

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

March 10, 2014

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 Yakawich gave the invocation.

ROLL CALL: Councilmembers present on roll call were: Cromley, Yakawich, Pitman, Cimmino, McFadden, Bird, McCall, Swanson, Crouch, and Brown.

MINUTES: February 24, 2014 – Councilmember Cimmino moved for approval, as written, seconded by Councilmember Pitman. On a voice vote, the motion was unanimously approved.

COURTESIES: Mayor Hanel thanked Public Works Director, Dave Mumford, and his staff for the excellent job of keeping the city streets safe and cleared of snow wherever possible. He also recognized Kevin Nelson, who was in attendance, for being the recipient of the Joan Harwood Galles Making Democracy Work award from the League of Women Voters of Billings.

PROCLAMATIONS: World Water Day – March 22, 2014. Mayor Hanel recognized Caitlyn Beley for her efforts and involvement.

ADMINISTRATOR REPORTS - TINA VOLEK

Ms. Volek commented on the following items.

- **Item 2 – Resolution approving \$178,000 Special Improvement District 1395 Bonds fixing the form and details and providing for the execution and delivery of the bonds.** Two e-mails dated 3/10/14 were sent to City Council from property owners on Annandale Road voicing concern about inadequate drainage and asking that the problem be resolved prior to the proposed development. Copies of e-mails were in the ex parte notebook. Ms. Volek noted the bonds had been sold and were about to be delivered. The SID was approved approximately one year ago with no protests recorded. Mr. Mumford advised there was a catch basin and storm sewer project built into the road. There was still a large parcel of unincorporated land above the property the City had no control over that could continue to be a problem for the area until it was developed.
- **Item 4 –Public Hearing and Agreement Amendment releasing the Oasis Water Park \$100,000 Irrevocable Standby Letter of Credit or releasing the \$100,000 Irrevocable Standby Letter of Credit and Eliminating the Deed Restrictions.** Council received 34 e-mails by 5:00 p.m. that day – 25 in favor of releasing the Letter of Credit and nine opposed to releasing the Letter of Credit. Copies of e-mails were in the ex parte notebook.

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: #1 & #2 ONLY.

Speaker sign-in required. (Comments offered here are limited to one (1) minute.

Please sign in at the cart located at the back of the council chambers or at the podium. Comment on items listed as public hearing items will be heard ONLY during the designated public hearing time for each respective item. For Items not on this agenda, public comment will be taken at the end of the agenda.)

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

1. CONSENT AGENDA

A. Bid Awards:

1. **2014 Airport Sanitary Sewer Extensions.** (Opened 2/25/2014) Recommend Cayton Excavation; 154,532.

B. **Contract** (3-year) with Tetra Tech for Groundwater and Landfill Gas Monitoring Services; \$112,702.94.

C. **Preliminary Subsequent Minor Plat** of Hogan Homestead Subdivision described as 2 lots on approximately 5.5 acres of land on the northeast corner of the intersection of Overland Avenue and Creekside Road; Veeder Homestead, LLC f/k/a LADS Riverside LLC, owner; Sanderson Stewart, agent; conditional approval and adoption of the Findings of Fact.

D. **Final Plat** of Emma Jean Heights Subdivision, 2nd Filing.

E. Bills and Payroll:

1. February 10, 2014
2. February 18, 2014

Councilmembers Cromley and Brown separated Consent Agenda Items 1E1 and 1E2 in order to abstain. Councilmember Cimmino separated Consent Agenda Items 1B, 1C, 1D, 1E1 and 1E2 in order to abstain. Councilmember Pitman moved for approval of the Consent Agenda with the exception of Items 1B, 1C, 1D, 1E1, and 1E2, seconded by Councilmember Bird. On a voice vote, the motion was unanimously approved.

Councilmember McCall moved for approval of Consent Agenda Items 1E1 and 1E2, seconded by Councilmember Bird. On a voice vote, the motion was approved 8 to 0. Councilmembers Cromley, Brown, and Cimmino abstained.

Councilmember McCall moved for approval of Consent Agenda Item 1B, seconded by Councilmember Bird. On a voice vote, the motion was approved 10 to 0. Councilmember Cimmino abstained.

Councilmember McCall moved for approval of Consent Agenda Item 1C, seconded by Councilmember Bird. On a voice vote, the motion was approved 10 to 0. Councilmember Cimmino abstained.

Councilmember McCall moved for approval of Consent Agenda Item 1D, seconded by Councilmember Bird. On a voice vote, the motion was approved 10 to 0. Councilmember Cimmino abstained.

REGULAR AGENDA:

2. RESOLUTION #14-10339 approving \$178,000 Special Improvement District (SID) 1395 Bonds, 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 Yakawich asked Ms. Volek to briefly explain an SID. Ms. Volek advised special improvement districts were funded projects that would not be covered through regular street maintenance fees or other types of improvements. She said they were created either by the property owners within a district petitioning the City or created by a developer of a subdivision. SIDs could range from a wide variety of projects such as streetlights, storm sewer, or parks. Notices were always sent to all property owners to whom the special improvement district fees would apply with an opportunity to protest. If a protest was not received from a property owner, it was presumed their vote was affirmative; and the City moved forward. She said a 51% property owner approval was necessary to create an SID. Ms. Volek noted the item in front of Council was the finalization of the sale of the bonds, and the property owners would be assessed with the September taxes. She noted the City followed state statute when creating SIDs.

Councilmember Brown asked if completion of the street would create a "downhill canal." Mr. Mumford advised the street was designed with eight catch basins and storm drain. He said until the adjacent land was developed there still could be a problem, especially during high water events.

Councilmember Cimmino confirmed with Ms. Volek that staff would reply to the homeowners who sent the e-mails and pictures and explain that the street improvements should help the situation.

