
COUNTY WATER DISTRICT OF BILLINGS HEIGHTS

Board of Directors Meeting Notes

Location: Board Room, County Water District of Billings Heights 1540 Popelka Dr.

Date: November 17, 2021

Time: 6:00 p.m.

CALL MEETING TO ORDER: Board Member Ming Cabrera

BOARD MEMBERS: Ming Cabrera, Pam Ellis, David Graves,

ALSO PRESENT: Suzie McKethen
Dianne Crees

INVITED GUESTS: Scott Aspenlieder, Dave Goodridge,
Josh Jabalara, Chris Kukulski,
Jennifer Duray, Roy NeeseFrank
Ewalt,

GUESTS: Evelyn Pyburn, Tom Zurbuchen,
Sarah Brockel

INTRODUCTORY COMMENTS

Ming Cabrera noted that unfortunately we would not have a quorum. There was a threat on somebody that was supposed to be here. The threat was made by Tom Zurbuchen. Tom Zurbuchen shouted out that Ming Cabrera better watch his mouth or Tom would sue for slander. Tom insisted that he did not threaten; Ming replied, “yes you did.”

Pam Ellis said that Laura Drager received an email from Tom Zurbuchen at 4:55 pm on November 17 (see below). Ming Cabrera read the email aloud.

From: zurbuchen@bresnan.net zurbuchen@bresnan.net

Sent: Wednesday, November 17, 2021 4:55 PM

To: 'lauradrager@remax.net' lauradrager@remax.net ; 'laura@remax-billings.com' laura@remax-billings.com

Subject: CWDBH Board meeting

This proposed meeting violates the current bylaws in Article 5 Sections 2 '5 members call a meeting'

Section 4 'The President, or in his absence, the Vice-President shall preside at all such meetings, whether annual, quarterly, or special'.

Article VI Section 3 'Special meetings of the Board must be called by the President, and in his absence by the Vice-President, or by 5 members of the Board.

Article VII Section 2 'The president shall preside at all meetings of the corporation and the Board of Directors, shall have general supervision over the affairs of the corporation.'

Also violates Montana Code Annotated open meeting laws in that there is no public notification of an agenda.

When ethics complaints are filed against you for knowingly and willingly agreeing to hold this meeting violating the bylaws and State law, will you be forced to surrender your realtors license?

Tom Zurbuchen

Tom Zurbuchen argued (comments not distinguishable on the recording). Ming Cabrera said, "you will be forced to surrender you way of earning a living is what it comes down to."

Pam Ellis pointed out that the current bylaws were adopted in 1956 and have not been updated since. The 1956 bylaws says that the people that are member are freeholder owning property and pay a membership fee per acre and per year. The meetings are held on Monday in January of each year. There are 9 members of the board. 3 have to live on one side of Wicks, 3 on the other. There is no relevance whatsoever, but unfortunately this is a pattern of threatening people. We are going to go ahead with the discussion and we will do in the sequence listed on the agenda. We will start with introductions of people that are in the room and then we will introduce the guests. We will take notes on the comments and enter that into the record.

WELCOME AND INTRODUCTIONS

Tom Zurbuchen repeated that he did not threaten Laura. He did not know anything about the Montana Board of Realtor Ethics until it was brought to my attention by others. If Laura chose to be here tonight, she would have had to appear before the Realty Board of Ethics to defend herself.

I. INVITED GUESTS

1. Scott Aspenlieder, Performance Engineering and Dave Goodridge, local Realtor have been asked to speak to the board about rate issues that they believe are impacting development in the Heights.

Pam Ellis said that Scott Asplenlieder and Dave Goodridge were invited to talk about how the fees from the district are negatively impacting development. We still need the information and we're sorry there are not more people here. Evelyn Pyburn is present from the Yellowstone County News and Pam Ellis will take notes. If we can get the remainder of the board to show up and listen, maybe there is another time you can come. Please share.

Scott said his comments have been pretty consistent for the last 3-4 years. I think on of the biggest problems you have in the Heights is the way you assess annexation fees at 23 center per square foot. He has never gotten a full explanation of what the annexation fee is supposed to cover.

If you look at the growth of our community, there is a reason you are not seeing significant growth at the same level and at the same speed that you are seeing in the rest of the Billings community. When you charge somebody 23 centers a square foot to annex into the district, and then make them put the infrastructure in and then charge them the impact fees, you are hitting them 3x. It's not comparable, it's not competitive with Lockwood Water and Sewer District; it is not competitive with Laurel or the City of Billings. So your fees are impacting the way developers look at accessing and building on land in the Heights Water District. That is one of the primary issues that is impacting the way that you grow and the speed with which things are growing up here in the Heights. I'm not saying that that has neutered development completely because obviously it hasn't. But it has definitely changed the type of development that you are seeing and at the density and level of speed that we are seeing in other parts of our city. That is not an arguable thing in my mind.

