

REGULAR MEETING OF THE BILLINGS CITY COUNCIL
September 14, 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 Clark gave the invocation.

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

MINUTES – August 24, 2009, approved as presented

COURTESIES – Mayor Tussing expressed appreciation for citizens who had attended the community conversation sessions held the previous week. He announced that the remaining sessions would be held September 16, at 9 a.m. and 7 p.m. at Garfield Center, and September 17, at 9 a.m. and 7 p.m. at the Community Center. He noted that all citizens were welcome to attend any session regardless of where they lived.

PROCLAMATIONS – National Library Card Sign-up Month

ADMINISTRATOR REPORTS – Tina Volek

- Ms. Volek advised that the insurance certificate for Item 1K1, the St. Patrick's Catholic Church street closure request, was sent in the Friday Packet and available in the ex parte notebook in the back of the room.
- Ms. Volek advised that the application and insurance certificate for Item 1K2, the Montana Brewing Company street closure request, were placed at council desks that evening and available in the ex parte notebook in the back of the room.
- Ms. Volek advised that the one protest received for Item 4F, SID 1386 for East and West MacDonald Drive, was sent in the Friday Packet and available in the ex parte notebook in the back of the room.
- Ms. Volek advised that the applicant for Item 6 sent an email request that the new name for Cynthia Park Drive should be Sky Run, not Sky Run Drive as reflected in the staff report and the initial request.

PUBLIC COMMENT on "NON-PUBLIC HEARING" Agenda Items: 1, 2 & 3 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.)

- **Stan McIntire, 1425 Bitterroot**, referenced Item 1P and stated that development documents were on file at the Courthouse. He said the contract was between Cherry Creek Estates and the City, and it was voided in October the previous year due to non-performance by Cherry Creek Estates, but the City's part of the contract was still valid. He stated that the City reduced the total number of units that could be built on Lots 3 and 4 from 368 to 300. He added that a proposal was before the Council that night to recover 62 of those units through a new development agreement called Danube Court.

Councilmember Brewster asked Mr. McIntire what problems he had with the contract. Mr. McIntire said that because the number of units was reduced to 300 for Lots 3 and 4, there was no more land available because the lots were the same size. He said the problem was that the contract was void and the developer was trying to do something on a piece of land that was denied by the Council the previous November.

- **Tom Zurbuchen, 1747 Wicks Lane**, stated that the development agreement for Item 1P specifically stated that all of its contents became a matter of record and went on all title reports concerning the land. He said it defined the land and included a surveyor's map, and no part of tract 4 was excluded from the development agreement. He said the development agreement covered all land in tracts 3 and 4 and was still valid. He stated he was not saying the developers could not develop more on that land, but he was saying that to do so, the agreement needed to be changed and not doing so would negate any development agreements the Council had entered into. He commented that the Council needed to maintain its integrity.

Councilmember Ronquillo asked if there were 300 trailers in that development. Mr. Zurbuchen responded that there were probably 300 spaces, but not 300 trailers. Councilmember Gaghen clarified that the correct term was manufactured homes.

Councilmember Astle asked if the City had a copy of the development agreement referenced in the testimony. Mr. Brooks advised that he thought Planning Manager Wyeth Friday had a copy of the agreement and he could provide comments during the staff presentation of the item. Mr. Zurbuchen reported that he had a copy of the agreement.

- **Larry Trettenbach, 1608 Blarney St.**, stated that there were traffic problems on Bitterroot with the number of trailers already in Cherry Creek Estates. He added that Police were in the trailer court quite often as well. He said the school kids had to walk along the road with all the traffic and it would be a nightmare one day.
- **Joe White, Billings, MT**, spoke about Item 1M and said social workers were needed. *The rest of Mr. White's testimony was inaudible.*
- **Kevin Nelson, 4235 Bruce**, referred to Item 1M and asked if anyone had read the fine print of the Internal Revenue Code Section 1400 U-1(b). He said people needed to have a meaningful time and place set aside for public comment on the item and there was time to do that before the October deadline.

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

1. CONSENT AGENDA

A. Bid Awards:

1. **SID 1387, Sanitary Sewer to Zimmerman Trail Subdivision.** (Opened 8/25/09) Recommend delay of award until September 28, 2009, following the sale of bonds.
2. **W.O. 09-03, 2009 Street Maintenance City Crack Seal.** (Opened 8/25/09) Recommend Z & Z Seal Coating \$86,084.38.

B. Contract for Professional Landscape Architectural and Planning Services with The Land Group for Pioneer Park Master Plan Update, \$86,660.

C. Approval of Contract with Montana Department of Commerce and **Acceptance** of Montana House Bill 645 (Montana Reinvestment Act) (ARRA) Grant Funds for W.O. 04-12, Reconstruction of Alkali Creek Road; \$1,650,688.

D. Amendment #1, Scheduled Airline Operating Agreement and Terminal Building Lease (Signatory Agreement). Great Lakes Aviation, Ltd.; extending the term of the lease for one year to expire on 6/30/2010. Annual lease revenue - approximately \$95,000; annual landing fees revenue - approximately \$34,000.

E. Amendment #9, Architectural and Engineering Services Contract for MET Operations Center Bus Wash and Pavement Upgrades (100% funded by ARRA Grant MT-96-x002.00); CTA Architects Engineers; \$62,368.

F. Confirmation of Police Officers Moses Richardson, Cory Kambak, Joshua Schoening, Bethany Schwartz, Sean Weston, Anthony Nichols, Joshua Cavan, Richard Gilmore, and John Tate.

G. Approval of the reconveyance of the original 1988 Trust Indenture to the Billings Area Chamber of Commerce (\$410,000) and **acceptance** of the new Trust Indenture.

H. Approval of License for Use of Real Property #09WSW0267 with National Oceanic and Atmospheric Administration for use of Airport real property; 15-year license (2/1/08-1/31/23); with no financial impact to the City.

