

**REGULAR MEETING OF THE BILLINGS CITY COUNCIL**  
**March 9, 2009**

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 Ron Tussing called the meeting to order at 6:30 p.m. and served as the meeting's presiding officer. Councilmember Astle gave the invocation.

**CALL TO ORDER** – Mayor Tussing

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

**MINUTES** – February 23, 2009, approved as distributed

**COURTESIES** – Councilmember Veis announced that the City of Billings' Aronson Avenue Project and Engineer Travis Harris were awarded the Innovative Project of the Year award at the recent Engineer's Club Banquet.

**PROCLAMATIONS** – None

**ADMINISTRATOR REPORTS** – Tina Volek

- ✓ Ms. Volek advised that page 3 of the attachment for Item 1B was sent in the Friday packet and in the Ex-Parte Notebook for public review.
- ✓ Ms. Volek advised that numerous emails and a petition of opposition for Item 3, Sahara Park Master Plan, were sent in the Friday packet and in the Ex-Parte Notebook for public review.
- ✓ Ms. Volek advised that an email regarding Item 4 was placed at Council's desks that evening and in the Ex-Parte Notebook for public review.
- ✓ Ms. Volek referenced the list of stimulus projects approved by Council on February 23, 2009, that was placed at Council's desks that evening and in the Ex-Parte Notebook for public review. She explained that Ed Bartlett, the City's Lobbyist, received a request to provide a list of the top five projects and an additional five high-priority projects. Ms. Volek asked Councilmembers to provide their lists to her by the close of business Wednesday, March 11. Councilmember Veis advised consideration needed to be given to the fact that some highway projects would not meet the MDT criteria or were already demarcated to receive stimulus funds, and that there was not much money available for water and wastewater projects. He said how the money was received would make a difference in the ranking and he thought the top five should be projects that realistically had a chance of getting money. Ms. Volek advised that she and Public Works Director Dave Mumford had that discussion earlier and the only project that MDT listed on a recovery list for Billings was Phase II of Shiloh Road. Councilmember Veis read from a list he received at the Transportation Committee meeting that indicated MDT would put

\$7 million toward Phase II and \$15.5 million to Phase III of Shiloh, and those funds would likely not be released until the next fiscal year. He said MDT had committed to spending that money on Shiloh Road and he hated to send a list with Shiloh Road as a number one priority when it was already decided that stimulus funds would be used for that project. Ms. Volek clarified that the request was only for two groups of projects – a top five and a high priority five, not a prioritized list.

Mayor Tussing commented that it was complicated and he learned when he went to the Montana Mayor's Forum that there was quite a bit of grant money available that had not been delegated to the states. He mentioned possible grants in the public works and law enforcement areas and said he did not want the City to miss out on those opportunities. Ms. Volek advised that the Council could choose not to respond to the request. She said she understood the request came from the Senate for a meeting that could be held by the end of the week. Mayor Tussing stated he was not suggesting it not be sent. Councilmember Veis suggested further discussion at the end of the meeting.

Ms. Volek announced that she would participate in an audio conference sponsored by ICMA on March 19 regarding available funds and how to access them beyond what would come through transportation projects. She said there had been very little discussion about how anything but transportation funds would come through the state.

Ms. Volek advised that the specific list of priorities was provided to the three members of the delegation and their local staff and she hoped they would be able to provide direction. She noted that some departments, such as Aviation and Met, had already heard from agencies with which they normally did grant work about what was available to them, but it was not universal. Councilmember Veis asked if there was any indication what dollars the Senate controlled. Ms. Volek responded that she did not have a good feel for that. She said the Governor's office was working on a list and a legislative list could also exist.

Councilmember Ulledalen reported that he attended a conference the previous week and heard that the Congressional Budget Office had already determined that only 30-35% of the stimulus money would be released within the next year and the 60-65% would be spent in years three and four.

Councilmember Gaghen stated that it would be difficult to get much consensus and she felt further discussion was necessary during the Council Initiative time period. Councilmembers agreed to discuss the issue during the Council Initiative portion of the meeting.

- ✓ Ms. Volek advised that the public hearing for Item 2a was not properly advertised and requested a two-week delay of both Items 2a and 2b.

**PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: 1, 2b, 3, and 4.**

**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.)*

- **Chuck Barthuly, 300 Eastlake Circle**, said he was Executive Director of the Better Billings Foundation and spoke in favor of the aquatic facility at Sahara Park. He said the mission of the Better Billings Foundation was to provide services, programs and facilities that were not otherwise provided to enrich and serve the needs of Yellowstone County citizens.

Councilmember Ulledalen asked about the foundation's fundraising. Mr. Barthuly explained that \$2.2 million was committed to the project, with about \$450,000 in hand. He explained that the period of giving had a two-year window and the commitments should be in by December 2010. He noted that in-kind donations of \$70,000 were received as well for engineering work. He said a quiet-phase capital campaign had begun to seek funds from the community to supplement the funds raised by Harvest Church. Councilmember Ulledalen asked if the pool project was destined specifically for the Heights or if it could have been citywide. Mr. Barthuly responded that the initial focus was on the Heights. He explained that after the third failed attempt to build an aquatic facility in the Heights, the Foundation identified that as an opportunity to serve the community. He stated that a 2002 feasibility study indicated that the Heights was the most desirable location for an aquatic facility. He said the Heights Master Plan also stated that an aquatic facility was one of the top priorities of the community as a whole and the elimination of the Athletic Park pool presented the opportunity to build the facility in a location that benefitted the entire community as well as addressing the specific need for recreational opportunities in the Heights.

