

City Council Work Session

September 21, 2009

5:30 PM

Community Center

The recording was inadvertently erased before transcription. Minutes are based on hand-written notes.

ATTENDANCE:

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

ADJOURN TIME: 8:46 p.m.

Agenda

TOPIC #1	Public Comment
PRESENTER	
NOTES/OUTCOME	

- **Stephanie Haider, 729 Aronson Avenue**, expressed her opposition the pool plan.
- **Kevin Nelson, Billings, MT**, referred to Item #2 and expressed his concern that Council knowingly violated the law by meeting in small groups. He said any decision was tainted and asked how public trust would be developed on the issue.
- **Tom Zurbuchen, Billings, MT**, referred to Sahara Park and asked how the Better Billings Foundation was different than a developer.
- **Julie Thomason, 265 Caravan**, stated she was against the Sahara Park pool development agreement. She said Master Plan B was supposed to go into effect if the pool was not built. She noted that was a different proposal and was a commercial venture, not a neighborhood park. She said she wanted Plan B if the Plan A concept was not ready to go.
- **Jennifer Wittmayer, 279 Caravan Avenue**, stated that Plan B should be implemented because the Foundation did not meet the deadline. She said people did not want a pool.
- **John English, 1001 Ginger**, spoke for the Sahara Park pool. He said he was an elementary school Principal and felt the pool would serve students well along with his own children.

TOPIC #2	Sahara Park Funding and Development Agreement and Feasibility Study
PRESENTER	
NOTES/OUTCOME	

- Parks, Recreation and Public Lands Director Mike Whitaker provided an update on the pool project. He advised that Chuck Barthuly of the Better Billings Foundation was

present and could answer questions too. He explained that the March approval required a signed development agreement by September 30. He added that because there would be an operating deficit, staff recommended that the City leased or sold the land to the Foundation to run the pool. He said the Parks Board recommended the same. Mr. Whitaker advised that a 60-day extension was needed to get to a final development agreement. He noted that the item could be considered at the November 23 Council meeting – to sell the site to the Foundation with the provision that the land would revert to the city if the pool was not developed.

- Mayor Tussing did not allow Mr. Barthuly to provide testimony since the public comment period was closed.
- City Administrator Volek advised that during a peak season, operating costs would be covered, but during an average season there would be a \$7500 deficit. She said there were liability concerns if someone else built the pool and the City operated it. She advised that the reversion was modeled after the Montana Rescue Mission land sale of four or five years ago. She noted that surveys indicated a Heights pool was desired. She said the land sale prevented the City getting the pool back in the future if it closed, etc.
- Councilmember Ronquillo asked how much land was involved.
- Ms. Volek and Mr. Whitaker explained that three acres would be transferred and the remaining land would be green space with a trail to the adjacent park land and some land would remain undeveloped due to the steep slope.
- Councilmember Astle asked what was considered a nominal amount.
- Ms. Volek responded that there was no amount in mind. She noted that MRM was a gift.
- Councilmember Astle stated that MRM was done because the former land use was unacceptable and did not compare to this situation. He said he would oppose the extension.
- Ms. Volek advised of a September 23rd meeting to discuss a special improvement district and a park maintenance district.
- Councilmember Pitman stated he wanted more public testimony after this presentation.
- Councilmember Veis asked if the process and criteria that was reviewed a few weeks ago was used to determine if the land should be sold.
- Mr. Whitaker explained that they just started thinking about it in the past few days.
- Ms. Volek noted that the criteria were reviewed in a work session, not approved.
- Councilmember Veis asked why the deadline was not met.
- Mr. Whitaker stated it was up to the Foundation to meet the deadline.
- Mayor Tussing asked if that was what the Foundation wanted.
- Mr. Whitaker advised that more time was needed to review the development agreement and how a sale/lease could happen.
- City Attorney Brent Brooks recommended against opening comments again that evening because some people left that may have wanted to comment.
- Councilmember Clark asked if anyone could bid on the land and use it for something besides park.

