

**REGULAR MEETING OF THE BILLINGS CITY COUNCIL**  
**December 20, 2010**

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

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

**MINUTES:** December 13, 2010 – Councilmember Astle moved for approval, seconded by Councilmember McCall. On a voice vote, the motion was unanimously approved.

**COURTESIES:** Recognition and appreciation of service - Judge Mary Jane Knisely

**PROCLAMATIONS:** None

**ADMINISTRATOR REPORTS - TINA VOLEK**

- Ms. Volek referenced Consent Agenda Item 1A1 and advised a staff memo with the recommendations was forwarded to Mayor and Council in the December 17<sup>th</sup> Friday packet and said a copy was filed in the ex-parte notebook that evening.
- Ms. Volek referenced Regular Agenda Item 2 and advised an e-mail had been sent to Mayor and Council from John Lattimer on December 18<sup>th</sup> opposing the appointment of Judge Davies and asking that Council look at other candidates to fill the position. She advised a copy of Mr. Lattimer's e-mail was filed in the ex-parte notebook in the back of the room. She also referenced the e-mail she sent to Council on December 17<sup>th</sup> with the application information on each of the municipal court judge applicants. She said she had the original copies with her that evening if someone wished to look at them.
- Ms. Volek referenced Regular Agenda Item 3 and advised a staff memo with recommendations was forwarded to Mayor and Council in the December 17<sup>th</sup> Friday packet. She also referenced an e-mail sent to Mayor and Council from Jonathan Peart, dated 12/20/10, asking them to vote against the City Administrator's pay raise; and the e-mail responses to Mr. Peart from Mayor Hanel and Councilmember Ruegamer. She said copies were filed in the ex-parte notebook in the back of the room.
- Ms. Volek advised Councilmember Ronquillo requested special consideration for Item D and noted a memo had been placed at their desks and filed in the ex-parte notebook.

**PUBLIC COMMENT on "NON-PUBLIC HEARING" Agenda Items: #1, #2 and #3.**  
**Speaker sign-in required.** (Please sign up on the clipboard located at the podium.  
Comment on items listed as public hearing items will be heard ONLY during the

designated public hearing time for each respective item. 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 podium.)

The public comment period was opened.

- **Sheila Kolar, 3003 Country Club, Billings, MT**, told Council she was the right candidate for the Municipal Judge position and asked for their support. She said she had 15 years of legal experience, had been a trial attorney for 15 years, had management experience and grant writing experience, as well as drug court experience.
- **Colette Davies, 2335 Crimson Lane, Billings, MT**, advised she was well qualified for the Municipal Judge position and asked Council to vote for her. She said she had served as part-time municipal judge the past five years and felt she was the right candidate for the job.

The following people spoke in favor of Sheila Kolar for the Municipal Judge position.

- **Gayle Stewart, 2937 Rimview Drive, Billings, MT**
- **Sarah Blackburn, 128 Avenue D, Billings, MT**
- **Margaret Gallagher, 3129 Laredo Place, Billings, MT**
- **Tracy Whitehead, 1 Bus Lane, Laurel, MT**
- **Lynnette Baisch, 1106 Primrose Drive, Billings, MT**
- **Bradley Finn, 4050 Night Hawk Road, Billings, MT**

The following people spoke in favor of Colette Davies for the Municipal Judge position.

- **Chuck Hensley, 1834 Schooner Road, Billings, MT**
- **Mikel Anderson, 202 13<sup>th</sup> Street West, Billings, MT**
- **Laura Hopkins, 3508 Poly Drive, Billings, MT**
- **Mary Jane Knisely, 3015 Stanford, Billings, MT**
- **Tom Zurbuchen, 1747 Wicks Lane, Billings, MT**, referenced Item 3 and said the 'closed door' policy for the evaluations of the City Administrator should be eliminated. He said the end result was always the same with needed improvements in various areas. He said now, when there was no inflation, she was worthy for almost a 3% raise. He said he would like to know why but the information had been withheld. He said the City Administrator was not an elected official and was held with the highest public trust. He said it was important to open the evaluations to the public and not hold them behind closed doors.  
Councilmember Astle stated the choice of privacy belonged to the employee being evaluated. He said the employee could waive their right to privacy but did not have to; and Ms. Volek had chosen to remain private.
- **Joe White, Billings, MT**, said he felt the City Administrator's contract should be terminated.

