

## REGULAR MEETING OF THE BILLINGS CITY COUNCIL

September 12, 2011

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 Hanel called the meeting to order at 6:30 p.m. and served as the meeting's presiding officer. The invocation was given by Councilmember Gaghen and was included with the "A Day of Service and Remembrance" Proclamation.

**ROLL CALL** – Councilmembers present on roll call were: Ronquillo, Gaghen, Pitman, Cimmino, McFadden, Ruegamer, McCall, Ulledalen, and Clark. Councilmember Astle was excused.

**MINUTES** - August 22, 2011. Councilmember Cimmino moved for approval, seconded by Councilmember Pitman. On a voice vote, the motion was unanimously approved.

### **COURTESIES:**

- Matt Borron, representing the Department of Defense, Employers Support of Guard & Reserve Division, presented the Department of Defense Above and Beyond Award to Police Chief St. John. He said it was a very prestigious award and only given to a handful of employers nationwide. He said the award was given to employers who went above and beyond in supporting the National Guardsmen and Military Reservists in their employ. Mr. Borron told Chief St. John he had been nominated by Command Chief Mitch Brush, who was serving in the Montana Air National Guard and currently on mobilization. Mr. Borron said Mr. Brush asked him to convey his sincere thank you for all the support the Chief had shown him throughout the years. Chief St. John said Mr. Brush was one of the Police Department's K9 Sergeants who had been employed with the City for 16 or 17 years and was currently deployed. Mr. Borron said, as an Army Reservist himself, they could not do it without the support of not only friends and family, but employers as well.
- Councilmember Ronquillo presented Chief St. John with a blanket made by Delores Terpstra that he had won in a drawing at a 9/11 event honoring veterans, emergency responders, the Police Chief, and the Fire Chief held at the South Park Senior Center.
- Police Chief St. John presented Department Citizen Recognitions to the following individuals.

**Kurt Kephart** was involved in an accident involving a bicyclist on a sidewalk. Chief St. John said even though it was determined that the cyclist was at fault, Mr. Kephart showed extreme concern and insisted on buying the cyclist a new bicycle. Mr. Kephart did not attend the meeting but relayed his appreciation for the recognition.

**Shaun Spencer and Jared Carter** witnessed a female being pulled by the hair into a motel room. Chief St. John said they ran to help and saw a male straddling

and choking the female. He said risking their own safety they intervened, pulled the male from the female, and held him until police arrived. He said the suspect was ultimately charged with aggravated assault. The Chief said because of Jared and Shaun, the female was saved from serious injury or death. He said Jared was currently in Bozeman attending school and introduced Shaun Spencer. Mr. Spencer thanked everyone and said the Billings Police Department's quick response and professional case work were key in the apprehension and prosecution of the offender.

#### **PROCLAMATIONS:**

- Big Sky Little League All-Stars Day, September 3, 2011
- A Day of Service and Remembrance for the Tenth Anniversary of September 11, 2001. Councilmember Gaghen read the proclamation and gave the invocation. Councilmember Cimmino said in light of the 10<sup>th</sup> anniversary of September 11, she wanted to take the opportunity to remember all the passengers on the four planes, at the Pentagon, the World Trade Center, and in Pennsylvania and that a prayer be said for them, as well as the surviving friends and families. She asked that the battery-operated candles she provided to each member of the council and administrative staff be turned on in remembrance.

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

Ms. Volek commented on the following items:

- **Item 1K3 – Cadillac Jax Sports Bar Grand Opening Street Closure.** Staff received word from Gary Larsen with Cadillac Jax on 9/7/11 asking that the street closure for the grand opening be postponed indefinitely.
- **Item 5 – Public Hearing and Resolution for Annexation #11-02.**
  - E-Mail to Mayor and Council from John Brewer, Billings Chamber of Commerce Convention and Visitors Bureau, dated 9/9/11, asking that the annexation be contingent upon an easement. Copy was filed in ex-parte notebook.
  - E-Mail to Mayor and Council from Earl Guss, dated 9/11/11, asking that the annexation be contingent upon an easement. Copy was filed in ex-parte notebook.
- **Tiger III Grant Application for 6<sup>th</sup> Avenue North/Main Street Intersection Improvements.** Copy of staff memo from Planning Director Candi Beaudry was sent in 9/9/11 Friday packet asking that the item be added to the agenda. Copy was filed in ex-parte notebook. She noted a 3/4 vote of council members present was required to add to the agenda.

Councilmember McCall moved to add approval of the Tiger III Grant Application to the regular agenda as Item 2, seconded by Councilmember Pitman. On a voice vote, the motion was unanimously approved.

**PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items #s 1, 2, 3, 4, 9, 10, 11 ONLY. Speaker sign-in required.** (Comments offered here are limited to one (1) minute. Please sign up on the clipboard located 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.

- **Kevin Nelson, 4235 Bruce Avenue, Billings, MT**, said he did not think the public had enough time to comment because the facts did not come up until after the public hearing that S & P had rated certain bonds as not investment grade and the reason was because of the vacant parcels at Miller Crossing. He said he hoped the Council would re-focus themselves on the finances of the City of Billings and work hard to get some of the parcels filled in. He said according to the BSEDA meeting minutes, they were concerned about parcels of ground and projects in Bozeman, and he hoped they could put their efforts into Billings instead of worrying about what was going on in Bozeman.
- **Bill Kennedy, Yellowstone County Commissioner**, referenced the Tiger Grant Application and said it was a timing issue because it was due the 1<sup>st</sup> of October. He said it would be used for a split entrance onto 6<sup>th</sup> Avenue, and it needed to go forward as a community project. He said the State of Montana was willing to go forward and sponsor or be the 20% match of the grant. Mr. Kennedy stated he was asking the Council on behalf of all of the Commissioners to support the recommendation to the Policy Coordinating Committee.

Councilmember Ulledalen asked if there had been any discussion with potentially impacted landowners. Mr. Kennedy said they were not exactly sure if it would be an overpass or an underpass, but if it was determined to be an overpass there would need to be discussion and negotiation with landowners.