Secondly, when you look at land that is already annexed into the community and you are talking about larger commercial scale development with property that is inside the city limits, the way that you assess impact fees and water meter service fees is vastly different than the way it is done with the City of Billings. And it is the reason you are not seeing bigger scale commercial development in the Heights. When we approach a commercial business, let's just say it is a big box store that is 40,000 square feet that requires sprinkler and fire suppression in the building. In the City of Billings we will put a 4" or a 6" fire service into the building. From that fire service, we will t-off and put a 2" domestic meter for servicing the water supply to the building. The City of Billings charges you for that 2" meter; they don't charge you for a 6" tap. Nor do they require you to put a 6" water meter in. In the Heights, if I put in a fire service line, you require me to put a 6" water meter in. The difference between a 2" and a 6" water meter is a quarter of a million dollars.

Ming Cabrera asked why he thought the district was doing that. Scott said he can't answer that question and I don't have a good justification that I can come up with in my mind for why that is. It's not done to that level in Lockwood. Lockwood does approach it a bit differently than the City of Billings. You have some fee structures and some impact structures here that are the reason, in my opinion, that you don't see the kind of development in the Heights that you see

in the rest of the city. And they are easy changes to make. The board members obviously have to look at what the financial ramifications are from an operations standpoint. Those fees are what, in my opinion, in the eight years we've done business out here, those are the reasons you are not seeing the type of development and the speed of development that you see in the rest of our city. It's pretty easily done. We've had a number of due diligence meetings with different developers whether it's been residential or commercial, to talk about exactly those things and costing out properties in different parts of the city. Heights loses every time for those reasons.

Ming asked, "let's say that you take that away from the Heights district in terms of cost. Let's say that we are able to change the fees so that they are comparable to what everybody else is charging in Lockwood and Billings. Do you think that that would raise residential rates? Scott said he could not answer that question. Pam Ellis said that is one of the points for inviting Josh Jabalara. We need to lay those calculations out, we need to figure out what the wholesale cost of water is, operations cost, capital improvement plan. The bottom line is that development needs to pay for their costs and residential needs to pay for theirs. We don't know and I don't know that it has ever been done that way. To my knowledge, they have followed the city of Billings. So if the City of Billings jumps their rates 15%, we jump our cost of water 15%. The cost of wholesale water is only 50% of our expenses.

Scott said when you look at the Bar 11 Subdivision, the gross acreage was 220 acres. You do the math on that. Now all 220 was not annexed. But they are going to pay upwards of \$1.5 million just in annexation fees. How do you still have affordable housing on top of all the other expenses? If you take that same 220 acres just across the border and you take it out to the west end and you don't have that \$1.5 million annexation fee, we don't have to do a bunch of statistics and mathematical analysis to come to how that is affordable and how it's not and why people do and make the decisions they make about where to develop primarily. My comment is that if you want the Heights to be competitive and to see similar growth and grow as a community like the rest of Billings, what has to happen to your water rates after what you do to the impact fees is up to you. But your impact fees are definitely driving development away from the Heights. And I don't know that you can find someone in the development arena that will argue with that. Land costs are not low enough to off-set that difference. And I think there is a possibility for awhile that the cost of real property in the Heights was depressed because of that.

Ming Cabrera asked if Scott ever brought these concerns up to prior boards or anyone else. Scott said he was going to leave that one alone. It is pretty well noted and documented, his attempts to have conversations with past boards. Pam Ellis said there was no documentation in the minutes of past board meetings. Scott said that was not accurate (Pam has a document with 6 years of board minutes; no comments from Scott Aspenlieder have been recorded).

Pam Ellis said one of the complaints she heard when she was going door to door was the cost of installing a fire hydrant. I know the City of Billings does not charge. Scott here is a fee structure for a private fire hydrant but he can't remember how much it is. I was told by another engineer that the cost of a fire hydrant is \$2500 and the fire hydrant wasn't necessary. The fire department told the business they would not have required an additional fire hydrant nor would they have used a fire hydrant in the location the district demanded.

Ming Cabrera said we have Dave Goodridge here. Ming asked Dave as a realtor, "what are you seeing in the development of the Heights?" Ming is a business owner in the Heights. Nobody wants to move to the Heights. It is one reason I ran for office is because we have been told time and time again that the water district does not want to work with businesses and the cost of doing business has stifled any business development on Main Street.

