

REGULAR MEETING OF THE BILLINGS CITY COUNCIL
September 13, 2010

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 Thomas Hanel called the meeting to order at 6:30 p.m. and served as the meeting's presiding officer. Councilmember McCall gave the invocation.

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

MINUTES: August 23, 2010, approved as presented

COURTESIES – None

PROCLAMATIONS

- Billings Symphony Orchestra & Chorale Day in Billings, September 18, 2010.
- Library Card Sign-Up Month, September, 2010.

ADMINISTRATOR REPORTS - TINA VOLEK

- Ms. Volek referenced Item 1B, the new Automobile Rental Concession and Lease Agreement, and said a draft of the agreement was included in agenda packets distributed September 7. She advised that a final agreement was sent to Council in the September 10 Friday packet. She advised that the final agreement would be voted on that evening. She said a copy of the final agreement was filed in the ex-parte notebook in the back of the room.
- Ms. Volek referenced Item 4 (renumbered as Item 7), the Public Hearing and Resolution to consider donation or sale of parkland and noted that the Mayor and Council received the following:
 1. An e-mail dated August 26, 2010, from Chuck Barthuly, Executive Director of Better Billings Foundation, with a progress report of the proposed community center and aquatic facility in Sahara Park.
 2. An e-mail dated September 13, 2010, from Dawn Broderius, saying that she enjoyed the open space of Sahara Park and advising Council that it was unconstitutional to donate land to a religious organization.
 3. Letters from Jennifer Wittmayer, Kobe Wittmayer, and Kurt Wittmayer, dated September 9, 2010, against building the community center and water amusement park in Sahara Park. She advised that a copy of the letters were on Council's desk that evening.
 4. A letter and handout from Julie Thomason, dated September 9, 2010, asking that Council decline or defer a donation or sale of any part or parcel of Sahara Park to the Better Billings Foundation. She advised that a copy of the letter was on Council's desk that evening.

Ms. Volek advised that copies of those items were available for public viewing in the ex-parte notebook in the back of the room.

- Ms. Volek referred to Item 8 (renumbered as Item 11), the Public Hearing and Resolution re-spreading assessments on SID 1386, East and West MacDonald Drive, and said staff was asking that it be postponed until the September 27, 2010, meeting so further analysis of the assessment amounts could be made.
- Ms. Volek advised that at the August 23, 2010, meeting, the Council denied a variance request for an Ironwood Subdivision sidewalk. She said there had been discussion of adding an item to the evening's agenda for reconsideration of that variance because procedural errors were made. She noted that if the Council desired to add the item, it should be done prior to the public comment period to allow public comment.

Councilmember McCall moved to add an item to the evening's agenda for reconsideration of the variance for Ironwood Subdivision that was denied at the August 23, 2010, meeting, seconded by Councilmember Ulledalen. Councilmember McCall stated she felt it would be helpful to have Public Works Director Dave Mumford provide an explanation. She explained that the City made two procedural errors when the original variance was voted on. She said there was agreement between Legal, Planning and Public Works that it went back to the drawing board. Mr. Mumford advised that Councilmember McCall was correct about the two procedural errors. He explained that the staff person used the last year's calendar, so the public notice posted in the neighborhood was off by a day, however, the City Clerk caught the error so the notice published in the media was correct. He advised that after talking with Legal and Planning staff, it was determined it was not really a variance, but a correction to a subdivision agreement. He said if Council decided to reconsider the item, staff would work with the property owners to do what needed to be done. Ms. Volek noted that to add the item to the agenda, a two-third vote of those present was required. Mayor Hanel asked if the process had to start over from the beginning if it was an amendment to a subdivision agreement. Mr. Brooks advised that it would, but the only thing the Council would do that evening was to decide if the variance would be put back on a future agenda. Mayor Hanel asked if there was a definite timeline. Mr. Brooks advised that there was not. On a voice vote, the motion was unanimously approved. Mayor Hanel advised that it would be added as Item 2.

Councilmember Cimmino asked if the Planning Board had to look at it, since it was an amendment to the Subdivision Improvement Agreement. Mr. Brooks said it was a potential amendment to an SIA, and referred to City Code 23-1103 that required an amendment be brought back to the Council as opposed to the Planning Board.

Councilmember Ruegamer moved to renumber Items 10 and 11 to Items 3 and 4, and adjust the remainder of the items accordingly, seconded by Councilmember Gaghen. Councilmember Ruegamer said the principals for the items were present and there was no public hearing for either of the items, so he did not see a conflict. On a voice vote, the motion was unanimously approved.

PUBLIC COMMENT on "NON-PUBLIC HEARING" Agenda Items: #1, 2, 3, 4, 5, AND 6 ONLY. Speaker sign-in required. (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.)

The public comment period was opened.

- **Joe Dwyer, Secretary/Treasurer Teamster Union Local 190**, stated that the City administration and Teamsters Union had reached a tentative agreement on a one-year

contract, which was overwhelmingly ratified by Teamster members with a 292-49 vote. He explained that a one-year deal was the best approach for employees and management because it allowed real-time negotiations in the current economic times. He thanked the members of both sides of the bargaining teams for their participation in the contract work. He asked for Council's approval of the contract.

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

1. **CONSENT AGENDA**

A. **Bid Awards:**

1. **Airport Car Rental Quick Turn Around Facility.** (Opened 8/24/10). Recommend Jackson Construction Group, \$4,572,900.30.
2. **2011 4-Wheel Mechanical Broom High Dump Sweeper.** (Opened 8/31/10). Recommend Titan Machinery, \$173,738.68, plus the 5-year warranty of \$2,769.00, and trade-in of Sweeper #1254 in the amount of \$17,500.00.
3. **MET Transit Parts Washer.** (Opened 8/24/10). Recommend rejecting all bids and re-issuing a new Invitation for Bids.

B. **Approval** of new Automobile Rental Concession and Lease agreements with: Overland West, Inc. dba Hertz; Corpat, Inc. dba Alamo & National; Enterprise Rent-A-Car; Avis/Budget; Lewis Transportation Group dba Thrifty; and Dollar Rent-A-Car; April 1, 2011-March 31, 2016; guaranteed revenue of \$5,569,851 over the five-year period.

C. **Approval** of the purchase of eleven (11) Replacement Police Vehicles from Bison Motor Company for \$24,209.67 each, for a total cost of \$266,306.37, budgeted in the 2011 Equipment Replacement Plan.

D. **Approval** of a title transfer of Police vehicle #1422 to Yellowstone County for use at the firing range.

E. **Confirmation of Police Officers:** Maxwell Battle, Samantha Puckett and Daren Haider.

F. **Sidewalk easement** for W.O. 09-02, Miscellaneous/Developer Related project, for property at 2102 17th Street West.

G. **Encroachment Permit** crossing Billings Bench Water Association (BBWA) canal for W.O. 10-01, Water and Sanitary Sewer Replacement Projects.

H. **Warranty Deed** for purchase of Lot 1, Block 3, Howard Heights Subdivision for W.O. 05-15, Howard Heights Storm Drain, \$24,150.93.

I. **Street Closures:**

1. **Pilgrim Congregational Church 100 Year Anniversary**, September 18, 2010; 8 a.m. to 9 p.m.; South 36th Street between 4th and 5th Avenues South, 4th Avenue South between South 36th Street and the alley to the east.

2. **Skyview High School Homecoming Parade**, October 1, 2010; 12:45 p.m. to 2 p.m.; beginning at Skyview High School parking lot and proceeding down Wicks Lane to St. Bernard's Church.
3. **Skyview High School Spirit Fun Run/Walk**, Sunday, September 26, 2010; 12:00 noon to 4:00 p.m.; starting at Skyview High School on High Sierra Boulevard, to West Wicks Lane, to Fantan, back to West Wicks Lane, ending at Skyview High School.

