

REGULAR MEETING OF THE BILLINGS CITY COUNCIL
February 9, 2009

The Billings City Council met in regular session in the Council Chambers located 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. Councilmember Gaghen gave the invocation.

CALL TO ORDER – Mayor Tussing

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

MINUTES – January 26, 2009, approved as distributed

COURTESIES – Councilmember Ronquillo recognized Matt Willoughby who was selected as the Montana Boys and Girls Club Youth of the Year. Mr. Willoughby was applauded for his activities and achievements.

PROCLAMATIONS

- Designation of Billings' Brand: Montana's Trailhead
- National Engineers Week, February 15-21, 2009

ADMINISTRATOR REPORTS

- Ms. Volek advised that a memo from her regarding Item 3, the federal legislation priorities, was placed at the desks that evening and also available in the Ex-parte Notebook at the back of the room for public viewing.
- Ms. Volek reported that a protest letter from John Laudon for Item 5 was placed at the desks that evening and also available in the Ex-parte Notebook at the back of the room for public viewing.
- Ms. Volek advised that an email from Mike Penfold and a draft bill were also placed at the desks that evening and available in the Ex-parte Notebook. She said the bill concerned the scenic byways pilot program that Mr. Penfold discussed at a recent work session. She added that Mr. Penfold requested an indication of support from the Council. Ms. Volek said Assistant City Administrator Bruce McCandless had reviewed the bill and had information to share at that time or later in the meeting. Mayor Tussing suggested reviewing it under Council Initiatives.

Mayor Tussing announced that there was an error in an article in the Sunday newspaper regarding a hearing for new street lights. He stated that he had not seen the agenda for that evening's meeting when he talked with the reporter and thought a public hearing would be held that night, but it was scheduled for February 23. Mayor Tussing said public comment would be allowed during the Public Comment period at the end of the meeting if anyone wished to comment at that time.

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: 1 and 2 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.)

- **Randy Vogel, 5953 Lazy Lane**, said he represented the Billings Police Foundation and its many community supporters. He explained that Chief St. John came to them a few weeks ago with a need for the Billings Police Department and the Foundation stepped up to that need. He presented a check for \$6,983 to Police Chief St. John for two light bars, related equipment and two radars for patrol vehicles. Chief St. John complimented the Foundation for its persistence and resiliency. He said they were steadfast supporters of the Police Department and the donation would help with equipment needs. He encouraged approval of Item N.

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

CONSENT AGENDA:

1. A. Bid Awards:

- (1) W.O. 06-10, Bannister Drain Trail. (Opened 1/27/09) Recommend CMG Construction, Inc., \$365,503, pending CTEP approval.
- (2) W.O. 08-15, Lampman Strip Park Trail. (Opened 1/27/09) Recommend CMG Construction, Inc., \$243,809, pending CTEP approval.

B. Change Order #2, W.O. 07-16, Shiloh Road Corridor Water and Sanitary Sewer System Improvements, COP Construction, \$441,700 increase, and 24 additional days.

C. Professional Services Contract for W.O. 08-22, Wastewater Treatment Plant Disinfection System Improvements, HDR Engineering, Inc., not to exceed \$844,600.

D. Agreement with Canyon Creek Ditch Company, Inc., for ditch crossing for W.O. 07-16, Shiloh Road Corridor Water and Sewer System Improvements, \$500 paid by COP Construction.

E. Settlement Agreement and Release of Claims, Moira Murphy D'Alton; \$125,000.

F. Amendment to 2009 Transportation Improvement Program.

G. Easement requests from Northwestern Energy for electric power line relocation in (1) Ann Ross Park and (2) Shiloh drain property for the Shiloh Road Project, at no cost to the City.

H. Sidewalk Easements for W.O. 06-10, Bannister Drain Multi-use Trail from King Avenue West to S. 29th Street West, at no cost to the City:

- (a) Pierce Flooring
- (b) Big Sky Florists Supply

I. Sidewalk Easement for W.O. 07-22, King Avenue East Multi-use Path along the south side of the City-County drain from South Billings Center LLC, at no cost to the City.

J. Street Closure: St. Vincent Healthcare Foundation World Water Day Walk, 8 a.m.-12 p.m., March 21, 2009, commencing at the MSU-B Student Union Building, west on Marbara Lane, south on Virginia Lane, west on Highland Park Drive, south on Raymond, west on Poly Drive, north on Upper Highwood Drive, east on Park Lane, south on Virginia Lane, across the MSU-B campus, through the N. 27th Street Tunnel, around Mountain View Boulevard, through the N. 27th Street Tunnel, and back to the Student Union Building.

K. Acceptance of Donation to Dehler Park from the Billings Mustangs, for design services for a third base concrete deck, \$8,000.

