

**REGULAR MEETING OF THE BILLINGS CITY COUNCIL**  
**May 26, 2009**

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

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

**MINUTES** – May 11, 2009 , approved as presented

**COURTESIES** – Skyview High School Student Presentation

Laramie Ayers, 1141 Hardrock Lane, said he was speaking on behalf of the students in Skyview High School's AP Government Class, and their project started out as part of their curriculum. He said they really believed in their project because it impacted the safety of not only the students but the surrounding neighborhoods. He distributed handouts and explained the overview of the project. He said there was currently only one exit out of Skyview; and there was a traffic bottleneck every day at the corner of Wicks and Fantan, with the problem worsening during bad weather and school activities. He said there were several potential high risk scenarios that would worsen with the current traffic situation; such as grass fires, bomb threats, personal health emergencies, and simultaneous school functions. The students' proposal was to pave a section of dirt road connecting Sierra Grande and Gleneagles Boulevard that would provide another access to and from Skyview High School and help relieve the bottleneck at Wicks and Fantan. The students presented traffic statistics and said they felt the City had some obligation to build the second exit. Mayor Tussing asked if the exit would be for emergency only or for everyday use. Mr. Ayers said it would be used daily by the students going to and leaving Skyview. Councilmember Pitman asked if the students had looked at other alternatives to relieve the bottleneck. Mr. Ayers said they talked about staggering class times, but they felt the most efficient way to solve the problem was through a second access. Councilmember Ulledalen asked if other transportation was considered such as walking, biking, and carpooling. Mr. Ayers said the problem was that many students lived far away, so walking and biking was not an option for a lot of them. Councilmember McCall asked if a survey had been conducted in the neighborhood. Mr. Ayers said a survey had been conducted, and they received a lot of support for their proposal. He asked the Council to consider their project as part of the Capital Improvement Plan. Councilmember Gaghen thanked the students and commended them for the work that went into their proposal. Councilmember Veis encouraged the students to attend the Capital Improvement Project meetings.

**PROCLAMATIONS** – None

## **ADMINISTRATOR REPORTS – Tina Volek**

- Ms. Volek referenced the letter from Gary Roller, General Manager of the Mustangs Professional Baseball Club, dated 4/23/09, concerning Items E & F. She said the letter was included in the Friday packet and the ex-parte notebook in the back of the room.
- Ms. Volek advised the staff memo for Item B, approval of members of the ad hoc committee to promote annexation east of the East End TIF District, had been distributed on the councilmember's desks that evening and was filed in the ex-parte notebook in the back of the room. She said Councilmembers Veis and Ronquillo had shown an interest, Ken Kunkel and Marty Connell had been nominated by BIRD Board Chairman Gordon Tryon, Greg Krueger had been nominated from the Downtown Billings Partnership, and County Commissioner Jim Reno had been nominated by the Yellowstone County Board of County Commissioners. Ms. Volek said one of the Councilmembers needed to be named as Chair of the committee, as required in the resolution creating the Committee.
- Ms. Volek referenced the presentation handout on the councilmember's desks for Item 3 and said a copy was also included in the ex-parte notebook in the back of the room.
- Ms. Volek referenced a letter from Burger King Corporation for Item 6 that had been placed on the councilmember's desks that evening. She said it had also been filed in the ex-parte notebook in the back of the room.

**PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: 1, 2(a), and 2(b) 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.)*

The public comment period was opened.

- **Dave Bovee, 424 Lewis Avenue**, said he would like to see a computer set up in the council chambers for the public to view the agenda items when the new agenda management software was implemented.
- **Tom Iverson, 2717 Hoover**, said he was a member of the Parks Board and questioned how the Mustangs arrived at the cost estimates they were charging MSU-B to play baseball games at Dehler Park. He said the two agreements were different. He said the American Legion would receive 30 percent of concessions and would not have to provide for field prep, and MSU-B would have no concessions and would have to provide for field prep. Mr. Iverson said, contrary to the Gazette article, Gary Gray did not lead the discussion and strictly answered numerous questions from the board members. He said Mr. Roller was at the meeting, answered a few questions, and left the meeting. He said had Mr. Roller

stayed at the meeting, the board would have had more questions for him. He said the motion that passed included a request for Mr. Roller to accurately track expenses this year so a better recommendation could be made next year based on actual costs.

Councilmember Ruegamer asked Mr. Iverson which numbers Mr. Roller presented that he disagreed with. Mr. Iverson said he disagreed with the 18 hours for playing field labor. He said there was only one restroom open and no concessions were sold. Councilmember Ruegamer asked if Mr. Iverson had any numbers to repute Mr. Roller's numbers. Councilmember Veis asked if the board offered to provide any monetary support to Mr. Roller to track the expenses because it was not an easy task. He said tracking numbers down to the penny would not be easy. Mr. Iverson said he did not think it would be that difficult because all he would have to do is look at the employees' timecards to see how much time was spent on field prep. Councilmember Clark asked Mr. Iverson how much difference there was between the old figure and the new figure. Mr. Iverson said MSU-B wanted \$350, and Gary Roller wanted \$450. He said \$350 was the old figure.

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

## **CONSENT AGENDA:**

### **1. A. Bid Awards:**

**(1) W.O. 08-23, West Wicks Lane Water, Sanitary Sewer, and Storm Drain Improvements.** (Opened 5/12/09). Recommend Knife River, \$324,240.

**(2) Well Pump Replacements, Wastewater Treatment Plant.** (Opened 5/12/09). Recommend Star Service, \$128,400.

**(3) Airport Terminal Building Roof Replacement.** (Opened 5/12/09). Recommend rejection of all bids and authorization to seek new bids.

