

## **REGULAR MEETING OF THE BILLINGS CITY COUNCIL**

### **May 12, 2008**

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

**ROLL CALL** – Councilmembers present on roll call were: Ronquillo, Gaghen, Pitman, Stevens, Veis, Ruegamer, McCall, Ulledalen, and Clark. Councilmember Astle was excused.

**MINUTES** – April 28, 2008, approved as distributed

**COURTESIES** – Tree City USA Designation – 24<sup>th</sup> year, Mayor Tussing

**PROCLAMATIONS** – National Women's Health Week, May 11-17, 2008  
Bear Meadows Exhibit at ZooMontana, June 7, 2008

#### **ADMINISTRATOR REPORTS:**

- City Administrator Tina Volek referenced the following agenda items included in the Friday packets or distributed at that night's meeting:
  - ✓ Agenda Item #3 – the final public service recommendations from the Community Development Board; and information regarding CDBG and HOME impact on the Billings community
  - ✓ Agenda Item #4 – proposed Housing Development and Construction Agreement for King's Green Subdivision
  - ✓ Proposed Council Initiative regarding Memorial Day and the Billings Veteran's Parade.

Ms. Volek advised copies of all of the agenda items were located in the Ex-Parte notebook in the back of the room for public view.

**PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: 1, 2, 3, 10b, AND 11 ONLY. Speaker sign-in required.** (Comments offered here are limited to 1 minute per speaker. Please sign up on the clipboard located at the podium. Comment on items listed as public hearing items will be heard ONLY during the designated public hearing time for each respective item.)

*(NOTE: For Items not on this agenda, public comment will be taken at the end of the agenda. Please sign up on the clipboard located at the back of the room.)*

The public comment period was opened.

- **Kevin Nelson, 4235 Bruce Avenue**, said the 2007 City Council strategy planning document, under economic development, contained goals and objectives. He said the first action was to determine potential conflicts of interest and in that section, tax increment finance districts were cited. He said the Council must have felt strongly about that and since two would be dealt with at that meeting, he called on the Council to determine if anyone had conflicts and were willing to recuse themselves from Items H and R of the Consent Agenda.

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

## **CONSENT AGENDA:**

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

**(1) Airport Improvement Program (AIP) 34 Airport Perimeter Security Fence Project** (Opened 4/15/08) Delayed from 4/28/08. Recommend Frontier Fence, \$655,255.53.

**B. Change Order #8**, Dehler Park - Front Entry Plaza Lighting, Langlas and Associates, Inc., \$12,385.00.

**C. Approval** of Assignment of the Limited Commercial Aviation Ground Lease with Corporate Jet, LLC, to Stockman Bank for financing purposes, at no cost to the City.

**D. Approval** of Assignment of the Commercial Aviation Ground Lease for Fuel Farm Site with Corporate Jet, LLC, to Stockman Bank for financing purposes, at no cost to the City.

**E. Acceptance** of Federal Aviation Administration Airport Improvement Program Grant 34.

**F. Approval** of Downtown Revolving Loan Fund for Bin 119, LLC, \$77,000.00.

**G. Approval** of State Revolving Loan Fund Application to supplement 2008 water line replacement expense - \$1,700,000.00; and 2008 sanitary sewer line replacement expense - \$3,500,000.00.

**H. Notice of Intent to Create** a Railroad Quiet Zone at the 27<sup>th</sup> Street, 28<sup>th</sup> Street, and 29<sup>th</sup> Street railroad crossings.

**I. Acknowledging Receipt of Petition to Annex #08-07:** 4.765 acres described as Tract 1, Certificate of Survey 2350, generally located on the northeast corner of King Avenue East and Calhoun Lane, Robert Medvec, owner and petitioner, and setting a public hearing date for 5/27/08.

**J. W.O. 04-33 Lake Elmo Drive (Hilltop to Wicks Lane) Right-of-Way Acquisition:**

(1) Parcel 44: Portion of Tract 1B, Certificate of Survey 2121 Amended, Lake Elmo Limited Partnership, \$12,900.00.

**K. Street Closure:** Central Heights PTA Community Fun Run, May 31, 2008, 8:30 a.m. to 10:30 a.m., commencing at 120 Lexington Drive, north on Lexington Drive, west on Eldorado Drive, south on Pueblo Drive, east on Alamo Drive, north on Lexington Drive, east on Eldorado Drive, north on S. Santa Fe Drive, east on Concord Drive, south on Birchwood Drive; west on Beloit Drive, northwest on Fair Park Drive, southeast on S. Santa Fe Drive, south on Berthoud Drive, west on Pueblo Drive, north on Pueblo Drive, east on Beloit Drive, northwest on Lexington Drive, west on Dallas Drive, north on Pueblo Drive, east on Eldorado Drive, and south on Lexington Drive.

**L. (a) Approval and Acceptance of Financial Donations** from Lyle Johnson, \$10,748.00, for concrete base to display and secure his bronze sculpture of Ed Bayne; and from Bill Rains, \$5,818.00, for concrete base to display and secure his bronze sculpture of Dave McNally, to be placed in the entry plaza of Dehler Park.