L. Acceptance of Donation to Billings Animal Shelter from High Plains Psychiatric Association, \$500.

M. Acceptance of Donation to Billings Police Department from DUI Task Force, for light bars for patrol vehicles, \$10,000.

N. Acceptance of Donation from Billings Police Foundation, for two light bars, related equipment and two radars for patrol vehicles, \$6,983.

O. Second/final reading ordinance #09-5488 expanding the boundaries of Ward I to include recently annexed property in Annexation #08-09: Property described as Lots 1-3, Block 1, Cereus Subdivision, located on the north side of Midland Road east of the Motor Power Equipment business, including un-annexed portions of the I-90 and South Billings Boulevard interchange. Brumar Corporation, owner and petitioner; Bruce Sunwall, representative.

P. Amended Plat of Block 1, Lots 22-25, High Sierra Subdivision, 4th Filing.

Q. Preliminary Subsequent Minor Plat of Amended Lots 3A & 4A, Blaesius Subdivision, approximately .64 acres located on North 16th Street between 8th Avenue North and Vuecrest Drive, conditional approval of the preliminary subsequent minor plat and adoption of the Findings of Fact.

R. Preliminary Major Plat of The Estates at Briarwood Subdivision, 2nd Filing, approximately 52 acres located east of Blue Creek Road and north of McMasters Road, conditional approval of the preliminary major plat and adoption of the Findings of Fact.

S. Preliminary Plat of High Sierra Subdivision, 6th Filing, 7.18 acres located north of Annandale Road and east of Greenbriar Road, conditional approval of the preliminary plat and adoption of the Findings of Fact, and **approval** of the Master Plan for High Sierra Subdivision 5th-12th Filing.

T. Final Plat, Amended Lot 1, Block 1, Burlington Northern Subdivision, 17th Filing.

U. Bills and Payroll

- (1) January 9, 2009
- (2) January 16, 2009

(Action: approval or disapproval of Consent Agenda.)

Mayor Tussing separated Items A, H and I. Councilmember Ruegamer separated Item K. Councilmember Gaghen moved for approval of the consent agenda with the exception of Items A, H, I and K, seconded by Councilmember Ronquillo. On a voice vote, the motion was unanimously approved.

Councilmember Gaghen moved for approval of Item A, seconded by Councilmember Astle. Mayor Tussing said he would recuse himself from Items A, H and I due to his wife's involvement in those items, and would not comment during Items H and I. Councilmember Ulledalen commented that it was encouraging that bids came in under engineers' estimates and he hoped that trend continued. He stated that one of the things considered as projects were selected was to focus on projects that enhanced connectivity of our system and those two projects were viable in that way. On a voice vote, the motion was approved 10-0.

Councilmember Gaghen moved for approval of Item H, seconded by Councilmember Pitman. On a voice vote, the motion was approved 10-0.

Councilmember Gaghen moved for approval of Item I, seconded by Councilmember Pitman. On a voice vote, the motion was approved 10-0.

Councilmember Gaghen moved for approval of Item K, seconded by Councilmember Pitman. Councilmember Ruegamer asked Parks, Recreation and Public Lands Director Mike Whitaker if that was what was referred to as the corporate area. Mr. Whitaker responded that it was not, it was the grass berm area on third base side. He said seating was originally planned there and through value engineering it was pulled out, but now the Mustangs wanted to move forward with a concrete deck and additional seats. Councilmember Clark advised that the Mustangs were putting up the \$8,000 for the engineering fee and would put up the total cost of the project in the form of a donation after obtaining a bid. Councilmember Ronquillo asked about the size. Mr. Whitaker explained it was the size of the small grass berm area on the third base side

and would add 20-30 more seats. Councilmember Ronquillo said at the old facility, there was an area that could be reserved for group outings and asked if that was what this was. Mr. Whitaker said the Bob Wilson Memorial Plaza area, the turf area between the clubhouse and the concession area, would remain turf and could be used for groups. He noted that the proposed deck was at the berm area along third base side. Councilmember Clark asked about the seating. Mr. Whitaker advised it would be concrete decking with approximately two rows of seats, along with some portable picnic tables. On a voice vote, the motion was unanimously approved.