Dave Goodridge, Goodridge Real Estate I have been doing Real Estate 17 years. Grew up in the Heights. Graduated from Skyview, used to go see movies in Crossroads Plaza. I am rooted in the Heights and have always wanted to see the Heights do well. For the longest time, I thought the lack of development was the lack of land because commercial core was along Main Street and it was always penned in by residential. But I was always expecting that something would happen at the triangle of Hwy 87 & 312. Dave would piggy-back on the numbers. A wise Real Estate guy once told me, just make it a math problem. All you have to do is do an either/or. Even if you are doing \$10 a square foot in the west end and \$5 a square foot in the Heights. Using Scott's example of 220 acres, the \$1.5 million annexation fee is a cover charge to go into the bar. You haven't even gone through the doors, sat down, ordered a drink, figured out who is playing on the stage yet. You throw \$1.5 million into a pro forma, that will change what most investors look (IRR—Internal Rate of Return). I would venture a guess that it will change it at least a point if not 2. A good IRR is anywhere from 13 to 15% right now. So if you are on the low range and you lose a point, that will change. Most investors will most likely sell the development 5-7 years out it and roll it into another investment. But that thing needs to start paying it's bills and putting some cash into the coffers by 1 1/2 to 3 years. If all of sudden just using that annexation fee, you are at year 4 before you get out of the hole, it is just done at that point.

The other thing that I know from people who have done stuff in the Heights is just the ambiguity once they start a project. So maybe they figure out how they can stomach the annexation fee, they purchase the land and engage Scott, engage a builder, they get going, now all of a sudden is the ambiguity about the fees. I cannot go to the website and see, like Scott was talking about, and he can probably talk in way more detail than me. You can't tale a project on a spreadsheet or something and take it from taking down the ground to the final build and be fairly confident in the numbers. There are a lot of ambiguities from the fire lines to all the technical stuff that Scott knows way better than me, but there is a lot of ambiguity around the fees. Now maybe they got that number to work at year 2 1/2 and now new ambiguity, new fees come into play,

and all of sudden they are at year 4 before they are making money. They have to hold longer which investors are not crazy about.

Dianne Crees asked about how much the mindset people have impact where they go? It seems to me the people in the Heights don't have a qualm about going to the west end. The west end people think if they come to the Heights they have to pack a lunch, car pool. Don't you think that has something to do with it also?"

Dave Goodridge says he cannot speak to the mindset. An investor, a site selection guy...If I go out to other major investors, Utah, Colorado, anywhere in the country, they are looking at roof tops, traffic, what they are competing against, and what is available in raw land and services. I will speak to the triangle. You have services right there; you have raw land right there. The Heights has oodles of rooftops. Main Street is the busiest road in the state. So that is pretty much checking all the boxes. Those guys are interested and honestly of the new board and at least discussion on having these things maybe looked at and changed, I am starting to push land to these investors. Whereas before I would not have been able to get any interest at all.

Suzie McKethen said the Heights has the stigma that they are the lower end of the city. Suzie says it has gotten 1000% better. Scott said that Dave's point is really good though in that when you are not dealing with an in-town investor, they are dealing with the stigmas that we think we have for our city. They are strictly looking at the numbers and the data and that is it. One of the suggestions that he made to the previous board, when is the last time that you had an independent third party come in and do a rate analysis for you. Scott worked as a volunteer sitting on the impact fee analysis committee for Lockwood Water and Sewer Board representing the development community. Every four years they go through that. I know the City of Billings goes through a very similar process. I don't know when the Heights district ever had a third party come in and do a full analysis not just your impact fees, but your rate structure, how it is set up, what exactly is this annexation fee and what it is not? What is the impact of all of those things on your budget and how that actually works? I don't know the answer to that. I have asked that question before and I haven't gotten an answer. It is something I would suggest highly. And at that point you have an independent third party telling you, "here's some decision points for you to make: this is what it is, this is the comparison to these development markets of Laurel, Lockwood and the City of Billings."

Pam Ellis said that was one of the reasons we contacted the Midwest Technical Assistance group and normally they work with smaller districts, but they did OK Josh working with us. Josh, can you explain what you are capable of doing. We are lacking information. There are many things that have not been done in the district including we have no budget. Scott said Raftelis is the group that did the work in Lockwood. Raftelis was hired by the County Water District to fight the city's rate increase which to me is just money down a rat hole. I voted against it but I lost. There has been no contract let to do a thorough rate study.

2. Josh Jabalara, Midwest Technical Assistance Program will provide copies of the references to assist the Board in management and rate setting.

Josh Jabalara says they do rate studies across the United States. That is something we can do for the district; our rate study is no cost. We have not done one in Montana of this size; this is the largest district in the state. The line items remain the same no matter the size of the district. We would be looking at all of that. Perhaps a water loss analysis. How much you are billed each month from the city vs what you are billing. I don't know if the district has done that, a water audit. How much of the water we are purchasing from Billings are we selling? Capital Improvement Plans we do. We identify short lived assets, start looking at that. We help do budgets across the state. Any questions? The bylaws have not been updated since 1956. We would go through the by-laws and make they are compliant with MCA.