**(b) Change Order #9**, Two concrete bases for display of Ed Bayne and Dave McNally bronze sculptures, Langlas & Associates, \$16,566.00.

**M. Approval and Acceptance of Anonymous Donation** to the Police Department for trauma first aid kits and training, \$2,613.00.

**N. Approval and Acceptance of Donations** from the Yellowstone County Homeless Board on behalf of the Mayor's Committee on Homelessness' Project Homeless Connect, \$2,500.00; and the Billings Area Resource Network, \$640.79.

**O. Approval and Acceptance of Donation** to the Billings Animal Shelter from William E. Coburn in honor of Jayne Winegardner, \$500.00.

**P. Approval of Donation** of spare parking meters by the City of Billings Parking Division to the Downtown Business Improvement District and the Mayor's Committee on Homelessness for the "Spare Change for Real Change" Program at no cost to the City.

**Q. Grant Application Request** to submit HUD Federal Housing Initiatives Program (FHIP) application and accept award, \$100,000.00 maximum.

**R. Second/Final Reading Ordinance #08-5462** repealing Ordinance 07-5441 and creating the South Billings Boulevard Urban Renewal District.

**S. Second/Final Reading Ordinance #08-5463 Expanding Ward III (Annexation #08-01)** for an approximate 114-acre parcel legally described as Tracts 1A through 5A, Certificate of Survey 2063, Amended. Lenhardt Property, LP; Lenhardt Farm, LLC; and Lenhardt Enterprises, LLC, owners.

**T. Bills and Payroll**

- (1) April 11, 2008
- (2) April 18, 2008
- (3) January 1, 2008 – January 31, 2008 (Municipal Court)
- (4) February 1, 2008 – February 29, 2008 (Municipal Court)
- (5) March 1, 2008 – March 31, 2008 (Municipal Court)

(ACTION: approval or disapproval of staff recommendation).

Councilmember Veis separated Item B. Councilmember Clark moved for approval of the Consent Agenda with the exception of Item B, seconded by Councilmember Ronquillo. On a voice vote, the motion was unanimously approved.

Councilmember Clark moved for approval of Item B, seconded by Councilmember Ruegamer. Councilmember Veis said the last time Parks, Recreation and Public Lands Director Mike Whitaker was before Council, he said there was only \$1,000 left in the Dehler Park budget. Councilmember Veis said a change order for \$11,500 was on the agenda for approval and he wanted to know if that meant there would be a deficit. Mr. Whitaker responded that the funds were available to cover the change order with the combination of additional donations and the agreement with Pepsi Cola. He noted the change order was anticipated and funds were set aside for that project. Councilmember Veis asked why he said there was only about \$1,000 left the last time a change order was presented if he anticipated this change order. Mr. Whitaker responded the funds were held back to cover the proposed change order to add additional lighting on the steps at the entrance. He said he misunderstood the question from the perspective that when he said there was \$1,000 left for the project, he meant that was what was unallocated at the time. Councilmember Veis asked if it was allocated at that time. Mr. Whitaker said it was not allocated but he knew it was coming because it related to an ADA concern regarding adequate lighting at the entryway to the facility. Councilmember Veis asked if there were other anticipated change orders that funds had been allocated for. Mr. Whitaker said there was another possible change order related to the sidewalk on 27<sup>th</sup> Street and \$20,000 was held back to cover the expense for that. Councilmember Veis asked what kind of reserve was left on the Dehler Park project. Mr. Whitaker said reserves were approximately \$35,000-40,000, not including the change order. Councilmember Veis asked if those funds were in a reserve and could be used for anything that came up prior to the completion of the project. Mr. Whitaker answered that they were. Councilmember Clark said the reserve fund was donated money and not part of the original bond. Mr. Whitaker explained the Pepsi donation was \$200,000 and after borrowing the money and the interest costs, there was a net of approximately \$140,000-150,000. He added that the scoreboard change order was \$108,000, which left some money in reserves.

On a voice vote, the motion was unanimously approved.

## **REGULAR AGENDA:**

**2. INCREASE IN CHANGE ORDER APPROVAL LIMIT for City Administrator for SID 1379 – King Avenue West.** Public Works Director Dave Mumford said this was something that hadn't been done in the past. He said the request was an increase in the amount the City Administrator was allowed to approve, under Administrative Order, for the King Avenue West project. He said the project was out of the ground, the road work was in progress, and the project was approximately 6-7 weeks from completion. He said an unexpected change order for more than \$300,000 was received, which brought the project to the \$500,000 limit. He explained the change order was necessary because the lift station bids came in about three times the anticipated cost. He stated the lift station would be redesigned, but in order to get the road completed, the concrete barrels had to be installed and the change order was put into the contract with COP Construction. He said the request was to increase the City Administrator's approval limit to \$50,000 so when small items came up that needed correction, it wasn't necessary to wait for Council approval and the contractor could keep working. City Administrator Volek said she would be happy to provide a list to Council as those items were approved. Mr. Mumford added that his office provided Council a monthly list of change orders and that could be done on a weekly basis if Council preferred. Mayor Tussing asked if the authorization was for that particular project only, and only because a large portion of the percentage was used up. Mr. Mumford said that was correct.