**(4) Taxiway "A" East Rehabilitation Project, funded by American Recovery and Reinvestment Act.** (Opened 5/12/09). Recommend Riverside, \$947,432.55.

**(5) AIP 035 – General Aviation Taxilane Rehabilitation.** (Opened 5/26/09). Recommend delay of award to June 8, 2009.

**B. Approval** of members of the ad hoc committee to promote annexation east of the East End TIF District.

**C. Approval** of contract with Innoprise Software, Inc. for replacement of the existing Enterprise Software System, five year term, \$90,000 per year.

**D. Approval** of License and Service Agreement with Destiny Solutions, Inc. for agenda management software, \$19,950; annual maintenance fee second year forward, \$3,200.

**E. Approval** of Facility Use Agreement for Dehler Park between the Billings Mustangs and Montana State University-Billings.

**F. Approval** of Facility Use Agreement for Dehler Park between the Billings Mustangs and the American Legion.

**G. Approval** of 20-year combined Ground Lease with the Bureau of Land Management for a new fire station site and the existing tanker base/dispatch center at Billings Logan International Airport; May 1, 2009 – April 30, 2028; \$86,668.50 first year revenue; subsequent years adjusted according to the CPI-U.

**H. Approval** of two-year contract extension with EideBailly LLP for audit services for fiscal years 2009 and 2010, \$116,300.

**I. Perpetual Right-of-Way Easement** with Billings Clinic for construction of a sewer main along Shiloh Road between Howard Avenue and Broadwater Avenue for W.O. 07-16, Shiloh Road Corridor Water and Sewer System Improvements, at no financial impact to the City.

**J. Approval of Quarterly Report for Pledged Collateral** for First Interstate Bank Certificate of Deposit, US Bank Municipal Investor Accounts, US Bank Repurchase Account, and US Bank Certificates of Deposit.

**K. Approval** of Downtown Revolving Fund Loan to EB Ventures, LLC, to remodel Yellowstone Garage Building for restaurant space, not to exceed \$200,000.

**L. Approval** of Downtown Revolving Fund Loan extension of promissory notes of William and Marcia Honaker, secured by the Securities Building and the Securities Building Parking Lot, approximately \$300 additional interest income.

**M. Approval** of application and acceptance of Internet Crimes Against Children (ICAC) Continuation Grant, \$200,000.

**N. Resolution of Intent #09-18817** to expand the Downtown Business Improvement District No. 0001 to include the new MET Transfer Center, and set a public hearing for June 22, 2009.

**O. Resolution #09-18818** rescinding Resolution of Intent to Create No. 09-18813, Special Improvement Lighting Maintenance District 307, and cancelling the public hearing set for June 8, 2009.

**P. Second/final reading Ordinance #09-5493 expanding the boundaries of Ward IV** to include recently annexed property in Annexation #09-02, a .74-acre property described as Lot 26, Block 19, Lillis Heights Subdivision, and located at 4739 Rimrock Road; MCS Properties, LLC, owner and petitioner.

**Q. Preliminary Minor Plat** of Lenhardt Square Subdivision, 1<sup>st</sup> Filing, a 33.8 acre tract described as Tract 1A of C/S 2063, Amended, located in Section 10, T1S,

R25E; generally located north of King Avenue West, across from the Montana Sapphire Subdivision; **approval of two variance requests:** (1) allowing a 56 foot right-of-way dedication along 44<sup>th</sup> Street West and Monad Road adjacent to the subdivision; (2) allowing a total 8.5 foot right-of-way for boulevard and sidewalk along 44<sup>th</sup> Street West and Monad Road; and adoption of the Findings of Fact. M & K Blue One, LLC/Lenhardt Property, LLC, applicant; Sanderson Stewart, engineer. (Delayed from 4/27/09).

**R. Preliminary Subsequent Minor Plat** of Kuhlman Subdivision, Amended Lot 6, a .46-acre tract described as Lot 6, Section 22, T1N, R26E, generally located at 512 Josephine Drive; **approval of variance request** allowing a 30-foot street right-of-way for Kuhlman Drive; and adoption of the Findings of Fact. Troy Boucher, applicant, Blueline Engineering, LLC, engineer.

**S. Final Plat** of Flanagan Subdivision, Amended Lot 5.

**T. Bills and Payroll**

- (1) April 24, 2009
- (2) May 1, 2009
- (3) February 1, 2009-April 30, 2009, Municipal Court

(Action: approval or disapproval of Consent Agenda.)

Councilmember Ronquillo separated Item B; Councilmember Gaghen separated Item H; Councilmember Veis separated Items E, F, and N; and Councilmember McCall separated Item P.

Councilmember Ulledalen moved for approval of the Consent Agenda with the exception of Items B, H, E, F, N, and P, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

Councilmember Ulledalen moved for approval of Item B, seconded by Councilmember Pitman. Councilmember Ronquillo made a substitute motion to nominate Councilmember Gaghen to serve on the ad hoc committee in his place, seconded by Councilmember Ruegamer. Councilmember Gaghen said she had participated in the development of the TIF district more than three years ago and would like to continue her involvement. On a voice vote, the substitute motion was unanimously approved.

Councilmember Ulledalen moved for approval of Item E, seconded by Councilmember Ruegamer. Councilmember Veis asked Attorney Brooks why Council would vote on the Agreements if they did not have signatory authority. Attorney Brooks advised it was required by Section 3.9 of the existing operating agreement between the Mustangs and the City of Billings. Councilmember Ruegamer said the City had an agreement with the Mustangs, and he thought the Mustangs should be able to charge what they wanted. He said the numbers were very difficult to come up with and maybe Mr. Roller could work with the Parks Board to come up with different numbers. Councilmember Ruegamer said he felt the numbers were fair and felt Mr. Roller had done a good job presenting the numbers.