Pam Ellis said all the bylaws have been updated and we would have approved them at this meeting had Tom not sent his threat. The Montana statutes will be completely rewritten for county water and sewer districts. We were advised by Jeff Weldon, the attorney hired by the district, to take out all references to specific statutes so you don't have to rewrite them every time.

Josh says he believes that there will be a large increase coming to the fees. Pam Ellis said 30.6% increase is for the cost of wholesale water. The cost of wholesale water is about 50% of our costs. Pam asked Chris Kukulski if there is a chance the rate increase would be postponed if the city is hoping to receive funds through the federal infrastructure bill. Chris Kukulski said the rate increase may be delayed by a few months, not years. The city is continuing to work on design. They have about \$120-\$150 million of work to do on the west end. We are seeing if we can get grant dollars. But we are talking weeks and months not months and years. The city is continuing to make investments. We are being deliberative about not signing contract or authorizing contracts that would prevent us from getting federal funds. Pam noted that Andrew Rheem did recommend in an undated email that the board received at the October meeting is that regardless of any dispute over the amount of the rate increase, the 30.6% increase is effective July 1, 2022.

Josh Jabalara said they would look at implementing the rate increase—our rate studies across the U.S. suggest it is better to implement it incrementally rather than hit the customers with one big sticker shock right away. Pam Ellis said she agrees that she totally agrees but that is water under the bridge. The prior board knew there were rate increases coming and did not raise fees incrementally.

Josh said he is not sure what the Heights has for projects that need to be funded. The City of Billings got about \$16.4 million in ARPA funds and Yellowstone County got \$30.2 million. Those are both pools of money. Pam

Ellis contacted the county commissioners. They have allocated all of the ARPA funds. We applied for ARPA grants through the state and didn't make the cuts, or anywhere close so that is not an option. The City of Billings got some money through the state ARPA grants.

Pam Ellis said the other thing Jeff Engel complained about when she and Jeff E talked with Scott Aspenlieder was there is no control of the engineering fee. Developers hire an engineer, develop their plan, then as I understand it, the district takes that plan and sends it to Interstate Engineering who bill and then when it comes back to the district, the district adds another 10-15%. Is that accurate?

Scott said he doesn't know what the mark-up is on the district's side. There is a pretty ambiguous process for understanding the cost of review for submitted plans is. We have requested costs every time we have done something for review for a cost estimate from Interstate. They will now give an estimate, but it is an estimate only. There is nothing locked in. When we started Bar 11 it was an open check. There was no parameters or bounds on what that was or what the iterations were. I'm not saying that Interstate ran that out the door; bit as to Dave's point, when you are budgeting these projects and you are trying to understand what the fee structure is and what you are going to pay. To the best of our ability, we can ask or assume but even Interstate cannot tell you in a planning meeting when you are looking at a 2 dimensional schematic, how much is it going to cost you to review the document? In all fairness to them, they cannot answer that question either. They don't know. It is a tough deal because you don't have your own staff capable of doing it like the city of Billings does and the review fee and submittal fee associated with that. But that is just one of those parameters that is ambiguous about what that is going to cost. I will tell you that Interstate has gotten a lot better in the last couple of years about giving us cost estimates and they have been pretty good about being within those cost estimates or under, lately, the last 2 or 3 that we have done. And that is appreciated. We have gone out of our way to try to work very closely with them as to work very closely with them. That is not an indictment against Interstate. It is just another thing that is ambiguous and tough to budget for as it is in the other jurisdictions.

Pam Ellis noted that the draft job description for the new General Manager is that an engineering degree would be preferred. That would make it more cost effective for developers and make the whole process smoother. Scott said you are going to have to figure out how to develop a fee structure depending upon how those applications come in. I don't know that developers are against paying a fee commensurate with the effort that they get on the backside to get things moving. Most developers frankly are willing to pay more for speed than anything else. Those are the things to keep in mind and take into consideration as you are going through this process. What you are asking for as a manager is admittedly going to be difficult to find, probably.

Pam Ellis said a number of engineers have looked at the job description and they have said it is an attractive salary and benefit package. Ming Cabrera said that was on the agenda for tonight's meeting. We need to get the job posted but unfortunately we don't have a quorum to get that done because of the disruption that has taken place tonight. We are now delayed in getting a new General Manager hired before the current manager retires December 10. That was one of the things we needed to do tonight to make sure that happened.

