their job, it did not necessitate "let's just dump it and get it off our back," particularly when it was a prime piece of property in a part of town that was densely populated and did not have a reasonably-accessible neighborhood park. Mr. Cole said he agreed. The sad reality was the City had zero General Fund dollars to pay for the development of the park, and the practice the City had developed was if you want a park you have to pay for it. The neighborhood for the past 50 years had said they did not want to pay for it. Councilmember Bird said it made more sense to invest in Lampman Park than in Lampman Strip Park because the strip park to her was not a park; it was part of the trail system. She asked what the committee's discussion was that went into the value of improving the strip park. Mr. Cole said the trail was already part of the strip park, the ditch went along the park, and there may be underground sewer lines, so it could not be sold to generate money to provide development of the larger park.

Councilmember Ronquillo commented they knew they would have an uphill battle selling parks. The committee kicked out the parks that had problems. People did not want them developed so the City needed to get rid of them one way or the other. They were costing the City money, and no one wanted to spend their money to develop them. He thanked the committee for their hard work.

Councilmember McFadden asked if there had been any discussion by the committee on how to minimize the pain and turmoil to the neighbors when land was sold. Mr. Cole said there was a need for a transparent process so people could provide input through a public hearing and surveys; and if there were a sale, another opportunity to talk about the details.

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

Councilmember McCall asked Mr. Jarvis if he had received any negative calls from any of the neighbors because they did not like Ramada Park as a natural park. Mr. Jarvis said he was not aware of any complaints. Councilmember McCall asked what other downsides there would be, other than the issue of the City's liability, to keeping it a natural park. Mr. Jarvis said other than the liability there was not much of anything the City did as far as maintenance at this time. Liability was the biggest issue. Councilmember McCall said she assumed the liability was wrapped into a comprehensive policy for all of the parks. Mr. Jarvis said he was sure it was.

Councilmember Cimmino asked if the same realtor/appraiser provided the comprehensive market analysis on all three properties. Mr. Jarvis said he provided two; they did not get a comparative market analysis on the Briarwood property.

Councilmember McCall moved for approval of the authorized sale of Lampman and Briarwood Parks based on conditions that Legal would define, seconded by Councilmember Pitman. Councilmember McCall said she came that evening fully prepared to vote for all three parks. Clearly they had asked the Parks Board to go down the path, and everyone had done an excellent job. It was very compelling and clearly evident to her that Ramada Park was well used and well loved by the neighbors, and she could not support the sale of the property.

Councilmember Ulledalen said it was obligating the buyer of the Briarwood parcel to the maintenance of the private road that already existed and asked if they could do that. Attorney Brooks said he did not think they could make it a part of an existing association, because it was a stand-alone park owned by the City. He suggested, as a condition, that anybody interested in purchasing the parcel be notified that they themselves would be responsible for the maintenance of the property.

Councilmember Cromley asked if the City was responsible as the current owner. Attorney Brooks said he was assuming if it had been accepted as a dedicated park, the City was responsible for maintaining it. Mr. Jarvis said he was not made aware of the Comyn Coulee Road Association until that evening, and he was not aware of the City participating in the association. Mayor Hanel confirmed that no estimated value had been done on the Briarwood parcel; there had just been interest shown by a citizen. Mr. Jarvis said that was correct.

Councilmember McFadden asked if the motion would give them any avenue to reassure the people living near Lampman Park that their neighborhood would remain zoned single-family. Councilmember McCall said it would not.

Councilmember Ulledalen made an amendment to the motion with regards to the Lampman sale that the City initiate a zone change that matched the surrounding neighborhood. He said then they would not have to worry about someone buying it and wanting to put in a major multiplex. It would assure the neighbors there would be some coherent development. The City would then initiate the process and move forward with the sale identifying what developer was buying and identifying what the neighbors would be getting. The amendment to the motion was seconded by Councilmember Cimmino.

Mayor Hanel commented he thought the decision on the motions, specifically on Lampman Park, may have been influenced by the \$210,000 that was presented. He said he personally felt it was far too low. He initially would have been in favor of the motion and amended motion, but the more he thought about it with the convolution of testimony and concern, he was leaning more towards voting against both.

Councilmember Pitman clarified they were not actually selling the properties at that point. If Councilmember McCall's motion passed, it was just saying they were moving forward, they were going to iron out the issues discussed, and it would ultimately come back to Council for a yes or no. Both motions were moving the process forward and at any point they could stop it or adjust it. They specifically asked Parks for the information, they brought it forward, it had been modified a little, and it was worth going forward at that point.

