

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

August 28, 2006

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. Mayor Tussing led the Pledge of Allegiance and Councilmember Richard Clark gave the Invocation.

ROLL CALL – Councilmembers present on roll call were: Ronquillo, Gaghen, Stevens, Brewster, Veis, Ruegamer, Ulledalen, Boyer, Jones and Clark.

MINUTES – August 14, 2006 Special Meeting. Approved as printed.
August 14, 2006 Regular Meeting. Approved as printed.

COURTESIES

- Councilmember Veis congratulated Lindsey Wolf, the first place winner in the Montana Meth Contest, as well as others that placed in the contest.
- Councilmember Veis thanked the firefighters for the MDA Rally boot drive event, which raised money for the Muscular Dystrophy Association.
- Mayor Tussing congratulated Katie Blair, the recent winner of the Miss Teen USA pageant. Ms. Blair is from Billings.

PROCLAMATIONS – None

ADMINISTRATOR REPORTS – Tina Volek

- Interim City Administrator Tina Volek reminded the Council that tomorrow evening is the agenda review meeting for the Sept 11 meeting. She also noted the work session on September 4th will be moved to Tuesday, September 5th due to the Labor Day holiday.
- Ms. Volek noted that copies of a revised staff report on Item 1A2 were placed on the Council desks this evening. The recommendation has been changed.
- She said ex parte communication was received on the 4th & Broadway and Sandstone projects. Copies of this communication were placed in a binder at the back of Council Chambers this evening.
- Ms. Volek informed the Councilmembers that a resolution for Item #9 was also on their desks this evening.
- Lastly, Ms. Volek noted that the Councilmembers received copies of the FY2007 budget and copies will be available for the public shortly. A copy will be placed on file at the Library and the budget will be posted on the City's website.

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: #1, #11 and #12 ONLY. Speaker sign-in required. (Comments offered here are limited to 1 minute per speaker. Please sign up on the clipboard located at the back of the room. 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.)

There were no speakers.

CONSENT AGENDA:

1. A. Bid Awards:

- (1) **W.O. 06-03, Contact #3: 2006 Street Maintenance.** (Opened 8/15/06). Recommend Harddrives Construction, Inc., \$108,350.00.
(2) **W.O. 06-13: 2006 Accessibility Ramps.** (Opened 8/15/06). Recommend delaying award to 9/11/06.

B. Grant Application submittal for the Fannie Mae *American Dream* Fund, \$2500.00.

C. Approval of Semi-Annual Investment Report.

D. Acceptance of donations:

- (1) 32 ornamental trees for Centennial, Harvest and Olympic Parks; donor: Billings Hardware, value: \$1,024.00.
(2) Education Shelter in Swords Park; donor: Yellowstone Conservation District, value: \$40,785.00.

E. Street Closures:

- (1) YMCA 2006 *Montana Marathon*, Sept 17, 2006; route: Molt Rd to Daylis Stadium.
(2) Billings Central High School *Homecoming Parade*, Sept 29, 2006; route: Wyoming St. to Division St., west on Broadwater Ave. to 5th St. W, north on 5th St. W through Grand Ave., and disbanding at Senior High School back parking entrance.

F. Acknowledging receipt of petition to vacate portions of 8th Ave. N and the alley between 7th Ave. N. and 8th Ave. N., Billings Clinic, petitioner; and setting a public hearing date for 9/25/06.

G. Acknowledging receipt of petition for street name change, changing the name of Broadview Drive to Twin Oaks Drive, and setting a public hearing date for 9/25/06.

H. Acceptance of a *Public Access Computer Hardware Upgrade Grant* from the Bill and Melinda Gates Foundation for sustainability of high quality public access at Parmly Billings Library, \$5,725.00.

I. Second/final reading ordinance 06-5383 expanding the boundaries of Ward II to include recently annexed property in Annex #06-10: a 288-acre parcel described as: N2 of Section 20, T1N-R26E and C/S 1904, State of Montana Dept. of Natural Resources and Conservation (DNRC), petitioner.

J. Second/final reading ordinance 06-5384 for Zone Change #784: A zone change from Residential-9,600 to Residential-6,000-Restricted on Lot 1, Block 1 and Lot 1, Block 2 of Arlene Subdivision, and located at 3410 and 3416 Poly Drive. City of Billings' Public Works Department, owner; David Mumford, agent.

K. Bills and payroll.

- (1) July 28, 2006
- (2) July 1 - 31, 2006 – Municipal Court

(Action: approval or disapproval of Consent Agenda.)

