

REGULAR MEETING OF THE BILLINGS CITY COUNCIL
January 12, 2009

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

CALL TO ORDER – Mayor Tussing

Mayor Tussing noted there was an error on the agenda and the election of Mayor Pro Tem was not necessary because Councilmember Ronquillo was elected for a two-year term the previous year.

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

MINUTES – December 15, 2008, approved as distributed

COURTESIES – None

PROCLAMATIONS – None

ADMINISTRATOR REPORTS

- Ms. Volek advised that staff requested separation of Item #1Q to amend the resolution to include tax code A01685 that was inadvertently omitted from the tax codes included in the resolution.
- Ms. Volek referenced amended buy-sell agreements for Agenda Item #2: an amended agreement from Hanser Properties was placed on Council desks that evening, and an amended buy-sell agreement from Paul and Rachel Cox was provided in the Friday packet.
- Ms. Volek invited Councilmembers to a Montana League of Cities and Towns meeting to discuss the stimulus package, scheduled for January 13, at 1 p.m. in the City Hall Conference Room.

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: 1 and 3b ONLY.

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

(NOTE: For Items not on this agenda, public comment will be taken at the end of the agenda. Please sign up on the clipboard located at the back of the room.)

- **Carla Lawrence, PO Box 180, Joliet, MT** said she represented the Beartooth RC&D Economic Development District and was present to answer any questions

about Agenda Item #11, the memorandum of understanding. She provided an annual report to Ms. Volek for Council's review.

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

CONSENT AGENDA:

1. A. Mayor's appointments:

Mayor Tussing recommends that Council confirm the following appointments:

	Name	Board/Commission	Term	
			Begins	Ends
1.	* Ginny Hart	Tourism BID Board	1/12/09	09/01/09
2.	* No Applicants	Energy & Conservation Commission	1/12/09	12/31/10
3.	* Postponed until February 2009	Yellowstone Conservation District Board	1/12/09	06/30/11

- *Unexpired term of Erin Kennedy
- *Unexpired term of Bernard Rose
- *Unexpired term of Gay Easton

B. Bid Awards:

(1) W.O. 01-05, Lake Hills Storm Sewer Outfall (Opened 12/16/08). Recommend H.L. Ostermiller Construction, \$733,015.50 base bid; Alternate 3 - \$39,562.50; Alternate #4 – decrease of \$4,410. Total Bid - \$768,168.

(2) W.O. 07-20 Poly Drive Utilities (Opened 12/16/08). Recommend Castle Rock Excavating, \$78,615.65.

(3) Six (6) new 2009 truck cabs and chassis with refuse compactor bodies. (Opened 12/16/08). Recommend:

Schedule I –Two Units – Tri-State Truck & Equipment, Inc.	\$446,200.00
Schedule II –One Unit – Tri-State Truck & Equipment, Inc.	\$169,991.65
Schedule III – Three Units –Tri-State Truck & Equipment, Inc.	\$717,696.00

C. Change Order #1-Final, Phase 3 Landfill Expansion, Montana Civil Contractor's, Inc., decrease of \$28,890.14 and the addition of seven (7) calendar days.

D Professional Services Contract for W.O. 08-23, West Wicks Lane Water, Sewer, & Storm Drain Improvement , Engineering Inc., \$39,360.

E. Professional Services Contract for W.O. 08-27, Solid Waste Landfill Phase 4 and Related Improvements, Great West Engineering, \$297,000.

F. Contract with Community Solutions, Inc. to provide services to Billings Adult Misdemeanor DUI Court Probation Officer (BAMDUI), January 1, 2009 - September 31, 2009, with option to negotiate two-year extension, at no cost to the City.

G. Approval of Section 5316 Operating Contract with the Montana Department of Transportation for paratransit operating assistance through the Federal Transit Administration JARC Program to access \$90,000 in grant revenue.

H. Supplemental Lease Agreement #4 to the Terminal Building Lease with the U.S. Government for the benefit of the Transportation Security Administration (TSA), adding space and extending the term to May 31, 2012, annual revenue \$77,903.34.

I. Memorandum of Understanding with Beartooth RC&D Economic Development District, \$9,003 annual expense.

J. Amendment #2 to Airport Business Park Building and Ground Lease with Yellowstone County Museum Foundation, adding additional square footage, \$3,590.58 annual revenue.

K. Confirmation of Police Officers:

- (1) Glen Gunther
- (2) Matthew Brandt
- (3) Tony Jensen
- (4) James Ward

L. Street Closures:

(1) Martin Luther King Day Pedestrian March, 6:25 p.m.-6:50 p.m., January 19, 2009, beginning at the Court House lawn, to the corner of N.27th and 3rd Ave. N, crossing N. 27th and marching in the street to N. 29th, then north on N. 29th, disbanding at the Lincoln Center.

(2) Magic City Blues Festival, 9 a.m., August 7, 2009, to noon, August 9, 2009, 2300-2500 blocks of Montana Avenue.

M. Approval and Acceptance of the 2009 High Intensity Drug Trafficking Area (HIDTA) Award, \$138,010.

N. Approval of application for a Certified Local Government Grant from the Montana State Historic Preservation Office for historic preservation activities, \$5,500.

O. Approval of the Metropolitan Planning Organization/Planning Division Public Participation Plan and forward a recommendation of adoption to the Policy Coordinating Committee.

P. Resolution #09-18781 establishing Financial Internal Control Procedures.

Q. Resolution of Intent #09-18782 to construct improvements for W.O. 08-02, 2008 Miscellaneous/Developer Related Project, and set a public hearing date for February 9, 2009.

R. Repeal Resolution #08-18694 approved March 10, 2008, approve a new **Resolution of Intent #09-18783** to Create SID 1384, Yellowstone Club Estates, and set a public hearing date for February 9, 2009.

S. Second/Final reading ordinance #09-5485 for revisions to Boards and Commissions: Revisions that provide consistency in procedural areas for advisory boards, commissions and committees, and reorganizes ordinances into one Article of the Code.