Councilmember McCall asked Mr. Barthuly about the projected timeline if the plan was approved that evening. Mr. Barthuly responded that they hoped to begin construction in late 2009, with a projected opening in 2010. Councilmember Ruegamer asked if the project would be started without all the cash in hand. Mr. Barthuly stated it would, but a line of credit would be obtained so the money was available to complete the project.

Councilmember Gaghen asked Mr. Barthuly if the Foundation would be comfortable with a two or three year timeline to determine the funding and their line of credit so there was progress sooner than the five-year timeline discussed. Mr. Barthuly explained that they did not want to wait that long and wanted to start the project as soon as possible. He said the pledge window would be a five-year window and the pledges would cover the debt associated with the project. Councilmember Gaghen asked if he saw potential problems if people were not able to fulfill their pledges. Mr. Barthuly responded that he did not see that as a problem because support would be built over that period of time.

Councilmember Ulledalen asked if he had talked with a bank regarding a line of credit. Mr. Barthuly said his discussion with the bank had been general about the project. He said the first step of the process was adoption of the Sahara Park Master Plan and then the feasibility study regarding operations and long-term maintenance would be completed that would assist with development of a business plan to present to the City. He noted that the

elements included in the design would determine the funding needed and the potential revenue stream.

Councilmember Ulledalen stated he was still puzzled why the facility would not be on Harvest Church land. Mr. Barthuly said the biggest reason was that they felt the Sahara Park location addressed the needs of the community better than the Harvest location. He added that the perception could exist that the facility was for only Harvest Church members and it was intended to be a gift to the entire community.

Councilmember Brewster asked Mr. Barthuly what he saw as the relationship with the City after the pool was built. Mr. Barthuly advised he hoped a committee would be formed with members from the Foundation and the community to program, organize and promote the facility. He noted it would be a turnkey operation to the City with no strings attached. Councilmember Ulledalen said the turnkey option spooked him a little because the Council recently heard that the Parks Department budget was constrained and did not have the ability to maintain what already existed and there was no money in the budget for operation of a new facility. He said his concern was that the City was handed something that it could not afford to operate and he did not know if the City could deliver on its obligation for commitments with that project. Mr. Barthuly stated he hoped the feasibility study would address those issues and the long-term operation and maintenance feasibility. He pointed out that the only decision being made that evening was identification of the site. Councilmember Ulledalen expressed his concern that the City was potentially making a capital and operational commitment and if it was marketed to the community as a great deal, the City would have to figure out how to pay for the operation. Mr. Barthuly responded that was a valid concern and the first step had to be taken to answer those questions. He pointed out that the City had not contributed any capital outlay to the project and even after the feasibility study was completed; it would still just have a master plan for Sahara Park.

Ms. Volek clarified that the evening's agenda item was the Sahara Park Master Plan that included Option A with an aquatic facility and Option B without one. She said that after the master plan was developed, Mr. Barthuly's group would be asked to complete a feasibility study, and based on that, a separate agreement could be presented for approval before any construction began.

- **Tom Iverson, Billings, MT**, said he was the Parks Board Chairperson and the Board recommended approval of the Sahara Park Master Plan with both options. He said it was important to include a timetable in the plan so that Plan B would be in place if the Better Billings Foundation could not provide the pool or obtain the financing for Plan A. He said if a master plan with a pool was not approved, they could not proceed at all. He said the Parks Board had the same concerns about future operation, but at that point, they just wanted Council's approval of a location so the next step could be taken.

Councilmember Brewster asked if the Library Board was consulted about the plan. Parks, Recreation and Public Lands Director Mike Whitaker advised that the recommendation was taken to the Library Board for its review and he did not recall a recommendation from it, but knew there was no opposition to it.

Councilmember Gaghen asked if the Parks Board suggested a timeline. Mr. Iverson responded that he suggested a five-year timeline but he felt that was negotiable as long as it did not go beyond five years.

Councilmember Ulledalen expressed his concern that the group had already been at it for five years and the amount of money they had was not sufficient to get it done so he questioned the likelihood of generating more than what had been pledged. He said he was concerned with committing to building something that the City could not operate. Mr. Iverson stated that they only wanted a commitment for a location to build the facility. He said the Foundation could proceed with the next steps after the location was known.

Councilmember Pitman asked if the Parks Board had any information about Rose Park's revenue. Mr. Whitaker advised that during the past season, Rose Park generated approximately \$40,000 more than the direct operating cost, but that did not include any major maintenance, such as pump repair and pool blankets. Mr. Brewster noted that Public Works picked up the cost of the water. Mr. Whitaker said that was correct.

Councilmember Ronquillo stated that the Foundation indicated the pool could be built on the Church's property, and asked if the same problems would exist if it was built there instead of at Sahara Park. He said he agreed with Councilmember Ulledalen that the City did not have the money. He stated that if the Sahara Park Master Plan was approved without the pool, it could still be built on the Church property and he did not see a problem with the perception. Mr. Iverson commented he was not sure if the public perception would be different if it was not built in a City park. He advised that if the master plan was approved and the Foundation did not have the funds to build the pool, Plan B became effective.

- **Todd Rose, 1323 Paul Revere**, spoke in favor of an aquatic facility at Sahara Park. He said he was asked to address the benefits of living near a pool because he grew up on Avenue C about two houses away from Rose Park and spent a lot of time at that pool. He stated it was a positive thing for the children and adults in the community. Mr. Rose noted that parents have told him that their kids did not go to parks because they were not trusted to be there and he felt an aquatic center would provide an opportunity for a supervised area.
- **Joe White, Billings, MT**, said the Shrine Circus should be warned of the diseases on the downtown streets when the elephants were in town for the circus. He said there was also the possibility of stormy weather. *The rest of Mr. White's testimony was inaudible.*

Ms. Gaghen advised that this was the second year the elephants were in town and there had not been previous problems.