I. Resolution #09-18864 approving the Skyview Ridge Park Master Plan,

J. Approval of City's purchase of the south 180.70 feet of Lot 1, Sandra Subdivision, located at 2421 Belknap Avenue; \$122,000.

K. Street Closures:

1. **St. Patrick's Catholic Church Annual Picnic**, Sunday, September 20, 2009, 10:00 a.m. until 3:00 p.m.; N. 31st Street from 2nd Avenue N. to 3rd Avenue N.
2. **Montana Brewing Company Benefit**, Saturday, September 26, 2009, noon (following the Farmer's Market) to 10:00 p.m.; North Broadway between 1st and 2nd Avenues North.

L. Resolution of Intent #09-18865 to sell the Park IV Parking Garage, set a public hearing date, and instruct staff to contract with Strategy 5 for marketing the sale.

M. Resolution #09-18866 naming the entire City of Billings as recovery zone and reserving recovery zone bonding authority; up to \$17.9 million of recovery zone economic development bonds and up to \$26.8 million in recovery zone facility bonds (ARRA).

N. Resolution #09-18867 establishing compliance for reimbursement of land and design expenses for the Inner Belt Loop Project under the Internal Revenue Code.

O. Second/Final Reading Ordinance #09-5496 for Zone Change 856: a zone change from Residential 6000 to Community Commercial on the east half of Lots 22-24, Block 272, Billings Original Town, located at 2215 6th Avenue North. George and Dorothy Wetstein, owners; Joyce Lunder, agent.

P. Preliminary Major Plat of Danube Court Manufactured Home Park, 62 spaces for manufactured homes (units) on approximately 9.7 acres of land, located east of Bitterroot Drive off of Cherry Creek Loop; legally described as a portion of Lot 4, Block 1, Cherry Creek Estates Subdivision; conditional approval of the preliminary major plat and adoption of the Findings of Fact.

Q. Final Plat of Barrett Subdivision.

R. Bills and Payroll:

1. August 7, 2009
2. August 14, 2009
3. August 21, 2009

(Action: approval or disapproval of Consent Agenda)

Councilmember Brewster separated Item 1P. Councilmember Ulledalen separated Item 1B. Councilmember Ronquillo moved for approval of the consent agenda with the exception of Items 1P and 1B, seconded by Councilmember Clark. On a voice vote, the motion was unanimously approved.

Councilmember Ronquillo moved for approval of Item 1B, seconded by Councilmember Pitman. Councilmember Ulledalen asked what the City was getting for the \$86,000, and if that was the actual negotiated amount. Parks, Recreation and Public Lands Director Mike Whitaker responded that the amount was similar to what was spent for the updated master plan for Riverfront Park. He said the contract included a survey, several public meetings, and an analysis. He advised that it had been more than 30 years since the plan was updated and he hoped it would include a

recommendation about how to deal with disc golf in the park. Councilmember McCall asked Mr. Whitaker about the timeline for the contract. Mr. Whitaker stated it would be completed by April 1, 2010.

Councilmember Ulledalen expressed his concern that there was no money for parks and when there finally was some, it was being spent on a planning document. Councilmember Astle asked where the \$86,000 would come from. Mr. Whitaker explained that a supplemental budget request was submitted as part of the budget process to take the funds from the General Fund. Councilmember Veis stated he did not disagree that it was too expensive, but it seemed to be the only way to get a decision on the disc golf issue.

Councilmember Ulledalen asked if the funds were actually from the sale of the parkland at the Southgate Business Park. Mr. Whitaker advised that the request was to take the money from the General Fund, and the money from the parkland sale was in a separate line item in the budget.

Councilmember Astle stated that he agreed with Councilmember Veis that the study would answer the question about disc golf, but he said an answer could come from a Council Initiative. He said he was not sure he could support spending money that could be used improving parks. He commented that the only people that would get excited about a survey that included disc golf would be the people that hated it.

Mayor Tussing asked if the study was more involved than just the disc golf issue. Mr. Whitaker said that it would be a complete assessment of the whole park. He explained that the park was extensively used by several user groups, was the most used park in the parks system, and the City could not keep up with the maintenance of it, so he hoped the study would identify other ways to maintain it. Ms. Volek commented that the Council normally changed the use of a neighborhood park by amending the master plan and since that had not been done for many years, it was time for an updated plan. She said Pioneer Park was not just a neighborhood park, which was the rationale to use general funds to pay for the update.

Councilmember Clark asked how many master plans existed that were never used. Mr. Whitaker said he could not say exactly, but it was quite a few. He said the department generally followed the plan in place for each park. He said the Pioneer Park document was very old and things started to occur in the park without approval of the department or the Council.

Councilmember McCall agreed it was expensive, but would support it. She said the results from the citizen survey indicated the importance of parks and that Pioneer Park was the most used park. She said she felt an updated plan was important.

Councilmember Ruegamer stated that he agreed the City should plan its own parks instead of paying a consultant to make an unpopular decision for the City. He said he would not support it.

Councilmember Gaghen stated that she felt some direction was valuable because there were concerns and misunderstandings about what was planned in the park, but she was not sure that the money outlay for a plan was practical.

Councilmember Ronquillo stated that he agreed \$86,000 was too much money for a study and believed that staff was capable of updating the plan. He said he visited with disc golf players that indicated they were not interested in using the discs for anything other than the game. He added that parks were intended to be used. He said he would not support spending money on a master plan that should be done internally.

Councilmember Veis asked Mr. Whitaker what he would do if the allocation was rejected. Mr. Whitaker stated that staff would have to strategize. He said his staff did not have all the necessary skills or time to complete a plan in a timely manner, and it would require re-prioritizing of other projects. Councilmember Veis asked how decisions could be made about Pioneer Park in the next decade without a master plan. Mr. Whitaker said his department would examine the issues and make recommendations to the Parks Board and the Council. He explained that the department would work with neighbors and the disc golf players to try to come to an agreement about using Pioneer Park for that activity or would consider an alternate location.