Councilmember Brewster said he disagreed and felt the numbers were too high. He said he thought the goal was to try and run the other entities out of the park and keep it solely for the Mustangs. He said he would like to reconsider the contract. He said when the bond was passed, the goal was that it would be a community facility to be available to be used by other entities; but with the current prices, he said he could not see why anyone else would want to use it.

Councilmember Astle asked if the figures for MSU-B were for next year since school was already out for this year. Parks Director, Mike Whitaker, said it was for this year, and the games for MSU-B had already been played.

Mayor Tussing said he had the same question as Councilmember Veis. Attorney Brooks said that Section 3.9 stated that the Council would approve the form of the agreements, such as proper insurance to protect the Mustangs and the City, appropriate liquor liability, etc. He said Section 5.5 allowed the Mustangs to set their user fees at their discretion. He said the Council was not approving the fees but the form of the agreement that included indemnification, insurance, liquor liability, etc.

City Administrator Volek reminded Council that when the agreement was signed, the City was made aware through bond counsel that there was a limit on what the City could continue to receive in additional private financing given the generosity of the donors in the community and still keep the bonds for the structure tax exempt. She said there was a limit in federal rules that said that no more than 10% of the value could be donated across the bond life. She said the amount of income being requested from the ball club was limited, and the ball club was asked to assume the responsibility of the maintenance of the park. She said the discussion of the forms was intended to do exactly what was happening that evening. She said it was intended to have a public hearing with any charges associated with the park. She said the contract extended to 2017, and Section 9.10 stated that any amendments or modifications to the agreement during the term that were mutually agreed upon by both parties shall be made in writing and executed in the same manner as the original document.

Councilmember Veis commented that both parties would have to agree to an amendment. He asked Attorney Brooks if there were certain aspects of the agreement Council could comment on or change, and if the fees charged by the Mustangs was one of them. Attorney Brooks said Council could comment on the fees but could not offer an amendment to change the dollar amounts.

Councilmember Pitman said he felt it would have been more appropriate to get one year under their belt so they had solid numbers before raising rates. He said they were guessing on numbers, and they had nothing solid.

Councilmember Clark advised he was contacted by the Mustangs and had talked with them. On a voice vote, the motion was approved 9 to 2. Councilmembers Brewster and Pitman voted 'no'.

Councilmember Ulledalen moved for approval of Item F, specifically the staff recommendation, seconded by Councilmember Ruegamer. On a voice vote, the motion was approved 9 to 2. Councilmembers Brewster and Pitman voted 'no'.

Councilmember Ulledalen moved for approval of Item H, seconded by Councilmember Ruegamer. Councilmember Gaghen said she noticed it was a 3-year contract with an option to extend two additional years. She said the amount had increased \$1,700 from last year's audit and asked if it would save to enter into an RFP

to obtain proposals from more than EideBailey. Financial Services Manager, Pat Weber, said the City had gone out three years ago with an RFP, which was when they came up with the five-year contract. He said, given all of the GASB pronouncements that have continued to come out that they have to check, he felt \$1,700 was reasonable for the additional work they had to do. Councilmember Gaghen asked if they would go out for an RFP after the two-year span. Mr. Weber said that was correct. On a voice vote, the motion was unanimously approved.

Councilmember Ulledalen moved for approval of Item N, seconded by Councilmember Ruegamer. Councilmember McCall said she needed to recuse herself because she was a friend and colleague with the party. Councilmember Veis asked Councilmember McCall if she meant to recuse herself from Item P instead of Item N. Councilmember McCall said she was mistaken, and it was Item P she needed to recuse herself from, not Item N.

Councilmember Veis asked Director of Aviation and Transit, Tom Binford, why he felt it was the better alternative rather than just doing the maintenance themselves. Mr. Binford said when they looked at the price to do sidewalk sweeping and snow removal, as well as site security, they felt it was a pretty good bargain. He said the real savings would be in site security. He said they would be doing supplemental security because of the site and its amenities. Mr. Binford said it would bridge the gap between the daytime hours. Councilmember Veis asked what security would be provided. Mr. Binford advised it would provide site security during the day. He said they have a pretty good handle on the people who hang out downtown and their movement. Mr. Binford said the sidewalk maintenance would be taken care of quicker. Councilmember Veis asked about the sidewalks by the court house where the buses currently park. Mr. Binford said it was not their property and the buses only parked on the curb. He said it would be a cost they had not had before.

Councilmember Brewster asked how much funding the BID would provide. Ms. Volek said she believed it was about 18 percent. Mr. McCandless indicated it was 10 percent. On a voice vote, the motion was unanimously approved.

Councilmember Ulledalen moved for approval of Item P, seconded by Councilmember Ruegamer. Councilmember McCall recused herself from the vote. On a voice vote, the motion was approved 10 to 0.