- Ms. Volek said that was possible.
- Councilmember Astle asked if a lease was as good as a sale if the party was insured and indemnified.
- Mr. Brooks responded that it was possible and depended on the policy and company.
- Ms. Volek explained that the Foundation requested that the City assumed utilities and staff was concerned about that request.
- Councilmember Ulledalen asked if the Foundation could build the pool and then sell it.
- Ms. Volek and Mr. Brooks agreed a limited deed reversion would be used.
- Councilmember Ulledalen commented that the City could get a defective pool under that arrangement.
- Councilmember Veis asked if the plan had to be amended if the time was extended. He also asked if the plan had to be revised if the land was sold.
- Mr. Whitaker advised that the resolution would have to be amended and it would probably be wise to amend the park plan.
- Councilmember Pitman suggested giving the Foundation more time; at least 30 days and 60 would be better.
- Mayor Tussing stated he wanted a pool, but was not excited about this proposal.
- Ms. Volek reviewed the time frame.
- Mayor Tussing stated that if that was supposed to happen, it would not be so complicated.
- Councilmember Gaghen commented that other parks to be sold were different than this one.
- Councilmember Pitman stated he was against the land sale.
- It was Council consensus to not consider the time extension.

TOPIC #3	<i>Energy Star Challenge Recommendation</i>
PRESENTER	
NOTES/OUTCOME	

- Energy and Conservation Commission Chair Robert Merchant explained there were two parts to the program – the City improved energy usage in its buildings and took the results to the community as an example of what private sector could and should do. He said the program required the City to make a 10% energy savings commitment. He noted that the efforts and the results had to be documented over a long term, and an energy savings plan had to be developed, and then taken to the community. He explained that performance contractors encouraged cities to do the program because it dovetailed with their program.
- Mayor Tussing stated that he generally supported these initiatives and that starting with the City was the way to do things. He added that the City could educate and encourage others to do the same.
- Councilmember Ronquillo stated that Conoco won an award two years ago and the City could learn from them. He noted that MDU worked on the same goals for years.

- Mr. Merchant advised there was no sign-on cost and there were no penalties if the goals were not met.
- Commission Member Mary McNally stated that even though there was no cost, funds could be put into the energy conservation grant application for public education and marketing.
- Mr. Merchant advised that was correct and money could be leveraged by using volunteers such as MSU-B students. He noted there would be some staff effort to input the data and develop the programs.
- Councilmember Pitman asked if the savings were tracked from the brown-out.
- Ms. Volek advised it was not tracked by building.
- Councilmember Ronquillo explained that MDU offered interest-free loans, and the Legislature could change the tax policy to encourage companies to do it again.
- Councilmember Clark asked if it was voluntary.
- Mr. Merchant explained it was a commitment by the City to work on City buildings and then try to help the community save through educational efforts, and possibly some incentives. He pointed out there were no mandates that anyone had to do anything.
- It was Council consensus to proceed.

TOPIC #4	Code Court
PRESENTER	
NOTES/OUTCOME	

- Mr. Brooks explained that in 1999 or 2001, the Legislature established municipal infractions as an alternative to misdemeanor criminal charges for some offenses, such as parking violations, traffic, zoning code, animal control, weeds, etc. He said the Code Court would provide a more flexible way to handle those offenses and they would not automatically go to municipal court. He advised that the proposal transferred several violations to infractions. He stated that the Judge could hear and process citations the same as a small claims procedure.
- Deputy City Attorney Craig Hensel explained that the concept started with the red light camera idea, and continued even though the Legislature prohibited red light cameras. He noted that only minor violations that did not require jail time could be decriminalized. He said most were Title 61 traffic offenses and people could choose to not contest the citation and could send in their payments without having to appear in court. He explained that contested violations would be heard by a judge, not a jury. He stated it should be an expeditious process.
- Ms. Volek asked if Billings would be the first city in Montana to enact that concept.
- Mr. Brooks said it would not, but the others did not use the process much.
- Ms. Volek explained that the concept was used around the country. She said people would get violation letters and would not be threatened by criminal charges, and it allowed people to pay their fines without burdening the court. She noted that those fines stayed with the City, not the state. She said it was well worth trying.
- Councilmember Veis asked if a new judge would be needed.
- Ms. Volek advised that someone could be appointed.

