

# City Council Work Session

October 20, 2008

5:30 PM

Community Center

## ATTENDANCE:

**Mayor/Council** (please check)  Tussing,  Ronquillo,  Gaghen,  Pitman,  Veis,  Ruegamer,  Ulledalen,  McCall,  Astle,  Clark.

**ADJOURN TIME:** 9:00 p.m.

## Agenda

<b>TOPIC #1</b>	<b><i>Public Comment</i></b>
<b>PRESENTER</b>	
<b>NOTES/OUTCOME</b>	

- There were no speakers

<b>TOPIC #2</b>	<b><i>Bench Boulevard</i></b>
<b>PRESENTER</b>	Dave Mumford
<b>NOTES/OUTCOME</b>	

*Electronic record not available for the beginning portion of the meeting. Bullet points are from notes taken during the meeting.*

- Public Works Director Dave Mumford reviewed the project and its history.
- Councilmember Veis asked if MDT wanted the City to be responsible for the entire match because all their money was tied up with Airport Road and Shiloh Road.
- Mr. Mumford responded 'yes'.
- Councilmember Veis stated that the current intersection was not horrible. He asked what we could get for a \$1.6 million improvement.
- Mr. Mumford said it would not be much except one more leg on the road.
- Councilmember Ulledalen asked about the option of doing nothing.
- Mr. Mumford explained that the Bench connector benefitted about 6000 people on the east side of Main, MetraPark and a few people north of the city and those who would use Bench instead of Main.
- Councilmember Astle asked if the County was asked if they would help pay for the road.
- Mr. Mumford advised the County offered to donate right-of-way but he was waiting to talk with them until after discussion/direction from Council.

- Councilmember McCall asked if PCC would reconsider the project if the contract was void.
- Mr. Mumford said not yet but they would need to be addressed.
- Mr. Mumford reviewed options and said the last option was to convert 4<sup>th</sup> and 6<sup>th</sup> to two-way streets and then build a fly-over from 6<sup>th</sup> to Swords Bypass to Aronson. He stated that both arterials had excess capacity, so it should work. He said his recommendation was to evaluate this option, and to bring Yellowstone County into funding the match because the street would benefit county residents and MetraPark.

*The remainder of the meeting was recorded.*

Mr. Mumford said cancelling the project could result in reimbursement to the Federal Highway Administration of \$600,000 for what was already spent on the project.

Councilmember Pitman stated that even though it was stated that 6000 people lived on the east side of Main Street, they were actually more impacted by the completion of Aronson. He said the actual impact of the Aronson project was not really known yet.

Mr. Mumford stated there was an option to consider before giving up on that project. He explained that the Aronson connection changed the dynamics on the west side of the Heights, but the problem was that even though it was a great way to leave the Heights, people could not get back home the same way so it forced them back to Main Street.

He said discussion was held with the State and Federal Highway Administration about a change of scope with the consultant and the State agreed to do all the modeling for free. He said the option was to convert 6<sup>th</sup> Avenue to a two-way street and create a two-way connection of Aronson on the west side of Main Street. He said that allowed people on both the west and east side to get where they needed to go without having to use Main Street. He noted that option had never been considered because Aronson was not available to look at. Mr. Mumford reviewed the route for that option and noted that a one-lane grade separation could be required.

Councilmember Gaghen stated that some business owners in the area favored having 4<sup>th</sup> and 6<sup>th</sup> Avenues as two-way streets so she did not think that would be a negative idea. Mr. Mumford stated that converting both streets would provide more access to MetraPark.

Councilmember Ulledalen said it seemed like eastbound traffic relief would be provided by changing those streets to two-ways. Mr. Mumford agreed. He stated that one problem was that no matter what was planned, 4<sup>th</sup> Avenue would remain a congestion point to access the Heights.