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

**1. CONSENT AGENDA**

**A.** Mayor Hanel recommends that Council confirm the following appointments:

	Name	Board/Commission	Term	
			Begins	Ends
1	Sterling Starr	Aviation & Transit	01/01/11	12/31/14
2	Charles Peterson Jr.	Aviation & Transit	01/01/11	12/31/14
3	Christopher Cook	Bicycle & Pedestrian Advisory	01/01/11	12/31/13
4	No Application	Board of Adjustments	12/20/10	12/31/13
5	No Application	Board of Adjustments	12/20/10	12/31/13
6	No Application	Board of Appeals - Architect	01/01/11	12/31/13
7	No Application	Board of Appeals - Electrical	01/01/11	12/31/13
8	No Application	Board of Appeals	01/01/11	12/31/14
9	No Application	Board of Appeals	01/01/11	12/31/14
10	No Application	Board of Ethics	01/01/11	12/31/14
11	David Goodridge	Community Development Low Mod	01/01/11	12/31/14
12	Kamber Kelly	Community Development Low Mod	01/01/11	12/31/14
13	Patt Leikam	Community Development Low Mod	01/01/11	12/31/14
14	No Application	Community Development	01/01/11	12/31/14
<del>15</del>	<del>-</del>	<del>Energy &amp; Conservation Commission</del>	<del>01/01/11</del>	<del>12/31/14</del>
<del>16</del>	<del>-</del>	<del>Energy &amp; Conservation Commission</del>	<del>01/01/11</del>	<del>12/31/14</del>
<del>17</del>	<del>-</del>	<del>Energy &amp; Conservation Commission</del>	<del>01/01/11</del>	<del>12/31/14</del>
<del>18</del>	<del>-</del>	<del>Energy &amp; Conservation Commission</del>	<del>01/01/11</del>	<del>12/31/14</del>
<del>19</del>	<del>-</del>	<del>Energy &amp; Conservation Commission</del>	<del>01/01/11</del>	<del>12/31/14</del>
<del>20</del>	<del>-</del>	<del>Energy &amp; Conservation Commission</del>	<del>01/01/11</del>	<del>12/31/14</del>
<del>21</del>	<del>-</del>	<del>Energy &amp; Conservation Commission</del>	<del>01/01/11</del>	<del>12/31/14</del>
<del>22</del>	<del>-</del>	<del>Energy &amp; Conservation Commission</del>	<del>01/01/11</del>	<del>12/31/14</del>
<del>23</del>	<del>-</del>	<del>Energy &amp; Conservation Commission</del>	<del>01/01/11</del>	<del>12/31/14</del>
<del>24</del>	<del>-</del>	<del>Energy &amp; Conservation Commission</del>	<del>01/01/11</del>	<del>12/31/14</del>
25	Maureen Jurovich	Housing Authority	01/01/11	12/31/15
26	No Application	Housing Authority - Resident Comm	01/01/11	12/31/13