Councilmember Gaghen said she thought that was similar to the Growth Policy in that a plan would be in place to guide staff. She asked about the range of the costs from the companies that responded to the request for proposals for the master plan update. Mr. Whitaker explained that the RFP process did not include prices until the most qualified company was selected, and then the price was negotiated. Ms. Volek added that it was different from the typical bid process where price was the primary factor. Ms. Volek stated that the company selected had experience with the disc golf issue.

Councilmember Ulledalen asked if Mr. Whitaker would be able to spend \$86,000 to enhance and improve Pioneer Park. Mr. Whitaker responded that he would want a formalized document before spending money for anything other than basic maintenance. Councilmember Astle asked why the current master plan could not be amended to deal with the disc golf issue that seemed to be the most prevalent item. Mr. Whitaker said he did not believe the department had the skills needed to deal with that in-house. Councilmember Pitman said a current master plan had been needed for some time, but it had not been done internally. He said professionals were relied on to provide opinions.

On a roll call vote, the motion was approved 6-5. Councilmembers Ronquillo, Ruegamer, Ulledalen, Astle, and Clark voted 'No.'

Councilmember Ronquillo moved for approval of Item 1P, seconded by Councilmember Pitman. Councilmember Brewster asked if the Council could limit density on a subdivision. Planning Manager Wyeth Friday responded it was not normally done because subdivisions did not typically have development agreements and the zoning determined the density. Mr. Friday stated that he was not aware of that being done other than the previous development agreement on that manufactured home park. Mr. Brooks explained that case law indicated that if certain negative impacts occurred from a development, reasonable conditions could be imposed to mitigate those impacts. Councilmember Brewster asked if it was acceptable to have limited the density in that case because there were likely conditions that stipulated that. He also asked if the conditions from the preliminary plat went away once the final plat was approved. Mr. Friday explained that the conditions included in the preliminary plat had to be addressed before the final plat was approved. He said in that case, it would be before the final SIA could be recorded.

Councilmember Brewster referred to the Planning Board minutes from the public hearing regarding the City's action on Phase II and asked if that meant that all the conditions went away. Mr. Friday advised that the conditions from the Cherry Creek Manufactured Home Park Phase I and II went away when the Council took final action on that development agreement in November, 2007, and that project ended at that point. Councilmember Brewster asked if that included the density. Mr. Friday responded that it did. He said Phase I and II were complete and the density could not increase there. He said the subject development was a brand new application for development and not part of Phase I or II. Councilmember Brewster asked if the boundaries were defined in Phase II. Mr. Friday explained that the development agreement defined the Phase II boundaries as Lots 3 and 4 of Cherry Creek Subdivision, but it also specifically stated that it was an agreement for the Cherry Creek Manufactured Home Park and the new application was for Danube Court Manufactured Home Park on a portion of Lot 4. Councilmember Brewster asked if that was to circumvent the agreement on Phase I and II of Cherry Creek. Mr. Friday explained that when the Council acted on the development agreement in November, 2007, and limited the number of lots, that ended the development of Phase I and II, and the only way

additional development could occur was with a new proposal. Councilmember Brewster asked if all the density could be packed into a small corner of the area in that agreement and then the developer could come back later with a larger density, contrary to the agreement. Mr. Friday advised that the zoning limited the density available so if it was all located in one place, the rest of the property could not be developed with additional density. He noted that they were talking about two different things - a subdivision and a manufactured home park that was a subdivision for rent or lease that could be on just a portion of a tract, because it was creating units for rent or lease and the lot remained underneath. Mr. Friday said an SIA or development agreement would dictate the conditions. He explained that the issue was that a project went through the Council and that ended that development, but because there was undeveloped property remaining, a new development could be proposed. Councilmember Brewster asked if staff felt it was important at the time to let the Council know that could happen. He stated that if it was the Council's intention to limit the development there, and if the Council was told it was a reasonable condition, in his mind, it was ignored. He asked if it eroded the credibility of the Planning Division. Mr. Friday responded that the Cherry Creek Manufactured Home Park followed the process for approval of Phase I and II and ended with a certain number of lots approved by the City. He said when that ended; the developers indicated a desire to develop the additional piece and were informed that the only way to do that was to start the process over at the beginning. He said going through the process was what made sure the conditions were imposed and the review was complete.

Councilmember Brewster asked if the developers were 100% in compliance with the agreement before it was thrown out. Mr. Friday explained that when the developer wanted to complete Phase II, staff reviewed the conditions imposed and required compliance before Phase II was released.

Councilmember Pitman asked if another company purchased the strip of land. Mr. Friday said it was the same company, but under a different name. Councilmember Pitman asked why the name was different. Mr. Friday advised that the developer had to start the process again since Cherry Creek could not be developed further, so a new name was used.

Councilmember Ruegamer stated that he remembered it was the same group that was supposed to have landscaping in place and that junk vehicles were to be removed, and he knew that those things did not happen because he visited the area at that time and saw that it was not in compliance. He said his point was that they were not improving the area, but just putting trailers on the prairie, and he wondered if they had to be held accountable to make it look nice. Mr. Friday explained that Councilmember Ruegamer was correct, and when the applicants wanted to develop Phase II, there were still outstanding issues that had to be addressed before approval of Phase II. He said the Council reviewed the situation at that time, and under the authority of the development agreement, limited the number of units because the previous requirements were not met. He explained that staff made sure all the requirements were met before Phase II could be developed and used. He said the current application was a brand new piece adjacent to Cherry Creek, with the same layout. He advised that during the review process there was a complaint about weeds and Code Enforcement required the weeds to be cut, which they were. He advised there was no development agreement, but a subdivision improvement agreement that would be recorded. He said the same type of issues would have to be addressed. Councilmember Ruegamer said it seemed the developers did the minimum to get approval of the next phase. Mr. Friday reported that the developers had a security for landscaping that had not been done yet. Councilmember Ruegamer commented that three years had passed and they had not done what was required and he did not like doing business with those people. Ms. Volek pointed out that "secured" meant that a financial security was put up to make sure the landscaping would be done. She said part of the issue was where the trees would be planted in relation to the existing units because if a tree was in place, a unit could not be moved on or off. She said the trees would be planted after a unit was moved onto a parcel.