Councilmember Astle asked Mr. Barthuly what the proposed aquatic facility included. Mr. Barthuly said they hoped to include attractive amenities such as a zero-entry pool with play features for younger kids and other features to attract other groups such as a water slide or lazy river. He noted that the feasibility study would help identify those elements and the revenue expected from them. Councilmember Astle asked if it was a year-round facility. Mr. Barthuly said it would be a summer-only facility.

- **Alex Tommerup, 170 Erickson Court**, advised he was the architect for the proposed aquatic center project and was present to answer questions. He spoke in favor of the facility at the Sahara Park location and said the soil conditions there were ideal. He said it was a natural mitigation to the neighborhood and research indicated that property values could increase in a one-half block area of the park.
- **Lucky Seibert, 430 Shane Lane, Columbus, MT**, thanked the Council for its support of the 58<sup>th</sup> Annual Shrine Circus. He said the approval of the street closure to have the elephants on Broadway provided an opportunity for the public to see the circus prior to performances. He said approximately 20,000 kids received free tickets to attend the circus.

Councilmember Ruegamer asked if there had been any disease problems with the elephants or other animals at the Shrine. Mr. Seibert advised that there had not been any past problems and the State Veterinarian inspected animals as they entered the state.

## **CONSENT AGENDA:**

### **1. A. Bid Awards:**

- (1) Fire/Technical Rescue Unit. (Opened 2/24/09) Recommend delay of award.
- (2) Chemicals—Chlorine for Water Treatment Plant. (Opened 2/24/09) Recommend DPC Industries, Inc., \$598 per one-ton cylinder and \$150 per 150-lb cylinder.

**B. Change Order #3, W.O. 07-16, Shiloh Road Corridor Water and Sanitary Sewer System Improvements**, Cop Construction, \$111,680 increase, and **increase** in City Administrator's change order authority by an additional \$100,000 above what has been approved for Change Orders 1-3, to a total contract amount of \$2,726,986.

**C. Amendment #4** to Scheduled Airline Operating Agreement and Terminal Building Lease with United Airlines, decrease of leasehold by 972 square feet and annual decrease of \$43,448.40.

**D. Scheduled Airline Operating Agreement and Terminal Building Lease** with Great Lakes Aviation, February 1, 2009-June 30, 2009, \$45,013 approximate annual revenue.

**E. Approval** of Advertising Agreement with Billings Gazette, two-year term, approximately \$46,698 per year, to be reviewed annually.

**F. Grant Agreement** with Department of Housing and Urban Development (HUD) to offset construction costs for Dehler Park, \$328,300.

**G. Approval of Quitclaim Deeds** from The Village Subdivision and Certificate of Survey 3125, Amended Tract 2, for necessary improvements on King Avenue West for The Village Subdivision, at no cost to the City.

**H. Approval** of State Revolving Loan Fund Application for W.O. 08-01, 2008 and 2009 Water and Sewer Replacement Projects, \$3,500,000 for water, and \$7,844,801 for wastewater.

**I. Lockwood Transportation Study.**

**J. Street Closure:** Shrine Circus “Elephants on Broadway”, March 31, 2009, 4:00 p.m. to 9:00 p.m., 2700 and 2800 blocks of 2<sup>nd</sup> Avenue North and 100 and 200 blocks of 28<sup>th</sup> Street North.

**K. Acceptance of Donations** to the Ballpark Construction Fund and Maintenance Fund, \$81,000 total.

**L. Acceptance of Donation** to Billings Animal Shelter from Pet Smart Charities, \$591.

**M. Memorandum of Understanding** with the County Water District of Billings Heights covering the resale water rate and **Resolution #09-18798** adopting the revised rates.

**N. Appointment** of Councilmembers to various Council Member Committees.

**O. Preliminary Plat** of Morledge Family Medical Village Subdivision, 2.8 acres located on the northwest corner of Poly Drive and 17<sup>th</sup> Street West, conditional approval of the preliminary plat and adoption of the Findings of Fact.

**P. Preliminary Subsequent Minor Plat** of Amended Lot 2, Block 1, Appleby Subdivision, approximately .66 acres located at 428 Milton Road, conditional approval of the preliminary subsequent minor plat and adoption of the Findings of Fact.

**Q. Final Plats:**

- (1) Lot 1, Block 1, Billings Clinic Subdivision.
- (2) E.D. King Subdivision, 3<sup>rd</sup> Filing
- (3) Amended Lot 3, Block 3, Weil Subdivision

**R. Bills and Payroll**

- (1) February 6, 2009
- (2) February 13, 2009
- (3) December 1, 2008 – January 31, 2009, Municipal Court

**(Action:** approval or disapproval of Consent Agenda.)

Councilmember Veis separated Item N. Councilmember Astle moved for approval of the Consent Agenda with the exception of Item N, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

Councilmember Astle moved for approval of Item N, seconded by Councilmember Ruegamer. Councilmember Veis reported that changes were made to the PCC bylaws and a City Council member and two alternates would serve on it. He moved to amend the motion to add Councilmember Ulledalen as the second alternate to the PCC, seconded by Councilmember Ruegamer. On a voice vote, the amendment was unanimously approved. On a voice vote, the amended motion was unanimously approved.

