

## **REGULAR MEETING OF THE BILLINGS CITY COUNCIL**

### **July 14, 2008**

The Billings City Council met in regular session in the Council Chambers 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.

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

**MINUTES** – June 23, 2008, approved as printed

**COURTESIES** – None

**PROCLAMATIONS** – None

#### **ADMINISTRATOR REPORTS – Tina Volek**

- ✓ Ms. Volek reminded Council that the Agenda Review meeting was scheduled for the following evening at 5:30 p.m. in the City Hall Conference Room.
- ✓ Ms. Volek referenced the request to delay action on Item 5 from Shawn Wickhorst of KRP, LLC, until September 8, 2008, that was distributed that evening and located in the Ex-Parte notebook in the back of the room.

Councilmember Veis asked if a public hearing would be required for item #5. Mayor Tussing asked if anyone present would testify on that item and there was no response. He said the item and associated hearing would likely be postponed. Ms. Volek said the hearing could be opened and comments could be received from anyone present or the whole item could be postponed until September 8.

**PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: 1 and 2 ONLY. Speaker sign-in required.** (Comments offered here are limited to 1 minute per speaker. Please sign up on the clipboard located at the podium. Comment on items listed as public hearing items will be heard ONLY during the designated public hearing time for each respective item.)

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

- **Rick Leuthold, Billings**, said he was Immediate Past President of The Rotary Club of Billings and wanted to make a contribution on its behalf. He said The Rotary Club of Billings was established in 1916 and was the largest club in the State of Montana and dedicated to ‘service above self.’ He presented a check in the amount of \$3,000.00 from The Rotary Club of Billings to Parks, Recreation and Public Lands Director Mike Whitaker to provide trees for Dehler Park. He said Rotary members would help plant the trees as a service project. He said the park was a jewel for the City.

Mr. Whitaker thanked The Rotary Club of Billings for helping make the project a reality.

- **Patrick Reichert, Our Lady of Guadalupe Church**, said he wanted to comment on the letter he provided Council a few weeks ago regarding the Viva La Fiesta street closure request that was postponed from June 23. He said he wanted to reiterate the Church's feelings that the street closure in front of its handicapped parking and drop-off zone would be a problem. He said the noise from a fiesta going on during Church functions would be very disruptive. He asked the Council to deny the request.

Councilmember Gaghen said the last time the Church commented on that item; there was concern that there was no interaction between the two groups. She asked if the Viva La Fiesta group contacted the Church and if there was an attempt at dialogue. Mr. Reichert responded that a meeting was held the previous Saturday and Gloria Trevizo, President of the Viva La Fiesta Committee, and a member of the Parish as well, came to the meeting to clear the air and to resolve the differences. He said it was determined that the Viva La Fiesta should be moved to a different date and September 16 was suggested since it was Mexican Independence Day. He said the Church offered support of the change and event. He said Ms. Trevizo reiterated she planned to withdraw the request, but when he checked that day, it had not been withdrawn. Mr. Reichert added that Ms. Trevizo indicated she would resign as President of the Committee if the members did not go along with her recommendations. He said he did not know if that happened, but the request was still in place and he urged Council to deny it.

Councilmember Gaghen asked if Viva La Fiesta was willing to have the September celebration for a shorter length of time so it would not impede the Church functions and access. Mr. Reichert said it was discussed to not block the street at all because there was a park across the street that could be used for the event. He said it was a great meeting and it was obvious something happened since the Saturday meeting.

City Administrator Volek said she thought the request had been withdrawn and even though there was conversation to that effect, nothing in writing was received. She noted the event would occur prior to the next Council meeting so it was not possible to postpone action on it that evening. She said there were conversations, but to her knowledge there was nothing in writing.

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

## **CONSENT AGENDA:**

1. A. **Bid Awards:**
  - (1) **W.O. 03-07, Alkali Creek Multi-Use Path – Segment 1B (Main Street Tunnel)**. No recommendation for contract award due to no bids received by the bid deadline.

(2) **W.O. 04-36, Briarwood Sewer Main Extension.** (Opened June 24, 2008). Recommend COP Construction, \$5,089,781.00 plus 10% contingency (\$508,978.10) for a total of \$5,598,759.10.

(3) **W.O. 07-22, King Avenue East road construction.** (Opened July 1, 2008). Recommend delay of award to July 28, 2008.

(4) **Waukesha Engine Generator Control Upgrade for Wastewater Division.** (Opened June 24, 2008). Recommend Winn-Marion Barber, LLP, \$134,911.00.

**B. Agreement** with Billings Housing Authority to fund one Police Officer, July 1, 2008, through December 31, 2008.

**C. Approval** of Commercial Aviation Ground Lease with Edwards Jet Center for the Airport's Commercial Lot 2 parcel. Five-year term, annual revenue, \$12,220.44.

**D. Amendment #1** to Non-Commercial Aviation Ground Lease with Williams Enterprises to correct and update the legal description. Annual revenue increase, \$221.52.

**E. Assignment and Transfer** of the Non-Commercial Aviation Ground Lease from Williams Enterprises to B&J Properties Limited, LLC.

**F. Amendment #1** to Limited Commercial Aviation Ground Lease with Corporate Jet, LLC to correct and update the legal description. Annual revenue increase, \$208.80.

**G. Amendment #2, W.O. 07-22, King Avenue East, Professional Services Contract, HDR Engineering, \$175,360.00.**

**H. Amendment** to Certified Local Government Program Grant Contract with the State of Montana Historic Preservation Office to send a Yellowstone Historic Preservation Board member to the Montana History Conference in October, 2008, \$500.

**I. W.O. 05-20 Aronson Avenue,** amendments to the plat of Sahara Sands Park and certificate of survey for Swords Park to add road tracts and right-of-way.

**J. Street Closures:**

(1) Billings Clinic's Classic Street Party; N. Broadway between 3<sup>rd</sup> Avenue N. and 4<sup>th</sup> Avenue N. from midnight August 22, 2008, through 5:00 p.m. August 24, 2008; and the alley between 3<sup>rd</sup> and 4<sup>th</sup> Avenues North from 9:00 p.m. August 22, 2008, through 5:00 a.m. August 24, 2008.