J. **Resolution #10-18982** fixing the form and detail of Pooled Sidewalk 2010A bond sale.

K. **Resolution #10-18983** fixing the form and details of bond sale for SID 1388.

L. **Resolution #10-18984** amending Resolution #10-18921 to increase the City Administrator's signature authority up to \$80,000 for rehabilitation agreements for the Neighborhood Stabilization Program.

M. **Second/final reading Ordinance #10-5522** amending the boundaries of Ward V to exclude the portion of recently de-annexed property in Annexation #10-01; a Broadwater Avenue road tract located between 56th Street West and 58th Street West.

N. **Approval** of one-year extension of preliminary plat approval date for River Rock Estates Subdivision; setting a new expiration date of September 24, 2011.

O. **Final plat** of Dorothy Subdivision, Amended Lot 6 and East 25 Feet of Lot 5.

P. **Bills and Payroll:**

1. August 9, 2010
2. August 13, 2010
3. August 20, 2010

Councilmember Ronquillo separated Items 1J and 1L. Councilmember Cimmino separated Items 1P1, 1P2, and 1P3. Councilmember Gaghen moved for approval of the Consent Agenda with the exception of Items 1J, 1L, 1P1, 1P2, and 1P3, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

Councilmember Ronquillo asked Mr. Mumford about a sidewalk on the corner of 9th Avenue South and S. 31st, where there was a sidewalk that needed repair, but was not on the list of sidewalks to be repaired in Item 1J. Mr. Mumford explained that the item concerned projects that were already completed and was pooling the bonds for completed projects. He said the project Councilmember Ronquillo referred to was still in the works. Councilmember Gaghen moved for approval if Item 1J, seconded by Councilmember Ronquillo. On a voice vote, the motion was unanimously approved.

Councilmember Ronquillo referred to Item 1L and asked Ms. Volek if the houses that were being purchased would give the City some buying power for more houses that were boarded up. Ms. Volek explained that the City had acquired three houses that were being renovated, and when they were sold, funds would roll back into a pool for future development. She asked Community Development Manager Brenda Beckett to provide a more detailed explanation. Ms. Beckett explained that there would be a recoup of most of the funds invested in the properties. She advised that work on one particular home had increased because it sustained damage from the June storm. She explained the criteria for both purchase of homes

by the City, and the individuals that would purchase them after the City rehabilitated them. Councilmember Ronquillo asked if a property could be demolished if it was not suitable to rehabilitate. Ms. Beckett advised that there was flexibility within the project that would allow demolition of a property and the land could be reserved for a program such as Habitat for Humanity. Councilmember Gaghen moved for approval of Item 1L, seconded by Councilmember Ronquillo. On a voice vote, the motion was unanimously approved.

Councilmember Cimmino advised that she would recuse herself from the vote on Items 1P1, 1P2, and 1P3 due to invoices #735719, #735942, and #736188 paid to the consulting firm that was her employer. Councilmember Gaghen moved for approval of Items 1P1, 1P2, and 1P3, seconded by Councilmember Ronquillo. On a voice vote, the motion was approved 7-0.

REGULAR AGENDA:

2. RECONSIDERATION OF VARIANCE FOR IRONWOOD SUBDIVISION THAT WAS DENIED AUGUST 23, 2010. Ms. Volek explained that at the last meeting, the Council heard and rejected a variance request regarding a sidewalk in the Ironwood Subdivision. She said staff subsequently determined that the sidewalk change affected the Subdivision Improvement Agreement (SIA), and for that reason, the Council was asked to reconsider it. She said the item was published correctly in the legal notice, but noticed incorrectly at the site, which caused those interested in the item to come to a Council meeting on the wrong day. She said staff recommended Council reconsider it, but also recommended that the Council consider amending the SIA, rather than a variance. She advised that the proper motion would be for the Council to consider reconsideration of the Ironwood sidewalk, without reference to how that would be done, to allow staff to follow the necessary procedure to bring the item back to a future meeting. Mr. Mumford advised that staff would have adequate time for legal advertising if the item was scheduled for the first meeting in October. Councilmember McCall moved for reconsideration on October 12, 2010, of the Ironwood Subdivision denial that was voted on at the August 23, 2010, Council meeting, and that the City would move forward and work with the homeowners on a new process, seconded by Councilmember Ulledalen. On a voice vote, the motion was unanimously approved.

3. DOWNTOWN BILLINGS PARTNERSHIP PROJECTS REQUEST; a request for approval of two FY2011 projects in the Expanded N. 27th Street Urban Renewal District consisting of: 1) up to \$15,000 for a privately-owned and operated downtown conference center study with the cost being equally shared with the TBID, and 2) up to \$15,000 for purchase of a large tent and equipment for downtown events. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) Ms. Volek advised that staff did not have a presentation on the item, but Greg Krueger of the Downtown Billings Partnership was present in the audience if staff had questions. Councilmember Ronquillo asked Mr. Krueger if there was adequate staff to set up the tent. Mr. Krueger explained that the Business Improvement District had grown since its inception, and now had adequate equipment and staff to utilize a tent.

Councilmember Ruegamer asked who would conduct the conference center study. Mr. Krueger explained that an RFP would be issued to update the study that was done in 2002. He said the study was necessary to entice a private developer to show how a public/private venture would work. He said the public component was a parking structure that would be attached to it.

Councilmember Cimmino asked about the location for that facility. Mr. Krueger said it would be in the North Broadway/Montana Avenue area. He said it was no secret that a parking structure would be built at that location. He said the study went beyond that to make sure that was the best location and it was feasible.

Councilmember McFadden asked if Mr. Krueger was saying that the project could not go through without a study. Mr. Krueger said he was saying that. He said the facility could be a \$12-\$15 million investment, and they really had to make sure it would work and was in the right spot. Councilmember McFadden asked if it was possible to amend the old study without spending the entire \$15,000. Mr. Krueger said that they would ask for that first, but wanted to make sure they had everything covered.

Councilmember Ronquillo moved for approval of the Downtown Partnership projects request, seconded by Councilmember McCall. On a voice vote, the motion was unanimously approved.

4. ONE YEAR CONTRACT WITH TEAMSTERS UNION LOCAL 190. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) Ms.

Volek advised that the one-year contract would be retroactive to July 1, 2010, because the previous contract expired June 30, 2010. She highlighted the major changes of the contract that included a Teamsters' Random Drug/Alcohol and Reasonable Suspicion Policy and Procedures; addition of three Teamster-selected employees to the Citywide Safety Committee; improvements in the grievance process; and a 2.9% pay increase retroactive to July 1, 2010. She said a budget amendment, which was the last item on the evening's agenda, was related to the payment of the increase. She mentioned that it was a productive, yet lengthy bargaining session, and thanked the members of the bargaining teams, as well as Mr. Dwyer, who was very cooperative and worked candidly with the administration.

Councilmember McFadden asked if the Teamsters had serious concerns or objections to the drug testing provision. Ms. Volek advised they had questions about the implementation, but those questions were worked through in a cooperative and productive manner.

Mayor Hanel asked what other bargaining units had random drug and alcohol testing as part of their agreement. Ms. Volek explained that the MPEA contract for the Police Department included an agreement that there would be a drug and alcohol testing policy. She explained that drivers that held commercial driver's licenses and were under Federal Transportation Administration guidelines were already being tested. Ms. Volek said the MPEA contract was approved, but the drug policy was still under negotiation. She explained that policy for the Teamsters' and non-represented employees would be presented at the next Council meeting, and the MPEA policy would likely follow a short time later. She noted that negotiations with the IAFF were still in progress, and although that had been brought up, they were still not close to a resolution.