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

**1. CONSENT AGENDA**

**A. Mayor Hanel recommends that Council confirm the following appointments:**

	Name	Board/Commission	Term	
			Begins	Ends
1	David Mosdal	Yellowstone County Soil Conservation District	09/12/11	06/30/14

**B. Bid Awards:**

- 1. W.O. 10-16, 32nd Street West Two-Way Left-Turn Lane, King Avenue West to Broadwater Avenue.** (Opened 8/30/2011) Recommend HighMark Traffic Services, Inc.; \$72,525.25.

**2. Three-Year Window Cleaning Services for Billings Logan International Airport Terminal Building.** (Opened 8/23/2011) Recommend Skyline Services, Inc.; \$58,590.

**3. Yellowstone Family Park Improvements.** (Opened 8/9/2011) (Action delayed from 8/22/2011) Recommend Good Earth Works, Inc.; \$772,149.

**4. Loader-Mounted Snowblower for Street/Traffic Division.** (Opened 8/30/11) Recommend delay of award until September 26, 2011.

**C. Professional Engineering Services Contract** for design and construction administration for W.O. 12-01, 2012 Water and Sewer Replacement Project, Schedule 2; DOWL HKM, in an amount not to exceed \$608,000.

**D. Contract** with State of Montana Department of Public Health and Human Services (DPHHS) to provide paratransit services; 7/1/2011-6/30/2012 with three, one-year extensions not to exceed a total of four years; approximate annual revenue - \$90,000.

**E. Memoranda of Understanding** between the City of Billings and Billings Public Schools for two (2) middle school resource officers and three (3) high school resource officers (7/1/11 - 6/30/12); Billings Public Schools payment to the City of Billings - \$117,832.

**F. Approval** of annual Funding Agreement with the Yellowstone County Council on Aging.

**G. Approval** of Investment Grade Audit Report (IGAR) as presented by McKinstry Essention, Inc.

**H. Approval** of Report for Pledged Collateral for First Interstate Bank Certificates of Deposit and US Bank Certificates of Deposit.

**I. Approval of Semi Annual Investment Report.**

**J. Acknowledging Receipt of Petition to Annex #11-03:** 14.87 acres located west of Highway 87 and north of the existing commercial development that includes American Pharmaceuticals in the Billings Heights, legally described as Tract 2D of C/S 2776, Amended; Wayne Laufer, petitioner, and setting a public hearing date for 9/26/11.

**K. Street Closures:**

**1.** Inland Truck Parts Company Car Show; September 16, 2011; 9 a.m. to 6 p.m.; North 16th Street between 1st and 2nd Avenues North.

2. Chase Hawks Memorial Association Race for Chase 5K and 10K Run; October 2, 2011; 7 a.m. to 11 a.m.; combined start just west of Sportsman's Warehouse parking lot proceeding on Shiloh, Neibauer, 56th St. W, Hesper & Shiloh Roundabout, finishing at the entrance of Zoo Montana.

3. Cadillac Jax Sports Bar Grand Opening; September 17, 2011; 3:00 p.m. until 10:30 p.m.; 18th Street West from Grand Avenue south to the alley.

4. Skyview High School Homecoming Parade; October 7, 2011; Noon until 2:00 pm; starting from Skyview's parking lot, east on Wicks to Babcock, returning to Skyview's parking lot.

5. Skyview High School 5K Fun Run/Walk; October 2, 2011; Noon to 2:00 p.m.; starting at Skyview High School on High Sierra Blvd, west on Wicks Lane, east on Matador Ave., south on Vesca Way, east on Sierra Grande Blvd, south on Fantan, west on Wicks Lane, back to High Sierra Blvd ending on Skyview High School track.

**L. Second/Final Reading Ordinance #11-5540 for Zone Change #878:** A zone change request from Entryway Light Industrial (ELI) to Highway Commercial (HC) on a 12.99-acre parcel of land described as Lots 3 and 5, Block 1, Montana Sapphire Subdivision and generally located in the Montana Sapphire Subdivision at 4300 Montana Sapphire Drive; Montana Sapphire, LLC, owner; Sanderson Stewart, agent. Approval of the zone change and adoption of the determinations of the 12 criteria.

**M. Resolution #11-19099** allocating up to \$10,000 of Council Contingency Funds to the President's Reception at the Montana League of Cities and Towns 2011 Annual Conference to be held in Billings October 5-7, 2011.

**N. Approval** of extension of preliminary plat approval for two years for North Pointe Square Subdivision, 2nd Filling; setting new expiration date of October 14, 2013.

**O. Final Plats**

1. River Rock Estates Subdivision
2. Montana Sapphire Subdivision, Amended Lot 9-A, Block 1

**P. Bills and Payroll:**

1. August 5, 2011
2. August 12, 2011
3. August 19, 2011

Councilmember Pitman separated Items K3 and K4, Mayor Hanel separated Item B2, and Councilmember Cimmino separated Items E, G, P1 and P2.

Councilmember Pitman moved for approval of the Consent Agenda with the exceptions of Items B2, E, G, K3, K4, P1 and P2, seconded by Councilmember Ronquillo. On a voice vote, the motion was unanimously approved.

Mayor Hanel referenced Item B2 and asked Assistant Director of Aviation Kevin Ploehn to explain the significant difference in the two bids received. Mr. Ploehn said it was very confusing and initially they thought there could be a mistake. He said the low bidder was the vendor they were currently using, and the other bidder was a new company just starting out who was apprehensive about what it would take to do both the inside and outside of the high windows at the Airport. Mr. Ploehn said staff talked to both contractors, and the bids were correct as they were presented.

Councilmember Pitman moved to indefinitely postpone Item K3, seconded by Councilmember Cimmino. On a voice vote, the motion was unanimously approved.

Councilmember Pitman referenced Item K4 and moved that the route be approved to continue the parade all of the way to St. Bernard's Catholic Church, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.