Councilmember Cimmino moved for approval of Item 2, seconded by Councilmember Yakawich. On a voice vote, the motion was unanimously approved.

3. PUBLIC HEARING AND RESOLUTION #10340 approving and adopting Fiscal Year 2013/2014 budget amendments. 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 Cimmino referenced Exhibit A, Page 6, Fund 0100, and said it referenced the General Fund for Parks seasonal employees. She said the total was \$22,834; and it was her understanding from the work session presentation the increase would be approximately \$16,000. Ms. Volek advised it affected all Forestry, Cemetery, and Parks seasonal employees, and the approximate \$16,000 referred only to the pool

employees. Ms. Volek confirmed the salaries would be funded from the General Fund and not the Park Maintenance District No. 1 fund. She said the Park Maintenance District No. 1 fund was for maintenance only.

The public hearing was opened.

- **Tom Zurbuchen, 1747 Wicks Lane, Billings, MT**, said in 2013 Council approved Police, Fire, Teamster, and non-bargaining COLA totaling \$1,563,100. He said he asked staff at that time if it included every cost of the COLA, and staff was adamant it did. That evening Council was agreeing to amend the budget in the amount of \$1,641,778 for COLA alone. That was 5% over the numbers given last summer. On February 3 during the budget audit for FY2013, Pat Weber said the industry standard for budgeting was 3%, and his department had budgeted at 1-1/2%. Mr. Zurbuchen said it was a 5% difference and outside of staff's own criteria for being credible; yet no one seemed to care. He brought it up last year, and there was never an answer; and no one would give him a breakdown. Mr. Zurbuchen said he and Council deserved to know what happened and why there was such a huge discrepancy.

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

Finance Director, Pat Weber, advised a year ago Ms. Volek and the contract negotiation team asked him how much 1% would cost so they had an amount when talking to the bargaining units. To provide a number to them, he took each bargaining unit and calculated 1%. To prepare the budget amendment he had to use December payroll numbers for each different division within each fund, which he knew contained step increases. He said a budget was an estimate, and the difference was approximately \$78,678. The budget amendment was what they thought it needed to be as of today.

Councilmember Cimmino asked what the difference was between the 3% and 5% deviation. Mr. Weber said he tried to use 3% as a guideline when doing an overall budget for the variance from actuals. It was just comparing an estimate from a year ago to what they thought it to be now. Councilmember Cimmino asked if the estimated \$1.5 million Mr. Zurbuchen referred to had room to work; and now the final would be an estimated \$1.6 million. Mr. Weber said that was correct. He tried to get the numbers as close as he could, but a year in time would have some variables; and he did not have a crystal ball.

Councilmember McCall moved for approval of Item 3, seconded by Councilmember Bird. On a voice vote, the motion was unanimously approved.

4. PUBLIC HEARING AND AGREEMENT AMENDMENT releasing the Oasis Water Park \$100,000 Irrevocable Standby Letter of Credit; or releasing the \$100,000 Irrevocable Standby Letter of Credit and Eliminating the Deed Restrictions. Parks, Recreation & Cemetery Board recommends denial of the request. (Action: approval or disapproval of Parks, Recreation & Cemetery Board recommendation.) City Administrator Volek said the item was in response to a

Council initiative created on January 13, 2014, to return a \$100,000 reserve for the Oasis Water Park to the Better Billings Foundation so the money could be used to install another water slide. The reserve, in the form of an irrevocable standby letter of credit, was required as part of the Funding and Development Agreement with the Foundation, which created the Oasis Water Park in conjunction with Harvest Church. She said the standby letter of credit could be used for demolition or repairs if the property reverted to the City of Billings. The standby letter of credit was backed by a certificate of deposit, and the certificate's interest paid for the cost of the letter of credit. She said if the letter of credit were released, the Better Billings Foundation could use the certificate of deposit for other purposes, such as the new slide. She said it had been indicated to her the Foundation had already raised about \$80,000 for the new slide through donations, and no more than \$25,000 of the certificate of deposit would be used for the slide; with the balance of the money going towards their maintenance fund. Ms. Volek advised there were several options Council could pursue. (1) Take no action, which would retain the irrevocable letter of credit and provide certainty to the City if there were any problems with the pool in the future and the land reverted to the City; (2) Postpone to another date for further clarification; or (3) Adopt one of two amendments to the original resolution included in the packet - (a) simply release the letter of credit and amend the development agreement; (b) approve an amended resolution releasing the letter of credit and amending the development agreement to eliminate the reversion of the property to the City if the Foundation failed to comply with the development agreement. She said in the event there was a problem it would cover the City, and the City would not have the liability for a project for which it no longer had money. She said the agenda item was considered twice by the Parks, Recreation and Cemetery Board. She introduced Rick DeVore, Chairman of the Parks, Recreation and Cemetery Board.

Mr. DeVore said the Board held two meetings. (1) A special meeting on February 6 to gather information and facts and to provide background information on the \$100,000 letter of credit to the new board members; and (2) A regular board meeting on February 12 where the item was discussed again. After lengthy discussions, the Board voted unanimously to recommend to the City Council to deny the request to release the \$100,000. He said the main reason for the action was that all of the board members felt it would not be in the best interest of the City or the Parks Department for the future of the project.

Mayor Hanel asked if the two meetings were open to the public and if public comment was allowed. Mr. DeVore said both meetings were advertised, and public comment was allowed. Mayor Hanel asked if anyone from the public spoke at either of the meetings in favor of releasing the \$100,000. Mr. DeVore said Chuck Barthuly, Executive Director of the Better Billings Foundation, spoke at the February 12 meeting.

Councilmember Pitman said he wanted to clarify that he brought the initiative forward, and it was not at the request of the Better Billings Foundation.