Councilmember Ulledalen moved for approval of Item #2, seconded by Mr. Ruegamer. On a voice vote, the motion was unanimously approved.

**3. COMMUNITY DEVELOPMENT BLOCK GRANT AND HOME INVESTMENT PARTNERSHIP PROGRAMS AND THE FY2008-2009 ANNUAL ACTION PLAN.** Public hearing held April 28, 2008; final action delayed until May 12, 2008. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) City Administrator Volek advised there was no presentation for the item since there was a public hearing and extensive presentation at the last meeting, but staff was available for questions.

Councilmember McCall moved for approval of the Community Development Block Grant and HOME Investment Partnership programs and the FY 2008-2009 Annual Action Plan, seconded by Councilmember Pitman. On a voice vote, the motion was unanimously approved.

**4. CONTINUANCE OF PUBLIC HEARING AND APPROVAL OF AGREEMENT with Real Estate Dynamics, Inc. for King's Green Subdivision, Phase III, for the construction of 14 new homes. (Continued from 4/28/08) Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** City Administrator Volek advised there was no presentation but staff was available for questions.

The public hearing that was begun on April 28, 2008, was opened. There were no speakers, and the public hearing was closed.

Councilmember Ruegamer moved for approval of item #4, seconded by Councilmember Clark. On a voice vote, the motion was unanimously approved.

**5. PUBLIC HEARING AND RESOLUTION #08-18706 approving and adopting third quarter budget amendments for Fiscal Year 2007-2008. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** City Administrator Volek advised there was no presentation but staff was available for questions.

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

Councilmember Veis moved for approval of the resolution approving and adopting third quarter budget amendments for Fiscal Year 2007-2008, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

**6. PUBLIC HEARING AND FIRST READING ORDINANCE expanding the boundaries of Ward II to include recently annexed property in Annex #08-06, a 20.6-acre parcel legally described as Tracts 1A, 1B, and 1C, Amended Tract 1, C/S 2055, and located north of Alkali Creek Road. Jim Pickens, Best Development Corporation, owner and petitioner. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** City Administrator Volek advised there was no presentation but staff was available for questions.

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

Councilmember Stevens moved for approval of item #6 expanding the boundaries of Ward II, seconded by Councilmember Pitman. On a voice vote, the motion was unanimously approved.

**7. PUBLIC HEARING AND SITE DEVELOPMENT ORDINANCE VARIANCE #OP-08-03: A variance from Section 1203(j) of the Site Development Ordinance regarding off-street parking for a proposed medical facility at 1407 Wyoming Avenue, Mike Stock, Wyoming Plaza, LLC, owner and petitioner. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** City Administrator Volek advised there was no presentation but staff was available for questions. Councilmember Veis said he didn't understand why the described use required a change in the parking ordinance. Public Works Director Dave Mumford responded the business was three spaces short of the required parking. Councilmember Veis asked if that was still the case when it went from retail to medical. Mr. Mumford said it did. He said it was a commercial area and not onerous to approve, but it required a variance from the parking ordinance.

The public hearing was opened.

- **Michael Stock, 1135 Bluegrass Dr. E**, said he was in favor of the variance. He said he was the owner of the building and it was short three or four spaces. He said he had an agreement with the casino located across the street that has predominantly nighttime use so there was an abundance of daytime parking that the owners would use to make the parking lot available for customers.

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

Councilmember Pitman moved for approval of item #7 for site development ordinance #OP-08-03, seconded by Councilmember McCall. Councilmember Stevens stated she didn't think it was a problem in that instance but considered the big picture of similar situations when there's an agreement with a neighbor for parking. She asked how it affected the property owner when it loaned parking spaces to someone else even if they had sufficient parking. Mr. Mumford said first, both neighbors had to agree to it and there had to be available spaces at the time of day the two operations were going on to make sure they didn't operate at competing times. He said in this instance, there was overlap during the lunch hour when the casino was fairly busy, but staff believed there was such a small shortage and on-street parking was available in the area. He said staff checked during operational hours to make sure there was adequate space. Councilmember Stevens asked what happened when there was a change of use since the variance went with the property or if the businesses decided to dissolve the agreement. Mr. Mumford responded that the agreements were recorded and went with the property. He said agreements were allowed but he was cautious about them for those reasons. He said something was usually worked out with a small shortage, but the City didn't typically support anything with a large shortage for the reasons mentioned. Councilmember Ruegamer advised he lived about three blocks from the business and went past it regularly at different times of day and night and hadn't seen the lots full, except once or twice when the business was new, and that was at night. He added there was quite a bit of available parking in that area because it was mostly commercial and apartments. Councilmember Gaghen said one thing she found attractive about allowing only three spaces was it wasn't a dense residential area that took parking from residents so it was tiny by comparison and she favored the variance.

On a voice vote, the motion was unanimously approved.

