

**REGULAR MEETING OF THE BILLINGS CITY COUNCIL**  
**March 23, 2009**

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

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

**MINUTES** – March 9, 2009, approved as presented.

**COURTESIES**

- The Par 3 Golf Course Annual Distribution in the amount of \$20,000 was presented by Mr. Greg Wilson, incoming Board Chair of the Downtown Exchange Club Golf Course.
- Councilmember Ruegamer announced that the Lady Grizzlies from the University of Montana played in the national championship tournament, and the Rocky Mountain College Battlin' Bears were in the final four of the NAIA championship tournament.

**PROCLAMATIONS** – None

**ADMINISTRATOR REPORTS**

- Ms. Volek referenced the updated resolution and staff report for Item #2, Sahara Park Master Plan, that was distributed in the Friday packet and available in the Ex-Parte Notebook for public review.
- Ms. Volek advised the bond sale for Item #3, SID 1384, had been held and an updated resolution and staff report recommending award was at each councilmember's desk for review. She said copies were also available in the Ex-Parte Notebook for public review.
- Ms. Volek advised an issue had arisen late that afternoon regarding Item #7, Special Review #875. She said a condition in the original Warranty Deed specified the building could not be used for a bar or receive revenue from the sale of liquor. She said an e-mail and a copy of the Warranty Deed were at each councilmember's desk and in the Ex-Parte Notebook for review.

**PUBLIC COMMENT on "NON-PUBLIC HEARING" Agenda Items: 1, 2, 3, and 6b 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.)*

- **Chris Alamond, 1001 Aronson**, said he had a question that had not been answered in the public meetings he had attended about the Sahara Park Master Plan. He asked where the money would come from to build and maintain the aquatic center proposed at Sahara Park. He reviewed previous estimates, with the most current at \$5 million. He said the foundation had raised only \$450,000, so he wondered where the money would come from. He noted that other councilmembers had the same question.
- **Alex Tommerup, 170 Erickson Court**, said he was the architect for the proposed aquatic center and was available to answer questions. He said the approval of the Master Plan was the first step that would determine the details of the project.
- **Chuck Barthuly, 300 E. Lake Circle**, said he represented the Better Billings Foundation and was available to answer questions on the proposed Sahara Park Master Plan. He explained that a previous estimate of \$10 million, as mentioned in earlier testimony, included all of the aquatic facility components, a community center and established sports playing fields.

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

## **CONSENT AGENDA:**

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

**(1) W.O. 08-12 – Waste Water Treatment Plant Digester Condensate Drain Vault Entrance.** (Opened 3/10/09) Recommend delay of bid award until April 13, 2009.

**(2) MET Transit Engine Overhauls.** (Opened 3/10/09) Recommend Interstate PowerSystems; Schedule 1- \$35,855; Schedule 2 - \$33,460; Schedule 3 - \$22,545.

**(3) Airport Improvement Program (AIP) Project for Taxiway A Straightening.** (Opened 3/10/09) Recommend Knife River-Billings; \$1,757,323.68.

**(4) Fire/Technical Rescue Unit.** (Bid award delayed from 3/9/09). Recommend Base Bid #2 to Unruh Fire, Inc.; \$127,686.

**B. Professional Services Contract** to provide design, construction documents, and construction administration for the Park 1 Parking Garage Elevator Upgrade. Recommend Collaborative Design Architects, Inc.; \$22,500 (10% of total estimated construction costs).

**C. Professional Services Contract (W.O. 08-25)** to provide hydraulic modeling and site selection, design, and bidding and construction services for the expansion of the Zone 3 water distribution system. Recommend Brown & Caldwell; \$822,102.

**D. Assignment and Transfer** of two west end hangar ground leases from Pacific Tank and Pipeline to Backscratch Aviation, LLC, located on Lots 1 and 2 – Taxilane D.

**E. Amendment #7, Engineering Services for Airport Improvement Program (AIP) 36 Project**, Morrison-Maierle, Inc., \$833,008.

**F. Downtown Revolving Loan Fund Recommendation** for Randy and Janna Hafer approving loan subordination to Yellowstone Bank, \$240,000.

**G. Declaring Surplus Property** on miscellaneous parts for two 1992 Oshkosh TA-1500 model fire trucks no longer owned by Aviation and Transit and authorizing the disposal of the parts through salvage.

**H. Declaring Surplus Property** and authorizing the Police Department to release 30 ballistic vests and 40 Streamlight Maglite rechargeable flashlights with chargers to the Yellowstone County Sheriff's Office Reserve Unit.