Councilmember Veis asked if a new at-grade intersection would be needed if the Aronson expansion was done. Mr. Mumford responded that if the east side was done, something would have to be done to get traffic across. He added that if the Bench connector went east, something would be included to allow MetraPark traffic to go straight across. Councilmember Veis stated that would expand the scope to complete the Aronson connection and the at-grade intersection would be needed. Mr. Mumford explained they hoped it would provide an access on the west and would still continue to do one on the east to benefit Main Street. Mr. Mumford said up to \$17 million in matching funds could be spent.

Mr. Mumford advised that his recommendation was to evaluate it before any decision was made. He said another recommendation was to develop a new project contract with the State, City and County that provided for a three-way split of the matching funds.

Mr. Mumford reviewed the funding. He said the City incorrectly assumed that the State matched the entire \$17 million, so the \$1 million the City set aside was put toward other projects to keep them moving. He stated that the City was later informed that the State's match was only for the portion of Bench that was north of Lake Elmo.

Councilmember Veis asked what MDT's response would be to the proposed change. Mr. Mumford said the State was only considering Lake Elmo to Hilltop. Councilmember Veis asked Mr. Mumford what he thought the State's response would be about sharing the cost of the matching funds. Mr. Mumford said that was brought up when he was in Helena and the State did not offer to pay it, nor did they say it was out of the question. He said the Federal Highway Administration was open to it because they realized that all across the country there were projects that had matching funds that were spent and cities and states no longer had the money. He said the Federal Highway Administration personnel that were there understood about delays in projects. Mr. Mumford noted that the project would expire in a few years.

Councilmember McCall asked Mr. Mumford to play devil's advocate about the County's response. Ms. Volek said she visited with Commissioner Reno and his answer was that they wanted a bridge. Mr. Mumford said if they contributed the right-of-way portion, it would go toward their match.

Councilmember Ulledalen said he felt the first two options made no sense. He said the no-build option did not make sense either, so the only option worth pursuing was the Aronson to 6<sup>th</sup> connection. He said it seemed like the County could build a bridge if they wanted one because it was their land and their project. Mr. Mumford advised he stated at the meeting that the City could decide it was cheaper to spend \$600,000 to get out of a project than \$1.6 million to build something that did not work. He noted that the FHWA people understood that but the State did not. Mr. Mumford said the City's attorneys did not believe the contract required repayment of the money because of the way it was originally written.

Councilmember Ulledalen asked if another meeting with the County was needed. Mr. Mumford said if Council was interested in at least looking at the 6<sup>th</sup> and Aronson connection, the County wanted a meeting with just him and Ms. Volek. He suggested completing the study which would take four or five months to understand everything and to get state and federal approvals. He said it would then be brought back to Council, the Planning Commission, the Planning Department, the Technical Advisory Commission, and Policy Coordinating Committee. He said the final step would be a contract but he would recommend not doing anything with it until it was known if the project would proceed.

Councilmember Astle asked if the estimated costs would include converting both 4<sup>th</sup> and 6<sup>th</sup> Avenues to two-way streets. Mr. Mumford answered that it would.

Councilmember Ulledalen stated that accomplished a lot of goals of the Strategic Plan of improving transportation linkages.

Councilmember Veis asked if MDT would do the Lake Elmo to Hilltop project if the City moved forward with the 6<sup>th</sup>/Aronson connection. Mr. Mumford said they would.

Councilmember Veis said he would like to see what projects within the CIP would be delayed. Mr. Mumford said that would be provided when the costs were presented.

Councilmember Pitman asked if the Airport Road construction currently underway was able to handle two-way traffic from 6<sup>th</sup> Avenue. Mr. Mumford said it was two-way most of the way to Main and it would just be a matter of extending it further. Councilmember Veis asked if the traffic model would take the new Airport Road into consideration. Mr. Mumford said it would all be considered.