## **REGULAR AGENDA:**

### **2. BENCH BOULEVARD PROJECT – 6<sup>TH</sup> AVENUE NORTH TO LAKE ELMO ROAD, PHASE 1; CM 1099 (32)**

(a) MEMORANDUM OF UNDERSTANDING BETWEEN CITY OF BILLINGS AND YELLOWSTONE COUNTY regarding local funding match requirements; Yellowstone County - \$1,000,000 and road easement valued at \$175,000; City of Billings - \$526,185. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) Deputy Public Works Director, Vern Heisler, advised there had been a lot of discussion back and forth on the project. He said the project had been split into two phases. He said Phase I was from 6<sup>th</sup> and Main to Lake Elmo with an at-grade intersection at 6<sup>th</sup> and Main. He said it was funded between state, federal, city,

and county dollars. Mr. Heisler said Phase II was an underpass at 6<sup>th</sup> and Main at a later date as funding was available. He said it would need to go through the PCC in order to move forward. He said City Council, City Staff, County Staff, and County Commissioners had worked hard on the project to get it to that point. He said federal highway funds were available for the project, would be used for the project, and could not be used elsewhere. He said he confirmed with Commissioner Reno that the sunset date of July 1, 2009, in Item 2a on the second page of the MOU could be moved to August 1, 2009. Mr. Heisler said three items needing council approval were (1) MOU with the County for the County contribution on the agenda that evening; (2) City MDT agreement on the agenda that evening; and (3) consultant design contract that would be on the June 8, 2009, council agenda. Mr. Heisler advised that Commissioner Reno and Steffan Streeter from MDT were in the audience to answer questions. Mr. Heisler said the total state and federal cost was a little over \$11 million, and the total local match required was about \$1.7 million; which included the county easement for the road estimated conservatively at \$175,000, a \$1 million county contribution, and a \$526,185 city contribution. Mr. Heisler said the \$526,185 from the City would come from two sources (1) the Poly Drive and Zimmerman signal project in the amount of \$300,000. He said staff would like to delay the signal from FY10 to a future, undetermined date. He said there had been no warrants done at the intersection, and there was no indication currently that warrants required installation of the signal; and (2) the Rimrock Road reconstruction from Shiloh to Stanford in the amount of \$226,185 that was scheduled for construction in FY11. Mr. Heisler said the target date for award of construction would be by the end of calendar year 2010. He said the City would oversee the project through design and out to bidding, and MDT would conduct the bidding and the construction administration. He said, to date, the City had about \$800,000 invested in the project. He advised there was a Bench North project that was an MDT project that would start at the end of the Bench Connection project and go north to Mary Street. He said the State had divided it into two pieces; Phase I of the Bench North project would reconstruct Bench from the end of the Bench Connection project through the intersection of Hilltop. He said Sanderson Stewart was selected to design Phase I. He said the planned ready date for Phase I was December 2011. He said MDT was doing an environmental document for the entire North Bench project and planned to do the design of Phase II in-house. Mr. Heisler said Phase II would be built as funding became available and approved through the PCC.

Councilmember Ronquillo asked who would do the maintenance after construction of the Bench Connector, specifically in front of the Metra. Mr. Heisler said the City signed an agreement to maintain that section. He said the County would maintain the bridge.

Councilmember McCall asked what process was used in determining which projects should be put on the side burner. Mr. Heisler said the Public Works Director, the City Engineer, and he sat down and went through the approved CIP to determine which projects could wait.

Councilmember Veis said he noticed the dollars were significantly less than what was there before due to the at-grade intersection. He asked what the cost would have been for a full-blown intersection. Mr. Heisler said it was approximately \$29 million. Mr. Heisler said the \$29 million would still be needed for Phase II. He said Phase I would be the at-grade intersection at 6<sup>th</sup> and Main, the bridge across Alkali Creek to Lake Elmo, and the road through the Metra at almost \$13 million. He said the Phase II would be the

underpass. Councilmember Veis asked if Phase II would be in the \$16 to \$17 million range. Mr. Heisler said Phase II would be \$29 million by itself.

Councilmember Ulledalen asked what the local match would be for Phase II. Mr. Heisler said it would be 13.42 percent, plus 14.06 indirect costs. Steffen Streeter from MDT said the most recent preliminary estimate was \$20 million to continue the tunnel under Main Street. He said currently the way the original agreement between MDT and the City was written, the entire Bench Connection project had match. He said if they would enter into a separate agreement again, there would be indirect costs attached. He said something they had talked about was after the first phase was done, PCC would recommend to the Transportation Commission to put the route on the system and then go back and revisit the agreements; but there was no current guarantee. Mayor Tussing asked when they would be talking about Phase II. Mr. Streeter said it would be when the money became available.

Councilmember Veis asked if once Phase I was completed, the PCC would have a discussion on putting the whole route on MDT's system. Mr. Streeter said they would have the discussion but only the Transportation Commission could put a route on the system.

Councilmember Ulledalen said the Poly/Zimmerman signal was going to be increasingly important to Ward IV of the City. He said a lot of it was Heights traffic coming over on Zimmerman, especially on the weekends. He said as they looked to the future, if they were going to have to come up with matching money for Phase II, the Council needed to take a hard look at what other projects were going to get shelved if they had to come up with \$3 to \$5 million in match for Phase II. He said it was a discussion the Council needed to have at some point. Mayor Tussing said he had to agree. He said the intersection of Poly and Zimmerman was not safe, especially on a bicycle. He said he felt there was a definite need for a light at that location. Mr. Heisler said he agreed there was a lot of traffic at the intersection and said some of it could be as the result of the closure of Shiloh.

Councilmember Veis asked when the PCC had approved Phase I. Mr. Heisler said the PCC was made up of representatives from different entities. He said they were approving funding changes through the transportation plans, etc. at their meetings. Mr. Heisler said he was not sure if they called them public hearings, but they took action at their meetings. Mayor Tussing said he doubted if they had approved it yet because they could not until both government bodies voted on it.

Councilmember Brewster asked if Phase I would happen at the same time so it was available when the bridge came online and the road was through the Metra. Mr. Heisler said the Bench North Phase I project had a ready date of December 2011. Councilmember Brewster asked if it would put it one year behind the Bench Connection. Mr. Heisler said that was what the dates indicated.