Councilmember Cimmino said she had the minutes from the special meeting of February 6, but the February 12 minutes were not posted on the City website and asked when they would be available. Ms. Volek advised they were distributed to the Parks Board that afternoon and would be posted to the website the following day. Mr. DeVore told Councilmember Cimmino the minutes were a staff function, and the Board had no control over when the minutes were published.

Councilmember Brown asked Mr. DeVore to expand on why the Board did not feel it was a good decision for the City. Mr. DeVore said the \$100,000 protected the City. The approximate 6.7 acres of land valued at approximately \$1 million was donated to the Better Billings Foundation so they could build the pool and not have to raise the money for the land. If for some reason in the future the land reverted back to the City's ownership and the \$100,000 was not available, there would be no money to repair any deficiencies to make it a functional, operating water park; or to demolish the water park if it was in such a state of disrepair. The Parks Department did not have the money. Councilmember Brown asked if the \$100,000 was long term and not just a construction bond. Ms. Volek advised the Better Billings Foundation did not get a construction bond and used the bonds of the individual contractors working on the project. She said the \$100,000 was originally intended to cover the City in the event the pool was not completed, but it also sustained the concept outlined by Mr. DeVore. She said there was a 10-year provision in the agreement so Council could review and amend it.

Councilmember Swanson asked if the \$100,000 was a first lien or security of interest on the property. Attorney Brooks advised it was not; it was simply financial security in favor of the City. He said the bank remained obligated to the City to provide up to \$100,000 upon the City's demand. Councilmember Swanson asked if the letter of credit would affect the Better Billings Foundation's ability to take out a loan. Attorney Brooks said he did not know the credit worthiness of the Better Billings Foundation, but it was his understanding the letter of credit was not a lien and would not have much of an impact on the ability of the Better Billings Foundation to secure a loan.

Councilmember Pitman asked if the Parks Board talked about the value of the land and the structure as an offset to the \$100,000. Mr. DeVore said not specifically. They were all aware of how valuable the project was to the City and the community, but they needed to look beyond the goodness and worthiness of the project and keep the City safe against anything that could potentially happen in the future.

Councilmember Cimmino referenced the Sahara Park Master Plan and said the Better Billings Foundation had followed all of the requirements; as well as all of the requirements stipulated in the Development Agreement. She believed the Better Billings Foundation would qualify to maintain the letter of credit in good standing or First Interstate Bank would not have issued it in the first place. They had demonstrated it was a viable project, and they would protect the interest of the City. Mr. DeVore said if they were 15 years down the road with the project he could not agree more. They were only two years down the road; the first year of operation they had very, very warm June temperatures, and the grand opening was held in June. Their attendance and newness of the facility was over the top, and they had good attendance their second year; but the point was they needed a longer track record to determine whether or not it would remain viable. He said Joe Fedin, a former employee of the Recreation Department, told them at their Board meetings that if they had a really cool month of June, the revenues from the South Park and Rose Park pools were low; and even with high attendance during July and August, they had a very hard time balancing things out. He said pools were not necessarily a money-making situation for the City; and they had a very short 10-week session. Mr. DeVore referenced the 10-year review specified in the Agreement and said that would be a more appropriate time to look at it.

The public hearing was opened.

- **Vince Ruegamer, 509 14th Street West, Billings, MT**, said he was on the City Council when the Development Agreement was approved, and he was a former banker. He said the letter of credit was Better Billings Foundation's personal guarantee. He said the City took the Better Billings Foundation's word that they knew what they were doing, and they had not shown anything yet. He said the Better Billings Foundation now wanted to use \$25,000 of the guaranteed money for a water slide, and \$75,000 of the guaranteed money for maintenance. The maintenance was supposed to come out of their cash flow; so they obviously did not have cash flow if they were asking for the money. Mr. Ruegamer asked what Council would say if the Better Billings Foundation came to them and said they were not making it and needed the City to put in \$200,000. He said the City should not give the money back now. It was a long-term business deal and should be treated as such. Ten years from now when the Better Billings Foundation could show a cash flow, then it could be renegotiated. He said the Better Billings Foundation would be taken off the hook, and the taxpayers would be put on the hook.

Councilmember Pitman clarified again the Better Billings Foundation did not come asking for the money. He offered to give it back and to release the obligation. It was not that the Better Billings Foundation was not making it. He wanted to make it better and more solid and successful. The Better Billings Foundation had proven itself by what it had built and how it was operating.

Mr. Ruegamer said if the Better Billings Foundation was making money, they would show it. He had not seen a cash flow statement.

- **Tom Zurbuchen, 1747 Wicks Lane, Billings, MT**, said there had been three water slide facilities in Billings that had failed, and each facility had lasted at least two years. They all looked like super facilities with major dollar investments; yet without warning or explanation, all three facilities closed. He asked what made Better Billings Foundation superior to the other three facilities. He referenced the proposed amendment to the Development Agreement to give the Better Billings Foundation the land with no recourse to the City. City residents were told the land would revert back to a city park if the Better Billings Foundation failed and said the Council would be going back on their word.
- **Julie Thomason, 265 Caravan Avenue, Billings, MT**, said she lived right across the street from the Oasis. She said she belonged to the Sahara Park Neighborhood Network, and as a group they were encouraging Council to take the recommendation of the Parks, Recreation and Cemetery Board and deny the request to release the \$100,000. She said they supported continuing the agreement, letter of credit, and deed restrictions as they currently existed. Ms. Thomason said there were four things the neighbors were concerned about. (1) Being good, caring neighbors; (2) Providing safety for their families and neighbors; (3) Protecting and respecting the rights and properties of others; and (4) Providing quality in their schools, parks, and aesthetics in their neighborhood. She said the agreement stated the \$100,000 would be there to return the land to a city park should the Better Billings Foundation fail, and they wanted to have

that reassurance. No one wanted to see the Better Billings Foundation fail; but if it did, they did not want to have an “albatross” in their neighborhood. She said they felt eliminating the deed restrictions would be a travesty because anything could happen to the land, and they really wanted it to remain a park. Ms. Thomason said she hoped Council would make the right decision.

