

## REGULAR MEETING OF THE BILLINGS CITY COUNCIL

**September 22, 2014**

The Billings City Council met in regular session in the Council Chambers located on the second floor of the Police Facility, 220 North 27<sup>th</sup> Street, Billings, Montana. Mayor Thomas W. Hanel called the meeting to order at 6:30 p.m. and served as the meeting's presiding officer. Councilmember McFadden gave the invocation.

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

### **MINUTES:**

- August 25, 2014 – Councilmember Cimmino moved for approval, as submitted, seconded by Councilmember McCall. On a voice vote, the motion was unanimously approved.
- September 8, 2014 (pending)

### **COURTESIES:**

- Police Department "Heroes" - Police Chief Rich St. John explained on June 2, 2014, while investigating a stolen vehicle report in the downtown area at 5:30 a.m., Police Officers Dennler, Ward, and McComb spotted a large plume of smoke rising above the tree line west of their location. Upon investigation, they found a 3-story apartment building at 23 Yellowstone Avenue on fire. The officers immediately called the Billings Fire Department and made a critical decision to enter the building to rouse and evacuate the residents. Officers Lamantia and Brundell arrived shortly thereafter, and all five officers went door to door on all three floors clearing each apartment of sleeping or unaware residents. Despite labored breathing and a growing threat of being overcome by smoke, the five officers remained diligent and forced open doors of apartments to ensure nobody was left behind. The officers regrouped and made a second sweep through the burning building to make sure everyone was out. The apartment building was evacuated, and there were no injuries. A subsequent investigation revealed there were no working smoke detectors in the building. Chief St. John recognized Officers Dennler, Ward, McComb, Lamantia, and Brundell for their commendable action and said they had been awarded the Medal of Valor.
- Mayor Hanel recognized Councilmember Cromley for receiving the 2014 George L. Bousliman Professionalism Award. The annual award was dedicated to George L. Bousliman, former State Bar Executive Director, and was awarded to an attorney who had established a reputation for extraordinary professionalism through contribution of time and resources. He said Councilmember Cromley was an attorney with Moulton Bellingham, PC and would be presented with the award at the State Bar's 40<sup>th</sup> Annual Meeting to be held at the Big Sky Resort September 24-26.

- Billings Metro VISTA Project Honoree - Samantha Vernon. Mayor Hanel noted this year marked the 20<sup>th</sup> anniversary of AmeriCorps. The Montana AmeriCorps Alums chapter held nominations and recognized outstanding alums for continued commitment to bring people together and strengthen their communities. Billings Metro VISTA Project member, Samantha Vernon, was one of 19 individuals in Montana to receive the honor through her completion of AmeriCorps NCCC FEMA Corps in 2013. He said Ms. Vernon planned to continue her service with AmeriCorps as a NCCC Team Leader after completion of her VISTA term in January. Community Development Manager, Brenda Beckett, introduced Ms. Vernon and presented her with her certificate. The following VISTA members were in attendance and provided their names, home states, host sites, and positions.

Name	From	Host Site	Position
Samantha Vernon	Indiana	Community Development Division	Veteran Services
Deirdre Loftus	So. Carolina	Community Development Division	Faith Community Engagement
Courtney Carver	Georgia	Community Development Division	Illuminate Homelessness
Liz Prather	Wisconsin	Parks and Recreation	Community Garden
Emily Willis	Virginia	Youth Court Services	Juvenile Detention Alternatives
Summer Red	Oregon	Community Development Division	VISTA Leader

Mayor Hanel also recognized Gina Simonetti, a former VISTA member who decided to remain in Billings and who was now the Program Manager for the Billings Metro VISTA project.

#### PROCLAMATIONS: None

#### ADMINISTRATOR REPORTS - TINA VOLEK

- Chief St. John provided a brief update on the new radio system. Their new Tait mobile radios were working well, and he had received rave reviews from the officers. The new radios provided clear and concise communications with dispatchers. Everyone in public safety was very happy with them.
- Item A3 – Airport Terminal Building Window Washing Bid Award:** Council received a memorandum from Tom Binford, Director of Aviation and Transit, in the September 19 Friday Packet in response to a protest letter he received from Thomas Schwab, owner of Fish Window Cleaning, regarding the website posting of the Invitation to Bid. Copy of Mr. Binford's memorandum was on file in the ex parte notebook.

- **Item F – Initiate Map Amendment & Zone Change from R96 to R60 for 2707 13<sup>th</sup> Street West**: A staff memo was sent in the September 19 Friday Packet. Copy was filed in the ex-partie notebook and on Council's desk.
- **Item 4 – Public Hearing and Resolution for Park District 1 Assessment**: A staff memo with proposed 2015 city-wide park district assessment projects was sent in the September 19 Friday Packet. Copy was on file in the ex-partie notebook.
- **Item 10 – Public Hearing and Special Review #919**: Council received copy of a letter from James and Lori Cameron in support of the special review via e-mail on September 18. Copy of letter was on file in the ex-partie notebook.
- A tour of the Airport and MET facility would be held on Monday, September 29, 2014. The tour would be held from 8:30 to noon at the Airport and from noon to 2:00 at MET Transit.
- Ms. Volek provided an update on the Public Safety Levy presentations. They had scheduled 23 public meetings with more anticipated. She felt the presentations were going well, and there were many questions. October 6 there would be a work session presentation, and Mr. Buchanan would be available to answer questions.

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

- **Joe Schmidt, 121 Grand Avenue, Billings, MT**, asked for the name of his council representative. Mayor Hanel told Mr. Schmidt his representatives were Councilmembers Yakawich and Cromley.

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

**1. CONSENT AGENDA**

**A. Bid Awards:**

1. **Grinder/Shredder for Solid Waste Division Landfill.** (Opened 9/9/14) Recommend Dopstadt; \$457,000.

2. **Purchase of 23 City Vehicles in Car and Light Truck Class.** (Opened 9/9/14) Recommend Bid Schedules 1,2,3,4,6,7,8,9,10,11,12,13,14 and 15 without trades to Bison Motor Company in Great Falls, MT for the bid amount of \$561,161.09; and Bid Schedule 5 to Denny Menholt Chevrolet in Billings, MT for the bid amount of \$45,605.22. Staff also recommends retaining all thirteen of the vehicles offered for trade

and selling them at auction because the dealer trade allowance for these thirteen vehicles was only \$11,000 while the trade-in book value is \$40,576.

**3. Airport Terminal Building Window Washing.** (Opened 9/9/14) Recommend Skyline Services, Inc.; \$61,020.

**4. 2014 Articulated Tandem Roller for Street/Traffic Division.** (Opened 9/16/14) Recommend delaying award until October 14, 2014.

**B. Memorandum of Understanding (MOU)** between the City of Billings and Billings Livability Partnership.

**C. CTEP Project Specific Agreements** with Montana Department of Transportation for Jackson Street Sidewalks; Poly Drive from Virginia Lane to 13th Street West; 19th Street West/Colton Boulevard Crossing; 44th Street West Multi-Use Path; Wicks Lane Multi-Use Path; King Avenue West-32nd Street West to the BBWA Canal Multi-Use Path; Calhoun Lane Sidewalks; Barrett Road Heights Middle School Path; and Broadwater Elementary School Landscaping.

**D. Amendment #3, W.O. 12-31: East End Industrial Storm Drain Project.** Professional Services Contract, Morrison-Maierle, Inc., not to exceed \$28,966.

**E. Second/Final Reading Ordinance #14-5627 expanding Ward III (Annexation #14-04)** for property located south of Elysian Road and just west of the existing Josephine Crossing Subdivision.

**F. Initiate a map amendment and zone change from R96 to R60 for 2707 13th Street West.**

**G. Preliminary Major Plat** of Josephine Crossing Subdivision, 5th Filing, 92 lots on approximately 15.35 acres of land generally located south of Elysian Road and west of Stony Meadow Lane; McCall Development, owner; Sanderson Stewart, agent; conditional approval and adoption of the findings of fact.