Councilmember Veis asked if they previously had money ready to go for the original project. Mr. Heisler said when the original project initially began in 2001, the total project cost was between \$6 and \$7 million. He said the local match at that time was a lot less. Mr. Heisler said there was money set aside to cover the match back in the old CIPs. He said there had been changes on how money was to be moved around. Councilmember Veis said Mr. Mumford had talked at a work session about making an Aronson connection as part of the project and asked if it was still planned. Mr. Mumford advised that at this point, it was not part of it. Councilmember Veis asked if it would be part of Phase II. Mr. Mumford said they were still looking at it, but it would end up being a separate project. He

said it could be part of Phase II or as part of the improvements to the East End TIFD. Councilmember Veis said Mr. Heisler had noted that \$800,000 had already been invested, and asked if he was saying they had invested \$300,000 and \$500,000 would go for the rest of it. Councilmember Veis asked what the \$300,000 went for and why could it not be used as a match. Mr. Heisler said the \$300,000 was used for grade alignment and environmental studies that had to be done in order to get where they were today. Councilmember Veis asked how the City would hold accountable to the construction date of the end of calendar year 2010 and how someone would be held accountable if the date was missed. Mr. Heisler said the County Commissioners had asked if the 2010 date was a reasonable target and the City thought it was. He said it came from discussions with MDT, the consultant and city staff. Mr. Heisler said there would be milestones set throughout the project and if milestones were not met, they wanted to find out why and get back on track. He said the end of calendar year 2010 to award the construction contract was a realistic target. Councilmember Veis asked what would happen if the target date was missed. Mr. Heisler said he did not see that happening because the alignment and grade and the environmental documents were already done. He said it was now the matter of designing the road and designing the bridge, and it should be pretty straight forward. Councilmember Veis said if they missed the 2010 date by four or five months, they would miss an entire construction season. Mr. Heisler said they had no desire to do that. He said the City, MDT, and the County want to hit the 2010 date and are committed to it. He said if the consultant's contract is approved on June 8, 2009, they are on track to move forward.

Councilmember Ulledalen said he was comfortable with Phase I but had serious concerns with Phase II. He asked how the bridge could be reasonably designed if they did not fully understand what Phase II even would be at this point. Mr. Heisler said the bridge would be designed and built as if Phase II was in place, so they would not have to go back and redesign or rebuild the bridge.

Councilmember Veis said one of the things that had delayed the project was the incredible cost of Phase II. He asked if the at-grade intersection constructed in Phase I would be able to handle the traffic volumes 20 years out or if Phase II was never built. Mr. Mumford said the problem with the intersection would not be Bench, it would be Main Street. He said, at that point, 4<sup>th</sup> and 6<sup>th</sup> would still enter Main. He said eventually something would need to be done to bring the two together if the underpass was not done. He said they would be continuing to work with the PCC over the next 20 years if the underpass did not happen. He said 20 years out the state traffic volumes on Bench would be approximately 9,000 trips per day, so Bench was not a large traffic generator on its own. He said the problem would be Main Street. Councilmember Veis asked Mr. Mumford if he thought failure of the intersection would be due to Main Street and not Bench or 6<sup>th</sup> or 4<sup>th</sup>. Mr. Mumford said that was correct. Councilmember Veis asked if it would be likely that if they chose not to move forward with Phase II, the Main Street reconstruction would have to pay for the cost of the intersection. Mr. Mumford said something would have to be done eventually, such as merging 4<sup>th</sup> and 6<sup>th</sup> into a single intersection. He said Main Street carried a lot of traffic, which was the main culprit. Councilmember Veis asked if they chose not to move forward with Phase II, would the intersection constructed under Phase I be sufficient to handle the traffic. Mr. Mumford said his guess would be that the intersection would eventually fail if something was not done, whether they built Bench or not. He said there cannot be two intersections that close with the volume on Main Street.

Councilmember Ulledalen asked if the studies included assumptions by the State as to who would use the Bench Connector more, Heights residents or county residents. Mr. Mumford said he was provided with volumes by the state, and the majority of the traffic on Bench would be county residents.

Jim Reno, County Commissioner, came forward and asked if there were any questions. Councilmember Ulledalen thanked the Commissioners for stepping up to the plate recognizing that a significant part of the benefit of the project was getting people out of the Metra. Commissioner Reno said the Commissioners felt it was the County's role to step up and help find a portion of the match.

Councilmember McCall moved for approval, seconded by Councilmember Gaghen.

Councilmember Brewster said if the project was built and they did not do Phase II, they were essentially moving the congestion down from Airport Road intersection to the other intersection. He said he thought Aronson would help a lot, Airport Road would help when finished, and the Inner Belt Loop would help. He said he felt it was important to move forward and appreciated the County's help.

Attorney Brooks advised if the Council wanted to modify the Termination of Agreement clause on Page 2 from July 1<sup>st</sup> to August 1<sup>st</sup>, they would need to make an amendment. Councilmember Veis moved to amend the Termination of Agreement from July 1<sup>st</sup> to August 1<sup>st</sup>, seconded by Councilmember Ruegamer. On a voice vote, the motion to amend the Termination of Agreement was unanimously approved. On a voice vote, the amended motion was unanimously approved.

**(b) AMENDMENT #1 TO THE GENERAL PROJECT DEVELOPMENT AND CONSTRUCTION AGREEMENT BETWEEN MONTANA DEPARTMENT OF TRANSPORTATION AND THE CITY OF BILLINGS, amending the contract dated September 10, 2001, to split the project into two phases. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

City Administrator Volek advised there was no presentation, but staff was available for questions.

Councilmember McCall moved for approval, seconded by Councilmember Pitman.

Councilmember Ulledalen said he felt Council needed a work session presentation on Phase II in the near future. He said there was a significant amount of information presented at the last PCC meeting that he and Councilmember Brewster would be happy to share. He said Phase II was a huge project with significant consequences to the budget, and they needed to take a look if they wanted to commit to that much matching money.