Ming Cabrera asked if anyone else had questions. These are questions Ming has had forever, about why, here in the Heights, we have not been able to keep up with the rest of the city with regards to development. When you have 30,000 people in the Heights and we cannot get any development. It is a big question. That is why I am so involved, trying to make the Heights part of the City of Billings and I think you brought up some good points today. The rate studies that need to be looked at to put us in the situation would help us out a lot.

Pam Ellis said she knows that Jeff Engel worked with the City of Billings in setting the rates when Billings rates were out of whack. I don't know if the board will choose to go through Raftelis in addition to Josh, would you be willing to sit down with the group and help analyze. You have a lot more valuable information.

Scott responded he would, depending upon what we are specifically are looking for, they would be willing to help where we could. At the end of the day, we are all residents of the City of Billings. We are all supposed to be swimming in the same direction. We all want our community to develop and reach it's maximum potential. That's why we're all here at the end of the day. We are all here. We may have differences of opinion about how we get to that point. We should all be working to get to the same place that we all want. That is not west end vs Heights vs Central town. That is the City of Billings being the best City of Billings that we can be.

Suzie McKethen said there is only so much Main Street property to develop. We don't decide what can be put on that land—the city does that. I don't think we decide the planning. Pam Ellis said when the Johnson Road bridge opens, it opens up a lot of land for development. All of that area is in the Heights Water District. As I understand, a part of the new area will be zoned for commercial and part for residential. There has been a lot of public meetings, a lot of feedback, and a lot of data.

Scott said the district needs to acknowledge that they are part of the development issue. And acknowledge that the district does have an impact in that process. City planning has a large impact. But we are part of that.

Ming Cabrera noted that the Inner Belt Loop will provide additional access to the Heights. We have improvements on Main Street—it is nice and clean. The

Lockwood Bypass is coming through. We are looking at this in the future, and the Heights Water District is going to have a huge impact.

Tom Zurbuchen said he has heard a lot of discussion about commercial property. Why is there no commercial development in the Heights not serviced by the Heights Water District? I've heard a lot of discussion about affordable housing. How come HUD does all of their rehab in houses served by this water district? How come HUD bought acreage on Hawthorne served by this water district? If everything so much cheaper outside of this district, this doesn't quite add up to me. All of the commercial development is served by this district and yet this district is so horrible? Why hasn't some of this development occurred outside this district here in the Heights? Why hasn't HUD done things outside the district? They are for affordable housing. I'm sorry, I don't see the correlation with your discussion. Because comparing one part of the Heights to the other has got to be easy to do, isn't it?

Dave Goodridge says if it is already in the district. When he sold the piece of ground over on Wicks and the Kiwanis trail and they are building some townhomes there right now. That was the most recent piece of property I sold in the Heights. Most people who called that were a seasoned developer asked, "has that been annexed into the Heights Water District yet?" I would say, yes. The response, "OK, that helps". If it is in the district already, then they don't have to pay the annexation fee. My theory, this is my theory, not fact, why you see so many buildings get scraped on Main Street. They are already in the district. They scrape, it is Main Street, valuable property. So the value is there to buy it, scrape it, redo. If it is in the district, those ambiguity of fees, those annexation fees are gone. Outside of the district, that's when those fees start to bubble to the surface.

The only other thing Dave wanted to say to echo what Scott said, as far as the city goes. I grew up in the Heights, love the Heights. My parents lived up here from the time they bought their house until they moved into Edgewood Memory Care down on Wicks. So we are a Heights family. But it is the City of Billings. And if you look at property tax revenue per acre, there was a real interesting graph that showed it could be cordoned off by geography. You see cost per acre and property tax revenue really tall in the downtown core, relatively high graphs as you move west. Out in the Heights, it is flat....flat. Since there is such a large portion of the Heights that is City of Billings, it has asked for the same mills and levies. I would think that the Heights would want to get some commercial property developed. Because the commercial property is what kicks the most dollars into the tax bucket. Dave's theory, maybe then, we don't have to ask for levies every other year. The only one other thing I would say that you as a board and I'm glad Mr. Kukulski is here, because I have asked him about it before, cost of services. Cost of services study is on the table to be done within the city. That has to be prioritized. Especially with what is coming with the Johnson Road Bypass and what we are talking about happening out here in the Heights. Because if you know what the cost of services are to your properties within the city limits, you can start deciding

whether it makes sense to build whatever you want to build with an actual expense side of what it is costing the city. Cost of services is a big thing that I think would be very important for you as a Board to keep poking the city on.