## **REGULAR AGENDA:**

**2. (a) PUBLIC HEARING AND FIRST READING ORDINANCE FOR REVISIONS TO THE ANIMAL ORDINANCE. Changes to the existing ordinance by the Animal Control Board due to the contract entered into between the City of Billings and Yellowstone Valley Animal Shelter. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

**b) RESOLUTION ADJUSTING FEES CHARGED AT ANIMAL SHELTER. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** Ms. Volek advised that staff recommended postponement of Items 2a and 2b until March 23, 2009, so the public hearing could be properly advertised. Councilmember Ulledalen moved to delay Items 2a and 2b until March 23, 2009, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

**3. RESOLUTION TO ADOPT SAHARA PARK MASTER PLAN. STAFF RECOMMENDS APPROVAL. (ACTION: APPROVAL OR DISAPPROVAL OF STAFF RECOMMENDATION.)** Parks, Recreation and Public Lands Director Mike Whitaker outlined the two options for Sahara Park. Mayor Tussing asked Mr. Whitaker to review the timeline that determined whether Option A would be used. Mr. Whitaker explained that from a Parks Department perspective, they wanted to move forward with adoption of a master plan but it was not time sensitive. He said it was more time sensitive to the Better Billings Foundation. Mayor Tussing asked if Mr. Whitaker agreed with Foundation's proposed construction date of late 2009 and an opening of 2010. Mr. Whitaker said he wanted to move forward and partner with them to make it happen, recognizing the fact that the evening's action was just approval of the master plan and once that plan was in place and the location of a pool was known, the Foundation could complete a feasibility study. He said a development agreement could be presented for Council action after the feasibility study was completed. Mayor Tussing asked if Mr. Whitaker would indicate whether or not the City could afford it. Mr. Whitaker responded he could not say for sure until after the feasibility study.



Councilmember Ronquillo stated he received a call from someone who preferred adoption of Plan B because they wanted to pursue an SID for a park without the pool. Mr. Whitaker said no proposal regarding development of an SID had been brought to him. He noted that Sahara Park had been undeveloped since the mid-1970s. Ms. Volek stated that a second public hearing was held on Plan B of the master plan and it was explained at that time that it would have to be funded with an SID. Mr. Whitaker added that there were no funds to develop the park and any development had to be done with an SID.

Councilmember Astle referenced item #2 of the proposed resolution and stated he felt clearer definition and parameters for those two conditions was necessary. He said he could not vote for a master plan without that knowledge because he felt it left the City open to legal ramifications. Mr. Whitaker explained that the thinking was a five-year time limit as it related to Plan A, and within those five years, Council would enter into an agreement, and if the agreement allowed, the five years could be prolonged. He added that it was also the intention that Plan B would not become effective unless a neighborhood group brought forward a petition to do an SID.

Councilmember Veis stated he shared some of Councilmember Astle's concerns and wanted to make amendments to that part of the resolution when they got to it.

Councilmember Ulledalen stated that the fundraising had been in progress for five years but without a master plan, he wondered if the group had any conception of what they were trying to build. Mr. Whitaker said they had a vision and a concept and what could be completed depended on how much money was raised.

Councilmember Brewster asked how the structured play area would be funded. Mr. Whitaker advised that there were no funds set aside for the play area outside the pool complex. He noted that the Foundation intended to fund everything within the pool complex.

Councilmember Brewster asked why a library was proposed in that area instead of where it could create other economic development. Mr. Whitaker explained that the park was visualized as a regional facility similar to Pioneer Park due to the transportation corridor and the location. He said it seemed to be a good location for a library and was simply a place mark for one. Councilmember Brewster stated that if the master plan was approved with that left in it and no way to fund a play area, essentially a pool and nothing else was being developed.

Mr. Whitaker reviewed the diagram of Plan A. He pointed out that only the pool complex and the parking would be funded.

Councilmember Brewster expressed his concern that during the presentations, community members were told that because it was a regional park, they would not have to pay for any improvements in the park and the City would take care of all of it. Mr. Whitaker apologized if that was the impression given the public because that was not the intent.

Councilmember Astle asked about the size of the park. Mr. Whitaker said it was a little more than nine acres. Councilmember Astle said it was not fair to compare it to Pioneer Park because it was much smaller. Mr. Whitaker explained that the differences between a regional park and a neighborhood park were the facilities and whether the park served more than just the neighborhood. Councilmember Astle asked for some scale to the plan. Architect Alex Tommerup explained that the aquatic park took up

about three acres and contained 200-250 parking spaces, which was according to the City's parking requirement.

Councilmember McCall asked City Attorney Brent Brooks if he felt the City was at risk with the way the resolution was written. Mr. Brooks responded that no attorney could guarantee that a document was perfect. He said the key was if a development agreement was entered into with the Better Billings Foundation, very specific milestones and benchmarks needed to be included, with consequences if they were not met, up to and including termination of the development agreement. Councilmember McCall asked if legal staff prepared the resolution. Mr. Brooks responded that his staff reviewed it but did not prepare it. He said if there were specific concerns, he could review it further, and if Council felt more comfortable, it could be brought back in two weeks.

Councilmember Ulledalen advised there was a passing comment about Sahara being similar to Centennial Park. He explained that an agreement was entered into with a hockey organization to build a hockey facility and they had a nebulous 15 year contract with a 15 year renewal, and even though the contract included the substantial progress concept, nothing had been done and it precluded other groups that had concepts for Centennial Park from moving forward. He stated he felt that some Councilmembers were concerned that they did not get into a similar situation with Sahara Park.