Councilmember Cimmino referenced Item E and asked why there were only five resource officers when there were three high schools and three middle schools. Police Chief St. John advised there was one resource officer per high school, and one resource officer for Castlerock and Riverside Middle Schools, and one resource officer for Lewis & Clark and Will James Middle Schools. Councilmember Cimmino moved for approval of Item E, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

Councilmember Cimmino referenced Item G and asked City Administrator Volek if it was correct the energy audit report excluded the library building. Ms. Volek said that was correct. Ms. Cimmino asked if the report could be amended to include the existing library building if the vote failed in November to build a new library building. Ms. Volek advised recommendations had been made on the existing building but an in-depth study had not been done. She said if the library bonds failed, staff could work on it. Councilmember Cimmino moved for approval of Item G, seconded by Councilmember Ronquillo. On a voice vote, the motion was unanimously approved.

Councilmember Cimmino referenced Item P1 and noted for the record she would abstain from Invoice #747448 concerning a First Time Homebuyer who happened to be a friend of hers. Councilmember Pitman moved for approval of Item P1, seconded by Councilmember Ronquillo. On a voice vote, the motion was approved 9 to 0.

Councilmember Cimmino referenced Item P2 and noted for the record she would abstain from Invoice #747724 due to her employment. Councilmember Pitman moved for approval of Item P2, seconded by Councilmember Ronquillo. On a voice vote, the motion was approved 9 to 0.

Councilmember Clark moved for approval of Item B2, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

## **REGULAR AGENDA:**

### **2. TIGER III GRANT APPLICATION for 6th Avenue North/Main Street Intersection Improvements. (This item was added to the Agenda at the meeting of**

**9/12/2011.) Staff recommends supporting the TIGER III Grant application and instructing Council's representative to carry recommendation to the Policy Coordinating Committee on 9/13/2011. (Action: approval or disapproval of staff recommendation.)** City Administrator Volek introduced Steve Zeier with Big Sky Economic Development Authority (BSEDA). Mr. Zeier told the Council they had spoken a week prior and between then and now they had clarified some of the details. He said the project selected itself for the purposes of the grant as an overpass or an underpass but more than likely an overpass due to budget constraints. He said to determine if a roundabout was technically feasible it would require (1) an investment by one of the bodies; (2) time to conduct an analysis; and (3) an entirely different environmental document they did not have time for. Mr. Zeier said the grant, as proposed, was for an overpass and the preferred alternative of Montana Department of Transportation (MDT). He said it was a \$12.5 million application with 20% funded by MDT, and the environmental was in place. He said it only needed to be amended slightly to include an overpass. Mr. Zeier said the primary applicant would be Yellowstone County. He said the City of Billings and MDT would be secondary.

Councilmember Ruegamer said an overpass would necessitate moving several businesses and asked who would be responsible. Mr. Zeier said MDT was not sure a lot of additional right-of-way would need to be purchased, and the design build delivery method allowed a certain amount of latitude. He said if additional right-of-way was needed, he did not know that it would require relocation of businesses. Councilmember Ruegamer asked if the City would have to pay for moving businesses because it would be extremely expensive. Mr. Zeier said he could not say for sure.

Mayor Hanel asked if BSEDA was actively involved up to that point with the preparation and grant writing. Mr. Zeier said that was correct. He said as their role and responsibilities to the Yellowstone County Commissioners, they had an interlocal agreement that tied BSEDA to Yellowstone County with several grant programs, which meant if an opportunity presented itself, BSEDA was the grant writing entity for the County.

Councilmember Ulledalen asked if there was any sense of how much of the not-yet completed part of Bench through the MetraPark grounds would have to be ripped out to accommodate the approaches to the bridge. Mr. Zeier said he did not know but likely some of the improvements currently being constructed would have to be removed but hopefully as little as possible. Councilmember Ulledalen said at the work session he did not sense a real ringing endorsement of the project from staff and asked how they arrived at the staff recommendation. Ms. Volek advised staff had received more information that enabled them to assist in a decision. Planning Manager Wyeth Friday advised the recommendation was based on information received from the work session and collecting and putting everything together afterward. He said they also were basing their recommendation on the recommendation of the Technical Advisory Committee (TAC). Councilmember Ulledalen asked if there had been any discussion with the East Billings Urban Renewal District. Mr. Friday advised Marty Connell, Chairman of the Billings Industrial Revitalization District (BIRD), attended the TAC meeting, at which time he talked about a roundabout and concerns from property owners. Councilmember Ulledalen advised they should let the BIRD know as soon as possible if Council's recommendation to the Policy Coordinating Committee (PCC) was positive.

Councilmember Pitman moved to recommend the TIGER Grant to the PCC, seconded by Councilmember Ronquillo. On a voice vote, the motion was approved 8 to 2. Councilmembers Ulledalen and Ruegamer voted in opposition.

**3. TEAMSTER LOCAL 190 7/1/2011 - 6/30/2013 UNION CONTRACT. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

City Administrator Tina Volek advised a 2-year agreement was tentatively reached on August 16, 2011, and approved by an approximate 3 to 1 margin by the Teamsters within the last few weeks. She said the contract included a zero percent cost of living adjustment (COLA) for the current fiscal year retroactive to July 1, 2011, and a 2.5% COLA for Fiscal Year 12, which would begin July 1, 2012. She said that was the same raise given previously for the same period to the Montana Public Employees Association Billings Police Chapter. She said the contract included a \$950 city contribution per non-probationary teamster employee in each year of the contract toward either an ICMA or Nationwide 457 Deferred Compensation Plan as selected by the employees. Ms. Volek advised the contract also included stand-by pay increases and shift differential increases, which were the first raises of their kind in more than a decade. She said there was also a \$130 increase in the annual uniform allowance, a provision of a rain suit if requested by MET Transit drivers, changes in the shifts for Park and Recreation employees, clarification of safety provisions for all employees, and promotional procedures at the Water and Wastewater Treatment Plants. Ms. Volek advised the total cost of the contract for the first year was \$405,963, and total cost of the contract for the second year was \$460,180. She said the items would be spread across the budget of the various departments in which Teamsters worked. She said the cost of the previous one-year contract with the Teamsters approved by Council in September 2010 was \$520,925, which included a 2.9% COLA.

Councilmember Ulledalen said historically the Teamster Agreements were also extended to the non-union employees of the City and asked if that would happen this time. Ms. Volek advised that would be her recommendation. She said the shift differential was not something they would have to look at, but the primary would be the COLA adjustments and the contribution to the 457 Plan.

