

# City Council Work Session

July 31, 2006

5:30 PM

Community Center

## ATTENDANCE:

Mayor/Council (please check) √ Tussing, √ Ronquillo, √ Gaghen, √ Stevens,  
√ Brewster, √ Veis, √ Ruegamer, √ Boyer, √ Ulledalen, √ Jones, √ Clark.

CONVENE TIME: 5:31 P.M.

ADJOURN TIME: 8:50 P.M.

## Agenda

TOPIC #1	PUBLIC COMMENT
PRESENTER	
NOTES/OUTCOME	
<ul style="list-style-type: none"><li>KEVIN NELSON OF 4235 BRUCE AVE. spoke on the barking dog ordinance. Mr. Nelson said the police should be able to cite people. Mayor Ron Tussing asked City Attorney Brent Brooks if the police could cite the owners of barking dogs or if only animal control could issue citations. Mr. Brooks said he could show Mr. Nelson the ordinance. Mr. Nelson said the ordinance is a 7-day process and is too long to wait to take care of the problem. Mr. Brooks said if the Council would like to review the ordinance, he'd be happy to bring it before the Council. Councilmember Ruegamer asked if Mr. Nelson had talked with the neighbors and the police. Mr. Nelson said he had talked to both without a solution to the problem.</li><li>JAMES SEWARD OF 18 MAIER ROAD, LOCKWOOD said he is opposed to the Lockwood Water/Sewer District hooking into the Billings Sewer District. He said he has talked with Council members recently - some said they want money from Lockwood; some say they want Lockwood to take care of its own problems. He presented a letter from Jill Morgan.</li><li>MIKE CRUZON OF 1045 J-T LANE, LOCKWOOD said he's a member of the Lockwood Water/Sewer Board. He urged the Council to seriously look at the contract. Mr. Cruzon said the impact on Billings would be minimal, while helping Lockwood save millions of dollars. He said the new NPDES rules make it hard to get a permit for wastewater discharge in order to build their own plant.</li><li>CARL PETERS OF 1548 ROSEBUD LANE, LOCKWOOD said he is a member of the Lockwood Water/Sewer Board. He said Lockwood had a contract in 1999. At that time, for Lockwood to build its own plant it would have cost \$32 Million; to hookup to Billings' system it would have cost \$26 Million. He noted that cost has now increased by \$8.6 Million.</li><li>MONA SEWARD OF 18 MAIER ROAD, LOCKWOOD said she is opposed to a Billings connection. Ms. Seward read a statement handed out to the Council. She said there is much</li></ul>	

propaganda coming out of Billings. Ms. Seward said the majority of Lockwood citizens do not need another system, adding that the voters have turned down the bond four times. She said promoters are driven by money and the Lockwood residents do not want to be a part of Billings.

- NANCY BELK OF 1744 ROBIN, LOCKWOOD said she is also a member of the Lockwood Water/Sewer Board. She stated that the Sowards would say or do anything to get the sewer hookup defeated. Ms. Belk said it is not the majority of Lockwood citizens that are against this issue.
- IVAN ANDRICK OF 1808 GREYSTONE DRIVE, LOCKWOOD said he is the owner of the Emerald View Trailer Park and noted that the Sowards do not speak for him. Mr. Andrick said Lockwood needs the sewer hookup to keep Lockwood healthy.
- MERRILL WALKER OF 1035 PALOMINO PLACE, LOCKWOOD said he is a member of the Lockwood Water/Sewer Board. The Board has been working for 10 years to get the hookup to Billings' system. Mr. Walker said there is a \$10 Million difference between building a plant and hooking up to the Billings' system. He said the EPA will force them to take care of the problems at some point in time. Mayor Ron Tussing asked why no one from Lockwood came to the Council meeting when this issue was before the Council. Mr. Walker replied he did not even know it was an agenda item.
- JOE WHITE OF 926 N. 30<sup>TH</sup> ST. said there are burning vapors near the hospitals and the people should be warned.
- EILEEN JOHNSON OF 1033 NOBLEWOOD DRIVE, LOCKWOOD urged the Council to support the request of the Lockwood Water/Sewer Board.