Councilmember Ronquillo stated that a library facility at that location would be open year-round and a pool would only be open a couple of months. He asked if it would be better to locate a library closer to a school. Mr. Whitaker responded that the Library Director had to answer that question, but he knew that the Library Director thought that was a good location. Councilmember Veis advised that he was on both the Library Funding Committee and the Library Facilities Committee and they were trying to answer that question. He said that of the three future facilities, the west end library in partnership with the College of Technology had the most commitment as to where it was going; a downtown presence was always wanted; and a facility in the Heights was desired, but the location was much more wide open. He said the Sahara Park location was as good as any they had seen in the Heights, but not much time had been spent trying to zero in on where they wanted a facility on the Heights. Councilmember Ronquillo stated he thought a Main Street location would be better. Councilmember Veis stated that it was better to put the Library into the master plan now rather than having to amend it in the future. Councilmember Brewster mentioned that it limited what could be developed in the park if the neighbors decided to fund the other items. He said he would rather amend the plan later to add a library than to tie up the land and not allow development on that part of the park.

Councilmember Pitman asked if a maintenance fund would be set up similar to the baseball field as the project progressed. Mr. Whitaker said the project was not that far yet -- the City was just partnering with the Foundation to see if it was feasible. He stated that if the City assumed the operation, a maintenance fund should be considered.

Councilmember McCall said it seemed that the master plan was only a guideline and a determination would be made based on a feasibility study.

Councilmember Pitman asked if the library was eliminated if Plan A went away. Mr. Whitaker stated that the library was not addressed in the resolution but was

included in Plan B as well, so it would not go away unless Council amended the plan and removed it.

Councilmember Brewster asked Mr. Whitaker what the relationship would be between the City and Foundation when the pool was built. Mr. Whitaker responded that the Foundation's goal was to build the facility and then turn it over to the City to operate, but if the City chose not to operate it, the Foundation would. He said their ultimate goal was to provide a family pool in the Heights.

Councilmember Gaghen asked if the land would be utilized for playing fields or something else that could be changed to accommodate the library if that came to fruition. Mr. Whitaker responded that it could be used for playing fields and irrigation would be needed. He said that for a plan like that, the whole area would be irrigated and as much space as possible would be used.

Councilmember McCall moved for approval of Item #3, the resolution to adopt Sahara Park Master Plan, seconded by Councilmember Pitman. Councilmember Veis moved to amend language in #2 of the resolution to read "Alternative Plan B becomes effective only after 2 conditions are met: First, there is not adequate progress made in fund raising and construction of the Family Aquatic Facility, *as determined by the Billings City Council*, within a 5 year period or as agreed upon in a formal agreement between the City and the Better Billings Foundation." Councilmember McCall seconded the motion. Councilmember Ruegamer asked if the Foundation could provide a completion schedule and if it was not completed, then the Council had the option to allow more time or cancel it. Councilmember Veis said he hoped that details and specifics would be in an agreement if one was reached with the Better Billings Foundation. He said he wanted the language added so it became the City's choice if adequate progress was not made in five years. Councilmember Astle stated he felt it was too nebulous and not specific enough and would still open the City up for a lawsuit. Councilmember Astle offered a substitute amendment to delay action on the item until specific language was included in the contract for review, seconded by Councilmember Ulledalen. Mr. Brooks asked if Councilmember Astle meant that he wanted to see a development agreement before voting on the master plan. Councilmember Astle replied that he did. Ms. Volek explained that it was her understanding that the development agreement hinged on the feasibility study and it would radically change the order of what was originally proposed. She said it was necessary to know if the Foundation was amenable or would proceed on those grounds. Mayor Tussing stated he would not support the substitute motion. Councilmember McCall asked for clarification whether Councilmember Astle wanted the development agreement or language changes in the resolution. Councilmember Astle stated he wanted changes in the resolution language, not a development agreement. He said he could not vote for it the way #2 of the resolution was written until there were specific rights and duties because he was concerned with passing rules and regulations for a future Council. He said he wanted to know the specific conditions to avoid legal issues. He suggested the City Attorney provide the language that provided a definition of adequate progress and a formal agreement. He stated he did not feel a master plan should be drawn up that listed only one group. He said he was not against the park and not against the pool, but was against someone suing the City. Councilmember Brewster stated he was hoping to make more amendments before the issue was tabled. Councilmember Veis said he

agreed with Councilmember Brewster and it needed further review. He said Mr. Brooks would not really have a good idea what the Council wanted if the substitute motion was delayed. He said he agreed it should be delayed but it may be too soon in the discussion to delay it. Councilmember Brewster suggested withdrawal of the motion so more amendments could be made before a motion to delay it. Councilmember Astle withdrew the substitute motion and Councilmember Ulledalen withdrew his second. On a voice vote, the amendment offered by Councilmember Veis was approved 8-2. Councilmembers Ronquillo and Astle voted 'no.'

Councilmember Brewster moved to include language that if a formal agreement was not reached with Better Billings Foundation within six months, Plan B became effective, seconded by Councilmember Ruegamer. Councilmember Brewster clarified that his motion meant if there was no agreement at all within six months, Plan B became effective, and if the agreement was in place in six months, then the five years came into play. On a voice vote, the amendment was unanimously approved.

Councilmember Astle moved to delay action until the language was in the agreement. The motion died for lack of a second.