Councilmember Veis separated Items A1 and A2. Mayor Tussing separated Item F.

Councilmember Brewster moved for approval of the Consent Agenda EXCEPT Items A1, A2 and F, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

Councilmember Brewster moved for approval of Item A1, seconded by Councilmember Stevens. Councilmember Veis asked if Lewis Avenue will be part of the sealing project, noting that Lewis Avenue has just been paved. Public Works Director Dave Mumford said Lewis Avenue should be deleted from the project map. Councilmember Veis moved to amend the motion to remove Lewis Avenue from the project, seconded by Councilmember Ruegamer. On a voice vote, the motion as amended was unanimously approved.

Councilmember Brewster moved to delay Item A2 to September 11th (the revised Staff recommendation) seconded by Councilmember Ruegamer. Councilmember Stevens asked for clarification of the agreement with Department of Justice (DOJ) and the City. Interim City Administrator Tina Volek said this is a result of a directive from the DOJ. The Council came to an agreement with DOJ regarding Americans with Disability Act (ADA) requirements. The City's current ramps do not meet the ADA requirements. This is the first of several ramps to be renovated. Mr. Mumford said the DOJ came to the City and reviewed all structures and listed all changes required to meet ADA standards. Any road constructed since 1992 had to be brought up to ADA standards. On a voice vote, the motion was unanimously approved.

Councilmember Brewster moved to approve Item F, seconded by Councilmember Ruegamer. Ms. Volek said Billings Clinic amended its original proposal to vacate. She added that Council had received a copy of the amended proposal. Ms. Volek said the City is ready to move forward on this item. On a voice vote, the motion was unanimously approved.

REGULAR AGENDA:

2. PUBLIC HEARING AND RESOLUTION 06-18471 approving and adopting a budget amendment for FY05-06 for the spray ground construction at Castle Rock Park and the Cobb Field Stadium Design and Feasibility Study Consultant Contract – Amendment #1. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

There was no Staff presentation. The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Stevens moved for approval of Staff recommendation, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

3. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #787: An ordinance providing that the BMCC be amended by revising Section 27-1404 through 1406 and Section 27-1431 through 1433, adopting the revisions as an amendment to the Zoning Regulations (re: Shiloh Overlay District) and setting a time period for the regulation to be effective. Zoning Commission recommends approval. (Action: approval or disapproval of Zoning Commission recommendation.)

City Planner Dave Green said this change in the ordinance is regarding the tree and shrub planting requirements. The current requirements result in severe over-crowding in the planting area right-of-way. Councilmember Stevens said she thinks the term “200 lineal feet” will not be understood by the public. Councilmember Brewster said it means that every 200 feet a new grouping of trees can be planted.

The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Gaghen moved for approval of the Zoning Commission recommendation, seconded by Councilmember Brewster. Councilmember Clark requested that the wording be corrected so the public can understand the terms. On a voice vote, the motion was unanimously approved.

4. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #789: A zone change from Residential-9,600 to Neighborhood Commercial on Lots 8 & 9, Block 2 of Central Acres Subdivision, located at 3525 Central Avenue, Betty Larsen, owner. Zoning Commission recommends approval. (Action: approval or disapproval of Zoning Commission recommendation.)

Neighborhood Planner Lora Mattox said this is a zone change from R9600 to Neighborhood Commercial, involving 2 lots on Central Avenue. Ms. Mattox said the City did receive a valid protest petition therefore, the Council will be required to approve the zone change with a two-thirds majority vote. Councilmember Boyer asked what type of stores would be allowed. Ms. Mattox said this change would allow for “neighborhood” stores such as clothing stores, barber shops, florists, residential professional offices, etc.

Councilmember Stevens asked about “spot zoning”. Ms. Mattox said this is not a huge development and would support the neighborhood. Councilmember Stevens asked if the request would only benefit one entity. Ms. Mattox said the benefits of businesses in this location would benefit not just the owner, but the area residents. Councilmember Boyer said the report states that it does not meet the criteria. She added that she does

not know what else could go on those lots. Councilmember Stevens asked if there are other "like zonings" in the area. Ms. Maddox said there are similar zonings in the area.

The public hearing was opened. BETTY LARSEN OF 2526 CUSTER AVE. said she is the owner requesting the zone change. She said she has no plans to develop and no plans to sell at this time. Ms. Larsen said she has contacted neighbors with concerns to try to answer their questions. She visited with 5 of 8 opponents. She urged the Council to approve the zone change. Mrs. Larsen said she has owned the property since the 1970's and purchased the land as an investment. She introduced her agent, Jim Lucas.