T. Second/Final reading ordinance #09-5486 correcting the legal description in Ordinance #08-5480 for Zone Change #848, East 80 Cardwell Ranch, previously adopted by City Council on 10/14/08.

U. Final Plats:

- (1) Gabel Subdivision, 4th Filing
- (2) Amended Fractional Lot of Block 305, First Addition to the City and Block 13, Sunnyside Subdivision, 3rd Filing
- (3) Cardwell Ranch Subdivision, 1st Filing
- (4) Lake Hills Subdivision, 14th Filing, Amended

V. Bills and Payroll

- (1) November 28, 2008
- (2) December 5, 2008
- (3) December 12, 2008
- (4) December 19, 2008
- (5) October 1-November 30, 2008 -- Municipal Court

(Action: approval or disapproval of Consent Agenda.)

Mayor Tussing separated Item Q. Councilmember Veis separated Items I, P, and S. Councilmember Brewster moved for approval of the Consent Agenda with the exception of Items I, P, Q, and S, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

Councilmember Brewster moved for approval of Item I, seconded by Councilmember Ruegamer. Councilmember Veis advised he was the appointed representative to the Beartooth RC&D Board so he would abstain from the vote on the item. He noted that he would be happy to let anyone who was interested take his place on that board. Councilmember McCall stated she and Councilmember Ruegamer were interested in jointly serving on that board. Mayor Tussing asked Assistant City Attorney Bonnie Sutherland if formal action on an appointment would be required by the Council. Ms. Sutherland advised she would have to review the documents that formed the district to make that determination. Councilmember Ulledalen mentioned that he had the same

issue as an ex-officio member of the EDA Board and it was another one that should have a change in representation. Mayor Tussing suggested dealing with that under Council Initiatives. On a voice vote, the motion was approved 9-0. Councilmember Veis abstained from the vote.

Councilmember Brewster moved for approval of Item P, seconded by Councilmember Ruegamer. Councilmember Veis suggested an overview of the internal control policy at a work session every three years, not a one-time thing. City Administrator Volek noted that the resolution should be amended to add that provision. Councilmember Veis moved to amend the resolution to add that Administration would provide an overview of the Internal Control Procedure to Council at a work session every three years, seconded by Councilmember Ronquillo. On a voice vote, the amendment was unanimously approved. On a voice vote, the amended motion was unanimously approved.

Councilmember Brewster moved for approval of Item Q, Resolution of Intent to construct improvements for W.O. 08-02, miscellaneous development project including tax code A01685, and setting a public hearing date for February 9, 2009, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.

Councilmember Brewster moved for approval of Item S, seconded by Councilmember Ruegamer. Councilmember Veis asked Ms. Sutherland if an amendment to the ordinance would be sufficient to eliminate a Board from existence. Ms. Sutherland responded that the ordinance could be amended at that time. Councilmember Veis moved to strike the part of the ordinance on page 17, Division 12, Traffic Control Board, to eliminate the Traffic Control Board, seconded by Councilmember Brewster. Councilmember Veis reviewed the stated role of the Traffic Control Board and said he did not remember one time during the past four years that it had advised the Council on anything. He said if it worked for Public Works to have the committee, that was fine, but it was difficult to fill the positions on the committee, the Council never heard from them and he was not sure why they were here. He asked what role the Traffic Control Board played in the red light cameras discussed during the past two years. Ms. Volek explained that the red light cameras were primarily an initiative from the Police Department. She noted that the Traffic Control Board had forwarded written recommendations to the Council on certain items in the past.

Public Works Director Dave Mumford advised that the Traffic Control Board had reviewed several traffic plans and initiatives and recommendations from Public Works included any concerns identified by the Traffic Control Board. He explained that the Traffic Control Board, and most of the others, worked through the departments. Councilmember Veis asked if that was what they were supposed to do, because the ordinance stated that the Traffic Control Board served in an advisory capacity to the Council. Mr. Mumford said he knew that the Traffic Control Board and the Public Utilities Board both wanted more interaction with the Council and he was not sure if they knew where their place was. He said it was up to the Council whether or not the boards were kept and he was not there to advocate before or against any. Mr. Mumford stated that as far as whether they performed their duty, he believed they tried to do that. Councilmember Veis stated that he did not doubt that they tried, but if the board's role was to advise the Council and the Council never saw them, he wanted to know what

purpose they served and if they met their mission. He said he felt that was a question the Council had to answer.

Councilmember McCall asked Ms. Volek if it was an issue of scheduling and not having a routine process to have boards come to the Council. Ms. Volek explained that at one time, there was a regular schedule for advisory boards to make presentations to the Council, but as the regular Council meetings grew lengthy, it was the Council's decision to not schedule the boards at those meetings, but to talk with them at work sessions as needed. She said that since that time, she did not believe there was an issue that necessitated the Traffic Control Board to come to Council.

Councilmember Brewster stated he had had a conversation with a member of the Traffic Control Board who said that board was concerned that it was not given any direction concerning its charge. He said he believed there was one in the past, but if he were to think of what that board's charge should be, he did not know because most everything they dealt with was based on warrants or state law and without a specific task, they probably felt they did not have much to contribute.

Councilmember Ulledalen pointed out that was an item kicked around during the strategic planning process. He said more interaction and structure for the boards was desired and he did not think the Council had done that. He noted that specific issues could be handed to the committees and not doing so was the Council's failure, not the committee's.

Mayor Tussing asked Mr. Mumford if the committees were helpful. Mr. Mumford responded that they had been helpful in the past because they brought in an outside perspective. He said the Traffic Control Board provided suggestions that were included in recommendations that came from Public Works. He said he felt more direction from the Council would be helpful because the committee struggled with knowing its charge.

Councilmember Veis stated that what Mr. Mumford said was true, but if he wanted the committee in place so his department could get reactions, then it should be set up similar to DPARB, the board the City Administrator used to review the development review process. He said he was not saying the board was not helpful, but was saying the committee did not interact with the Council, so he was not sure why it existed, especially since the committees could not be filled. He stated that it was the time to make a change if change was wanted.