Councilmember Ulledalen commented that the budget that was recently adopted barely squeaked by. He said the City would have to face some tough times and would have to make some hard decisions, so he wondered what had to be done to pay for that increase in terms of either service cuts or increased fees. Ms. Volek explained that in the General Fund departments, about \$1.8 million was returned to reserves the previous year, which accounted for about \$233,000, and the remaining would be spread among the departments. She said the number was addressed with the department heads, with the understanding that it was a one-year contract and things could change. She said those items would be bargained very seriously during the next negotiations.

Councilmember McCall asked about the Citywide Safety Committee. Ms. Volek explained that it was intended to look at safe practices of the organization and had representation from various departments. She said Teamster members already served on the committee, the process was simply formalized in the contract.

Councilmember Cimmino moved to approve the one-year Teamster contract as submitted, seconded by Councilmember McCall. Councilmember Ulledalen commented that the employees were very important, but it was difficult to go forward with that with the current economy. He stated that the voters did not get increases like that, the City was facing a

significant budget deficit in 2015, and he did not think it was the time to do that so he would vote against the motion.

Mayor Hanel commented that he understood that the negotiations went quite well. He expressed his appreciation to the Teamster and City negotiation teams.

Councilmember Ronquillo stated that he felt the public had to understand that the drug testing needed to be mandatory to ensure a safe environment. He referred to longevity pay and said that even though the City had good employees and wanted to keep them, he did not know why longevity pay was needed when the employees were provided with other good benefits. He said that should be examined and determined if it was necessary. He commented that he was afraid that employee numbers might have to be reduced in the next few years. Ms. Volek stated that with the Teamsters unit, longevity did not begin until year six of employment, which was the longest period of time of all the employee groups before longevity began. She explained that it was similar to how longevity was handled in other parts of the country when people reached the end of their step increases. She noted that it could be looked at when negotiations began again in the spring.

Councilmember Gaghen stated she wanted to echo the comments of Councilmembers Ronquillo and Ulledalen. She said she planned to vote in favor of the motion, but the public questioned how the City could continue to give increases when private sector organizations were freezing pay, did not have longevity pay, and did not offer some of the perks provided. She said she believed the time would come when raises would not be automatic for any union, and the unions had to be treated fairly. She said the public and employees needed to be aware that they needed to look at the best way to proceed and measures that had to be taken in lean times. Ms. Volek explained that having the Teamsters and MPEA contracts negotiated at the same time helped to eliminate some of the overlap that had occurred in the past when one contract was settled and other groups expected the same increases. She said she felt it was realistic for the Teamsters to agree to conclude the contract at the same time as the MPEA contract, and she hoped that ultimately a one-year contract could be negotiated with IAFF and then all three contracts would be negotiated at the same time to reach parity across the organization for any financial changes.

Councilmember Ruegamer said he agreed with everything that had been said. He said the benefits the City employees received were at least equal to those offered in the private sector. He stated that from what Ms. Volek had said, Mr. Dwyer had been easy to work with and had been reasonable, however, he would not vote for any more raises, because the City did not have the money for them. Councilmember Ruegamer continued that he felt the City was labor intensive, and in order to cut, services had to be cut. He said he did not think 3% raises to the three unions was the way to start minding the City's p's and q's.

Councilmember McFadden stated that he would vote in favor of the motion, but would ask that the unions took into consideration during future negotiations that getting a raise was not the most important goal, but to accommodate the City so that employees did not have to be laid off in the future.

Mayor Hanel reviewed the longevity pay section of the contract for clarification to the public.

Councilmember Cimmino commented that while it was common knowledge that there was a difference between private sector and public sector salaries and compensation packages, she was reminded of the previous winter when the temperature was -25° and everyone wanted streets plowed, garbage collected on a weekly basis, and planes flying. She said she was in support of the increase and believed the workforce deserved it. On a voice vote, the motion was approved 6-2. Councilmembers Ruegamer and Ulledalen voted 'no.'

5. 2011 UNIFIED PLANNING WORK PROGRAM (UPWP) for the Billings Metropolitan Planning Organization. Staff recommends approval of the Draft 2011 UPWP and

authorizing the Council designee to take the recommendation to the Policy Coordinating Committee (PCC) meeting on September 15, 2010. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) Ms. Volek advised that the document was the subject of a recent work session and staff did not have an additional presentation but was available to answer questions. Councilmember Ulledalen moved for approval of the 2011 Unified Planning Work Program for the Billings Metropolitan Planning Organization, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.

6. RESOLUTION #10-18985 ALLOCATING \$2,000 OF COUNCIL CONTINGENCY FUNDS TO THE TRAIL MAINTENANCE PLAN. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) Ms. Volek advised that Mr. John Brewer of the Chamber made a presentation regarding this item at a recent work session and staff did not have an additional presentation, but was available to answer questions. Councilmember Cimmino asked for clarification that the total amount of the plan was \$10,000 and that a consultant had already been chosen. Ms. Volek said that was correct and noted that the consultant was donating part of the cost of the study.

Councilmember McCall moved for approval of allocating \$2,000 of Council Contingency funds to the Trail Maintenance Plan, seconded by Councilmember Ruegamer. Ms. Volek advised that the budget for that fund was \$65,000, and none of it had been used yet this fiscal year. She noted that the entire contingency fund had not ever been used during her time as City Administrator. Councilmember Ulledalen commented that the Yellowstone County Commissioners frequently stated that they were not informed on issues, so they should be informed that the City was moving forward with the plan. He said Commissioner Ostlund had publicly commented that he would not vote for any more trail projects unless a maintenance program was developed. Councilmember Ulledalen suggested an official letter from the Mayor or staff to let the County know that the process was moving forward. Councilmember Cimmino mentioned that she knew the presentation and request for a contribution would be made to the County Commissioners as well. Councilmember Ronquillo stated he agreed with Councilmember Ulledalen and felt it was a good step in the right direction as long as others contributed. Councilmember Gaghen spoke about the positive aspect of public/private partnerships to get the study in place. On a voice vote, the motion was unanimously approved.

7. PUBLIC HEARING AND RESOLUTION TO CONSIDER DONATION OR SALE OF PARKLAND, a 6.775 acre parcel of parkland at Sahara Park, to the Better Billings Foundation to construct and operate a pool. Staff recommends donation of the Aquatic Project Land. (Action: approval or disapproval of staff recommendation.) Parks, Recreation and Public Lands Director Mike Whitaker provided an overview of what had happened to date with the project. He said that pursuant to the development agreement, the City would consider sale or donation of land for the aquatic park, but if the sale or donation was not approved, the funding and development agreement with the Better Billings Foundation would become null and void. Councilmember Ronquillo referred to the funding contingency contained on Page 3 of the agreement, and said the agreement would be null if the Foundation did not come up with the \$4 million. He said he did not want to vote to give them the land if they did not have the funds so the City did not have to go through the procedure to get the land back. Councilmember Cimmino pointed out that the agreement provided three years to raise the \$4 million, so it was not required for them to have the money for the evening's transaction.

Councilmember Ulledalen asked about the status of the \$100,000 escrow account. Mr. Whitaker asked Chuck Barthuly of the Better Billings Foundation to report on that. Mr. Barthuly advised that the development agreement was in place to protect the City's interest and the contingencies would be in place before construction began. He said that a contingency was not set aside yet, but one would be in place before construction started. Councilmember Ulledalen

stated he wondered why they were at that point when it was not known if the Foundation would be able to fulfill the funding requirements. Mr. Whitaker said it was his understanding, that for the Foundation to continue to raise funds, it was important to have possession of the property. Ms. Volek added that per the terms of the agreement, the City was responsible for the property maintenance and liability until it was transferred to the Foundation. She clarified that if the land was transferred to the Better Billings Foundation, the City would no longer be responsible for the maintenance and liability.