Ms. Volek pointed out that the item before the Council that evening was a separate item following the conclusion of the development agreement with Cherry Creek Estates. She referred to the Planning Board's summary of the public hearing that included a history of the Cherry Creek development, and pointed out that the issue before the Council was a new and separate SIA. She advised if the Council chose not to approve the new subdivision, it had to be based on the findings of fact included in the Council documents, and if those findings of fact were not addressed, there could be legal consequences. Mr. Brooks confirmed that the Council limited the development on Cherry Creek Estates Phase I and II, which meant that any further development had to be with a new application that went through the entire approval process. He cautioned against using the Phase II development agreement with Cherry Creek as a reason for denying or modifying the preliminary plat conditions presented that evening. He said the issue was whether Danube Court development and the preliminary plat conditions proposed were reasonable and should be imposed and complied with prior to final plat approval.

Mayor Tussing asked Mr. Brooks if he had previously reviewed the document Mr. Zurbuchen had and if approval of the preliminary plat would be a violation of the existing agreement as Mr. Zurbuchen and Mr. McIntire testified. Mr. Brooks advised that the agreement was amended on the floor by the Council at the time it was before the Council. He said the agreement applied until a new subdivision application was presented, which was the case with the application for Danube Court.

Councilmember Veis asked if the previous agreement covered Lots 3 and 4, and if the preliminary plat in front of the Council included a portion of Lot 4. He asked if that portion of Lot 4 was the 60+ units not allowed in the previous SIA. Mr. Friday said it was for 62 units, one short of the previous request for 63 units on that portion of lot 4. Councilmember Veis asked if it was Mr. Friday's contention that the preliminary plat could not be denied based on a previous SIA because it did not apply to the new part of Lot 4. Mr. Friday said that was correct. Councilmember Veis said he did not understand why they had to go through the process if the previous SIA no longer applied. Ms. Volek explained that in 2002, when the owners of the Cherry Creek Subdivision came in, the City did not have the standard SIA form. She said at that time, the development agreement was drafted and modified several times, but since then, the subdivision improvement agreement had been developed to alleviate issues with those forms. She said the old development agreement was not as thorough as the current SIAs. Mr. Friday explained that a portion of Lot 4 was not developed when Phase I and II were limited to 300 units because the 300 units did not use all of the available land. Councilmember Veis asked if that meant that the original agreement only applied to Lot 3 and a portion of Lot 4. Mr. Friday responded that it applied to the Cherry Creek Manufactured Home Park project on whatever amount of Lot 3 and 4 was used. He said the portion of Lot 4 that was not developed was not reviewed as part of the Phase I and II development. Councilmember Veis stated that the reason that portion of Lot 4 was not developed was because the developer did not meet the requirements and the Council limited the number of units, which left that portion of land undeveloped. He said what Mr. Friday was saying was that the agreement was over and the developers could start over with the process to develop that portion of the parcel not approved before and that Council was expected to ignore what happened in the past. Mr. Friday stated that just starting over was a big thing. Councilmember Veis said it was not because as Mr. Brooks said, the Council could not limit the number of units on Lot 4 based on a previous agreement and the previous agreement had nothing to do with that. He said the developer was allowed to get what he wanted by going around the old agreement and starting over. He added that if that was done every time there was an agreement and limitations were imposed because requirements were not met, people would not

have to worry about it because they could just go back and start over. Mr. Friday explained that starting over meant having to go back to the beginning of the review process and the project was subject to any requirements and conditions imposed.

Councilmember Veis said Mr. Brooks indicated the Council could not impose a limit of zero units on that parcel. Mr. Brooks stated it was with the caveat that the project went through the subdivision application process. He said if the developer had not done that and started moving units to the undeveloped portion of Lot 4, the Council would have the option to enforce the previous development agreement that contained the 300 unit limit. Councilmember Veis asked if it would be legal for the Council to say that now that there was a preliminary plat, the Council would not allow any units on that part of Lot 4 because there was a previous agreement. Mr. Brooks cautioned that would invite litigation. Councilmember Veis stated that the developers circumvented a previous agreement. He asked if there was any way to limit that portion of Lot 4 to zero units. Mr. Brooks said the Council could not do that because it was a new application with new conditions. He commented it was probably more stringent on the developer than if the other 63 lots would have been allowed in the first place. Councilmember Veis stated that the original agreement drawn up by the Planning Department was not that strong if the developer was allowed to come back with a new application. Mr. Brooks reminded the Council that it amended the agreement when it reviewed it previously.

Ms. Volek advised the Council that it could deny the application if it did not meet the 12 criteria. She clarified that the old development agreement died when the final plat for the Cherry Creek Estates subdivision was approved. Mayor Tussing said the bottom line was that it was an application to develop the same chunk of land that was limited to 300 and the Council was being asked to approve 362 units. Ms. Volek advised that the request was to approve 62 units.

Councilmember Brewster asked if it was normal for a developer to develop the property before the agreements were put into place. Ms. Volek said it was not today, but probably was in 2002. Mr. Friday stated that it was a risk for a developer to do that before going through the review process because whatever was done might have to be modified to meet the standards. He noted that in this case, the fire hydrant placement was not done to standard and would have to be modified to meet the standards.