REGULAR AGENDA:

2. RESOLUTION #09-198790 TO ADOPT BRIARWOOD PARK MASTER PLAN.
Staff recommends approval. (Action: approval or disapproval of staff recommendation.) Mayor Tussing asked Ms. Volek if there was a staff report since the plan was reviewed at a work session. Ms. Volek said there was no report but staff was available for questions. Councilmember Ronquillo moved for approval of Item 2, the resolution to adopt the Briarwood Park Master Plan, seconded by Councilmember Ruegamer. Councilmember Ronquillo asked if it was known how many properties would be included in an SID if one was done. Mr. Whitaker said they did not know the exact size of a SID, but a straw poll would be done after adoption of the master plan to see if there was support for it. Councilmember Gaghen asked if there would be additional input. Mr. Whitaker explained that after the community meetings were held, the Parks and Recreation Board recommended approval, and after the straw poll was conducted, that information would be provided to the neighborhood. On a voice vote, the motion was unanimously approved.

3. PUBLIC HEARING ON FEDERAL LEGISLATION PRIORITIES. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) Ms. Volek advised that a ranking was placed at the desks that evening. She explained that the prioritized list was based on rankings from Council on the federal funding project requests submitted by staff and reviewed at a previous work session. She said the recommended priorities were in order and listed the top eight as:

1. Water Treatment Plant Backup Power System
2. Naval Reserve Center Environmental Remediation and Demolition
3. Potable Water Treatment Facility Disinfection Upgrade
4. Stormwater Improvements for the East End Industrial Area
5. Regional Parkland Acquisition
6. MET Bus Replacements
7. Digital Video Cameras for Police Department
8. Fire Department Emergency Services Training Facility

Ms. Volek said the following were also added, in order: Replacement Paratransit Vans, Closed-circuit Television for MET buses, Business Consortium Project, and Bus Wash Renovations. She said that since the work session, two other projects came up and she would like direction from the Council. Ms. Volek said one of the additional

projects was the Alkali Creek Road stabilization project that would help stabilize the road that had been undermined by creek erosion, at an estimated cost of \$4.8 million. Ms. Volek said that was taken to the federal offices as a project that might be included in the stimulus package. She said they also encouraged its inclusion as a permanent item on the federal request list because the project was so important. Ms. Volek said the other item that was also on the stimulus list was the Shiloh Road project which was included on previous years' federal priority lists, but not on the current list. She said that even though it was a State project, it was very important to the City and had been for a long time. She said the estimated part of the project, which was the middle piece of it that was not yet funded, was \$17 million. She advised that staff wanted to know if Council wanted to add either of those items. Ms. Volek noted that a copy of the list was in the Ex-parte Notebook in the back of the room and a public hearing would be held prior to Council's action on the items.

Councilmember Ulledalen stated he understood the stimulus package leaned toward shovel-ready projects and there was still a right-of-way issue with the middle piece of Shiloh. Ms. Volek said there was, and that was why it was questionable as a stimulus project. She said if it did not qualify for a stimulus project, it would be a better candidate for the list that would be taken to Washington D.C. She noted that the Alkali Creek stabilization project was a good candidate because it was engineered and the cost was known.

Councilmember Gaghen asked if the entire list would be re-prioritized if the two projects were included or if they would be an addendum. Ms. Volek said it could be done either way, but she was scheduled to go to the local delegation offices in a couple of days to review the list so they would need to move quickly if the list changed.

Councilmember Ulledalen asked if the Alkali Creek project would come direct to the City or through the State. Ms. Volek responded that it was a stimulus project and would likely come through the State. Councilmember Ulledalen stated it would still be subject to ICAP and Ms. Volek said that was correct.

The public hearing was opened.

- **Joe White, Billings, MT** said he did not object to the projects; however there was a great failing in the relations with the federal government. He said in the past, there had been calls for federal aid to help and advise us with the hospital, public plague, diseases, urban sprawl expansion and the huge electrical problem and they never showed up. He said they should add to the priority list that if a federal agency was asked to advise or help, that they appeared. He said the Constitution allowed local agencies to do that and it was ignored. He said it would help on the projects, but when the Council and Mayor asked, they ignored them.

There were no other speakers and the public hearing was closed.

Councilmember Clark moved for approval of the federal legislation priorities, adding Alkali Creek Road and Shiloh Road projects as priorities 9 and 10, seconded by Councilmember Astle. Councilmember Veis stated he was supportive of the Alkali Creek project, but thought there were timing issues with Shiloh Road because there could be funds for it when the project was bid in March. He said he wondered if they

should wait a year to see what happened with the construction and the stimulus funds and if it did not get done, it could be added for the next year.

Councilmember Astle asked Public Works Director Dave Mumford if Alkali Creek Road was currently stable with the work that had been done to it. Mr. Mumford said it was stable at the current time, but he was concerned about spring and watched it regularly when there was rain and high water in Alkali Creek.