Councilmember Veis advised that he thought the master plan could indicate that to get to Plan B, it had to be done through an SID or PMD and did not think it should be a condition to get to Plan B. He said he thought it was inherent in the statement that if Plan A did not occur, it moved to Plan B. Councilmember Ulledalen stated he thought people needed to understand the conditions that an SID and PMD would be needed to fund the park if Plan B was developed. Councilmember Veis said he did not disagree with that, but asked where that left the residents if neither plan was developed. Councilmember Ulledalen said they would be where they were currently. Councilmember Ulledalen stated that he did not suggest dropping Plan B, but wanted to make sure people understood what it meant to move to Plan B. Councilmember Brewster stated he had talked with many of the residents and felt they were well aware of it now. He said the questions they had were related to the size of the district and how much it would cost. Councilmember McCall asked Councilmember Veis to restate his suggestion. Councilmember Veis stated if Plan B became effective because condition one was met, it was with the understanding that a formal petition had to be brought forward to benefit the district. Councilmember Veis asked Mr. Brooks if he understood what was wanted so the language could be revised. Mr. Brooks said he thought so and suggested articulation of all the amendments desired. He encouraged a motion to delay it for two weeks so a revision could be presented. Mr. Brooks advised he would review the minutes to make sure he understood what Council wanted.

Councilmember McCall moved to delay the resolution to adopt Sahara Park Master Plan for two weeks, seconded by Councilmember Ruegamer. Mayor Tussing asked if Councilmember McCall meant that she hoped Mr. Brooks would bring forth language that incorporated that evening's discussion. Councilmember McCall said that was correct. Councilmember Brewster commented that he wanted to strike the Library from the plan and change the period for adequate progress to three years. On a voice vote, the motion to delay action was unanimously approved.

**4. 2008-2010 IAFF LOCAL 521 COLLECTIVE BARGAINING AGREEMENT. Staff recommends approval. (Action: approval or disapproval of staff**

**recommendation.)** Assistant City Administrator Bruce McCandless advised that the local IAFF represented 112 members of the Fire Department and did not include the Chief, the Assistant Chief, dispatchers or administrative support personnel. He noted that the City had a history of two or three year contracts and the contract that expired June 30, 2008, was a three-year contract. Mr. McCandless reviewed the timeline of the negotiations and the makeup of the negotiation teams. He advised that tentative agreement on the contract was reached December 19, 2008, and the time in between was spent crafting language that was satisfactory to both parties.

Mr. McCandless reviewed the major elements of the two-year contract that included a 2.5% COLA increase the first year and 2.75% the second year. He explained that the biggest change was the addition of the employer's portion of the health insurance premium, which was currently \$575 per month, to the wages for retirement calculation purposes only. He noted that it increased the retirement contributions that the City, the firefighters and the State made to the firefighters' retirement. Mr. McCandless advised that holiday pay was also increased to be comparable with other bargaining units and there were changes to the officer development program, tuition reimbursement, and a one-time purchase of wildland firefighting boots. He estimated the cost for the first year of the contract was \$351,000 and an additional \$420,000 for the second year.

Mr. McCandless reported that the firefighters were required to sign an acknowledgement that the insurance premium was added for retirement purposes only and that acknowledgement was part of the Section 125 election that occurred each year which designated some benefits provided as pre-tax or post-tax. He noted that most employees would likely select the pre-tax option.

Mr. McCandless advised that the recommendation was to approve the contract. He explained the options to approve it, modify the contract proposal, or disapprove it. He noted that staff requested guidance how to proceed if the contract was disapproved and explained the three-step process of mediation, fact-finding, and final binding arbitration that would be followed.

Councilmember Ulledalen asked for some explanation of the wildland firefighting boots because the email received made it sound like it was something given to the firefighters that enabled them to contract with other agencies. Mr. McCandless responded that he thought some firefighters did work for other agencies during fire season, but the purpose of the boots was to equip firefighters with equipment for work they did for the City of Billings. He mentioned the Rehberg Ranch and Alkali Creek fires that necessitated those boots. Mayor Tussing asked if they were allowed to take the boots home. Fire Chief Paul Dextras explained that some firefighters took their equipment home because they did not have a designated station and carried their gear with them to work at different stations.

Councilmember Ruegamer asked if the health insurance premium language was specific and had been thoroughly reviewed. Mr. McCandless advised that the provision was thoroughly reviewed by in-house legal staff and outside labor attorneys. He said they started with language contained in the Bozeman and Great Falls contracts but found it inadequate and re-wrote the entire section and had it reviewed numerous times by legal counsel. Councilmember McCall asked how long Bozeman and Great Falls each had that provision in their contracts. Mr. McCandless responded Bozeman had

had it for at least ten years and he was unsure of Great Falls. Councilmember McCall said it seemed from the staff report that it was a good benefit that worked well. Mr. McCandless said it was a benefit that employees appreciated. Councilmember Veis asked if other groups would want that same benefit. Mr. McCandless stated that was the primary concern of management and it was expected that the police officers would request it as well and he was unsure of the Teamsters. Councilmember Veis asked if he had any cost estimates for that benefit. Mr. McCandless advised that for police officers, it was estimated at \$164,000 per year and \$507,000 per year for Teamsters.

Councilmember McCall asked if that trend occurred in Bozeman and Great Falls. Mr. McCandless stated he understood that the entire City of Bozeman workforce was covered by that benefit. Councilmember Ruegamer suggested review of that benefit by MMIA since they represented the City if it was sued. Mr. McCandless advised that contract provisions were excluded from MMIA coverage.

Councilmember Gaghen asked about the original contract proposal. Mr. McCandless responded that the original request 11 months ago was in excess of 10%. He pointed out that the Teamster contract called for a 3% COLA July 1, and the firefighters accepted a lesser amount because they received the increased retirement benefit. Councilmember Gaghen asked about the cost of the wildland boots. Mr. McCandless said they were estimated at \$300 per pair.

Councilmember Veis asked about the legal review that occurred since December 19. Mr. McCandless reported that Assistant City Attorney Bonnie Sutherland and City Attorney Brent Brooks reviewed and revised it along with outside labor attorneys Sherman and Howard, of Denver and Phoenix that have had a long-term relationship with the City. Mr. McCandless added that the firefighters and probably their legal counsel reviewed the contract as well.