**8. PUBLIC HEARING AND RESOLUTION #08-18707 CREATING EXPANDED PMD #4026 to include Twin Oaks Subdivision. Staff recommends approval.** **(Action: approval or disapproval of staff recommendation.)** City Administrator Volek advised there was no presentation but staff was available for questions.

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

Councilmember Gaghen moved for approval of expansion of Park Maintenance District #4026, seconded by Councilmember Ronquillo. On a voice vote, the motion was unanimously approved.

**9. PUBLIC HEARING AND RESOLUTION #08-18708 vacating a portion of North 26<sup>th</sup> Street and 2<sup>nd</sup> Avenue N., Big Sky Economic Development Agency (BSEDA) and Downtown Billings Partnership (DBP), owners. Staff recommends approval.** **(Action: approval or disapproval of staff recommendation.)** City Administrator Volek advised there was no presentation but staff was available for questions. Councilmember Veis asked when we would know if GSA was going to move forward with their project. Ms. Volek said GSA was waiting funding action. Councilmember Veis said he understood there was a delay to do it and no effective date, and questioned why the City was moving forward before it knew if GSA would

move forward. He said there would be enough time for the City to vacate the property once GSA knew if it had the funds. Assistant City Administrator Bruce McCandless explained the primary reason for the proposed vacation was that the development agreement required the City to vacate the right-of-way in the event that all the other property transactions took place. He added the street vacation was a lengthy process that started about 60 days ago to allow time to get responses from utility companies and the various City departments. He added that to avoid a delay with that property transaction, which we hoped would occur when the developers selected and purchased the property, it was decided to start the process now to get it completed. He said the effective date would be provided when the sale proceeded. Councilmember Veis asked if any money changed hands before an effective date was established. Mr. McCandless said there wouldn't be any funds involved until that time. Councilmember Veis asked if any funds had to be escrowed in case it didn't go through and Mr. McCandless answered 'no.'

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

Councilmember Ronquillo moved for approval of item #9 to vacate a portion of North 26<sup>th</sup> and 2<sup>nd</sup> Avenue North, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

**10.(a) PUBLIC HEARING AND RESOLUTION #08-18709 approving the sale of approximately 10 acres in Cottonwood Park to School District No. 2. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** City Administrator Volek reported this was a paired item to approve the sale of 10 acres of Cottonwood Park to School District #2 and consideration of the site purchase and sale agreement. She said Mr. Brooks worked primarily on the item and was not present due to a death in his family. She said Assistant City Attorney Bonnie Sutherland was available to answer questions and the School District's attorney was available by phone as well.

Councilmember Ulledalen asked which parcel would be sold. Ms. Volek said it was the northwest quadrant of the property. Councilmember Ulledalen asked if City staff ever met with the School District staff because he knew there was a meeting a few months ago, and then he and Mr. Mumford were to meet with the school district but there was no follow-up. Ms. Volek said they didn't hear from the school board but met with Mr. Martin from the district's administrative staff and the district's attorney, along with representatives from the City's parks, planning, public works and legal departments.

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

Councilmember Clark moved for approval of item 10a, the sale of approximately 10 acres in Cottonwood Park to School District #2, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

**10.(b) CONSIDERATION AND APPROVAL of the Cottonwood Park School Site Purchase and Sale Agreement. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** Mayor Tussing advised the sale was

approved in item 10a and now the item considered was the agreement that consummated the sale. City Administrator Volek said that was correct; under State law, the City had to publicly notice any proposal to sell city-owned land, which was the action just taken and this item was acceptance the buy-sell agreement with the school district.

Councilmember Ulledalen moved for approval of item 10b, seconded by Councilmember Ruegamer.

Councilmember Veis referred to item 4g of the agreement. He said in reading that, he felt the City could get into a situation similar to what happened with the Naval Reserve Center. He asked if the agreement could be amended so if the land ever reverted back to the City, the land came without a building on it. Assistant City Attorney Sutherland advised she spoke with Deputy City Attorney Kelly Addy who also worked on the agreement and he reviewed the 2002 development agreement. Mr. Addy said the language was drafted by the donor's attorney and was in keeping with the donor's wishes. She noted that Council had the option to not approve the agreement as presented and could suggest more restrictive language. Councilmember Veis confirmed that Ms. Sutherland said the language came from the development agreement but Council could agree to the sale contingent on other language. Ms. Sutherland said that was Council's option. She added that the property donor had very specific requirements and the language in the development agreement was drafted by the donor's attorney. Councilmember Veis said he understood that the property could be given back 75 years from now, and it could include a school on it that was contaminated by something we had never heard of. He asked if Ms. Sutherland read it that way also. She responded that was how she read it as well, but she had not been involved in the project from the beginning. City Administrator Volek said the City followed the language that occurred originally. She noted that Council's options were to defer action on the agreement for two weeks to see if the school district was amenable to an amendment and would check with the donors; another possibility would be to offer amended language that evening and provide it to the school district, then return with it if the district wasn't satisfied.

Mayor Tussing said he felt it was remote that the school district would build something then decide they didn't want it in a few years after they found out they built it with something that was somehow inappropriate. Councilmember Stevens said she was sure the Navy felt that way too.