Mayor Hanel asked Ms. Volek to briefly explain the random drug and alcohol testing policy that had been negotiated. Ms. Volek advised the agreement was negotiated in the last contract with all three of the bargaining units. She said the Teamsters were in a different situation than the other employees in that the Teamsters who had Commercial Drivers Licenses were required to do testing now. She said what the policy did was to extend random testing to a majority of the employees in the Teamsters Unit who had jobs that would affect public safety.

Councilmember Clark asked if the \$950 to the 457 Plan was for the first or second year, or both. Ms. Volek advised it was for each year. She said because of anticipated health insurance increases, employees would be taking home less in the coming calendar year than the previous year, even with the retirement benefit.

Councilmember Ulledalen asked if there were calculations on what the impact from the General Fund would be. Ms. Volek advised she did not have that information with her, but could provide it.

Councilmember Clark asked if the \$405,963 for the first year and \$460,180 for the second year included the \$950 and the 2.5%. Ms. Volek said it did. She advised the \$950 would carry over and was not included in the \$460,180, which was new money in year two of the contract.

Councilmember Cimmino asked if the longevity benefit had been left in. Ms. Volek advised the Teamsters Union currently had a longevity benefit by contract that began at the end of the sixth year, which was more in line with the traditional approach of longevity, which normally was used to recognize long-term employees who may be at the top of their pay scale or close to it. She said there was no change because it had been their situation for a considerable period of time. Councilmember Cimmino asked if the longevity would also be provided to the non-bargaining units. Ms. Volek advised it was for all new hires effective October 1.

Councilmember Ulledalen asked for the logic behind the money going into a 457K program rather than into the retirement system. He asked if there had been any feedback or objections at the State level. Ms. Volek advised it was a 2-year contract so the language was very specific. She said in her opinion it was more beneficial because the retirement to insurance that Council approved for the Police and Fire Departments involved the retirement plan that was operated by the State of Montana for the employees. She said it did not in any way, shape or form go through that plan or increase their obligation. She said it was a separate 457 plan to which employees had been able to contribute to in the past and simply added a city contribution to that. She said they talked about health insurance to retirement with the Teamster employees, and they were not interested because there was a cost, not only to the city and the retirement fund, but to the employees themselves.

City Administrator Volek advised Joe Dwyer, the secretary/treasurer of the union, was present and asked him to comment. Mr. Dwyer advised the reason they chose to look at not going through the PERS program was because it would reduce take-home pay of the union members of about \$75 to \$100 a month. He said they felt it would not sell, and they wanted to protect the benefit and shelter it from as many taxes as they possibly could.

Mayor Hanel thanked Mr. Dwyer on behalf of the Council and the City for his professionalism throughout the entire negotiation period. Mr. Dwyer said the committee was absolutely wonderful. He said it took 17 sessions and was not a fast and easy process. He said they tried to get it done with the best interests of everyone.

Councilmember McCall said Ms. Volek had indicated that the employees would be taking home less in their paychecks due to the increase in health insurance. Ms. Volek advised the \$950 was not going into the employees' pockets, but into a retirement fund.

Councilmember Ronquillo moved for approval of the Teamster Contract ratification, seconded by Councilmember Gaghen. Councilmember Ronquillo said he felt with the hours put into the contract and after reading it, it sounded good. He said he knew where Councilmember Ulledalen was coming from and one of these days they were going to hit the cliff and have to jump. He said staff did a good job at putting it together, and he felt the Teamsters would be happy with it. Ms. Volek recognized Karla Stanton, Human Resources Director; Mike Whitaker, Park and Recreation Director; Bonnie Sutherland, Assistant City Attorney; Tim O'Connell, Deputy Police Chief; and

Vern Heisler, Assistant Public Works Director, and said they were an excellent team who worked well together and brought all of the pieces together. She said Mr. Dwyer and his team worked very hard, and the City appreciated their cooperation.

Councilmember Ulledalen amended the motion to fund the raise by raising fees in the Enterprise Funds where possible to recoup the raise, seconded by Councilmember Ruegamer.

City Attorney Brooks advised that when individual fee increases were passed by the Council, each fee needed to be looked at and based upon the relation to the cost of the service being provided.

Councilmember McCall asked Councilmember Ulledalen to clarify his motion. Councilmember Ulledalen said all he was asking for was that staff start the process of funding the raise. He said they were not going to raise the fees that night because they did not even know what they would be. Councilmember McCall asked if he was talking about the \$950 per year because they had a 0% wage increase the first year. Councilmember Ulledalen said there was 2.5% increase the second year. City Administrator Volek advised the fees had already been sent to the County for inclusion in the tax bills. Councilmember Ulledalen said he recognized it could take six months to get it done. Finance Director Pat Weber advised when the financial projections were done by the City, an arbitrary cost of living was always included. He said at that point, the money was available and next year staff would need to look at their fees for the next budget year. Councilmember Ulledalen said the point was that it put the City back behind the rock again. Councilmember McCall asked if it would in any way impact what they had done with the other negotiations in the other categories. Ms. Volek advised they were still negotiating with the IAFF. She said the Police Unit had concluded its negotiations, and the contract had been approved so it would not be impacted. She said they did not do the negotiations in a vacuum, and they were aware what was being brought to the table.

Councilmember Pitman said there were puzzling things about the motion. He said it pushed them right back into the next budget session anyway, so rather than it being an amended motion that was broad-based and out there, having it to review at the next budget cycle seemed to be more appropriate. He said he felt directing staff to look into it would be more appropriate but not do it forcibly right now.

Councilmember Ruegamer said the 0% raise did not bother him at all, but the 2.5% next year concerned him. He said they were spending money they did not have or did not know they would have. He said he felt the Teamsters' pain, as he would be taking a 20 to 25% loss in income after the first of the year. Councilmember Ruegamer said he would support it, and supported Councilmember Ulledalen's idea because it would be funding something they would be doing in the future.