Mayor Tussing advised that he was not ready to support that motion because if Public Works was okay with the committee's input, he was fine with that.

Councilmember Gaghen said she echoed the Mayor's sentiment because she believed the public input was valuable to the department or the Council as a whole. She said education was needed if committees were not certain of their roles.

On a voice vote, the amendment failed 6-4. Councilmembers Gaghen, Pitman, McCall, Ulledalen, Clark and Mayor Tussing voted 'No.'

Councilmember Brewster moved to amend the last sentence of Section 2-586 to read: 'The board "*may*" in addition include as ex-officio board members,' seconded by Councilmember Veis. Councilmember Brewster said the change of wording from "*shall*" to "*may*" was appropriate because he was fairly certain the City Court Judge could not be required to be part of a committee because that was an elected position, nor was he certain that the school district could be required to send an ex-officio member. On a voice vote, the amendment was unanimously approved. On a voice

vote, the original amended motion was approved 7-3. Councilmembers Ronquillo, Veis and Ruegamer voted 'No.'

REGULAR AGENDA:

2. PUBLIC HEARING AND RESOLUTION #09-18784 FOR THE SALE OF CITY-OWNED PROPERTY DESCRIBED AS THE SOUTH 132 FEET OF LOT 4 IN THE SW ¼ OF SECTION 9, TOWNSHIP 1 SOUTH, RANGE 26 EAST MORE COMMONLY KNOWN AS SOUTH BILLINGS BOULEVARD, AND ACCEPTING THE BUY/SELL AGREEMENT FROM HANSER PROPERTIES, LP FOR \$125,300. STAFF RECOMMENDS APPROVAL. (ACTION: APPROVAL OR DISAPPROVAL OF STAFF RECOMMENDATION). Public Works Director Dave Mumford advised that Public Works purchased the property in the early 1990's to install a storm drain intercept for South Billings Boulevard. He said the parcel was about 135 feet wide and there was a 40 foot easement requested by the City to maintain the line. He said two businessmen inquired about the property and both submitted buy-sell agreements. Mr. Mumford noted an appraisal and market analysis were completed and the value was determined to be \$125,000 with the current zoning of R6000. He said offers were received from Hansers Properties and Paul and Rachel Cox, and both parties countered their original offers; one came earlier that day and the other was provided in the last Friday packet. He said Public Works recommended selling the property as long as the 40 foot easement was maintained. He said the recommendation was also to accept the offer from Hanser Properties because there were no conditions with the offer and payment would be in cash up front or in three payments over a three-year period at 6.5%. Mr. Mumford said the other offer was also good, but required the City to rezone the property to controlled industrial at the City's expense, and to pay half of the closing costs. He said the Coxes requested access from Newman Lane, an undeveloped local street at the backside of the property.

Councilmember McCall asked about the criteria or protocol for the amended buy-sell agreements. She asked what the timeline was, knowing that the vote would be taken that evening. Mr. Mumford said his understanding from Legal staff was that offers could be made up to the time the decision was made. He explained that a formal bidding process was not used because the sale started with an inquiry from a single business person when the City was not looking to sell it. He said a second party showed interest while things were in limbo. He noted that the other property he had sold in the past was excess property along Zimmerman Trail and a bid process was used in that instance.

Councilmember Ruegamer asked if the net amount was figured. Mr. Mumford responded that with the Hanser offer, the City only paid the cost of the title insurance; with the Cox offer the City's cost would be \$990 for the rezoning, half of the broker fees which were typically about 3-5%, and half of the closing costs which would be approximately \$1000. He said there would be several thousand dollars difference between the two offers.

Councilmember Clark asked where proceeds from the sale would go. Mr. Mumford advised they would go back to the storm drain fund which was used to purchase the property.

Mayor Tussing said he was approached by someone involved in commercial real estate development who was not aware the property was for sale until he read about it in the paper and claimed the property was worth more. He asked Mr. Mumford how he would respond to potential criticism that the property was not advertised for sale or put out for bids. Mr. Mumford explained that nobody had shown interest in the property for the last 15 years; it had limited use because there was only about 90 feet of the width that was usable, and it would have to be rezoned to be commercial which would probably make it more valuable. He said the appraisal and market analysis indicated that the offers received were slighter more than the value identified in those processes.

Councilmember Veis commented that he understood why Mr. Mumford did not use a bid process because it was typical that only one person was interested in the property. He asked if the Public Works department had a problem with a bid process now that more than one party was interested in the property. Mr. Mumford responded that he did not have a problem with that.

The public hearing was opened.

- **Ralph Hanser, President, Hanser's Automotive and Wrecker Company**, said he was an owner of Hanser Properties LLC and owned the building and properties in the area. He explained he was interested in the City property because it bordered his property. He said he started talking with Mr. Mumford about buying it about a year ago and it took that long to get where it was now. He noted that his business had been in that area since 1972 before the area was developed and he wanted to continue to be part of the development. He added that four of his six sons were involved with the business so it would go into the next generation. Mr. Hanser said his business was expanding into environmental cleanup and remediation. He said a manufacturing operation would be developed for floating islands, which was an innovative approach to handling storm water. He emphasized that the expansion would be in environmental issues and would be a great asset to the community and that area.
Councilmember Ronquillo asked Mr. Hanser for further explanation of the storm sewer. Mr. Hanser stated they knew there was a 40 foot easement on the property and they would probably recommend that as the entrance to the property at some point in the future and would use the other side for parking and development.
Councilmember Gaghen asked Mr. Hanser if he needed access from Newman Lane. Mr. Hanser responded that he did not. Councilmember Gaghen asked if he would require rezoning. Mr. Hanser responded that they would take the risk of rezoning themselves when they were ready to do so.
- **Paul Cox, President, Sign Products Company**, stated he learned about the property back in September and approached the City to see if it was for sale. He said an appraiser was hired and a buy-sell agreement was submitted to the Public Works Department. Mr. Cox said his interest in the property was to build a sign shop. He displayed a diagram of the proposed development and described the 20,000 square foot building that would be constructed. He noted that they would stay off the 40 foot easement and would create a driveway from South Billings Boulevard to Newman Lane. Mr. Cox said they wanted the South Billings

Boulevard address because it would be easy for customers to find. He said he would also request access from Newman Lane for installation trucks to use on an irregular basis. Mr. Cox said he was interested in clarification of the offer process.