Councilmember Ruegamer commented that in item 4g, on the 4<sup>th</sup> line, the text read '*... subject to various convents ...*' and he wanted to make sure the word should have been covenant not convent. City Administrator Volek said that was correct.

Councilmember Veis made a substitute motion to delay consideration of the Cottonwood Park site development purchase for two weeks, seconded by Councilmember Clark. City Administrator Volek said she understood that to mean that during that time, Council wanted staff to consult with the school district and the donor to amend the language. Councilmember Veis said he wanted to find out if they were amenable to that and to let them know where the City was coming from; that the concern was based on the problem with the Naval Reserve Center. He said he agreed with Mayor Tussing, that it was probably remote, but something could be installed on a building that had a crazy chemical on it and it would be easy for them to leave it alone

and the City would have to deal with it at some time in the future. He said he'd rather the property was returned as bare ground.

On a voice vote, the substitute motion was approved 9-1. Mayor Tussing voted 'no.'

**11. MAINTENANCE AGREEMENT with Montana Department of Transportation for improvements to Rimrock Road from Shiloh Road to 54<sup>th</sup> Street West. Staff recommends approval. (Action: approval or disapproval of staff recommendations.)** Public Works Director Mumford advised an agreement with Montana Department of Transportation to assume responsibility for maintenance was very common on projects that the State underwent on City right-of-way. He said it was an insurance the Federal Highway Administration required so that once funds were spent, someone would maintain the project. Mr. Mumford said a change has brought the item before Council.

Mr. Mumford explained that in the past, the maintenance agreement had a simple statement that said the City understood it would take over the maintenance responsibilities and indemnify hold harmless Montana Department of Transportation from any liability that occurred from maintenance. He noted it was a straightforward agreement. He said the State recently changed the agreement to become quite onerous and that simple sentence turned into a full page of requirements. He said Helena, Great Falls, and Missoula were concerned with that issue as well. Mr. Mumford stated that Alec Hansen of Montana League of Cities and Towns was trying to work with the Governor's office to change the language. Mr. Mumford advised that after review by our legal staff and MMIA, it was their belief that the State's requirement for things that had to be done to maintain the road were actually beyond the City's capabilities or equipment and to do that could place the City in a liable position and uninsurable on their portion. He said staff's recommendation was to modify the agreement.

Mr. Mumford stated he requested a meeting with MDT to discuss the agreement with their legal staff and they weren't interested. He said MDT advised us to sign the agreement as submitted or they wouldn't move forward on the project. Mr. Mumford said it was an extremely important and good project that was ready to go to bid and he'd like to get that far. He provided three options to Council as follows: 1) accept the agreement as is knowing it was something that other cities, our legal department and insurance carrier had concerns with; 2) indicate the City wouldn't do anything, which meant the project wouldn't go forward and Rimrock Road would not get built this year and take a risk that the funds would be transferred to other projects because the State indicated that was a possibility, which be a disappointment after all the work that brought the project to its current state; or 3) follow staff's recommendation to authorize the City Administrator to sign the attached maintenance agreement that strikes out the parts that are onerous and not possible for us to do and to add simple language that the City agreed to maintain it and hold the State indemnified and harmless from anything that came from the maintenance. He said that allowed us to send a contract that was consistent with past contracts, was longer and spelled things out more clearly and allowed the state to move forward with the project this year, something he hoped would be done.

Mr. Mumford indicated this was something different and he hoped the City wouldn't be held responsible if the project couldn't go forward. He said the City was willing to

maintain it and hold the State harmless for anything related to maintenance and even more, it was City right-of-way and something we had to maintain no matter what.

Councilmember McCall asked Mr. Mumford if Public Works had completed a cost analysis to hire another company to manage the special requests. Mr. Mumford said that hadn't been done. He said some of the requirements included washing and having grinding abilities. He noted the requirements were very specifically stated so if one was missed, the City would be liable if something happened. He said it would be expensive for the City to do that and there wasn't funding to contract it. Councilmember McCall asked if other cities in the state had met any of those requirements. Mr. Mumford said that was totally atypical and Missoula, Great Falls and Helena had the same concerns. He noted that MDT indicated it didn't even have the capability to do those things. Councilmember McCall said she understood the restrictions, but this was a very major project and she thought the pros and cons needed to be weighed. She said she wasn't saying she supported the restrictions, but was concerned about the possibility of the State pulling the project.

City Administrator Volek said it was important to note that it was anticipated the same agreement would be presented on other roads for which MDT funded in the future. Mr. Mumford added that the same agreement would be placed on the upcoming Airport Road project. He said when he asked about changing the simple language difference, the response was a one-line email that said to sign it and send it back.

Councilmember Ruegamer said he thought we needed to go over MDT's Director's head. He said it was onerous and he thought the Council should approve the amendment. Mr. Mumford said Alec Hansen had been working to get it changed for several weeks and tried to get into the Governor's office to see what could be done.