JAMES LUCAS OF 1920 SUDLAW, MILES CITY, MT. said he is the brother of Ms. Larsen. Mr. Lucas said most of the concern is due to the anticipation of additional traffic on Central Avenue. He said the traffic will always be there and the Council will need to deal with it. The development is not for one property owner, but to provide services to the neighborhood.

JEFFREY CUMMINS OF 3538 LYNN AVE. said he signed the protest petition. He spoke on the setbacks on Central Ave. Mr. Cummins said Lynn Ave. has become a "bypass" due to the Career Center students using it to avoid the 36th and Central intersection which backs up with traffic. He reminded the Council that this section of Lynn Ave. is not paved. Mr. Cummins said he was also concerned with the lighting that will come with "Neighborhood Commercial" zoning. Councilmember Boyer asked Mr. Cummins what he would like to see built on the property. Mr. Cummins said he would like to see the lot left vacant, but he realizes that will probably not happen.

The public hearing was closed. There were no other speakers.

Councilmember Ronquillo moved to approve the Zoning Commission recommendation, seconded by Councilmember Clark. Councilmember Clark asked City Attorney Brent Brooks if he should recuse himself because his business has a store a block from the area in question. Mr. Brooks asked if Councilmember Clark or his business would benefit from the zone change. Councilmember Clark answered "no". Mr. Brooks said then there was not a conflict of interest.

Councilmember Ruegamer said the City would be impeding progress to leave the lots as R9,600. He added that the lot would probably remain empty if the zoning is not changed. Councilmember Brewster spoke on "spot zoning" saying that the "spot zoning" definition was for the change to benefit only one entity and would be "way out of character" with the neighborhood. Councilmember Clark said perhaps it should be zoned for duplexes or professional businesses rather than neighborhood commercial.

Mayor Tussing asked if there have been zoning changes in the recent past. Ms. Maddox said this subject property has never been re-zoned. She said there has been "mixed activity" in this neighborhood. Ms. Maddox said some past requests have been approved, some denied and some withdrawn. She said most of the activity happened in the 1980's.

Councilmember Stevens made a substitute motion to delay the issue until September 11th and have the legal dept. brief the Council on "spot zoning" and how neighborhood plans and growth plans impact the claim of "spot zoning" either positively or negatively, seconded by Councilmember Jones. Councilmember Veis cautioned the Council about ex parte communication over this issue.

Councilmember Ruegamer suggested the applicant meet with the neighbors and talk about other zoning changes that would be acceptable to the neighbors. Interim City

Administrator Tina Volek said the applicant indicated that she had already talked with the neighbors. Ms. Volek did not know if anything would be gained by a second discussion. Councilmember Boyer said all the councilmembers like to listen to their constituents but this particular land will be hard to develop as any other zoning. On a roll call vote, the substitute motion was disapproved. Councilmembers voting "no" were: Ronquillo, Gaghen, Brewster, Veis, Ulledalen and Boyer. Councilmembers voting "yes" were: Stevens, Ruegamer, Jones, Clark and Mayor Tussing.

Councilmember Ulledalen said he thought perhaps the problem with this request was because the applicant did not have a project in mind when making the application. He said the lot is small and the options will be limited. On a roll call vote, the original motion was approved. Councilmembers voting "yes" were: Ronquillo, Gaghen, Stevens, Brewster, Veis, Ruegamer, Ulledalen and Boyer. Councilmembers voting "no" were: Jones, Clark and Mayor Tussing. The two-thirds majority of the Council required to approve the rezoning with a valid protest petition was met.

5. PUBLIC HEARING AND FIRST READING ORDINANCE expanding the boundaries of Ward IV to include recently annexed property in Annex #06-11: a 36-acre parcel described as Tract 1, C/S 3273, generally located on the west side of 46th St. W, south of Rimrock Rd., Jim Boyer and Paul Bromenshenk, petitioners. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

There was no Staff presentation. The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Clark moved for approval of the Staff recommendation, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

6. PUBLIC HEARING AND FIRST READING ORDINANCE providing that the BMCC be amended by revising Sections 24-1007 through 1009 and Section 24-1011; providing for vehicle immobilization when outstanding parking fines exceed \$50.00; updating the procedure; and increasing certain fines. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