**I. Approval of Donation** from BikeNet for a portion of the CTEP required matching funds for the Lampman Strip Park Trail, \$25,000.

**J. Approval of Donation** from ConocoPhillips to send School Resource Officers to the National Conference in Baltimore, MD (6/29/09 – 7/3/09), \$6,000.

**K. Approval of Anonymous Donation** to the Police Department for trauma kits for police vehicles and training for the officers, \$2,613.

**L. Preliminary Subsequent Minor Plat** of Amended Lot 5, Flanagan Subdivision, approximately 4.55 acres for commercial development located on the southeast corner of the intersection of Central Avenue and Moore Lane; conditional approval of the preliminary plat, approval of a sidewalk variance, and adoption of the Findings of Fact.

**M. Corrected Final Plat** of Amended Lot 5E, Block 1, Shiloh Crossing Subdivision, correcting the owner's name on the previously recorded final plat.

**N. Final Plat** of Amended Lots 1-8, Block 2; Lots 1-8, Block 3; Lots 1-9, Block 4, Reflections at Copper Ridge Subdivision.

- O. Bills and Payroll**
- (1) February 20, 2009
  - (2) February 27, 2009

(Action: approval or disapproval of Consent Agenda)

Mayor Tussing separated Item I. Councilmember McCall separated Item F. Councilmember Ulledalen moved for approval of the Consent Agenda with the exception of Items F and I, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

Councilmember Ulledalen moved for approval of Item F, seconded by Councilmember Astle. Councilmember McCall asked for an explanation and history of the item. Ms. Volek advised that the project was an architectural office located on Montana Avenue and the revolving loan committee approved a substitute of subordination parties. Financial Services Manager Pat Weber explained that the loan was being subordinated to a different financing source. He said Randy and Janna Hafer entered into a contract to purchase the property and the current owner advanced funds to bring the property to its current condition. He said they wanted to consolidate the financing and asked the City to subordinate it to Yellowstone Bank. He noted it was a swap in subordination. Councilmember McCall asked about the difference between the two loans. Mr. Weber said the combined loans represented the cost of purchase and renovation. He said their equity was within the revolving loan fund guidelines. On a voice vote, the motion was unanimously approved.

Councilmember Ulledalen moved for approval of Item I, seconded by Councilmember Astle. Mayor Tussing said he would recuse himself from that item because his wife could have been involved in it. On a voice vote, the motion was approved 10-0.

## **REGULAR AGENDA:**

**2. RESOLUTION #09-18799 TO ADOPT SAHARA PARK MASTER PLAN. (Delayed from 3/9/09) Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** Parks, Recreation and Public Lands Director Mike Whitaker explained that after the last Council meeting, he and Legal staff revised the resolution to make it clearer. Councilmember Ulledalen asked what the City was committing to at that point. Mr. Whitaker explained that the only commitment was that a pool could be built at Sahara Park. He said a development agreement would be needed between the City Council and the party that would build the pool. Mr. Whitaker noted that the resolution included a one-year deadline for that agreement and if it was not completed, the alternate master plan became effective. Councilmember Ulledalen stated he was a little troubled that it was a fairly radical departure from what people understood could be there in terms of a park. He asked if anything like that had been done in other areas of the City. Mr. Whitaker said he was not aware of that happening at other locations. He explained that the transportation corridor that was now next to Sahara Park prompted the change from a neighborhood park to a regional park facility.

Councilmember Brewster stated he thought the development agreement deadline was supposed to be six months. Mayor Tussing advised that even though there were substitute motions made at the last meeting, the final action was to postpone it to that night's meeting. Councilmember McCall moved for approval of Item 2, resolution to adopt Sahara Park Master Plan, seconded by Councilmember Ruegamer. Councilmember Brewster moved to amend the deadline for approval of the development agreement to six months, seconded by Councilmember Pitman.

Councilmember Brewster said he felt if an agreement could not be reached in six months, it was probably not needed. Councilmember Veis stated he felt the agreement could be fairly contentious and he preferred allowing more time to work on it rather than having to amend a resolution if they were close to an agreement in six months but would not have it completed in that time. Councilmember Ulledalen said he looked at the fact that they had worked on it for five years, and he felt they should have had some conception of the operating costs and what the scope of the project could be, so he favored the six-month limit. Councilmember Gaghen asked if there would be any reason to preclude the Council from extending the deadline after six months if it was close to being put together. City Attorney Brent Brooks explained that the resolution would have to be amended if the deadline was extended. On a voice vote, the amendment was approved 8-3. Councilmembers Veis and Ruegamer and Mayor Tussing voted 'no.'