**H. Bills and Payroll:**

1. August 25, 2014
2. September 2, 2014

Councilmember McCall separated Consent Agenda Item F. Councilmember Cimmino separated Consent Agenda Items 1A3 and C. Mayor Hanel separated Consent Agenda Item 1A1. Councilmember Brown advised he would be abstaining from Consent Agenda Items D and H2.

Councilmember Pitman moved for approval of the Consent Agenda with the exception of 1A1, 1A3, C, D, F, and H2, seconded by Councilmember Yakawich. On a voice vote, the motion was unanimously approved.

Councilmember Pitman moved for approval of Item D, seconded by Councilmember McCall. On a voice vote, the motion was approved 9 to 0.

Councilmember Pitman moved for approval of Item H2, seconded by Councilmember McCall. On a voice vote, the motion was approved 9 to 0.

Councilmember McCall referenced Item F and thanked the staff and council for the support of the map amendment and zone change for the property at 2707 13<sup>th</sup> Street West. Councilmember McCall moved for approval of Item F, seconded by Councilmember Swanson. Councilmember Brown asked if the property owners would be expected to pay the associated fees. Councilmember McCall said the property owners would not be required to pay the fees because the map amendment and zone change were being initiated and presented by the City. On a voice vote, the motion was unanimously approved.

Councilmember Cimmino referenced Item 1A3 and asked Director of Aviation and Transit, Tom Binford, to come to the podium. She referenced the letter provided in the Friday packet and said there seemed to be a little snafu. She spoke with the gentleman who wrote the letter, and it seemed as though he was not aware that the Billings Airport was not part of the City of Billings website. She asked if there was a way to ensure that all contractors were on the same page. Mr. Binford said it was not an inaccurate statement, but it was not an accurate statement either. The Airport was still a part of the City's website. In 2011 the Airport became a sub-site that was linked to the City website. He said bid announcements were separated from the City's main site because a lot of people were looking for more specific Airport items. Mr. Schwab had signed up for the notification service on the City's site on November 8, 2011, and he had signed up for the Airport's notices on June 15, 2014. Councilmember Cimmino noted there was an e-mail notification of the bid sent to Mr. Schwab a minute after the fact. Mr. Binford said that was unusual. Mr. Schwab had signed up before the announcement went out, he received the notice that the bid had closed; but he said he did not get the notice the bid was being let. The City site could have malfunctioned preventing the notice from going out; he could have received the notice and not opened it; or he could have received the notice and not recognized it. The Airport followed the State of Montana bidding requirements and also advertised in The Billings Times. They were unable to identify through the web provider anything other than the notice was posted, and it went out. Councilmember Cimmino asked if the Billings Times was a monthly or bi-weekly publication. Mr. Binford advised it was a weekly publication, and it would be no different than if the post office did not deliver the publication to a bidder. Councilmember Cimmino said The Billings Times did not have a website, so there was no way anyone could read the publication unless they subscribed to it. Councilmember Bird asked if there was any place on the City's website to indicate The Billings Times was the place to go. Mr. Binford said a short summary of the bid was provided on the website, as well as the actual legal ad that was published in The Billings Times. They could certainly include a disclaimer that The Billings Times was where all official advertisements occurred. Councilmember Cimmino moved for approval of the 3-year Airport Terminal Building Window Washing Services Agreement with Skyline Services, Inc., in the amount of \$61,020, seconded by Councilmember McCall. On a voice vote, the motion was unanimously approved.

Councilmember Cimmino referenced Item C and asked Planning Director, Candi Millar, to review the nine projects using the available CTEP Funding originally earmarked for the 25<sup>th</sup> Street Pedestrian Bridge that had been indefinitely suspended.

Ms. Millar described the nine projects as follows:

- Jackson Street Sidewalks - a half-mile of 5-foot-wide ADA sidewalks. CTEP Funds: \$187,446 Local Funds: \$29,054.
- Poly Drive from Virginia Lane to 13<sup>th</sup> Street West – 5-foot-wide ADA sidewalks on the south side of Poly Drive and a striped bike lane. CTEP Funds: \$155,844 Local Funds: \$21,156.
- 19<sup>th</sup> Street West/Colton Boulevard Crossing – 5-foot-wide ADA sidewalks on the west side of 19<sup>th</sup> Street West from Parkhill Drive to Rose Park Elementary School and an enhanced school crossing at Colton Boulevard and 19<sup>th</sup> Street West/Hoover Avenue to include beacons, curb extensions, and an improved ladder-style crosswalk. CTEP Funds: \$103,896 Local Funds: \$16,104.
- 44<sup>th</sup> Street West Multi-Use Path – 10-foot-wide ADA bike and pedestrian path along the east side of 44<sup>th</sup> Street West. CTEP Funds: \$88,311.60 Local Funds: \$13,688.40.
- Wicks Lane Multi-Use Path – 10-foot-wide ADA bike and pedestrian path beginning at Governor's Boulevard and connecting with Skyway Drive. CTEP Funds: \$220,779 Local Funds: \$34,221.
- King Avenue West; 32<sup>nd</sup> Street West to the BBWA Canal Multi-Use Path – 10-foot-wide ADA multi-use path from existing trail connection along the north side of King Avenue West. CTEP Funds: \$66,234 Local Funds: \$10,266.
- Calhoun Lane Sidewalks – 5-foot-wide ADA sidewalk where sidewalk is missing and broken along both sides of Calhoun Lane from King Avenue East to Underpass Avenue and missing sidewalk on Simpson Avenue to Calhoun Lane. CTEP Funds: \$150,000 Local Funds: \$23,000.
- Barrett Road Heights Middle School Path – 10-foot-wide ADA multi-use path from existing Kiwanis Trail to new middle school site. CTEP Funds: \$113,671 Local Funds: \$17,619.
- Broadwater Elementary School Landscaping – ADA sidewalk, fencing along the sidewalk, bike racks, corner bulb-outs, and landscaping. CTEP Funds: \$150,000 Local Funds: \$23,000.

Councilmember Cimmino said Planning and Public Works staff had a short timeframe to develop the nine projects and offered her thanks and appreciation.

Councilmember Swanson asked for the criteria for receiving the CTEP funds. Ms. Millar said a project needed to be shovel-ready. They had a year to spend the money, so a project needed to be easily designed within the year, which eliminated a lot of projects on their list. Ms. Millar said there also had to be a match, and the match was 13.8%. The matches were found in a variety of different sources through Gas Tax, Tax Increment Funds, and School District #2. They discussed the projects with the City Engineer's Office, the Bicycle and Pedestrian Committee, and the Billings Livability Committee to sort through the projects. Many of the projects were included in the Bike and Trail Master Plan and Safe Routes To School Plan. They originally had 11 projects,

but two had to be eliminated because of the cost and lack of funding for the match. Ms. Millar said there was \$137,388 divided between the nine projects.

Councilmember McCall asked Ms. Millar why the project on Poly Drive going out to 38<sup>th</sup> Street West was not included. She said it was a major issue that needed addressed. Public Works Director, Dave Mumford, said the Poly project would be an SID, and they needed to work with the neighborhood. The neighborhood would pay for the curb and gutter, and the City would pay for the asphalt.

Councilmember Cimmino moved for approval authorizing the Mayor to execute the CTEP Project Specific Agreements for the nine projects, seconded by Councilmember Yakawich. On a voice vote, the motion was unanimously approved.