27	Stephen Marsh	Human Relations Commission	01/01/11	12/31/14
28	Diane Foley	Human Relations Commission	01/01/11	12/31/14
29	Kayla Miller	Human Relations Commission	01/01/11	12/31/14
30	No Application	Human Relations Commission	01/01/11	12/31/14
31	Shari Nault Pullar	Library Board	01/01/11	12/31/14
32	Adela Awner	Mayor's Committee on Homelessness	01/01/ 11	12/31/14
33	Lucy Brown	Mayor's Committee on Homelessness	01/01/11	12/31/14
34	Sheri Boelter	Mayor's Committee on Homelessness	01/01/11	12/31/14
35	Bruce MacIntyre	Mayor's Committee on Homelessness	01/01/11	12/31/14
36	Mona Sumner	Mayor's Committee on Homelessness	01/01/11	12/31/14
37	Stephan Bradley	Mayor's Committee on Homelessness	01/01/11	12/31/14
38	No Application	Mayor's Committee on Homelessness	01/01/11	12/31/14
39	No Application	Mayor's Committee on Homelessness	01/01/11	12/31/14
40	No Application	Mayor's Committee on Homelessness	01/01/11	12/31/14
41	No Application	Mayor's Committee on Homelessness	01/01/11	12/31/14
42	Bruce Simon	Parking Advisory Board	01/01/11	12/31/14
43	No Application	Parking Advisory Board	01/01/11	12/31/14
44	No Application	Parking Advisory Board	01/01/11	12/31/14
45	Richard DeVore	Parks/Recreation & Cemetery Board	01/01/11	12/31/14
46	David Williams	Parks/Recreation & Cemetery Board	01/01/11	12/31/14
47	Brent Krueger	Traffic Control	01/01/11	12/31/14
48	Todd Cormier	Traffic Control	01/01/11	12/31/14
49	Zach Meyers	City/County Planning - Ward I	01/01/11	12/31/12
50	Damian Forrester	City/County Planning - Ward II	12/20/10	12/31/11
51	Donna Forbes	City/County Planning - Ward III	01/01/11	12/31/12
52	Susan Gilbertz	City/County Planning - Ward IV	01/01/11	12/31/12
53	No Application	City/County Planning - Ward V	01/01/11	12/31/12
54	Matt Krivonen	Zoning Commission	01/01/11	12/31/14

4. Unexpired term of LaVerne Bass
5. Unexpired term of Terry Madtson
50. Unexpired term of Alex Tommerup

- B. Assignment and Transfer** of three West End Hangar Ground Leases from Steve Vold to Steven A. Vold Revocable Trust and Susan K. Vold Revocable Trust as Tenants in Common.
- C. Amendment** to the Scheduled Airline Operating Agreements with Horizon Air, United Airlines, Delta Air Lines (as assignee and successor to Northwest Airlines), Great Lakes Aviation, and Allegiant Air extending the Agreement expiration date to June 30, 2011.
- D. Approval** of South Billings Urban Renewal Association's request to allocate up to \$300,000 to develop a Master Plan for the South Billings Boulevard Urban Renewal District.
- E. Acknowledge receipt of petition to vacate** street rights-of-way within The Village Subdivision; Sisters of Charity of Leavenworth Health System, property owner; and setting a public hearing date of January 24, 2011.
- F. Acceptance** of Warranty Deed and landscaping with 2-year maintenance from Big Sky Florists Supply for a tract of land situated in Lot 12-A-2 of the Plat of Amended Lot 12-A, Block 3, Midland Subdivision, 5th Filing, located east of South 29th Street West and constructed as a portion of the Bannister Trail under Work Order 06-10.
- G. Subordination of Housing Rehabilitation Loan** for Rebecca A. Kraft (Borchard); \$23,362.
- H. Ratification of a new grant application** to Montana Mental Health Settlement Trust for a 2-year program for the Billings Adult Misdemeanor Mental Health Court (BAMHC); \$244,220.
- I. Final Plat** of Circle Inn Subdivision.
- J. Bills and Payroll:**

1. November 26, 2010

Councilmember Ronquillo separated Consent Agenda Item D. Councilmember Ulledalen referenced Consent Agenda Item A, and said he thought the Mayor's Committee on Homelessness had sunsetted. City Administrator Volek said she was uncertain and would check the records. Planning Director Candi Beaudry advised the Committee was in the process of implementing the 10-year plan on homelessness, and she would look into the term of the Committee.

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

Councilmember Ronquillo referenced Item D and said he would like to recognize the South Billings Urban Renewal Association (SBURA) Board of Directors. He said

they were an advisory committee to the City Council and to the Southwest Corridor Task Force. He said their term on the committee would be for one year, and the committee consisted of two business owners and three people from the task force (Shawn Hanser, President; Floyd Martin, Vice President; Dave Duke; Richard Deis; and Tom Ruschkewicz). Councilmember Ruegamer asked Councilmember Ronquillo to clarify where the \$300,000 would come from. Councilmember Ronquillo advised it would come from tax increment funds and would be used for the development of a master plan for the southwest corridor. Mayor Hanel advised the South Billings Boulevard Urban Renewal and Tax Increment District received \$1,368,704 of tax increment in FY2010. He said \$194,680 would be subtracted for the City's commitment to the Miller Crossing developer for King Avenue East road improvements, leaving an estimated \$1,174,024 available for the urban renewal projects.