Councilmember McCall asked Ms. Thomason if she felt the Oasis Water Park had been a good neighbor. Ms. Thomason said that was a “loaded question.” She felt they were trying, but she did not feel they had done the things they promised to do such as putting up berms. People attending the park left dirty diapers on the street, garbage and noise were problems, and they dealt with parking issues even though they were guaranteed there would be ample parking. She said during the summer there was no place to park on their streets. Ms. Thomason said she did not feel the Better Billings Foundation was intentionally being bad neighbors. They had good intentions building the facility, but she could not honestly say they had been exemplary neighbors. Councilmember McCall asked Ms. Thomason if she considered the water park to be an albatross. Ms. Thomason said she would if it closed, and they were not able to maintain the upkeep.

Councilmember Pitman said there seemed to be some confusion with the property reverting back to a park. He said it was already a park, and it would stay that way. If the City inherited it, the chances of the City demolishing the entire facility and returning the park to its original condition were probably unrealistic. Because it was so widely used, the City would probably kick in Park Maintenance District No. 1. Ms. Thomason said her recollection of the process was when the neighborhood was given the plan, there was wide consensus against the water park; so the City came up with Park Plan B, which was to be implemented in the event the water park (Park Plan A) did not come to fruition or at some point it failed. Park Plan B had the expectation that many of the amenities would be removed. The neighborhood was not looking for a water park but instead open spaces, picnic tables, basketball courts, and a place they could enjoy. City Council had instructed the Parks Board to create a Park Plan B.

Councilmember Cimmino said albatross was defined as “something that greatly hinders accomplishment” and said she did not see how anyone could look at the facility and say it was an albatross considering all of the dedicated people and sweat equity that went into making the water park a reality. She asked Ms. Thomason to respond. Ms. Thomason said she believed the whole goal of the Better Billings Foundation was not just the water park; they had other interests and did other things. She said the facility would be an albatross if it fell into disrepair, or if they were unable to maintain and sustain it. She would not want to see a rundown facility across from her house that would hinder her ability to resell her property. Ms. Thomason said she was looking for the Council to maintain what they promised. The agreement was a contract between the Better Billings Foundation and the City. She said she agreed two years was not enough time for a water park to prove its validity because it was well known most businesses failed within the first five years.

- **Jim Tilley, 305 Camel Place, Billings, MT**, said he lived across from the park. They did not want the water park, but since it was there, they would support it. They wanted to make sure plans were in place. They were told it would be returned to its natural beauty, and he never believed \$100,000 would be enough. He said they wanted the park to succeed, but they wanted it done the right way. City Council and staff clearly stated on December 14, 2009, the reason for the \$100,000 letter of credit was to provide security for the City and not put the taxpayers at risk in the event the Foundation folded. He asked if an audit had been done. He knew it was expensive to run a park. The agreement clearly stated it would be reviewed every ten years on or near the anniversary date of December 14 to determine if the agreement should remain in effect. Mr. Tilley said it had only been two years, and they were already talking about giving the money back. Two years was not a good track record, and they needed more time. He encouraged the Council to accept the recommendation of the Parks, Recreation and Cemetery Board.
- **John Shoff, 1188 Fantan Street, Billings, MT**, said he wanted to speak in favor of releasing the \$100,000 letter of credit. He said he had no comments on removal of the deed restrictions. He and his wife personally supported the project, and the company he worked for donated over \$75,000 worth of engineering services to the project. He said Better Billings Foundation was a different kind of business model. It had a head start of millions of dollars compared to a private, independent water park. Mr. Shoff said the \$100,000 could be put to better use for the community instead of sitting in a bank earning minimal interest.
- **Scott McCulloch, 611 Tabriz, Billings, MT**, said he wanted to speak against the City releasing the \$100,000 letter of credit and in favor of the Parks, Recreation, and Cemetery Board's recommendation. He said the Sahara Park Neighborhood Network was also opposed to eliminating the deed restrictions found in the agreement, which required the property to be given back to the City should Harvest Church fail to continue to use the land as a family aquatic facility. If the deed restrictions were eliminated the result would be the City giving a tract of land free and clear to Harvest Church and Better Billings Foundation worth over \$1 million. It was not good fiscal policy or good public policy. He said the City Planning Director rejected their notion that it was a water park, which placed it in the City Code as an amusement park. It was ruled Oasis was a pool; yet today everyone referred to it as a water park, and it bore the name and was operated as one. The Sahara Park neighborhood was fearful of Harvest Church and Better Billings Foundation having future control of what was supposed to be public land. The water park had only been around for two seasons, and he asked Council to protect their neighborhood by keeping the \$100,000 and enforcing the Funding and Development Agreement.

Councilmember Cimmino said she recalled the Board of Adjustment agreed with the Planning Director's opinion, so the matter was taken to District Court, and it was the ruling from the judge that it was a pool facility and not an amusement park. Mr. McCulloch said he and Larry Seekins met with Candi Beaudry because the city code listed water parks under amusement parks, and

the land was not intended for an amusement park. Ms. Beaudry ruled it was a pool and not a water park, so they appealed that decision to the Board of Adjustment and lost. That was where it ended. Mr. McCulloch said he believed the suit Councilmember Cimmino was referring to was actually a temporary restraining order because the bulldozers had been moved onto the parkland to take out the trees, and they did not believe Better Billings Foundation had raised the \$4 million and met the Funding and Development Agreement.

