

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

July 9, 2007

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

ROLL CALL – Councilmembers present on roll call were: Ronquillo, Gaghen, Stevens, Brewster, Veis, Ruegamer, Ulledalen, Boyer, Jones, and Clark

MINUTES – June 11, 2007 – approved as amended
June 25, 2007 – approved as presented

COURTESIES - None

PROCLAMATIONS - None

ADMINISTRATOR REPORTS – Tina Volek

- City Administrator, Tina Volek, referenced ITEM 1H1, street closures for the Railyard Ale House & Casino. She said the agenda showed the second closure date as July 16th, which was in error, and confirmed the correct date was July 15th. She also referenced a copy of a letter from Mike Schaer distributed that evening and by e-mail earlier that day asking Council to deny the street closures.

- Ms. Volek referenced ITEM L and said there was an incorrect statement on Page 4 of 6 under letter (i) of the Plan Development Agreement. She said the wording "Skyline Court Homeowners Association" should be replaced with "Zoning Coordinator."

PUBLIC COMMENT on "NON-PUBLIC HEARING" Agenda Item: 1 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.)

- MIKE SCHAER, 1109 32ND STREET, referenced his letter to Council and pointed out that he had not been made aware of the street closure on Montana Avenue for the Railyard Ale House & Casino. He said he was the owner of the parking lot on Montana Avenue that would be cut off by the 3-day street closure and asked Council to either deny the street closure or make the street closure conditional on his written approval.

Councilmember Ruegamer verified with Mr. Schaer that he had not been contacted about the street closure by the Railyard Ale House owner. Mr. Schaer said he had just found out about the events on July 4th.

Councilmember Ulledalen said Council had been very liberal about approving similar events in the past and because there had been concerns voiced about closures in the downtown area, a task group had been organized to set up criteria for approving future events. Councilmember Ulledalen said the Montana Avenue closure issue was only a symptom of a broader problem to come if a plan was not put into place.

Councilmember Stevens asked Mr. Schaer which one of the parking lots he owned would be cut off by the street closure. Mr. Schaer said it was the lot in front of the brewing company. He said the parking lot was designated for parking for patrons of the Railyard, the Eleven Café, the Q Restaurant, the Carlin Club and Hotel, and the Log Cabin Bakery.

Councilmember Boyer asked if the owner of the Railyard Ale House was required to apply with the Downtown Billings Association for the event. Mike Whitaker, Parks Director, said Lisa Woods coordinated all of the downtown events before she left the Downtown Billings Association. He said since Ms. Woods left, the Parks Department had taken over coordinating the events. He said the Railyard Ale House had applied with the Parks Department for the event.

Councilmember Stevens confirmed with Mr. Schaer that the Railyard Ale House was his tenant.

Councilmember Boyer asked Mr. Schaer if it would be a typical process for his tenants to come to him prior to putting on a large event. Mr. Schaer said it would, especially with a street closure.

Councilmember Gaghen commented there were several other events in Billings scheduled that weekend that would draw people to all areas of the City.

- CORY OLISZCAZK, 110 CRESTLINE DRIVE, said he was the owner of the Railyard Ale House and had closed Montana Avenue five previous times without any concern from Mr. Schaer. Mr. Oliszczak said 50% of the proceeds of his scheduled concerts were being donated to St. Jude's Hospital and asked Council to approve the requested closure of Montana Avenue. He said the Montana National Guard had teamed up with him, and a St. Jude's patient and family would be present. Mr. Oliszczak said he had cleaned the parking lot, cut the hedges, and done all the maintenance on the lot for the last two years.

Councilmember Gaghen asked Mr. Oliszczak if he had spoken with Mr. Schaer about the previous five events he had held. Mr. Oliszczak said the only person he had spoken with was Lisa Woods.

Mayor Tussing asked Mr. Oliszczak if he was aware one of the conditions of approval was to contact all surrounding businesses and make them aware of the event. Mr. Oliszczak said he contacted some of the surrounding businesses but did not contact Mr. Schaer.