Councilmember Veis explained that this situation was unique because there was more than one party interested in the property. He said the process was not defined because it was not needed so he felt there was work the Council needed to do to confront the situation.

- **Rachel Cox, Billings**, said she was Paul Cox's wife and there were no brokerage costs in their offer; it was a cash deal like Mr. Hanser's and the City's share of closing costs were \$175, and they would take care of the cost of the zone change. She said they did not know they had the option of paying for the zone change and would be glad to do so. She said the offers were basically the same but theirs was \$127,000 and the other offer was \$125,000.
- **Joe White, Billings**, said he did not object to businesses on South Billings Boulevard but thought a condition should be stated that adequate air supply needed to be ensured. *The rest of Mr. White's testimony was inaudible.*

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

Councilmember Veis stated there were three alternatives listed on the staff memo, but none allowed for a bid process. He asked for clarification about how the Council could proceed. Ms. Sutherland advised that the Council could approve the resolution to sell the property, and if approved, a date and time could be set to accept bids on the property, and bids would be considered at the next Council meeting. She confirmed that the resolution approved the intent to sell the property, not to whom it would be sold. Councilmember Veis asked if there was a process in place to take care of that or if one had to be developed. Ms. Volek said the City could advertise and set a date certain to accept offers. Councilmember Veis asked if criteria would be included in the advertisement. Mr. Mumford explained that when the Zimmerman Trail property was sold, the advertisement included the zoning, easements or requirements, and the date bids had to be delivered to the Clerk's office. He noted that any contingencies were considered when the bid was awarded. He said the same process could be used.

Councilmember Ruegamer asked how that differed from the 4th and Broadway property when an RFP was issued to sell it. Ms. Volek responded that she did not believe there was a competitor for that property. Councilmember Veis stated that both processes had been used. Councilmember Ruegamer said if an RFP was not done, people did not know the property was for sale. He said people could not know it was for sale if it was not advertised.

Ms. Volek recounted a property sale from a couple of years ago with Mark Wright Lines in which only one party was interested in the property. She said when the current situation began, only one party was interested in the property. She pointed out that the resolution could be adopted and bids for the property could be accepted at a later date.

Councilmember Ulledalen expressed his concern about access to Newman Lane and suggested considering that as one of the conditions.

Councilmember Veis asked what staff felt was an appropriate timeframe for a bid process. Ms. Volek advised that 30 days should be sufficient time for the required advertisement.

Councilmember Veis moved to approve the resolution to sell 132 feet of Lot 4 in the SW ¼ of Section 9, Township 1 South, Range 26 East using the process used to dispose of the property owned along Zimmerman Trail and completing that within 30 days, seconded by Councilmember McCall. On a voice vote, the motion was approved 9-1. Councilmember Ronquillo voted 'No.'

Councilmember Gaghen stated she thought a second motion would be made regarding the bid process in addition to the motion to approve the resolution. Mayor Tussing advised Councilmember Gaghen that she had the opportunity to move for reconsideration that evening or at the next meeting. Councilmember Gaghen moved for reconsideration of Item #2, seconded by Councilmember Brewster. Councilmember Gaghen stated she felt they went through enough of the process and was comfortable with the staff recommendation to sell the property as recommended. She said she just wanted to vote against the bid process. Councilmember Brewster stated that the vote for reconsideration meant that the same motion was to be voted on and the reconsideration allowed Councilmember Gaghen to change her vote. On a voice vote, the motion to reconsider Item #2 was approved 7-3. Councilmembers Ronquillo, Veis and McCall voted 'No.' The Deputy City Clerk re-read the original motion for Item #2. On a voice vote, the motion was approved 8-2. Councilmembers Ronquillo and Gaghen voted 'No.'

3. (a) PUBLIC HEARING AND RESOLUTION #09-18785 FOR THE SALE OF CITY-OWNED PROPERTY WITHIN THE BILLINGS REGIONAL LANDFILL DESCRIBED AS THE TRACT 1, A PORTION OF THE NE ¼ NE ¼ OF SECTION 29 IN TOWNSHIP 1 SOUTH, RANGE 26 EAST, PMM, YELLOWSTONE COUNTY, AND ACCEPTING THE OFFER FROM YELLOWSTONE VALLEY ELECTRIC COOPERATIVE FOR \$17,700. STAFF RECOMMENDS APPROVAL. (ACTION: APPROVAL OR DISAPPROVAL OF STAFF RECOMMENDATION). Public Works Director Dave Mumford advised that Yellowstone Valley Electric Cooperative approached the City a few months back with a need for a parcel of land for a substation to improve service to the Blue Creek Area. He explained that a small parcel of land currently owned by the City for the landfill was identified as a potential property for YVEC. Mr. Mumford advised that the land was within the buffer zone area of the landfill operation and would not be used for landfill activities, but as a buffer for growth. He said YVEC provided an appraisal, area property owners were notified, which included a leaseholder that runs cattle in the area, and there were no objections. Mr. Mumford said the sale was strictly to allow YVEC to construct a substation. He said it fell under the City code for the sale of utilities. He noted that Item #3b was for approval of the plat that would actually break out that parcel to allow the sale.

Councilmember Veis asked if the buffer zone was required by law. Mr. Mumford explained it was land purchased by the City several years ago so development would not occur right up to the landfill.

Councilmember Ulledalen stated that during the easement request for Briarwood Sewer, Yellowstone Valley Electric chose not to negotiate with the City. He asked if that issue was resolved with them. Mr. Mumford advised it was resolved.