<b>TOPIC #2</b>	<b>Board &amp; Commission Reports</b>
<b>PRESENTER</b>	None

**NOTES/OUTCOME**

<b>TOPIC #3</b>	<b>Aggressive Panhandling Ordinance</b>
<b>PRESENTER</b>	Lisa Harmon – Billings Improvement District

**NOTES/OUTCOME**

- Lisa Harmon of the Billings Improvement District (BID) handed out a packet of information to the Council. She said through the process of creating a new ordinance there has been a great partnership formed with the police, Downtown Billings Association (DBA), and downtown owners. Ms. Harmon said the BID is developing a strategy to deal with panhandling and this new ordinance is part of the strategy. She listed the issues facing Billings:
  - Panhandling is a problem faced by all cities
  - Some panhandlers are passive others are aggressive
  - Some panhandlers solicit in intimidating places (i.e. ATM machines, parking structures, outdoor cafes, public transportation)
  - Panhandling is often deceptive and fraudulent
  - Panhandling often makes people feel unsafe
  - People may avoid a particular area because of panhandlers
  - Panhandling and freedom of speech
  - Support of anti-aggressive panhandling law is not attacking the poor
  - More than \$.70 of every dollar given to a panhandler feeds an addiction
- Ms. Harmon explained the use of the “Criminal Trespass Form” that a business can use when

panhandling is taking place on its private property. She said the Albertsons on 27<sup>th</sup> St. is actively using the form with positive results. She also distributed a “Solicitation Registration Card” that listed community resources on the back of the card.

- Ms. Harmon said BID is trying to educate the public. She said giving money to a panhandler may make the individual feel better, but does not really address the problem. The panhandler may just stay in that location because of the amount of money collected. The better alternative, she said, is to give to one of the community resources that actively help those in need.
- Ms. Harmon said the current ordinance is ineffective and the police have trouble enforcing it. Councilmember Jones asked about the 5-day maximum solicitation registration. Police Dept. Alcohol Prevention Coordinator Lisa Posada-Griffin said the solicitation registration is for anyone standing on the corner asking for money and does not apply to legitimate sales people. She said the goal is not to pick on poor people, but rather to eliminate those seeking money to feed an addiction. The time limit on the registration form forces those truly in need to come to the Police Dept. to register their need.
- Councilmember Stevens said the definition of commercial solicitation is trying to target those that approach people rather than those who just sit passively. Ms. Harmon agreed and said it is a First Amendment right to seek alms.
- Councilmember Boyer said she has seen a lot of passive panhandling on the west end. Ms. Harmon said it is a City-wide ordinance and would be implemented throughout the City.
- Councilmember Stevens asked if there is a law against jumping out of one’s car to give panhandlers money. Police Chief Rich St. John said there is no law against getting out of one’s car unless it stops or impedes traffic. Chief St. John said the public needs to be educated to give to the organizations rather than to the individual.
- Councilmember Veis asked how the process would work. Ms. Harmon said if the panhandler was not aggressive he could ask for funds, but if the panhandler was aggressive the individual may be cited. If the panhandler obtains a “Solicitation Registration Card” the panhandler may ask for money but not in an aggressive manner.
- Ms. Harmon said they are trying to educate the public by:
  - The “Spare Change for Real Change” campaign
  - Advertising on Community Seven regarding the panhandling problem
  - The Mayor’s Committee on the Homelessness – connecting people to the services
- Councilmember Gaghen asked if restricting the sale of alcohol single containers would solve some of the problems. Ms. Harmon said BID is encouraging the limiting of single serving sales but not outlawing the sale. Councilmember Gaghen asked City Attorney Brent Brooks to explain the connection between First Amendment rights and seeking alms. Mr. Brooks said there will be challenges whenever a new statute is enacted. If an individual is sitting on the sidewalk asking for alms, it is permissible. There may be restrictions on time, place and manner of solicitation; a reasonable restriction will be allowed. Councilmember Clark asked if an individual could block the sidewalk. Mr. Brooks said they do not have the right to block the sidewalk and the “reasonable restrictions” come into play.
- Councilmember Stevens said she thought the reason why the title “commercial solicitation” was given was because under the First Amendment the City has broader rights to limit commercial speech than other types of speech. Mr. Brooks said this is an attempt to define commercial vs. individual free speech rights. Councilmember Stevens congratulated the committee for being part of the solution, not just part of the problem.
- Mayor Tussing adjourned the meeting for a 10-minute break.