Mayor Hanel said he did not disagree with the concept of the amended motion but agreed it was something that needed studied. He said he disagreed with the timing and the information they had to work with based on the amended motion, so he would not support the amended motion.

Councilmember Clark asked if the steps and longevity were already built in to the approved budget. Ms. Volek said they were included in the budget approved in July.

Councilmember Ulledalen said his point was if not now, when. He said they had a tendency to kick the can down the street and worry about it later. He said there was

no reason staff could not work on it as part of the budget process and bring it to them showing what the impacts were.

Councilmember Pitman asked for clarification on the amended motion. The City Clerk repeated the amended motion. Councilmember Ulledalen said it obviously impacted the Enterprise Funds and there was nothing they could do about the General Fund entities.

On a roll call vote, the amended motion was approved 7 to 3. Councilmembers Ronquillo, Gaghen, Cimmino, McFadden, Ruegamer, Ulledalen and Clark voted in favor. Councilmembers Pitman, McCall and Mayor Hanel voted in opposition.

On a voice vote, the original motion was unanimously approved.

**4. RECOMMENDATION to the Policy Coordinating Committee (PCC) for approval of the Draft 2012 Unified Planning Work Program (UPWP). Staff recommends making recommendation of approval to the PCC. (Action: approval or disapproval of staff recommendation.)** City Administrator Tina Volek advised the item was the subject of considerable discussion at the work session the previous week, so staff had no additional presentation but was available for questions.

Councilmember Cimmino asked if it also included the Town of Broadview. Ms. Volek said it did not.

Councilmember Cimmino moved to approve the 2012 Work Plan and ask that the city representative make the recommendation to the PCC, seconded by Councilmember Ronquillo. On a voice vote, the motion was approved 9 to 0. (Councilmember Ruegamer left the room at 7:47 p.m. and was not present for the vote. He returned at 7:50 p.m.)

**5. CONTINUANCE OF PUBLIC HEARING FOR SPECIAL REVIEW #891: A special review to allow a drive-through window for a new coffee or food kiosk in a new building in a Neighborhood Commercial (NC) zone adjacent to a Residential 9,600 (R-96) zone on Lots 6 and 7, Block 9, Central Acres Subdivision, 5th Filing, generally located on the northeast corner of the intersection of Central Avenue and 32nd Street West; Gerald Neumann, applicant. (Continued from 8/22/2011). Zoning Commission recommends denial. (Action: approval or disapproval of Zoning Commission recommendation.)** Zoning Coordinator Nicole Cromwell began her presentation showing the zoning map of the subject property and surrounding properties. She showed a site plan that was submitted with the application, as well as an aerial view and photographs of the property. Ms. Cromwell explained there would be a right in only access point allowing drivers to obtain service and exit the property through the alley. She said the Zoning Commission received testimony from one of the neighbors north of the alley opposing the use of the alley, and the Zoning Commission felt the left turn off of 32<sup>nd</sup> Street West and the left turn out of the alley would be very difficult and hazardous to existing traffic. Ms. Cromwell said the Planning staff recommended the following nine conditions of approval.

1. The special review approval for a drive through window shall be limited to Lots 6 and 7, Block 9, Central Acres Subdivision, 5th Filing as shown on the site plans submitted with this application.

2. Any new lighting within the parking lot or drive through areas shall have full cut-off shields so light is directed to the ground and not onto adjacent property. Lighting standards are limited to 15 feet in height from finished grade.
3. The drive through location shall be constructed as shown on the submitted site plan.
4. The landscaping, paving and storm water retention areas shall be installed as shown on the submitted site plan.
5. The applicant is required to install and continuously maintain a 6-foot sight-obscuring fence that runs along the north side of the alley on the property known as 3144 Lynn Avenue, Lot 8, Block 9, Central Acres Subdivision, 5th Filing. The applicant will work with the adjacent residential property owner to accommodate gates and desired materials. Matte or flat finished fence materials are required.
6. There shall be no outdoor public address system or outside announcement system of any kind. The drive through may have an outdoor private address system as standard for all drive through services.
7. The drive through service shall not operate after midnight or before 5:00 am daily.
8. No site development or construction work will occur prior to 8 am or after 8 pm daily.
9. The proposed development shall comply with all other limitations of Section 27-613 of the Unified Zoning Regulations concerning special review uses, all landscaping requirements specified on Section 27-1101, and all other City regulations that apply.

Ms. Cromwell referenced Condition #5 and advised a neighbor to the north had expressed that she would not allow the replacement of her chain-link fence with a sight-obscuring fence. Ms. Cromwell advised the Zoning Commission was recommending denial on a 3-0 vote based primarily on testimony received from the neighbor, as well as their opinion concerning the negative impact on traffic at 32<sup>nd</sup> Street West and Central Avenue.

Councilmember Clark asked when the applicant would be required to install curb, gutter and sidewalk instead of just using asphalt and commented if they were not going to do it right, why do it at all. Ms. Cromwell advised the traffic using the entrance off of Central was currently for the single-family rental property, but the applicants were predicting 150 customers daily, which was why they needed asphalt because the gravel would not hold up. Ms. Cromwell said she was not sure where that particular piece of Central Avenue fit in the Capital Improvement Plan, but next summer a sidewalk project would come through on Central on the north side but it did not include right-of-way improvements other than the grade separated sidewalk.

Councilmember Gaghen asked if the size of the driving lanes would diminish when the sidewalks were installed and asked if they would acquire additional right-of-way. Ms. Cromwell said there was a considerable amount of right-of-way not currently being used, so no more right-of-way would have to be acquired.

Councilmember Ulledalen asked if everyone coming in off of Central would have to go out through the alley and everyone coming in on the alley would have to go back out through the alley. Ms. Cromwell said that was correct. He said the intersection was extremely full, especially on the weekends, and now there would be people making right turns in and left turns out from the alley into two lanes of traffic and a turn lane. Councilmember Ulledalen asked if the city traffic engineer had looked at it and commented. Ms. Cromwell said the traffic engineer did not submit a comment during the

review period, and she had directed the applicants to speak with the City Engineer's Office to ask if a traffic analysis or impact study was required. She said the traffic engineer indicated to the applicants a study or analysis was not required.