Parking Supervisor Chris Mallow reminded the Council of the past parking ordinance changes. He said Staff recommends "courtesy tickets" be reset every 180 days. The Parking Advisory Board would like "courtesy tickets" reset every 90 days with no outstanding parking tickets. Mr. Mallow said "meter plugging" extends the parking time beyond the established maximum time allotted. He said the fine for "meter plugging" would increase from \$10 to \$25. Mr. Mallow said Staff would also like to increase fire lane and fire hydrant violations from \$50 to \$100. He said the new "booting" proposal changes would be:

- Any number of tickets totaling \$50 or more
- 5 days to contest a ticket
- After 5 days the sticker will be applied to the vehicle stating that if tickets are not paid within 48 hours the vehicle will be booted.
- Final notices will be mailed but the booting is not contingent on those notices
- Warrants may be issued for habitual offenders

Councilmember Boyer said she would like to see the "booting fee" go up to \$100. Mr. Mallow said by setting the "booting fee" at \$50 people will be able to make the payment. Councilmember Ulledalen said in the past it took 5-7 tickets before being warned and before being "booted". He added that people could come up with the \$50 easier than \$100. Councilmember Stevens asked for the cost of "booting" and "un-booting" a car. The process would include Parking Staff time, mailings, and calling a police officer to aid in the process. Councilmember Stevens said that process alone would cost "way over the \$50 fine".

Councilmember Jones asked about tickets being contested and going to court and if the individual would be ticketed in the meantime. Mr. Mallow said the City has the technology to determine those individuals that are contesting a ticket.

Councilmember Stevens asked about the "stickers on the window" procedure. She said it might be hard to find the car in the following days and would it become a "cat and mouse game". Mr. Mallow said the habitual offenders are downtown employees and/or business owners who are fairly easy to find. Councilmember Stevens asked if lowering the number of tickets required for booting would increase the number of cars to be booted. Mr. Mallow said the City currently has about 75 cars on the boot list. He said initially there would be an increase in the number of cars being booted. Councilmember Stevens asked how many boots the City owns. Mr. Mallow said each of the four enforcement officers have one boot. He said he anticipates the need to buy more boots. Councilmember Gaghen asked the cost of a boot. Mr. Mallow said the boot costs about \$200-\$300 each. Councilmember Gaghen said with the change of the parking ordinance the City will need more boots. She said there is a problem with out-of-state cars parking in the "mission" areas. Mr. Mallow said the Parking Advisory Board is looking for a solution to the dilemma of the cars belonging to mission residents.

The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Jones moved to approve the Staff recommendation, seconded by Councilmember Ronquillo. Councilmember Brewster said the goal is to get people to pay their fines and change their habits. Councilmember Ulledalen said the goal of the parking rate changes was to also increase enforcement, not just pay the fines. He said the warning should motivate individuals to pay the ticket sooner. Councilmember Clark said those with booting warnings may come in and pay the fines and the anticipated extra boots may not be needed. Mr. Mallow said he plans on doing a press release so offenders will be aware of the change in policy. Councilmember Boyer asked if the trend has been for people to pay their fine and avoid the boot. Mr. Mallow said booting cars tends to go in cycles sometimes 4 a week and sometimes none at all. He said he does not think increasing the fee will increase the number of cars being booted.

Councilmember Jones amended the motion to increase the booting fee from \$50 to \$100, seconded by Councilmember Stevens. Councilmember Jones said it takes the enforcement officer, a police officer and a big effort by Staff to boot a vehicle and the City should be reimbursed for the cost. On a voice vote, the amended motion was unanimously approved.

Councilmember Jones amended the motion to have the ordinance verbiage "City Administrator" to do the booting corrected, seconded by Councilmember Gaghen. On a

voice vote, the amended motion was unanimously approved. On a voice vote the original motion, twice amended, was unanimously approved.

7. PUBLIC HEARING AND RESOLUTION 06-18472 annexing a 14.077-acre tract located near the southwest corner of the intersection of Central Ave. and Shiloh Rd. and described as: C/S 1648, Tract 1 of Corrected Amendment of Tracts 1 and 3 and Remainder Tract 2 to be Amendment of Tracts 1-3, along with the adjoining rights-of-way in Bell Avenue and Central Avenue, adding 0.472 acres, (Annex #06-12). Bell Family Trust, owners. Staff recommends conditional approval. (Action: approval or disapproval of Staff recommendation.)