Councilmember Ronquillo asked if the sale was advertised. He said if two bidders were interested in the property, they would have the same problem as the previous item. He stated that they were not doing the same thing with the property sales, but maybe it was different because it was landfill property and nobody else wanted it. He said he was still confused with the South Billings Boulevard property because he thought it was cut and dried, but then a second item was brought into it. He asked if a bidding process should be used for this property as well. Mr. Mumford advised that until the plat was approved in Item #3b, there was not a parcel of property to sell. He said advertisement was not done.

The public hearing was opened.

- **Terry Holzer, 2430 Interlachen**, said he was the General Manager of Yellowstone Valley Electric Cooperative and hoped the City would look at that issue differently than the previous property sale item. He explained that YVEC approached the City about finding a small parcel of land. He said the subject property was approximately 1.4 acres, and within a 35 acre section of hilly land. He said the area identified was near Hillcrest Road and had good access and was in the middle of the distribution area and in close proximity to the Northwestern Energy line that they had to connect to. Mr. Holzer said they had looked for property in the Blue Creek area for a substation for the past three years and were in dire need of a new substation to serve the development in that area because the existing one was at capacity. He said a new substation site would put the distribution and transmission system in a central area and would allow them to get to the nearby growth areas. He said YVEC served about 1,062 services in the Blue Creek area and the existing substation was about 25 years old. He noted that an upgrade with fans was necessary the previous summer to avoid outages in that area and a new substation should be adequate for 30 years or more. He said the substation would triple the capacity of the existing one but would be about the same footprint of 75' x 125'. He said the substation was very important to YVEC due to the growth in the Blue Creek area. He said the City was a member of the cooperative with four services on it already and the three-phase sewer lift station was a new service they would serve. He stated that a new substation was a great need to the customers in the Blue Creek area. Mr. Holzer advised that YVEC wanted to get clarification on language about addressed reclamation work in regard to the sewer easement. He said that was resolved and it was working out well for YVEC and the City. He urged approval of the sale and said he felt it was a fair proposal for everyone concerned.
- **Colleen Mora, 1932 Eastridge Dr**, said she owned a commercial facility in the Blue Creek area that had been adversely affected many times by the lack of power. She said she shuddered every time she had an event going and the lights flickered. She said it was needed badly out there and she encouraged the sale to YVEC.

Councilmember Gaghen asked for the name of Ms. Mora's business. Ms. Mora said it was The Perfect Place, located in Briarwood.

- **Monita Nemitz, 3808 Blue Creek Road**, said she had a small, home-based business that required dependable, regular electrical service. She said she had a wedding cake business and needed to depend on electric service for the success of it. She encouraged approval of the sale of the property to the electric coop.

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

Councilmember Pitman moved for approval of the resolution for the sale of City-owned property within the Billings Regional Landfill described as Tract 1, a portion of the NE ¼ NE ¼ of Section 29 in Township 1 South, Range 26 East, PMM, Yellowstone County, and accepting the offer from Yellowstone Valley Electric Cooperative for \$17,700, seconded by Councilmember Ronquillo.

Councilmember Ruegamer said he felt they needed to be clear. He said he thought that any time anything was sold, it had to be bid and an RFP had to be done. He used the MDU landfill deal as an example. He said they did not think anyone else wanted the land or was interested in mining the landfill, yet an RFP was done. He said he did not want to complicate things, but a consistent process was needed for situations when people were interested in City property. He commented that he felt the last two items put the City at risk.

Councilmember Veis stated he thought there was a Council initiative to develop a policy for the sale of City property and what came out of it was a good list of the land the City owned, but he did not think a policy was developed. He said there were several processes used when land was sold and it was not terribly consistent.

Councilmember Brewster advised he could not think of too many uses for the buffer zone of a landfill. He said he felt it was an appropriate use for that land even though he understood Councilmember Ruegamer's concerns. He agreed a better policy was needed, but did not see that situation much different than selling an easement to a utility company.

Councilmember Ruegamer said he agreed that consistency was needed, but he would vote to sell the property to YVEC. He noted that consistency eliminated the possibility of getting sued.

Councilmember Ronquillo agreed that the process should be consistent. He said he still felt the South Billings Boulevard situation was not handled right that evening. He said it was wrong to do something for one situation and something else for another. He said half the time the people did not know what the Council was doing and neither did the Council. He said the issue was brought up before and staff either had not brought it forward or it was about park land. He referenced meetings with Mr. Hanser and said he felt the previous item was cut and dried, but that did not happen. He said he felt it was handled wrong that evening.

Mayor Tussing advised he would vote against the item because he felt they needed to be consistent even though he understood there were not a lot of people who tried to buy the land, but if the public did not know it was available, the Council would never know.

Councilmember McCall said she would vote with Mayor Tussing. She stated they needed to find out how quickly a policy could be developed and approved so they were not in the same situation again.

Councilmember Brewster asked if every utility easement would be subject to the RFP process because he felt that was what this item was.

Councilmember Pitman stated he would support the item because he felt it was different from the standpoint that the property was not available; it was not in an area where property was developed and values were rising, but a location for a utility and houses would not be around it and other parcels around it would likely not sell unless it was for utilities. He said he felt it was an appropriate use.

Councilmember Veis added that the Council was inconsistent in how it sold land to non-profit organizations. He said it would be better to have one process.

Councilmember McCall asked how long it would take to research and develop a policy. Ms. Volek said a policy could be presented in February, and then there would be the normal process that required at least one reading and a public notice.

Councilmember Gaghan referenced Councilmember Brewster's question about utility easements and the RFP process. Mayor Tussing said they were not debating the type of process, but he saw a difference between selling 1.4 acres and an easement that did not alter the use of the land.

Councilmember Ulledalen advised he would vote for it because there was another aspect that was significant. He said YVEC searched for a substation site for a long time and the City had a certain interest in seeing that Briarwood area developed and without power there, the development was at a dead end. He stated it was mutually beneficial to get that in place.