Councilmember Ronquillo moved for approval of Item D to include recognition of the 5-member Board of Directors of the South Billings Urban Renewal Association, seconded by Councilmember Gaghen. Councilmember Clark asked if there were master plans for other parts of the city. Planning Director Candi Beaudry advised the SBURA master plan was slightly different from other existing neighborhood plans because it included a marketing analysis and a marketing plan. She said it had a strong economic development element in order to bring the neighborhood out of its blight situation. She said it would also involve elements of land use, development pattern, and infrastructure but it was distinct from other neighborhood plans because it included a marketing plan and analysis. Councilmember Clark said he felt \$300,000 was a lot of money. Ms. Beaudry advised \$300,000 was the amount spent for the East Billings Urban Renewal District master plan, which was partially funded with a grant through the U.S. Economic Development Agency. On a voice vote, the motion was unanimously approved.

## **REGULAR AGENDA:**

**2. APPROVAL OF COUNCIL SUB-COMMITTEE'S RECOMMENDATION FOR APPOINTMENT OF MUNICIPAL COURT JUDGE. (Action: approval or disapproval of Council Sub-Committee's recommendation.** City Administrator Volek advised that Judge Knisely had been elected to the District Court and would assume her new duties on January 3, 2011; and as a result, the City Council was required to appoint a successor to serve a term until the next general municipal election in the fall of next year. She said the position was advertised, and applications were received from Colette Davies, Sheila Kolar, Curtis Bevolden, and Larry Schuster. Ms. Volek advised the sub-committee met the previous Friday and presented 18 questions to the applicants, who were then scored. She said the two applicants who received the highest scores were Ms. Kolar at 321 points and Ms. Davies at 327 points. Ms. Volek said the decision by the majority of the sub-committee was that Colette Davies be recommended to the City Council for appointment to the open position. She said she had copies of letters of recommendation and/or work products from the four applicants with her that evening if anyone wished to look at them.

Councilmember McCall asked to hear from each of the panel members in terms of what their perspective was, how the process went, and what their recommendation was.

Mayor Hanel said he thought the interviews and the following procedure was very well planned and professional; the questions were given considerable thought with the assistance of legal counsel; and the Human Resource Director was consulted to make sure proper procedure was followed in accordance with the law. He said his point separation between the two top candidates was less than five points; they were very evenly matched; and the ultimate decision was given a lot of consideration and was very difficult.

Councilmember Pitman said it was important for the Council to know it was a fairly split decision and very close. He said one thing that caused confusion was that Councilmember Clark did not score the same way the rest of them did, so it left them without a total point system. He said he thought the point system got a little ahead of them because it was designed to give them an indication as to where they were at the end of the interviews and to have a discussion versus "who got the most points wins." He said he wanted to have a discussion beyond the point system as to who was the most qualified candidate and who would be the best benefit for the people of Billings. Councilmember Pitman said they had spent a lot of time on the questions that were inadvertently released to the legal staff, so all of the questions had to be released to all of the candidates. He said they had hoped to have more natural answers versus prepared answers. He said one thing they had heard consistently was that the court was overworked and the busiest in the state, so they needed to seriously start looking at whether the City needed a second, full-time judge.

Councilmember Ruegamer said the point system did not get a head of him. He said they had four good candidates and any one of them could have done the job well. He said the candidates were graded and scored, and Ms. Davies came out ahead. Councilmember Ruegamer said he did not feel there was any advantage in knowing the questions prior to the interviews. He commented it was an overworked court, and that was one of the reasons Colette Davies should be thought of clearly as the candidate because she was doing it now, doing it well, and there was no reason to think she would not continue to do it well.

Mayor Hanel said they were not in a position to comment for Councilmember Cimmino in her absence. He said it was very, very difficult. He said Ms. Kolar had considerably more years of experience, had been in all phases of the courts, had been directly involved with law enforcement, and had grant writing experience. Mayor Hanel said he had been solicited with information; and it was his intent to remain very neutral and unbiased so he did not accept personal invitations to visit on the phone or over lunch.