(2) Viva La Fiesta; South 28<sup>th</sup> and South 29<sup>th</sup> on 6<sup>th</sup> Avenue South on July 25, 26, and 27, 2008, from 4:00 p.m. on July 25 until 6:00 p.m. July 27, 2008. Delayed from June 23, 2008.

**K. Acceptance of donation** from The Rotary Club of Billings to provide trees for Dehler Park, \$3,000.00.

**L. Acceptance of Homeland Security Grant** for the purchase of confined space/rescue equipment for the Fire Department, \$20,248.00.

**M. Approval of grant application** to the Montana Tourism Infrastructure Investment Program to provide a bridge connection over the Montana Rail Link tracks in the downtown historic district, \$50,000.00.

**N. Approval of grant application and acceptance** of the 2008 Justice Assistance Grant (JAG) for replacement of lightbars on police vehicles, \$11,390.00.

**O. Resolution #08-18734** acknowledging approval of the Department of Natural Resources and Conservation (DNRC) for the sale and delivery of revenue bonds for the Briarwood sanitary sewer extension, \$7,400,000.00.

**P. Preliminary Plat** of Lake Hills Subdivision, 14<sup>th</sup> Filing, Amended Lots 4, 5, and 7 through 11, Block 46.

**Q. Final Plat** of Miller Crossing Subdivision, 2<sup>nd</sup> Filing.

**R. Final Plat** of Shiloh Crossing Subdivision, Amended Lot 4, Block 1.

**S. Bills and Payroll**

- (1) June 6, 2008
- (2) June 13, 2008
- (3) June 20, 2008

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

Mayor Tussing separated items A1, J2, and M.

Councilmember Ruegamer moved for approval of the Consent Agenda with the exception of Items A1, J2, and M, seconded by Councilmember Veis. On a voice vote, the motion was unanimously approved.

Councilmember Ruegamer moved for approval of Item A1, seconded by Councilmember Veis. Mayor Tussing stated that even though there were no bids received for the project, his wife was involved in it so he would recuse himself from the vote. He clarified that the motion was to not award a contract since there were no bids received. Councilmember Ruegamer said that was correct. Councilmember Veis asked Public Works Director Dave Mumford if there was any indication why there were no bids for the project and what the next steps were. Mr. Mumford explained that the project was a 90% tunnel contract and the general contractors did not want to be a general on only 10% of the project and the tunnel contractors preferred not to be general contractors. He said staff met with both general and tunnel contractors and developed a new way to bid the project. He said it would be the same project, but packaged differently. Councilmember Veis asked how long the project would be delayed. Mr. Mumford responded it would be delayed about six weeks and he did not know how that would affect the project.

Councilmember Stevens asked how and when both sides of the tunnel project would be connected to the trails. Mr. Mumford said he was not able to answer that off the top of his head. He said they were separate projects but he did not know the schedules for them.

On a voice vote, the motion was approved 9-0.

Councilmember Ruegamer moved for denial of Item J2, seconded by Councilmember Gaghen. Councilmember Ruegamer said he did not know who the individuals were and what they would do with the money raised. He said the Council did not know anything about it and the group wanted a street closure for three days. He said he felt the minimum the group should have done was to come to Council to explain the event and what it would do with the money, and that did not happen so he would not vote for it. Councilmember Ronquillo said he would recuse himself from the vote on the item.

City Attorney Brent Brooks encouraged Council to articulate reasons for denial if that was the intention. He said the primary reasons should be safety, property interference or something similar to that. Councilmember Ruegamer said he opposed it because he did not know who they were and what they wanted, and asked why that may not be a good enough reason. Mr. Brooks said he believed the basis for review and granting of permits was primarily to know who was doing what on City property and of particular concern was safety or the interference of other individual property rights. He said the motion could include the lack of knowledge of what the group intended to do and where it intended to do it on City property. He said it would also be wise to indicate concerns, if any, about safety and the interference of other property rights such as, but not limited to, Our Lady of Guadalupe Church. Councilmember Ruegamer said Councilmember Ronquillo already stated that it would block entry to the Church which was a problem for people who tried to attend it. He added that any street closure was always a safety issue to him and that was why the City had to be careful what it did and with whom. He said he added that to his comments.

Councilmember Gaghen said she did not remember a time when nearly three days were set aside as a street closure for an event. She said the request lacked credibility in her mind and was not presented to Council so there was any comfort in knowing it was a worthy project.

Councilmember Veis pointed out that Councilmember Ronquillo recused himself from that item so if there were similar concerns to what he expressed in the past, it would be best to articulate them for the record since his remarks would not be an official part of the record. Mayor Tussing said he was happy to articulate his concerns. He said that since the Church indicated the event would be disruptive to its operation and since there had been no communication from the organizers of the event to explain it was necessary or that the event would outweigh the disruption to the Church and the public for that period of time, he would vote for the motion to deny the closure.

On a voice vote, the motion to deny the street closure was approved 9-0.

Councilmember Ruegamer moved for approval of Item M, seconded by Councilmember Veis. Mayor Tussing said he would recuse himself from the vote on the item because his wife was involved with the project. Councilmember Astle asked if that was the overpass near the Depot that would cross Minnesota Avenue. City Administrator Volek said it was.

On a voice vote, the motion was approved 9-0.

## **REGULAR AGENDA:**

**2. RESOLUTION APPROVING AND ADOPTING FOURTH QUARTER BUDGET AMENDMENTS FOR FISCAL YEAR 2007/2008 (item #3 delayed from June 23, 2008). Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** City Administrator Volek advised staff had no presentation, but was available for questions. Councilmember Veis said that from the staff report, it seemed \$135,000 had been missed. He said he could not imagine that during the budget process, a supplemental request for that amount would have been blessed by the administration. He said he needed a better understanding of how the City lost \$135,000. Assistant City Administrator Bruce McCandless explained that the response to the question was that the biggest share of the \$135,000, \$100,000, occurred 14 years ago and staff could not reconstruct the financial records to determine whether the funds were ever requested from the State or if they were requested and received, but not deposited in the proper account. He said staff believed the money was requested, but did not know what happened to it because of the age. He added that the \$18,000 figure was always at risk because unless housing was produced, the expenses incurred for the project could not be recovered through HOME funds. He said the final \$17,000 was a number of small projects and he did not have much detail on them. He added he did not know if CDBG or HOME staff could provide more information than what he had. He said most of that occurred prior to the current administration or the current department management.