Councilmember Brewster moved to amend the motion to move the Alkali Creek Road project to the top three, seconded by Councilmember Astle. Councilmember Brewster said he did that because he thought the creek was only a bad thunderstorm away from washing that road away. He said he still felt that allowed the top two priorities and put it where it ought to be. Councilmember Veis said he did not disagree with that but the Council went through a process to rank them and it was not on the list at that point even though it was discussed. He said he did not mind adding it to the list but did not want to bump it from a priority that was already voted on. Councilmember Ruegamer stated he agreed with Councilmember Veis that moving it to the top three of the list was circumventing the process the Council went through. He said if that was done, the whole list needed to be re-done; otherwise it should just be added. Councilmember Brewster asked if it was less of a priority than the Fire Department Emergency Services Training Facility and digital video cameras. Councilmember Ruegamer responded that the water treatment backup, the Naval Reserve Center, and potable water were all important things too. Councilmember McCall said she thought it was good to amend the motion to include them on the list and that Councilmembers should re-write the priorities instead of arguing about it at the table that evening. She said she thought that could be done before Wednesday. Ms. Volek advised that a completed list was needed Wednesday when she met with the delegation. She pointed out that Mr. Putnam indicated this was the year that the Finance Committee looked at the new transportation bill which was a reason to add Shiloh since the new transportation plan would be in effect for several years. Mayor Tussing asked Councilmember McCall if she was making an observation or a substitute motion. Councilmember McCall answered it was just an observation and recommendation.

Councilmember Ulledalen stated he agreed with Councilmember Brewster that if Alkali Creek Road washed out, it would be a crisis for the Heights. He said he supported Councilmember Brewster's motion and thought they should vote on it and see what happened. Mayor Tussing stated that he also agreed that those things should be on the list as fail-safe measures. He said they were projects that were arguably shovel-ready and could be appropriate for stimulus funding, but if not, he wanted to see it higher and would support the amendment.

Councilmember Veis stated they were circumventing the process; it was not about ranking, but all about process and that was what mattered. He said if they started listing all the projects that could result in an emergency situation, they should start over completely and list all the things that could cause a problem and move them up on the list. He said that could probably add four or five projects, but that was also the reason there was emergency funding in highways. He said he felt if they used the process and if the project had been considered, it would have ranked very high on his list, but they should use the process they used and add it to the bottom of the list.

Councilmember Pitman asked Mr. Putnam how the priorities were considered after they were submitted. Mr. Putnam explained that prioritizing was requested by all three congressional staff so they knew how the City felt. He said the list included priorities beyond eight because the congressional staff felt six or eight was a workable number for them, and projects beyond that number allowed the delegation some flexibility to utilize committee strengths they had. He explained that in the past, legislators had gone outside the top priorities to pick another project that they had a better opportunity to support in a committee they were on. He said the list was in order to maximize the ability for them to be successful. Mr. Putnam said the rationale to keep Shiloh Road on the list was because Senator Baucus chaired the Finance Committee, the committee that did the highway bill. He said he felt it was important to support the efforts made by Senator Baucus over a period of years to get that project funded. He said if it was not on the list, it could communicate the wrong message, even though discussion indicated that it was still an important project.

Councilmember McCall moved to have the Council accept the priorities that were identified on the grid, in addition to adding the Alkali Creek Stabilization and Shiloh Road projects, and that the Council re-ordered their priority and provided that information back to the City Administrator by Tuesday afternoon, seconded by Councilmember Pitman. Mayor Tussing stated he would vote against the substitute motion because he felt it was important for those things to happen in a public forum and that would not be in a public forum. Councilmember McCall stated that not all of the prioritization was done in a public setting before. Mayor Tussing said the public would hear it that night and would know what the top eight were and what the amended ones were if approved. On a voice vote, the motion failed 9-2. Councilmembers McCall and Pitman voted 'Yes.' On a roll call vote, the amendment was approved 6-5. Councilmembers Pitman, Brewster, Ulledalen, Astle, Clark, and Mayor Tussing voted 'Yes;' Councilmembers Ronquillo, Gaghen, Veis, Ruegamer, and McCall voted 'No.' On a voice vote, the original amended motion was approved 10-1. Councilmember Veis voted 'No.'

4. PUBLIC HEARING AND RESOLUTION creating SID 1384 Yellowstone Club Estates sanitary sewer extension, repealing and superseding Resolution 08-18699 approved by City Council on April 14, 2008. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) Mr. Mumford advised that Council passed a resolution of intent to create an SID for sewer connection and construction fees for Yellowstone Club Estates in April, 2008. He said that after the resolution passed, conversations were held with property owners in that area who asked for help with the process and for more time to pay off their assessments so they did not have to pay SID fees. He said additional time was provided, the fees were reviewed, and Finance found a different way to finance it which lowered the fees. He advised that 50% of the property owners had paid their fees since that time and an SID could be assessed for the rest of the fees. Councilmember Ulledalen asked if it was known how it would be financed. Mr. Mumford responded it would be a public bond sale, but he did not know the exact methodology. Ms. Volek stated it was her understanding that there was a lack of bonds in the market so it was hopeful that the bond would have good marketability.