Councilmember Pitman said he had struggled with the issue and felt the Council was stuck between a rock and a hard spot. He asked how that could have occurred and what questions should have been asked to avoid this situation. Mr. Friday explained that in the case of the Cherry Creek project, a development agreement was put in place instead of an SIA, which was the normal procedure currently used. He said in order to keep a future subdivision from occurring on a property, a specific statement had to be included in the SIA. Ms. Volek confirmed that the statement was not included in the Cherry Creek development agreement.

Councilmember Ulledalen asked how much work had been done on the development and how it could have been done without obtaining permits. Mr. Friday explained that the infrastructure was in place; the water and sewer was a private system and there was no need for a building permit because there were no buildings. He said it was a private development with private streets and private utilities. Councilmember Ulledalen said that meant the answer was 'no,' that the City did not have any oversight over it. Mr. Friday stated that there was oversight when the Cherry Creek project was going forward because the piece being discussed that night was expected to be part of it. Councilmember Ulledalen asked if there were adverse impacts that were identified through the process that were already mitigated or needed to be mitigated, such as the traffic and kids having to walk along the busy streets. Mr. Friday advised that for the new piece of the project, several of those things were identified to be mitigated. He said two cash contributions were required for road infrastructure off-site improvements before the project could be developed; one for the Hilltop Road and Bench Boulevard intersection and the other for a left-turn bay at Hawthorne Lane and Yellowstone River Road. Mr. Friday explained that most of the discussion regarding that review was related to parks. He referred to condition #3 to have parkland set aside within the area to serve the residents of the development. He said the other item identified for mitigation was proper fire hydrant placement as outlined in condition #4.

Councilmember Clark asked if there was a provision that the parkland had to be developed. Mr. Friday responded that the condition was to set it aside. He said the Parks Department did not want to be responsible for improvements in a private park that might not meet required standards.

Councilmember Gaghen said she was on the Council when the previous development was discussed and the limit imposed, and felt that the developers circumvented the system by delaying the process. She said it seemed there were some gray areas regarding the additional traffic and pedestrian safety. She said those items could be covered under item 2f, and even though the school district did not provide comments for the review, she thought it would be interesting to know the enrollment data prior to development of Cherry Creek Estates and the current time. Councilmember Gaghen referred to item 5 and the amount of traffic the number of residents generated. Mr. Friday advised that there were sidewalks within the development that led to Bitterroot, but Bitterroot had not been improved with curb, gutter and sidewalk.

Councilmember Pitman asked if it was correct that the Council's decision could only be based on what impact the 62 spaces would have on the surrounding area. Mr. Friday answered that was correct.

Councilmember Ulledalen asked when the adverse impacts would be mitigated. Mr. Friday explained that the turn bay on Hawthorne was done and the Public Works department was collecting the contributions for it. Public Works Director Dave Mumford explained that the Danube Court contribution would help offset the cost of the Bench Boulevard project when the State proceeded with that project. He explained that developers were never asked to go beyond the site limits when there was no project in the immediate area. He said the consideration was the traffic impact from the 62 lots proposed for Danube Court. Councilmember Brewster asked if a contribution to school routes could be required. Mr. Mumford said the City did not require that. Councilmember Pitman asked if that was something that should have been asked of Cherry Creek Estates. Mr. Mumford stated that he was not sure how the City could request contributions to things other than the impacts within the limits of the project.

Councilmember Veis referred to 2a of the findings of fact and asked if the DEQ approval was done or would be done. Mr. Friday advised that it was done and the findings should have reflected that. Councilmember Veis referred to 2b regarding stormwater and asked if it satisfied the City's criteria. Mr. Friday explained it would have to be determined before the SIA was recorded and the project was completed. Councilmember Veis asked Mr. Friday why he could not verify it was done if he said nothing needed to be done. Mr. Friday advised that the City was going to check to make sure there was no issue before the project was completed. Councilmember Veis said the Council was being asked to move forward before knowing if that was true. Mr. Friday stated that if the Council was unsure, an additional condition could be added to make sure it met the criteria. He explained that if a condition was added, it had to be met. Councilmember Veis stated that it seemed that the findings of fact were not necessarily facts. Mr. Friday responded that they were as close to facts as available during the review, and that was why conditions were set so everything that needed to be addressed was done before the project was finalized. Councilmember Veis asked if Mr. Friday knew if the review by DEQ was consistent with what was done for a new subdivision. Mr. Friday said he was not sure, but his understanding was that it was approved.

Councilmember Ulledalen said if the Council allowed the project without knowing if the stormwater plan was approved, there could be potential for runoff to neighbors or other properties. He expressed his concern about some of the loose ends, such as knowing there were not enough fire hydrants, and asked if there was any way to enforce that through the process. Mr. Friday explained that the conditions placed on the preliminary plat had to be met. Mr. Mumford stated that the confusing part of the project was that normally, a preliminary plat concerned vacant ground, which was not true in this case, but the regulations required this project to be treated that way. He confirmed that it would be reviewed to make sure all current stormwater and DEQ requirements were met, and that the current infrastructure would be inspected to make sure it met the requirements. Councilmember Veis stated he understood that it was not a usual situation because the infrastructure was already there, but he wanted to know if there was any leeway with it. Mr. Mumford advised that he could only comment that the infrastructure would be inspected to make sure it met the current standards. Councilmember Veis asked if it was inspected when it was put in. Mr. Mumford responded that it was private and the City did not inspect private systems; he explained that the City's liability for water, sewer, and streets ended at the property line. Councilmember Veis asked how he knew it was consistent with Section 23-603(B)(4). Planning Director Candi Beaudry explained that because it was a subdivision, the subdivision regulations required the City to look at the standards set forth in those regulations. She added that a lot of things could be done on private property and it was only subject to review once a subdivision application was submitted. She stated that during the initial review, many of the standards had not been met, and conditions were imposed to mitigate them. She stated that the governing body was required to reasonably mitigate any adverse effects, and that must be done before concluding there were grounds for denial. She advised that staff had gone through it and felt the conditions suggested would reasonably mitigate the adverse effects. She said if the Council felt there were gaps, the adverse effect had to be identified using the primary review criteria regarding effects on agriculture, agricultural water use, local services, and public health and safety. She said staff was forwarding its best shot after nearly 60 days of review. She stated it was not a sloppy application and had been well-reviewed and conditions of approval were recommended.