City Administrator Volek she said it was her understanding there had been a lot of discussion about the Outer Belt Loop, which was scheduled for the June 15 work session. She said they could make arrangements to include Phase II. Councilmember Ulledalen said that would work.

Councilmember Veis said the City was getting over some significant hurdles with regards to transportation with the Shiloh Road and Airport Road construction and the Inner Belt Loop, and he said he thought they needed to take some time to do some five to ten year transportation planning and where they wanted to go next. He said MDT was not the quickest agency and if there were things they saw as priorities they needed to get to within the next ten years, they needed to get started on them.

Councilmember Ulledalen said they needed to focus on how to get "the most bang

for their buck", and he said they needed to look at the complexity of dealing with federal earmarks and the amount of time it takes. He said at some point in time the City needed to figure out how to build it and maintain it themselves because that would be the only way to get it done as quickly as it was needed. He said the point was if they should ask for federal money for significant future projects.

Councilmember McCall said she supported Councilmember Ulledalen's comments about having the representatives to the PCC bring the information to a work session. She said it would be very helpful to the rest of the Council.

On a voice vote, the motion was unanimously approved.

**3. PUBLIC HEARING FOR AMENDMENTS TO THE COMMUNITY DEVELOPMENT BLOCK GRANT AND HOME INVESTMENT PARTNERSHIP PROGRAMS AND THE FY2008-2009 ANNUAL ACTION PLAN to accept additional funding of \$190,430 from the American Recovery and Reinvestment Act. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

Community Development Director, Brenda Beckett, said they had a little extra money coming in from HUD. She said the money could only be used for energy efficiency or infrastructure. She said they needed to have a commitment via contract within 120 days. She said they needed to allocate the funds during the current fiscal year. Ms. Beckett said the proposed design for the program was to utilize the funds by combining the First Time Homebuyer and the Weatherization Programs. She said they currently had over 60 applicants that had been approved for the First Time Homebuyer Program, and they felt they could meet about 45 of them after July 1<sup>st</sup> when the new HUD funding was approved. Ms. Beckett gave a PowerPoint presentation providing statistics on the economic benefits of the project. She said they were hoping to assist with seven homes.

Councilmember Gaghen asked if the first time homebuyer would have to make repayment when they sold the property. Ms. Beckett said all of the loans through the First Time Homebuyer and Housing Rehab Programs were due on the sale of the property. Councilmember Gaghen asked if the program was limited to stick-built homes. Ms. Beckett said it could be for a manufactured home, but it had to be on a permanent foundation with specific hook-ups. She said they had to own the land and qualify for an FHA loan.

The public hearing was opened.

- **Joe White, Billings, MT**, said some of the money should be put into social workers to advise those living in the house about what a human is and how they are living in the house. He said they needed that more than 14 more real estate people.

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

Councilmember Ruegamer moved for approval, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.

**4. PUBLIC HEARING AND RESOLUTION #09-18819 ordering construction of**

the improvements identified in W.O. 08-30, Poly Drive Sidewalk Improvements – Billings, Federal Aid No. STPE 1099(61). Staff recommends approval. (Action: approval or disapproval of staff recommendation.) Ms. Volek advised that staff did not have a presentation but was available for questions.

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

Councilmember Veis moved for approval of the resolution for W.O. 08-30, Poly Drive Sidewalk Improvements, seconded by Councilmember Brewster. Councilmember Ullendalen commented that the project was very important. He said the area was just west of Shiloh Road and connected a major portion of the Rimrock West Subdivision to Shiloh. On a voice vote, the motion was unanimously approved.

**5. PUBLIC HEARING FOR SPECIAL REVIEW #876: A special review to allow a drive-through window for a new coffee shop in an existing multi-tenant building in a Community Commercial zone adjacent to Residential 7000 and Residential 6000 zoning districts, on Lots 25-27, Block 5, Central Heights Subdivision, located at 2156 Central Avenue; Michael Stock, owner; Rob Veltkamp, agent. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

Planner Nicole Cromwell provided a PowerPoint presentation that illustrated the location and details of the proposed project. She said the adjacency of the business to the residential zoning triggered the special review. She noted that the proposed project would redevelop the site that had parking issues and three drive approaches. She said the existing buildings would be demolished and a new building would be constructed with a proposed drive-through window for a coffee shop. She reviewed the traffic plan and the current traffic volumes. Ms. Cromwell noted that full access would be available from Santa Fe Drive and Central Avenue. She stated that there was concern about the left turn movement from the drive-through exit. Councilmember Veis noted that the site plan showed more office spaces than what was shown on the traffic plan. He asked if that made a difference in the amount of traffic. Ms. Cromwell responded that it made a difference because retail space increased the amount of traffic and required parking. She said the applicant was informed that any use other than the office space required additional parking, but the space available at that location could only accommodate the coffee shop and office spaces. She noted that the redevelopment would improve the site with landscaping and the building design. She advised that the site plan did not include retail space, only the coffee shop and office space.

Ms. Cromwell advised that the Zoning Commission recommended approval based on the following eight conditions.

1. The special review approval for a drive through window shall be limited to Lots 25-27, Block 5, Central Heights Subdivision as shown on the site plans submitted with this application.