Councilmember Ruegamer advised that he looked at the land and saw two uses for it – as a buffer for the landfill or to graze cattle because it was on a hillside and there was not much use for it.

On a voice vote, the motion was approved 8-2. Councilmember McCall and Mayor Tussing voted 'No.'

(b) EXEMPT PLAT OF UNNAMED CERTIFICATE OF SURVEY: A 1.363 ACRE PARCEL OF CITY LAND DESCRIBED AS THE NE ¼ OF SECTION 29, TOWNSHIP 1 SOUTH, RANGE 26 EAST LOCATED ON THE SOUTHEAST CORNER OF THE INTERSECTION OF BOLLINGER LANE AND HILLCREST ROAD. YELLOWSTONE VALLEY ELECTRIC COOPERATIVE, APPLICANT. STAFF RECOMMENDS APPROVAL. (ACTION: APPROVAL OR DISAPPROVAL OF STAFF RECOMMENDATION).

Ms. Volek advised there was no staff report. Councilmember Pitman moved for approval of the exempt plat of unnamed certificate of survey: a 1.363 acre parcel of City land described as the NE ¼ of Section 29, Township 1 South, Range 26 East located on the southeast corner of the intersection of Bollinger Lane and Hillcrest Road, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

4. (a) PUBLIC HEARING AND RESOLUTION #09-18786 FOR ANNEXATION #08-09: PROPERTY DESCRIBED AS LOTS 1-3, BLOCK 1, CEREUS SUBDIVISION, LOCATED ON THE NORTH SIDE OF MIDLAND ROAD EAST OF THE MOTOR

POWER EQUIPMENT BUSINESS, INCLUDING UN-ANNEXED PORTIONS OF THE I-90 AND SOUTH BILLINGS BOULEVARD INTERCHANGE. BRUMAR CORPORATION, OWNER AND PETITIONER; BRUCE SUNWALL, REPRESENTATIVE. STAFF RECOMMENDS CONDITIONAL APPROVAL. (ACTION: APPROVAL OR DISAPPROVAL OF STAFF RECOMMENDATION). Ms. Volek advised that staff did not have a presentation on that item, but would have one for Item #4b.

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

Councilmember Gaghen moved for approval of the resolution annexing Lots 1-3, Block 1, Cereus Subdivision, and the adjacent I-90 right-of-way with the following conditions:

- that a development agreement be executed between the owners and the City shall stipulate specific infrastructure improvements and provide guarantees for said improvements;
- or a Subdivision Improvement Agreement and Waiver of Right to Protest the Creation of SIDs shall be approved and filed that will stipulate specific infrastructure improvements and provide guarantees for such infrastructure improvements,

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

(b) PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #852: A ZONE CHANGE FROM ENTRYWAY GENERAL COMMERCIAL (EGC) TO HIGHWAY COMMERCIAL (HC) ON LOTS 1-3, BLOCK 1, CEREUS SUBDIVISION LOCATED IMMEDIATELY EAST OF 5021 MIDLAND ROAD; BRUMAR CORPORATION (MOTOR POWER EQUIPMENT) APPLICANT, ENGINEERING, INC., AGENT. ZONING COMMISSION RECOMMENDS APPROVAL AND ADOPTION OF THE 12 ZONING COMMISSION DETERMINATIONS. (ACTION: APPROVAL OR DISAPPROVAL OF ZONING COMMISSION RECOMMENDATION).

Planner Nicole Cromwell explained that the item was a request to rezone three parcels of land that were annexed in Item #4a. She said the parcels were changed from Highway Commercial to Entryway General Commercial in 1995 by the previous owner. Ms. Cromwell provided a PowerPoint display of the parcels in question, the surrounding area, and the existing zoning. She noted that the current owners, Brumar Corporation, represented Motor Power Equipment. Ms. Cromwell advised that the area was on the western boundary of the South Billings Boulevard Interchange Master Plan that was adopted in 1993 by the City and County and that plan gave preferred zoning to parcels in that area. She pointed out that master plans and neighborhood plans were advisory to the City Council and it was not mandatory that the Council followed the boundaries or proposed zoning in the master plans. Ms. Cromwell stated that the plan was amended in 2002 by a City Council initiative to change the proposed zoning on the south side of Midland Road to Public Zoning for the new Billings Operation Center.

Ms. Cromwell advised that two of the lots contained in annexation #08-09 were developed 13 years ago for truck parking and turnaround. She said Motor Power Equipment wished to finish the development of the third lot and possibly expand the

building across a lot line. She explained it would be hardship to have two different types of zoning to apply to the same property under a single ownership. She said the owner wanted to unify the property under a single zoning.

Ms. Cromwell pointed out there were several similar types of businesses in the area. She reviewed photos of the area from May 1993 and the present.

Ms. Cromwell reported that the Zoning Commission voted 4-0 to recommend approval based on the following 12 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 allow commercial development on an arterial street that is consistent with all surrounding land uses and zoning. Land uses on Midland Road are primarily to serve the interstate traveler and the HC zone is specifically designed for uses and services for highway travelers.

- *New developments that are sensitive to and compatible with the character of adjacent City Neighborhoods and County Townsites. (Land Use Element Goal, page 6)*

The proposed zoning is consistent with the surrounding character of Midland Road. City development codes will require some upgrades to landscaping if a building addition is 25% or more of the existing floor area.

2. *Is the new zoning designed to lessen congestion in the streets?*

Midland Road is a minor arterial that carries approximately 4,000 vehicle trips per day. No significant increase in traffic load is anticipated from this zone change since 2 of the 3 lots have already been development for Motor Power Equipment.

3. *Will the new zoning secure safety from fire, panic and other dangers?*

The subject property is currently serviced by City Fire and Police. Any development will require a minimum width for access drives; turn around areas, and provision of water for fire protection. The property is proposed for annexation which will provide those city services.