Mayor Tussing asked if anyone objected to allowing Mr. Mumford and Ms. Volek to meet with the County. Mr. Mumford said the State felt it did not want to move forward with the project until it was ready to move forward with the rest of it no matter what. He said it was almost a three-year wait for them to get through their process of design, right-of-way acquisition and environmental process for the section between Lake Elmo and Hilltop.

Councilmember Ronquillo said he met with a County Commissioner the week before who said they felt they were left out of the realm so they wanted three different times to make sure all three commissioners could attend. Mr. Mumford advised they had spoken at the policy committee meetings and had advised them the City was trying to figure something out. He said they wanted an answer before he had direction from the Council. Councilmembers Ulledalen and Pitman volunteered to attend a meeting with Commissioners as well.

Councilmember Ronquillo suggested inviting the County Commissioners to a work session to discuss that project and representation on the PCC. Councilmembers agreed.

<b>TOPIC #3</b>	<b><i>Sexually-Oriented Business Ordinance</i></b>
<b>PRESENTER</b>	Candi Beaudry
<b>NOTES/OUTCOME</b>	

Planning Director Candi Beaudry advised the interim ordinance was adopted in June, 2008, to deal with a deficiency in the sexually-oriented business ordinance that allowed nude or semi-nude dancing in places that did not serve alcohol. She said the interim ordinance provided a moratorium on that type of business and was due to expire December 23. She said if the proposed amended ordinance was approved, something would be on the books and effective by December 10. She said the new ordinance was reviewed by the legal department.

Ms. Beaudry explained that the current code allowed businesses that met the current definition to be in four zoning districts: central business, highway commercial, controlled industrial and heavy industrial. She said it also required a separation from certain other uses as well as an existing sexually-oriented business.

Ms. Beaudry reviewed the proposed amendments. She noted that one significant change was to allow those businesses in controlled industrial and heavy industrial-zoned areas only. She advised that non-conforming businesses had four years to comply with the location requirements. Councilmember Gaghen asked if that had to be strictly adhered to. Ms. Beaudry said it did. Councilmember Clark asked if that was a state law. Ms. Beaudry said it was from a City lawsuit when the ordinance was first adopted. She said that amortization period was challenged by Terry McKay and the City won that lawsuit. She said the Court determined that four years was a reasonable time to conform.

Ms. Beaudry displayed a map of the zoning districts where sexually-oriented businesses would be allowed under the new ordinance. Ms. Beaudry pointed out that there were five

existing sexually-oriented businesses and three of them would be non-conforming with the ordinance amendment.

Ms. Beaudry advised that the Zoning Commission recommended approval of the amended ordinance.

Councilmember Veis asked how much work was performed on the definition of an adult cabaret since the interim ordinance was passed. Ms. Beaudry responded that she did not know because Planner Nicole Cromwell worked on it steadily and she was out of the office for a month. Ms. Volek advised that the proposed ordinance was included in the October 27 agenda packet distributed that evening.

Councilmember Clark asked what the ordinance did to Alberta Bair Theater and some of their programs. He said that was the reason the Central Business District was included in the allowed areas of the original ordinance. Ms. Beaudry reviewed the definition of adult cabaret which indicated the nude dancing was regularly featured and said she did not believe that applied to the ABT programs.

Councilmember Ulledalen said that the 1992 ordinance was thought to have been sufficient when it was adopted. He asked if Ms. Beaudry was aware of any issues that other cities or areas were dealing with that Billings should anticipate. Ms. Beaudry responded that other cities were dealing with the same things as Billings. Ms. Volek said she was aware there was a clause in some city ordinances that referenced artistic expression and a business was opened under that premise.

Councilmember McCall stated there were times when a proposed ordinance or piece of work was thought to be foolproof. She asked if anyone outside of staff ever reviewed ordinances. Ms. Beaudry said not outside the City's legal department. City Attorney Brooks advised that other city attorneys had discussed it. He advised there were two things to be careful about; one was the four-year amortization and the other was that findings on ordinances referred to as secondary effects of the establishments had to be reasonably accurate and recent. He noted that case law indicated that six months to a year was reasonable amortization.