Councilmember Ulledalen said the hours of operation could be until midnight, so lights would be shining into the backyard with the chain link fence until midnight. Ms. Cromwell said that was correct unless the applicant was willing to have a sight-obscuring fence installed.

Councilmember Gaghen asked if the applicants had indicated their hours of operation. Ms. Cromwell advised they did not have a potential lessee at that point, so the hours were unknown.

The public hearing was continued.

- **Ed Jorden, no address given**, said he was one of the owners of the property. He said they owned the five lots on the corner of 32<sup>nd</sup> and Central and were in the design phase of an office/retail project that would encompass the five lots. He said they wanted to push back the approach as far as possible to the retail center. Mr. Jorden said the office/retail project would clean up the intersection and they were told they would need to put in curb, gutter and a right-turn lane when they developed the five lots. He said the city engineer felt it was a good project and had no concerns. He said the Zoning Commission's main concern was with the traffic and a traffic study, and they told the Zoning Commission there was no traffic study needed for the proposed temporary use. He said they hoped to capture 150 cars of the existing traffic and said it would help them see how it would work with their future project. He said the goal for a kiosk was temporary for a couple of years because they hoped to start construction on their building in two to three years. He said they hoped the temporary kiosk would help pay the property taxes and interest on the land. Mr. Jorden said he understood the code was to have a solid fence, which they were fine to pay for; but one of the neighbors did not want a solid fence. He said they would be moving the approach on 32<sup>nd</sup> Street West to the alley.

Councilmember Clark asked how they would mitigate left turns out of the alley. Mr. Jorden said they were in favor of a right-hand turn only sign even though people would choose which way they turned.

- **Jerry Voto, 3128 Lynn Avenue**, said he was one of the neighbors north of the property and represented several other neighbors. He said he was in favor of the development of the strip mall because it would abate the noise that came off of Central. He said the fear the neighbors had with the alley access would be that people would learn to go east and in that case the alley needed to be widened and paved because it was gravel, dusty and noisy. He asked if the temporary drive-through would turn into a permanent one because the egress and ingress from the intersection was dangerous. Mr. Voto said they wanted the property developed and the strip mall but they were against the drive-through because it might become permanent.
- **Jerry Neumann, no address given**, said he was one of the owners, and it would be a temporary kiosk that they would not leave for 20 years. He said

considering the economy it did not make sense to build 16,000 feet of retail/office space right now so they were looking at other ways to move it forward. He said the city engineer came up with the drawing. He said they talked about widening the alley approach to make it safer and paving a portion for the kiosk. He said they were trying to capture 150 cars and did not think it would be a problem. He said they were trying to take a situation and make it better. Mr. Neumann said if they went further with their next development, they would be required to spend \$5,000 for a traffic study. He said a traffic study was not required for a temporary kiosk and to spend it right now did not make sense.

Councilmember Ruegamer asked what they would sell out of their kiosk. Mr. Neumann said they had been approached by Mountain Mudd and City Brew, but neither decided to move forward. He said they decided to start the process in case someone else contacted them, and there would not be a 6-month process to get approved. Mr. Neumann said it could be a kiosk for coffee or smoothies, or whatever would sell.

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

Councilmember Ulledalen moved for denial, seconded by Councilmember Cimmino.

Councilmember Ruegamer said he did not feel right making the neighbor put in a solid fence if she did not want one. He said he felt they were trying to “shoe-horn” a business into a place where it did not fit. He said he felt the owners were being honest, but they were basing it on the economy and no one knew what the economy would be in the next few years. He said there were too many unknowns, so he could not support it.

Councilmember Ulledalen said part of the special review process was to mitigate the impacts, and he did not see where they could. He said he understood the situation, but who was to say the economy would not be in the same situation and nothing would happen. He said he had supported the zone change because it was a way to consolidate the properties and have someone plan and mitigate some of the problems and to do something temporary without mitigating the impacts just kicked the can further down the road. He said there was no assurance things would be better in two years and the temporary situation could become long term.

Councilmember Clark said the Zoning Commission recommended denial and the last person testifying said “if” they did the project in two years. He said he did not see any way to mitigate the traffic going out of the alley, so he could not support the request.

On a voice vote, the motion to deny was unanimously approved.

**6. PUBLIC HEARING AND RESOLUTION #11-19100 FOR ANNEXATION #11-02: Property described as 16.94 acres located on the South Frontage Road, west of the intersection of Sugar Avenue and South Frontage Road addressed as 3128 South Frontage Road. Knife River, Inc., owner; Land Use Consulting, agent. Staff recommends conditional approval. (Action: approval or disapproval of staff recommendation.)** Planning Division Manager Wyeth Friday began his PowerPoint presentation showing an aerial view and map of the subject property and surrounding

properties. He said the petition had been reviewed and it complied and was consistent with the City's Annexation Policy criteria as follows:

1. The area is located within the Limits of Annexation.
2. The City is able to adequately provide all municipal services. However, water and sewer services will require extension of lines by the property owner at the time of development.
3. Any proposed improvements will be required to meet City standards.
4. As part of a Development Agreement or Subdivision Improvement Agreement, the owners will sign a Waiver of Right to Protest the creation of any Special Improvement Districts.
5. The property is zoned Controlled Industrial and any proposed land use will comply with the zoning. Future development also may conform to the goals of the City of Billings and Yellowstone County Growth Policy.

Mr. Friday advised there was a proposed 30-foot-wide trail easement along the southern boundary of Tract 1. He said it was their understanding that the easement had not been recorded but had been under discussion in 2009 between Yellowstone River Parks Association (YRPA), Knife River, and County Commissioner Reno to provide future connectivity for trails. Mr. Friday said Riverfront Park was to the south and west and Mystic Park was further north and east. He said there were other trail corridors already in place in the general area. He said the County, YRPA and the Billings Chamber of Commerce would like the Council to make the easement a condition of the annexation.

Councilmember McCall asked if there was written communication from the County. Mr. Friday said Commissioner Reno had e-mailed Earl Guss and the Planning Staff and talked directly to members of the Planning Staff expressing his interest and support in getting it completed. Mayor Hanel said he had conversations with all three commissioners, and they were in favor of it with the condition the easement be added.