Mayor Hanel referenced Item 1A1 and asked Mr. Mumford why they were purchasing a used grinder/shredder if the funds were available to purchase a new one with a warranty. Mr. Mumford said the used equipment had only 60 hours on it, and the vendor was providing a full warranty as if it were new. He said with only 60 hours and a full warranty, they felt it was worth the savings. He noted the machine was not just to grind trees and brush that came into the landfill. It would also grind tires and separate the metal for recycling. It would also grind mattresses and separate the springs for recycling.

Councilmember McCall moved for approval of Item 1A1, seconded by Councilmember Cimmino. On a voice vote, the motion was unanimously approved.

## **REGULAR AGENDA:**

**2. PUBLIC HEARING AND RESOLUTION #14-10396 approving and adopting Month 13 Budget Amendments for FY2013/2014. Staff recommends approval. (Action: approval or disapproval of staff recommendations.)** City Administrator Volek advised there was no presentation, but staff was available to answer questions. Councilmember Cimmino referenced the CTEP money and asked how much the City had to pay back. Ms. Volek advised they would have to pay back the \$137,386 spent on engineering. Finance Director, Pat Weber, advised there was still \$117,000 in the budget. He just needed to up the budget by \$20,000 to cover the pay-back amount.

Councilmember Yakawich asked if the money raised by other organizations for the bridge had gone back to the organizations. Mr. Weber said he was currently addressing CTEP monies; and none of the other money had been discussed, so he was not sure how it would be handled. Councilmember Yakawich said he assumed the money had not been spent. Mr. Weber said it was spent to build the engineering plans for the project so it could be bid.

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

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

**3. PUBLIC HEARING AND RESOLUTION #14-10397 reducing arterial construction fee assessments for certain commercially-zoned parcels and certain RMH-zoned parcels meeting the criteria in Ordinance #05-5322 and Ordinance #08-5478, capping parcel square footages at 9,600 square feet and calculating**

**assessments based on the R9600 zoning rate instead of Commercial or RMH zoning rates. 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 comment period was closed.

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

**4. PUBLIC HEARING AND RESOLUTION #14-10398 setting Park District 1 assessments for Tax Year 2014. Delayed from August 25, 2014. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** Park Director, Mike Whitaker, introduced Jon Thompson, Superintendent of Parks; Rick DeVore, Park Board Chairperson; and Tom Rupsis, Park Board Member. Mr. Whitaker presented the amended 2015 City-Wide Park District Assessment projects. The original proposal was approximately \$400,000 more than what they were proposing that evening.

#### **Proposed 2015 City-Wide Park District Assessment**

<b>Deferred Maintenance Projects</b>	
Stewart Park Irrigation Upgrade	\$ 300,000
Stewart Park Traffic and Pedestrian Circulation & Parking Study	\$ 75,000
Replace Fall Protection at 5 Sites (Eaton, Streeter, Trails End, Walsh and Central)	\$ 100,000
Pioneer Park Playground Replacement	\$ 300,214
Yellowstone Kelly's Grave (Partner with Chamber of Commerce)	\$ 50,000
Rock Removal Above 6 <sup>th</sup> Avenue North (completed)	\$ 165,000
Amend Park Irrigation Upgrades (Upgrade city water service, ditch infrastructure, etc.)	\$ 250,000
Park and Facility Maintenance Tracking Software	\$ 9,900
<b>On-Going Maintenance</b>	
Personal Services (Current Employees: 3 full-time and 7 seasonals)	\$ 213,292
Operations and Maintenance (Picnic tables, playground equipment repairs, pumps, irrigation, building maintenance, vegetation management, etc.)	\$ 431,594
<b>Total</b>	<b>\$1,895,000</b>

Mr. Whitaker advised the criteria used to determine what projects to move forward was safety, state and federal compliance, preventing closures, public priorities, and efficiency savings. He reviewed the proposed projects noting the City Engineer's Office recommended \$75,000 be used toward a Stewart Park Traffic and Pedestrian Circulation & Parking Study. He said the Fall Protection Replacement would finish all of the General Fund playgrounds and bring them into compliance. He noted three old playground structures had to be removed from the Pioneer Park Playground, and they

were hoping to leverage additional dollars from the Chamber of Commerce to upgrade Yellowstone Kelly's Gravesite.

Councilmember Bird asked if there was a design available for the Pioneer Park Playground Replacement. Mr. Whitaker said they did not have a design. He showed pictures of two of the playground structures that had to be removed from Pioneer Park due to age and condition. He showed pictures of open areas and noted the pads needed to be a minimum of six feet around all the play equipment. They were looking at \$25,000 for playground equipment fall protection and \$215,000 for equipment and installation. He said they had an opportunity to apply for a \$75,000 Land Water Conservation Fund (LWCF) grant for the replacement project that would be in addition to the established budget. Councilmember Bird asked if the design would be put out to bid. Mr. Whitaker said they would request proposals.

Councilmember Cimmino said she remembered spending nearly half a million dollars for fall protection in 44 parks and asked if Pioneer Park was included. Mr. Whitaker said fall protection was put under the current equipment. He showed photographs of areas with sand and areas with fall protection, and said they felt they would need to expand areas of fall protection to meet the required 6-feet around the equipment, plus an additional four feet that was needed for a slide.

Councilmember McCall said a discussion was held during the summer with a family whose son had passed away and who wanted to put together a playground for people with disabilities. The family had not heard anything from the Parks Department, and she asked if someone would be contacting them if the proposal was approved that evening. Mr. Whitaker said one reason for pushing the project forward was because the private sector wanted to help.

Councilmember Pitman referenced the proposed \$75,000 parking study in Stewart Park and asked what would be accomplished. Mr. Whitaker said they hoped to create a design to solve the problem. Once they had a good design, they could bring a better number back to Council on what it would cost to solve the problem. Councilmember Pitman asked Mr. Whitaker to describe the problem. Mr. Whitaker said the problem was the amount of use in Stewart Park at one time. The combination of pedestrian flow and traffic was a huge issue. Councilmember Pitman said when they approved Park District 1 for deferred maintenance, they took on three full-time employees; and now they had added seven seasonals. He asked for an explanation of the positions and why they were in Park District 1. Mr. Whitaker explained the positions were originally in Park District 1. The decision to open restrooms earlier in the season and keep them open longer involved those positions; as well as their weed management program.

Councilmember Cromley noted the old equipment referenced earlier in Pioneer Park was purchased by the City and installed by the Yellowstone Kiwanis Club approximately 45 years ago.

Councilmember Brown said the original proposal for Stewart Park was for \$1.2 million and now it was down to \$375,000. What else was taken from the original proposal? Mr. Whitaker said their goal was once they had the study, they could come back and put in parking and change the traffic circulation. What he heard from the Council was that they wanted a better understanding of exactly what they would be doing at Stewart Park. By doing the study first, they would be able to report back with an

exact plan. Councilmember Brown asked if the balance of the money was to actually install the improvements. Mr. Whitaker said that was correct.

Councilmember Cimmino referenced the Stewart Park Parking Study and asked if Parks staff or Engineering staff would be involved. Mr. Whitaker noted the City Traffic Engineer would be involved, as well as Mark Jarvis, the City's Park Planner, who would facilitate the project. Councilmember Cimmino noted the Yellowstone Kelly's Grave area had recently been vandalized and had been neglected for the past 75 years. She asked if there was any way in the meantime the area could be secured; possibly with temporary security cameras or lights. Mr. Whitaker said currently there was no electricity at the site. In his conversations with John Brewer, the Chamber Director, they would like to look at a design to help deter graffiti but so far they had not come up with a good solution. Councilmember Cimmino asked what the allocated \$50,000 would pay for. Mr. Whitaker said the Chamber hoped to raise \$300,000 for the project, and they felt \$50,000 would be a good number to help leverage the additional \$250,000. They had been working with Sanderson Stewart on a design, and the Chamber had paid for it.

Councilmember McCall said she supported the Yellowstone Kelly's Grave site project. It was absolutely fantastic the Chamber was bringing forward a \$300,000 goal, and the \$50,000 was a good investment for the City.