Councilmember Ulledalen said his point was to take away some of the risk and uncertainty for the neighbors. They were defining as they moved forward a coherent part of the neighborhood and not just tossing it out to the best developer that came in with the highest price who saw more apartments. They were asking staff for feedback

on what zoning was appropriate given what was already there. They wanted something reasonable that would protect the neighbors and give the City the most return on the sale.

Councilmember McFadden said he supported Councilmember Ulledalen's amendment because they owed it to the neighborhood and needed to assure them in writing that their neighborhood would not turn into an apartment complex simply because the City sold the unused parkland.

On a voice vote, the amendment to the motion was approved 9 to 1. Mayor Hanel voted in opposition.

Councilmember Ulledalen said he hesitated to bring this up but one of the tennis supporters called him that afternoon, and they had an extensive conversation. He said when the tennis group approached the City about locating a facility at Centennial Park they were told there was a long-term lease with the hockey organization that went on perpetually. The tennis supporters then asked if they could consider Lampman Park for building a tennis facility, and staff told them it had to be a neighborhood park with slides and swings. He was asked since there were four or five entities interested in doing something in Centennial Park and not everyone was going to win, could Lampman Park be considered as part of the discussion and be brought in for one of the groups wanting to build a tennis facility, lacrosse facility, etc. Councilmember Ulledalen said he could not answer the question with a yes or no. He said it took six years to get an inventory of parkland and eight years to vote for the first or second sale. He said if they wanted to go back and wait until 75 years had passed before doing something, they could. He said they consistently underfunded parks and had all of these question marks from the 50's and 60's. There were other undeveloped parks just like Ramada with no development plans and when they tried to sell them they would get the same kind of pushback. He asked if they wanted to try to leverage the money they were assessing for Park District One by selling the land they had no intention of developing, getting the most return, and reinvesting in the park system. He would support the motion to sell Lampman and Briarwood because they needed to move forward. There was a legitimate question that Ramada Park was designed as part of the subdivision and as long as Mr. Jones wanted to continue mowing it and there were no complaints, it should be left as a natural park.

Councilmember Cimmino said she supported the amendment. She said with all due respect they needed to remind themselves that if any group wanted to develop Centennial Park, \$30,000 of Council Contingency Fund was allocated for an update of the master plan, so the potential was still there for tennis courts.

Mayor Hanel noted the vote on the amendment had already taken place, and they were voting on the motion.

Councilmember Cromley said he was concerned if the motion defined the method of sale because there was discussion of a possible auction. City Administrator Volek said she understood the auction discussion was related to Ramada Park and not the other parcels; but if Council wanted to create an initiative to direct staff to look at an auction, they could. Councilmember Cromley said his only concern was that they get the best value.

Councilmember Bird offered an amendment to the motion to vote on all three parks separately and not lump the sale of Lampman Park with Briarwood. She said they had heard some passionate testimony, and Lampman Park was a unique piece of

property that deserved discussion on its own merit. The amendment to the motion died for lack of a second.

Councilmember Ulledalen said the neighbors were asked if they were willing to fund the creation of the park and the ongoing maintenance of the park, and they said they were not, which put the City in a “blind alley” as far as options. Does the City want to advance other General Fund funds for the completion of the park, which would then open it up to other undeveloped parks? There was a point where they needed to stop talking about it and move forward.

On a voice vote, the original motion was approved 8 to 2. Mayor Hanel and Councilmember Bird voted in opposition.

Mayor Hanel called for a recess at 8:55 p.m. Mayor Hanel called the meeting back to order at 9:05 p.m.

6. PUBLIC HEARING AND RESOLUTION approving Park Maintenance District (PMD) assessments for FY2014. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) City Administrator, Tina Volek, said a discussion had been held at the last work session about the staff recommendation to assess owners of all buildable lots in Copper Ridge Subdivision, Falcon Ridge Subdivision, Ironwood Subdivision, Rehberg Ranch Subdivision, and Uinta/Twin Oaks Subdivisions. It was discovered recently the City was not assessing the lots owned by builders and developers in the subdivisions and only assessing parcels that had homes on them. Ms. Volek said she had attempted to contact the developers of the subdivisions and during discussions, one of the developers brought to her attention that the creation resolutions for three of the subdivisions contained a sentence that complicated the situation. The sentence read “Said properties shall not be eligible for assessment until such time as the final plat of the property is filed and the Restrictions on Transfers & Conveyances are lifted.” The three subdivisions involved were Ironwood, Falcon Ridge, and Uinta/Twin Oaks. She said what it meant was that there were parcels that had been platted but the restrictions had not been lifted, which meant that the lots did not have the improvements necessary to sell them as building lots. The improvements would include sewer, water, or streets. In some cases they discovered within one filing the developers may have some streets that had been platted and built or developed and some that had not, which created difficulty for the City.