- **Dave Ulrichs, 2620 Lake Elmo Drive, Billings, MT**, said he was a CPA, Co-Chair of the Foundation, and Chief Resource Officer of Harvest Church. He distributed financial information for the last fiscal year ending September 30 to the Council. He said they had experienced a “cold June year,” but they still pulled a profit. Total revenue was \$458,461.75, and total operating expense was \$417,852.05; so net operating income was just over \$40,000. He said they spent \$17,941.97 in capital expenditures, which included a new kiosk and additional kitchen equipment, for a net surplus of \$22,667.73. Mr. Ulrichs said the Oasis Management Company was an entity owned and controlled by the Better Billings Foundation, and it was created so it could be managed as a separate company. He said they had a net operating income of \$40,609.70, and they had raised nearly \$89,000 for a second slide to be installed in time for the summer season. They had a strong donor base, the full backing of Harvest Church who had invested over \$3.5 million, and they had no debt. He said they would solidify the maintenance account with the \$100,000. They had dreams of putting in more and making it more useful for the community.

Councilmember McFadden confirmed with Mr. Ulrichs that they had no debt, and everything they had was paid for. Mr. Ulrichs said that was correct. Councilmember McFadden asked if their main operating expense was paying summer employees. Mr. Ulrichs said that was correct. He asked if they had any operating expense during the winter. Mr. Ulrichs said they had very little; they rented the facility out to the community so there were just minor expenses. Councilmember McFadden asked if the difference between the Oasis and the other facilities that had gone out of business was that the Oasis had no debt payments. Mr. Ulrichs said the difference was the Oasis received \$3.5 million unencumbered from Harvest Church where the others had to find the money through investors or borrow the money.

Councilmember McCall referenced Ms. Thomason’s earlier statements regarding what had not been completed by the Oasis Water Park, such as the berthing, and asked Mr. Ulrichs to respond. Mr. Ulrichs said he was not sure what berm Ms. Thomason was talking about. They had berms up and had sunken the facility to mitigate some of the sound. He said they desired to be a good neighbor, so dirty diapers were not okay, and they would look into it. They wanted to do it right. No one was getting rich, and it was purely for the community. Councilmember McCall suggested Mr. Ulrichs visit with Ms. Thomason about her concerns.

Councilmember Brown said according to the financials, they were “above water” and planning to go ahead with the new slide with or without the return of the \$100,000. He asked if it made sense to keep the \$100,000 to make everyone

else feel better, safe and secure in their neighborhood and support the Oasis in any other way they could. Mr. Ulrichs said he was thrilled they were having the discussion, and he understood the protection. The question for him was value. Was it more advantageous to have the \$100,000 surety losing value because of inflation or investing it to make the facility more meaningful for the community? Councilmember Brown asked if the \$100,000 would not necessarily be used for improvements to the pool or the slide and possibly be used in other areas. Mr. Ulrichs said the \$100,000 would over fund the maintenance fund. He said \$75,000 was their goal for deferred maintenance, so if it freed up \$25,000 for other things, they would look at that. Councilmember Brown said he would be in favor of keeping the \$100,000 simply for the good faith relationships with the neighbors.

- **Larry Seekins, 380 Camel Place, Billings, MT**, said he did some research and discovered that 350 major water and amusement parks had become defunct in the United States. Photos of the defunct water parks showed they were overrun with vegetation, were partially dismantled, and were dangerous eyesores. He said the history of water parks in Montana or in the City of Billings showed they had either failed or were experiencing financial difficulties. Water parks usually operated until a major maintenance expense occurred, and there were no funds set aside for the necessary repairs. He said reduction in visitors, changes in management, costly accidents, and other nearby new attractions were factors that contributed to a water park becoming defunct. Mr. Seekins said successful organizations set aside 1% to 3% annually of capital costs for future capital renewal and deferred maintenance. If the Oasis was worth \$4 million that meant they should be setting aside \$40,000 to \$120,000 a year. The City of Billings recently found itself in a predicament with its own parks and had to pass a special levy to try to catch up. He said if the \$100,000 letter of credit was returned, he recommended at least coming up with a plan by a third party that had a capital renewal and deferred maintenance financial plan projected for the next 15 to 20 years. Mr. Seekins said he was happy to be able to stand before Council and support a recommendation by one of the City's boards. Mr. Seekins asked all of the members of the Sahara Park Neighborhood Network in attendance to stand and be recognized.
- **Andrew Billstein, 614 Crawford Drive, Billings, MT**, said he was the attorney for the Better Billings Foundation and was available to answer any questions. He referenced the Park Board minutes and a comment made that the City should be concerned about "eliminating the requirement of the money because nothing is saying the Oasis will go out of business in the next 150 years." He said if that was really the purpose of the \$100,000 it was a very ineffectual way to handle it. The U.S. Department of Labor had a Consumer Price Inflation Index calculator that did not even go out 150 years. Even going out 75 years, the City should be asking for \$1,648,848.92 for \$100,000 of buying power. He said he hoped the Council would realize what the Better Billings Foundation had missed out on with the money being held in a CD. If the \$100,000 had initially been invested in an S & P 500 fund, it would be worth \$144,960 today. He assumed everyone did not

want the Oasis back in the City's lap. Success was the goal and putting the \$100,000 to work was the way to proceed.

Councilmember Bird said no one wanted to see the water park fail, but given the fact the City was not able to keep up with its own park maintenance, why should the City supplement a private business with money set aside to protect the City in a limited capacity should something happen. Mr. Billstein said putting the money to work increased the chance the City would never have to question how to fund taking back the project.

Councilmember Brown said the \$100,000 was there by agreement, and he did not think it was unrealistic for the City to retain it because there were simply no water parks that had lasted. He said the water park could only operate a few months a year and the fact they were above water was amazing to him. In five years they would be fantastic if they continued down the same road. He said at that point the City would revisit it. He said waiting five years was not bad business. Mr. Billstein said the one cost he did not mention was that he thought provisions like it had a "chilling effect" on other organizations that would like to work with the City. People who knew he worked on the project had told him they would be "out of their mind to help the City from what they had seen us work through."