Ms. Beaudry explained that resources were available to assist with the ordinance development and other city ordinances were reviewed to find common threads to make sure the points were covered.

Ms. Volek noted that the item would be on the October 27 Council agenda.

<b>TOPIC #4</b>	<b>CTEP Project Overview</b>
<b>PRESENTER</b>	
<b>NOTES/OUTCOME</b>	

Transportation Planner Scott Walker said his topic was purely informational – the 2008 Community Transportation Enhancement Program. He said a list of projects requesting CTEP funding was presented to Council each year. He distributed the list of 2008 proposals which contained five projects that totaled around \$2.2 million. He said they were informed about 10 days ago that three projects currently in the CTEP program were experiencing funding difficulties. He said the technical advisory committee suggested funding the Shiloh Road Landscaping project and Swords Park project at about \$500,000 each.

Mr. Walker said three 2007 projects that were short funding were Bannister Drain, Lampman Strip Park and Main Street Underpass. He noted those projects were put into the CTEP system in 2007 but approved by Council about 1-1/2 years ago.

Mr. Walker said there were options. He said the three projects could be funded by using the five funding sources of past allocations (unspent), Swords Park Engineering, Schedule II (Main Street), Project reallocation (Jackson St.), and the current 2009 allocation. He said the three projects were already in the system and the Main Street Underpass was bid and the bid has to be acted on by the end of November.

Mr. Walker advised he called TAC regarding the cost overruns for advice about the projects. Councilmember Ruegamer said it appeared that an additional \$1.4 million was needed for the projects. Mr. Walker responded that approximately \$2.5 million was needed for the three 2007 projects currently planned and by utilizing the current CTEP funds, they could be funded and still have approximately \$100,000 to spend toward the 2008 proposed projects. Councilmember Clark asked about the unspent allocation of \$1.6 million. Mr. Walker explained that it was unspent in the City's and County's CTEP funds and the fund also accrued some interest.

Councilmember Ronquillo asked about the reallocation for the Jackson Street project. Mr. Walker said he was told by the Engineering Department that the project fell into the TIF District and there were options to improve the whole area through that. He added that some of the property owners could not afford the 50% match for the CTEP project.

Councilmember Ulledalen asked if Swords Park Phase II was going to be concrete or asphalt and what the price difference was. Mr. Walker said he did not know the prices because it was not a live project yet but the proposal listed it as hard surface so the more beneficial option would be selected.

Councilmember Ruegamer said it appeared the current CTEP projects cost \$2.5 million and \$2.6 million was available but that included some of the 2009 allocation. He noted that \$100,000 was available to apply to the five 2008 projects. Mr. Walker said those 2008 projects could be reallocated the next program year.

Councilmember Veis asked about the Swords Park Engineering. Mr. Walker explained it was to engineer the project for Phase II. He said there was some money left from the previous year and he had hoped to get a jump on the project but was informed by CTEP that the whole project had to be bid, not just a portion of it.

Councilmember Veis asked if the Main Street Schedule II would return to the mix for 2009. Mr. Walker responded it was a PCC decision.

Councilmember Veis commented that the 2009 allocation basically paid for the overage of the Main Street Underpass project because the allocation was \$789,000 and the overage of that project was \$700,000.

Councilmember Ulledalen asked for a description of the Bannister Drain project. Ms. Beaudry explained it was a connection south from King Avenue West to near Gabel Road behind the Big Bear and Best Buy stores.

Mr. Walker advised he had a lively discussion with County Commissioners earlier that same day and they were concerned about cost overages and suggested revisiting that at the PCC. Mayor Tussing commented that if the Commissioners wanted the issue on the PCC agenda, they would all show up and the Council needed to have a strong idea about it beforehand. Ms. Volek reminded Council the item was on the October 27 meeting agenda.