- Ms. Hensel stated that the judge supported the concept, and that she or a magistrate would do this a few hours a week. He said the process would be quick and efficient in an informal proceeding that provided a lot of discretion to the judge.
- Mayor Tussing asked if warrants would still be issued for a failure to appear.
- Mr. Hensel explained that would probably be turned over to collection in the same way it was done when someone did not pay who plead guilty.
- Mr. Brooks advised that the person could still be found in contempt and that was a criminal charge.
- Councilmember Ulledalen asked if the point was that most people would forfeit bond.
- Mr. Hensel said it was.
- Ms. Volek advised that the proposal was to implement the Code Court January 1. She said it was on the Council agenda at the end of October.
- Councilmember Veis asked if that would eliminate the weed fiasco at the Council meeting.
- Mr. Hensel explained that the violation would be a civil infraction but abatement would still have to be assessed and that went to Council.
- Councilmember Ronquillo asked if Police and Code Enforcement Officers issued the citations.
- Mr. Hensel said they would and the officers would present the case to the judge.
- Ms. Volek advised it was the same people issuing the citations and there would have to be a second set of forms and citations.
- Councilmember Clark asked if not going to court was an option with the current procedure.
- Mr. Hensel said it was, but this was clearer that people did not have to appear.
- It was Council consensus to proceed.

TOPIC #5	General Fund Employee Costs
PRESENTER	
NOTES/OUTCOME	

- Ms. Volek advised that this was in response to a Council initiative.
- Councilmember Veis asked Councilmember Ulledalen if that was the information he wanted.
- Councilmember Ulledalen said it was, and he did not have any questions about it right now.

TOPIC #6	2010 Unified Planning Work Program
PRESENTER	
NOTES/OUTCOME	

- Transportation Planner Scott Walker advised that he presented the Unified Planning Work Program each year at about this time. He explained that the document reflected how staff intended to spend its time and how it would be charged to the federal grant. He said the plan had been presented to the Technical Advisory Committee (TAC) and

the Planning Board, and it would be presented to the Board of County Commissioners at 9:30 a.m. September 29, the day after the Council meeting, and to the PCC at noon the same day. Mr. Walker explained the MPO classification under federal transportation legislation that included twelve work elements for staff time. He said the reimbursement occurred quarterly and each work element had a different reimbursement rate. He advised that the Planning Department City fees were projected at \$158,000, County fees at \$100,000 and the planning levy at \$300,000. He said that matched up to \$1.2 million federal money but it could not all be claimed.

- Councilmember Clark asked how the plan compared to 2008.
- Planning and Community Services Director Candi Beaudry advised that it was lower, due to lower forecasted fees, but the mill levy was about the same. She said the department would not be able to match and claim all of the federal money.
- Councilmember Ronquillo asked if the fees had increased recently.
- Ms. Beaudry advised that fees were increased over a year ago.
- Mr. Walker explained that the work had to be related to transportation. He compared 2009 and 2010 funding and work elements. He explained that a \$572,000 contingency was unspent money from previous years because the federal money could not be matched. He said a major transportation plan revision might cost lots of money and contingency funds could be directed to that. He explained that with more staff, the money could be used, but the fees or local taxes were needed to match the federal dollars which fund about 50% of the department costs.
- Mr. Walker reviewed 2009 and 2010 priorities as: the Heritage Trail Plan update, Highway 3 access, 2010 census preparation, clear vision requirements, east end parking, and the annexation policy.
- Councilmember Clark asked if the \$572,000 contingency was because the City did not have enough local money to match the federal grant.
- Mr. Walker said that was correct and showed how the funds had built over the past years. He said over \$2 million had been left on the table. He explained that the contingency was growing fast in the past couple of years and with four unfilled staff slots, the hours were not committed, the work was not done and the federal money could not be matched.
- Ms. Beaudry advised that three MPOs would probably lose \$400,000 at the end of September because the money was not being used. She said there was low activity so fees were not being generated. She noted that the Board of County Commissioners could increase the mills without a vote, but were not willing to do it.
- Ms. Volek advised that approval of the plan was an item on the September 28 agenda.

TOPIC #7	<i>Quarterly Updates (Budget, Initiatives, Downtown Billings Partnership, Strategic Plan, Pending Litigation-Executive Session)</i>
PRESENTER	
NOTES/OUTCOME	

- Mayor Tussing agreed to move the Downtown Billings Partnership report to the beginning of the updates.