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

Councilmember Astle moved for approval of Item 4 creating SID 1384 and superseding Resolution 08-18699, seconded by Councilmember Ruegamer. Councilmember Ulledalen stated that staff had put a huge amount of work into the project and it had drug on for more than four years. He said it was nice to get it done, it had taken a lot of time and effort and he requested Council support of it. On a voice vote, the motion was unanimously approved.

5. PUBLIC HEARING AND RESOLUTION ordering construction of the improvements identified in W.O. 08-02, 2008 Miscellaneous/Developer Related Project. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) Mr. Mumford explained that the item was the annual miscellaneous project where the City assessed property owners or did the work itself on sidewalks, curbs, gutters and other issues. He said there were 176 properties being assessed, and one protest was received from John Laudon who lived on Lyndale, and had rental property on the corner of N. 27th Street. Mr. Mumford explained that corner lots were assessed based on the shorter of the sides and Mr. Laudon had removed or abandoned his driveway on that side, so staff was working with him on his issues. He noted that Mr. Laudon had a tree on his property that he wanted spared, but it was breaking up the sidewalk and would have to be removed if it was determined to be a safety hazard.

The public hearing was opened.

- **Sandy Oium, 430 19th Street West**, said she and her neighbors were happy that the construction would go forward, but they had a couple of questions related to safety issues. She said 19th Street West was a narrow street and neighbors wanted the City to consider removing the boulevards on each side to widen the street and provide more room for traffic flow. She said that when emergency vehicles parked on the street, traffic slowed, which was a good thing, but also caused problems. Ms. Oium stated that visitors in the neighborhood parked on the boulevards and if it was not for two big trees in her boulevard, she was sure people would park there as well. She said people who had small driveways did not have room for many cars to park anywhere but the boulevard. She said the traffic was destroying the greenery in the boulevards as well.

Councilmember Gaghen asked Ms. Oium if she was willing to sacrifice the two large trees in her boulevard. Ms. Oium said she was willing to sacrifice the trees if the boulevard went away, but if it stayed, they would continue to plant trees in the boulevard. She said neighbors got tired of people parking on their boulevards so some poured concrete on them.

Councilmember Veis asked if Ms. Oium understood that if the boulevard went away the curb and gutter would be right against the sidewalk and that snow plowed from the street would probably end up on the sidewalk. Ms. Oium said she realized that.

Councilmember Astle stated that widening the street would mean the traffic speed would increase. He said he drove that street often and knew what Ms. Oium meant about the parking, but he did not think they wanted the speed that would come with widening the road. He said he thought planting trees in the boulevard was a better idea. Ms. Oium said the street was a speedway before and after school, but the stoplight at Miles Avenue helped.

Mr. Mumford advised that only a couple of properties were being addressed on 19th Street, not the entire street. Ms. Oium said she did not know it was not the whole street, but the neighbors wanted the street widened or guidance about what they could do. She said if that created a speedway, she invited any police officer to sit in her driveway. Mayor Tussing stated he could not let her continue to testify since her time was up and she had answered the question.

Ms. Volek suggested that staff meet with the neighbors because an SID would be needed if the street was widened. She said Ms. Oium might be able to ask to have her property excluded. It was decided that Ms. Oium could visit with Mr. Mumford while other testimony was heard.

- **George Sullins, 1739 43rd Street West**, stated the sidewalk being considered for replacement at the front of his property was new. He said he had lived at his home in Shiloh Pointe Subdivision for about five years. He asked if a new sidewalk should have been inspected and if it was, why it started sinking. He said the sidewalk had sunk about a foot and the underlayment about two feet, so it evidently was not backfilled correctly. He said water and utility lines were at the point where it was sinking. Mr. Sullins stated they were essentially paying for the sidewalk twice because they paid for it with the new construction and now had to pay for its repair. He asked why the inspections did not show that. Mayor Tussing asked if the developer initially installed the sidewalk and provided a one year grace period for repairs, but the sinking did not show up until after that year. Mr. Sullins said that was correct.

Councilmember Astle asked the name of the developer. Mr. Sullins said it was Dan Fleury and Fleury Concrete poured the cement. Mr. Sullins stated that at the end of the damaged sidewalk, a footbridge was supposed to be installed across the ditch. He said there would be a dangerous situation if the footbridge was installed prior to the repair of the sidewalk. He suggested coordination of the construction. Mayor Tussing asked Mr. Sullins to visit with Mr. Mumford about the projects.