Councilmember Pitman asked if a 30-day delay jeopardized anything. Mr. Brooks advised that he knew there was a statutory time limit. Ms. Beaudry advised that September 25, 2009, was the statutory limit. Councilmember Ulledalen asked if there would be opportunity to review the application again before it was finalized. Mr. Friday explained that the applicant would have to address the conditions and then would present a SIA for approval before a final plat was approved. Mr. Friday explained that the only way the preliminary plat could be delayed beyond the 60-day limit was if the applicant agreed to an extension.

Councilmember Veis stated that in response to Ms. Beaudry's comments, he did not think staff did a sloppy job on the review, but felt there were holes in it. He added that Council had limited it to 300 units and, even though he understood the constraints with it, the Council was basically told it had no choice, that the findings of fact were the best that could be done, and the Council had to live with them and vote to approve the project or get into legal hot water, in a situation where the Council had placed a limit on the development. Ms. Beaudry responded that Councilmember Veis was right, the Council was in a difficult position not being able to implement a development agreement that was missing a key phrase that prohibited development of any further subdivisions. She said it was not a loophole in the law; it was following the statutory requirements that favored the applicant. Councilmember Ruegamer stated he thought it was a loophole around something agreed on. He said he would support it so it was not put off because the City always lost if it went to court. He said he would vote for it, but would not forget that the developers did not follow the original agreement on Phase I and II, and even though he could not use that for a reason to not vote for this one, he would not forget it.

Councilmember Ulledalen asked if it was correct that there was a requirement to set aside parkland, but no requirement to ever develop it. Ms. Beaudry responded that was correct and it was not required of any developer because it was not part of the State Statutes. Councilmember Brewster commented that the parkland was in another area, not in the subdivision. Ms. Beaudry stated it was in Cherry Creek, within about five minutes from the proposed area. She suggested Council visit the development because it was much different than it was four years ago and included attractive landscaping, some park amenities, and a community center.

Councilmember Ulledalen said while spending numerous years on the Zoning Commission, he saw some developments that were zoned one way, and then later the zoning was changed and the initial plat approval became meaningless. Ms. Beaudry agreed that was possible unless a caveat was included in the SIA. Councilmember Ulledalen stated his concern with that happening in this case due to the economic conditions.

Mayor Tussing asked if it was possible that the developer could come back in a year and request more spaces if a statement halting further development was not included in the conditions that night. Ms. Beaudry explained there were some constraints set by the zoning. Mayor Tussing asked if that was it for that area. Ms. Beaudry said there was one more lot, but it was marginal as far as development potential. She stated that the Council would have to determine what it used as findings of facts to prohibit further development.

Ms. Volek advised that the applicant was present if the Council wished to request an extension. She added that if the Council made a motion to deny the preliminary plat, it had to be based on the Findings of Fact for Danube Court. Councilmember Veis asked if it was possible to delay the action for seven days to allow Council more time to consider additional conditions. Ms. Volek said a special meeting could be scheduled for the following Monday prior to the Work Session.

Councilmember Veis moved to delay the item for seven days to hold a special meeting at the September 21, 2009, Work Session, seconded by Councilmember Brewster. Councilmember Ruegamer stated he would like to hear from the applicant. Mr. Brooks advised that the time for public comment had passed and if the applicant was allowed to testify, the public comment period was being reopened on that item. He said if general discussion with the applicant was desired, the public comment period should be reopened, or a public hearing could be advertised for the special meeting. Ms. Volek asked for clarification of how the special meeting should be held. Councilmember Veis stated it was his preference to have the special meeting at 5:30 p.m. and public comment on the item allowed through a public hearing. Mayor Tussing asked Councilmember Veis to clarify what the Council would learn the following week that it did not know then. Councilmember Veis stated that he wanted the additional time to look into some of the items in the findings of fact and that others may want to have time to consider additional conditions on the preliminary plat. Mr. Brooks explained that new information gathered at a public hearing would have to go back to the Planning Board, and if the Council articulated what that might be, staff could be working with the Planning Board prior to the Monday meeting. Councilmember Veis stated that he was not certain the DEQ approval was structured correctly; that the storm drainage condition should be more complete; and he wanted a better explanation of how the streets met the subdivision regulations. Councilmember Brewster said he was interested in the park dedication and would not be opposed to a cash-in-lieu donation spent on development of a park in Cherry Creek Estates as part of the dedication.

Councilmember Pitman asked if it was appropriate to ask the applicants about an extension. Ms. Beaudry explained the Subsequent Hearing provision within the subdivision regulations that allowed a subsequent hearing to consider new information. She advised that only new information that the public had not had opportunity to comment on at the Planning Board hearing could be considered. Councilmember Veis said that meant there should not be a public

hearing at the special meeting and he was fine with that. Councilmember Ulledalen clarified that two significant issues of concern were: the review of private lines by DEQ and the stormwater plan. Ms. Beaudry said staff would present that information. Councilmember Veis stated he also wanted to know how the City knew the internal streets were constructed according to its regulations if the City did not inspect them.

Ms. Volek asked if the Planning Board's decision on the parkland was made after the public hearing. Ms. Beaudry said it was, and that could trigger a subsequent hearing, but the Council could only hear testimony on that topic. She recommended not holding a public hearing at the special meeting. Councilmember Veis agreed that the special meeting should not include a public hearing. On a voice vote, the motion was approved 10-1. Councilmember Ruegamer voted 'No.'

A break was taken 8:16 p.m. to 8:25 p.m.