Interim Planning Director Candi Beaudry said the Bell Family Trust is petitioning for this annexation on behalf of the Mountain West Senior Housing, LLC with the intention of developing a senior housing development on the property. The property is currently agricultural. This property would be adjacent to residential property on one side and commercial property on the other side. The proposed main building is to be three stories high with various levels of care for the residents. There will also be 13 cottages of 2 units each equaling 26 units available for independent living.

The public hearing was opened. JOE WHITE OF 926 N. 30TH ST. said the Council should halt annexation and zone changes until environmental reports are completed. He said the City needs electrical tests, saline salt tests, and other environmental tests. There were no other speakers. The public hearing was closed.

Councilmember Boyer moved to approve the Staff recommendation, seconded by Councilmember Ruegamer. Councilmember Gaghen asked the number of support staff needed to run a facility of this size. CARL SANDERS, DEVELOPER, 977 EISENHOWER DR., SALEM, OR. said he estimates 75 FTE jobs. The public hearing was re-closed. On a voice vote, the motion was unanimously approved

8. PUBLIC HEARING AND RESOLUTION 06-18473 naming the new street section through the Peter Yegen, Jr. Golf Course between Grand Ave. and Broadwater Ave. as Zimmerman Trail. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

There was no Staff presentation. The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Ulledalen moved for approval of the Staff recommendation, seconded by Councilmember Ruegamer. Councilmember Jones amended the motion to name the road 32nd Street rather than Zimmerman Trail, seconded by Councilmember Clark. Councilmember Jones said everyone knows where 32nd Street is and it makes more sense to call it 32nd since it connects with 32nd Street. Councilmember Boyer said she has had constituents ask her to "get this done and make it consistent". Public Works Director Dave Mumford said this section of the street actually starts at 34th St. W. Councilmember Jones withdrew his amended motion, Councilmember Clark who seconded the motion concurred with the withdrawal. On a voice vote the original motion was unanimously approved.

9. PUBLIC HEARING AND RESOLUTION 06-18474 authorizing the sale of real property at 4th and Broadway described as Lots 1-6, Block 53, Fosters Addition to Stockman Bank for \$900,000.00. Staff and the 4th and Broadway Ad Hoc

Committee recommend approval. (Action: approval or disapproval of the Staff and 4th and Broadway Ad Hoc Committee recommendation.)

There was no Staff presentation. The public hearing was opened. JAY STREVER OF 910 BLONCO CIRCLE said he is the HR Director of the Billings Gazette. He said he believes the proposed development of Stockman Bank is the first step in a positive development of the 4th and Broadway site. Mr. Strever said the Billings Gazette "whole-heartedly" supports the sale to Stockman Bank.

KAY ERICKSON OF 1901 BEVERLY HILLS BLVD. said she is the chairman of the church council of the United Methodist Church. She said her church has been on that corner for over 100 years. Ms. Erickson said she feels this is a good proposal. She said she would encourage the City to keep the alley open and keep in mind the need for adequate parking in the area. Councilmember Ulledalen noted that throughout the negotiations concerns for the Methodist Church have been voiced.

JOE WHITE OF 926 N. 30TH ST. said he made an offer on this property and he has a better idea for a project at this location. Mr. White suggested putting a museum of antiques at the 4th and Broadway location. He said he has not been called regarding his offer. Mr. White said the Council is out of order in considering this project and requested a delay. He said the bank can be placed elsewhere.

CHARLIE HAMWEY OF 1010 GRAND AVE. said the purchasers will be good stewards of the property and will be a good downtown neighbor. He urged approval of the Staff recommendation. There were no other speakers. The public hearing was closed.

Councilmember Ruegamer moved to approve the Staff and Committee recommendation, seconded by Councilmember Ronquillo. Councilmember Gaghen complimented the Committee members involved in the negotiations on this project. Councilmember Ruegamer said this is the first time in his memory that the City sold property and actually made money on the sale. On a voice vote, the motion was unanimously approved.

The Mayor called for a brief recess at 8:25 p.m. The meeting was called back to order at 8:35 p.m.

10. PUBLIC HEARING AND TERMINATION OF NEGOTIATIONS with Downtown Billings Investors for redevelopment of property located near 4th Ave. N and Broadway. Staff and the 4th and Broadway Ad Hoc Committee recommend approval of the termination of negotiations. (Action: approval or disapproval of the Staff and 4th and Broadway Ad Hoc Committee recommendation.)

There was no Staff presentation. Mayor Tussing asked the Council if the questions raised in the exparte communication from Mr. Fagg have been adequately answered. Deputy City Administrator Bruce McCandless noted there were two pieces of correspondence from the Downtown Billings Association (DBA).