4. *Will the new zoning promote health and general welfare?*

The current and proposed zoning have slightly different building heights. HC allows 45 foot buildings and EGC only allows 40 feet. There are no residential uses within the immediate area. The proposed HC zone will unify the zoning codes that apply to all the land under single ownership of Brumar Corporation on Midland Road. There are no significant differences in allowed uses between HC and EGC.

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 prevent overcrowding of land?*

The proposed zoning, as well as all zoning districts, contain limitations on the maximum percentage of the lot area that can be covered with structures. The current EGC zone allows 50% lot coverage and the proposed HC zone allows 75% lot coverage. The proposed increase in lot coverage should not overcrowd the property.

7. *Will the new zoning avoid undue concentration of population?*

The proposed zoning would allow multi-family residences at the same density as RMF-R. The maximum density on this parcel would be 143 dwelling units or 28 dwelling units per acre. It is not likely this density could be achieved based on the maximum building height of 45 feet, requirements for off-street parking, drive aisles and landscaping. In any event, the applicant has already developed 2 of the 3 lots for parking lot, intends to expand the existing business with a building addition, and does not intend to construct residential units on the property.

8. *Will the new zoning facilitate the adequate provisions of transportation, water, sewerage, schools, parks, fire, police, and other public requirements?*

Transportation: The proposed zoning should have no significant impact on the arterial street. If an application for a building permit is submitted in the future the City Traffic Engineer will evaluate the site for traffic impacts.

Water and Sewer: The City will provide water and sewer to the property through existing lines on the applicant's property and in Midland Road.

Schools and Parks: There should be no impact on schools or parks from this commercial development.

Fire and Police: The subject property is currently served by the City of Billings Fire Department and will be served by the police department upon annexation of the property.

9. *Does the new zoning give reasonable consideration to the character of the district?*

The proposed zoning will permit commercial uses to expand on property under a single zoning district rather than split zoning for one property owner with one development. The South Billings Boulevard Master Plan has allowed the development of many facilities for interstate travelers in this area. The property will continue to serve those policy goals and future development of Lot 3 will enhance the character of the existing developments in the area. The new zoning gives reasonable consideration to the existing character of the district.

10. *Does the new zoning give consideration to peculiar suitability of the property for particular uses?*

The subject property is suitable for the requested zoning district. Many properties directly west and north of the subject property are zoned HC and there are no significant differences in uses allowed in EGC and HC zones.

11. *Was the new zoning adopted with a view to conserving the value of buildings?*

Staff cannot determine whether the proposed zoning would appreciably alter the value of structures within the area. As development continues along Midland Road, land and building values should increase as infrastructure is installed and improved.

12. *Will the new zoning encourage the most appropriate use of land throughout such county or municipal area?*

The proposed zoning will encourage the most appropriate use of this land on a minor arterial street in the South Billings Boulevard Master Plan area.

Councilmember Veis asked why the property owner wanted to annex the land instead of requesting a zone change from the County. Ms. Cromwell responded that the existing Motor Power Equipment building had City services and was within the City, and expansion of the building would mean services, such as water, could not be expanded to the part of the facility that was within the County.

The public hearing was opened.

- **Tim Pirtz, Engineering, Inc.** said he represented Brumar Corporation with that property. He asked for support of the zone change to unify the property and to be consistent. He said he was available for questions.

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

Councilmember Gaghen moved for approval of Zone Change #852 at 5019 Midland Road and adoption of the 12 zoning criteria, seconded by Councilmember Ronquillo. On a voice vote, the motion was unanimously approved.

5. PUBLIC HEARING AND RESOLUTION #09-18787 ADOPTING THE 2008 GROWTH POLICY UPDATE. YELLOWSTONE COUNTY BOARD OF PLANNING RECOMMENDS APPROVAL. (ACTION: APPROVAL OR DISAPPROVAL OF YELLOWSTONE COUNTY BOARD OF PLANNING RECOMMENDATION).

Planner Juliet Spalding provided a brief review of the 2008 Growth Policy Update and its purpose. She stated that the second public hearing for it would be held that evening. She noted that the document covered the City of Billings, Yellowstone County and the town of Broadview and could and should be implemented by private entities as well.

Ms. Spalding explained the six-month public participation process as well as Council and Board of County Commission reviews. She advised that public comments received since the first public hearing held December 15, 2008, were included in the evening's agenda packet.

Mayor Tussing asked if the text of the policy had changed since the Council had last seen it. Ms. Spalding said it had not.

The public hearing was opened.

- **Donna Forbes, 1116 8th Street West**, said she had been a member of the Yellowstone County Board of Planning for the past five years. She advised that the Board thoroughly reviewed the Growth Policy with Ms. Spalding. She explained that the Planning Board met twice each month and worked very hard.

She said two additional meetings were held in November for the purpose of reviewing the policy. She stressed it was given very careful scrutiny. Ms. Forbes stated that the Planning Board felt it was essential as a guide as the city grew. She said the policy was a wonderful tool and she encouraged adoption of the policy.

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

Councilmember Ronquillo moved for approval of Item #5 for adoption of the 2008 Growth Policy Update, seconded by Councilmember Gaghen. Councilmember Ronquillo advised he had received phone calls regarding regulation of vicious animals in the form of pit bull dogs. He said he hoped people would take a good look at that and that legislation would be considered. Mayor Tussing said he was not crazy about every single word in it, but because it was such a comprehensive document and a lot of work had been put into it, he would not nit pick it to death at that point and would support it. On a voice vote, the motion was approved 7-3. Councilmembers Brewster, Ulledalen and Clark voted 'No.'

6. PUBLIC COMMENT on Non-Agenda Items -- Speaker sign-in required.
(Restricted to ONLY items not on this printed agenda; comments limited to 3 minutes per speaker. Please sign up on the clipboard located at the back of the Council Chambers.)