Councilmember Gaghen asked about maintenance costs for that parcel. Mr. Whitaker estimated it cost about \$3,000 per year for the mowing and trash removal.

The public hearing was opened.

- **Morris Hall, 460 Tabriz**, distributed a written copy of his comments. Mr. Hall said he did not agree that the mowing or trash collection had occurred as Mr. Whitaker mentioned. He said the public had not seen a three-dimensional model of the project. He spoke against donation of the land until issues regarding donations, utility rights-of-way, traffic study, zoning, proper description of a Billings neighborhood, and other uses for the park were resolved.

Councilmember Ruegamer asked how much land would be needed for a disc golf course. Mr. Whitaker said 9-10 acres was needed for a disc golf course, and Sahara Park was 10 acres. Councilmember McCall asked if Mr. Hall's last statement was an adequate assessment that other activities such as disc golf would not be allowed in the park. Mr. Whitaker advised there was not adequate room for a whole disc golf course there. He said there would still be about 2.5 acres that could be developed into a neighborhood park. Councilmember McCall asked if the area designated for the aquatic center would sit without any use at all until construction began. Mr. Whitaker advised that it was his understanding that it would.

Councilmember Cimmino asked for clarification that the property was zoned Public, which allowed for that particular use. Mr. Whitaker advised that was what he was told by Candi Beaudry, Planning and Community Services Director.

- **Larry Seekins, 380 Camel Place**, advised that he went to the Planning Commission to find out what was happening. He said Sahara Park was zoned for a swimming pool, but what was planned for that area was not a swimming pool, but an amusement park and Sahara Park was not zoned for that. He said the park was close to residents and included an overhead high-voltage power line, and an underground high-pressure petroleum valve. He displayed pictures of how the park would look and provided traffic information for Aronson Avenue. He referred to a gas line explosion the previous week in California and asked if the same disaster could occur if that petroleum valve was accidentally hit. He said that although the water park looked fun, it would also be noisy.

Councilmember Ruegamer stated he had never heard complaints from the residents near Rose Park, which had a similar facility as what was proposed for Sahara. Mr. Seekins commented that Rose Park was not on a main thoroughfare, was only two stories, not three, and was placed farther away. He said that during the public meetings, the neighbors expressed the importance of keeping the trees, but they would be replaced with a three-story, multi-colored amusement park. Councilmember Ruegamer stated that it did not seem to bother the people at Rose Park, and he took issue with the statement that it was farther away because it was across the street. Mr. Seekins said he felt it would bother the people in his neighborhood. He advised that his wife was asking the neighbors about their concerns, and all were against it except one couple that did not care because they were moving away.

- **John Shoff, 1188 Fantan**, advised that he was a regional manager for Dowl HKM, the firm that was donating engineering services for the project. He said the firm supported the

project. He reviewed the engineering services that had been done to date, as well as Dowl HKM's participation in the process. He said those preliminary engineering services indicated that it was a good site and location. He expressed his support for the project, and noted that although he could not speak to the funding issue, he knew that the land ownership transfer was important from a fundraising standpoint. He said he hoped the Council would support the project and not hamstring fundraising by withholding its support.

Councilmember McFadden asked if the picture displayed by Mr. Seekins was an accurate representation of what it would look like. Mr. Shoff said he would defer to the architect. He explained that Dowl's role was civil site design work related to access, parking, and utilities. Councilmember McFadden asked if it was possible the gas line would be hit during construction. Mr. Shoff said the location of the gas line was well known.

Councilmember Ruegamer asked if the 6,000 cars mentioned in Mr. Halls' report was a total of the cars that traveled on Aronson each day. Mr. Shoff advised that it was an average day and the key point was that the peak hours for that road were 8 a.m. and 5 p.m., but the aquatic center's peak hours would be different. He noted that the impact on the intersections studied was hard to measure because it was so minimal. Councilmember Ruegamer asked Mr. Shoff to comment on the Northwest Energy right-of-way and the gas lines. Mr. Shoff said they ran through easements on the eastern edge of the parcel and the parking lot would extend in that direction. Councilmember Ruegamer asked if the gas line or right-of-way were endangered. Mr. Shoff advised that they were not endangered and would actually be protected with the paved surface over it. He commented that the power lines were in back yards of residents and overhead.

- **Scott McCulloch, 611 Tabriz**, requested postponement until the financial conditions of the development agreement were met. He said many of the opponents opposed the location, not the pool. He said they preferred Castlerock Park as the location for the facilities. Mr. McCulloch distributed four documents related to his concerns. He reviewed the funding and said he was concerned with the misinformation about it. He said the project did not fit into a neighborhood park, but would fit in Castlerock Park. He referred to emails that indicated Castlerock Park was not ruled out as an option. He asked about the process the City would use to verify the funding, how in-kind donations would be handled, and noted that the remaining questions were reflected in his handouts.

Mayor Hanel asked Mr. McCulloch if his opposition was to the donation of the land, or the project itself. Mr. McCulloch stated that those who opposed the location were surprised when the land issue came up because they thought it would not come up until the \$4 million was raised. He requested waiting until the funding was met in cash and in-kind, then developing a process to verify it. Mayor Hanel asked again if Mr. McCulloch was opposed to the project and the location. Mr. McCulloch said they were opposed to the location of the project, and the donation of land. He said they agreed a pool was needed in the Heights, but that Castlerock was a better location.

- **Peggy Hubley, 314 Camel Place**, said she disapproved of the precedent of giving City property for a commercial endeavor, and disapproved of the location for all the reasons already mentioned. She mentioned residential aesthetics, traffic congestion, increased risk of accidents and explosion, and destruction of quiet residential neighborhoods. She recommended a swimming pool at Castlerock Park and asked that the deed of Sahara Park be denied.

Councilmember McFadden asked if Castlerock was already developed and pretty much out of the question, while Sahara was undeveloped and land that the City could donate. Ms. Hubley said that was not her understanding because she had seen overlays of the proposed project placed over the available Castlerock property, and that it would fit and was appropriate.

- **John Hurd, 442 Aronson**, advised that he lived across the street from the proposed project and purchased his house because it was a quiet area. He said he was under the impression a pool was planned, but did not know a multi-story slide would be installed, which he opposed. He stated he did not want Sahara Park fenced the way it was being planned. He said an amusement park across the street from him did not work, but he did not have a problem with a swimming pool. He stated he disagreed with donating or selling public land, but did not see a problem with a long-term lease. He said the public land belonged to everyone and if it was given to an organization, it no longer belonged to the public.
- **Stan Morris, 491 Tabriz**, voiced his support of the project. He explained he had small children and there was nothing to do in the Heights and no place for teens. He said he did not see a problem with the gas lines. He said the park was a mess with trash and graffiti, so it needed to be cleaned up. He agreed there were things that needed to be in place to make sure zoning and funding were followed. He said the land needed to be in place so the donors had a vision. He stated he felt Sahara Park was a better location than Castlerock.

Councilmember Ruegamer stated that Mr. Morris was a breath of fresh air because typically, neighbors opposed any development, so it was nice to hear another side of it from a close neighbor.

Councilmember McFadden asked if Mr. Morris thought the future property values would increase for that neighborhood. Mr. Morris said he did, even though other neighbors would probably disagree. He said the development would allow neighbors a close place to go have an enjoyable time.