Councilmember Clark said he sat through all of the interviews and thought all of the candidates were qualified; but some rose to the top very quickly. He said he had a tough decision between the two candidates, but in the end he felt Colette Davies was the better candidate for the job. Councilmember Clark said they could not appoint one and expect the other candidate who was already there to stay. He said they had to look at how both candidates would do the job.

Councilmember Ronquillo confirmed that the candidate the Council picked would still have to run in the November election.

Councilmember Pitman said it was important to note that ultimately following the number scale, it came down to a tie. He said that was the debate they had because Councilmember Clark actually tied both of them and the discussion ended up being more on which candidate he leaned a little more toward. He said if they were to go by strict numbers, it was actually a tie.

Councilmember Ruegamer said, as he recalled, Colette Davies had the most points. He said their job was to bring forth a candidate, and they did. They brought forth the candidate with the most points. He said the tie was that he and Mayor Hanel gave the most points to Ms. Davies; and Councilmembers Pitman and Cimmino gave the most points to Ms. Kolar. He said Councilmember Clark did not grade the candidates the same way the others did; and as he recalled, there was no question it was Ms. Davies.

Councilmember Pitman said they could debate it all night, but the simple fact was that the numbers did not fully paint the picture when one of the pieces was not completed the way it was suppose to be completed. He said they were comparing four people's complete numbers to one person's one number; and his one number was the same for both candidates.

Councilmember Gaghen asked if there had been any opportunity to have a spontaneous response from either candidate. City Administrator Volek advised the 18<sup>th</sup> question was added at the end of the meeting and asked of everyone. She said the question was with regard to the candidates' intent to run for the office in the future. She said the 17<sup>th</sup> question was added with regard to any questions the candidates may have. Councilmember Gaghen commented neither of the two questions required much of a spontaneous, thoughtful response and would not qualify in her estimation.

Councilmember Astle said they could talk about the process all they wanted and asked Councilmember Pitman if he felt they needed to start over. Councilmember Pitman said he did not think they needed to start over. He said he felt they needed to take it for what it was and as a body make an independent decision. He said the information on the candidates was before them and they would still find it to be a tough decision. He said they had two incredibly talented people, and it was up to the full body to make the decision and not solely rely on the sub-committee because there were issues. Councilmember Pitman said they each could act independently not only of the sub-committee, but the whole process. He said they had all seen the resumes, recommendations, references, and talked to the candidates. Councilmember Pitman asked each councilmember to think about it and make a decision that evening.

Councilmember Clark said the majority of the committee wanted the questions to be spontaneous, but the questions were accidentally released to one candidate, so they had to release them to all of the candidates. He said the committee was not who accidentally released the questions.

Councilmember Ulledalen said he felt one of the issues was that they got in a hurry, the clock was against them, and they did not have the opportunity to add in other dimensions to the search that would have given a little more validity with the Council. He said they did not get input specifically from the legal community, and it would have been nice to hear recommendations from people who actually practiced in front of court



and were present on a regular basis. Councilmember Ulledalen said he thought it put them in the same position as when they replaced Joy Stevens on the Council. He said it did not become a matter of who the best candidate was, but they got into second guessing what was done by the sub-committee. He said they were at the same point now where it was not the candidates, it was if the process was fair and reasonably done. He said obviously there were some reservations and uncertainties about that. Councilmember Ulledalen said he read all the information and agreed they had four good candidates but said it was obvious the two best rose to the top. He said it was his sense that Sheila Kolar had the best resume with a broad range of experience.

Councilmember Pitman moved for the appointment of Sheila Kolar for the City of Billings Municipal Court Judge, seconded by Councilmember Gaghen.

Councilmember Astle advised he would recuse himself from further discussion and the vote because he had been a personal friend of Ms. Davies' parents for 25 years.

Councilmember Ulledalen made a substitute motion to forward the top two names to the Council, tally the vote, and declare the candidate with the most votes the winner, seconded by Councilmember Ruegamer.