Councilmember Bird said the Stewart Park Traffic and Pedestrian Circulation & Parking Study was an important first step. She had spent a lot of time at Stewart Park and been in the traffic. It was a "hodgepodge get it while you can" kind of place that was heavily used during certain times of the year.

The public hearing was opened.

- **Joe Schmidt, 121 Grand Avenue, Billings, MT**, said the old circular wading pool in Pioneer Park had a spray frog that was preserved when the new wading pool was built. He would like to have the plumbing to the frog fixed. Mr. Schmidt said he wrote a 14-page letter to the Chief of Police regarding the awful mandatory insurance law, and he never received an answer. Mayor Hanel said staff would pass on his concern and get a response. Mr. Schmidt asked if it was city policy not to answer letters.

Mr. Whitaker said he was aware the spray frog was not working. It was his understanding there was a broken waterline under the concrete; and it would be a major cost to repair it. It would be more cost effective to repair the spray frog when they updated the facility, which was in their next 3-year plan.

- **Tom Zurbuchen, 1747 Wicks Lane, Billings, MT**, said PMD1 was sold to the public as raising money for deferred maintenance; and \$75,000 for the Stewart Park Traffic and Pedestrian Circulation & Parking Study had nothing to do with deferred maintenance. It was a park improvement, which was totally different from deferred maintenance. He said some people said installing a \$300,000 sprinkler system at Stewart Park was an upgrade. The same went for Yellowstone Kelly's Grave. Mr. Whitaker called it an upgrade. He did not discuss any deferred maintenance; he discussed upgrading with deferred maintenance funds. It was a slap in the face at the taxpayers' budget. For park improvements,

they could go to Cottonwood Park or Meadowlark Park and spend millions of dollars in improvements. PMD1 was solely for deferred maintenance and that was what the City needed to stay with.

- **Rick DeVore, 2614 Park Ridge Lane, Billings, MT**, said he was the Park Board Chairman. On September 10, the Board addressed the issue of the new plan, and staff provided a lot of information on potential projects. They had a very lively discussion about projects they felt would best fit the City of Billings and stay within the \$1.2 million budget. The Board passed a motion to recommend to Council to pass the proposal so they could continue with the great maintenance district projects that provided for deferred maintenance. Mr. DeVore said there were so many unknowns at Stewart Park and with the amount of problems that existed, they could not possibly start looking at the deferred maintenance issue without knowing the cost. The study would identify where the traffic problems were, how many parking spots were needed, and how to move pedestrians and emergency vehicles through the area. He had experienced a hurt athlete where neither the ambulance nor fire department could reach the field because of the parking. In order to have a plan, a study was needed. He asked Council to approve the proposed projects.
- **Bill Cole, 3733 Tommy Armour Circle, Billings, MT**, said he was a member of the Billings Chamber of Commerce Board of Directors and the Chairperson of the Chamber's Trails Committee. The Chamber believed the development of parks, trail systems, historic resources, and other community amenities was good for business, tourism, and quality of life. On behalf of the Chamber, he commended the taxpayers of Billings, the City Council, the Park Board, and City Staff for the tremendous improvements made in the city parks since the City-Wide Park Maintenance District was passed. He encouraged the Council to approve the 2015 Park District 1 assessment as recommended by the Park Board and City Staff. They followed the instructions of the Council and shaved off roughly \$400,000 from the original recommendation even though it was not an easy task. Mr. Cole encouraged Council to support the development of the Yellowstone Kelly's Grave Site; or as they liked to call it "the future Yellowstone Kelly Interpretive Site." The grave of Luther Sage Kelly, a famous veteran of three different wars, and the overlook where he was buried on the high point of the rims had been in disrepair and not maintained almost since the grave was dedicated in 1959. Numerous City Planning documents had made its restoration a high priority, but those recommendations had not gone anywhere. The Billings Chamber of Commerce would like to help the City develop the area. The preliminary development plan prepared by Sanderson Stewart with input from City Parks Staff would cost approximately \$350,000 to implement. Before private donors could be lured into making a contribution, they believed they had to see the City was committed to development of the City property. The \$50,000 City money would demonstrate that commitment and help the Chamber raise the private dollars the City would need to finally build the much-needed, much-delayed project.

Councilmember McFadden asked if the improvement and maintenance would be the flagship project of a greater effort to make improvements to the

entire Swords Park area. Mr. Cole said there was a lot of truth to that. Phase I started with the development of the trailhead where there was now a place to park. Through private funds the Chamber, with the help of other local organizations, raised \$65,000 to put in the pit toilets and provide other improvements. He said signage would be installed in the future. The Yellowstone Kelly Interpretive Site would be Phase II, followed by Skeleton Cliff and Boothill Cemetery.

- **Kevin Nelson, 4235 Bruce Avenue, Billings, MT**, said it was an assessment by force of law. They were just throwing stuff at the wall and wondering what was sticking. He referenced the original \$1.2 million for Stewart Park, and said they did not even know what they were going to do. They acted like it was budget talk, but it was an assessment the taxpayers would be forced to pay. All of a sudden they had playground equipment that was in dire need, yet a month ago nothing was said about it when they were planning to build a \$200,000 pole barn. The taxpayers were supposed to be buying, but the City did not know what it was selling. The City was always in a hurry at the end with no plan.

Mayor Hanel told Mr. Nelson he was exactly right. It was the law, and he would pay. And yes, he was right again. The Park Board was told to go back to the drawing board and bring back better numbers and a better plan, which they did. Mayor Hanel thanked Mr. Nelson for his comments.

Councilmember McFadden told Mr. Nelson he came up with his glass half empty. The numbers were before them and the public; so even though they were being taxed, they knew exactly where their money was going and why. Councilmember McFadden said he looked at it on the positive side because the Park Board did a good job with the numbers and prioritizing the projects. Mr. Nelson said he asked about the \$300,000 assessment in an e-mail, and Ms. Volek responded she could get the answer to him early next week. How was the public supposed to participate when City Administration could not even produce the numbers until five minutes ago?

Councilmember Cromley asked Mr. Nelson what sort of reception he received when he appeared at the Park Board. Mr. Nelson said he did not have time to go to the Park Board; and the minutes were not even available for review. He said with something of such importance, they could have "hustled the minutes out" so the public could see how the decisions were made.

Councilmember Brown said everything on the current list fit much better into deferred maintenance than the first list. Half of the Pioneer Park Playground equipment was gone. Mr. Nelson asked why it was not presented last month. Councilmember Brown said it was about prioritization. Council asked that Stewart Park not be made a top priority and that other projects be considered, which was exactly what the Park Board and Parks Staff did. Mr. Nelson said he would have appreciated more time to review the list.

City Administrator Volek commented Mr. Whitaker and his staff were attending their state conference last week, which she had indicated in her e-mail to Mr. Nelson. She said the new list was included in the Friday Packet, and at 10:57 that morning Mr. Whitaker e-mailed Mr. Nelson a breakdown of the list that he had requested.

- **Susan Svetich, 30 S. Plainview Street, Billings, MT**, asked if Parks jobs were made available to Montanans; and when Parks equipment was purchased, if the money stayed in Montana. She thought the taxpayers would feel a lot better if there were more jobs available for true Montanans.

Mayor Hanel said they did everything they could to spend the money locally in accordance with the law.

Ms. Volek noted for the record the last two major city projects employed Montanans. The Empire Parking Garage was contracted with Sletten Construction of Great Falls, and the new Library was built by Jackson Contractors of Kalispell.

- **Joe Schmidt, 121 Grand Avenue, Billings, MT**, said Pioneer Park had a couple of places that were supposed to be for handicap accessibility from the street but frequently there were cars parked there because the yellow marking paint was completely faded away. He had tried for three years to get something done about it, and asked if he and Mr. Yakawich could take a can of yellow traffic paint and do it themselves.