- **Carter Knight, 422 Killarney, Macy Zier, 870 Siesta Avenue**, stated that Carter was the founder and Macy was a member of IMPACT, Innovative Minors Pursuing Active Change Together. Ms. Zier stated that an aquatic center would be a great addition to the Heights and would give kids something to do. Mr. Knight stated that Sahara Park was an unsupervised free zone right now, but had potential for good things based on its location. Ms. Zier said there was nothing for kids to do in the Heights and a safe environment was needed for after school and summers. Mr. Knight said he was excited about an aquatic facility and knew that other people felt the same. Ms. Zier said it was their wish that the land be donated to the Better Billings Foundation. Mr. Knight said he believed the facility would live up to the Better Billings Foundation's name.

Councilmember Gaghen commended Mr. Knight and Ms. Zier for becoming involved in the issue at such a young age. She asked how many youth were involved in IMPACT. Mr. Knight explained that it was a new organization with about 40 members, and was growing quickly.

Councilmember McFadden asked if the organization had a Facebook page. Mr. Knight advised they had a website: www.impactvolunteers.weebly.com, and also had a Facebook page: www.Facebook.com/impactbillings. Mayor Hanel stated that their parents must be proud of them.

- **Heather Ryland, 1220 Calico**, asked that those who supported the pool to stand. (*No count was taken.*) Ms. Ryland stated that Billings Heights lacked a pool facility where families could spend quality time together and children could be taught life-saving swimming lessons. She advised that she felt the facility offered positive alternatives for teens. She said Big Splash was a good facility, but was expensive. She mentioned the possible activities for a community center that would cater to all ages. She said the facility would be open to all Billings residents, along with surrounding areas. She said she believed as a teacher, wife and citizen that it would make Billings better. She asked for Council support of the donation of the land.

Councilmember McFadden stated that people had mentioned the noise that would accompany the facility and asked if she felt it would be noise pollution. Ms. Ryland said she did not think it was. She spoke about all the activities in Rapid City, South Dakota, and said the addition of the aquatic facility would be an attraction for visitors.

- **Jennifer Wittmayer, 279 Caravan**, stated she lived across the street from Sahara Park and wanted to see a show of hands of how many people wanted that outside their front window. (*No count was taken.*) She said her main concern was the safety. She said she felt the individuals that opposed the location were being ignored, and she felt that the Better Billings Foundation and City Council were negligent in not addressing the safety issues of traffic, high power lines and underground gas lines. She said she could see kids spinning cookies in the parking lot during the winter and running into the fenced gas line. She said people were giggling about their concerns, but asked what it would take when someone got hurt and there was documentation that told them so. She said she also had concerns about the deviousness of the Foundation. She said the general public was uninformed and she knew that many people thought it was a pool, when there would not be a pool until the second phase of the project. She said that at the last Heights Task Force meeting, they were told that the money made from the facility would not be put back into it, but would be used to further other missions of the Better Billings Foundation. She mentioned a discrepancy in the funds they claimed to have versus what they actually had. She said she hoped the issues were taken into consideration. She stated that the facility would be better in a different location.

Mayor Hanel stated on behalf of the Council that none of the concerns brought up had been taken in a joking manner. He said both sides of the issue were taken seriously. He reminded everyone who still planned to testify that the purpose of the public hearing was regarding the donation of the acreage for a pool, and the public comment regarding the pool itself occurred previously and had been discussed extensively. He said the comments should be regarding the donation of the land.

- **Alex Tommerup, 170 Erickson Court**, advised he was the architect on the project. He said other sites were considered, but Sahara had advantages and was perfect for the layout. He explained the benefits of the natural terrain and said the three main concerns of noise, lights and traffic would be addressed. He commented that the facility would not look like the picture displayed during earlier testimony, but would be very attractive.

Councilmember Ruegamer asked about the power and gas lines. Mr. Tommerup advised that there was nothing close that was in jeopardy. He said if anything happened, it would be a result of recklessness, and not on the part of anything related to the facility.

Councilmember McFadden asked if there would be a large public address system. Mr. Tommerup advised that any sound or light system would have a cut-off time and there would not be any artificial noises.

- **Chris Ervin, 311 Tabriz**, said his bedroom windows would directly face the water park. He said he did not anticipate any noise from the park and felt it was a good use of the land, a good location, and good for the community.
- **Cathyeen Paige, 253 Caravan**, stated that she lived across the street from the proposed aquatic park. She said they were getting away from what it really was, because at one point it was a swimming pool, but now it was an aquatic park. She agreed that a swimming pool was needed in the Heights, but not the eyesore planned to be in front of her window. She said the people that really complained about the facility were the ones directly in front of it. She advised she felt her property value would decrease and she was worried about what would happen if Foundation ran out of money when the facility was only half finished. She said the Parks Department would not take care of it, because they did not now. She said in the 14 years she lived there, she had never seen anyone clean it up and only saw some

mowing twice. She stated the neighbors picked up the trash. She said she was concerned about who would be the responsible party if there was a lawsuit against the park. She said those questions needed to be answered before the land was given away. She asked why the land could not be given to her if it was going to be given away.

Councilmember Ruegamer referred to a study done about eight years ago, and explained that calling it a swimming pool was not an attempt to deceive anyone, but teenagers were not interested in just a swimming pool, so something that would not be used would not be built. He added that the land was not just given to them with the hopes it would be built; the deal was that the Foundation had to have the land before construction could start. Ms. Paige asked if the Council would stand up to that when the time came. Councilmember Ruegamer responded that it was in the contract. Ms. Volek referred to the agreement that required the irrevocable letter of credit that was intended to allow the City to collect the funds to do whatever was necessary to revert the land to its original condition if necessary. She added that the City was protected from any negligence.

- **Dave Ulrichs, 2620 Lake Elmo Drive**, said he was a former Better Billings Foundation board member and was present to put a face to the organization. He described the significant financial sacrifices his family made in order to contribute to the project because they believed in it.

Councilmember McFadden asked Mr. Ulrichs if it would be easier for the Foundation to raise money if the land was in hand. Mr. Ulrichs advised that it would be; it was difficult to ask for contributions when there were too many 'what ifs' related to the project.

- **Andrew Billstein, 614 Crawford Drive**, said he did not live in the Heights nor did he attend Harvest Church, but he was a member of the Better Billings Foundation. He explained he was an attorney that specialized in non-profits. He stated that the donation of the land would help with the fundraising. He said he believed the contract in place would take care of what would happen if the funds were not raised.

Councilmember Ronquillo advised that he was not against the pool, but wanted to see the money in hand before he was willing to give away the property. Mr. Billstein said he felt it would be easier to show them the money if the land was in hand.

- **Chuck Barthuly, 300 Eastlake Circle**, said he was the Executive Director of the Better Billings Foundation. He referred to the various studies that included the project. He spoke about the concerns that had been addressed and discussed. He explained that major contributors to the project were concerned with the land and what could happen in two years with a new Council. He said the Foundation intended to commemorate all gifts and would recognize the City as a high-level contributor. He said the Foundation recognized the concerns mentioned and he felt they had been addressed. He said he hoped the Council would consider donating the land so the project could be brought to fruition.

Councilmember McCall asked Mr. Barthuly to speak about activities that supported the parks. Mr. Barthuly explained that the Better Billings Foundation participated with Harvest Church activities such as Celebrate Freedom on July 4th each year, assisted with cleanup at City parks, painted pavilions, assisted with cleanup at the community cemetery, and provided assistance in areas that had limited resources.

Councilmember Gaghen asked Mr. Barthuly to review the fundraising to date. Mr. Barthuly reported that the Foundation had \$1.75 million cash in hand; \$200,000 grants in hand; \$200,000 in-kind, some of which was being used; for a total available funds of \$2,150,000; along with pledges of \$700,000. He said other funds were being pledged, but there was concern with what could happen in two years when a new Council was in place, so that was the reason the Foundation wanted the donation of the land at the present time.