Councilmember Veis asked if the accounting principles that lead to that problem were still in place. Mr. McCandless said the accounting procedures in the CDBG division were substantially changed as a result of the 2006 audit findings. Councilmember Veis asked how often an audit was conducted since those items were 14 years old. Mr. McCandless responded that an annual audit was conducted and a different division or department was selected for more intensive testing, and in 2006 it happened to be the CDBG program which was when those issues were discovered. Councilmember Veis asked if the CDBG program had received an intensive audit prior to 2006. Mr. McCandless said he did not know, but he found it hard to believe that there was not a more intensive audit between 1994 and 2006, and in addition to that, the CDBG had auditors that conducted periodic investigations that monitored compliance, yet the issues were not discovered until 2006.

Councilmember Veis referenced the \$100,000 and asked why the City erred on the side that it wasn't reimbursed for the money. Mr. McCandless responded that at the current time, there was no way to account for and show that those monies were deposited in the HOME fund. Councilmember Stevens asked if the City could show that they were not. Mr. McCandless said the City did not have to prove a negative, but had to prove that the funds were deposited in the HOME fund, but was unable to do that. Councilmember Veis said if that was in question, then why did the City err on the side of a transfer of \$100,000 from the General Fund. He asked if a federal agency required the transfer or what the impetus was to shove \$100,000 into that program. Mr. McCandless said he believed the 2006 audit recommended a number of accounting changes in the CDBG and HOME programs. He said it also identified some accounting irregularities. He said there was no evidence of any kind of theft or embezzlement or anything like that, but probably more for record keeping. He said staff believed that had been corrected. He advised he did not believe a federal agency had demanded the

correction, but for the City's own accounting records, a fiscal year could not end with a negative balance in a fund, which was what happened in 2006.

Councilmember Stevens asked what would happen if it wasn't approved. Mr. McCandless responded he did not know; he would have to find out and report back at a future date. City Administrator Volek advised the item could be postponed for two weeks to answer those questions and others the Council might have.

Councilmember Veis moved to delay the resolution approving budget amendment #3 for two weeks until further clarification was received, seconded by Councilmember Stevens. Councilmember Veis noted he would be absent from that meeting and hoped someone would carry on with his line of questioning. On a voice vote, the motion was unanimously approved.

**3. PUBLIC HEARING AND RESOLUTION #08-18735 AUTHORIZING THE SALE OF PORTIONS OF OLYMPIC PARK AND THE SHILOH DRAIN ACCESS PROPERTY. A transfer of City-owned property, located in the right-of-way along Shiloh Road, to Montana Department of Transportation for the Shiloh Road Project. Subject property is generally described as Parcels 22, 25, 31 and 83 on Montana Department of Transportation Project MT 1031(4). Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

City Administrator Volek advised that one parcel was inadvertently omitted from the list and was not advertised so it would be advertised and brought to a future meeting, likely the first meeting in August. She stated there was no other staff report on the item and approval was recommended. She said the land would be transferred to Montana Department of Transportation for the Shiloh Road project and would be returned to the City for maintenance when the project was complete. She advised that the recommendation was to transfer the property to MDT at no cost. Mayor Tussing said it was listed as a sale but was really a transfer. Ms. Volek confirmed that it was a transfer.

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

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

**4. PUBLIC HEARING AND RESOLUTION #08-18736 VACATING THE ALLEY WITHIN BLOCK 260 OF BILLINGS ORIGINAL TOWN, Aaron Sparboe, petitioner. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

City Administrator Volek advised that staff had no presentation, but was available for questions. She noted that Mr. Sparboe, the petitioner, was in the audience as well.

The public hearing was opened.

- **Joe White, Billings**, said since the story came out in the Billings Gazette that First Interstate Bank intended to build, a lady on the street told him that any approval for the construction should be contingent upon paying condemnation

damages for the Head Start Building across the street. He said that was her opinion and would be his as well because it would be unusable for Head Start with a busy commercial center across the street. He urged that added to any improvement or vacation of the alley.

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

Councilmember Pitman moved for approval of the resolution vacating the alley within block 260 of Billings Original Town, seconded by Councilmember Gaghen. Councilmember Gaghen stated she wanted to clarify Mr. White's concern about Head Start in that it would be insulated from the activity he was concerned about. She advised that Head Start sat in on the conference when First Interstate explained its plans prior to the press release so they were anxious and eager to have the new facility in the proximity. She noted it would not be huge; a two-story structure, and would provide an impetus to the whole of the area.

Councilmember Ronquillo advised that the school asked First Interstate Bank if the bank's conference room could be used and the bank was agreeable. He said the bank reached out to help the neighborhood it was moving to.

On a voice vote, the motion was unanimously approved.

**5. PUBLIC HEARING FOR SPECIAL REVIEW #862: A special review to remove a condition of approval from Special Review #836 and Special Review #841 restricting vehicle access across the west property line to adjacent property on a 2.303 acre parcel of land in a Controlled Industrial (CI) zone, on Lot 11A-1, CBH Industrial Park Subdivision at 1911 King Avenue West. KRP, LLC, owner, Blueline Engineering, agent. Delayed from June 23, 2008, at applicant's request. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)** City Administrator Volek said this was the item for which a request was received from the owner to delay until September 8, 2008. She said staff had no other presentation and was available for questions. Mayor Tussing asked if anyone had entered the premises who wished to testify on the item. He said individuals could testify now and would also be able to testify on September 8 if the item was delayed.

- **Marshall Phil, Blueline Engineering**, said he represented the owners. He explained the reason for the extended delay was to work with the neighbors. He said there had been a couple of meetings about concerns with fencing and the use of the neighbor's parking lots and they were working around those complications. He said that was the only reason for the extension of the delay. He said he didn't believe anyone else for or against the project was present, and he would be happy to answer questions.

There were no other speakers. Mayor Tussing stated he would not close the public hearing pending the motion for that item.

Councilmember Gaghen moved to continue the public hearing for Special Review #862 until September 8, 2008, seconded by Councilmember Ruegamer.