- BRAD MCCALL, 1638 STONEY MEADOW, said he was at the meeting on behalf of BikeNet and referenced ITEM I. He said the \$36,000 donation was from BikeNet for the Main Street Underpass project, and it was the

largest single donation made by BikeNet to date. He said the proceeds were from two years of the Ales for Trails event. Mr. McCall said the donation would be a huge benefit to the City for connecting the trail system.

Councilmembers Boyer, Stevens, and Ruegamer expressed their thanks and appreciation to Mr. McCall and BikeNet for the donation.

▪ GREG KRUEGER, DOWNTOWN BILLINGS PARTNERSHIP DIRECTOR, said he would like to comment on the street closure agenda items. He said Lisa Woods was no longer the director of the DBA, and Lisa Harmon had been asked to serve as the interim director. Mr. Krueger said he would like to visit with the Parks Department about bringing the street closure approval process back through the Downtown Billings Association.

Councilmember Gaghen asked if the concert would go forward if the street closure was not allowed. City Administrator Volek advised the street closure involved one lane on Friday and two lanes on Sunday and not the entire street. Mayor Tussing commented the closed traffic lane would prohibit access to the parking lot. Mr. Oliszczak said the concert would still be held with or without the street closure.

Councilmember Boyer said she and Councilmember Ulledalen had started receiving complaints about street closures, and Montana Avenue on the weekend of Summerfair could be very busy.

There were no additional speakers, and the Public Comment period was closed.

CONSENT AGENDA:

1. A. Mayor's Appointments:

	Name	Board/Commission	Term	
			Begins	Ends
1.		Human Relations Commission	07/09/07	12/31/09
2.		Human Relations Commission	07/09/07	12/31/10

1. Unexpired term of Skip Godfrey
2. Unexpired term of Jean Smith.

B. Change Order #4, W.O. 04-13: Water Treatment Plant Maintenance Building Construction, Schedule II, Williams Brother Construction, \$34,468.00.

C. Approval of the Assignment and Transfer of the West End Hangar Ground Lease from Picacho Aviation, L.L.P. to Ted E. Whiting and Sally A. Whiting, as Trustees of the Ted E. Whiting Trust, dated November 14, 2000.

D. Approval of Downtown Revolving Loan Committee's recommendation of loan to Clock Tower Inn, LLC, for expansion of restaurant, addition of patio, and modifications to garbage and storage areas. \$40,000.00.

E. Agreement with Billings Housing Authority to fund one Police Officer for the period July 1, 2007, through December 31, 2007.

F. Acknowledge receipt of petition to vacate the north/south alley located on Lots 1A-12A, Amended Plat of a portion of Lots 1 through 12, Block 38, Town of Billings; and Lots 13-24, Block 38, Town of Billings, Billings Food Bank, Inc. petitioner; and setting a public hearing date of August 13, 2007.

G. W.O. 04-33, Lake Elmo Drive (Hilltop to Wicks Lane) Right-of-Way Acquisition:

(1) **Parcel 22:** Portion of Unit No. 1 of Imperial Park Condominium, Lot 1, Block 1, of Windsor Imperial Subdivision, Wayne A. Michel and Ella Marie Michel. \$6,100.00.

(2) **Parcel 58:** Portion of Tract 1-A of Certificate of Survey 1113, Amended Tract 1, Donald W. Bender and Madeline Bender. \$3,800.00.

H. Street Closures:

(1) The Railyard Ale House & Casino Concerts, (a) July 13, 2007, 2:00 p.m. - 10:00 p.m., closing one parking lane and one driving lane on the south side of the 2500 block of Montana Avenue; (b) July 15, 2007, 2:00 p.m. - 10:00 p.m., closing one parking lane and two driving lanes on the south side of the 2500 block of Montana Avenue.