Councilmember McCall said she had spoken with several people on behalf of both candidates, and she thought both candidates were extremely qualified. She said even though the process was somewhat flawed, it was important to maintain some integrity with the process. She said they had a person brought forward who had the highest score, which was the intent. She said based on that, she would support Colette Davies. She told Ms. Kolar it had nothing to do with her qualifications but it was about the integrity of the process.

Councilmember Pitman asked Attorney Brooks how many votes would be required. Attorney Brooks advised the majority of the Council would require six votes. He stated the statute required the majority of the entire council and not just the majority of the members present and voting.

On a voice vote, the substitute motion was unanimously approved.

A roll call vote was taken with each Councilmember naming the candidate they supported. There were five votes for Ms. Kolar and four votes for Ms. Davies. Councilmembers Ronquillo, Gaghen, Pitman, McFadden, and Ulledalen voted for Ms. Kolar. Councilmembers Ruegamer, McCall, and Clark, and Mayor Hanel voted for Ms. Davies. The motion failed due to lack of the required majority vote.

Mayor Hanel asked Attorney Brooks if no motion was made and if no further action was brought forward, would it be understood that Judge Davies would continue as the judge or would they appoint someone during the interim. Attorney Brooks said he would need to check the statute to see if the part-time judge could be appointed for the term of the full-time elected municipal court judge until such time as the term ended. He also advised the Council could continue the matter by motion to another date when the absent councilmember would be available to vote and said the ability to appoint pro-tem judges was also an option. Attorney Brooks noted that the statutes surrounding the appointment of a municipal court judge stated that the vacancy must be filled within 30 days following the vacancy.

Councilmember McCall asked if the statute would allow for a temporary interim to continue for a period of time not more than 60 days to give them an extended period of

time. She said if they could not come to a resolution, they may need to go back to the drawing board and restructure the questions and get the stakeholder input they needed.

Attorney Brooks advised that according to code, Council could not simply appoint Judge Davies as the full-time judge pending the resolution of the matter.

Councilmember Pitman said he was seeing two possibilities; either get someone that evening to reconsider their vote or have the same vote at the next business meeting in January.

Councilmember McCall said she thought it was a good suggestion, but said Judge Knisely would be sworn in on January 3<sup>rd</sup>. Judge Knisely commented that she would be happy to do the jail arraignments on the morning of January 3<sup>rd</sup> prior to being sworn in or said Judge Davies could do them as her appointed part-time judge if Attorney Brooks agreed. She said people would be in jail without a judge Thursday, Friday, Saturday, Sunday, and Monday. She said she would be doing probable cause hearings over the weekend during that period of time so they could be held over 48 hours. City Administrator Volek advised a work session was scheduled for January 3<sup>rd</sup>, and a special session could be scheduled prior to the work session in which there would be a full Council. Councilmember McCall said she would be willing to make a motion that the matter be moved to the 3<sup>rd</sup> of January and asked Attorney Brooks to get on it immediately that next morning to see if there was any other flexibility within the law to help them out with the situation. Attorney Brooks said he would do it, but doubted there would be any other process available.

Councilmember Pitman asked for a 5-minute break so he could attempt to reach Councilmember Cimmino and find out when she would be back in town.

Mayor Hanel called for a 10-minute recess at 7:55 p.m. Mayor Hanel called the meeting back to order at 8:05 p.m.

Councilmember Pitman advised he had contacted Councilmember Cimmino and she would be returning on the 30<sup>th</sup> and would be available for a January 3<sup>rd</sup> meeting.

Councilmember Clark commented that, according to Legal, since there was no prevailing side, anyone could bring it back up and present one name to see if the vote had changed. Mayor Hanel confirmed with Attorney Brooks that it could happen at the meeting that evening or at the next regularly scheduled business meeting. Attorney Brooks said that was correct.

Councilmember Pitman moved for the appointment of Sheila Kolar for the City of Billings Municipal Judge, seconded by Councilmember Gaghen.

Attorney Brooks advised Council should have a motion to reconsider first and then entertain a specific person's nomination.

Councilmember Ulledalen moved to reconsider Item 2, seconded by Councilmember Ronquillo. On a voice vote, the motion was unanimously approved.