Mayor Hanel told Mr. Schmidt they took his concern seriously, so it would be taken care of.

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

Councilmember Yakawich moved for approval of Item #4, seconded by Councilmember Swanson.

Councilmember Cimmino asked for the status of the Castlerock Park tennis courts. Mr. Whitaker advised they were currently in negotiations with Hellas Construction for engineering of the project. They hoped to start construction in the spring of 2015 and have the courts playable by June. They had discussed starting this fall, but he was told it would increase the cost by roughly 20% due to the cost of pouring concrete in 0 degree weather. The funding source was Fiscal Year 2014. They already had the funding, and they would move forward when the cold weather broke.

Councilmember Cimmino said the Heights Task Force was promised the tennis courts would be part of the priority project because of the tennis competition that came to Billings. She said she did not understand the additional year delay. Mr. Whitaker said the high priority of the tennis organization was to get the six courts at Pioneer Park and the four courts at Rose Park resurfaced. They were ready to get the courts resurfaced prior to the tournament, but the weather did not cooperate so they had to delay. The Castlerock Park tennis courts involved a complete reconstruction.

Councilmember Bird asked for the timeframe for the Pioneer Park Playground Equipment replacement. Mr. Whitaker said they would receive the first half of funding in December. They would be applying for a grant in November, and the outcome of the grant application would determine the start date.

Councilmember Pitman inquired about a maintenance agreement for Stewart Park. Mr. Whitaker advised they had a maintenance agreement with the Billings Softball Association to manage the softball complex and the concessions only. Councilmember Pitman commented partnering was a great way to use a little bit of the money and volunteer time. Yellowstone Kelly's Grave was a great project, and if the budget was

loaded with things like that, it would be a great sell to the community. He said he struggled with Stewart Park because he did not see the City leveraging money to get more value for its buck. He just saw the City as a cash cow, and he would like to see more participation from the groups.

Councilmember Bird commented public and private partnerships were great, but it did not mean the City was not responsible for taking care of its own property even without public support.

Councilmember Brown said he would support the motion, but he did not like the \$75,000 study for Stewart Park. He would also like to see more partnering with the Softball Association. He felt the Park Board and staff came back with a very good plan.

Councilmember Cimmino said there were many Billings' visitors who toured Yellowstone Kelly's Grave and used the trails. It was quite embarrassing they had to pick up trash because in addition to the veteran buried there, it was considered sacred ground by the Native American population. The City needed to take extra steps to preserve it now while the consultants were working on the design of the interpretive center.

On a voice vote, the motion was approved 9 to 1. Councilmember Pitman voted in opposition.

**5. PUBLIC HEARING AND RESOLUTION #14-10399 assessing Park Maintenance Districts (PMD) for Tax Year 2014. Staff recommends approval.**  
**(Action: approval or disapproval of staff recommendation.)** Park Director, Mike Whitaker, provided an update on the 35 Billings PMDs. He said the FY2014 total expenditures were below what was budgeted mainly due to a wet spring and fall. He said 30% of their budget went towards water. Mr. Whitaker displayed a graph of current and past assessments and expenditures. He noted 16 of the 35 PMDs were in the red. They were attempting to get them out of the red within three years and were recommending a 10% increase in assessments.

Councilmember Pitman said he was confused. He thought they had a wet, cool season and asked how there could be such a dramatic increase. Mr. Whitaker said as the city developed, they continued to take on additional parkland.

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

Councilmember McCall moved for approval of Item #5, seconded by Councilmember Bird.

Councilmember Pitman said for a while they were under-assessing and asked if they were now at the level of specific costs for the districts. Mr. Whitaker said their goal was to have a slight fund balance in all of the PMDs in case of a very dry year.

Mayor Hanel asked if the increases were identified in the information provided by staff. He said the billing notice did not identify the increases. Mr. Whitaker listed the PMDs with negative balances that would see increases. Mayor Hanel asked for the breakdown per square foot. Ms. Volek noted some PMDs had a per lot charge instead of a square foot charge. Mr. Whitaker said it was hard to provide a breakdown per square foot because each PMD was different, and some were based on the number of lots in the PMD.

Councilmember McCall asked for an increase percentage. Mr. Whitaker said the increase would be 10% of the total budget of the PMDs. They aggregated all the PMDs into one fund. If a PMD ran a negative balance, the total fund got them through the year; and the next year they increased the assessment to bring that PMD out of the red.

Councilmember Brown asked for the reserve amount they were looking to maintain. Mr. Whitaker said he could not provide that information off the top of his head. Councilmember Brown asked if there was a base for every PMD or just certain ones. Mr. Whitaker said if they anticipated a major repair in a particular PMD, they tried to accumulate dollars in order to make that repair.

Councilmember Swanson asked about water expense. Mr. Whitaker said they had PMDs that were on wells. If there was a nearby ditch, they pumped from it; but in most situations they were on city water. He said 30% of their budget was for water. All PMDs were on an automated system and were as cost effective as possible. Mr. Whitaker noted one PMD could include more than one park.

Councilmember Pitman said it concerned him that they borrowed from other PMDs to temporarily balance other PMD budgets. Mr. Whitaker said it was just to cover cash flow until they could increase the assessment. Councilmember Pitman asked if the money was paid back. Mr. Whitaker said all PMDs went into one fund, and they utilized that fund to pay all charges. For accounting purposes, they kept track of all the PMDs. Whenever maintenance was done in a particular PMD, the maintenance workers completed a form and that particular PMD was charged.

Councilmember Pitman asked how much input the residents had with regard to maintenance of the PMDs. Mr. Whitaker said the City maintained the parks to a certain standard. There were some residents who wanted more involvement in their PMD, so the Parks Department worked directly with them. There were other PMDs where the residents did not want to be involved. If there was a major repair required, the Parks Department notified the residents of that particular PMD.

Mayor Hanel called for a recess at 8:48 p.m. in order for staff to print and distribute copies of a breakdown of the 2015 PMD Assessments to the City Council for further discussion. Mayor Hanel called the meeting back to order at 9:20 p.m.

Park Superintendent, Jon Thompson, referenced the spreadsheet distributed listing the PMDs. The spreadsheet included the proposed 2015 assessments for each PMD, the PMDs that would see an assessment increase, and the PMD assessment rate. He noted the amount varied substantially from PMD to PMD due to the number of properties being assessed. Some PMDs were assessed on a per-lot basis and some were assessed on a square-foot basis. Assessment changes were due to properties being added to a subdivision with new development phases and the addition of new park areas. He referenced the last two columns on the spreadsheet showing cash balances ending in FY13 and FY14. Mr. Thompson noted they were making progress on the negative cash balances. Not all PMDs with negative cash balances would see assessment increases because the assessments were increased the previous year, the cash balances were moving in a positive direction, and the assessments were adequate to get the PMD out of the red in the next year or two.

Councilmember Bird asked how Ramada Park could have a negative cash balance when the PMD had not been created. Mr. Thompson said Ramada Park was a small natural area north of Rimrock Road that incurred weed management costs. The

creation documents for Foxtail, Bitterroot, and Reflections at Copper Ridge stated a PMD could not be created until the development was 50% or more built out; so until that occurred, there would still be costs for weed management. When the PMDs were created, their cash balances would start off in the red. Mr. Thompson said assessments had not been raised until FY2009. Eventually all the PMDs would be self-sustaining and in the black. He noted their biggest expense was water. Water cost for FY2013 was \$380,000 compared to \$280,000 in FY2014 because of the wet spring.

Councilmember Brown said he did not think a 10% increase for Ironwood would get them out of the red. Mr. Thompson said the overall budget for all the PMDs would increase an average of 10%. Ironwood would require more than 10%. He said a budget was developed for each PMD that included electrical, water, maintenance personnel, internal costs, and assessments for street lights, fire hydrants, and streets. The annual PMD budgets were determined by looking at the average expenditures for the past three years.