• TOPIC #4	• Lockwood Water/Sewer District
• PRESENTER	• Dave Mumford, Public Works Director
• NOTES/OUTCOME	
<ul style="list-style-type: none"> <li>• Public Works Director Dave Mumford had no formal presentation. Mr. Mumford said the Dept. has made two changes to the contract as requested by the Council: <ul style="list-style-type: none"> <li>○ Lockwood would pay for the rate study</li> <li>○ The district would be dissolved if the City annexes Lockwood</li> </ul> </li> <li>• Mr. Mumford said at full build-out, Lockwood would use less than 4% of the City's plant capacity. Lockwood asked the City to renew the same contract from 2004. The City said it wants dialogue with the Lockwood Water/Sewer District Board. Mayor Ron Tussing asked if the Lockwood board members are elected or what gives them the authority to request a contract. Mr. Mumford said they are an elected board, which gives them the authority to make a contract with the City.</li> <li>• Councilmember Veis asked how this agreement would benefit the City of Billings. He referred to the Yellowstone Country Club agreement and the problems that arose from that agreement. Mr. Mumford said there are two issues involved: <ul style="list-style-type: none"> <li>○ DEQ will require millions of dollars for necessary upgrades to the City wastewater plant. Both the City and Lockwood will be dumping into the river at the same location and it would be difficult to determine which municipality was at fault when there is a violation.</li> <li>○ Lockwood, as the neighbor next door, has significant health issues with its current septic system. It would not hurt the City to allow Lockwood to come into its system.</li> </ul> </li> <li>• Councilmember Boyer said the failure of the bond in the past shows the people of Lockwood do not want to be part of the Billings sewer district. Councilmember Veis said perhaps someone from the Sewer Board could speak, but in the State of Montana the bond has to pass with a supermajority. Lockwood Water/Sewer Board member Nancy Belk said the law has been changed and now only 50% is required. In the four previous elections, 60% was required so the bond did not pass. Ms. Belk said Lockwood had 52%, 54% and 58% in the first three elections. She said the fourth election didn't have a majority because of a majority of misleading information. Councilmember Veis asked if the District size had been changed. Ms. Belk said the size had been changed, but the district as whole is the same. The business district is in the worst shape. They would start in that area and make small additions. Ms. Belk said Lockwood does have \$7 Million in grants that will expire unless they are used. She said they could not build a plant and system at the same time. Councilmember Veis said the contract says the City would have the ability to limit the growth of Lockwood. The Board might want to change the language if they want to make incremental changes. Ms. Belk said the Board had asked for the whole system but would make the changes in small sections.</li> <li>• Mayor Tussing asked if the deal is contingent on a bond election in Lockwood. Mr. Mumford said Lockwood cannot go forward with the election until it knows where the sewage would go. Mayor Tussing asked if the voters will know the rates before they vote on the bond. Manager of the Lockwood Water/Sewer District Rick Russell showed a map and gave a description of the district boundary vs. the initial service area covered by the previous elections. On the next election, the citizens will be voting on a sub-district which would be the commercial corridor. The improvements could be made through a sub-district, SIDs or through a developer.</li> <li>• Councilmember Boyer asked if the fees would change due to sub-districting. Mr. Russell said taxation would be based upon taxable value and general obligation bond assessments based on the</li> </ul>	

value of the property. As the area grows and the taxable value grows, the per year assessment would go toward the bonds and the tax would go down. Mr. Russell said the user rate is based upon the amount of water used. The City has given a target rate for that area and the Lockwood Water/Sewer Board has added 15% for explanation purposes and to move forward with the election.