Councilmember Veis asked Mr. Mumford if he knew what prompted the language change. Mr. Mumford said there was a lawsuit in Butte and Missoula regarding a maintenance issue and he believed Butte's issue was a design flaw that caused it and MDT wanted to be indemnified from a design error which Butte refused to do. He added MMIA said the cities shouldn't be held liable for design issues. He indicated he thought the change was the State's attorney's reaction to that lawsuit.

Councilmember Ulledalen said Mr. Mumford explained at the Yellowstone Country Club Homeowners Association meeting the other night that this wasn't coming from MDT, it was from a higher level administration, and MDT administration was told to deal with it. Councilmember Ulledalen said he visited with Alec Hansen earlier that day and there was supposed to have been a meeting last week, but State's attorney was sick so the meeting wasn't held yet.

Councilmember Ronquillo said the City did other contracting work within the City with the Highway Department and asked if it required more than sweeping and snow removal. Mr. Mumford said the City was paid for the contracts Councilmember Ronquillo spoke of, and there were no liability issues with it; it was simply sweeping, snow removal, and signal maintenance. He noted there were several projects for which there were signed agreements when federal highway funds were used to reconstruct or build a road. He said the arrangement always was that the City maintained it and indemnified them from maintenance liabilities.

Councilmember McCall asked what the next steps were after Alec Hansen's discussion with administration. She wondered if the three cities, Helena, Great Falls and

Billings could join together formally with a letter or meeting with the Governor or his staff. Mr. Mumford said a teleconference was held with MDT and all the cities involved. He said the language placed in the amended agreement was the language that the legal staff of all the cities and MMIA agreed upon. He said the language relieved us of concerns and at the same time indemnified and encouraged the maintenance.

Councilmember Stevens asked when this was dreamed up. Mr. Mumford replied the City received it about 6 weeks ago, and since then staff tried to work around it. He said local MDT officials tried to work with the City, but were pressured to accept it. He said there was an agreement on Moore Lane with the same language, and the City indicated it wouldn't sign it but still wanted to move forward. He said Stefan Streeter accepted the modified language on that project, but the Rimrock Road project was much bigger.

Councilmember Stevens stated the cynic in her believed there was more going on besides the lawsuit. She said the timing seemed as though it was retaliation for the cities fighting the ICAP or that something else was going on because she wondered why the State imposed standards on cities that they couldn't even meet themselves. Mr. Mumford said in a recent phone conversation with other cities and the State, the discussion was on MPOs, and when they tried to talk about that language in the maintenance agreement, the conversation very quickly deteriorated to ICAP and cities' rights to control projects and it all sort of blended together in the conversation.

Councilmember Veis asked Mr. Mumford what he thought MDT's reaction would be if the City sent back an amended agreement. Mr. Mumford answered if Alec Hansen continued to work on the issue and with the pressure from the other cities, he thought there might be enough language to cover them, and they would accept it. He said he thought their first knee-jerk reaction would be to say 'no' and we'd be told we should have signed it when we were supposed to. He advised that Deputy City Attorney Kelly Addy spoke with Alec Hansen earlier in the day and he felt that would give them the leverage needed to get it through at the Governor's level because the City indicated it would take care of the maintenance and indemnify them. Mr. Mumford said he didn't want to upset the process and wondered if sending an amended contract would do that, but Mr. Hansen felt that signing an agreement with that language might be beneficial.

Councilmember McCall moved for approval of the maintenance agreement with Montana Department of Transportation for improvements to Rimrock Road based on the third alternative recommended by staff that the Billings City Council could authorize the City Administrator to sign an amended agreement with the maintenance language used in previous maintenance contracts, seconded by Councilmember Ruegamer. Councilmember Veis clarified that staff's recommendation was for the amended agreement so voting for Ms. McCall's motion meant voting for the amended agreement. On a voice vote, the motion was unanimously approved.

**12. PUBLIC COMMENT on Non-Agenda Items -- Speaker sign-in required.**  
**(Restricted to ONLY items not on this printed agenda; comments limited to 3 minutes per speaker. Please sign up on the clipboard located at the back of the Council Chambers.)**

- Russ Doty, 3878 N. Tanager Lane, said he was chair of the Energy and

Conservation Commission. Mr. Doty circulated a copy of a brochure depicting various types of LED lighting, a new technology for street lighting that was growing quite rapidly. He said the downtown council may consider a fixture similar to what was being implemented in Ann Arbor, Michigan, although he didn't know for certain since he hadn't met with the organization. He noted the lights could be targeted for specific uses and would result in an energy savings. He said his Commission recommended the possibility that the City become a demonstration city. He noted there were two different time periods to keep in mind; one at the end of the month and the other later on. Mr. Doty said a city selected as a demonstration city received technical advice from the Department of Energy.

Mayor Tussing said he knew there was a possibility of state financing and asked Mr. Doty to briefly review that grant opportunity. Mr. Doty explained there was a \$100,000 grant that could be applied for by the May 15 deadline. He said he was willing to write the grant because the City's Planning Department didn't have the staff to write one. He said that would provide additional seed money for the downtown council should it decide to go forward with the project.