Councilmember Pitman said he served on the Park Board 7 to 8 years ago, and the Board only sent the bottom line to Council. They found out some of the specific districts were paying too little, and others were paying too much. Even though the current process looked confusing, they were trying to achieve an overall balance so they did not have to continue borrowing from Peter to pay Paul.

Councilmember McCall said she agreed, but she felt it was a good lesson in terms of staff presentations. If they had received the breakdown at the beginning of the presentation, they could have gotten through it a lot quicker.

On a voice vote, the motion was unanimously approved.

**6. PUBLIC HEARING AND RESOLUTION #14-10400 assessing the cost of cutting and/or exterminating weeds. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** Planning Director, Candi Millar, advised City Code required unattended vegetation be cut below four inches in height, and when it reached 12 inches in height it became a violation. The code was enforced from May to September, and staff responded only to complaints received. If a violation was confirmed, a notification was sent to the property owner that the vegetation needed to be mowed below four inches or removed within 10 days. After 10 days the property was re-inspected; and if the violation still existed, a notice to cut was sent to the Parks Department. Before and after photographs were taken, and the Parks Department forwarded their mowing charges to Planning for payment. Ms. Millar advised the mowing charge was a minimum of \$90; the inspector man-hour charge was \$40; the administrative fee was 25% of the mowing charge; and the penalty for first offense was \$25. The bill was sent to the individual property owner. Ms. Millar reviewed graphs of the past seven years comparing the number of weed complaints and cuts; compliance percentages, and mowing charges. She noted the cost of mowing had decreased significantly because in 2008 the City switched the mowing contract from a private business to the Parks Department. She said the current assessment for 22 properties totaled \$7,860.

Councilmember Pitman said they always heard it could have been done cheaper; but it was a penalty; and the City was in the abatement business, not the lawn mowing

business. Ms. Millar agreed, and said they offered monthly payments to help lessen the burden of the costs.

The public hearing was opened.

- **Susan Svetich, 30 S. Plainview Street, Billings, MT**, said there were extreme rains in May and June; and due to a bilateral hip replacement, she could no longer do her yard work. The first notice she received was the bill in August. She had a person start mowing on the driveway side and by the alley on June 8; and he told her he would have it all mowed in the next day or two. In the meantime, the City mowed it on June 10, and she thought the person she hired had finished the job. Ms. Svetich said it was an outrageous amount of money, and she did not want the assessment added to her taxes.

Councilmember McCall disclosed that she and Ms. Svetich spoke during the break. Her suggestion would be that Council allow Ms. Millar and Ms. Svetich to get together and figure it out without passing the assessment that evening. Ms. Svetich said she would like to be able to make payments.

Councilmember Brown asked Ms. Svetich to confirm her first notification was when she received the bill. Ms. Svetich said that was correct. She said her neighborhood had experienced a lot of problems with theft. Councilmember Brown asked if she was contesting the letter had been sent. Ms. Svetich said she was not; she was just saying she did not get it; and she would work with Ms. Millar to get the bill paid.

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

Councilmember Pitman moved for approval of the assessments for cost of cutting and eliminating weeds and that Ms. Svetich's assessment be pulled so payment arrangements could be made, seconded by Councilmember Brown. On a voice vote, the motion was unanimously approved.

**7. PUBLIC HEARING AND RESOLUTION #14-10401 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 the encroachments were permitted items, and Council had received the list of the encroachments and the annual assessments.

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

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

**8. PUBLIC HEARING AND RESOLUTION #14-10402 assessing the cost of abatement for properties located at 3310 1st Avenue South. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** City Administrator Volek advised the subject property was a vacant home, improperly

secured, and an attractive nuisance to transients and vandals. It was failing structurally and could not be rehabilitated. The City received a Municipal Court order for abatement signed in August 2013. The demolition was completed the first week of April, and by city ordinance, the City could now assess the abatement in the amount of \$15,110.37 against the property.

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

Councilmember Swanson moved for approval of Item 8, seconded by Councilmember Yakawich. On a voice vote, the motion was unanimously approved.

**9. PUBLIC HEARING to receive input on the City's FY2013-2014 Draft Comprehensive Annual Performance Evaluation Report (CAPER) for Community Development Block Grant (CDBG) and HOME Programs. No action is necessary.**  
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 fourth 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, six of who were required to be residents of the low income community. They had almost \$1 million in CDBG, including program income from stalled or closed projects; and just over \$600,000 for the HOME program. They also had a \$250,000 allocation released in May 2013 from the Council Reinvestment Fund, and 80% of that fund had been expended. The total of all grant programs managed by the division for expenditure and draw, not including the Council money, was \$2.2 million. Ms. Beckett reviewed pie charts of their budget allocations by program and type. She said their leveraging ratio was 1:4. They leveraged \$7,165,806 through other mortgage programs and the VISTA Program. The biggest leveraging amounts were in the First Time Homebuyer area and Home Repair Programs. The VISTA members generated almost half a million dollars. They had about \$45,000 they needed to allocate to a project this

fiscal year or next fiscal year or return it to HUD, so they were looking for a project to fund.

Ms. Beckett said total grant awards generated for the City through the Community Development Division since July 2005 to present, outside of CDBG and HOME, was \$4,276,334 that included VISTA, trails grants, and the HUD Economic Development Initiative Grants they did for the Homeless Initiative. Ms. Beckett referenced Strategy A and reported they had accomplished 19 city housing repair programs, 17 energy-efficiency improvements, and 4 accessibility improvements for the disabled. She referenced Strategy B and reported they provided down payment and closing cost assistance on 51 properties, provided homebuyer education to 172 households, and 49 units in Kings Green Phases I-IV were completed. Ms. Beckett referenced Strategy C and said they facilitated organizations and groups in the City such as Affordable Housing Task Force, Billings Partners for American Indian Homeownership, Mayor's Committee on Homelessness, and AmeriCorps VISTA – Billings Metro VISTA Project. Ms. Beckett referenced Strategy E and said 100% of the people they served were low income with 12% disabled. They served 34% ethnic minorities; and their census rate for 2010 was 19%.

Councilmember Cimmino asked Ms. Beckett to explain how the VISTA resources generated half a million dollars. Ms. Beckett said they primarily wrote grants for the non-profit organizations they worked for and held fundraising events.

Councilmember Yakawich asked Ms. Beckett how they were doing with housing. Ms. Beckett said they had a very small vacancy rate both in sales and rentals. She noted in October she would attend a leadership conference with representatives from other local housing agencies to talk about the need for a Housing Center. Billings had a tough housing market. Councilmember Yakawich asked if there was a waiting list of people needing help with rehabbing their homes. Ms. Beckett said their waiting list was usually about 15 households.

Councilmember Swanson asked for an explanation of a Housing Center. Ms. Beckett said a Housing Center would provide housing counseling, fair housing information, location of rental lists, information on capital gains, and so on. It was a complicated system, and all of the housing providers were involved.

Councilmember McCall told Ms. Beckett she did an excellent job, her data was stellar, her site was the place to go for information about Billings, and the maps were sophisticated and great. Ms. Beckett said the number one place she went for maps was the City's IT Division, and she also used the HUD GIS System.

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

No action was required by the City Council.