Mayor Hanel asked how many of the final plats had been recorded. Ms. Volek said all of them had been recorded but not all of them had the Restrictions, Conveyances, and Transfers lifted. She said the restrictions put the improvements into effect. Once a parcel was platted, the other assessments against it went into effect such as water and sewer, but the Parks Department had not been part of the distribution on the conveyances and transfers when they were completed. They had come through Public Works to be signed and then returned to a private engineering firm for recording. There were 1,184 properties in the five subdivisions. The developer of Ironwood indicated he had 56 to 60 parcels platted that had not had the restrictions lifted.

Mayor Hanel asked whose responsibility it was to have the restrictions lifted and if any had been lifted. Ms. Volek said in some cases the restrictions had been lifted and some had not. She said the problem was they would need to work with a local engineering firm to look at their records and with the developers in the three

subdivisions. Mayor Hanel again asked whose responsibility it was to lift the restrictions. Ms. Volek said usually it was done by the engineering firm. As she understood it, a developer may provide a financial bond that allowed the restrictions to be lifted on a single parcel because it had been sold to a builder. Mayor Hanel asked what happened if the engineering firm never lifted the restrictions; it seemed like the City was being left out in the cold. Ms. Volek said that had been the case in the Parks Department, but she did not think it had been done intentionally. She spoke with Mr. Mumford, and he indicated his office's willingness to provide a list of the conveyances and transfers when they were lifted to the Parks Department. Staff would work with the engineering firm(s) to identify those parcels. Ms. Volek advised the County Treasurer's Office had agreed to accept the City assessments no later than October 9. She said staff was recommending the advertised public hearing be opened that evening, and action be postponed to a special business session on October 7 prior to the work session. It would provide staff time to advertise the special business session and the opportunity to address the parcels in the three subdivisions with the specific language. She said it would also allow staff time to provide Council with a corrected version of the assessments.

Councilmember Crouch asked for the nature of the restrictions. Planning Director, Candi Millar, explained that some developers preferred to improve their subdivisions in phases, which allowed them to capitalize future phases based on the sale of property in the first phase. In order to prevent the developer from selling property that did not have infrastructure to it, the City placed restrictions on it. The nature of the restrictions was that the property could not be sold or transferred until Public Works released that phase for sale. Public Works would release it based on (1) the developer putting up a letter of credit or some type of security to install the improvements; or (2) the developer actually installing the improvements. She said it appeared there were some situations where individual lots were granted a release, which she was not familiar with; but generally it was done by phase. Councilmember Crouch confirmed the restrictions were government-imposed. Ms. Millar said that was correct. She said the developer requested the release by completing a form that was part of the Special Improvements Agreement. The Public Works Director signed off on the form and it was returned to the engineering firm to record with the County Clerk and Recorder. Councilmember Cromley said the problem was not really the fact that the restrictions were still in there, it was the specific language. Ms. Millar said the special language was in the PMD resolution that excluded some of the lots from being assessed. Councilmember Cromley said the City could actually lift the restrictions, but it did not want to. Ms. Millar said that would not be wise because they would have lots that did not have infrastructure to them.

Councilmember Ulledalen said if a house could not be built on a lot, it could not be assessed through the PMD. Ms. Millar said that was what the special language said. Mayor Hanel said that was exactly what the developers were doing. Ms. Volek said the problem was the City never found a way to encapsulate the Parks Department into it once the restrictions had been lifted; the process was not there. Staff had a two-part process it needed to undergo; (1) identify the existing parcels that had been platted and had the restrictions lifted so they could be assessed; and (2) identify how to prevent it from being an issue in the future.

Councilmember Bird said by moving ahead, they would not be looking back to assess any property. They would be moving forward starting today. Ms. Volek said they were not recommending going back and looking at each of the 1,184 lots because it would be a monumental undertaking to track when restrictions were lifted and who owned the property at the time. According to Attorney Brooks the Council had the authority to go back, but not an obligation.