- Councilmember Gaghen asked where the community development dollars would be applied. Mr. Russell said there is economic development funding from the state Community Development Block Grant (CDBG) and also for low-income. Councilmember Gaghen asked if a general contractor could build the project for less money than the City. Mr. Russell said a general contractor could probably do the project for less money, but the District and City can't operate that way. The City has to hire professionals; a general contractor is not a viable option. Interim City Administrator Tina Volek said a package plant might be less money, but it is harder to permit and could cause future problems. Councilmember Gaghen said the opposition claimed the City would be profiting from this project, which was a misconception. Mr. Mumford said the purpose of a rate study is to determine a fair and equitable rate.
- Councilmember Clark asked Mr. Mumford if, in the case of contamination, the dept. would be able to determine whether the flow came from the City or Lockwood. Mr. Mumford said the dept. would be able to make that determination. Councilmember Veis asked if the City would be accepting wastewater from Exxon. Mr. Russell said only wastewater from the Exxon bulk terminal restrooms would be accepted.
- Councilmember Ulledalen asked what part of the first phase area is undeveloped. Mr. Russell said about 20% is undeveloped. Councilmember Veis asked about the 4% figure given by Mr. Mumford. Mr. Mumford said the 4% figure is for the whole district. Councilmember Veis asked if the City should cap the effluent. Mr. Mumford said anything above 1 million gallons would have to be approved by the Council.
- Councilmember Stevens asked if both Lockwood and Billings had separate plants and were discharging into the river or there was a high reading of some pollutant what would happen. Mr. Mumford said the DEQ might not be able to determine which entity was polluting the river. Both plants could be asked to come into compliance. Councilmember Ulledalen said if someone from Lockwood dumped a contaminant into the system, it would contaminate the City's system with no control over the problem. Mr. Mumford said it would be a problem, but they can track it back to the responsible party.
- Councilmember Ruegamer asked for the current capacity. Mr. Mumford said currently the City runs about 14 mgd out of 26 mgd. Councilmember Ruegamer asked when the system would be running at full capacity. Mr. Mumford said the system is meant to serve a population of 200,000.
- Councilmember Stevens asked how the City would police shops hooking up to the drains. Al Towleron, Deputy Director of Public Works said Lockwood would have to sample and test with the same standards as Billings. The standards are set by EPA. Councilmember Brewster asked if the plant was reaching 90%, would the City look at plant expansion. Mr. Mumford said any changes to the master plan because of the Lockwood addition would require Lockwood to help pay for the expansion. Ms. Volek asked if the distance serviced would cause more problems. Mr. Mumford said the distance is a problem when providing water because of pressure, but is not a problem with wastewater service.
- Councilmember Veis said it is hard for the Council to make any decision regarding Lockwood because there is no governing body to talk to. He asked what Lockwood wants for growth in the next several years. Mr. Russell said any annexation has to be a voluntary action or an election

issue. Dan Belk said the Lockwood Community Plan shows no interest in being annexed. He acknowledged that Lockwood is growing. Councilmember Veis asked if they had considered incorporation. Mr. Belk said Lockwood would have to request annexation, be denied and then seek incorporation. Councilmember Boyer asked how many people are on the planning board. Mr. Belk said there are 6-7 members that have changed through the years. He added there are five different boards in Lockwood and they have to coordinate their efforts.

- Councilmember Brewster said the City has no intentions of annexing Lockwood. Ms. Volek said Staff had been requested by the Council to study the issue of annexation and would report back later.
- Councilmember Ulledalen asked for the cost of treating one gallon of sewage. Mr. Towleron said he does not have a cost per gallon. Councilmember Ulledalen said whatever is charged above the cost is insignificant to the budget and financially it is not advantageous to the City to take on the project. Mr. Mumford said there is the possibility of risk and no real gain financially to the City; it is a “good neighbor” endeavor. He said the 15% rate of return is not significant. Councilmember Stevens asked why the City does not raise the rate-of-return fee. Councilmember Brewster said the rate-of-return to regulated utilities is usually 10-12%. Councilmember Gaghen said it’s not the City’s desire to make money on this project, but rather to be a “good neighbor” to Lockwood.
- Councilmember Veis asked Ted Kylander, Director of Environmental Health with the Yellowstone City/County Health Dept., to talk about the septic systems in Lockwood. Mr. Kylander said his dept. is looking at Lockwood and considering what to do with the septic systems as they fail. There are already 5000 + systems in Lockwood - both commercial and residential. All the systems are getting older and will fail. Some have failed more than once. The sewer system may be the only viable alternative for Lockwood citizens. New businesses ask him for guidance and he tells them to vote for the sewer system. Some businesses have been shut down until the sewer is fixed. The residential area is growing and septic issues may limit its growth. All the Health Dept. can do is close businesses down until they fix their systems. DEQ may require larger lot sizes in order to accommodate the drain fields. There are already high nitrates in some areas. Councilmember Ulledalen asked if a similar problem will be developing in Shepherd and the west end. Mr. Kylander said Shepherd lots are 1-5 acres and there is not as much industrial growth. He said he hopes the City is keeping up with the growth on the west end of the City. He said there is no other situation in Montana similar to the Billings/Lockwood situation.
- Mayor Tussing asked if this is a similar situation to the Helena valley water quality issue. The septic tank wastewater is leeching into the ground water in that area. Mr. Kylander said that problem is because Helena is in a valley and Billings does not have a watershed similar to Helena.
- Ms. Volek noted that this item had been delayed to the August 14<sup>th</sup> Council meeting and is on the agenda for that meeting. Councilmember Veis said he would also like a clause stating how the City would handle the district if Lockwood were to incorporate at some later date.
- Mr. Mumford said many states have gone to regional wastewater treatment plants because the smaller towns cannot afford a plant of its own. Billings needs to be good stewards to the neighbors and to the river; that is why the Staff is bringing this forward to the Council. Mayor Tussing asked, “what’s in it for us?” He asked Mr. Mumford what type of risks are involved for the City. Mr. Mumford noted that the risks are minimal, no different than what the dept. faces with the citizens of Billings. Mr. Mumford said there is really no financial benefit to the City.
- Councilmember Ulledalen said he is concerned about the growth policy aspect of the project. The City is extending a subsidy to Lockwood without receiving any tax funds from them. He said it is critical to put a limit on the amount of wastewater sent through the system. He said the people of