Councilmember Brewster asked if Mr. McCandless was suggesting that it was likely that every employee group would request the health insurance premium benefit and it would cost about \$1 million, versus the three-quarters percent the firefighters gave up from what the other bargaining groups had which was about \$200,000. Mr. McCandless explained that the police contract expired in June and negotiations would begin in the spring, and the Teamsters were the only bargaining unit that had a two-year contract and it was set at 3% for FY2010.

Councilmember Veis asked about the length of the process if the Council chose not to approve the contract. Mr. McCandless advised that a fact finder was initially scheduled following the mediation meetings held in July and August and the person was scheduled 30-45 days from the date of the request. He explained that a fact finder would review the proposals and recommend approval of one. He noted that the findings were published with the intention to encourage settlement. He explained that final and binding arbitration was basically consideration of the two proposals and the arbitrator selected one as final and the firefighters could not strike. Councilmember Veis asked which proposal was considered by the arbitrator. Mr. Brooks stated it would be the City's last, best offer. Mayor Tussing asked if it was true that arbitration was generally more concerned with what was more comparable than the city's ability to pay for it. Mr. McCandless advised that arbitrators usually considered comparability with like employers, what other bargaining units within that city received in their agreements, and the employer's ability to pay. Councilmember Ulledalen asked if there was any analysis

of where that put the City in relation to the public safety levy. Mr. McCandless advised that FY2010 was the last year of the public safety levy increase. He said the cost of the firefighter contract was factored into projections used for preparation of the FY2010 budget and the budgets could be balanced until at least 2013. Councilmember Ulledalen expressed his concern that adding the health insurance premium benefit accelerated the budget shortfall.

Councilmember Pitman asked what mediation, fact-finding and arbitration cost. Mr. McCandless said fact-finding fees were in the \$1000-2000 per day range, along with expenses. He noted that the fact finder contacted previously anticipated a 2-3 day review period.

Councilmember Ruegamer moved for approval of Item 4, seconded by Councilmember Ronquillo.

Mayor Tussing stated that it was discussed a lot and the problem always arose when or where the City started to address it because the most significant budget expense was personnel expenditures. He said the problem was that everyone wanted what the last union got the next time the contract was negotiated. He mentioned that State employees agreed to no raises this year and with the unions, the City knew it would face difficult fiscal situations. He said he would vote for the contract because it would be disingenuous not to since negotiations started 11 months ago and it was already the 8<sup>th</sup> month of the fiscal year when the raise would have taken effect and it would probably have been approved under normal circumstances sometime the previous June. He stated it was disingenuous for him to say now that since things had changed, the City had to retroactively not approve it. He said he was concerned and knew it was difficult because there was overlap of other contracts and the Teamsters would get 3% this year when virtually everyone else in the country was lucky to have a job. He said he would support it, but had reservations about when austerity in personnel raises would start. Ms. Volek pointed out that in the case of the State, all of the employees were in a single bargaining unit, which gave them an advantage in terms of a single approach to bargaining.

Councilmember Ruegamer clarified that one objection to buying the wildland boots was submitted and he understood the contract called for a one-time purchase which could mean one free pair that lasted as long as 20 years. Chief Dextras agreed that he understood it was a one-time benefit. He noted that it opened the door for future negotiation, but the equipment and training provided had a direct impact on the safety of the citizens and firefighters. Ms. Volek clarified that some firefighters already had the wildland boots because they were issued to them by agencies that fought wildland fires. She explained they were leather, as opposed to rubber that was traditionally worn by urban firefighters. Ms. Volek said there would likely be a small number of boots purchased every year because there would be new recruits each year. She said the intent was that if properly cared for, the boots could last a lifetime.

Councilmember Veis stated it was some consolation that city councils across the nation had the same problems. Mayor Tussing stated he would rather have fewer happy employees than a bunch of upset employees.

Councilmember Brewster stated he agreed with a lot of the comments and at some point the City had to deal with the compounding effect of ever-increasing costs and taxpayers would get their fill of ever-increasing taxes and then the City would have

to live with what it had. He said the things that had a big compounding effect would impact jobs and he hoped people were braced for that because he thought it would happen.

Ms. Volek explained that this was the first contract in the last couple that the cost of living increase was not tied to the CPIU, but would be a negotiated item. She said that would also be done with future contracts. Mayor Tussing asked if Ms. Volek had considered getting the contracts on the same timetable so other groups could not expect to get what the previous group negotiated in their contract. He said he understood that two or three-year contracts were beneficial, but given the uncertainty of the economy, thought one-year contracts were more advisable. Ms. Volek advised that he was accurate that labor negotiations were complex and a time-consuming activity for both sides. She said the last contract with IAFF was a three-year contract but a shorter contract was agreed upon this time. She noted that senior management staff was working on business plans for their departments to determine costs of core services, and having that information in hand would allow better bargaining.

Councilmember Ulledalen stated his concern with automatic increases. He said something like the health insurance premium benefit limited the City's ability to negotiate it if it did not work. He said he preferred straight raises rather than creating a structural bind that would be hard to get out of and it also sent a signal to the other unions to ask for the same benefit. He said he felt the administration's flexibility was being negotiated away.

Mr. McCandless explained that the contract included a specified dollar limit on the employer's contribution for the health insurance premium benefit. He said if the employee's or employer's costs went above the specified amount, those dollars would not be counted toward the retirement.

On a voice vote, the motion was approved 9-1. Councilmember Ulledalen voted 'no.'