Councilmember Cimmino asked Mr. Barthuly to speak about the Pepsi Grant. Mr. Barthuly explained that \$250,000 would be given away to two community projects and the Better Billings Foundation submitted a proposal that could be voted for on line or by text.

- **Samantha Morris, 491 Tabriz**, stated she was also a member of the Better Billings Foundation and asked for consideration of the land donation. She said she served on the fundraising committee and the land was the first thing potential donors asked about. She mentioned the Foundation's excitement about the planned community center and the great things that could be done with it. She clarified the text number for the Pepsi Refresh grant vote.
- **Andy Gott, 3103 38th Street West**, expressed his support of the project. He said it would pay dividends for years to come, not only to the community, but to families. He said an organization was willing to take the risk and it should be taken advantage of.
- **Jim Tilley, 305 Camel Place**, stated that he and his wife had lived out of the country for a couple of years, so he was behind on the issue. He said they did not believe there would be any development in the park when they purchased their house in 2005. He said that once development started, it would probably continue and the park would be lost and the neighborhood would change. He said he was not against parks, and selling Billings, but he was opposed to the project. He said he would miss the tranquility.
- **Jesse Murphy, 13th Street West**, mentioned that the politics and the public process were for the betterment of the community. He voiced his support for three reasons: the location was a proper place for that facility; the money which was solid for large donors; and the precedent being set to support organizations that wanted to do positive things for the community. He asked for approval of the donation of Sahara Park.

Councilmember Ronquillo stated that he still had a problem with needing to see the money. Mr. Murphy explained that major donors were hesitant to contribute to something that was not certain. Councilmember Ronquillo said in his experience with fundraising, people still donated before the project was complete.

- **Rexene Tilley, 305 Camel**, thanked the Council for its service and recognized the difficult decisions that had to be made. She said that being out of the country made her grateful for being able to say the Pledge of Allegiance or prayers.

Councilmember Gaghen acknowledged Ms. Tilley's comments and agreed that the Council had a challenging role to play in the community and had to make difficult decisions.

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

Councilmember Cimmino moved to adopt staff's recommendation and approve donation of the Sahara Park land to the Better Billings Foundation as outlined in the Funding and Development Agreement, seconded by Councilmember Ruegamer.

Councilmember McCall asked Mr. Brooks if this was a reasonable comparison to the Rescue Mission property. Mr. Brooks explained the land donation to the Rescue Mission that reverted back to the City due to the lack of funds raised to build the proposed facility. He said he believed the City was protected like it was with the Rescue Mission, but it was significantly different from a practical matter because he was not aware of the amount of funds that were raised by the Rescue Mission.

Councilmember McCall stated she would continue to support the project and would vote in favor of donating the park land. She said she was impressed with the funds that had been raised so far. She said it was a huge opportunity, even though the face of the neighborhood would change, which was part of being in the middle of a thriving, growing city.

Councilmember McFadden restated that there was a covenant within that if the money was not raised, the Foundation did not get the land in the end. He said the City was at no risk, and the Foundation had done a tremendous job of raising funds without the land, but with it, they would be able to put the project over the top. He said he would vote for it.

Councilmember Ronquillo said he was going by the Funding and Development Agreement that was already agreed on in December, 2009, and he wondered if it had to be amended. Mr. Brooks said the document could be amended, but under the development agreement, it was at Council's discretion to deed the land now or later. He advised that if the Council voted not to deed the land now, the reasons should be stated for the record. He said the document would not need to be amended, but he felt the record should be clear when it would be considered. Mr. Brooks said the other distinction between this and the Montana Rescue Mission issue was that he did not recall a development agreement being in place. Councilmember Gaghen spoke about the donation of the land to the Rescue Mission which seemed that it would be the impetus for the fundraising, although it did not work out for the Rescue Mission. She said she supported the positive things that came from the Better Billings Foundation, but had serious reservations about donating the land until the fundraising was complete.

Councilmember Ruegamer stated that from what he heard, if it did not happen by December 2012, the land came back to the City. He said he did not know why it was a problem and asked Councilmember Gaghen to clarify her statements. Councilmember Gaghen referred to the fundraising contingency that was in the agreement that did not indicate the clear title was needed for the fundraising. Councilmember Ruegamer said that did not trouble him and he supported it, but cautioned the Foundation and supporters of the project not to ask to start construction before the funds were raised. He said it would not be built on promises, but would be built on cash. He said as a citizen, he wanted it to happen, and as a councilmember, he wanted the taxpayers protected 100%.

Mayor Hanel expressed his respect for the people who spoke about the project. He said he was one that promoted Billings and the only way to stay on the map and progress, was with achievements like that project. He said he believed that risk was well worth it and he would support it.

Councilmember Cimmino echoed Mayor Hanel's comments and clarified that she was not a member of that organization but was aware of the outreach programs in Billings, Lockwood, Plentywood, and Bozeman with annual events such as Easter egg hunts and the July 4th celebration. She noted that as a Heights Community Development Task Force member, she knew that that particular group had attended the task force meetings since 2001 and provided proposals on long range plans that included a pool in the Heights. She said she was also happy as a citizen and councilmember that it had come to fruition. She said the Better Billings Foundation was made up of successful business people in the community that had committed their own funding. She said she supported the proposal.

On a voice vote, the motion was approved 5-3. Councilmembers Ronquillo, Gaghen, and Ulledalen voted 'no.'

A ten-minute recess was taken at 9:15 p.m.

Mayor Hanel announced that Legal counsel had informed him of voting requirements related to land-use issues which required six councilmembers present to vote in favor of the motion in order for it to pass. Mr. Brooks further explained the City Code requirement which meant that the donation of land did not pass with the vote just taken. He explained that a member of the prevailing side, which would be one of the three that voted against the motion, or one that did not vote or was absent, could move to have the item reconsidered that evening or at a future meeting. Mayor Hanel confirmed that the resolution was defeated because six councilmembers did not vote in favor as required.

Councilmember Cimmino asked if the City Code was silent on an exception to the rule in light of the fact that there was a quorum at the meeting and the vote was a majority vote. Mr. Brooks read the Code aloud and noted that did not mention an alternative to that requirement.

Councilmember Cimmino commented that if that that was a requirement, for similar issues in the future, it would be helpful to know that in advance of the vote. Mr. Brooks confirmed that a motion for reconsideration could be made. Ms. Volek added that it could be seconded by any councilmember.

Councilmember Gaghen moved to reconsider the possible donation to the Better Billings Foundation at a future meeting, seconded by Councilmember McFadden. Ms. Volek said she was certain there would not be a full council at the September 27 meeting, so it may need to be considered at the October 12 meeting. On a voice vote, the motion was approved 7-1. Councilmember Ulledalen voted 'no.'

8. PUBLIC HEARING AND RESOLUTION #10-18986 re-spreading assessments on SID 1372, Water, Sanitary Sewer, Storm Drain and Street Improvements for Summerhill Subdivision. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) City Administrator Volek advised that Items 8 and 9 were both re-spreading assessments on existing special improvement districts and were being spread based on the actual costs for the improvements as opposed to the estimates. She said staff had no further presentations on Items 8 and 9, but was available for questions.

Mayor Hanel asked if staff had a presentation for Item 10. Ms. Volek advised Item 10 was similar except that there had been a re-subdivision of the parcels in Miller Crossing, and new assessments had been assigned based on the new divisions. She said staff had no further presentation on Item 10, but was available for questions.

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

Councilmember Cimmino moved to approve the resolution for assessment of SID 1372, Summerhill Subdivision, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

9. PUBLIC HEARING AND RESOLUTION #10-18987 re-spreading assessments on SID 1379, King Avenue West improvements. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) City Administrator Volek advised staff had no presentation, but was available for questions.