Mayor Hanel said there were very, very few cities that would donate land to anyone for building a park such as the Oasis, so there were two sides to the story. In his daily experiences of representing the City, which he did in a very faithful and ethical manner, he continuously had businesses and persons interested in investing in the City. He told Mr. Billstein that Billings was very inviting to many people.

Councilmember Yakawich said he poured over the past minutes, and former Councilmember Ulledalen said he fully trusted the Better Billings Foundation and everyone involved, but it was not about trust. It was business, and he wanted to make sure the taxpayers were not left hanging; and he would not vote for anything until he was sure they were not. Former Councilmember Gaghan said the contingency needed to be set aside for the worst case scenario; former Councilmember Brewster said the money was not for maintenance but to protect the City in the future; former Councilmember Astle said it was escrow for the life of the pool; former Councilmember Ruegamer said it was keeping the risk out of the laps of the taxpayers, not a position of pro or con for the pool; and former Mayor Tussing said to put it in a perpetuity in the event the foundation folded. Councilmember Yakawich told Mr. Billstein it was a decision made on a business deal, and for the sake of the City and the community it needed to be left where it was.

- **Crull Chambliss, 1121 Cortez Avenue, Billings, MT**, said he was a resident tax-payer, served as the Executive Pastor of Harvest Church, and was a member of the church council. He noted Harvest Church represented the largest donor participating in the Oasis. He said when Harvest Church decided to do the project and work with the City, their motivation was to better the City. Harvest Church had a long-standing reputation of trying to make a positive impact. He said the opposition had great points, and they had great points. The motivation

came down to what was best for the City; and the best use to better the City would be to release the funds to be reinvested. Speaking on behalf of Harvest Church, the Oasis was an outreach of Harvest and represented their initiative to help make the City better. They supported the Foundation and the Oasis and had put "their money where their mouth is." Even if something happened down the road where the Oasis was unable to maintain its current track record, Harvest Church would act long before the City would act.

- **Rexene Tilley, 305 Camel Place, Billings, MT**, said she did not know a lot about business and banking, but one thing she wanted to talk about was integrity. There had been an agreement made, and she asked if integrity was more important than making a money deal. She would rather deal with a Council with integrity that stood by what they had agreed upon.
- **Chuck Barthuly, 300 East Lake Circle, Billings, MT**, said he was the Executive Director of Better Billings Foundation. He thanked the Council and staff for their role in the success of the Oasis and the vision and hard work of both parties who came together and served the City of Billings well. The agreement was created five years ago during a time of national uncertainty, so they needed to keep that in mind. He said at the time they did not like the idea but they wanted to continue moving forward. They had invested about \$250,000 in the Sahara Park site. He said there were 18 acres next to the Oasis with an asking price of \$600,000; putting a value on their 6.7 acres at about \$220,000. He said Jim Pickens, the owner of the adjacent land, believed the Oasis was valuable to his land; and he was one of their first financial supporters. Mr. Barthuly clarified that they were not looking for, nor had they ever suggested, that the deed restrictions be lifted. That was an idea that came from staff. He said if they failed to operate the Oasis, the City would acquire a \$4.5 million community asset and get the land back. At the time of the agreement, there was no doubt they would accomplish the task they set out to do. The same concerns did not exist today; and like an outdated insurance policy, it was not good stewardship to keep paying for something. The risk had changed, and there was a better use for the funds. The Oasis was a vibrant enterprise, completed as promised, and voted Billings Best Family Entertainment Value. They employed over 90 employees, had 170,000 swimmers, given 850 swimming lessons, donated 4,500 day passes to the schools, given free and reduced entrances to Eagle Mount, Big Brothers Big Sisters, Friendship House, and partnered with St. Vincent Healthcare, Billings Clinic, YMCA, Young Life, School District 2, Indian Education Foundation, BikeNet, Yegen Golf Club, Billings Chamber, RiverStone Health and ZooMontana to name a few. They were here to stay and if profit was their sole motive, they could raise prices and not offer scholarships and free and discounted service. They intended to serve the Community through their mission to provide opportunities for kids and families to thrive. He asked Council to approve the release of the \$100,000.

Councilmember Brown asked Mr. Barthuly what risks had changed. Mr. Barthuly said back then they did not know if they would even build the park and wondered if it was a viable business opportunity. There was a point in time when they were considering just building it and donating it to the City. He said there

were a lot of former councilmembers who did not believe it could possibly be done, and the community voted a pool down on numerous occasions. He said they continued to have donor support from community members and had raised over \$85,000 for a second slide. Councilmember Brown said he still could not see how the risks had changed. The \$100,000 was after they had decided to build the project and had no affect on whether they built it or not. Mr. Barthuly said that was correct; and when they initially talked about the \$100,000, it was to be used if they got halfway complete and then had to raze it and put the land back into a natural park. Mr. Barthuly said even if the water park failed, there was still \$800,000 of infrastructure, parking lots, and a beautiful community center available for the public to use. It was a community asset and more than just an aquatic facility. Councilmember Brown asked if they could afford to fix a cracked pool or a busted water slide. Mr. Barthuly said they could. Harvest Church said they would step forward. He said he would venture to say if there was a significant problem, it would be addressed. He said there was no guarantee, but there was never a guarantee they were going to build it. They kept their word and did exactly what they said they would do.

Councilmember McFadden asked for the difference between the Oasis; the City, who could not run a pool without dipping into the taxpayers' money; and private entities, who could not keep their heads above water. Mr. Barthuly said the premise was wrong. Big Splash was around for 16 years and continued to operate until the land became more valuable than the business, so they sold the land. It was a good business decision. The Better Billings Foundation could not sell the land, and they were not in favor of removing the deed restrictions. The Better Billings Foundation was a non-profit and was not about return on investment.