Councilmember Ulledalen said it seemed if the money wasn't available, the project such as Main Street Tunnel would have to be delayed. Mr. Walker stated that there was approximately \$1 million of required match needed for the Main Street project. He said BikeNet would help out with the match requirement so there was enough match to fund all three of the projects discussed even with the increased CTEP dollars.

Ms. Beaudry advised she wanted to expand on what the Commissioners said that day. She said they wanted to look at everything as a whole instead of going with either of the recommendations. Councilmember Veis asked what changed from what was recommended last year and what would be recommended. Ms. Beaudry said the current recommendation was to not go forward with any 2008 submittals. Councilmember Veis asked why anything already submitted had to be re-prioritized. Ms. Beaudry stated the Commissioner's comments were that the underpass was awfully expensive. Mr. Walker advised that three bids were received for that underpass project and they were within \$200,000.

Councilmember Veis asked why the Schedule II part of the Main Street project would not be completed, especially since it was \$107,000 and \$100,000 should remain after the three projects were completed. Mr. Walker responded that everything was considered to be able to move forward with the projects even though the 2008 projects would never go away. Councilmember Gaghen asked how long projects remained in a priority capacity. She cited the 25<sup>th</sup> Street Bridge that had been on the list for a very long time and a lot of people were skeptical of the practicality of it. Mr. Walker explained that it stayed on the list until it was removed.

Councilmember Clark asked what project could be funded with the \$100,000. Mr. Walker noted that the Earl Guss Park Trail project estimate was \$101,000 that connected the existing bridge at MetraPark to the Main Street underpass.

Councilmember Veis stated that the Council's recommendation would probably be to fund the overages of the three projects with the new allocation.

Councilmember McCall asked Mr. Walker to spell out the acronym to allow the public to understand what CTEP was.

<b>TOPIC #5</b>	<b><i>Master Site Plan Review Process</i></b>
<b>PRESENTER</b>	<b>Wyeth Friday</b>
<b>NOTES/OUTCOME</b>	

Planning Manager Wyeth Friday informed Council that a proposed text amendment would be presented for first reading at the October 27 meeting. He explained that it was an amendment to several sections of the zoning code to implement a master site plan review process. He said the process was a result of a recommendation from the ICC study of the Building Division. He said the idea was to improve communication among the departments as they reviewed projects proposed by developers. He said it also included the concept of a review meeting up front to review the project with all the departments involved so developers could make modifications before moving to the building permit review process.

Mr. Walker explained that an internal staff committee spent the last year looking at implementation of recommendations from the ICC study. He said that in addition, when the Council adopted the Planning Division's FY 2009 budget, a master site plan review process was included.

Mr. Friday explained that the amendment defined certain types of development subject to that type of review. He said residential and commercial condominium developments were included, as well as commercial developments that included common private facilities shared by buildings or blocks. He said the idea was that both residential and commercial projects on a single lot with multiple units/buildings, shared accesses, utilities and features that were subject to City site development requirements, zoning, fire, utility issues, etc. were looked at as a whole to move them forward expediently. Mr. Friday provided examples of projects that fit into that definition and would have been in the master site plan review process.

Mr. Friday advised that the Zoning Commission reviewed the text amendment and recommended approval of it. He said the basis for that recommendation was it met the ICC Building Division Operations Appraisal recommendations, implemented the piece of the planning budget proposed, and that it would expedite some development review processes and more information would be provided to developers up front to minimize challenges encountered throughout the project. Mr. Friday stated that code required the Planning Department to sign off to make sure condominium developments complied with zoning before obtaining ownership documents. He said that responsibility was always there, but they considered zoning only and the amendment allowed the Planning Department to facilitate the process in a way the developer and staff understood. He said the proposal that Council would review October 27 did not include a fee but one would be proposed and presented to Council at a later date in the form of a resolution. He stated that staff was reviewing the fee structure and format. He noted that he had reviewed the amendment with DPARB and the Home Builders Association.