(2) Yellowstone Art Museum Arts and Crafts Summerfair, July 13, 2007, 10:00 a.m., through July 15, 2007, 8:00 p.m., closing the driving lane on the north side of 6th Avenue North between 19th and 22nd Streets North.

(3) Big Sky State Games 5K Run, July 20, 2007, 6:00 p.m. - 7:00 p.m., beginning at the Daylis Track, north on 3rd Street West, west on Parkhill Drive, turning around at 12th Street West, east on Parkhill, south on 3rd Street; ending at the Daylis Track.

(4) Big Sky State Games Triathlon, July 22, 2007, 6:15 a.m. - 11:00 a.m., beginning at Lake Elmo State Park, right on Riveroaks, right on Lake Elmo Drive, right on Meadowlark, left on Cody Drive, right on Wicks Lane, right on Fantan, left on Siesta, left on High Sierra Boulevard, left on Wicks Lane, left on Cody Drive, right on Meadowlark, left on Lake Elmo Drive, left on Riveroaks, left on Interlachen, left on Eagle, left on Constellation, right on Riveroaks, ending at Lake Elmo State Park.

(5) Big Sky State Games Cycling Race, July 22, 2007, 6:00 a.m. - 2:00 p.m., Black Otter Trail.

I. Acceptance of Donation: Approval and acceptance of donation from BikeNet for a portion of the match for the Main Street Underpass project, \$36,000.00.

J. Resolution #07-18576 amending Resolution 07-18548 approved by City Council on April 23, 2007, for the annexation of Lots 1-5, Block 1, Western Sky Subdivision (Annexation #07-07), correcting error in the legal description.

K. Second/Final reading Ordinance #07-5418 for Zone Change #807: A zone change from Residential 6,000 Restricted to Community Commercial and Residential Professional for Tract C1, Certificate of Survey 1011, and located on the southeast corner of Zimmerman Trail and Avenue E and adopt the determinations of the 12 criteria.

L. Second/Final reading Ordinance #07-5419 for Zone Change #808: A zone change from Residential Multi-family to Planned Development, and located on North 26th Street bordered by 7th Avenue North, North 25th Street and North 26th Street and adopt the determinations of the 12 criteria. Thomas Towe and Court E. Ball, owners.

M. Second/Final reading Ordinance #07-5420 for Zone Change #809: A zone change from Public to Community Commercial, and located at the southeast corner of 14th Street West and Grand Avenue and adopt the determinations of the 12 criteria. School District No. 2, owners.

N. Second/Final reading Ordinance #5421 for Zone Change #810: A text amendment to the Unified Zoning Regulations, Section 27-601, Parking and Storage Regulations, regulating parking and outside storage in residential and some commercial zoning districts. The Zoning Commission approved Zone Change #810 with the exceptions that a permitting or similar system control use of personal recreational vehicles on residential property, Section 27-601(a)7 and Section 27-601(b)7, on June 5, 2007

O. Second/Final reading Ordinance #5422 for Zone Change #811: A text amendment to the Unified Zoning Regulations, Section 27-1502, Amendments to Chapter, Applications for map amendments. The Zoning Commission approved Zone Change #811 amending Section 27-1502(b) on June 5, 2007.

P. Second/Final reading Ordinance #07-5423 for Zone Change #812: A text amendment to the Unified Zoning Regulations, Special Review Uses, Sections 27-306, 27-601, 27-612, 27-613. The Zoning Commission approved Zone Change #812 amending Sections 27-306, 27-601, 27-612, 27-613 on June 5, 2007.

Q. Preliminary Subsequent Minor Plat of Amended Lot 1, Block 4, High Sierra Subdivision, 2nd Filing, generally located on the northeast corner of Wicks Lane and High Sierra Boulevard, Harvest Evangelical Church, owner,

conditional approval of the plat and variance and adoption of the Findings of Fact.

R. Preliminary Plat of Lot 4, Block 2, Goodman Subdivision, 4th Filing, generally located on 41st Street West between Avenue B and Avenue C. Jeff Muri, Randy Swenson, and Steve Repac, owners, conditional approval of the plat and adoption of the Findings of Fact.