The public hearing was opened. GREG KRUEGER, DIRECTOR OF DOWNTOWN BILLINGS PARTNERSHIP (DBP), 2815 2nd AVE N. said he would be happy to answer any questions for the Downtown Billings Partnership. He said the Partnership is still desirous of a multi-use facility on the site. Mr. Krueger said he recognizes the committee's work and recommendations and does not dispute the recommendations but would like to assist the development team in developing that site.

He is not ready to rule out the Sandstone proposal, but wants to be sure all proposals have been treated the same.

Councilmember Brewster asked if there is any merit in the Council revisiting the development criteria. Mr. Krueger said there may be some merit in revisiting the issue. Councilmember Jones asked Mr. Krueger if he wanted the Council to turn this issue over to the DBP for review. Mr. Krueger said "yes" because the DBP would like to be part of the future negotiations for the development of 4th and Broadway beyond Stockman Bank.

Councilmember Ruegamer asked how much public money went into Montana Avenue for redevelopment. Mr. Krueger said he's not sure, but the DBP has invested a little over \$7 Million tax increment dollars since 1998 in well over 200 projects. Councilmember Clark asked if parking structures were included in that amount. Mr. Krueger said they were.

DAVE BOVEE OF 424 LEWIS AVE. said he wants to encourage the Council to give the Library parking lot the weight it deserves. He said daycares and assisted living facilities bring their clients to the Library. Mr. Bovee said the parking lot provides safe access to the Library. He encouraged the Council to leave that parking lot alone.

BILL COLE OF 3733 TOMMY ARMOUR said he is representing his client Harrison Fagg. Mr. Cole said the Downtown Billings Investors (DBI) are disappointed with the committee's recommendation. He said the private component of this project has never been the problem. The problem has been the public component – mainly building a public parking garage. DBI presented a new proposal in July, but the Committee did not consider their proposal and recommended to terminate negotiations with DBI. Mr. Cole asked the Council not to give up on a large residential development at 4th & Broadway or the Sandstone proposal. He urged the Council to include the DBP in future negotiations. Councilmember Ronquillo asked if Mr. Fagg had sold any of the condos. Mr. Cole said Mr. Fagg could not sell condos prior to the project, but he had several preliminary commitments.

Councilmember Veis asked if DBI has looked at moving forward with a private development, which did not include the City parking structure. Mr. Cole said that would be a possibility. Councilmember Boyer said that in order to make this project "go", DBI would have to have a fair amount of the parking subsidized. Mr. Cole replied not necessarily for the building itself, but for the Library, City employees, Billings Gazette employees, and parking space for the occupants.

Councilmember Ulledalen asked why Mr. Fagg was reticent to secure a letter of credit to secure the \$2 Million Fannie Mae financing. Mr. Cole said the cost of the letter of credit would have eclipsed the reduced rate of the Fannie Mae loan, so it was not a financial incentive to Mr. Fagg to secure the letter of credit.

Councilmember Ruegamer said banks that do development loans include a letter of credit with the loan. He said it starts at about 75 basis points or about 3%. Councilmember Ruegamer said another of his concerns is committing to a major project that would tie up the tax incremental funds for 20 years. He added that he is "risk averse" and does not want to commit the City to unnecessary risks.

CHARLIE HAMWEY OF 1010 GRAND AVE. said he's been working on this project for over 8 months. He said he received a copy of Mr. Fagg's letter over the weekend. Mr. Hamwey said Deputy City Administrator Bruce McCandless has provided

Mr. Fagg with all the information requested. He said the Committee had asked for information from DBI and did not always receive the requested information. Mr. Hamwey said he cannot recommend this project to the Council. He said at this time the negotiations need to be terminated.

DON OLSEN 2112 FAIRVIEW PL. said he is the Vice Chairman of the Downtown Billings Partnership and said DBP does not disagree with the committee's recommendation. He said that DBP is disappointed that a larger project is not happening at that site. Mr. Olsen said DBP wants to see a mixed-use development on that site and wants to help with development of a larger project on the corner.

There were no other speakers. The public hearing was closed. Councilmember Veis moved to approve the Staff and Ad Hoc Committee recommendation, seconded by Councilmember Boyer. Mayor Tussing asked if the City were to terminate negotiations, would that preclude Mr. Fagg from submitting another proposal. Mr. McCandless said "no". Councilmember Brewster said he is disappointed that this project could not be pulled together. He hopes that a high rise, multi-use facility can be developed on that site. Councilmember Brewster asked the Council not to abandon all hope and leave the property "as is". He said it is still a great opportunity.