Councilmember Brewster moved to strike the library from the Sahara Park Master Plan, seconded by Councilmember Pitman. Councilmember Ruegamer asked why. Councilmember Brewster advised that the library was nowhere near any schools and in a residential area. He added that even though an arterial was developed there, it was different from others that had a major intersection where that type of development could be located. He stated that the library was similar to semi-industrial or semi-commercial development that attracted a different group of people in some instances. He noted that security was needed at the downtown library and that type of development was not needed in a purely residential area that had no nearby commercial development. He added that it was not on a bus route and he did not believe people would take a bus to that area. Mayor Tussing asked Ms. Volek if there were other potential locations for a library in the Heights. Ms. Volek said that location was one of several alternatives identified in the Heights. She noted that the downtown and College of Technology locations were the first priorities of the Library Board at the present time. Mayor Tussing asked if the resolution without the proposed amendment meant that the library had to be in that location or could be in that location. Ms. Volek said it meant that it could be located there. Mayor Tussing said he would vote against the amendment. Mr. Whitaker confirmed what Ms. Volek said about the library location. Councilmember McCall asked if other potential library sites were identified in the Heights. Ms. Volek advised that she believed there was one along Main Street that had been considered as a potential site. Councilmember Brewster stated that inclusion of the library in the master plan prevented other development from occurring without making changes to the master plan. Councilmember Pitman stated that part of the discussion with the neighbors was that the aquatic center would only be active in the summer and a library would be a year-round facility. He said if that was approved, that area would be taxed quite a bit. He said he felt the neighbors could handle three months of activity, but if a library was built and year-round traffic was there, it would cause a huge problem with neighbors. On a voice vote, the amendment was approved 9-2. Councilmember Veis and Mayor Tussing voted 'no.'

Councilmember Brewster moved to limit the time for the development agreement to come to fruition to three years, seconded by Councilmember Ulledalen. Councilmember Brewster said he thought there were residents in the neighborhood who were unaware they had the option to develop the park, but now that they understood how it could be done, they could be interested in doing that but did not want to wait five

years to see if the aquatic center was developed. Councilmember Veis said he did not see that the resolution indicated it had to be done in any amount of time, but if the development agreement was not in place within six months, the alternate plan was effective. Councilmember Ulledalen advised that the five year limit was part of the discussion during the previous meeting. He said one was needed so it would not be a situation where a development agreement was in place without a time limit to build the pool. Councilmember Veis stated he felt the timeline needed to be in the development agreement, not in the resolution. Councilmember Brewster pointed out that the agreement was separate from the master plan and the master plan would be in place unless it was amended. He said he was suggesting that it diverted to Plan B automatically in three years so the City would not have to pay for a separate master plan. Councilmember Veis stated that it did that after six months. Councilmember Clark said that was his understanding. Councilmember Brewster advised that it did if there was not an agreement, and if there was an agreement, it went on forever. Ms. Volek said she thought it was staff's intent that there would be a timeline in the agreement. She added that the master plan and development agreement were separate issues and the timeline would be in the development agreement. Councilmember Brewster said he was fine with that if it was true that the master plan diverted to Plan B if a development agreement was not in place in six months. Councilmember Brewster withdrew his motion and Councilmember Ulledalen withdrew his second.

Councilmember Ulledalen said he talked with someone who was under the impression that there was enough money to build the pool and that person did not understand the Council's hesitation. He stated that as mentioned during public comment, less than half a million dollars was in hand and pledges of about \$2 million would be collected in the next two years. He said he felt it should be clear what the agreement was about and the economic realities as the discussion went forward.

On a voice vote, the twice amended motion was unanimously approved.

**3. RESOLUTION #09-18800 AWARDDING THE SALE OF SPECIAL IMPROVEMENT DISTRICT 1384 BONDS TOTALING \$495,000. Recommendation to be made at council meeting. (Action: approval or disapproval of staff recommendation.)** Financial Services Manager Pat Weber explained that the bonds were for Yellowstone Club Estates sanitary sewer fees, and that was the amount left from the original connection fees of approximately \$1.3 million. He reported that the bond market was such that the City was unable to get its bonds rated to go into the bond market, so bids were requested from local banks, brokerage firms and individuals who previously expressed interest in City bonds. He advised that the City was working with Springstead on the rating issue and a legislative bill that had passed the State House would provide a better reassurance of the revolving fund to bond rating entities. He reported that of the qualified bids received, the recommendation was to award the sale to US Bank at 5.85%. Councilmember Ruegamer moved for approval of Item 3, seconded by Councilmember McCall. On a voice vote, the motion was unanimously approved.