S. Final Plat of MK Subdivision generally located on the northwest corner of Grand Avenue and 54th Street West, Mary Kramer, owner.

T. Bills and payroll.

- (1) June 8, 2007
- (2) June 15, 2007

(Action: approval or disapproval of Consent Agenda.)

Mayor Tussing asked for separations from the Consent Agenda.

Mayor Tussing separated ITEM 1A because there were no applications for the two Human Relations Commission positions. Councilmember Boyer separated ITEM H1, and Councilmember Jones separated ITEM L.

Councilmember Jones moved for approval of ITEM 1 with the exceptions of 1A, H1, and L, seconded by Councilmember Ruegamer. On a voice vote, the motion was approved.

Councilmember Jones moved to table ITEM 1A indefinitely, seconded by Councilmember Boyer. Councilmember Ulledalen said the Human Relations Commission members were appointed less than a year ago and asked why they were resigning. Mayor Tussing said the resignations he received from the individuals stated they did not feel welcome on the Commission and were not accepted as part of the group. Mayor Tussing said he would forward copies of the resignations to Council. The motion to table ITEM 1A indefinitely was unanimously approved.

Councilmember Jones moved for approval of ITEM H1, seconded by Councilmember Brewster. Councilmember Boyer stated she was concerned about the lack of communication and the closure of Montana Avenue on that particular weekend, so she would not be supporting it. Councilmember Stevens said condition #1 was contacting all businesses to make them aware of an event, and events were being approved before that was being done. She said she felt surrounding business owners should have the opportunity to protest an event prior to Council approval. City Administrator Volek advised there was currently no policy or procedure for event approval, and Staff would be working on one. Councilmember Stevens asked Ms. Volek if a council initiative was necessary; and Ms. Volek said an initiative would be fine but staff would be working on it anyway. Councilmember Veis said the application stated submittal should be made 60 days prior to the event, and the Railyard application was submitted approximately 30 days prior to the event. He asked why they were allowed to

move forward when they did not make the 60-day deadline. Parks Director Mike Whitaker stated there was a mix-up in communication, and they had received approval on prior events in less than 60 days. Mr. Whitaker said it was decided to allow them to move forward as quickly as possible. Councilmember Ruegamer said he planned to amend the motion to make the street closure conditional upon the approval of Mr. Schaer, but said he was concerned other businesses would be affected, so he would be voting against it. Councilmember Stevens pointed out the application stated that application "should" be made at least 60 days in advance and not "shall". Councilmember Gaghen said she felt there was merit in having the Downtown Business Association involved in approval of the street closures, and it would alleviate some of the burden on the Parks Department.

Councilmember Boyer asked Mr. Krueger if street closure approvals were to come back through the Downtown Billings Association, would they contact the business owners. Mr. Krueger said they would.

Councilmember Brewster said one of the concerns being discussed was the parking lot, which would not be available anyway. He said the real issue was the one lane street closure on Friday evening and the two lane street closure on Sunday. He said he felt the event was for a good cause and was good for downtown.

Councilmember Veis asked Mr. Schaer if the parking lot could be closed if the street closures were not approved. Mr. Schaer said the attorneys were working on the issue, and he did not feel his parking lot should be closed. Councilmember Veis asked Mr. Schaer for an estimate of the number of cars that would use the parking lot during that time. Mr. Schaer said on Saturdays there are customers of the Log Cabin Bakery and the McCormick Café that use the lot, but he generally did not keep track. Councilmember Veis asked Mr. Schaer how many cars would park in the lot on a typical Friday afternoon. Mr. Schaer said the lot was open to all customers of the Log Cabin Bakery, McIntosh Art, Toucan Gallery, the Q Restaurant, and the Carlin. Mr. Schaer said with the parking lot closed, all of the people going to the Railyard would be taking up space in his other parking lots. Mr. Schaer added there were two other downtown concerts scheduled for that Friday night at the same time 150 feet apart that had been scheduled and advertised since last fall.