Suzie McKethen said she doesn't understand what is ambiguous about the buy in fees. Dave said the buy in fees are not ambiguous. The cost per square foot is posted. The district has worked with several customers to replatt so they don't have to annex in all their property. Pam Ellis said she heard the complaint frequently. They would work out and think they understood all the costs, they would bring all the documents forward and then it would change. Some of the fees are posted and some are not. People feel that the costs keep changing and changing. People feel that they can never get a final cost. She talked with business owners that walked away from projects because they could not get a cost they could rely upon—every time they spoke with the General Manager the number changed. Pam referenced a project Scott had submitted. After submitting the documents, the district uploaded new rules and required the plan to be redone according the new rules. That should not have happened. Whatever the rules are when you start, should be the rules.

3. City Manager Chris Kukulski, Assistant Public Works Director Jennifer Duray, and Ward 2 Council members Roy Neese and Frank Ewalt attended.

Ming Cabrera noted in moving forward to discuss resolution of the fee dispute with the City of Billings, this has caused a split with the Board members themselves. This is why we don't have the full seven here.

How old is this bill at this point? Jennifer Duray said it is 4 years old. Ming noted that we wanted to get the dispute resolved and over with.

Pam Ellis noted that in August we met with Jeff Weldon in an open session and I thought it was clear that what the board wanted was to resolve the fee dispute, pay what was owed for the water. We collected the money from the ratepayers, we have the money. It was held in cash up until the tolling agreement expired and then it was put in CD's. Some of the CD's are earning 3 hundredths of a percent so essentially worthless. We wanted the bill paid. We did not want to deal with the contract issue. Roy and Pam talked about it and Roy talked with Chris. The issue with not wanting to deal with the contract have to do with what Scott and David said. We need to get our rates rationalized, we need to get development working, it is not a priority. We understand where the city is coming from, but we have so many things on our plate including some quite unhelpful behavior on the part of some individuals. That is what the board directed. In October, three board members (Ming, Laura and Pam) repeated the direction from August. We were told things were going fine, things with the city are going great. Evelyn reported it. When I talked with Roy, Evelyn said the reporting is not even in the ball park. Dennis Cook and Jeff Engel had come to the meeting with a list of 11 items. Evelyn's reporting was correct—she reported what happened at the October meeting. What we had said to other

board members was that we wanted to invited the city in so we could have the discussion because there was a difference of opinion between what the members of the legal committee (Dennis Cook, Jeff Engel and Brandon Hurst). Other board members would not speak to the other board members. Jeff Engel said he would only speak if Dennis Cook gave him permission; a lack of the concept of boardsmanship,.

Dave Graves said we need to add more. Four of us want to pay the bill in full (\$2.95 million). We voted and that is why it is on the agenda that was out last Friday. They knew we wanted to pay that bill. We want to get things done so we can move on with other things. Because we do need to hire a new General Manager. So pretty much there would have been six of us. When they saw what we had submitted in the agenda, all of a sudden we weren't having a meeting. I can show you the text on the phone and things like that. So we still had four board members and they knew exactly what we were going on with. And they did their best to stop us. We don't know what is going on with the negotiations with the city other than they led us to believe that you walked away. We walked away and would not agree to meet again until January. We have so much stuff on the agenda that we need to get this stuff done. We drank the water, we showered with it, we watered our lawns. We owe the city that money because we are part of the city. The amazing part when we were getting underbilled by the city, our water rates didn't go down. They stayed the same.

We can't be angry at the city. They made a mistake, they admitted it, we drank it. We need to pay the bill. That is what we wanted to do and we were shut down. And people were attacked on the board. They tried to force people to resign and different things. You can shake your head Suzie, but I read the stuff about certain things. That is not how you operate. Dave was appointed because somebody dropped out. Laura and Ming and Dennis were elected; the first election since 56?

Pam Ellis said Laura has been in her house 45 years and there was never an election she recalls in 45 years. I have been in my house 21 years and there has not been an election.

Ming noted that the remaining 4 board members have no idea what is going on in regard to the negotiations whatsoever. We have been completely put in the dark. We were told to keep our mouth shut and the committee would come back later. But there was clear direction that we wanted to have this completed. We want it done so we can get a contract, we can get a rate study, we can get things done for the Heights. We can approve the health care plan for the staff; the plan has to be signed by November 30th. That's what is on the table right now because people didn't want to show up because they are so mad because they felt that we were interfering with the discussion. We are all members of the board. We have been open about everything else, but when it came to do with the discussion with the city, the remaining 4 board members had no say whatsoever. So that's is where the point of this is going.

Suzie McKethen said the district didn't know about the underbilling for two years.