Councilmember Stevens stated she wanted the applicant to know she appreciated the delay to work out the issues instead of them coming before the Council to sort out.

On a voice vote, the motion was unanimously approved.

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

- **Catherine Schaeffer, 2113 Walter Road**, said she was present to speak about the privatization of the Billings Animal Shelter. She said she hated to take the time to repeat herself, but must in light of recent emails. She said she was not against privatization of the Animal Shelter, nor did the Cat Sanctuary wish to respond to the RFP. She said the Cat Sanctuary had enjoyed a wonderful working relationship with the Billings Animal Shelter and its staff since its inception nine years ago and wanted to continue that relationship especially with the positive changes that had taken place during the last eight years. She stated she was against an unproven, inexperienced rescue group taking over the Billings Animal Shelter. She said that according to the HHUS Northern Rockies Regional Office, regionally, there had not been a non-profit animal welfare group that took over an established municipal shelter and improved it or community services. She said there were ongoing discussions around the region and they all faced the same barriers – well-intentioned folks that wanted to instantly or radically change shelter operations and eventually learned that public behavior, attitudes, and culture had to be changed first before sheltering was changed. She said that was not a quick fix, but a long-term maturation and education challenge. She said she heard the YVAS compare itself to the Heart of the Valley Humane Society in Bozeman and there was no comparison. She said Heart of the Valley was formed to be an alternative shelter to the Gallatin Valley Humane Society, which had the Gallatin County shelter contract. She noted that Heart of the Valley had no interest or goal to take over the Gallatin Valley Humane Society, which had been in business for 30 years. She stated that Heart of the Valley had been in business for at least 10 years and had already raised \$1 million for a new shelter prior to the 2004 merger of the two groups.
- **Kevin Nelson, 4235 Bruce Avenue**, distributed information about sanctions and said it had to do with the recent unanimous vote by the Board of Ethics regarding Councilmember Joy Stevens. He read the Billings Code regarding the Code of Ethics and said anyone who violated that code was guilty of a misdemeanor. He said the Ethics Board found Councilmember Stevens in violation by unanimous vote and an officer of the court and a police officer were present at that evening's meeting. He said he believed Councilmember Stevens should be charged with a misdemeanor, based on the evidence found at the ethics hearing. He noted she did not participate and did not have counsel represent her and the ethics board found her guilty. He said he believed the City should treat everyone equitably. He said she should be charged with a misdemeanor according to the code. He referenced City Code 2-201 regarding former employees having interest in

contracts, and stated that even if she resigned and recused herself, Council still had a duty under the Statute not to issue her a contract for six months. He said the State Statute was also in place.

Councilmember Ronquillo asked Mr. Nelson about the Chairman's decision at the Board of Ethics meeting. Mr. Nelson responded that it was a unanimous vote. Councilmember Ronquillo said the outcome was to send a letter to the Council. Mr. Nelson said the Board found that she violated a section of the code. Councilmember Ronquillo said the outcome was that the Board would send her a letter and advise her not to do that again. He said the Board of Ethics made the decision. Mr. Nelson said they still found that she violated the code. He said the Chairman chastised the Council for not standing up. He said nobody wanted to step up and say she had a conflict.

Councilmember Astle said he had a statement, not a question. He said Councilmember Stevens had not been convicted in a court of competent jurisdiction or a court licensed by the State of Montana. He added that she was before a Board of Ethics, which was not a court, and neither was the City Attorney or anyone else who sent her an email. He said he thought the Board was right in what it did, but she had not been convicted in the court and he did not want to hear any more about it.

Councilmember Ruegamer said he did not want to send Councilmember Stevens to prison for six months or fine her.

Councilmember Stevens addressed City Attorney Brent Brooks. She said she was unable to attend the hearing because she was out of state at the time and had not seen results from it. She said it was her understanding that it was not a unanimous decision, but a 2-1 decision. Mr. Brooks said he would have to check the minutes. He noted that he had to request an outside attorney because it involved the Council. He said the vote, minutes and the letter were a matter of public record and should be posted to the City's website. Mayor Tussing asked if anyone had received a letter from the Board of Ethics. No one responded that they had.

- **Sandra Wulff, 2942 Old Hardin Road**, said she wanted to address the issue of Councilmember Stevens using her influence as a Councilmember to push through a proposal to privatize the Billings Animal Shelter. She said Councilmember Stevens founded the Yellowstone Valley Animal Shelter solely for the purpose of taking over the Billings Animal Shelter. She noted the City Ethics Board found her in violation of an ethics code due to discussion of the YVAS proposal at public meetings. She said Councilmember Stevens sent an email to fellow Councilmembers the evening before a Council meeting in an attempt to discredit Animal Control and citizens who opposed the YVAS proposal because she expected those citizens to speak in opposition the following night. She said that email made malicious and untrue statements to discredit her opposition in the eyes of Councilmembers who would vote on the YVAS proposal. She said it was shameful that Councilmember Stevens' behavior was allowed; that behavior was unbecoming and unacceptable conduct for a City Council member. She stated Councilmember Stevens abused her Council position to push through a proposal for which she had a private interest. She said she requested her resignation because her behavior greatly compromised

government procedure and process and violated the public trust required by a City Council position.

Councilmember Ruegamer asked why he did not receive the email she referenced. Ms. Wulff responded that it was sent to all of City Council. Councilmember Ruegamer said he did not get it. He asked if Ms. Wulff thought the YVAS would gain something from the proposal. Ms. Wulff said she was not saying they gained anything and there was no gain for anyone. Councilmember Ruegamer said that was his point.

Councilmember Ulledalen asked Ms. Wulff if she worked with an animal group since everyone else identified themselves as having an affiliation with one. Ms. Wulff said she worked with all of them: the Help for Homeless Pets, the Last Chance Sanctuary and Animal Welfare League. She noted they were non-profit organizations that had been in the area for a number of years. Councilmember Ulledalen said he had received a number of complaints from the community about the Animal Shelter and he had not heard any comment about positive suggestions they would have. Ms. Wulff asked who those comments were directed at because the only person she knew they were directed at was Councilmember Stevens. Councilmember Ulledalen stated that Councilmembers received them from constituents. Ms. Wulff said they were miniscule; that any group that ran the shelter would get complaints and it was a matter of opinion because people would complain if their dog was impounded. She added that an untrue statement about the Billings Animal Shelter was in the email sent by Councilmember Stevens. Ms. Wulff asked if people signed statements that verified they were true. She said anyone could say something about someone to discredit them.