Mayor Hanel asked if staff had the time to get it all figured out and corrected by October 7. Ms. Volek said they would work with the developers and the private engineering firms to get it done.

Councilmember Ulledalen said since February they have had a series of questions about the Ironwood PMD and expenses allocated to it. There was a deficit of \$30,000 to \$50,000, and the neighbors were complaining of incorrect assessments. He said they had been waiting for an accounting so they could sit down and look at it. He asked if it would be completed within the next couple of weeks so they could come up with a reasonable explanation for the neighbors. Ms. Volek said it would be done. She said she recently became aware of another issue. The park maintenance district at Ironwood was created in 2005 but due to concerns about ADA accessibility and compliance it was not accepted until 2009. There was a past practice that no longer existed in which developers were allowed to go to the water department and sign up for water meters in the City's name without the City's necessary concurrence, so what had been charged against that PMD represented a large portion of the back costs that were owed. Also, until this year, there had been a drought, so water was a big cost attached to the districts.

Mayor Hanel said it was unfortunate Council did not have the information prior to the meeting. Ms. Volek said she had met with the developer of Uinta/Twin Oaks, who expressed their understanding of the situation. It was not until she met with another developer who brought the language to her attention that she became aware of the issue. She had seen documents but had not done a deep analysis on the documents of the five subdivisions. Staff's recommendation was to open the public hearing as advertised and set a special business session on October 7 prior to the work session when staff would bring back the documents and ask Council for a conclusion. Mayor Hanel said they had no choice. Ms. Volek advised they could assess as had been done in the past or assess as proposed in the resolution and allow the developers to protest their assessments. She said if they could get it done and work it out in a way more equitable for everyone, it would be the simplest way to go.

The public hearing was opened.

- **John McFadden, 711 Grand Avenue, Billings, MT**, asked for clarification. He said it sounded like Ms. Volek said the City had considered taxing the undeveloped lots but the reason it would not happen was because it would be too difficult to track down the former owners. Ms. Volek advised they would not do retroactive. They would go forward. The 1,184 parcels could have changed hands more than once, and it would take a very conservative full year of staff time to track previous owners. Mr. McFadden said he understood Attorney Brooks to say it would be legal for the City to track down the previous owners.

Ms. Volek said they had the authority but not the obligation. Mr. McFadden asked if the authority was only over those particular lots or if the City had the authority to tax anyone who decided to dispose of their property and then go after them for retroactive taxes. Ms. Volek said she would never make that recommendation. Mr. McFadden asked if the City had the authority to do that. Ms. Volek said that was another question that had not been investigated. They had no answer and it would depend on the circumstances.

Mayor Hanel told Mr. McFadden it was not his opportunity to grill the staff. Mr. McFadden said he did not feel he received a complete answer. Mayor Hanel told Mr. McFadden if he had a question regarding the presentation, that was fine; but this was not the time to grill the staff on taxing procedures. Mr. McFadden apologized and said he was still pursuing his question.

Councilmember Ulledalen told Mr. McFadden he thought he had misunderstood both points. It was a very complicated situation, and it had to do with specific assessments for park maintenance districts in brand new subdivisions and the issue if the lots were buildable or non-buildable. The City had not been notified that lots had been deemed buildable, so that was what they were trying to clarify.

- **Bill Cole, 3733 Tommy Armour, Billings, MT**, said he represented the developers of Rehberg Ranch Subdivision. The City had identified 24 undeveloped lots in Rehberg Ranch and would assess PMD fees moving forward. He said pursuant to the City's Subdivision Improvements Agreement most of those lots could not be sold to the public because they did not have streets or utilities to them. His clients did not object to paying future PMD assessments on any lots covered by the original PMD resolution documents; although, given what was just said, it looked as though there might be equal protection issues because their documents did not have the same language but were created at the same time. Mr. Cole said the City would be dealing with the same situation but in two different ways, which could be problematic. Any change to the PMD assessment should be made carefully. His client and presumably other developers only learned of the situation six days ago, and they had not had a chance to review which lots should or should not be assessed and in what amounts. More mistakes could be made if Council made decisions without having all the relevant information. He said on Friday he received a list of the 24 lots the City wanted to assess in Rehberg Ranch, and his quick research indicated that eight of the lots were already paying the full neighborhood PMD assessment. Another concern was in Section 3 of the proposed PMD resolution in the agenda packet that said all lots in all PMDs were to be assessed based on a per square foot basis but assessments for many PMDs were already based on a fixed per lot basis. The list in Section 4 of the resolution showed both ways, so Section 3 needed clarified or fixed. Mr. Cole said they strongly recommended that the City and/or Parks Board convene a committee to determine the fairest way to assess undeveloped lots in the future and iron out other kinks in the system. As presently structured, a house with five children who played in the park every day would pay the same for park maintenance as a completely undeveloped, unsalable lot. He said his clients were still helping to expand park