- **Dennis Ulvestad, 3040 Central Avenue**, said he was concerned about parking in the downtown area and the expense of \$68,000 for a consultant. He asked if a consultant was needed to find out about parking. He expressed his concern about space downtown because there were more people than parking spaces. He noted that some of the Councilmembers were against the study. He applauded Councilmember Pitman for his suggestion of a park and ride for a solution for the Heights. He stated he felt it was a good solution and suggested one single bus that ran all day long from downtown to a park and ride. He said a consultant with MET would be needed to figure that out. Mr. Ulvestad said it was necessary to educate people about riding the MET system, which would alleviate some of the parking in the downtown area. He said the question came up about where employers and employees would park. He said Councilmember Pitman's suggestion of employer's paying for MET fares for employees was a good idea. He noted there was not enough land in downtown to keep building parking garages, so he felt the only solution was a park and ride. He suggested an engineer or consultant speak with a MET system about growth out west too.
- **Catherine Schaeffer, 2113 Walter Road**, said she wanted to personally thank the City for its help and support during the recent capture of dogs on the Kapsa property. She specifically mentioned Chief St. John for allowing Susie Hanson, a former HSUS employee who had participated in similar seizures, to take the day from her new job with the Police Department to assist with the dogs. She added that there were several people at the seizure site who remarked about how wonderful Dave Klein and Mark Kraft were at getting the dogs into crates for transport to the Expo Center. She commended Billings Animal Shelter employee Kristi Dworshak who had taken extra measures to take care of the animals, to the

point that a semi-feral dog had allowed Kristi to pick up her puppies. She said she hoped for continued support to help with those dogs.

Councilmember McCall thanked Ms. Schaeffer for her leadership role in the care of the animals since they were rescued. She said Ms. Schaeffer had done a great job.

Council Initiatives

Mayor Tussing suggested a list from staff of Council membership on committees so appointments could be reviewed. He suggested that Councilmembers also let him know what committees they served on. Ms. Volek advised staff would prepare a list. Councilmember Ulledalen commented that he felt it was valuable to rotate those seats on boards and commissions.

Councilmember Ulledalen stated that the land sale policy was a Council goal he suggested it during his first year on the Council. He indicated he would like an inventory of the City-owned land for consideration of selling some parcels and using those funds to improve others. Councilmember Veis said he agreed with Councilmember Ulledalen that it seemed like that always got put on the back burner. He said he felt it would be good to review the parks and to inform neighborhoods if they did not want the undeveloped park land sold, a park maintenance district had to be formed. Councilmember Ulledalen suggested asking the parks board to rationalize some of the lands. Councilmember Clark stated he felt the park maintenance districts were not as big a problem for residents as the SID needed to get the park developed in the first place.

Ms. Volek explained that each park agreement would have to be reviewed because there could be language that did not allow the city to dispose of the land. She said a policy could be developed, but it would be applied on a park-by-park basis. Councilmember Ulledalen stated that he would send an email to Council regarding some of those parks issues.

Councilmember Veis stated he hoped a policy could be established to consistently dispose of property, irregardless of parks.

Councilmember Ulledalen stated he felt the City should be proactive and assertive if there was park land that could be constructively modified.

Councilmember Ruegamer moved to enact a 25¢ surcharge on all ticket sales for Dehler Park to be placed in an endowment fund for future major improvements, if it did not violate bond regulations, seconded by Councilmember Veis. Councilmember Ronquillo mentioned that he thought the attorney had been consulted about that before. Ms. Volek advised she had tried to reach the bond counsel earlier in the day but was unsuccessful. She said there were issues with the tax exempt status for the bonds and the past instruction that if a surcharge was initiated for one city-owned facility, the same had to be done for all city-owned facilities.

Councilmember Ruegamer advised that the Alberta Bair Theatre was already putting \$1 from each ticket into an endowment. He said if his motion meant it had to be done for all those facilities, it should be done. He said some basic calculations indicated that if Cobb Field had started an endowment from a surcharge in 1948; there would have been about \$1 million in 1972. Councilmember Ruegamer stressed that the

endowment was for major improvements and he wanted strict guidelines and monitoring it.

Councilmember Clark advised that an endowment was set up for Dehler Park for replacement of seats. Councilmember Ulledalen said he knew that it had been considered previously and there was a reason relative to the bonding why it could not be done. He said he wondered if funds could be earmarked for a specific purpose. Councilmember Ruegamer stated his intention was that the people who used the park paid for the future of it.

Councilmember Veis asked if there was a fund within the budget that could be used for that purpose. Ms. Volek advised that a perpetual fund could be created but she was not sure if the current Council could bind future Council's spending. Councilmember Veis asked if those funds could be used to pay down the bonds. Ms. Volek responded that she would have to consult with the bond counsel about that.

On a voice vote, the motion was unanimously approved.

Councilmember McCall provided an update of the citizen survey. She said the pre-notification postcards would be sent later that week and a completed report should be completed around mid-March. She expressed appreciation to the committee members. She said they would work with the media to inform the public about it and to encourage completion of the surveys.

Councilmember Gaghen shared a Christmas message and box of chocolates left by Santa for her to share with the Council.

Councilmember Gaghen advised she had received calls from residents in the 5th and Grandview and Parkhill areas regarding City plows that pushed snow back onto sidewalks after residents had paid to have the sidewalks cleared. She stated that residents needed to be reminded of the need to shovel sidewalks as required by City ordinance. Councilmember Pitman added that the ordinance also stated that snow was not to be thrown back into the streets.

Councilmember Veis stated he felt the City crews did an excellent job of clearing the streets and the situation Councilmember Gaghen mentioned was one of the reasons boulevard sidewalks were now required by ordinance. Councilmember Gaghen also lauded City staff for tree and snow removal efforts.

Councilmember Ulledalen asked if additional direction was needed for staff on the South Billings Boulevard property sale. He said he had issues about access on Newman Lane and the issues that could come up with that. He wondered if a restriction could be put on the property when it was advertised. Councilmember Ronquillo expressed his concern with additional traffic in that area due to proximity of it to Newman School and the safety for the children. Discussion followed about access to that street and if it could be restricted with the property sale. Ms. Volek advised that it would be clarified before the documents went out.

ADJOURN – The meeting adjourned at 8:44 p.m.