Councilmember Ulledalen asked if there was some way to get trail access from the State within the river zone. Mr. Friday said it could be looked at; although certain areas along the river were flood plain and portions of property were within the flood-way that may not be able to be developed. He said it had been discussed and looked at further to the east but there was the challenge of the trail being washed out.

Councilmember Ulledalen asked Mr. Friday if he was saying that because portions of the land were in the flood-way they could not be developed. Mr. Friday said that was correct. He said there was a piece of land within the flood plan by the Intermountain Distributing property with development limitations. He said all of the flood plain maps were being updated for the entire Yellowstone River corridor and should be completed by early next year.

Councilmember Ronquillo asked if other existing properties had been asked for access. Mr. Friday said the Chamber had been spearheading an analysis of the entire corridor looking for trail options but he did not know if others had been contacted.

The public hearing was opened.

- **Elaine Hawk, PLand Land Use Consulting**, said she represented Knife River for the annexation request. She thanked Wyeth Friday and Joe Sheridan of the Engineering Division for their assistance. She said in the past the property had been used for a pig farm and most recently as a gravel pit. She said the property was no longer productive as a gravel pit and it had been put up for sale about two years ago. She said there had not been a lot of interest in the property and they felt the annexation would position it for better sale and make it more marketable. Ms. Hawk said the easement issue had come up a couple years ago, and Knife River had no problem with the condition. She asked that Council consider modifying the language of completion to within so many months after the FEMA mapping was completed.

Councilmember Ronquillo asked if the area was where a go-cart track once existed. Ms. Hawk said she was not aware of it.

- **Bob Kober, 3330 Burning Tree Drive**, said the go-carts were on lots to the east and not on the subject parcels.

Councilmember Clark asked if the easement condition would run with the land. Mr. Friday said it would. Councilmember Ulledalen asked if there was a way to write the easement in to accommodate the FEMA mapping issue. Mr. Friday said there was.

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

Councilmember Ronquillo moved for the approval for Annexation #11-02 with three conditions (1) Prior to site development, a Development Agreement shall be executed between the owner(s) and the City that shall stipulate specific infrastructure improvements and provide guarantees for said improvements and a Waiver of Right to Protest the Creation of Special Improvement Districts will be recorded; and/or (2) A Subdivision Improvements Agreement (SIA) and Waiver of Right to Protest the Creation of Special Improvement Districts shall be approved and recorded that will stipulate specific infrastructure improvements and provide guarantees for such infrastructure improvements; and (3) A 30-foot-wide trail easement along the southern boundary of Tract 1, C/S 1591, and included as an exhibit to the petition for annexation, shall be recorded within 12 months of the date FEMA makes effective the new Digital Flood Insurance Rate (DFIRM) maps for the Yellowstone River adjacent to this property, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.

Mayor Hanel called for a recess at 8:45 p.m. Mayor Hanel called the meeting back in session at 8:55 p.m.

**7. PUBLIC HEARING AND RESOLUTION #11-19101 assessing annual fee for encumbrances, obstructions, or encroachments on, over, across or above the streets, avenues, sidewalks, or alleys of the City of Billings. Staff recommends approval. (Action: approval or disapproval of staff recommendation).** City

Administrator Volek advised staff had no presentation but was available for questions.

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

Councilmember Clark moved for approval of Item 7, seconded by Councilmember Ruegamer.

Councilmember McFadden moved to amend the motion that an exception be made for ongoing construction projects. The amended motion died for lack of a second. Finance Director Pat Weber clarified that the assessments were for permanent encroachments and not temporary construction encroachments.

Councilmember Ruegamer moved to amend the motion to include the word 'permanent', seconded by Councilmember McFadden. After further discussion, Councilmember Ruegamer withdrew his motion, and the withdrawal was agreed to by Councilmember McFadden.

On a voice vote, the original motion was unanimously approved.

**8. PUBLIC HEARING AND RESOLUTIONS regarding the re-spread of assessments in the following Special Improvement Districts.** City Administrator Tina Volek advised there was no presentation but staff was available for questions.

A public hearing was opened for Items 8A, 8B, 8C, and 8D. There were no speakers, and the public hearing was closed.

**A. SID 1387 – RESOLUTION #11-19102: Zimmerman Trail Subdivision Sanitary Sewer Improvements. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** Councilmember Clark moved for approval, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

**B. SID 1388 – RESOLUTION #11-19103: Dorothy Lane Street and Storm Drain Improvements. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** Councilmember Clark moved for approval, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

**C. SID 1389 – RESOLUTION #11-19104: Clubhouse Way Water, Sewer, Storm Drain, and Street Improvements. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** Councilmember Clark moved for approval, seconded by Councilmember Ronquillo. On a voice vote, the motion was unanimously approved.

**D. SID 1383 – RESOLUTION #11-19105: Cherry Hills Road Water, Sewer, Storm Drain, and Street Improvements. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** Councilmember Clark moved for approval, seconded by Councilmember Ulledalen. On a voice vote, the motion was unanimously approved.

**9. RESOLUTION #11-19106 approving \$1,058,250 SID 1392 Bond Anticipation Notes, Series 2011, fixing the form and details and authorizing execution and delivery of the bonds. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** City Administrator Tina Volek advised there was no presentation, but staff was available for questions.

Councilmember Ulledalen asked Finance Director Pat Weber if it was a bridge loan between getting the project started and the ultimate bond financing. Mr. Weber said that was correct. He said the Bond Anticipation Notes gave the City the right to assess the property owners instead of the City paying for it, not being able to sell the bonds, and being left on the hook.

Councilmember McCall moved for approval, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

**10. RESOLUTION #11-19107 approving \$710,000 Pooled Special Improvement District Bonds, Series 2011 (SID 1369 and SID 1391) fixing the form and details and authorizing execution and delivery of the bonds. Staff recommends approval. (Action: approval of disapproval of staff recommendation.)** City Administrator Tina Volek advised there was no presentation, but staff was available to answer questions.