Dianne Crees said there are reasons we honestly did not know we were being undercharged. #1 because we bill in gallons; they bill in cubic feet. #2 we were reading meters at different times of the month so our usage would never be the same as the city; #3 we changed to a 3 tier conservation billing system at the same time so we did not know how that was going to impact our income from water sales; #4 we were under major construction at that time on Alexander Road and building a reservoir so a lot of our energy was going to that; #5 we believe they had capable people doing their jobs; we never checked the water bill. They sent us a bill and we paid us. So I would like to know how they didn't know they were underbilling and why it took so long and what the city's responsibility is.

Dave asked why the district didn't know our reserves were growing. Dianne said the district didn't know it because they changed the way they billed.

Chris Kukulski, city administrator, said those are fair questions. Chris said his approach is exactly as David Graves approached it. He was 30-60 days on the job; when he was notified of the problem, the city scheduled a meeting with the Board President and his approach was the city has made a mistake, they take full responsibility for the mistake, but we are long term partners. The offer Chris made at that first meeting and has now consistently made it for now three years, has been that the district should not have to pay penalties and interest. Back then we would have allowed the district to pay it back over the same time period it took the city to figure out the error. That was the approach we started in late 2018 and early 2019. What I was told consistently was "shame on you, you fool." Chris said that he looked at this as partners again, long term partners. Most of your customers are city residents, if I walked away from the till with extra money, that is wrong. If I overbilled you and it was determined through a calculation that we had overbilled, I better expect them to say, "hold it, you owe us a refund." So we approached it that way and that started in the very first conversation.

Second, the offer, the same approach, was made numerous times including at meetings and over the last few months with the group that is negotiating on behalf of the board. The goal this evening—we don't want to get in the middle of all that is going on here. I realize that there is nothing that the city benefits from that. We easily could be pointed at and perceived as the bad guy. So I don't want to be here and become the scapegoat for something unnecessary. But I also wanted to be here to say these same things. We have always made the offer that we would accept the payment in full, assuming that we would both agree on how much water went through the meter. If we agree on how much water went through the meter, there was nothing really to debate. That really was our goal, is our goal, continues to be our goal. Jennifer could explain much better why didn't we catch it? We have made that point at the discussions about why it did take us so long to figure out what was going on.

Did we have a water main break or leaks somewhere? The gallons vs cubic feet certainly added to it. His main point was that he didn't want anybody to leave tonight with the city not showing up and false information to be claimed that the city has not consistently asked that the water that was used to be paid for. So that then we can move onto other issues. Because honestly building this city in a healthy way in all of its borders is a bigger priority to me long term than this dispute.

Ming clarified that no interest or penalties have been added to the amount owed. Chris responded that the late fees have been added to the bill but the offer to resolve it has been consistently that those penalties or late fees were gone.

Chris said that the first negotiations just a few months ago with the team. We have never met the third person of the team. Two very consistently Jeff and Dennis have met 3 times. There was illness in the middle there or we would have met more. We have consistently met with them. We agreed at the first meeting that we will deal with the contract separately. The contract is a huge issue to the city if we can first resolve that and that was what was communicated. If we have 3 or 4 separate issues going on here, the board counter-claimed about franchise fee, cut fees in street right of ways. We can deal with those issues separately. Dennis has been very clear that he wants to deal with them separately.

Pam Ellis noted that the attorneys were really made that the other board members tried to get information. Dennis told us in October that the worst case scenario was that we would pay the full bill, the worst case scenario. Pam's understanding is that the attorneys thought they had a proposal for a lower amount and that we would save people money. Pam is offended because she is someone who pays her bills. It offends her that the district refuses to pay their bill. That is not something that is desirable to me.

Dave Goodridge said as a concerned citizen, he would put on the table that you don't have a quorum and your board is clearly dysfunctional to a degree, a board of directors is always a steward of the programs they are a board for. And if this board is as dysfunctional as he is hearing, this is all a waste of time.

Pam Ellis said it actually isn't a waste of time. We need information. The law requires that you have the discussion in open session.

Dave responded that is fine, but "you have bigger fish to fry" right now.

Chris Kukulski agreed. We had various conversations. Jeff Engel is the city's appointee. I have talked to Jeff several times in the past 24 hours and whether to be here. My purpose to be here was just to share that information and frankly leave because I don't want to get caught up and be perceived that we are trying to do anything other than the offer.

Ming Cabrera agreed that that is all we are asking. Whether that is a foolish negotiation strategy or not as Tom says here, this has not been about negotiating the best settlement for the district. This has been about resolving this in a fair way because Lord willing, we are going to be working together for decades, for a century. We are your water supplier, and you serve 10's of thousands of our citizens.

David Graves said the point is it is foolish for you to hire lawyers and us to hire lawyers when we live in the city and drink the water. Why are we doing this?

Pam Ellis noted that district ratepayers are paying for the lawyers on both sides of the dispute.