Downtown Billings Partnership Update

- Steve Wahrlich advised that he was President of the Downtown Billings Partnership and the Business Improvement District. He thanked the Council for its support of projects and funding, and asked for continued support for the BID and safety zone expansion.
- Greg Krueger, Executive Director of Downtown Billings Partnership referred to three action items for which guidance was requested related to Fund 202 (old TIF) and the development agreement with large, carryover projects. He reviewed the final encumbrance number and how the dollars would be spent. He explained that the Quiet Zone had a \$25,000 cost overrun and the request was to add \$40,000 to it for a cushion to wrap up the project. He asked if \$252,000 should be allocated to the Cooperative Security project. He advised that any leftover money went to the streetlight project.
- Councilmember Ronquillo stated that the Police Department was doing a great job including on the south side.
- Ms. Volek commented that Officer Winden did not hear Mike Nelson's compliment.
- Mr. Krueger stated that criminal activity was down so Officer Winden was able to work on community policing that the DBP really wanted him to do.
- Councilmember Clark asked how long that patrol program would last.
- Mr. Krueger explained it was for two more years and then it was up to the property owners whether to continue. He explained that Fund 203 was the N. 27th street district and it was expected that the value would increase \$80,000, but it would actually be \$500,000. He noted that amount of money could not be counted on in future years. He noted a five-year plan was in place to spend the funds. He advised that Fund 203 projects were underway. He noted that two property appraisals were included in the funding proposal.
- Councilmember Veis asked why the appraisals would be done now instead of as part of a sale.
- Mr. Krueger explained that Stockman Bank may want the land so an appraisal was needed first. He said it was unknown if the Library or Council was interested in selling the Library lot.
- Councilmember Ulledalen asked if the lot belonged to the Library. Mr. Krueger said it did.
- Lisa Harmon, Executive Director of the Downtown Alliance provided an update on the Business Improvement District. She asked if the City was willing to participate in the safety program expansion in the fourth year of the safety expansion program. She stated that Officer Winden loved his job, was successful at it and statistics reflected that. She announced that the first meeting about a downtown neighborhood watch would be held the next day.
- Councilmember Veis asked why Dehler Park needed to be in the district.
- Ms. Harmon explained that when it opened, there was significant panhandling there and even though it dropped off, it needed to be kept down.

- Councilmember Clark stated that could be a way to increase the number of people who felt safe in downtown at night.
- Councilmember Ulledalen commented that he had worked downtown for 20 years and things had never looked better. He said it was important that the Council continued its support.
- Councilmember Veis asked why police were not patrolling the parks.
- Mr. Krueger explained that the beats were too large and busy. He noted that if patrol was available, Officer Winden called them in, but was willing to handle it without that assistance.
- Officer Winden stated he was able to be more proactive than the patrol could.
- Councilmember Veis asked if that was just moving people to other parks or areas. He said it seemed the City was paying a second time for police presence in these neighborhoods.
- Ms. Harmon stated that the problem was moved.
- Mr. Krueger commented that Pioneer Park was different, but transients had moved west.
- Councilmember Gaghen noted that Officer Winden was a deterrent all along 27th Street.
- It was Council consensus that the items should be presented at the October 13 meeting.

Budget Update

- The budget was reviewed. There were no questions, but an observation was made that the General Fund was under budget.

Initiative Review

- Councilmember Ronquillo referred to an initiative that the State was working on, but indicated he still wanted to leave it on the list. Ms. Volek said she would check with Montana Department of Transportation and would keep it on the list until it was certain what they were doing.
- Ms. Volek commented that a Main Street Tax Increment District was not supported by the Heights Task Force.
- Councilmember Pitman suggested removing that initiative if it was not supported.
- Ms. Volek reported that Planning staff suggested dropping the vertical siding initiative because a variance could be requested. It was Council consensus to eliminate it.
- Ms. Volek advised that staff suggested keeping the requirement for special reviews for all beverage licenses.
- Ms. Volek advised that items marked as complete would be removed from the list.
- Councilmember Ronquillo asked about the item concerning Passages PILOT.
- Ms. Volek explained that she offered to meet with Dave Armstrong. She advised that he was meeting with a new attorney and she would hear from them when that was done in about a month.

Strategic Plan Update

- It was Council consensus to tentatively schedule a meeting on October 21, 2009, 4-7 p.m. for strategic planning.
- Councilmember Clark asked about a meeting with the County.
- Ms. Volek advised one was scheduled October 1, at 12 noon, but she did not know the location.

Executive Session

- Council moved to executive session at 8:00 p.m. to review pending litigation.

Additional Information:

- Councilmember Ulledalen reported as RC&D Board representative that there was USDA money from stimulus. He said there were budget issues due to audit costs and administrative costs could not be charged to grants. He said more money may be sought from the City.
- Councilmember Ronquillo stated that Grains of Montana had landscaping requirements, but the grass and trees were dying.
- Ms. Volek advised that she would make sure Code Enforcement checked on it.
- Councilmember Veis reported that he would host a group from Nepal at the end of October and invited Council to join the group for lunch.