Councilmember Yakawich said when he ran for office he knocked on almost every door in the Heights and encountered intensity he had never experienced before. He said everyone could have done a better job with public relations, and he hoped it could be improved. Councilmember Yakawich asked why not leave everything as is right now for the sake of better community relations and revisit it later. They were doing a great job, and if they did not get the \$100,000, they were still going to get the new slide. Mr. Barthuly said he was taught early on that you did not put money under your mattress, and that was what they had done. There was money not making any interest and losing value every day, and he thought it was bad stewardship. Councilmember Yakawich said the agreement was negotiated in good faith, and everyone agreed at that time.

Councilmember Cimmino thanked Mr. Barthuly for his presentation and said she believed good faith was a two-way street. She said he performed in good faith and congratulated him on his success. She said there were talkers, and there were doers, and she truly believed he said what he meant and meant what he said. She was not a member of Harvest Church, but respected what it did for the entire community; and she was glad he pointed out some of their outreach programs. She said she appreciated him attending the public hearing and presenting his viewpoints.

- **Chad Broderius, 511 Poppy Place, Billings, MT**, said he had been involved in the process since the beginning. He said he was opposed to how the project was zoned and not because it was bad for his neighborhood. He said the water park was in place, and it provided a good service; but they needed to do what was right and protect everyone. That was what the \$100,000 was meant to do. He said the project was funded by a major donor; and without Harvest Church, the project could be leveraged in a very bad way. Mr. Broderius said the City needed to hold on to the \$100,000 to protect itself, especially looking at how the business model started much unlike any other business model in town. He said at the time the City donated the property, it was appraised at \$1.67 million. The donation was a huge good faith measure by the City. He said to return the \$100,000 now would be irresponsible on the part of the City, and it would send the wrong message to the community that there was favoritism being shown to that particular group. He said the Development Agreement was a legal document, and they needed to follow through with it.

Councilmember Cimmino asked Mr. Broderius if he recalled when the final agreement was negotiated and finalized by the City Council. Mr. Broderius said he would say it was finalized in 2009 and enacted in 2011. Councilmember Cimmino said she was not on the Council in 2009, so she inherited it as a representative of the Heights. She said at almost every task force meeting since 2001 they talked about someday having an aquatic facility in the Heights. She said the voters turned it down three different times. As a taxpayer, she felt it was a prime example of another entity stepping up to the plate and providing for their area what the municipality could not provide. She believed the Oasis was a wonderful amenity for the Heights and asked how Mr. Broderius felt about it in terms of something productive the Chamber could promote as part of a quality of life issue for anyone wanting to relocate to Billings. Mr. Broderius said he loved the City and was actively involved with it on a daily basis. He said he felt the Oasis was servicing the community very well, and he appreciated it. He said he was involved in the process up until the day it was signed and told Councilmember Cimmino she sat on the Council at the time the document was being negotiated and finalized. Councilmember Cimmino said her vote had to do with the land donation. Mr. Broderius said he did not know how she voted, but the Funding and Development Agreement was in place yet still a moving document at the time. Councilmember Cimmino said she had the 2009 document with her; and she was sworn to the Council in 2010. Mr. Broderius said he sat in the council chambers when the document was put to question and people were voting on it, and she was a part of the process. They both agreed it had to do with the land exchange; and it had been a two-step process.

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

Councilmember Pitman moved to approve an amended resolution releasing the Better Billings Foundation from the required \$100,000 irrevocable standby letter of credit and amending the Development Agreement between the

City and the Foundation as shown in Attachment A and reflecting only that change, seconded by Councilmember McFadden.

Councilmember Pitman said they could either let a future Council address it at its 10-year fruition or they could address it now. The point was the value of the dollar was diminishing over time, and they were not securing the interests of the taxpayer and the City. The use of the facility had been amazing. It was not the City's money, it was fundraised money that had to be set aside and could not be used to expand the facility. It was a good endeavor, and he apologized if his actions implied the Better Billings Foundation was not succeeding. They were thriving and did hundreds of thousands of dollars worth of work in the community every year and focused more on parks than any other element. He mentioned Council recently amended the Kiwanis license plate agreement to increase the Kiwanis' revenue, and it was the right thing to do. He said in the beginning they wanted to protect the City because they were starting with an empty field, and the Better Billings Foundation had done more than exceed the expectations of the entire community. The reason he brought the whole issue forward was to help keep the momentum going, make the Oasis a better place for the community, and get more "bang for our buck" with the \$100,000. Councilmember Pitman asked the Council to support his motion.

Councilmember McFadden said when they took the final vote on the \$100,000, it was his personal understanding the City could and would give the money back as soon as they got the project off the ground. He felt duty-bound to give the money back. He also understood the neighbors did not want to see it fail because it would look bad in their neighborhood. Logic dictated that if they gave the \$100,000 back, it would better serve the operation. If they wanted the operation to succeed, they needed to help them out and give them their money back.

Councilmember Bird said according to the testimony that evening, the Oasis was succeeding and the slide would happen even if they did not get the money back. She said they were making it more complicated than it needed to be because they had a contract giving the City the authority to revisit it in ten years. They needed to honor the contract and the votes that supported the contract. Councilmember Bird said \$100,000 was nothing compared to the \$1.6 million piece of property the City donated to a private entity to build and develop a private enterprise. She did not think there was any comparison to the Oasis and the Kiwanis. She said she was opposed to returning the \$100,000, and they should honor the integrity of the contract and the Parks Board's recommendation.

Councilmember McCall said she would support Councilmember Pitman's motion. She was a part of it from the beginning and a proponent of the project. The whole purpose was to provide a water facility for the Heights. It was about working together to provide an opportunity for kids to have fun in the summer; and they succeeded. The Better Business Foundation had done everything they promised to do. There may be issues that occurred during the season that needed to be worked on, and they all needed to be good neighbors. It was a good faith effort, and she felt they all had integrity even though they disagreed. Contracts and agreements were designed to make changes if the parties agreed.