REGULAR AGENDA:

2. RESOLUTION #09-18879, AUTHORIZATION OF LOAN APPLICATION FOR ISSUANCE OF DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION REVENUE BONDS TO PAY FOR THE COST OF THE ZONE 4 RESERVOIR PROJECT. 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. Councilmember Clark moved for authorization of a loan application for issuance of Department of Natural Resources and Conservation bonds, seconded by Councilmember Ronquillo. On a voice vote, the motion was unanimously approved.

3. RESOLUTION #09-18868 RELATING TO \$297,000 POOLED SIDEWALK, CURB, GUTTER, AND ALLEY APPROACH BONDS, SERIES 2009; DETERMINING THE FORM AND DETAILS AND AUTHORIZING THE EXECUTION AND DELIVERY. 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. Councilmember Astle moved for approval of the resolution relating to \$297,000 Pooled Sidewalk, Curb, Gutter, and Alley Approach Bonds, Series 2009, seconded by Councilmember Pitman. On a voice vote, the motion was unanimously approved.

4. PUBLIC HEARINGS AND APPROVAL OF RESOLUTIONS making original spread assessments on various SIDS and Sidewalk Programs. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) Mayor Tussing announced that the items would be read by the Clerk, and then a public hearing would be held to include all of Items 4A-4F, and if an individual wanted to testify on more than one item, that person would be allowed three minutes for each item. He noted that a vote would be taken on each individual item. Ms. Volek advised that staff did not have a presentation, but was available for questions. Mayor Tussing asked Ms. Volek if Item 4D concerned residents who had not paid for that sewer connection yet. Ms. Volek said that was correct. Mayor Tussing asked Mr. Brooks if he should recuse himself from that item since he lived in that area, even though he had already paid for his connection. Mr. Brooks advised that he only had to recuse himself if he had a personal or financial interest in the outcome of the vote.

The public hearing was opened.

- **Kevin Nelson, 4235 Bruce**, asked by whose authority the Council would allocate and assume risk with arterial street fee funds on Item 4E. He said arterial street fee funds would be used to cover the bonding cost of the SID for Cabelas. He said he did not believe that had ever been done and no one else had their SID supplemented or paid for with arterial street fee funds.

Mayor Tussing advised that it could be because that was the only street that was an arterial on any that were being voted on. Mr. Nelson stated that he was just curious where the City got the authority to allocate those funds to a private corporation's SID and to assume that liability. Mayor Tussing said no funds were being allocated to a private organization; the funds were only allocated to the City to pay for part of the SID because it was an arterial. Mr. Mumford advised that Mayor Tussing was correct that arterial fees were being used to pay for the City's portions of the project until the TIF took over that portion. He noted that the City was obligated to pay for a portion of the road and once the TIF was large enough, it would take over.

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

A. Resolution #09-18869 Sidewalk, Curb & Gutter #2701, Various Miscellaneous and Developer-Related Curb, Gutter, and Sidewalk Programs. Councilmember Ulledalen moved for approval of Item 4A, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

B. Resolution #09-18870 Sidewalk, Curb & Gutter #2702, Milton Lane Project Improvements. Councilmember Ulledalen moved for approval of Item 4B, seconded by Councilmember McCall. On a voice vote, the motion was unanimously approved.

C. Resolution #09-18871 SID 1372: Water, Sanitary Sewer, Storm Drain, and Street Improvements for Summerhill Subdivision. Councilmember Ulledalen moved for approval of Item 4C, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

D. Resolution #09-18872 SID 1384: Sanitary Sewer Connections for Yellowstone Club Estates. Councilmember Ulledalen moved for approval of Item 4D, seconded by Councilmember McCall. On a voice vote, the motion was unanimously approved.

E. Resolution #09-18873 SID 1385: Street Improvements Along King Ave East, Miller Crossing Subdivision. Councilmember Ulledalen moved for approval of Item 4E, seconded by Councilmember McCall. On a voice vote, the motion was unanimously approved.

F. Resolution #09-18874 SID 1386: Street and Storm Improvements to East & West MacDonald Drive. Councilmember Ulledalen moved for approval of Item 4F, seconded by Councilmember McCall. On a voice vote, the motion was unanimously approved.

5. PUBLIC HEARING AND RESOLUTION #09-18875 respreading assessments on SID 1378, Street and Storm Drain Improvements along Clevenger Avenue. 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.

- **Kevin Nelson, 4235 Bruce**, stated that Clevenger Avenue was in the TIF District. He said an SID was just approved that allocated TIF dollars to reimburse Cabelas and the City for their portion of the bond payment for SID 1385. He asked why that body was so discriminating against the people that lived within the same district that had the same SID. He said those people did not have the opportunity to have their SID paid with TIF dollars. He commented that residents had lived there and paid taxes for many years but did not have that opportunity, but when Cablelas came to town, it got that. He said it was discriminating against people in the same district.

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

Councilmember McCall moved for approval of respreading assessments on SID 1378, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

6. PUBLIC HEARING AND RESOLUTION #09-18876 changing the name of Cynthia Park Drive to Sky Run Drive. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) Mayor Tussing referred to Ms. Volek's report that the applicant requested removal of 'Drive' from the new street name. Ms. Volek noted that would also be reflected in the resolution. Councilmember Veis asked why the applicant's July letter said Sky Run Drive. Mr. Brooks reported that he received an email from Mr. Krutzfeldt the previous Thursday afternoon when he was out of the office that explained that the County GIS agreed that naming the street Sky Run was permissible, so he wanted to eliminate the word 'Drive' from the street name. Councilmember Veis stated that he did not have a problem with that but the agenda packet contained a letter from the applicant and he thought another letter should be provided. Mr. Brooks stated that Mr. Krutzfeldt probably felt that his email to Mr. Brooks was sufficient to allow that change from his initial request. Councilmember Veis suggested adding that email correspondence to the official record with his original request.