**4. PUBLIC HEARING AND RESOLUTION #09-18801 ADOPTING SECOND QUARTER BUDGET AMENDMENTS FOR FISCAL YEAR 2008/2009. Staff recommends approval. (Action: approval or disapproval of staff recommendation).** Ms. Volek advised that staff did not have a presentation on the item but was available to answer questions.

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

Councilmember Veis moved to approve the resolution adopting second quarter budget amendments for FY 2008-09, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.

**5. PUBLIC HEARING AND RESOLUTION #09-18802 APPROVING BUDGET AMENDMENT FOR CHARGE FOR SERVICES FROM GENERAL FUND CODE ENFORCEMENT TO PLANNING FUND. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** Ms. Volek stated that as the Council was aware, the Planning and Building departments had suffered a decline in business. She explained that the Code Enforcement Division, located in the General Fund, had been supervised by a Planner II/Code Enforcement Supervisor and the Planning Director on a part-time basis. She said the proposed amendment transferred 35% of the Planner II/Code Enforcement Supervisor salary and 25% of the Planning Director's salary to the General Fund, which would actually result in a payment from the General Fund to the Planning Department's budget to help cover the expense for the time those two positions spent on Code Enforcement issues.

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

Councilmember Brewster moved for approval of Item 5, seconded by Councilmember Veis. Councilmember Clark asked if the salaries could be moved back if the Council decided to do so. Ms. Volek said they could, but the change, in addition to a contribution by the County, allowed the department to continue one position. She noted that the County's contribution consisted of a charge of only half its usual fees for GIS. On a voice vote, the motion was unanimously approved.

**6. (a) PUBLIC HEARING AND FIRST READING ORDINANCE FOR REVISIONS TO THE ANIMAL ORDINANCE. (Delayed from 3/9/09) Changes to the existing ordinance by the Animal Control Board due to the contract entered into between the City of Billings and Yellowstone Valley Animal Shelter. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** Police Chief Rich St. John explained that the Animal Shelter changed hands on Sunday, March 22, and was now operated by Yellowstone Valley Animal Shelter. He said the amendment to the ordinance basically deleted any reference to the animal shelter and inserted animal control where appropriate.

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

Councilmember Pitman moved for approval of Item 6a for revisions to the Animal Ordinance, seconded by Councilmember Ronquillo. Councilmember McCall commented on Section 4.309 and commended staff for working on it so quickly. She

said she looked forward to the new contract. Ms. Volek noted that Chief St. John and his staff helped with the smooth transition. She said Animal Control Officers would now be able to focus on animal control issues rather than having to spend time in the shelter. Ms. Volek advised that extended hours would allow work on the issue of the sale of animals in public parking lots which was a source of many complaints. Councilmember Ronquillo asked how the ordinance would be monitored. Chief St. John explained that Animal Control Officers would conduct compliance checks at pet stores, would develop liaisons with local veterinarians and would become proactive with the parking lot sales. He said animal control staff time would be adjusted for additional coverage. He added that staff did not think the ordinance applied to garage sales, but primarily focused on the sales that occurred in parking lots in front of businesses. On a voice vote, the motion was unanimously approved.

**(b) RESOLUTION #09-18803 ADJUSTING FEES CHARGED AT ANIMAL SHELTER. Staff recommends approval. (Delayed from 3/9/09) (Action: approval or disapproval of staff recommendation.)** Ms. Volek advised that staff did not have a presentation but was available for questions. Councilmember Pitman moved for approval of Item 6b, the resolution adjusting fees at the Animal Shelter, seconded by Councilmember Ruegamer. Councilmember Gaghen asked how the new fee schedule was determined. Animal Control Supervisor Dave Klein explained that many of the adjustments were for fees that would no longer be charged by the City, but would be charged by the private contractor for the animal shelter function. Councilmember Gaghen asked if Mr. Klein knew what fees the private contractor would charge. Mr. Klein advised he was not aware of their entire fee schedule but knew that the adoption fees increased. He added that the City would receive 50% of the licensing fees but the remainder of animal shelter fees went to YVAS. On a voice vote, the motion was unanimously approved.