The City had a \$237,000,000 budget, and she thought investing \$100,000 back into the project was one of the safest votes she could make.

Councilmember Brown said two years was just too soon; and any business was not considered a success in two years. If it was any other type of business, it would not even be coming up. He thought it was wonderful the water park was there, but the Heights had voted a water park down three times because they did not want to support it. The City was providing good faith to the citizens of Billings by making sure they were not stuck with it should it fail. Councilmember Brown asked if the City even wanted a \$4 million water park handed to them if the Oasis failed. He said the City could not keep its own aquatic facilities operating without taking money from the General Fund. He said two years was just too soon.

Mayor Hanel "welcomed everyone to democracy," and said it was a very, very fine form allowing citizens to say "the good, the bad, and the ugly." Mayor Hanel said the members of the Council were normal citizens who relied heavily on hundreds of citizens each year to serve on boards and commissions to help run the City. He said Harvest Church was a very fine church attended by and led by wonderful individuals. The Council had an obligation to serve the taxpayers. He said there was an agreement that had only been in place for two years, and he thought the water park would succeed and continue to grow and make money. He said he could not speak in favor of the motion simply because he did not feel it was the right thing to do. It was too soon, and they needed to protect their assets. The City took a risk, and it had only been two years.

Councilmember Cromley made a substitute motion to accept the recommendation of the Parks, Recreation and Cemetery Board to deny the request, seconded by Councilmember Yakawich.

Councilmember Cimmino said she supported the Oasis Park. Three weeks ago the governing board, staff, and department heads got together as a group for an entire Saturday reviewing the goals and objectives for the strategic plan. One of the goals was that the City of Billings would do the best it could to improve its commitment and effort to public/private partnerships in the City. She noted Cobb Field was turned down by the voters a couple of times, but they now had Dehler Stadium. The library was turned down by the voters twice, but supporters in the community believed they still needed a library, and they now had a new \$20 million library. They had three different attempts to build a pool in the Heights. She said when Cobb Field developed into Dehler Park the Athletic Pool was removed, and people relied on the YMCA's pool facility. The YMCA defaulted on two of its loans and asked the City to forgive a \$138,000 loan, which Council did. She believed they needed to remain consistent and support the non-profits who provided services and programs the City did not have the funds to support. She said she appreciated everyone's comments that evening, whether in favor or in opposition.

Councilmember Crouch called for the question.

On a roll call vote, the substitute motion was approved 7 to 4.

Councilmembers Cromley, Yakawich, Bird, Swanson, Crouch, Brown, and Mayor Hanel voted in favor of accepting the recommendation of the Parks, Recreation

and Cemetery Board. Councilmembers Pitman, Cimmino, McFadden, and McCall voted in opposition.

Mayor Hanel called for a brief recess at 9:10 p.m. Mayor Hanel called the meeting back to order at 9:20 pm.

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.

- **Vince Ruegamer, 509 14th Street West, Billings, MT**, complimented the City on a great job cleaning the streets. He said he felt like he was "home" and said he missed being on the Council. It was just great being there.
- **Kevin Nelson, 4235 Bruce Avenue, Billings, MT**, said on September 9, 2013, he had asked what firewalls were in place during the MMIA/Feuerstein matter and when Specialty National Insurance Company went bankrupt. He said former Councilmember Astle said there was a little-known entity called an Insurance Guarantee Account that the State handled and if an insurance company went bankrupt, they would pay the claim. Mr. Nelson referenced Government Entities Mutual (GEM), a re-insurer of MMIA, and said it stated State Guarantee Funds would not protect against insolvency of re-insurers. State Guarantee Funds protected purchasers of primary coverage and not purchasers of re-insureds. He said there was no coverage with the State Guarantee Account if a private entity insurance company went bankrupt. He said an insurance pool was an extension of each member, which meant Billings' membership extended to MMIA; and the MMIA then extended to the national re-insurer, which was another public entity. He said they were all in it together, and "the rock rolls downhill." He said Council should take a look at the risk of belonging to a risk pool that extended its membership nationally.

Councilmember McFadden asked Mr. Nelson if he had received any feedback from his state representatives because they would be the people who might handle it better. Mr. Nelson said it was each city's choice whether or not to belong to MMIA, and it was clearly spelled out that one of the risks of belonging was assuming everyone else's liability or claims.

Mayor Hanel recommended placing the topic on a work session and having Mr. Hulse of MMIA attend and explain some of the matters Mr. Nelson spoke about. He said it would be helpful to both the Council and the public to be provided with an explanation of how it all worked. Ms. Volek advised they would arrange to have Mr. Hulse at a work session following the upcoming special budget sessions.

- **Tom Zurbuchen, 1747 Wicks Lane, Billings, MT**, said in November staff presented information on how much the COLA would cost the General Fund and the Public Safety Fund. He said the numbers were no longer correct after the

budget amendment that passed that evening and asked for an update on the burn rate to the General Fund and Public Safety Fund due to the COLA.

Councilmember Brown said he would like to see the information since they were approaching a levy. It would be good information to have to see where they actually sat.

Councilmember Cimmino asked Mr. Zurbuchen if the information he requested was in relation to the updated figures Ms. Volek had promised last Monday to provide to them on the mill levy proposed costs. Mr. Zurbuchen said he did not think so. He wanted to know what COLA ended up costing the General Fund and the Public Safety Fund only.

COUNCIL INITIATIVES Mayor Hanel explained the Council Initiative portion of the meeting was not the time to share comments, and it was to be used for initiatives only. There were no initiatives.

There was no further business, and the meeting adjourned at 9:34 p.m.



CITY OF BILLINGS

BY: 
Thomas W. Hanel, Mayor

ATTEST:

BY: 
Cari Martin, City Clerk