Councilmember Stevens said the issue was only the street closure and not the closure of the parking lot. She said the parking lot closure was a civil matter between Mr. Schaer and his tenant.

Police Officer Mark Cady said he reviewed the street closure request and felt with the large volume of pedestrian traffic crossing Montana Avenue to get to the concert, the lane closures would create a safety buffer zone and prevent someone from getting run over.

Councilmember Gaghen questioned the scheduling of two rock concerts at the same time, and the noise ordinance restrictions. She felt there could have been better coordination. Officer Cady said they had measured noise levels of downtown band concerts in the past, and the regular traffic and train noises were louder than the bands.

There was no further discussion. The motion to approve the Montana Avenue street closures for the Railyard Ale House events failed. Councilmembers Gaghen, Stevens, Ruegamer, Ulledalen, Boyer, Jones, and Clark and Mayor Tussing voted “no”.

Councilmember Jones moved for approval of ITEM L, seconded by Councilmember Clark.

Councilmember Jones said the minutes of June 25, 2007, reflected the change was to B1(a) of the Agreement, and he thought the change was to B2(a). He said he was not sure if he was reading it wrong and asked Attorney Brooks if he should amend the current document and leave the minutes as printed. Attorney Brooks said that would be the most appropriate way to do it.

Councilmember Jones moved to change B2(i) to read “Zoning Coordinator” rather than “Skyline Court Homeowners Association”. He said there were actually two different areas of the Agreement where “Skyline Court Homeowners” needed changed to “Zoning Coordinator”. Mr. Jones said B2(a) had been changed but B2(i) had not. Planning Director Candi Beaudry said she understood at the first reading that the Council agreed the Homeowners Association could consider and approve; but the approval would not be final without the Zoning Coordinator’s approval. She said she thought Council approved B2(i) as *“any use not clearly permitted by this section must be approved in advance by the Skyline Court Homeowners Association, provided the Zoning Coordinator may not approve any use not consistent with the intent”*. She said the Homeowners Association would approve the use, but the Zoning Coordinator would make sure the use was consistent with the intent of the Zoning Regulations. Councilmember Jones said “Zoning Coordinator” should replace “Association” in B2(i). He said the record needed to show the first change was to B2(a), and the second change was to B2(i).

Councilmember Boyer said she was concerned with the involvement of the Skyline Homeowners Association. She said she still had concerns with the wording in the Agreement.

Councilmember Ulledalen said he supported Ms. Beaudry in leaving the Skyline Court Homeowners Association in the wording and including the Zoning Coordinator. He said it kept the Homeowners Association actively engaged, which was critical.

Councilmember Jones said he felt the sentence in B2(i) needed to be reworded and asked Ms. Beaudry if there was a time limit for approval of the Agreement. Ms. Beaudry said there was no time limit. Councilmember Jones asked to postpone approval to give Staff time to re-word the sentence. Councilmember Stevens offered a suggestion for the reading. She suggested *“provided the Zoning Coordinator only approve uses consistent with the intent of a section”*. Councilmember Jones said that wording would be sufficient.

There was no further discussion on the motion to approve the amendment to B2(i). The motion was unanimously approved.

There was no further discussion on the original motion.

Councilmember Jones moved to amend B2(a) to leave as it was in its form in the current Agreement, seconded by Councilmember Stevens. Mayor Tussing

confirmed with Councilmember Jones that the current wording was correct, and the minutes only reflected the wrong section. Councilmember Jones confirmed that was correct.

Councilmember Ruegamer asked Ms. Beaudry for the difference between Residential RMF and Planned Development. Ms. Beaudry said Residential Multi Family RMF allowed for multi-family units based on square footage of the parcel. A Planned Development could be designed by the owners of the parcel to create their own type of zoning regulations, and the Plan Development Agreement is the controlling document.