**10. PUBLIC HEARING AND SPECIAL REVIEW #919: A special review to allow the expansion of the Best Friend's Animal Hospital in a Community Commercial zone on property legally described as Lot 3, Block 1, Popelka Heights View Subdivision and addressed as 1530 Popelka Drive. Smith-Gocke Properties, LLC, owner; Sanderson-Stewart, agent. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.) Planner II, Nicole Cromwell, began her presentation showing the**

zoning map, photographs, and an aerial view of the subject property and surrounding properties. She explained it was an existing animal hospital near the intersection of Bench Boulevard and Wicks Lane. Ms. Cromwell showed a site plan that was revised and submitted to the Zoning Commission on September 2. They adjusted some of the land, the building expansion, the parking area, and the animal exercise yards as the result of a discussion with Mr. Cameron, an adjacent property owner to the south. One of the issues that came out of the discussion with Mr. Cameron was after-hours use of a utility easement along the south end of the property. People needing a cut-through from Bench Boulevard to Main Street were walking through the easement and were sometimes causing disturbances. The idea was not to fence off the easement but to place a removable panel at Bench Boulevard on the property line so there was no continuous, open access. The Zoning Commission was recommending approval of the following conditions.

1. The special review approval shall be limited to Lot 3, Block 1 Popelka Heights View Subdivision generally located at 1530 Popelka Drive.
2. The proposed 7,754 square foot addition shall be constructed in substantial conformance with the submitted site plan of September 2, 2014, including the new parking area, landscaping and fencing as shown. Increases in the total area that exceeds 10% of the area shown on the site plan, or 1,248 square feet, will require additional special review approval. Increases in the number of parking stalls greater than 10% of the total number of stalls will require additional special review approval.
3. No boarding of animals shall be allowed outside the main building.
4. Any building used for animal boarding shall be constructed of permanent building materials that have been approved via a City building permit.
5. Use hours for any outdoor exercise area shall be limited to 8:00 a.m. to 6:00 p.m.
6. The exterior fencing of the exercise area shall consist of a six-(6) foot high sight-obscuring solid wood or vinyl fencing material. A fence permit shall be submitted to the Planning Division prior to the construction of such fence.
7. All new outdoor lighting, with the exception of signage, shall have full cutoff shields so no part of the fixture or lens projects below the cutoff shield. Light pole standards must be 20 feet in height or less.
8. All new mechanical equipment, including but not limited to air conditioning units, air handling units, back-up power generators, installed at ground level or on a roof must be fully screened from view. The screening shall be at least the height of the mechanical equipment. Mechanical equipment that generates or is expected to generate noise in excess of 55 decibels (DbA) within three (3) feet of the equipment location must provide sound abatement or suppression which may require the equipment to be enclosed in a structure.
9. No signs may be placed on the south elevation of the building wall that parallels the residential zone to the south.
10. 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.

11. 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.

Mayor Hanel referenced Condition #5 and said 8 a.m. to 6 p.m. seemed somewhat restrictive. He asked if it was something the applicant had offered. Ms. Cromwell said they had been complying with it for about 12 years and had no objection that the condition continue. Councilmember Cimmino said she agreed with Mayor Hanel, especially during the summer.

City Administrator Volek advised the Volek animals used Best Friend's Animal Clinic so she would recuse herself from any involvement, and Mr. McCandless would assist the Council, if necessary. Councilmember Pitman said he also used the Best Friend's Animal Clinic; he had no financial gain from it; and asked Attorney Brooks if he needed to recuse himself. Attorney Brooks said he always recommended that if there was doubt, the safest thing to do would be to recuse. City Code referenced a personal or financial interest. The safest thing would be to recuse, but it was a personal decision. Councilmember Pitman said he would recuse himself. Mayor Hanel disclosed that his dog came from the applicant, but he had no problem participating because it had no bearing on personal relationships as far as favors or anything of that nature. Councilmember Cimmino indicated to the applicants and others that one of her best friend's co-workers was Diesel, but she did not see a conflict of interest and would participate as a Heights representative. After further discussion with Attorney Brooks, Councilmember Pitman said he would not recuse himself after all. Mayor Hanel said as long as each of the Councilmembers was fair, followed the law, and treated the business as it would any other business, there would be no issues.

The public hearing was opened.

- **Lauren Waterton, Sanderson Stewart**, said she represented the applicant. She said it was originally approved as a special review in 2002 when the facility was built, and it had operated as such ever since. The applicant found a need to expand the facility as business grew, and the boarding part of the facility was causing the need for the special review. The facility was well-used within the community and expanding it would allow it to stay in the Heights.

Councilmember Brown asked if public meetings had been held. Ms. Waterton said they followed the protocol for special reviews. A public hearing was noticed and held at a Zoning Commission meeting. Councilmember Brown asked if there was any opposition. Ms. Waterton said prior to the public hearing, Sanderson Stewart received an e-mail from James Cameron, the adjacent neighbor to the south. A meeting was held with Mr. Cameron to discuss his concerns.

- **D.J. Smith, 2007 Alkali Creek Road, Billings, MT**, said he and his wife owned Best Friend's Animal Hospital. They met with James and Laurie Cameron, and they were quite helpful. Adjustments were made as a result of some of the Cameron's suggestions and concerns, and they were able to reach mutual agreement. Their intent was to develop and grow their business, but at the same

time to be neighborly. Mr. Smith said when they took over ownership in January 2008 the exercise hours were already in place; but realistically they used the exercise yard beyond those specific hours. They had staff 24 hours a day so they were walking boarded and hospitalized pets at all hours. They walked the dogs into the exercise yard, they did their business, and they went back in. During a normal boarding day the pets were allowed to exercise and run around. He said he brought up noise to the Camerons because they were the closest neighbors, and it was never a point of contention.

Councilmember Cromley asked where the 8:00 a.m. to 6:00 p.m. timeframe come from. Mr. Smith said he understood it was grandfathered in from the initial review in 2002.

Mayor Hanel said no matter how large or small an animal, he could not imagine having restrictive hours for exercise. The only real concern would be if the animals became obnoxious or loud.

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

Councilmember Cimmino moved for approval of the special review with the specified conditions, seconded by Councilmember Swanson.

Councilmember Cromley moved to amend the motion that the hours for the exercise area be changed to 7:00 a.m. to 8:00 p.m., seconded by Councilmember McFadden. Mayor Hanel said he felt the hours should be completely eliminated. Councilmember Cromley said that was a good point, because they still had the noise ordinance.

Councilmember Pitman made a substitute motion to approve Special Review 919 and eliminate the time requirements as listed in the conditions, seconded by Councilmember Swanson.

Councilmember Brown commented the business and the neighbors have had an amicable relationship all along; it had not been a big issue; and a request had not even been made to change the hours. Everyone seemed to be happy with the way it was working. Why did they need to make the change?

Councilmember Bird said the reality was there was already a noise ordinance in the City, and she did not know why they needed to designate specific hours. If there were a problem, it could be managed just like any other noise complaint.

Councilmember Yakawich said he felt most important was the neighborhood. If there was already an agreement, he did not see a need to extend it. Everything was amicable with the neighbors.

Councilmember Cimmino said the purpose of the special review was to expand the facility, which meant the number of animals would increase.

Mayor Hanel asked Mr. Smith to return to the podium. He asked Mr. Smith if the business was a 24-hour facility. Mr. Smith said it was; there was someone there 24 hours a day/7 days a week. Mayor Hanel asked if an animal was taken out at 5:00 a.m. if necessary. Mr. Smith said currently they took the animals out any time they needed to go. He appreciated all of the discussion and thoughts about the timeframe, but if a pet needed to go, they would not let it have an accident in the kennel. It was nice to develop a relationship with the Camerons to find out if they were doing something bothersome to

them. Whether it remained 8:00 a.m. to 6:00 p.m. or had no restrictions, he did not think it would impact how they went about caring for the pets. They would walk the pets in the middle of the night, if necessary; and would not be out there exercising them.

Councilmember Bird asked why have a timeframe that realistically was not going to be followed. If the neighbors had a problem, they would call the City. Let the people run their business and not throw an artificial barrier in the way. They were trying to solve a problem that did not exist. They needed to get the timeframe removed because it was not necessary.