**5. 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 a member of the Animal Control Board and was concerned about Liz Honaker being a member of the Yellowstone Valley Animal Shelter. He said she should recuse herself from any further representation of Ms. Kapsa of Shady Lane Kennels. He explained that Ms. Honaker previously represented Ms. Kapsa for several violations of cruelty to animals and he thought it was a conflict of interest. He recommended that Ms. Honaker resign from the Yellowstone Valley Animal Shelter if she continued to represent Ms. Kapsa. He also commended Animal Control Staff members Fred McCracken and Dave Klein and their staff for an outstanding job of caring for animals.

Councilmember Ruegamer asked Mr. Ulvestad if he had spoken with Ms. Honaker about that. Mr. Ulvestad said he had not. Councilmember Ruegamer



suggested he do that before he raised a ruckus because he thought he would hear some things that made sense to him. Mr. Ulvestad stated he was considering the perception of the people of Billings.

- **Kevin Nelson, 4235 Bruce Avenue**, referred to the mention of a work session and encouraged Council to hold a special meeting to take action and develop the prioritized stimulus list. He said that would provide a better process and procedure.
- **Joe White, Billings, MT**, said that he watched a hearing on CSPAN and one witness from the IRS wanted to know if Ms. Volek was the person responsible for paying the City's taxes. He suggested getting it settled quickly. *The remainder of his testimony was inaudible.*

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

## **Council Initiatives**

Councilmember Ulledalen reported that the Senate Taxation Committee hearing was scheduled the next morning and Ms. Volek and Councilmember Ruegamer planned to attend. Councilmember Ulledalen asked Mayor Tussing how he felt about two people going to Helena to testify. Mayor Tussing responded that he thought it was a good idea. Ms. Volek added that Alec Hansen from Montana League of Cities and Towns would also attend as well as Bruce McIntyre from the Billings Chamber of Commerce. Mayor Tussing stated that he spoke with Senator Brown the previous Saturday and emailed him earlier in the day. Councilmember Veis advised that he spoke with Mr. Hansen the previous week and that he planned to testify on SB 486.

*Councilmember Ulledalen left the meeting at 8:29 p.m.*

Ms. Volek read an email from Mr. Bartlett regarding stimulus fund meetings held the previous week and the request for the prioritized list. Mayor Tussing reported that he attended the Montana Mayor's Forum the previous week in Helena where State representatives from the Congressional Delegation and the Governor were in attendance and there was significant discussion about the American Recovery and Reinvestment Act. He said he had no objection to Senator Gillan's request for a list, however the Congressional Delegation indicated cities needed to seek federal grants as well and many of those grant requests or applications were due April 4. He said staff may already be aware of the grant opportunities but he wanted to make sure the City did not miss out. Ms. Volek said she believed staff was aware of the grants but would review Mayor Tussing's list. Public Works Director Dave Mumford advised that he received clarification on funding for water and wastewater. He said the funding would be added into the state revolving fund to lower the interest rate. He said the City would still apply for loans and the interest rate would be lower.

Councilmember Veis asked Ms. Volek if she had any idea what pool of funds the State Legislature would control. Ms. Volek said she was told specifically transportation. Councilmember Veis said he had the list of what the Transportation Committee passed and it would go to FHWA. He said it was his understanding that State Legislators had nothing to say and about it and testified to that. He added that the question came down to what pool of funds the legislators had the ability to direct. Ms. Volek said she would check on that while in Helena. Mayor Tussing said the Governor talked about \$13.8

billion for Montana distributed since 2005 and until 2011. He said the stimulus package comprised about 5% of that figure and the discretionary made up about ½%. Mayor Tussing said he agreed with the Governor and thought it would be best not to put bill H2 in it because if the funds were not committed, the money could be lost and in some cases the projects had to be started. He stated that the longer we messed around with the short construction season, the more chance the funds were at risk. He said it was his understanding from what the Governor said that a very small proportion of those ARRA funds were discretionary and he hoped the legislature did not mess with it too much.

*Councilmember Ruegamer left the meeting at 8:33 p.m.*

*Councilmember Ruegamer and Councilmember Ulledalen returned to the meeting at 8:35 p.m.*

Councilmember Veis said he was in Helena the week before and testified on Senate Bill 284, the bill that allowed use of revenue bonds on roads, and also attended the Transportation Commission meeting as it updated the State Transportation Improvement Program to include ARRA funds. He reported that \$7 million was appropriated for Phase II of Shiloh Road and \$15.5 million for Phase III of Shiloh, which probably would not be let until the next year. He said it was possible that the \$15.5 million would be reduced if the omnibus bill earmarks stayed in. He said it was emphasized that \$234,000 was allocated but the State only had \$211,000 and there were earmarks in there that could be removed to get to the \$211,000. He said there was a backup list of projects if additional funds were available. He said \$1.8 million was allocated to transit. Ms. Volek said she understood that was for two vans and two buses.

Councilmember McCall asked if it was right that the \$15.5 million for Shiloh could be reduced by the \$4.7 million that was in the omnibus bill if it passed. Councilmember Veis advised that was correct, and then another project would possibly move up the list.

Councilmember Veis stated he wanted more clarification regarding which pool of money the priorities would be identified for. Ms. Volek advised that she and Councilmember Ruegamer would visit with Mr. Bartlett about that when they were in Helena the next day.

Councilmember McCall stated she agreed with Councilmember Veis that there was not enough information to make wise decisions that evening. Councilmembers agreed to hold a special meeting Thursday, March 12, at 5 p.m. in the City Hall Conference Room to develop stimulus list priorities.

**ADJOURN** – The meeting adjourned at 8:46 p.m.