Lockwood live there because it is cheaper than living in Billings and they now have a problem and expect the City to bail them out.

- Councilmember Ruegamer said he is not worried about the profiteering charge. He said the City has never made a profit on any of its decisions. He said it is better to get a little profit rather than no profit at all. Councilmember Ruegamer said Billings needs to be a good neighbor, but Lockwood needs to be a good neighbor also. Councilmember Brewster said that is part of the incorporation question. Councilmember Ulledalen said the 15% rate of return is based on a cost/benefit analysis, which depends on accurate estimates. He was concerned that the City does not currently have that information and intangibles are tough to quantify. Mr. Mumford said it is the City's rate study, but Lockwood will pay for it, after the bond passes.
- Councilmember Ruegamer said maybe the Council should allocate additional time to the opponents of the sewer district. Councilmember Gaghen said there were questions asked of her during the break. She asked the opponents who favored hiring a general contractor rather than hooking up with the City system to comment. Mona Seward said if Lockwood were to use the City wastewater treatment plant, it would require pumping the wastewater at least three miles "uphill." Ms. Seward said if Lockwood put in its own system, it would be at least 3 miles "down river," so testing the water for contaminants would not be a problem. Ms. Seward said Morrison-Maierle has told them just the commercial area cost for one year would be about \$300,000 and \$500,000 for the whole area. Ms. Seward said Lockwood citizens would see their taxes increase by one-third. Ms. Seward said Lockwood needs to do some real research on options, funding and remain independent of Billings. She said Absarokee has a sewage system without cost to the citizens and she thinks they can find a similar system. Ms. Seward said the Lockwood citizens cannot afford this system. Councilmember Gaghen said there have been four bond elections and asked how many years has that covered and have they found any better alternatives. Ms. Seward said the elections were 2-3 years apart with the most recent election in February 2004.
- Councilmember Boyer said Ms. Seward is assuming there will be no long-term problems with the Lockwood system. There are problems and the Lockwood citizens are not dealing with those problems. Ms. Seward said people were gullible enough to buy too small of lots to handle the septic system. She said she should not have to pay 1/3 higher taxes to bail out someone else. Councilmember Stevens asked what will Lockwood residents do when the lots don't have room for new septic drain fields. Ms. Seward said she doesn't know the answer, noting that Bozeman has a new septic system using above ground techniques.

<b>TOPIC #5</b>	<b>Council Initiative List</b>
<b>PRESENTER</b>	
<b>NOTES/OUTCOME</b>	
<ul style="list-style-type: none"> <li>• Councilmember Clark made a motion for the Council to take the list home, review it and get back to Staff. Interim City Administrator Tina Volek recommended deleting any items prior to 1/1/06 and to giving the Council quarterly updates.</li> </ul>	
<b>TOPIC #6</b>	<b>Executive Session – Pending Litigation</b>
<b>PRESENTER</b>	Bruce McCandless – Deputy City Administrator
<b>NOTES/OUTCOME</b>	

- The Executive Session was closed to the public in order to discuss pending litigation.

**Additional Information:**

- There was no additional information presented.

Respectfully submitted  
Tami Greeley, Deputy City Clerk