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

Councilmember Ruegamer moved for approval to change the name of Cynthia Park Drive to Sky Run, seconded by Councilmember Pitman. On a voice vote, the motion was unanimously approved.

7. PUBLIC HEARING AND RESOLUTION #09-18877 reducing arterial construction fee assessments for certain commercially-zoned parcels and certain RMH-zoned parcels that meet the criteria of Ordinance 08-5478, capping parcel square footage at 9,600 square feet and calculating assessments based on the R-9600 zoning rate instead of commercial or RMH zoning rates. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) Ms. Volek explained that was an annual process and all seven of the current applicants were recommended for approval. Councilmember Clark asked if the properties had to apply each year. Mr. Mumford responded that they did.

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

Councilmember Veis moved for approval of reducing arterial construction fee assessments, seconded by Councilmember McCall. On a voice vote, the motion was unanimously approved.

8. PUBLIC HEARING AND RESOLUTION #09-18878 adopting the East Billings Urban Renewal District Master Plan. Yellowstone County Board of Planning recommends approval. (Action: approval or disapproval of Yellowstone County Board of Planning recommendation.) Mr. Friday provided a brief PowerPoint presentation that reviewed the major components of the master plan. He noted that the full presentation was provided to the Council in July. He explained that the plan had gone to the Planning Board, and was scheduled to go to the Board of County Commissioners for action on September 29, 2009, as the final step in the approval process.

The public hearing was opened.

- **Kevin Nelson, 4235 Bruce**, stated that since funding was going to be the primary engine that drove it, he wanted to know if the plan had been vetted enough that it would survive in the event the constitutionally-mandated 95 mills for schools would not be able to be redirected to the plan.
- **Joe White, Billings, MT**, stated that major efforts had been made for groundwater and air pollution. He said he opposed elimination of the current housing and opposed upscale housing, a visitation center, and hotels that would be too close to the refineries and airport. *The remainder of Mr. White's testimony was inaudible.*

There were no other speakers, and the public hearing was closed. Councilmember Brewster moved for approval of the East Billings Urban Renewal District Master Plan, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.

9. 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.)

- **Amy Cowley, 546 Avenue F**, began to speak about the Pioneer Park Master Plan and disc golf in the park. Mayor Tussing informed her that the time for comment on Item 1B was at the beginning of the meeting so unless she had something new to add, her comments were not appropriate at that time.

Ms. Cowley's allowed time was started over at 3 minutes.

Ms. Cowley expressed her concern that the firefighter staffing was below recommended regulations with one of the most crucial areas being that the ladder truck was not manned. She said that was a liability to the City and due to an error in common sense. She stated that the economic growth was starting to exceed both the budget and public safety, and the City was expanding beyond its budget. She commented that the present police and firefighters could not be taken care of. Ms. Cowley stated that as long as those concerns had been discussed, she had not seen any actual homework to back any of it up, but she would be glad to do that if permission was given to her. She stated that the general public needed more than three minutes to comment or ask questions at meetings, and the Council should be prepared with follow-up to questions at the next meeting. She cautioned to never assume anything and unless something was written in black and white, there was a large potential for error and liability.

Mayor Tussing commented that Ms. Cowley complained about three minutes not being enough time to comment, but she still had time left.

Councilmember Veis asked Ms. Cowley how many budget sessions she had attended in the last five years. Ms. Cowley responded that she had not attended any.

- **Joe White, Billings, MT**, spoke about his property at 926 N. 30th and said he heard that the Billings Clinic had a chance to obtain his property and demolish it, which he considered to be a criminal activity. *The remainder of Mr. White's testimony was inaudible.*
- **Kevin Nelson, 4235 Bruce Avenue**, stated that over the years there was so much confusion for the people on the Consent Agenda and when, if, and how they could comment on an item. He said Ms. Cowley wanted to participate but was unaware of the procedure that was confusing, at best. He said there had been many Council meetings when people were unsure of when to comment. He stated that Ms. Cowley had the right to express her concerns and should have been allowed to comment about the Pioneer Park Master Plan even though the comment period for the Consent Agenda had passed. He said that was why poor ratings for participation were shown on the citizen survey.

Council Initiatives

- **Councilmember Clark** requested traffic counts for 29th and Central to determine if a light was warranted.
- **Councilmember Clark** stated that he was still getting a lot of complaints about the speed limit on Central Avenue beyond 32nd Street West.
- **Councilmember Astle** stated he was getting the same complaints and people pointed out that King Avenue West was 35 mph all the way out and Central was 45 mph. Mr. Mumford said he would have to check because studies were done on all the east-west roads.
- **Councilmember Ruegamer** asked if an executive session would be held regarding the Police longevity issue. Ms. Volek advised that an executive session to update pending litigation would be part of the September 21, 2009, work session.
- **Councilmember Clark** asked about caution lights at bicycle crossings and why some had them and some did not. Mr. Mumford advised that staff was reviewing the crossings to determine which worked best to get cars to stop.
- **Councilmember Astle** expressed appreciation to Ms. Beaudry and staff for addressing a business owner's concern about poor visibility at an intersection on King Avenue. Ms. Beaudry advised that Engineering Staff addressed the issue.
- **Councilmember Ulledalen** commented that drivers were not able to see pedestrians in the crossings and additional signage might be needed. Mr. Mumford stated that public service announcements would be made to help educate drivers.
- **Councilmember Pitman** requested traffic counts on St. Andrews and Wicks because he was getting a lot of complaints about that intersection.
- **Councilmember Pitman** commented that the electronic agenda was in place and he encouraged everyone to use it.
- **Councilmember Ulledalen** asked if the traffic counts on the MDOT website were current. Mr. Mumford advised that he believed they were updated annually.

ADJOURN

The meeting adjourned at 9:11 p.m.



CITY OF BILLINGS

BY:

Ron Tussing, Mayor

ATTEST:

BY: Cari Martin
Cari Martin, City Clerk