Councilmember Pitman moved for the appointment of Sheila Kolar for the City of Billings Municipal Court Judge, seconded by Councilmember Gaghen. On a roll call vote, the motion failed 5 to 4, due to lack of the required majority vote. Councilmembers Ronquillo, Gaghen, Pitman, McFadden and Ulledalen voted in favor of the motion. Councilmembers Ruegamer, McCall, Clark, and Mayor Hanel voted in opposition of the motion.

Councilmember Pitman asked Attorney Brooks if they could make a motion to reconsider for a later date right then or if they needed to wait until the Initiatives portion

of the agenda. Attorney Brooks advised they could move to reconsider right then as long as it was placed on a regular agenda where business was officially conducted. Councilmember Pitman asked if they needed to set aside January 3<sup>rd</sup> as a special business meeting. Attorney Brooks advised the item would have to be advertised as a Special Regular Meeting.

Councilmember Pitman moved “to put this on a regular agenda item for January 3<sup>rd</sup> as a special meeting,” seconded by Councilmember Ronquillo. On a voice vote, the motion was unanimously approved.

**3. CITY ADMINISTRATOR EMPLOYMENT AGREEMENT RENEWAL FOR THE PERIOD OCTOBER 2010 THROUGH SEPTEMBER 2012. (Action: approval or disapproval of Employment Agreement Renewal.)**

Councilmember Astle moved for approval of the City Administrator’s Employment Agreement, seconded by Councilmember Ulledalen. Councilmember McCall thanked the Council for their work on the contract renewal, particularly Councilmembers Ulledalen and Clark. Councilmember McCall said she felt they were very fortunate to have Ms. Volek for the City Administrator. She said Ms. Volek had been in the business for over 30 years serving 15 years as the Assistant to the County Administrator for Johnson County, Kansas, with a population of 250,000; and serving as County Manager for six years in Shiawassee County, Michigan, with a population of 72,000. Councilmember McCall said Ms. Volek came to work for the City of Billings as Assistant City Administrator in February 2004 and after one and a half years, she was appointed as the Interim City Administrator for one year, and had currently served the last five years as the City Administrator. Councilmember McCall said she thought overall the Council believed that Ms. Volek had done a really good job and had restored and improved relationships with key stakeholders in the community, as well as doing a lot to bring back a much higher level of respect throughout the community between the city and county and other entities. She said Ms. Volek was very dedicated, bright, and vigilant as to what was important for the City of Billings and the community. She said they had a goal plan for Ms. Volek, and the Council would work with her over the next two years and hold semi-annual evaluations with the full Council. Councilmember McCall said several of the goals were to implement performance improvement plans for the various city departments and to really look at the internal staff investigation policy to make sure it was objective and an independent review for employees under investigation. She said another goal was to continue to delegate further responsibility to the department heads and an investigation into the possibility of an independent expert consultant to do all collective bargaining negotiations for the City. Councilmember McCall thanked Ms. Volek for her hard work and said they were proud to have her. She said it was the first time in several years they had continuity of leadership and management for the City, and they were seeing the rewards from it.

Mayor Hanel said he wished to speak in favor of the motion. He said he had the opportunity to spend more one-on-one time with Ms. Volek since becoming Mayor to learn more about her, her style, her ability to communicate, and her responsiveness to his requests. Mayor Hanel said he admired how Ms. Volek handled her position and her delivery of information. He said Ms. Volek was a pleasure to work with.

Councilmember Ronquillo thanked Ms. Volek for her cooperation with the Council, and said she had spent a lot of time with the task forces. He said she took a lot of heat sometimes, and he wanted to give her credit. Councilmember Ronquillo said he enjoyed working with Ms. Volek. He said he liked the idea of the goals, and said he knew she could reach them.

Councilmember Pitman thanked Ms. Volek for the interest shown in Ward II the past couple of years. He said they had toured the Heights together to look at some of the issues the Heights had experienced. He said he had some concerns over the contract and was struggling with the automatic renewal after the anniversary date for another two years. He said with the goals they had set for her, he would like to see a one-year contract to see how she attained the goals to keep her on task. He said there were some high expectations set, and he wanted to make sure they were following through on them, especially since they would be entering into a time of a large portion of the Council being new next year. Councilmember Pitman said he had issues with the amount of the raise and would like to see more of a step raise each year. He said his 'no' vote that evening would be based on some of the semantics of the contract and not necessarily her performance. He said he wanted to be able to measure the process in the event there were issues they needed to address.