Councilmember Astle asked Ms. Wulff if she thought the Animal Shelter was properly run at the current time. Ms. Wulff responded 'yes.' She said other cities in Montana had been privatized and a comparison could be made to Great Falls where there were numerous problems. She said Councilmember Stevens compared Billings to Bozeman but the two did not compare demographic-wise because Billings was situated next to a reservation, many people in Billings were not on the higher end of the income scale, and it was a larger city. She said she was concerned with how things had been done and there was always room for improvement. She said the Billings Animal Shelter had made some improvements and a group that took over the shelter would not make those problems go away overnight.

Councilmember Ruegamer asked what the reservation had to do with any of it. Ms. Wulff responded they were numerous. She said statements were made in Councilmember Stevens' email and she wondered if anyone asked her to provide the source of the malicious attacks against her. Councilmember Ruegamer asked her if that had to do with the reservation. Ms. Wulff said it did because the people involved in Councilmember Stevens' group did not have a background in rescuing or sheltering. She said she volunteered at the Animal Shelter and her sole purpose was to help the animals. Mayor Tussing said she did not answer the reservation question she testified about. Councilmember Ruegamer affirmed she did not answer it.

Councilmember Stevens stated she wanted to respond to her and it was not a question. She said she spoke with a woman, Susan Grasso, for about 1-

1/2 hours in March or April. She said she believed Susan had since moved out of town. She said Susan told her she had trapped and killed feral cats in the City for approximately 20 years and that Ms. Wulff was part and parcel with that for some time. Councilmember Stevens said that was where she got her information and the things she said in the emails were the views of her constituents. She said she did not make that stuff up, but because she had been in the forefront, she received numerous phone calls, emails and complaints. She said that as the Council and Mr. Hagengruber of the Billings Gazette knew, she had resigned from the YVAS because with her job in Wyoming, it was not feasible to continue with that group. She stated she got her information from constituents that called her. She said she had been accused of not representing everyone, but she represented a majority of the people that had contacted her, which was where her information came from.

Ms. Wulff asked if she could respond to the constituent thing. Mayor Tussing told her to make it quick. Ms. Wulff said one of Councilmember Stevens' board members was Jean Albright, a Billings Veterinarian, and Ms. Wulff had given her about five feral cats in the last year. She said she did not trap and kill anything and tried to save any animals she could. She noted there were limited homes for feral cats and if she placed one in a home she wanted to make sure it was cared for.

- **Susan Grasso, Moon Valley Road**, said she still lived in Billings and did speak with Councilmember Stevens. She said she called her to discuss the proposal and her concerns. Ms. Grasso said she trapped feral cats in the City for over 20 years and did not implicate Ms. Wulff in the number of cats she trapped. Ms. Grasso said she had trapped about 1,500-2,000, and Ms. Wulff had probably trapped 100 cats and taken them to Animal Welfare League. She said there was a great need for feral cat trapping and she got calls from trailer courts, junkyards, and private homes. She said the City would be overrun with feral cats if they did not trap them.

Councilmember Stevens thanked Ms. Grasso for her attendance since their conversation was so long ago that she was afraid she may have misstated it, but Ms. Grasso clarified it. She asked Ms. Grasso why she received phone calls and not Animal Control. Ms. Grasso said she did not believe Animal Control would go to a junk yard to set and monitor traps for 60 cats and she felt the volunteers could do it better. Councilmember Stevens asked if that was a function Animal Control should do. Ms. Grasso said that would be nice if the manpower was there. She said she did not think YVAS taking over the shelter would provide them more time to trap feral cats.

Councilmember Astle asked if any of the trailer courts or junkyards Ms. Grasso referenced were in the City. Ms. Grasso said it was not done just in the City. She said she had trapped cats at a junkyard on Orchard Lane and there was a trailer court in the Heights where she took 45 cats from under one trailer. She named trailer courts throughout Billings that had feral cat problems.

Councilmember Ulledalen asked Ms. Grasso if that was a business she ran. Ms. Grasso responded that volunteers did it to keep the cats from populating. She said for Councilmember Stevens to think feral cat colonies could be taken into neighborhoods was ridiculous. Councilmember Ulledalen asked

what happened to the cats after she caught them. Ms. Grasso responded that a majority of them were euthanized and some were taken to the City Animal Shelter. She said it was not a fun thing to do but most of the feral cats were sick.

- **Dave Bovee, 424 Lewis Avenue**, said he was an independent animal care person and took a lot of dogs out of the street. He said he wanted to remind everyone that the reason there were employees in vital functions was that they showed up, theoretically at least. He said the government employees in the Shelter now were, or should be, accountable to the public. He said he had looked at the proposal regarding staffing the shelter 24 hours a day if it was taken over by a non-profit organization. He said organizations that relied on volunteer or uncompensated support did not have solid 24-hour staffing and that worried him. He said the idea may be that they would employ people, but that was one more division between the public and a needed service. He asked who would be called for an animal if it was not the middle of the day. He said the response was better if the words 'pit bull' were used when someone called for a dog. He said he wanted to remind Council of that subject.

Councilmember Stevens told Mr. Bovee he made a couple of misstatements. She said the YVAS proposed to have more staff on the employee roles; it was not only volunteers, although they would be used to build supplemental programs. She said there would be an executive director and full-time employees, one or two more than what was currently at the shelter. She said the shelter was not currently staffed 24 hours a day and the YVAS proposal did not intend to do so either. She said as far as who would capture the animals, the YVAS proposal was for animal care only and the Animal Control Division would still be on the streets doing that job. She said she also learned that when the Shelter was short-staffed, Animal Control Officers worked the Shelter desk which took an officer off the street. She said if it was privatized, more officers, in theory, would be on the street as they were hired to be. Mr. Bovee thanked Councilmember Stevens for the information. He said that as he had said before, he felt better funding of what was in place would also be a solution.