Ming reiterated that this situation was created because they felt there was interference but we were never given any information whatsoever. That's where the problem is.

Pam asked what the rationale was for walking out of the meeting and not wanting to meet again until January? Chris said that things did get a little bit heated and they got a little heated over the fact that from his perspective, Dennis communicated pretty clearly, he wasn't going to give us any credit in the negotiation for the fact that we had said all along we would not charge penalties and interest. So when Dennis made that point, the negotiations went from there down. Dennis was pretty firm they were going to negotiate from the amount owed down. And so we decided that rather than have it really dissolve, we stepped away, I would say amicably. Nobody stormed out the door. But I think it might have been December 1, I said, guys, I really think please reach back by December 1 to see if we can get this thing resolved. By this time, the tempers were there and the comments were we are just not going to talk about this again until next year. Chris felt that was not going to be helpful in his opinion. He left it open hoping we could have that meeting; no meeting has been set. As of this moment, there are no additional discussions scheduled to take place between the Heights Water District negotiators and three representatives from the city.

Roy Neese said he would add to that. Just to make it clear in the negotiations because there was not offer from the district, we made it clear that every offer we had made prior was off the table and we were starting over again when we meet the next time. All offers are off the table if the district choses to come back to the table. We are starting with everything and then we can negotiate down from there. Because we already had talked about the original offer subject to council approval.

Chris clarified that he is the administrator, he makes recommendations to the council. At the end of the day, the council has to vote to approve. He does not see any opposition and he would anticipate strong support if we can get this

resolved. If we keep paying lawyers on both sides, eventually people start digging in and aren't willing to make offers on either side. That is where I believe we still stand today if we can get this thing off our books on both sides and get on frankly with for us, our big issue, is the contract.

Chris has not been secret that the contract is an issue. We work in a public agency. There are thousands of customers that the district has that keep getting added outside the city limits. They are not required to follow the land use planning rules, they are not helping to pay for streets, parks and police and fire. And of that has created another nightmare, in my opinion, for our community to deal with. And when that new interchange opens, Chris wants both to be ready. The city is the sewer. The district is the water. To have this done right. And the way we are going right now, it is not going to be done right. It will be another disaster that has to get fixed later.

Ming said we will end the discussion at this point. The city has been here discussing but they are not talking about what the negotiations were. We need to move forward; we need to do that.

Dianne did not get an answer about why it took so long and what even happened in the first place.

Jennifer Duray said the city did a conversion back in 2015. We went on line with the new conversion. The Heights has a gallon meter; the only one in our system. There was an incorrect conversion factor put in to the system so it was not converting right. Somebody missed a decimal. We don't know. We are not here to place blame or accuse you of knowing that this happened. We don't know who caused the error on the city's side. We have people we are retired now that were there. Could have been the vendor. Could have been the programmer. Why it took so long? The Heights Water District is approximately 11% of our revenue so we didn't notice a huge revenue change from the misbilling that we were doing for awhile. What we noticed, because we do audit our water and we are noticing our production of water and what we were billing was different. That is when we started looking for leaks. And that takes a long time. We finally narrowed it down to the Heights Water District.

David Graves asked, "didn't that happen in other cities." He tried to look it up and said other cities had problems with new meters and new systems. Down the road they found out there was a mistake in what they were being billed for.

Chris said it certainly is not uncommon in a system. The first thing you look for is how much water is leaking out of the system? Most would probably be shocked at how much water leaks out of the system but it does. The city of Billings literally had 500 miles of pipes in the system. For the longest time, we were looking for a leak in the system that they were not seeing. Unfortunately this is the first time we have had a calculation error or this magnitude. But it is not shocking with the one and only meter being that way.

Jennifer noted that the city has changed how they bill from cubic feet to gallons; the meters still measure cubic feet.

Chris says errors happen, nobody wants them to happen. Utilities are critically important if you are going to have equity billing to make sure you are measuring every drop you can and fairly charging the people who use it. And that is our goal here, period, is to do that. That is why in that first meeting we took full responsibility that the city is the one that messed up the formula (or the firm we hired). We did not blame the Heights for that. But it did start to get ugly quick when the approach was “shame on you, you fool”. What was shoved back at me was that if the city is that stupid, then the city should pay for this. We believe that sooner or later we could get a resolution; we just have not been able to get there. I sure hope in the near term we can so we can move on with the other bigger issues: development. Chris works with Dave Goodridge on many different projects in town. He sincerely cares about this community as a whole and its success. So we probably better leave before I say too many things.

David Graves said he appreciates the city representatives coming. Because you have the best interests of the citizens of Billings. We are trying to take care of the ratepayers here in our water district. I appreciate you guys being here, and gal. Everybody.

The meeting was adjourned at 7:15 pm.