**7. PUBLIC HEARING FOR SPECIAL REVIEW #875: A special review to locate a beer & wine license with gaming within an existing building in a Planned Development zone with underlying zoning of Community Commercial, legally described as Block 1, Lot 2, Wal-Mart Subdivision, located at 1667 Main Street, and within 600 feet of East Gate Wesleyan Church, 625 Mattson Lane. Rimrock II, LLC, owner; Shelby Waldron, agent. Zoning Commission recommends waiving the 600-foot separation requirement from a church and conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)** Planning Division Manager Wyeth Friday advised that Planner Nicole Cromwell prepared the report on that item. He began a PowerPoint presentation that showed the location for the proposed casino and the location of the nearby church. Mr. Friday advised that the Zoning Commission recommended conditional approval with the waiver of the 600-foot separation for that use. He noted that the Zoning Commission considered the criteria that a building or buildings obstructed the view completely between the uses, which was the case for that situation. He added that the Zoning Commission recommended the following four conditions for the special review: 1) development applied to the location applied for, the former Thrifty Car Rental location; 2) the site consisted of the existing building, landscaping and parking area; any

expansion greater than 10% of the floor area or parking, or the addition of a patio required a special review; 3) the conditions ran with the land for the property; and 4) the proposed development complied with the special review and zoning regulations.

Mr. Friday advised that late that afternoon, staff was notified that there were questions concerning deed restrictions on the property that could prohibit the use of a casino or alcohol sales facility. He referenced a warranty deed that was distributed to Council at the start of the meeting that mentioned restrictions placed on the property from 2002 when WalMart transferred the property. He said that after review of the warranty deed, Mr. Waldron was contacted and he indicated that he provided information regarding projected alcohol sales figures to WalMart personnel, and he felt that addressed the restriction. Mr. Friday noted that Mr. Waldron was unable to attend the meeting that evening. He added that he did not have documentation that Mr. Waldron provided that information to WalMart. Mr. Friday advised that under zoning code, deed restrictions were not reviewed to make sure they were in compliance during a special review application process. He noted that Section 27-1701 discussed covenants and restrictions that could supersede the zoning.

Councilmember Brewster stated that he remembered discussion about not allowing alcoholic establishments on the property during the approval process for WalMart, and he was fairly certain that WalMart agreed to that condition. Mr. Brooks stated he remembered that was a planned unit development and those concerns were expressed by the surrounding neighbors. Councilmember McCall advised that only the major stakeholders were present and testified at the meeting held on March 3. She asked if there had been any communication with the East Gate Wesleyan Church. Mr. Friday responded that he was not aware of any discussion with them and they did not testify at the meeting. Councilmember Veis asked if WalMart was the party that had to enforce the restrictions on the warranty deed. Mr. Friday explained that warranty deed restrictions were not enforced or regulated as zoning applications were considered.

Mr. Brooks advised that the new information was discovered late that afternoon and staff had not had much time to review it. He referenced an ordinance that indicated deed restrictions could prevent approval of the special review. He suggested review of the original planned unit development and that WalMart needed to amend the deed restrictions if it did not have a problem with the proposed development. He suggested a two-week delay to allow staff to research those issues. Councilmember Veis asked if the public hearing should be opened and then continued for two weeks. Mr. Brooks advised that was the best way to handle that.

Councilmember Pitman asked Mr. Friday if he had a map that showed the 600-foot radius from that property. Mr. Friday advised that he did not have a map with him at the meeting. Councilmember Veis asked if the proposed development was compliant with the 2008 Growth Policy because the staff report referred to the 2003 Growth Policy. Mr. Friday said it was compliant with the 2008 Growth Policy and he believed it was a typographical error in the staff report. Councilmember Veis asked about the item in the staff report regarding a drive-through service. Mr. Friday said that was an error; no drive through service was planned for the proposed development.

The public hearing was opened. Mayor Tussing stated that there was probably a good chance that the item would be continued, and if so, the public hearing would also be continued.

- **Daniel Robertson, 625 Mattson Lane**, said he was the pastor of East Gate Wesleyan Church and lived next door to it at 627 Mattson Lane, in a church-owned home. He explained that the proposed development was detrimental to the church's purpose. He said the church was opposed to the casino and there were already 14 of them along Main Street.

Councilmember Gaghen asked Mr. Robertson if he was aware of the issue when it went before the Zoning Commission. Mr. Robertson said he found out about it the day before that evening's Council meeting. He said a lay person from his church informed him that he read about it in the newspaper.

Mayor Tussing commented that every time a special review was considered, people testified that they did not want more casinos or more liquor licenses. He pointed out that the Council did not control the liquor licenses or number of casinos; the only control was where they were located in the City.