- **Sarah** (last name inaudible), **2619 Woody Drive**, said she was the Treasurer of the Yellowstone Valley Animal Shelter and also volunteered at the Billings Animal Shelter. She referenced the assertion that Councilmember Stevens should resign from the Council because of her representation of constituents or being critical of someone and their ideas. She said if Councilmembers could not be critical of a person or their ideas, there would not be anyone on the Council. She said that was part of how the job was done and decisions were made. She stated that the Council unanimously passed an initiative in 2005 to look into privatization of the Shelter and the subsequent study indicated that things could be better at the Shelter. She said an Animal Care Leadership Team was developed as a result of that study and both she and Catherine Schaeffer were part of it. She said the team identified good things that could be done and she wanted to continue in that direction in whatever form it took. She said she felt the YVAS proposal was a good framework to run the Animal Shelter and move that along.
- **Heather Cuning, Hemlock Dr**, said she thought Sarah covered it well. She said several groups tried to figure out a proposal to have the adoption taken over.

She said she thought past records indicated that Dave Klein supported the idea so she did not think it was a City Shelter versus an animal rescue by the YVAS. She stated she did not have affiliation with the YVAS. She agreed that the YVAS proposal was a good framework to run the Animal Shelter. She said she did not see the rescue groups coming together to do anything because there was too much trouble between the groups. She referenced the comments Councilmember Stevens made about other groups and said from her knowledge, they were accurate. She said two members personally attacked her; and she saved voice mails and letters from those people. She said she did not believe their interest was about the animals; it was about a battle with someone who had different ideas from them and they were afraid they would be axed from the situation. She said what she had read and heard about what Councilmember Stevens said was accurate from what she had seen and heard personally. She said she would like the current Animal Control to handle the animal control function and a private group to handle the animal adoptions with home checks, vet references, microchips, and education.

- **Angie Cook, 2910 Hannon Road**, said she was with Help for Homeless Pets. She asked why Councilmember Stevens could ask questions because she did not think it was fair. She said Councilmember Stevens was still part of it and was still the one who initiated it, and Council made people sit there and go back and forth with her. She said her problem was with the way the proposal was written and the bad things that were insinuated about the rescue groups, the Billings Animal Shelter, some Veterinarians that provided spay/neuter services and people that tried clinics at the Metra. She said a group with more animal experience was needed. She said the proposal was not presented to anyone. She said it was sent to veterinarians, but not to any rescue groups in Montana and there were groups that might have bid on it.

Councilmember Ulledalen said the proposal came up three years ago, so it was not something Council kept secret. He said Council heard about all the rescue groups and he asked to whom they were accountable. Ms. Cook responded that rescue groups took care of the animals in the community. Councilmember Ulledalen asked who they were accountable to in regard to their activities and finances. He asked if the groups were transparent to the community if there were questions about finances or operations. Ms. Cook said they had to be. She said she had no interest in doing it, but thought it should have been presented so more experienced people had the chance to bid.

Councilmember Astle asked if Ms. Cook suggested that the request for proposal be delayed until other people could submit a bid. Ms. Cook said she felt that would be fair. Councilmember Astle asked if she and her group were interested in it. Ms. Cook responded they were not. Councilmember Astle said that what they had was a group, that he was not affiliated with in any way, that made a proposal for a situation for which it felt needed improvement. He said Ms. Cook said she did not like the proposal and it seemed like none of the animal rescue groups could get along which each other for more than about 15 minutes. Ms. Cook said that was untrue. She said the groups had different ideas and did not have to agree with each other, but they got along even though there were certain ones that did not. Councilmember Astle said there seemed to be a turf

war among the animal groups. He said what he asked was if she did not like the proposal, what hers was. He said he always said if people did not like what was going on, they should come up with a solution to the problem. Ms. Cook said she proposed to re-bid it. She stated the Animal Shelter had improved on its own and nobody acknowledged that.

City Administrator Volek said to clarify the process, the RFP was the point of discussion at a City Council Work Session held publicly in January, 2008. She said the RFP was advertised in the City's paper of record; the RFP was provided to veterinarians in the area with the hope they might have contact with some rescue groups; and it was provided to the ASPCA in California, which was a name provided to her by people interested in rescue. She noted it was also provided, although belatedly, to rescue groups individually through the Animal Care Coalition. Mayor Tussing asked for the current status of the process. Ms. Volek said the City Council voted to postpone action on the item until August 25, 2008, to allow negotiations with the single respondent, YVAS. She said she met with the Vice President of the organization earlier that day and discussed times for potential negotiations and membership of the various teams and issues each side had. Councilmember Stevens pointed out that the advertisement issue was raised during the ethics meeting and the Board of Ethics agreed staff followed the proper process and that was a dead issue. Ms. Cook asked why only certain groups were contacted. Councilmember Ruegamer commented that Ms. Cook's time for testimony was up.

Councilmember Gaghen said much of it occurred since 2005 when concerns were raised about the lack of care at the Animal Shelter and some of it changed when the County withdrew its support for the combined efforts for animal rescue, care, etc. She said there were several meetings that a number of Councilmembers attended and various animal welfare groups were present to voice concerns and suggested what could be done. She said there should have been enough awareness of what was pending to arouse interest to collaborate or act to address the concerns about the Shelter as it was run by the City. She said the RFP may have escaped the notice of some, it had loomed large for so long that it did not seem there should have been surprise that the opportunity was available.

- **Kelly Sondeno, Fromberg**, distributed pamphlets to Councilmembers. She said she was in favor of the privatization of the Animal Shelter, and it should go forward. She said the top two pages of her pamphlet were a proposal by Safe Harbor given to Dave Klein and Councilmember McDermott in December, 2002. She said a big battle started then and she would not go into all that evolved. She said her group had no experience when the proposal was developed and it was a no-brainer to do what they did. She said there was viciousness between the groups and she was sorry to say she had been partially involved in it. She said the only way she saw to help with the animal problem in the City was to go forward with the privatization. She said a monster was created during the last 50 years because Council did not address the problem before it got out of control. She said the Shelter employees only changed because they were forced to due to public scrutiny. She said the pictures of animals in her pamphlet were animals of hers that were stolen by rescue groups, and then adopted out. She said those

were the same people who questioned the ethics of Councilmember Stevens. She said she was sorry it turned into such a war between people, but it would not end until the City Council made a stand and tried to do something positive. She said she did not see any way for the shelter to continue the way it was.