2. Any new lighting within the parking lot or drive through areas shall have full cut-off shields so light is directed to the ground and not onto adjacent property. Lighting standards are limited to 18 feet in height from finished grade.
3. The drive through location shall be constructed as shown on the submitted site plan.
4. The landscaping and parking shall be installed as shown on the submitted site plan, including a sight-obscuring dumpster enclosure on all sides.
5. The applicant is required to install and continuously maintain the 6-foot sight-obscuring fencing that runs along the south and east property boundaries. The fencing shall comply with the clear vision area at the intersection of the alley and Santa Fe Drive and the drive exit on Central Avenue.
6. There shall be no outdoor public address system or outside announcement system of any kind. The drive through may have an outdoor private address system as standard for all drive through services.
7. Demolition of the existing structure on the property will provide for site security, debris and trash containment, dust control during and after structure demolition, and no demolition work shall occur prior to 8 am or after 8 pm daily. A demolition permit from the Building Division is required.
8. The proposed development shall comply with all other limitations of Section 27-613 of the Unified Zoning Regulations concerning special review uses, all landscaping requirements specified on Section 27-1101, and all other City regulations that apply.

Ms. Cromwell said the conditions were standard with the exception of #7 regarding demolition on the property. Councilmember Gaghen asked if the coffee shop would sell food in addition to coffee. Ms. Cromwell said it was another store of Off the Leaf, and she thought there would be a limited food menu. Councilmember Gaghen expressed her concern with exiting left onto Central Avenue with a stop light so close the exit. She asked if the exit onto Santa Fe would be better than trying to exit to Central. Ms. Cromwell explained that the final traffic plan would come at the building permit stage. She said she did not believe the final approval was given for full access to Central Avenue. Councilmember Veis commented that if exiting to Central got to be a problem, right-turn only signs could be installed. Councilmember McCall stated that the City Brew at 17<sup>th</sup> and Grand had the same kind of entrance/exit pattern, and it worked there.

The public hearing was opened.

- **Michael Stock, 1135 Bluegrass Drive East**, said he was the owner of the property. He said the site plan was the same as City Brew at 17<sup>th</sup> and Grand, and he did not anticipate any problems with the proposed plan. He said his intention was to improve the area. He said he had no timeframe, and it would probably be next year sometime before any construction began depending on the economy.

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

Councilmember Brewster moved for approval, seconded by Councilmember Pitman. On a voice vote, the motion was unanimously approved.

**6. PUBLIC HEARING FOR SPECIAL REVIEW #877: A special review to allow a drive-through window for a Burger King restaurant in a new building in a Community Commercial zone adjacent to a Residential 7000 zoning district, on Lot 2, Sweet Subdivision, 2<sup>nd</sup> Filing (aka C/S 263 Tract 5), located at 2434 Grand Avenue, just west of the CVS Pharmacy under construction at 24<sup>th</sup> Street West and Grand Avenue; Montana CVS Pharmacy, owner; Food Service Concepts and Morrison-Maierle, agents. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

Planner Nicole Cromwell provided a PowerPoint presentation that illustrated the location and details of the proposed project. She said the CVS Pharmacy also had a drive-through, but it was not adjacent to residential zoning across the alley, so they did not go through a special review. She said the Burger King location was adjacent to residential zoning and required the special review. Ms. Cromwell reviewed the site plan for the proposed Burger King. She showed the drive-through for the adjacent CVS building with a one-way exit to the alley at 24<sup>th</sup> Street West. She said it would be a full access alley with the option of turning north and crossing the southbound lanes of 24<sup>th</sup> Street West or turning south onto 24<sup>th</sup> Street West. She said the Burger King would have its own drive approach off of Grand Avenue. She said the CVS property and the Burger King property had contributed right-of-way to the city so a right-turn only lane could be constructed. She said the City Engineer's Office planned to move forward with construction of the right-hand turn lane next season. She said they had never put it forward as a project, because there had been no ability to obtain the right of way. Ms. Cromwell said the Burger King drive-through would be on the east side of the building. She said, once through the drive-through, a customer could turn right and exit through the CVS drive approach, left through the Grand Avenue exit, or circle back around and go through the alley. Councilmember Veis asked why the illustration showed that entrance and exit to Burger King was allowed through the alley when she said the CVS drive-through was a one way out. Ms. Cromwell explained that the alley would be paved and would be wide enough for two-way traffic. She advised that a concern was brought up at the Zoning Commission meeting about cut-through traffic. She said that was illegal under state and local ordinance, however, there was nothing about it in the conditions. She advised that Staff recommended dealing with that issue pending construction of the right-turn only lane on Grand Avenue. She noted that one of the conditions from the Zoning Commission dealt with that issue to deter cut-through traffic through the alley from Grand to get to 24<sup>th</sup> Street West. Councilmember Ronquillo asked if signs would be posted to prohibit through traffic in the alley west of Burger King because it was a dead end. Ms. Cromwell advised that would be part of the alley improvement project being reviewed by the Engineering Division.

Ms. Cromwell reported that a concern was raised at the Zoning Commission meeting regarding customer access to the alley. She said one property owner indicated he could not support the project with the customer access from the alley since he did not have a fence at the north side of the property. Ms. Cromwell stated that the applicant proposed to place a screen fence north of the alley property line and landscaping on the

south side of the fencing. She said the resident was still concerned with the alley access and people using that property to turn around when they discovered the alley did not allow through traffic. She said the Zoning Commission considered that but thought it was an appropriate access point and that not many people would use the alley exit after going through the drive through because the most obvious choice for the drivers was to go back onto Grand Avenue. She added that the Zoning Commission also felt there would be very little access by customers from 24<sup>th</sup> Street West into the alley.

Ms. Cromwell advised that the Zoning Commission recommended approval based on the following eight conditions.