Councilmember Ruegamer said the Council needs to be patient with this piece of property – large projects take time. He pointed out that one of the things that held this up was the Library parking lot. He added that the Council has no intention to leave Library parking out of the project.

Councilmember Brewster said the Council must be willing to accept some level of risk or the City will not see any development. The Council needs to decide what level of risk it can live with and then move forward with this project.

Councilmember Jones said he is interested in turning this over to the DBP because Council has gone in circles on this issue and spent a lot of time on this project. He said he is disappointed that the Council is stopping negotiations. Councilmember Jones reminded the Council that the City is subsidizing Wells Fargo Bank parking in the new parking structure.

Councilmember Ulledalen said there are several issues involved. He said everyone wants something "wonderful to happen", but only so much can be done. Councilmember Ulledalen said the Council wanted to minimize risk – the Council is not a venture capitalist. He noted the Council needs to be very careful of how taxpayer money is used. Councilmember Ulledalen said it is one thing to agree to subsidize a project, but another thing to take a risk on a project. Councilmember Ruegamer said the City's risk cannot be more than the risk of the partner involved.

Councilmember Boyer said the Council can partner with DBP, but the Council has nothing to apologize for. The Council needs to stay in the leadership role in this development.

Councilmember Veis asked about the allocation of \$800,000 DBP funds of toward Park II with the Sandstone project now ended, what would happen with that allocation? Mr. Krueger said the Partnership Board would like to use those dollars as incentive for development. He said they would like to continue toward a multi-use development. Councilmember Veis asked if Park II was financed with the DBP funding. Mr. McCandless said the Park II financing did not include the \$800,000 allocation. On a voice vote, the motion was unanimously approved.

11. RESOLUTION 06-18475 relating to \$380,000.00 Pooled Special Sidewalk, Curb, Gutter and Alley Approach Bonds, Series 2006; creating Special Sidewalk, Curb, Gutter and Alley Approach Fund and prescribing covenants of the City for the security of the holders of the bonds. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

There was no Staff presentation. Councilmember Brewster moved to approve the Staff recommendation, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

12. CITY ADMINISTRATOR RECRUITMENT. (Action: Direction to Staff.)

Councilmember Clark moved for the Council to offer the job of City Administrator to Tina Volek and form a subcommittee of 3-4 councilmembers to negotiate a contract, seconded by Councilmember Boyer. Volunteers for the subcommittee were: Councilmembers Ruegamer, Gaghen, Boyer, Clark and Brewster. Councilmember Brewster volunteered to chair the committee. City Attorney Brent Brooks said that would be a quorum, and the meeting has to be advertised as a public meeting with a public comment period available. On a voice vote, the motion was unanimously approved.

13. 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.) There was no public comment.

COUNCIL INITIATIVES

- Councilmember Brewster moved for a discussion for uses of undeveloped property at a future work session, seconded by Councilmember Boyer. On a voice vote the motion was unanimously approved.

Councilmember Veis said he and Councilmembers Jones and Boyer had received their packet regarding the Shiloh Road PAC meeting on Wednesday, the 30th. He said he does not know if the committee will want to know what the Council wants to do at that time or not. Councilmember Boyer said they would need to come back to the Council for its input. Councilmember Veis said he feels that PAC will want the City to choose an alternative and he does not think that the City is ready to do that yet.

Councilmember Ulledalen said that 11 roundabouts are "way too much". Councilmember Veis said at the last PAC meeting they asked if it was okay in the Environmental Assessment (EA) to evaluate 11 roundabouts. He said there is a difference between recommending 11 roundabouts and evaluating 11 roundabouts. Councilmember Boyer said at a work session Engineering, Inc. asked all councilmembers to come and look at the plan. Councilmember Jones asked Councilmember Ulledalen if he did not want 11 roundabouts, what did he want to see instead.

Councilmember Ulledalen said he does not think three councilmembers can represent the Council without the members voting on the plan. He added that at the work

session the plan was for 5-6 roundabouts and that sounded reasonable. Councilmember Ulledalen said after the work session it grew by 3-4 more roundabouts.

Councilmember Gaghen said there was always the alternative of 7 or 11 roundabouts. Councilmember Veis said the initial plan was 6 roundabouts because Zoo Drive was not included. He said at the second work session it was 7 or 11 because by then Zoo Drive had enough development around it to require a roundabout. Councilmember Veis said the evaluations to be made on Wednesday would be between 7 and 11 roundabouts. He added that Montana Sapphire would require another intersection.