Councilmember Ulledalen commented that all the comments and criticism were from people outside the City of Billings. Ms. Sondeno said when she started with the rescue; it was the original shelter partner in 2002. She said there was a deal in which Mr. Klein allowed the group to take the animals from the shelter because nobody else wanted to do it. She said maybe it was sticking her nose in someone else's business, but she saw a need to do that. She said the group had given more money to the City of Billings than any other person; from the PetSmart charity checks to everything. She said the group could have had enough animals turned in to it that it did not have to deal with the Shelter, but then the whole problem at the Shelter was it was an 'us against them' issue. She said she lived in Billings at that time and it was not her intent to get into a battle with Dave Klein and his crew, but when questions were asked, the response was that the City would not allow it. She said the Council was blamed for everything when it was the Shelter employees that were so adverse to the change.

City Administrator Volek said she needed to stand in defense of the employees at the Animal Shelter who did a job day in and day out that included dealing with animals in cages for extended periods of time, euthanizing animals, and abused animals. She said it was a job that very few people would do and rather than publicly criticize them she stood in their defense because they did a hard job day in and day out. She also pointed out that what was at odds was not behavior of employees, but a philosophical approach. She said the philosophical approach of the Billings Animal Shelter was to be a health and safety issue and the primary focus of the animal control function was to deal with animals that were at large, disturbed or threatened other people, or were no longer wanted and if not taken to the shelter, would be at large. She said what was at hand was an issue that involved people who had a 180-degree approach, and she was not saying it was a wrong approach, and if a way could be found to blend it into the operation, it was not a bad thing to do, but there was limited staff and limited space. She said that approach was that every animal was possibly salvageable. She said the City did not have the time or staff to do that; it was a private animal function. She said staff had taken steps to work with those groups more closely, but that was a philosophical approach, and in the end, the City Council would have to decide if there was sufficient operation and cost control to make that a reality. She said staff was in the process of performing an analysis. She reiterated that staff in the Shelter had a very difficult job.

Mayor Tussing said he took exception to that too, especially in light of the credibility issues of the witness. He asked Ms. Sondeno what the results were of the charges filed against her for mistreating animals in Fromberg. Ms. Sondeno responded that had nothing to do with the issue and he brought that up at the last meeting. Mayor Tussing said she portrayed herself as an expert witness. Ms. Sondeno said she did not portray herself as an expert and the problem was that the shelter was sold to the City as a better solution to animal welfare and it went back to the same as animal control. She said if exception was taken to her criticism of Animal Shelter employees, she wondered why the employees backed



the people who were against privatization of the shelter. She said at the last meeting she attended, Mr. McCracken met outside it with two people who were in that room to decide how else they could stop the privatization. She said that was an ethics problem.

City Administrator Volek said the privatization issue was in her hands personally and that of a committee that consisted of staff, with one exception from the Police Department, not the Animal Shelter. She stated she could assure an objective evaluation and that a financial evaluation would be part of the process. She said she could not recommend a process that would cost the City more money than what was spent now to provide a service unless there was a lot of justification that showed it was a service the citizens of the community wanted and something affordable. Mayor Tussing said it was premature to have the discussion that evening because it was not even known if there would be a recommendation.

Councilmember McCall voiced her appreciation to Ms. Volek for standing up for staff. She said it was the right thing to do and a good thing to do. She referenced Ms. Volek's earlier explanation of the process when she used the word 'negotiating.' Councilmember McCall asked if that meant negotiating or if she meant discussing the criteria. Ms. Volek said she believed they would be negotiating. She said there was a single respondent to the RFP; and with one respondent, as in most RFP situations, a contract was started. She said staff created a contract, based in part on the RFP and the response to it, and it was now necessary to reach agreement on a proposal to present to the City Council along with attached financial information.

There were no other speakers.

## **Council Initiatives**

- **Ruegamer:** Commented that he was really disappointed in the rescue groups and the bickering and fighting among them. He suggested putting the same amount of passion into cooperating with each other as they did with their animals. He said he had no doubt they cared for their animals, but the human part could be helped by efforts to get along, which could make the process simple. He said he had not heard any suggestions for improvement. He noted that Councilmember Astle asked for that and did not get an answer.
- **Astle:** Moved to repair and strengthen the ordinance regarding both licensed and unlicensed vehicles parked on the streets long-term, seconded by Councilmember Ronquillo. Councilmember Astle said he received more calls on that matter. He advised that people moved the parked vehicle just enough to change the tire marking and vehicle owners should not be given so many opportunities to do that without the vehicle being impounded. Councilmember Gaghen said she also received numerous calls on that subject and was sure that she asked about that at a previous meeting. She said she wanted to make sure the unlicensed vehicles were included because the volunteer staff no longer had the ability to issue additional tickets for unlicensed vehicles.

City Administrator Volek said it was her recollection as well that the topic was a previous initiative. She noted that an update of the initiatives would be provided at a meeting in August. She said if Council wished to vote on it to be sure it was considered, staff would add that to the previous initiative if there was already one on the list. Councilmember Stevens suggested creative thinking and some sort of affidavit the complainer could sign to attest that the vehicle had not moved so the owner could not contend that the vehicle was driven and parked in the same spot as before.

Mayor Tussing said he did not see the need for another motion since staff was probably working on the subject already unless that was not what he heard Ms. Volek say. Ms. Volek said she did not believe that the unlicensed vehicle aspect was part of the original initiative. On a voice vote, the motion was unanimously approved.