Councilmember Stevens asked how long, from an energy supply and energy cost perspective, the City could afford to continue lighting residential streets that saw little or no traffic for most of the nighttime hours. Mr. Doty said that was a good question and there was a possibility with LED lighting that the lights could be turned off at different time periods when they weren't needed. He said several years ago the State went to high pressure sodium lighting and it appeared this would be another big shift in the technology. Councilmember Stevens said there was a cost to produce that technology and also the streetlights, so the question went back to how long we could afford to make those and keep them on all night in a residential area. She said she knew there were residential areas that opted not to have street lights. Mr. Doty said that depending on the fixture installed, the energy savings seemed to be 50-75%. Mayor Tussing said he wasn't sure Mr. Doty was the person who should try to answer Councilmember Stevens question about how long we could afford to light the residential areas. He asked if it was correct that the pilot project the Energy Commission proposed was for the downtown street lighting. Mr. Doty answered that was correct. He said the recommendation was that the City applied for the grant from the Department of Energy and accepted his willingness to write the grant in hopes of convincing the Legislature to accept the grant application. He said the process for the grant application called for it to go to DEQ, then the Governor, then the Legislature, so the opportunity only came once every two years. Mr. Doty said a similar grant application was in process with the County for a flood district so there could be some competition.

Councilmember Stevens asked if the downtown lighting was going to be redone. Mr. Doty responded that it was. Mayor Tussing asked City Administrator Volek to recap a meeting when that topic was discussed. Ms. Volek advised there was an existing downtown lighting district and property owners in that district expressed an interest in replacing the current snake-head type light with a new fixture that projects less light skyward in hopes that some buildings could be turned into apartments and wouldn't be obstructed by light. She said they also asked for a portion of remaining funds from the TIF

District, if they weren't assigned to other projects. Ms. Volek said she met with property owners and talked with them about what we understood to be federal funding available for that use and as part of a demonstration project. She said when Mr. Doty and his group did a bit more research, they discovered it was primarily an advisory function rather than financial support at the DOE level, but the State grant was potentially a seed money replacement for some of that. She said the property owners planned to meet May 14, and she could present the idea to them, however, Mike Tuss, the president of that organization, indicated the group's concern about the cost of the project as it was because they would ultimately pay for it. She said if LED lighting added considerable cost, she wasn't sure what their reaction would be but didn't want to speak for them until there was an opportunity to discuss the issue with them.

Councilmember Ulledalen said he understood that it was new cutting edge technology which meant we'd be diving into the initial stages of a project that he didn't feel we had any point in being involved in at this point, so he wouldn't support it at this time.

Councilmember Stevens said Councilmember Ulledalen touched on her question of how much more expensive that was than what was currently proposed for the downtown district. City Administrator Volek responded that the cost of LED had not been explored. Public Works Director Mumford said LED traffic signals that the City purchased as it replaced signals, were twice the cost of regular incandescent lights even though there's a savings over time, but that's a 10-15 year payoff. He said the brighter lights were worth it for traffic signals. Mr. Mumford said he assumed the street lights would be similar in cost to the traffic signals. Councilmember Veis said he wanted to reiterate that one thing they've talked about was softer light and the LEDs were used in the traffic lights because they were brighter. He said if there was concern about backlighting with street lights, the new design had a shield which focused the light down to the pavement. He said Mr. Doty was correct that energy-wise, the LEDs were more efficient, but they were more expensive.

Councilmember Stevens asked if a cost-benefit analysis had been done and if not, if one was needed before Council could even make a decision. Mr. Mumford answered there wasn't one. City Administrator Volek commented that the driving factor was the deadline of May 15 for submission to the state. Mr. Doty added that was one of the driving deadlines and he could provide some cost figures. Councilmember Stevens stated that without a detailed cost benefit analysis, some cost figures weren't helpful and if there was a deadline, maybe this wasn't the time to do it. She said the homework wasn't done on the project. She said she didn't want to get the Council started down a trail that was ultimately more expensive.

Mayor Tussing said since a grant application couldn't be submitted again until it would potentially be heard in the 2011 Legislature, it would be well beyond something would be done in the downtown light maintenance district so a decision should be made soon if it would be pursued. He said he would likely make a motion to see where it went. He said it didn't mean the City had to accept the grant, and in the meantime, a cost-benefit analysis could be done. He noted that at one time, the downtown group was interested in the lights without knowing the cost figure, but at the same time, they thought the DOE might provide funding, and then found out DOE only provided technical assistance. He said it was also his understanding that other cities benefited from test lights provided by manufacturers. He said we needed to know if the downtown group wanted to do a few, as

many as possible for the \$100,000 or as many free ones it could get, or if they wanted to do all of them.