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

**11. RESOLUTION #11-19108 approving \$2,620,000 Special Improvement District 1360 Refunding Bonds, Series 2011, fixing the form and details and authorizing execution and delivery of the bonds. Staff recommends approval. (Action: approval of disapproval of staff recommendation.)** Finance Director Pat Weber said he wanted to address the Investment Grade Rating. He said it hurt his ego not to get an Investment Grade Rating because the City had a 28% revolving fund and all of the SIDs were current. He said it did not sit well with the City's Underwriter or Financial Advisor either. Mr. Weber said the rater was out of California and it was very difficult for her to understand the situation. He said despite not having an Investment Grade Rating, the City was still able to get a 4.28% on refunding for Gabel Road and saved the taxpayers \$180,000. He said the test that was applied to the City was one that no city would have passed, and the Underwriter and Financial Advisor said no city would have been able to stand up to the scrutiny. Mr. Weber said Piper Jaffray bought 60 percent of the bonds and D.A. Davidson and Buchanan Capital also took advantage. He said the City was currently working with its Financial Advisor to bring forth a 2-year contract for an Underwriter for 2012 and 2013.

Councilmember McCall said she served on the Economic Development Authority and Economic Development Corporation Boards and asked that either Tina or Pat respond to the two boards via e-mail to Steve Arveschoug with an explanation and that she be copied on the response. Mr. Weber said he would write a memo and send it to Tina to forward on to Mr. Arveschoug.

Councilmember Gaghen asked if the woman who did the rating assessed all of the city's bonds. Mr. Weber said it was hard to understand. He said she gave Missoula an Investment Grade Rating about five months prior, and they kept their revolving fund at 10%. Councilmember Gaghen asked if there was an appeal process. Mr. Weber said unfortunately there was not. Councilmember Gaghen said it almost seemed rather punitive that Billings be required to meet a higher standard than many other entities.

City Administrator Volek advised that Billings' rating came after the downgrade of Federal bonds, and Missoula's rating came before, which may have played a factor. Councilmember Ulledalen asked who had done the rating, and Ms. Volek advised it was

Standard & Poor's (S & P). Councilmember Ulledalen suggested next time going with Moody's or Fitch because S & P was the only one who downgraded the US debt. Mr. Weber advised they had always received investment grade on Airport bonds and G.O.'s, and they never had to rate SIDs before now. Councilmember Ulledalen asked what was given up in the rating downgrade in terms of rate. Mr. Weber said it was about 20 basis points. Councilmember Ulledalen said it was insignificant because the market and what the bonds sold for told the real story. Councilmember Ulledalen asked what the rating cost. Mr. Weber said it was \$8,500. Councilmember Ulledalen said theoretically, if they had not paid the \$8,500 for the rating they would have sold the bonds for about the same rate anyway.

Councilmember Cimmino moved for approval, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

**PUBLIC COMMENT** on Non-Agenda Items -- Speaker Sign-in required. (*Restricted to ONLY items not on this printed agenda. Comments here are limited to 3 minutes. Please sign up on the clipboard located at the podium.*)

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

### **COUNCIL INITIATIVES**

- **Ulledalen:** Said there were a couple things in the Complete Streets initiative that still bothered him; and he felt they kind of thumbed their noses at the highway department, which could bite them in the future as money became tighter.

MOVED to ask for Planning's and Public Works' opinions on amending the Complete Streets Initiative with the following two items.

1. Amend the Complete Streets Policy to make it clear that it excluded MDOT-funded projects making it clear it only applied to city-funded projects.
2. Amend the Complete Streets Policy to have the exceptions come back to the Council for a decision and not be left on staff's shoulders.

Councilmember Ulledalen asked that staff's opinions on the two items be submitted in a memo to Council. He said if staff felt there was merit, he would be willing to make a motion in the future as an initiative to amend Complete Streets concerning the two items.

Councilmember McCall seconded the motion. On a voice vote, the motion was unanimously approved.

- **Ronquillo:** Said he and Councilmember Clark visited Exxon Mobil in Laurel that morning, and the underground pipe was completed. He said they were at 45 feet where it went in and at 77 feet under the river. Councilmember Clark added putting crude back into the pipe depended on getting the okay from the Feds, the State, and others.

- **Ronquillo:** Showed pictures of what the Community Block Grant had given the South Park Senior Center for replacement of their appliances.
- **Ronquillo:** Recognized Officer Cady and welcomed him back.
- **Ruegamer:** Said they were about a month away from the MLCT Conference. He said two of the sponsors would be PPL Montana and NorthWestern Energy. He asked Council to get their sponsors to Tina so an invoice could be sent and their names could be listed in the program. Councilmember McCall said a poster to be placed next to registration was planned to list all of the sponsors. She said CableVision Optimum was sponsoring \$2,500 to go towards the jackets.
- **Cimmino:** Referenced the National League of Cities Conference November 9-12, and asked if anyone planned to attend. She said the deadline to get the most affordable registration rate was in three days.
- **McCall:** Said they needed to pick the theme for the Montana League of Cities and Towns Conference. It was agreed "Endless Horizons" would be the theme.
- **Ruegamer:** The next MLCT Conference planning committee meeting would be held September 23 at 3:00 p.m. in the city hall conference room.
- **Clark:** MOVED to have the rent received from Dehler Park for the Mustangs use of the park be put into the permanent maintenance fund for large maintenance of Dehler Park and set a cap of half a million dollars, seconded by Councilmember Ulledalen. He said it was currently going into the General Fund. On a voice vote, the motion was unanimously approved.
- **Pitman:** MOVED to add Zoning 27-210(i)(9) regarding vertical siding to a future regular meeting agenda, seconded by Councilmember Cimmino. On a voice vote, the motion was approved 9 to 1. Councilmember McFadden voted in opposition.
- **Gaghen:** Said the Yellowstone County Council on Aging had an event on Friday that was very successful, and Councilmember Ronquillo created a cedar chest for the event that sold for \$900.

The meeting adjourned at 9:36 p.m.



CITY OF BILLINGS

BY: Thomas W. Hanel  
Thomas W. Hanel, Mayor

Attest:

BY: Cari Martin  
Cari Martin, City Clerk