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

Councilmember Ruegamer moved for approval of Item 9, seconded by Councilmember Ronquillo. On a voice vote, the motion was unanimously approved.

10. PUBLIC HEARING AND RESOLUTION #10-18988 re-spreading assessments on SID 1385, Miller Crossing. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) City Administrator Volek advised staff had no presentation, but was available for questions.

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

Councilmember Gaghen moved for approval of Item 10, seconded by Councilmember Ronquillo. On a voice vote, the motion was unanimously approved.

11. PUBLIC HEARING AND RESOLUTION re-spreading assessments on SID 1386, Street and Storm Improvements to East and West MacDonald Drive. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) City Administrator Volek advised staff was recommending Item 11 be postponed until the meeting of September 27 to allow staff time to conduct further analysis of the assessment amounts.

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

Councilmember McCall moved to postpone the re-spreading of assessments on SID 1386 until September 27, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

12. PUBLIC HEARING AND APPROVAL OF RESOLUTIONS making original spread assessments on various SIDS and Sidewalk Programs. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) City Administrator Volek advised the items were re-spreads based on actual costs of each of the special improvement districts. She advised a single public hearing could be held for all of the items, but asked that each SID be voted on individually for clarity of record.

The public hearing was opened.

- **Terry Huck, 832 Dorothy Drive**, testified on SID 1388. Mr. Huck said he purchased the house a year ago and never heard of any street improvement districts. He referenced the city raises and said he had not had a raise in three years. He said when he bought his house he assumed there would be no current SIDs. Mr. Huck said he had no problems with SIDs or street improvements, but no one ever came to him with the exception of receiving a survey. He said he would be for the SID if the City would try to get grants or stimulus money. He said he was a single homeowner and did not mind all the school district mill levies and being taxed to death, but he had to come up with more money that was being taken away from the community. He said he did not go out to eat anymore and took his lunches to work. Mr. Huck said it bothered him that part of the group could come along and say 'let's do all of this'. He said his sister wrote grants, and there were a lot of grants out there for infrastructure that would save the taxpayers a lot of money. He said he was in favor of better streets, but chuck holes also kept people from driving too fast. Mr. Huck said he would like to have been notified.

Councilmember McCall thanked Mr. Huck for hanging in until the end of the meeting to testify. Councilmember Gaghen told Mr. Huck that she empathized with his situation and said she thought it would be worthwhile for the City Administrator to address potential grants that might assist people in Mr. Huck's situation.

City Administrator Volek said she was not familiar with the funding on Dorothy Lane, and staff would know more. She said the improvements were for storm drain and streets and typically, unless the street was an arterial or collector street, grant funds were not available. Ms. Volek said individual, residential street improvements were normally done by a voted SID, and she felt Mr. Huck was caught in the period of time when the SID had already been approved. Ms. Volek asked Mr. Huck to look at his sales contract to see if there was any mention of the SID; and if, in fact, the SID had already been paid by the seller.

Mr. Huck said he would survive but was concerned that he was never notified.

Attorney Brooks advised a title report would also show the original estimate.

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

- a. **RESOLUTION #10-18989 SID 1388: Storm Drain and Street Improvements along Dorothy Lane.** Councilmember Cimmino moved to adopt the resolution for assessment for SID 1388, Dorothy Lane, seconded by Councilmember Ruegamer. On a voice vote, the motion was approved 7 to 1. Councilmember McFadden voted 'no'.

- b. **RESOLUTION #10-18990 SID 1389: Water, Sanitary Sewer, Storm Drain, and Street Improvements along Clubhouse Way.** Councilmember Cimmino moved to adopt the resolution for assessment for SID 1389, Clubhouse Way, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.
- c. **RESOLUTION #10-18991 Sidewalk, Curb & Gutter #2801, Lake Elmo Road.** Councilmember Cimmino moved to adopt the resolution for assessment of #2801, Lake Elmo Road, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.
- d. **RESOLUTION #10-18992 Sidewalk, Curb & Gutter #2802, Highland School.** Councilmember Ronquillo moved to adopt the resolution for assessment of #2802, Highland School, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.
- e. **RESOLUTION #10-18993 Sidewalk, Curb & Gutter #2803, Alkali Creek Road.** Councilmember Cimmino moved to adopt the resolution for assessment of #2803, Alkali Creek Road, seconded by Councilmember Ronquillo. On a voice vote, the motion was unanimously approved.
- f. **RESOLUTION #10-18994 Sidewalk, Curb & Gutter #2804, Poly Drive.** Councilmember Ruegamer moved to adopt the resolution for assessment of #2804, Poly Drive, seconded by Councilmember McCall. On a voice vote, the motion was unanimously approved.
- g. **RESOLUTION #10-18995 Sidewalk, Curb & Gutter #2805, Various Miscellaneous and Developer-Related Curb, Gutter, and Sidewalk Programs.** Councilmember Gaghen moved to adopt the resolution for assessment of #2805, various miscellaneous and developer-related curb, gutter, and sidewalk programs, seconded by Councilmember Ronquillo. On a voice vote, the motion was unanimously approved.

13. PUBLIC HEARING AND RESOLUTION #10-18996 APPROVING AND ADOPTING FY2010-2011 BUDGET AMENDMENTS. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) City Administrator Tina Volek advised the item allowed the transfers to occur that would put into effect the 2.9 percent increase that was made part of the contract with the teamsters. She said it also granted a similar increase to the supervisory staff for the non-represented departments, which included Municipal Court, Administration, Finance, Legal, Human Resources, Parks and Recreation, Police, Fire, Community Development, Water and Wastewater, Parking, Airport and so forth. She said the dollar amounts included not only the actual pay increase itself, but benefits that accrued including retirement, etc. She said it would be a complete coverage for those units. Ms. Volek advised the Police Department had already received their 2.9 percent increase because they had a 3-year contract, and they were in the last year of the contract. She said it would leave only the firefighters with whom they were still negotiating a contract. She said it would all be retroactive to July 1st.

Councilmember Ulledalen asked for the total cost of the wage increase in the organization. Ms. Volek advised it was \$959,619 including all benefits. She said it did not include the Police sum that was granted earlier. She said she did not have that amount with her but could provide it by e-mail in the morning.

Councilmember Cimmino asked if they were all civilian. Ms. Volek advised the \$900,000 number was the teamsters at \$520,000 and \$439,000 to non-represented employees.

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

Councilmember Ulledalen said he wanted it to go on the record that the City knew it was headed off a budget cliff in 2015, and he thought it impacted the organizational credibility that the City was going to hand out raises when it knew it could not sustain them. He said the City was going to be at a point in two or three years where it would be crying wolf saying either they were going to lay off 20 or 30 people or there would be a tax increase. He said at some point they needed to start talking very quickly about a tax increase. He said someone needed to make a motion to come forward with an increase to sustain the level of service and the general fund at this point, or they would be at a point in two to three years where they would be talking seriously about making cuts. He said they knew the cliff was up there, and the reality was a lot of them would be gone when it happened. He said they needed to be discussing the reality now, and his concern was that the income from the State was going to be down and deficits could be worse. He said as the economy slowed and tax collections declined, there would be that much less money to pass through back to the cities from the State. He said he thought the deficit situation in 2015 was going to be worse than what they had now.

Councilmember McFadden said he absolutely agreed with Councilmember Ulledalen, but felt they went around it the wrong way. He said next year maybe they should be more proactive and say there was no money for a raise, so they would not sit down and negotiate. He said they should not lead someone on believing they were negotiating in good faith. He said if there was no money for a raise, they should tell them upfront instead of negotiating a raise and then turning around and telling them they could not give the raise they just negotiated. He said once they had promised someone something, they should back it with the bucks they promised.