Councilmember McFadden said he agreed with Councilmember Bird and would advocate for no time restrictions.

Councilmember Brown commented the intent was that the heavy activity such as dogs running, barking, and chasing balls was between 8:00 a.m. and 6:00 p.m. Because the facility was in a residential area, the hours should be left the way they were. They would be adding more kennels and have more animals in the exercise yard. They needed to be respectful of the residents in the area.

On a roll call vote, the substitute motion passed 6 to 4. Councilmembers Pitman, McFadden, Bird, McCall, Swanson, and Mayor Hanel voted in favor. Councilmembers Cromley, Yakawich, Cimmino, and Brown voted in opposition.

**11. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE**  
**CHANGE #923: A zone change from Agriculture-Open Space to Public on Lot 5A, Block 1, Long Subdivision, a 69.65-acre parcel of land addressed as 1190 Shiloh Road. City of Billings, owner. Zoning Commission recommends approval of the zone change and adoption of the determinations of the 10 criteria. (Action: approval or disapproval of Zoning Commission recommendation.)** Planner II, Nicole Cromwell, said the property was recently annexed into the City zoned as Agricultural-Open Space, and the Public Works Department would like it to be zoned Public. The property was being developed as a storm water management facility called the Shiloh Conservation Area. Ms. Cromwell reviewed the zoning map, photographs, and an aerial view of the subject property and surrounding properties. She displayed a concept drawing of the completed conservation area showing two ponds, several wetland cells, a parking area, and a pavilion where people could get off Shiloh Road, park vehicles, and walk the trails around the ponds and wetlands. The Zoning Commission was recommending approval based on the following 10 criteria.

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

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

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

The proposed zoning would permit more land uses than currently allowed by the A-1 zoning and this is consistent with the neighborhood character and the planned development of areas along Shiloh Road. The proposed zoning is compatible with the existing uses on Shiloh Road and King Avenue West.

- *Utilize the development of a linear open space network as a component of achieving an acceptable level of flood control. (Open Space Goal , page 47)*

The property is under development for a conservation area and flood control facility. The proposed zoning will assist the city to preserve and maintain this public infrastructure and recreation area.

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

The new zoning requires minimum setbacks, open and landscaped areas and building separations. The new zoning, as do all zoning districts, provides adequate building separations and density limits to provide security from fire and other dangers. The City Fire Department will ensure safe access to the site and provision for minimum fire flow to structures if necessary.

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

Public health and public safety will be promoted by the proposed zoning. Development of the storm water facility will protect the public health, safety and general welfare.

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

Transportation: The proposed zoning will not impact the surrounding streets.

Water and Sewer: The City will not need water or sewer facilities for this project.

Schools and Parks: There should not be any impact to schools from the proposed zone change. The facility will have a walking trail around the permanent pond and will enhance the recreational opportunities in the area.

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

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

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

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

Traffic generation from this facility is not anticipated at this time. The facility will provide an off-street walking trail that will benefit non-motorized transportation opportunities.

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

The new zoning does promote compatibility with urban growth. The proposed zoning will provide an area to locate services essential city and public services.

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

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

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

The lot is currently under development for a flood control and storm water management facility. The value of adjacent property will be enhanced and conserved.

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

The proposed zoning will permit a greater variety of uses on the property and is the most appropriate use of the property.

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

Councilmember Cromley moved for approval of Zone Change #923, seconded by Councilmember McCall. On a voice vote, the motion was unanimously approved.

**12. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #924: A zone change from Residential 9,600 to Residential Professional on Lot 4A1A of Blue Meadow Acreage Tracts, 7th Amended, a 1.09-acre parcel of land addressed as 2526 Shiloh Road. BTS, Inc., owner; Sanderson Stewart, agent. Zoning Commission recommends approval of the zone change and adoption of the determinations of the 10 criteria. (Action: approval or disapproval of Zoning Commission recommendation.)** Planner II, Nicole Cromwell, began her presentation showing the zoning map, photographs, and an aerial view of the subject property and surrounding properties. The property only had access to Shiloh Road. There was a median barrier on Shiloh Road, so the only way to access the subject property was from the north turning right off of Shiloh, and the only way to exit the subject property was to turn right onto Shiloh and travel south. She noted the property was currently vacant, and it shared a drive approach easement with an adjacent residential property to the south. Ms. Cromwell noted there was a concern at the pre-application neighborhood meeting about the proximity of the pedestrian crossing used by school children to get to Arrowhead Elementary School located across Shiloh Road. The applicant was cognizant of the concern and did not feel the proposed real estate office and design center would generate a lot of peak hour traffic that would interfere with the safe operations of the pedestrian crossing. The applicants were also willing to provide at their expense a shelter for the crossing guard and for students waiting to cross Shiloh Road during inclement weather. The Zoning Commission was recommending approval based on the following 10 criteria.

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

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

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

The proposed zoning would permit small office uses on the property adjacent to existing and developing residential areas. The arterial street, Shiloh Road, would allow any traffic to be accommodated. Section 27-612(e) of the zoning code requires special treatment of site development so conflicts are reduced or eliminated between businesses and residences. The proposed zoning is compatible with the existing uses.

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

The existing zoning is restricted to residential uses. The proposed zoning will allow office uses and limited service businesses. No retail businesses would be allowed.

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

The new zoning requires minimum setbacks, open and landscaped areas and building separations. The new zoning, as do all zoning districts, provides adequate building separations and density limits to provide security from fire and other dangers. The City Fire Department will ensure safe access to the site and provision for minimum fire flow to the new buildings.

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

Public health and public safety will be promoted by the proposed zoning. Development of the vacant property will be done in accordance with current site development regulations that provide more screening and buffering for adjacent residential uses. These new requirement were adopted in 2012. The North Shiloh Overlay District requires compatibility between structures and abundant landscaping. This will improve public health and safety and the general welfare of the adjacent neighbors.

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

Transportation: The proposed zoning should have a minimal impact on the surrounding streets.

Water and Sewer: The City will be able to provide sewer and water service to the property by extension of those utilities from Shiloh Road.

Schools and Parks: There should not be any impact to schools from the proposed zone change. However, any residential development in the future could affect the schools in the area.

Fire and Police: The subject property is currently served by the city Public Safety Services. Commercial development of the site should not increase calls for service or change the nature of those calls for service.

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

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

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

Traffic generation from a commercial property is dependent on the specific uses within the development. A development plan has not yet been finalized so prediction of traffic impacts is not possible with certainty at this time. In general, the proposed development of an office generates little additional daily traffic. The re-construction of Shiloh Road included a 10-foot wide multi-use path on the east side of the street and curb walk on the west side. Any new drive approach will interrupt the sidewalk. Careful placement of the new approach is required due to the proximity to a marked crosswalk on Shiloh Road.

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

The new zoning does promote compatibility with urban growth. The proposed zoning will provide an area to locate offices and small service businesses in an area where none currently exist.

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

The proposed zoning does consider the character of the district and the suitability of the property for office and limited commercial uses. The level of existing traffic along with the number of existing and planned residential developments in the area makes the current zoning of R-96 not realistic for this vacant property.

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

The lot is currently vacant. Development of the site will add property value and may increase the adjacent property values. Surrounding buildings should be conserved when development occurs on the site by adding property value to the market.

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

The proposed zoning will permit a greater variety of uses on the property and is the most appropriate use of the property.

Ms. Cromwell also displayed a list of the different businesses located along Shiloh Road between Rimrock Road and Grand Avenue, the concept plan submitted to the Zoning Commission, and a rendering of the proposed office building and shelter for the crossing guard and students.

Councilmember Brown said the shared drive approach seemed strange to him. Ms. Cromwell said the owner of the adjacent property did not object; he did not comment in writing or attend the Zoning Commission hearing. The right of easement was on the plat.

The public hearing was opened.