Councilmember Ulledalen asked Mr. Sullins if he had received any response from his request to change the street name. Mr. Sullins said he had not. Councilmember Ulledalen advised he had submitted it to Ms. Volek and she was to send it on through the chain.

- **James Pennington, 5859 Ironwood Drive**, said he and his neighbor, Neil Johnson, were notified they needed to install sidewalks on the front of the street. He displayed the plat map that showed the sidewalk easement and that he and Mr. Johnson had sidewalk on three sides of their houses already. He said their two houses were excluded because Ironwood was a collector street and they did not want school kids getting on the bus there. He said he lived beyond that collector street. Mr. Pennington said he was not aware of the sidewalk

requirement until his concrete guy went to get a permit to put in a driveway apron. He said he then contacted the City and was told it had changed. He stated he was present that evening to ask to be excluded because he did not want his house to be a concrete island. He pointed out that the two houses had sidewalk on all three sides.

Councilmember Astle asked Mr. Pennington to identify his lot. Mr. Pennington said his was Lot 24 and Lots 22 and 23 were Mr. Johnson's combined lots.

Councilmember Ulledalen asked about the trail system. Mr. Pennington explained that when Ironwood was put together, it was agreed to put the sidewalks behind homes except for the one leg of Ironwood because during the long buildout of Ironwood, that would be the main thoroughfare collecting everything until the other legs came in. He said he was told it was bypassed because it bent down and went south and really was not a collector street, but at some point that changed.

Councilmember Veis asked Mr. Pennington if staff told him his option was to come to Council or if they gave him other options. Mr. Pennington responded that staff advised him to apply for a variance and he did that but did not hear anything back so he thought that was good news until a code enforcer came to tell him he needed to install sidewalks. Mr. Pennington said he applied for the variance about 14 months ago. Councilmember Veis asked Mr. Mumford if he knew about that. Mr. Mumford responded that he did not know about the variance because that went through the Planning Department, but he did not think it usually took that long. He said a subdivision agreement requirement approved by Council was being enforced. He noted that the Council could waive the requirement, but normally the variance process was the standard method to use. Councilmember Veis asked if Mr. Pennington could still go through the variance process before the resolution took effect. Mr. Mumford said they could not get through the variance process before it was effective, but the resolution could be amended if it was determined the work was not required. Councilmember Veis asked if there was a way to give them a one-year exclusion to get through the variance process. Mr. Mumford said an amendment could be made to exclude the property until the next year's program. Councilmember Veis asked about Lots 9 and 10. Mr. Mumford advised they would be in the same situation. Mr. Pennington noted there was no sidewalk at those lots other than what was behind the homes. Mr. Mumford explained that only the collector streets had sidewalks. Councilmember Veis asked if Lots 1, 9 and 10 were part of the project. Mr. Mumford advised he would check.

Councilmember Ulledalen asked how that fell through the cracks since it was part of the original subdivision agreement. Mr. Mumford stated that on the local streets, the sidewalks were considered the trail system but on the collector streets it was not and sidewalks were normally put in with a house. He said if they were not, the City requested that of the property owner or it was put into the miscellaneous developer project. Councilmember Ulledalen asked if that should have been done by the builder. Mr. Mumford said that was usually the case but did not always get done.

Councilmember Gaghen asked if Mr. Johnson had Lots 22 and 23. Mr. Pennington said that was correct. She asked if Lots 1, 9 and 10 would face similar problems. Mr. Pennington explained that the sidewalk in Ironwood was only on the north side of Ironwood Drive and those lots were on the south side. He stated that the original plat did not show it going as far as the current requirement and that was his dispute. He said it was no longer a collector street and since there was already sidewalk on three sides, he did not want to become an island.

- **Neil Johnson, 5835 Ironwood Drive**, said he also did not want to be an island. He said there was a trail system around his house. He said if there was a year's exclusion he would like to be included as well.

There were no other speakers and the public hearing was closed.

Councilmember Ulledalen moved for approval of Item 5 and exclusion of the Johnson and Pennington properties from that issue for one year along with the properties on the south side of the street if they were included, seconded by Councilmember Gaghen. Councilmember Brewster asked if Mr. Sullins' project should be delayed until the bridge was built. Councilmember Ulledalen explained that was one of the phases of the Rush Subdivision project and the subdivision was obligated to complete the bridge across the ditch. He asked if the projects could be coordinated. Mr. Mumford said both projects came from the same engineering staff so coordinating them should not be a problem. He said he would take Mr. Sullins' concerns to City Engineer Debi Meling. Councilmember Ulledalen asked if the City had any responsibility for the backfilling. Mr. Mumford explained that the current policy required the consultant to follow established standards and obtain inspection reports from the developer. Councilmember Ulledalen stated it seemed like a warranty issue with the builder.