Councilmember Gaghen moved for approval of Item 13.

City Administrator Volek advised if they did not adopt the motion, they would be back in negotiations with the teamsters.

Councilmember McFadden seconded the motion.

Councilmember McCall said she agreed with what Councilmember Ulledalen was saying and that she thought Councilmember McFadden was right on target. She said she put forth an initiative that within a six-month period before getting into working on the new budget that they would try some different strategies. She said she had a chance to visit with Ed and Dick about the way the State of Montana developed their budget. She said they had to have a balanced budget. She said they had decision packages that were presented very cleanly, the cause and effect; "this is what we've got, this is how much money we have; this is going to be the result." She said she did not believe the City had a process that was user friendly. She said she and Ms. Volek had talked about sitting down to visit with them. She said the State had an interactive mechanism on the web where information could be input right into the decision package. She said she felt it was something they needed to look at; and it was one of the major decision packages they needed to be prepared for next year.

Councilmember Ulledalen said the comprehensive number of almost \$1 million was somewhere around \$40 to \$60 per household increases in fees and taxes in some capacity that they would either have to recoup or recoup in terms of cuts in services. He said they needed to figure out a way to pass them along to the taxpayers or eat it internally by either cutting back services or laying off people to recover it. He said as they moved into the next budget year, it was something that would have to be a reality for them.

City Administrator Volek advised the State dealt with a single union. She said the City dealt with three and a group of non-represented employees. She said one of their constant issues had been that they had a process where they did a contract each year with one of the three unions. She said it created a tag team effect where in this session of bargaining, they went into it knowing that the final year of the three-year police contract, which she acknowledged she bargained, had a 2.9 percent increase in it. She said it was less than the three that most of the

other unions had gotten over the past several years, or more, so the idea of putting all of the contracts together at one time gave them the opportunity to leverage the money. She said most of the departments in their budgeting put some money aside for the pay increases that were anticipated; perhaps not in the amount of 2.9 percent, but some money was put aside, which would offset the amounts Council was seeing in front of them because they were already budgeted. She said she discussed it with the department heads, and no one raised any objections. She said they were aware they had the costs and were fairly aware of the police costs. Ms. Volek said she wanted to respectfully tell the Council that she was the individual doing the overall City plan and if she was in contract negotiations constantly, she did not have the opportunity to work on that plan because she was, instead, for every day they were in bargaining, at least a half-day in planning for that event. She said they spent two hours that afternoon for an all-day mediation on Wednesday. She said her time had been blocked out for them, and she turned her attention to them because they were appropriate this spring. She said those were the realities of the staffing situation and unlike many organizations, they did not have a staff of management analysts or people to do the other work. She said it was all done by a couple of people, and they were moving forward on it.

Councilmember McCall thanked Ms. Volek and said that was very true. She said there was a large number of fiscal staff who put together the budgets and the departments had a great deal more staff, but at the same time, she thought there were things they could learn. Ms. Volek agreed.

Councilmember Gaghen said she felt it would be a major plus to have everyone negotiating at the same time. She said they may have to play hardball and let the unions fully realize it was coming to the point where there were either pay freezes or cuts in service because they could not keep going to the public getting \$60 to \$100 more a year compounded with other entities asking for additional costs. She said they should not wait until 2015. She said it went far beyond a 'cry wolf' situation. She said they needed to be fiscally responsible. She said she would support the vote but had some real trepidation.

Councilmember Ronquillo said staff was doing a good job, and they had asked to try to get them all together and hoped that was being done. He said they needed to take a look at the need to replace people who retired. He said they needed to know ahead of time and be prepared, which would give them more leverage. He said it would be time-consuming and harder to convince people the City was hurting. He said they did know they would be \$1 million to \$2 million short by 2015.

Councilmember McFadden said he agreed with Councilmember Gaghen. He said she used the term 'cuts in services' but they should actually be more brutally honest and say 'lay off of personnel that caused cuts in services.'

Councilmember Ulledalen said the other issue was what was happening with the recent health care bill and that they would be seeing increases in their health insurance as the assessments were passed on. He said that was something else they would have to swallow. He said they needed to take the same stance as private sector businesses, which was handing their employees a higher health care bill. He asked if they were going to absorb the extra costs or go back and negotiate with the employees to pick up part of the costs. He said they needed to understand that the citizen survey said people did not want higher taxes or cuts in services. He said they needed to get creative in order to keep both sides happy.

Councilmember Cimmino said she echoed Councilmember Ulledalen's sentiments because the City was going to be faced with a huge budget challenge. She said she supported Councilmember McCall's initiative to do their homework ahead of time. She said Councilmember McFadden had a good point that they could not take away what had already been negotiated. She said she thought it was a great idea to have all the union groups negotiate a one-year contract at the same time that would hopefully streamline the process. She said they needed to somehow communicate to staff that these were some of the budget constraints they

were facing in the future and maybe they would not get a raise. She said she supported that they needed to show appreciation to the employees. She said in the public sector vs. the private sector, an employee was given a raise based on performance, not because it was automatically given.

Councilmember Gaghen said the Council needed to be ready and willing to take a little more of the heat. She said they had a fine negotiating team, and she would not want their job; but some of it needed to be generated from the Council as a whole with more input. She said Council needed to stand up and look ahead.

Councilmember Ulledalen said another option would be for Council to start working on tax increases to support and maintain levels of services and defend raises they had given and benefit packages.

Councilmember Gaghen said they could look for additional tax monies but they needed to play a more active role in suggesting negotiation procedures and making recommendations so the union heads knew it was not just staff speaking their minds but also representing the Council.

City Administrator Volek said she thought Mr. Dwyer acknowledged at the beginning of the contract negotiations that he understood the City was looking at a future financial crisis. She said in some of the departments, particularly in the Public Works area, the salaries did not make up as large a percentage as they did in some of the other departments where they were 85 percent of the cost, so the impact there was while it may mean there were projects that would be deferred, they had the capacity, as well as the enterprise funds, to make adjustments. She said she had very seriously taken into account the Council's comments on the issue, which was one of the reasons they tried to consolidate all of the contracts to the single point. She said she thought the City had done something that others may have not done. She said they had consciously been constricting cost for a very long period of time. She said for 10 years they had told departments they could not have an increase in anything that was not a utility where Finance could predict what the increase would be or a budgeted contract amount. She said they had been told for 10 years they needed to come in and make a case-by-case request for items with supplemental budget requests. She said in 2003 or 2004, supplemental budget requests were being granted at the rate of about \$1 million per year. She said in the last five or six years, the supplemental budget requests had been granted in the amount of well under \$500,000 and one year under \$160,000. She said the department heads were learning not to ask for large supplemental budget requests. She said they looked for equipment purchases that caused staff reductions or prevented additional hiring, promoted safety issues, etc. She said they had been very, very conservative in terms of not adding a lot of staff in many departments. She said there was no doubt with the mill levy cap in the Charter and re-appraisal limiting the amount of growth on mills, they had future financial concerns. Ms. Volek said other models around the country were in far worse shape than the City.

Councilmember Ulledalen said other communities depending on sales tax have had brutal cuts. He said they were seeing similar decreases in income taxes, and he thought the crisis would be at the state level, and the legislature would expect the City to cut. Ms. Volek said she agreed.

On a voice vote, the motion was approved 5 to 3. Councilmembers Ulledalen, Ruegamer and Cimmino voted 'no'.

PUBLIC COMMENT on Non-Agenda Items -- Speaker Sign-in required. *(Restricted to ONLY items not on this printed agenda. Please sign up on the clipboard located at the back of the Council Chambers.)*

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

COUNCIL INITIATIVES

There were no Council Initiatives.

ADJOURN

There was no further business and the meeting adjourned at 10:15 p.m.