facilities and last year paid \$5,000 for fence repairs that should have been paid by the PMD. He noted vacant lots without streets and utilities already paid regular city taxes, street maintenance fees, arterial construction fees, and storm sewer fees even though they used none of the public resources. At some point developers would wise up and create only small, piecemeal subdivisions to avoid the costs rather than plan large multi-phased subdivision. It would be a shame for the City's budget because it would deprive the City of what was essentially free money for many years until the lots were actually developed, and make it more difficult for planners to see the big picture and plan for long range, future development.

Mayor Hanel asked Attorney Brooks if the resolution for Uinta/Twin Oaks had any language about a fee to be paid. Attorney Brooks said there was no identified fee in any of the resolutions.

There were no other speakers.

Councilmember McCall moved to continue the public hearing and resolution for the Park Maintenance District Assessments for 2014 to a special meeting of the City Council on October 7, seconded by Councilmember Ulledalen. On a voice vote, the motion was unanimously approved.

7. PUBLIC HEARING AND RESOLUTION #13-19315 assessing the cost of cutting and/or exterminating weeds. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) City Administrator Volek advised staff had no presentation but was available to answer questions.

The public hearing was opened.

- **James Cox, 2822 Poly Drive, Billings, MT**, said a friend of his received a notice of violation and he asked him to find out what it was. Mr. Cox said he looked up Article 25-300, but it was resolved over the phone because his friend found it was intended for his neighbor. Mr. Cox said the code stated "notice shall be deemed given and complete the day the notice is mailed." He said in his particular case, financial items were mailed to a different state where someone else took care of them for him, so he would not receive it timely. He said Section 25-300 did not provide for due process for the landowner to appear before being assessed. He checked and could not find an article in the Gazette about someone who was in the Heights and sued because they received a notice, had a professional landscaper, and a city truck came and waited for the landscaper to finish and then re-cut what had just been done. He asked if anyone knew of it. He said grass was now considered a weed if it was over a foot high, and the City would mow it. Mr. Cox said he could not see grass in his iris until it was that tall, and he would be irate if someone mowed down his iris because there were weeds there. He saw other potential for the City to be sued.

Councilmember Ulledalen said he had sat there for nine years and never heard that story, so he did not know where it came from. He explained to Mr. Cox

that it was not until someone complained about a lot or yard that the City mowed. It was a citizen-driven action. Ms. Volek said she may know the case Mr. Cox was referring to. She said it was an allegation in the case itself, and she would have to check on the status.

Mayor Hanel commented the City mailed notices to the address on the tax rolls. It was not the City's responsibility to go beyond that and find out if there was a temporary residence, etc. If the mail was not received, it was not the City's responsibility to track the property owner down.

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

Councilmember Pitman moved for approval of Item 7, seconded by Councilmember Ronquillo. On a voice vote, the motion was unanimously approved.

8. PUBLIC HEARING AND RESOLUTION #13-19316 assessing the annual fee for encumbrances, obstructions, or encroachments on, over, across or above the streets, avenues, sidewalks, or alleys of the City of Billings. Staff recommends approval. (Action: approval or disapproval of staff recommendation) City Administrator Volek advised staff had no presentation but was available to answer questions.

Councilmember Cromley asked for the definition of "encroachment." Ms. Volek said it was the use of public right-of-way and gave a patio as an example. She said it could also include underground utilities.

The public hearing was opened.

- **John McFadden, 711 Grand Avenue, Billings, MT**, asked who determined the amount of the fee and if it was approved not knowing the amount. Finance Director, Pat Weber, advised the encroachments and fees were determined by Public Works.

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

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

Councilmember Cimmino said because it was a Public Works item, she would need to abstain.

On a voice vote, the motion was approved 9 to 0.

9. RESOLUTION #13-19317 approving \$305,000 Pooled Sidewalk Bonds, Series 2013, fixing the form and details and providing for the execution and delivery of the bonds. Staff recommends approval. (Action: approval or disapproval of staff recommendation) City Administrator Volek advised staff had no presentation but was available to answer questions.