Councilmember Veis asked Mr. Mumford if he had to chance to visit with Ms. Oium. Mr. Mumford said he did and staff would contact her further. He said an entire SID would probably be required to complete the work requested. Councilmember Ulledalen commented that what she requested was a substantial project. Mr. Mumford agreed that it would be extensive.

On a voice vote, the motion was unanimously approved.

**6. 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.)**

- **Russ Doty, 3878 N. Tanager Lane**, stated he was present to talk about LED lighting. He said he spoke as an individual and not in his capacity as a member of the Energy and Conservation Commission. He said the Commission had taken some action that would be presented at a future work session. Mr. Doty presented a letter from the Billings Conservation Roundtable that requested a new requirement of LED lighting in future lighting districts and development. He pointed to comparisons illustrated in the letter. He stated he was deeply concerned about

fiscal responsibility, energy dependence and environmental health and felt the proposal addressed all three of those. Mr. Doty stated that when he last appeared before Council a few months ago, Councilmember Ulledalen brought up some questions and he had been addressing them since then. He referred to a study from San Francisco included in his handout and said that it concluded there was significant savings from using LED lights. Mr. Doty stated he would not be present when the lighting district was considered during the February 23 meeting.

Mayor Tussing recognized Scout Troop 10 members who were present to work on their communication badge.

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

Council Initiatives

Councilmember Veis stated he felt using the new brand within the City organization would be a good idea. Councilmember Clark stated that the Council never voted whether it supported the brand. Mayor Tussing advised he sent an email to Council at least ten days ago asking for any objection and did not hear anything. Councilmember Ulledalen said that procedurally he agreed with Councilmember Clark that it would have made sense to have public comment and discussion about what the policy should be. He said he brought up the possibility with the Chamber of implementing a new logo for the City of Billings and if it would be possible to share design elements and the Chamber was amenable to that. He said there was also material on the website that could be downloaded or used on letterhead. Mayor Tussing said he would not want to discard current stock but a change could be considered when it was reordered. Ms. Volek asked if a work session should be scheduled for that item. She said she would need to consult with departments about supplies on hand. Councilmember Veis moved that a work session be scheduled to discuss implementation of the Billings Brand throughout the City of Billings organization, seconded by Councilmember Astle. On a voice vote, the motion was unanimously approved.

Assistant City Administrator Bruce McCandless said Ms. Volek asked him to comment on emails and a proposed bill draft for the Montana Legislature regarding scenic or historic highways or byways. He advised he had expressed concern during the last work session about local control over the process, both the nomination and the City's jurisdiction regarding zoning, land use, etc. He said it appeared that the drafted bill satisfied those concerns and actually went a little further than he felt was necessary. He noted that even if Black Otter Trail was specifically named in the statute, it still required the City to apply or petition for the naming of that as a scenic byway, so there would be a second chance to consider it.

Ms. Volek stated she received an email from Mr. Penfold that day that indicated a decision was needed very soon about whether the City supported the inclusion of Black Otter Trail in the bill. Councilmember Ulledalen asked what that obligated the City to if it passed. Councilmember McCall explained that page two of the draft bill included permissive language that stated it allowed applications and had a two-year sunset. She

said it did not obligate the City to anything. Councilmember Clark asked what the advantage was if it did not do anything for the trail. Mayor Tussing advised there was potential for federal funding. Councilmember McCall added that it established a state-wide process for scenic byways and set up a process within the department to put something together to test within the two-year period. Mayor Tussing confirmed that they just wanted to know if the City supported the bill. Ms. Volek added it was also whether or not to include Black Otter Trail. She said Mr. Penfold mentioned in the previous discussion that part of the issue with the bill concerned restrictions about adjacency of privately-owned land that prevented the bill from being effective after it was approved by the legislature the last time, but those restrictions had been removed. Councilmember Ulledalen said he did not see any point in opposing it if it did not obligate the City to anything financially.

Mayor Tussing asked if a motion should be made regarding the support. Ms. Volek suggested a motion. Councilmember Gaghen moved to support the naming of Black Otter Trail as part of the scenic byway as indicated in the draft legislative bill, seconded by Councilmember Pitman. City Attorney Brooks commented that it could be considered a matter of significant public interest that would have to be on a future public agenda, but given the urgency of the item, he did not know if someone would raise an objection and would want public comment before Council made direction to staff. Mayor Tussing said it was done all the time and the legislative discussions with lobbyists were done in public meetings. He said in cases of a work session when decisions were made whether an issue should be supported, that was done without a public hearing. He asked if the Council was skating on thin ice with that. Mr. Brooks said it was hard to know, but he wanted to warn Council that if it was a matter of significant public interest, public comment could be requested.