- **Stevens:** Moved to direct staff to revise the letter sent to victims of graffiti violations, seconded by Councilmember Pitman. Councilmember Stevens referenced a letter provided to Council from a woman who was a victim of a graffiti violation. She said she proposed a kinder, gentler letter to graffiti victims because in that situation, the people were victims. She said the letter could include suggestions for removal of various types of graffiti. Councilmember Ronquillo said he echoed what Councilmember Stevens said. He advised he received two calls from a woman who was victimized twice on the South Side and received the same letter. On a voice vote, the motion was unanimously approved.
- **Astle:** Moved to direct staff to research the possibility of commuter parking areas for bus riders, seconded by Councilmember Stevens. Councilmember Stevens said it was brought to her attention earlier that day that there were people who rode the City bus, but lived outside the limits of the bus route, and suggested the possibility of some designated commuter parking areas. Councilmember Gaghen said two public meetings were scheduled for July 23 with the transportation plan experts and she felt there was merit to present that on behalf of the Council. She said there could be some public/private partnerships at unused parking areas so there would not be a need to purchase land. Councilmember Astle asked how far the people were traveling to get to a bus route. Councilmember Stevens said the person she spoke with traveled to the terminus of the Heights from the Shepherd/Huntley area and parked, with permission, in a private lot. She said when that person approached a business that had more than adequate space, the request was denied. Councilmember Veis said that raised that question of servicing park and ride lots for people who lived outside the City. He added that MET funds were inadequate anyway so the City should not subsidize parking lots for people who lived outside the City. Councilmember Stevens said a private/public partnership could be developed at no cost and it could result in additional ridership. Councilmember Veis asked if the Commissioners should bring the issue to the City.

Councilmember Ulledalen said he agreed with Councilmember Veis. Councilmember Pitman said he attended a meeting with City Administrator Volek and MET staff and that idea had been discussed. He said the discussion was not just the people from outside the City, but about encouraging people to gather at a central location to ride the bus to the downtown area. He said he felt it was more

important to encourage the people within the City to find a common area to park, and then ride the bus.

Councilmember Stevens stated that staff did not need to spend excessive time on the issue. Mayor Tussing suggested a brief survey of riders or people who lived in town that did not have bus service in their area but might be inclined to ride it if the commuter lot was available. Councilmember Pitman said he would like to work with the Parks department to possibly set aside spaces at some park parking lots to see if it would work.

Councilmember Ulledalen said that out-of-the-box ideas could be considered as the new route structure was studied. He said it was also suggested to him that City employees should be encouraged to ride the bus. He said a substantial number of high-demand parking spaces were provided to employees and those could be sold to generate some revenue. Councilmember Gaghen advised that MET/Transit staff worked very closely with the study group and probably had some of the information staff could utilize to study the issue. Councilmember Stevens advised that it was a City employee that suggested the commuter lot. On a voice vote, the motion was approved 9-1. Councilmember Veis voted 'No.'

- **McCall:** Commented that Dehler Park was wonderful and the grand opening was great. She said several people mentioned there were no public water fountains. She asked what the plan had to remedy that. City Administrator Volek advised that it was an oversight and staff was working on a solution. Councilmember Stevens stated she too heard complaints about the lack of the water fountain and also the ATM. Ms. Volek advised that the ATM was in the gift shop.
- **Gaghen:** Commented that the yield signs at the King Avenue West Roundabout may need to be bigger because she had heard concerns that people were not yielding as required.

## 7. **EXECUTIVE SESSION - Litigation**

Mayor Tussing referenced the statues City Attorney Brent Brooks gave him in response to an email from the Billings Gazette Editor regarding the pending executive session. He asked Mr. Brooks about the section of the statute regarding litigation between public entities. Mr. Tussing asked Mr. Brooks if the MMIA was a public body or association. Mr. Brooks said as far as he knew, it was not. He said MMIA and its counsel would have to answer that question. He noted that public agencies paid insurance premiums to private agencies, but it was never ruled upon by the Attorney General, Montana Supreme Court or District Court. He said the collective opinion had been that it was not, even though MMIA utilized public funds from the member cities, but there was no definitive ruling from a court or Attorney General that the MMIA was a public body to which all of its meetings or records were open to the public.

Matt Hagenruber of the Billings Gazette asked about the purpose of the Executive Session. Mayor Tussing reviewed State Statute 2-3-203 regarding the exception to the Open Meetings law in regard to litigation. Mr. Hagenruber asked which agencies were involved. Mayor Tussing answered that it was the City of Billings and the MMIA. Mr. Hagenruber asked if something had been filed. Mayor Tussing responded 'no.' Mr. Hagenruber said there was no pending litigation. Mayor Tussing stated that Mr. Brooks informed him the threat of litigation was also covered under the

Statute. Mr. Brooks said that was correct, as well as the attorney/client privilege under Title 26 that litigation did not have to be filed in order for that statute to come into play.

Mr. Hagenruber said the Billings Gazette objected to the closing.

Council adjourned to Executive Session at 8:15 p.m. The meeting was called back to order at 8:30 p.m.

Mayor Tussing explained that because there was a question about the Executive Session, he sought advice from City Attorney Brooks. He said Mr. Brooks had alternatives he would present.

Mr. Brooks said he found out about the issue just prior to the evening's meeting. He said the challenge was whether the MMIA was a public agency and if there was contemplated litigation between the MMIA and the City of Billings, any meetings that concerned those two agencies should be open to the public. He advised that it had never been addressed before through a court opinion or the AG opinion. He said since it was raised at the 11<sup>th</sup> hour of the meeting, he offered an alternative to postpone the meeting to the July 21 Work Session to allow him time to confer with general counsel of MMIA. He advised if MMIA believed it was a public agency and the City concurred, as well as the member cities, then his recommendation would be that the discussion concerning potential issues between the MMIA and the City of Billings be opened to the public. He said in fairness to everyone involved, that was the alternative he recommended.

Mayor Tussing asked City Administrator Volek to speak about why she did not believe MMIA was a public entity. Ms. Volek reviewed Statute 2-3-202 (1) and (2) related to meetings of public agencies. She stated it was her contention that MMIA was not a public agency.

Councilmember Astle moved to delay the Executive Session until the July 21, 2008, Work Session to allow legal staff to determine if it needed to be held in an open session and to provide a definition of litigation, seconded by Councilmember Ruegamer. Mayor Tussing stated he asked Mr. Brooks and Mr. Hagenruber to provide documentation regarding the definition of litigation. Councilmember Veis asked if it would be added to the July 21 Work Session if it was determined that it could not be closed to the public. City Administrator Volek said she would presume that Council was willing to stay at the July 21 meeting as long as necessary. Councilmembers agreed. On a voice vote, the motion was unanimously approved.

**ADJOURN** – The meeting adjourned at 8:40 p.m.