Mayor Tussing asked if the three councilmembers could attend the meeting and return to the Council with a recommendation that could then be discussed and voted upon. Councilmember Boyer said Engineering Inc. asked in the past for any councilmember questions. She added that the Council needs to be proactive and get its questions to the committee.

Councilmember Veis said at the last PAC meeting he had several questions and did not want 11 roundabouts. He said what came out of the discussion was PAC would just put in 11 roundabouts and evaluate them in the EA. He said that made sense because, "you don't want to do 7 and then have to come back and start the EA process over again and waste the time."

Councilmember Veis said he does not remember the Council recommending 11 roundabouts. He said the Council will be held responsible for holding up the process, so the Council needs to make a decision on this issue "fairly soon". Councilmember Ulledalen said the Council should be able to give a consensus tonight. He said, "7 might work, 5 works really good", but with 11 roundabouts Shiloh would become a "joke". He noted Shiloh is an arterial to convey traffic through the City and is not meant to slow down traffic. Councilmember Ulledalen said the Council should forward a recommendation to the PAC supporting 5-7 roundabouts. Councilmember Veis said the Council could make a general recommendation to the PAC, but at the meetings they just talk and do not make any decisions. Councilmember Ulledalen said the City should take the lead because it is "our street, our issue" and PAC needs to know that the Council does not support 11 roundabouts. Councilmember Veis said he can take that forward, but he does not know where that will go.

Councilmember Stevens said the Council should not make a recommendation on "feelings". She suggested that PAC come back with "sound engineering reasons why they need each one of them". Councilmember Ulledalen said they have brought forward sound engineering reasons for roundabouts vs. signals, but now different interest groups are influencing the decisions. Councilmember Boyer said the 3 councilmembers should go and hear what they have to say. She said she did not want to take a stand tonight. Councilmember Jones said the Council should take a stand. Councilmember Clark said he has been at several meetings and there are sound reasons for these recommendations because of the large subdivisions going in and an increase in commercial developments in the area.

Councilmember Ulledalen said roundabouts work best when they are a mile apart. Councilmember Clark noted "they are a mile apart". Councilmember Jones asked if the City Engineer has taken a look at the plan and could the Council get information from Public Works Director Dave Mumford.

Interim City Administrator Tina Volek said that at the meeting on Wednesday they would be seeing the environment at assessment and that PAC wants the Council to indicate at this meeting whether to go ahead with 7 or 11 roundabouts. Mayor Tussing asked if anyone wanted to make a motion on the number of roundabouts. Councilmember Veis said he did not think it was a good idea at this time and that the Council would probably "take some heat for slowing down the process". He said there would be 5 choices: (1) no build, (2) 7 traffic signals (3) 7 roundabouts (4) 11 traffic signals or (5) 11 roundabouts.

Councilmember Boyer said other councilmembers could come to the meeting on Wednesday. Councilmember Veis said everyone is welcome but non-PAC members cannot speak during the meeting. Councilmember Veis said he will tell PAC that he is not ready to speak for the Council until the Council votes on the subject and comes to a consensus.

Ms. Volek said the associated firm sent her a notice about two weeks ago and she forwarded the notice to the councilmembers. She added that last week she saw an explanation of what was to be discussed. Mayor Tussing asked if PAC was expecting the 3 councilmembers to come with a number. Ms. Volek replied, "as representatives but not as an action from the Council." Councilmember Veis said every time they go to these meetings they are told that they will have to make "hard, fast decisions and they never do".

Councilmember Jones said it sounds to him that the Council is leaning toward 7 roundabouts. He said it is better to go with a conservative approach of 7 roundabouts because they can always go up, but if they go with 11 roundabouts, it would be hard to come down. Councilmember Clark asked what would happen to the other intersections. Councilmember Ulledalen replied, "right in, right out."

Councilmember Boyer said the PAC has not even seen the environmental assessment and they need to see it before making any decisions. Councilmember Veis said the matrix that PAC provided is as good as reading the entire EA document. Councilmember Veis said he now has a better sense for how the Council feels about Shiloh Rd.

ADJOURN - With all business complete, the Mayor adjourned the meeting at 10:05 p.m.

THE CITY OF BILLINGS:

By: _____
Ron Tussing, MAYOR

ATTEST:

BY: _____
Marita Herold, CMC/AAE City Clerk