Councilmember Ulledalen moved for approval of Item 9, seconded by Councilmember McCall. On a voice vote, the motion was unanimously approved.

10. RESOLUTION #13-19318 approving \$67,000 Special Improvement District No. 1394 Bonds, Series 2013, fixing the form and details and providing for the execution and delivery of the bonds. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) City Administrator Volek advised staff had no presentation but was available to answer questions.

Councilmember Ulledalen moved for approval of Item 10, seconded by Councilmember Cromley. On a voice vote, the motion was unanimously approved.

11. INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS (IAFF) LOCAL 521 UNION CONTRACT (7/1/2013-6/30/2015). Postponed from 8/12/13 and 8/26/13. Staff recommends postponing until October 28, 2013. (Action: approval or disapproval of staff recommendation.) City Administrator Volek said she was pleased to report as the result of contract negotiations held earlier that day they had reached a new tentative agreement, and a revised document would be provided to the Council and to the union membership. She said she anticipated the union would vote on it in October, and staff would return it to the agenda on October 28.

Councilmember McCall moved to postpone Item 11 until October 28, 2013, seconded by Councilmember McFadden. 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.

- **James Cox, 2822 Poly Drive, Billings, MT**, said he read in the Billings Gazette an article where the public would be voting on amending the City Charter. He said the article indicated it was about a parking district but did not say parking and people ought to know it referred to parking. By not saying parking, it looked like it could be any number of special missions, districts, etc. for different purposes that could be created without the public having a vote. There would be no restrictions on parking and letting it be a parking franchise to a certain outside vendor. He said he may have missed something; but it appeared to be a major change. He asked what was really intended.

Councilmember Ulledalen said it was a very complex process, and if they had the right to give authority to a commission it still had to go through the full process - a public hearing, action by the Council, staff recommendations, etc. It was not that Council could suddenly create commissions to do all kinds of things. It would give Council the flexibility that other Montana cities had so decisions could be made more quickly, such as the issues with parking. Mr. Cox asked if it would apply to more than just parking. Councilmember Ulledalen said it was possible. If the City wanted to create another commission in the future and give it authority, it could.

COUNCIL INITIATIVES

Councilmember Ulledalen said he had an interesting series of things happen as a result of the Phipps Park article a few months ago. It was brought to his attention that there was a whole class of federal funding for parks that the City had not applied for in about 30 years called the Land and Water Conservation Funds (LWCF) issued by the National Park Service. It was funding that came from oil production in the Gulf of Mexico and a certain amount of money was set aside and allocated to the states for park and recreation facilities. He said when “Googling” LWCF it would go to the National Park website where there was a whole list of criteria by county and state showing the significant number of parks in the 60’s and 70’s that received money from the LWCF. He said Glendive just received a LWCF grant to upgrade tennis courts.

Ullledalen: **MOVED** to have the Parks Board look into applying for Land and Water Conservation Funds to use for park improvements and decide whether they should be pursuing the grants available to the State of Montana. The motion was seconded by Councilmember McCall. Councilmember Cimmino asked if there should be a timeframe for follow-up. Councilmember Ulledalen said he wanted to let the Parks Board work on it at its own pace. On a voice vote, the motion was unanimously approved.

Bird: Said the Council had a previous conversation in relation to adding a specific item to the work session agendas that would allow for more generic conversation or discussion in order to keep the Initiatives portion of the business meeting focused on initiatives. She felt they were missing an opportunity to have discussion on things that might come up. She **MOVED** that the work session agendas include an open discussion item. Ms. Volek said following Council’s previous discussion on the matter, she instructed staff to include “Council Comments/Discussions” following the work session agenda items and before the Public Comment period. Councilmember Bird said she would be satisfied with that as long as they did not get real literal because there was value in having free-form discussion when things came up. Councilmember Ulledalen said they used to have specific agenda review meetings but over time attendance dwindled, and it was decided to discontinue them. Councilmember Ulledalen asked if it would make sense to add an agenda session before a normal business meeting and asked what other municipalities did. Mayor Hanel said they could look into it. Councilmember Pitman recommended that Councilmember Bird withdraw her motion. He said what they were talking about they would see implemented shortly, and they could then see how it was working. Mayor Hanel noted there had been no second to the motion.

There was no further business, and the meeting adjourned at 10:05 p.m.

CITY OF BILLINGS



BY: 
Thomas W. Hanel, Mayor

ATTEST:

BY: Cari Martin
Cari Martin, City Clerk