Ms. Volek noted that part of the Planning Department's current year budget was reliant on the collection of the fee for that process, although less would be collected than anticipated because it took longer to get to that stage than expected.

<b>TOPIC #6</b>	<b><i>MT League of Cities and Towns Meeting</i></b>
<b>PRESENTER</b>	
<b>NOTES/OUTCOME</b>	

Councilmember Ulledalen explained he proposed a report because a handful of Councilmembers went to the meeting and he felt it was a good idea to share experiences. He stated he attended a breakout session that was to be hosted by Dan Bucks of Department of Revenue but due to a death in the family Mr. Bucks was unable to attend. Councilmember Ulledalen said a couple of interesting comments came from that session regarding centrally assessed property. He said Department of Revenue advised that flat appraisals were to be expected on those properties due to national trends. He added that DOR also suggested quarterly meetings with local governments. Councilmember Ulledalen stated that there was a problem with the assessments not being done until August which got into the tight timeframe to get them included for the next assessment. He said the City of Bozeman had discovered several errors and was concerned about that. Councilmember Ulledalen said there was a new Deputy Director who was also on the Helena City Commission which could be an interesting perspective.

Councilmember Ulledalen reported that he attended the breakout session titled “Making Sense of Wastewater Regulations” which got into issues similar to what was being experienced with the Yellowstone. He said he thought the standards were imminent but he was told that was years away. Councilmember Veis commented it would depend on pushback when rule recommendations were made. Ms. Volek commented that she and Al Towlerton served on a committee that looked at that and was working with DEQ. She said there was a great deal of concern among cities like Helena because the lake they drew the water from was heavily polluted by the subdivisions with septic tanks in the county. She said it would depend on how large the areas were drawn and the regulations. She noted that would be monitored. Councilmember Ulledalen said comments were made regarding drainage and differences in basins.

Councilmember Ulledalen referenced the breakout session regarding reapportionment. He said that was an issue regarding reapportioning the different house and senate districts. He said the person who led the session explained that the decisions would be political and if not politically motivated and driven, the legislature would make them politically motivated and driven.

Councilmember Ulledalen reported that Jeff Essman and Bruce McIntyre made a presentation on local option taxes. He said the same issues that had been heard came up during that discussion.

Councilmember Ulledalen reviewed the workshop on innovative approaches to zoning by a consultant from Denver.

Councilmember Clark commented it was the largest ever attendance of about 400 people. He said TIF Districts were discussed and a program was presented. He said representatives from Missoula reported they were transitioning from large TIF districts to smaller ones and that made more sense for them.

Councilmember Ruegamer added that almost half of the cities in the state were represented. He said he learned from the tourist tax issue that there was not a city in the state that did not need money. He added that Butte did not intend to participate in the tax. Councilmember Gaghen said the recurring plea was that it had to be shared with the small rural districts.

Councilmember Ulledalen advised that the Montana Chamber announced it would not support a local option tax of any kind but would support overall tax reform.

Ms. Volek referenced a presentation on health care and health insurance. She said the discussion indicated that statistics needed to be demanded from health care providers about effectiveness of service and cost, which was probably the only way to control health care costs.

Ms. Volek advised she learned that Bozeman was not using biodiesel currently. She said their use was sporadic and they relied on a partnership with Yellowstone National Park and do not always get the fuel.

Councilmember McCall commented that the past legislative sessions pushed for transparency in health care costs and performance and she expected more of that would occur.

## Additional Information:

Mayor Tussing announced that the Council would adjourn to Executive Session. He said City Administrator Volek rightfully requested a closed meeting for the purpose of her evaluation but no decisions regarding financial compensation would be made that night.

*A short break was taken 7:25-7:30 p.m.*

The Council adjourned to Executive Session at 7:30 p.m. The regular meeting resumed at 9:00 p.m. and immediately adjourned.