1. The special review approval applies to this location.
2. New lighting within the parking lot or drive through areas shall have full cut-off shields.
3. Drive through location shall be constructed as shown.
4. Required to install and continuously maintain the 6-foot sight-obscuring fencing that runs along the south property boundary except where customers access the alley.
5. Landscaping and parking shall be installed as shown; orientation of the dumpster enclosure will be adjusted; TAS submitted and approved by the Engineering Division.
6. No outdoor public address system or outside announcement system.
7. Comply with all other limitations of Section 27-613 and all other City of Billings, regulations and ordinances that apply.
8. Alley egress will include traffic mitigation – may include signage, speed bumps other mitigation as appropriate on Burger King property.

Councilmember Astle suggested making LED lighting a requirement. Councilmember Veis commented that property owners should have the choice. He said the cut-off shields were beneficial to the neighbors.

Ms. Cromwell advised that condition #8 required some traffic mitigation on the property where customers had access to it from the alley. She said the traffic impact study was recently completed and it recommended components already recommended to control cut-through traffic, such as the right-turn only lane. Councilmember Ulledalen commented that traffic exiting to the alley would be annoying to the residents, especially late at night. He added that he felt the landscaping in the alley might be a waste and fencing along the alley would be a better option. Councilmember Veis asked if the alley access was a City requirement or the wishes of the applicant. Ms. Cromwell said the applicant wanted to provide that access and indicated the project would not move forward if it was not allowed.

The public hearing was opened.

- **Kevin Jacobson, Morrison-Maierle of Bozeman, MT**, said he represented the applicant. He referenced condition #8 regarding alley egress and advised that some mitigation was added to the site plan to address that. He said a sign would be posted to prohibit through traffic in the west alley, along with a temporary speed

bump at the entrance to the alley to reduce the likelihood of traffic. He said the applicant wanted to leave the alley access open for customers and service use. He said the temporary speed bump would be used until the right-turn only lane was constructed.

Councilmember Brewster asked how a speed bump reduced cut-through traffic. Mr. Jacobsen responded that it was an annoyance and could prevent people from doing that. Councilmember Astle said the speed bumps in place in the Sports Authority parking lot reduced the cut-through traffic by about two-thirds.

Councilmember Gaghen asked Mr. Jacobsen to comment on Councilmember Ulledalen's suggestion to install a fence in the alley rather than landscaping. Mr. Jacobsen stated he thought that was a possibility. Councilmember Ulledalen asked if the City had options to allow the applicant to do that if the special review was approved. Ms. Cromwell recommended amending the conditions if that was the Council's preference.

Councilmember Gaghen said one resident expressed concern about the smell from Burger King and asked if there was any way to address that. Mr. Jacobsen explained that a statement from Burger King Corporation regarding that issue was in the Council packet.

Councilmember Veis asked if it was accurate that the applicant would withdraw the project if the alley access was not allowed. Mr. Jacobsen said he could not speak for the applicant but knew they wanted approval of the alley access. He said the alley access was important for service use. Councilmember Astle asked if the applicant considered directing exiting traffic to Grand rather than the alley. He said he felt the alley access would be used frequently to exit south to 24<sup>th</sup> Street West. Mr. Jacobsen pointed out that a 'No Outlet' sign would be posted on the alley to the west.

- **Joe White, Billings, MT** said he opposed the drive-through at that location so close to a pharmacy. *The remainder of Mr. White's testimony was inaudible.*

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

Councilmember Pitman moved for conditional approval, as recommended by the Zoning Commission, for Special Review #877, seconded by Councilmember Ronquillo. Councilmember Veis moved to revise condition #8 that alley egress was for service use only and access had to be gated, with the gate closed from 8 p.m. to 6 a.m., seconded by Councilmember Brewster. Councilmember Veis said if the alley was only used for service use, a gate could discourage cut-through traffic and would keep traffic out at night. Councilmember Ulledalen said he would not support that because the alley had to be either opened or closed. He said he would offer an amendment on conditions #4 and #5 depending on what happened with that amendment. On a voice vote, the amendment failed 3-8. Councilmembers Ronquillo, Gaghen, Pitman, McCall, Ulledalen, Astle, and Clark 'no'. Councilmember Ulledalen moved to amend conditions #4 and #5 to allow staff to negotiate with the developer to trade for fencing the residences on the south side of the alley, seconded by Councilmember McCall. On a voice vote, the motion was

unanimously approved. On a voice vote, the amended motion was approved 10-1. Councilmember Veis voted 'no.'

**7. PUBLIC HEARING FOR SITE DEVELOPMENT ORDINANCE VARIANCE #OP-09-01: A request for a variance to allow access through the alley at a new Burger King restaurant on Lot 2, Sweet Subdivision, 2<sup>nd</sup> Filing, at 2434 Grand Avenue; Montana CVS Pharmacy, owner; Food Service Concepts and Morrison-Maierle, agents. Staff recommends approval subject to the condition that the alley be paved from the west edge of the Burger King site (Lot 2) all the way to 24<sup>th</sup> Street West. (Action: approval or disapproval of staff recommendation.)** Ms. Volek advised that the item was discussed at a recent work session and staff did not have an additional report but was available to answer questions.

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

Councilmember Gaghen moved for approval of the Site Development Ordinance Variance #OP-09-01, seconded by Councilmember Ronquillo. On a voice vote, the motion was unanimously approved.

**8. 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.

- **Mark Higgins, Ahoy Street**, said he was proposing to open a medical marijuana business and would operate within the confines of the law and was available to answer any questions. He said his intention was to service patients who were licensed in the State of Montana. Council had no questions.

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

### **Council Initiatives - None**

Councilmember Ulledalen announced he would not be at the June 8 meeting.

Mayor Tussing reminded Council of the next budget meeting scheduled for the following evening at 5:30 p.m.

Councilmember Clark asked if Mr. Brooks could provide information regarding when Councilmembers should recuse themselves from voting on items.

**ADJOURN** – The meeting adjourned at 9:01 p.m.