- **Terri Lasich, 643 Mattson Lane**, said that during the discussions with WalMart, the no-liquor restriction was put on that land. She said WalMart had not done what it promised with the maintenance of the trees. She said the development could mean a bunch of drunks or noisy kids in the parking lot and it would affect all of the residents. She said she opposed the waiver and felt it was against State law. She said a nice family restaurant was requested in that area, and a casino would mean guns, cars and alcohol. She mentioned there was a school around the corner and another church nearby as well.
- **Joe White, Billings, MT**, said he opposed the casino and other similar ones downtown that were too close to the church. He said that location was different than downtown because it was more residential. He said the best way to control the casinos was to be strict with what was already in place. He said he heard that someone in the State Legislature stated that the best way to control the population growth of Montana was to shut down casinos.
- **Ann Bustell, 306 Joy Lane**, said she was concerned with making an exception to one rule that left other rules open to exception down the line. She said that as the Heights grew and expanded, she did not want to see that loophole in other places. She said the rules were in place for a reason and should be followed.

Councilmember Veis moved to continue the public hearing and action for Special Review #875 for two weeks, seconded by Councilmember Ruegamer. Councilmember Brewster said he thought the public hearing should be closed and a vote taken on the item that evening. He explained that a 1000-foot separation was previously in place but it was modified to 600 feet because there was always a reason to approve a special review. He said the 600-foot separation was set so that applicants knew the limit and he was concerned about following the same pattern of allowing those things. He said he believed there was a commitment to the people in the area that there would not be alcoholic establishments so he felt the public hearing should be closed and the special review denied.

Councilmember Ruegamer said he agreed with a lot of Councilmember Brewster's comments, but felt a legal opinion was needed to avoid a lawsuit. Councilmember Brewster said he felt there was more risk with a delay because the 600-

foot separation applied in that situation, and it was up to the Council to determine if there was enough special difference to allow it. He said the purpose of the special review was to consider the development and he felt it could be denied based on the 600-foot rule.

Councilmember Astle commented that he agreed with the 600-foot rule and Council was aware of the deed restrictions. He said the ordinance read earlier indicated that if they were aware of the restrictions, the most restrictive of the covenants had to be followed. He said he would not vote for Councilmember Veis's motion and wanted to make a substitute motion. Councilmember Astle moved to close the public hearing and take action to deny Item #7, seconded by Councilmember Brewster. Councilmember Ruegamer advised that the 600-foot rule was waived before. He asked about the consideration of the building that blocked the view. Mr. Friday explained that the separation could be waived if certain criteria were met, one being whether a building blocked the view of the development. Councilmember Clark clarified that the waiver could be allowed for that reason, but one was not required. Mr. Friday advised that was correct. Councilmember Pitman pointed out that in that instance, the separation was 505 feet which was almost 100 feet from the limit, and that a school, another church, and a park were nearby. He said there were many reasons to deny the special review. Councilmember Ruegamer said they were waived before and there was something in there that appeared to be a loophole. He noted that the Zoning Commission approved it and he saw it as a situation similar to Rimrock Foundation where the City lost because it did not have a good legal opinion. On a voice vote, the substitute motion was approved 10-1. Councilmember Veis voted 'no.' Mayor Tussing advised that approval of the substitute motion meant that the public hearing was closed.

Ms. Volek advised that it would be helpful for Council to outline why the special review was denied. She said she understood it was denied based on the 600-foot separation. Councilmember Astle clarified that his vote to deny the special review was because of the 600-foot separation and the deed restrictions that were in place. Mayor Tussing stated that was part of the discussion, but not part of the motion.

**8. 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.)**

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

**Council Initiatives**

Mayor Tussing asked if Councilmembers had a chance to read the Energy Efficiency Loan Program they had been asked to support. He said he received a response from Councilmember Ruegamer. Mayor Tussing advised the program allowed people to get a revolving loan to complete energy efficiency projects in businesses and possibly residences. Ms. Volek explained it was a revenue bond program with city-issued bonds. She said she had not visited with Lobbyist Ed Bartlett

about it nor had the City had the opportunity to check on bonding availability. Mayor Tussing said they could review it at a work session.

Councilmember Astle reported that he was informed that a homeless town would be formed in Riverfront Park in the spring. Ms. Volek advised that current ordinances prohibited camping in City parks and those could be enforced.

## **ADJOURN**

The meeting adjourned at 7:45 p.m.