Councilmember Gaghen confirmed with Ms. Beaudry that the Plan Development Agreement could not be altered without extra steps and approval by the Council. Ms. Beaudry said that was correct.

There was no further discussion. The motion was approved. Councilmember Brewster voted "no".

Mayor Tussing asked for discussion on the motion to approve ITEM L as twice amended. The motion was approved. Councilmembers Stevens, Clark, Brewster, and Jones voted "no".

REGULAR AGENDA:

2. PUBLIC HEARING AND RESOLUTION #07-18577 approving and adopting the budget amendment for Fiscal Year 2006/2007. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) City Administrator Volek said Staff had no presentation but was available for questions. The public hearing was opened. There were no speakers. The public hearing was closed.

Councilmember Boyer moved for approval of ITEM 2, seconded by Councilmember Ruegamer.

There was no further discussion. On a voice vote, the motion was approved.

3. PUBLIC HEARING AND FIRST READING ORDINANCE for proposed amendments to City Code Section 6-1200 modifying allowable driveway widths, curb cut locations from an intersection, and curb cut separation on arterial roads. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) Public Works Director Dave Mumford advised the Homebuilders Association had brought forward concerns about driveway widths meeting and matching up with the new homebuilding design standards. He said Public Works looked into the policies of 13 other cities and discussed the concerns with the Traffic Control Board and DPARB. He said the design standards being presented for approval had been accepted by the Homebuilders Association and the Traffic Control Board; and no comments against them had been received from DPARB.

Councilmember Stevens asked if there were any downsides to the changes. Mr. Mumford said there were not, and the standards matched those of other communities.

Councilmember Boyer said she appreciated Staff researching other cities because it was very helpful to know what other communities were doing.

The public hearing was opened. There were no speakers. The public hearing was closed.

Councilmember Ulledalen moved to approve ITEM 3, seconded by Councilmember Stevens.

There was no further discussion. On a voice vote, the motion was approved.

4. 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. The public comment period was closed.

Council Initiatives

- Brewster: **MOVED** that Council study and consider changing the requirement for streets, curb, gutter, and sidewalk in subdivisions with unimproved roads older than 15 years, seconded by Councilmember Veis.

Councilmember Brewster said there were a lot of subdivisions with unimproved, gravel roads. He said the costs of bringing the unimproved streets up to code were prohibitive to the property owners, so they would never vote in favor of an SID. Councilmember Brewster said he would like to allow the older subdivisions to put an SID together to pave just the street to eliminate the ongoing maintenance of the gravel roads. He said he felt if the city allowed paving a street without curb, gutter, and sidewalk, a lot of property owners would approve an SID.

Councilmember Boyer asked Mr. Mumford if it would be an option. Mr. Mumford said it would be a subject that would need review. He said drainage could be a problem. He said the option had not been looked at in a long time, and he would not be against looking into the standards of existing streets.

Councilmember Ulledalen asked if Councilmember Brewster had any specific neighborhoods in mind. Councilmember Brewster said there were a number of neighborhoods in the Heights; an example would be off the north end of Lake Elmo Road. Councilmember Brewster said he was not suggesting the City rush out and start now; he would just like Staff to look into it as a viable solution to improving some of the gravel streets.

Mr. Mumford advised the same request came from all parts of the City. He said the entire City had streets that were asphalt and chipseal on top of dirt.

Councilmember Ronquillo said there would be a concern with property owners on Ryan Avenue with septic tanks in the front yards. He

said additional drainage would cause the tanks to fill up and cause more problems. Mr. Mumford said drainage could be addressed with different methods.

Councilmember Ulledalen said “one size did not fit all”, and the City would need to take a good look at all alternatives.

There was no further discussion. On a voice vote, the motion was approved.

ADJOURN – The meeting was adjourned at 7:30 p.m.

(NOTE: Additional information on any of these items is available in the City Clerk's Office)

**Visit our Web site at:
<http://ci.billings.mt.us>**