Councilmember Brewster stated that Black Otter Trail would not be in the legislation, but was used as an example. Mayor Tussing said it did not obligate the City to anything so what he thought Councilmember Brewster was saying was that the public hearing issue was somewhat mitigated by the fact that no obligation of public funds was being made. Ms. Volek said any application would be made at a later date. Councilmember Ulledalen said if an application was made, there would be many factors to consider and a whole process to go through. On a voice vote, the motion was unanimously approved.

Councilmember Gaghen stated she had a question more than anything. She said there had been a lot of email comment and a booklet prepared by the League of Women Voters in regard to the transportation plan that was recently shaped with a consultant and an extensive study. She said she wondered how they proceeded because there was a difference in the allocation of funding in the portion that had been pointed out. She asked if there was an option for additional changes to the whole of the transit system. Mayor Tussing advised that any Councilmember could make a motion, preferably before the funds were allocated or obligated to alternates besides what was being suggested, but until there was a specific motion, he believed staff would use their own judgment. Councilmember Ulledalen stated if Councilmember Gaghen felt strongly about it, she could make a motion that money be taken from the road funding and transferred to the MET system and if there was a second and votes, it would happen. Councilmember Gaghen said it was a difficult issue because she realized the road

funding was tight and plans were made for that, but she saw merit for additional allocation of funding that provided a more amenable system for those who used the transit system. She said she was asking for commentary by the Council or whether Councilmembers were satisfied with leaving things as they were.

Councilmember Veis stated it was not just a Council decision, but that PCC actually allocated those funds. He said the Council's PCC representative could be directed by Council, if that was Council's wish, to advocate moving money out of road projects and into MET transit projects. Ms. Volek pointed out that the Transportation Improvement Plan was approved that evening and that would normally be part of that function. She said that plan would have to be amended and she believed that was a lengthy process. Councilmember Ulledalen asked about allocations of MACI funds. Mr. Mumford explained that MACI funds were allocated annually and they were currently used on Airport Road, some on Shiloh Road, and a small amount on the Bench connector. He stated it was federal funding that came every year so the Transportation Plan would have to be revised and the Federal Highway Administration and Federal Transit Administration would have to approve it. Councilmember Clark asked how many dollars they were talking about. Mr. Mumford said he was not sure but knew it was over \$1.5 million. Councilmember Brewster suggested reviewing it when the 2011 budget was built. Mayor Tussing stated he agreed with Councilmember Brewster because he knew for a fact that if the TIP plan was not done within the next week, the City would be out of luck for stimulus funds. He said he was sympathetic to Councilmember Gaghen's stance on that, but agreed it was best to wait until the next year because of the stimulus and that the TIP was scheduled for approval by the PCC February 18. He noted that the TIP deadline was February 16, but he was told it would still be considered if submitted after the PCC meeting. Councilmember Gaghen stated she had no problem with that but wanted the Council to pay some attention to what had gone into the study and the work done by that dedicated group. She said it had merit and since public input was always sought, she did not want it to look like it had been pushed aside. Councilmember McCall stated she echoed Councilmember Gaghen's comments and Councilmember Brewster's suggestion to give it serious attention when the next budget was developed.

Councilmember Veis stated that the City paid \$4 every time a person rode the bus, so he did not think increasing the routes would get more people on the bus. He said he heard from his constituents that they wanted the roads done and heard only one time that someone was upset about the change of bus route times. He said Billings was not to the point where it could have an effective public transportation system. He noted he was in San Francisco recently and visited with a member of that City Council and discovered that they also paid \$4 every time a person rode the bus. He said that told him that even in the second densest city in the United States it did not work so he did not know why it would work in Billings. He said to take money away from a road system where things were needed for something that sounded like a good idea was not realistic and expanding it was probably only going to increase the cost from \$4 to \$6. Councilmember Gaghen said she understood that it was probably a situation where the City would never break even, but she thought with the upcoming stimulus plan, or other plans, that they needed to be aware of and consider options that could develop into something that would accommodate more needs. Councilmember Ulledalen stated his

concern that as federal funding got tighter, it would be harder to get money to subsidize our system and that at some point, the system could be looking at cutbacks because of budget realities. He said a comment was made to him that for the amount of money put into the system, there were times when the City could be better off providing free passes for people to use taxis.

Councilmember Clark commented that there was the idea that pollution was reduced by running buses rather than cars, but when the transit system went on strike in Denver, the air cleared up and when the buses started again the pollution was back.

ADJOURN – The meeting adjourned at 8:08 p.m.