Mayor Hanel responded that consistency was very important, specifically with future financial issues and employee issues. He said he had strongly suggested that Ms. Volek be taken off the hot seat with regards to labor negotiations. He said he felt her relationship with City employees had been hampered by the responsibility of sitting at the table with union representatives. Mayor Hanel said with new Council people coming on and budget matters, they needed consistency. He said with regards to Ms. Volek's salary compared to other comparable communities, he felt they were getting a great deal for their money. He said he appreciated what Ms. Volek did for what she was paid.

Councilmember Gaghen said she thought Ms. Volek's dedication to the job was far more than what was expected. She said she maintained a sense of cool talking to the media and constituents and was a fine representative of the City as a whole. Councilmember Gaghen said Ms. Volek was worth every penny she received and other cities the size of Billings did not have the quality of leadership for the price.

Councilmember Ulledalen said he thought Ms. Volek was doing a very good job. He said some of the current messes they were dealing with were partly the result of the "revolving door" they have had in the City Administrator's role. He said he thought the taxpayers, employees, and the community benefited from keeping a good candidate on the job, and he was supporting the contract.

Councilmember Ruegamer said several years ago some of the councilmembers sat down with Ms. Volek and they gave her a stronger contract in exchange for a lower wage. He said sometimes new councilmembers wanted to fire the City Manager so it would give Ms. Volek plenty of time to get the new councilmembers used to her style and to see the benefits she brought. Councilmember Ruegamer told Ms. Volek she was doing a good job and told her to keep up the good work.

Councilmember Clark said he would vote in favor of renewing the contract. He said there was an automatic renewal clause but there was also an escape clause where

after one year the Council could give Ms. Volek notice that her contract would not be renewed.

On a voice vote, the motion was approved 9 to 1. Councilmember Pitman voted in opposition of the motion.

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

The public comment period was opened.

- **Tom Zurbuchen, 1747 Wicks Lane, Billings, MT**, said the Miller Crossing TIFD did not show up in the County Treasurer's Office. He said the Treasurer did not collect taxes for the Miller Crossing TIFD. He said it was part of the South TIFD and all of the billing was done for the South TIFD and then Pat Weber needed to divide out what belonged in each. He said the \$194,000 payment from the South TIFD to the Miller Crossing was what was billed legitimately for Miller Crossing. He said Miller Crossing was responsible for the bonds on King Avenue East, not the South TIFD. He said the only major undeveloped area was Four Square Properties, and Four Square was delinquent in their tax bills. He said if they did not develop the undeveloped properties, the City would go into default on the bonds and they would have to be paid out of the Revolving Fund for developing King Avenue. He said right now the arterial street fee made up the difference of what the TIF District did not have, but it ended in a couple of years. He said if a large outfit paid the taxes, they would be allowed by law 10 percent profit on paying the taxes and the City would have to pay the 10 percent to take over the properties and then find someone to buy and develop them to recoup the monies for the Revolving Fund to pay off the bonds. He said the City should pay the back taxes immediately before someone else did to avoid paying 10 percent more to someone else and tie up more money waiting on a development in the district.

Ms. Volek advised that Mr. Weber was aware of the situation and contacted Four Square, who indicated a payment was forthcoming.

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

## **COUNCIL INITIATIVES**

- **RONQUILLO:** Moved to direct staff to check into whether the State's rotating call list for wrecker services was being followed by the City, seconded by Councilmember Ulledalen. On a voice vote, the motion was unanimously approved.
- **ULLEDALEN:** Moved to direct staff to clarify the ordinances regarding light illumination, noise, and signage onto adjoining properties, seconded by Councilmember McCall. He also moved that staff look into the need to review existing Planned Development Agreements specific to setbacks relative to approaching residential areas, seconded by Councilmember McCall. On a voice vote, the motions were unanimously approved.

There was no further business, and the meeting adjourned at 8:37 p.m.

CITY OF BILLINGS

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Thomas W. Hanel, Mayor

ATTEST:

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Cari Martin, City Clerk