- **Joe White, Billings, MT** said he wanted to comment on the damages that hadn't been paid to him yet. He said he would be out of town for several weeks.
- **Kevin Nelson, 4235 Bruce**, said the Council voted on a quiet railroad crossing that evening and the newspaper stated that Shiloh Crossing would have a sound wall. He asked why downtown got its noise abated and the west end got it abated, and he called on the Council to step up, by initiative, to take a proactive approach to the noise issues in the town because it was apparent they were there. He said there were adequate codes for exhaust and car stereos and people shouldn't have to listen to that noise. He said it was apparent that the people on the west end thought they shouldn't listen to it and downtown didn't think they needed to listen to it, so he called on Council to spread it equally among the whole city. He said a second issue was to call on the Council to cease all negotiations with Councilmember Stevens as far as the dog pound. He said she had clearly violated all of the ethical laws of the City Code. He said the *Billings Gazette* stated that she didn't think it incorporated any of her suggestions and was a moot point. He asked Mayor Tussing if someone walked into a bank and robbed it then walked outside and saw a cop and gave the money back, if that would be a moot point. He said his contention was until an ethical board convened and found that she violated ethical laws, it shouldn't move forward. He said he wanted to know if we gave her the dog pound if she might just go away.

There were no other speakers.

## **Council Initiatives**

- **Pitman:** Moved for the City Council to hereby set up the Billings Veteran's Parade and Honor Guard Assistance Fund to honor and support the Veterans of our community who have served their country so that we might all live in freedom. This fund is a tax deductible account where all citizens and businesses can donate. The funds in the account can only be used to offset the cost of liability insurance and usage fees needed to protect the City of Billings during parade or honor guard activities done by the American Legion, VFW Posts, and their Auxiliaries, and to take \$250 from the City Council fund to start the account by Memorial Day. The motion was seconded by Councilmember McCall.

Councilmember Veis asked why the City Council had to set up the fund, why the group couldn't go to a bank to set one up. Councilmember Pitman said it was a compromise and a way for the City to be assured that the activities were covered. He said it was a token on behalf of the City.

Mayor Tussing said the problem with the proposal was that a public hearing was required to spend Council Contingency funds and another meeting wasn't

scheduled prior to Memorial Day. City Administrator Volek said that was correct. Councilmember Ulledalen asked if that was something to be extended to Growth through Art and the St. Patrick's Day parade and other organizations that had the same type of issue. Councilmember Pitman said because of the veterans and their service, it separated them from other organizations and sent a message to the veterans in the community that we supported them. He noted that another option was to waive the requirements, but he informed the veterans group that probably wasn't a viable option for the City. He said if the City opened the account and accepted donations, it would be assured that the group could have their parades and honor guards.

Councilmember Stevens stated she liked the fact that it recognized donations to the City were tax-exempt because she felt people were confused by that issue and she supported it for that reason. She added she wouldn't support the initial transfer of \$250.00 because there were too many budget issues and that established a bad precedent for other groups, but she supported establishment of the fund.

Councilmember Clark stated he really preferred the veteran's group established the account because they were tax deductible also and the same type of donations could be made. He said he felt news agencies could advertise it and it would be as successful as if the City set it up. He noted that kept the City out of the liability loop.

Mayor Tussing asked for clarification from City Administrator Volek about what was done in the permit arena and the blanket opportunities available. Ms. Volek explained that State law prevented the City from being sued for any incident to the amount of \$750,000 per claim and \$1.5 million per occurrence. She said it was past policy of Council that an event for which the public was invited and City property was in use, the groups were required to cover the City for the gap between when the State indemnity kicked in and what could occur if there was an incident. She explained that a couple of years ago the City Council worked with a local insurer and agreed to essentially guarantee the price of a policy. She said people could apply to the agent to be covered under that policy and the City covered the difference. She said the policy was approximately \$2000-2500. She said as groups applied, they were rated based on the number of people involved and type of event, and then quoted a price by the insurance agent, and the group could then purchase the insurance using the money in that fund and the City guaranteed the balance at the end of the year. Mayor Tussing asked if she knew how much it would cost for the three ceremonies held on Memorial Day. Ms. Volek said she thought the insurance for the one event held last year was approximately \$240-250. She said she had no reason to believe that changed for the current year.

Councilmember McCall said she supported the initiative but agreed with Councilmember Stevens that the transfer of funds wasn't appropriate. She said it

was a good thing to step up and honor veterans who stepped up to serve us. She asked if the City was put at risk in any way by singling out the group the way the initiative was defined. City Administrator Volek responded that it created a precedent and asked Ms. Sutherland for her opinion. Ms. Sutherland said she didn't see any legal requirement to do that for other organizations but it certainly set a precedent that others may expect.

Councilmember Clark asked if there was a liability for the fund if the Council transferred the \$250 to it. City Administrator Volek said she didn't believe it was any more than the balance of the fund in any given year. She said it was a donation to a fund that was otherwise financed.

Councilmember Ulledalen said it was a nice idea and he understood it. He said his concern was that virtually every street closure was some type of fundraiser for a worthy cause so if a special exception was made for one group, the Council wouldn't be able to say 'no' to others. Councilmember Gaghen said she shared that sentiment and was supportive of veterans in every aspect but she was concerned with the precedent; and felt that support not based on financial was the healthiest way to go about that.

Councilmember Stevens stated her concern that the initiative wasn't specific enough about the American Legion, VFW or their auxiliaries. She said she felt someone could claim to be one of those organizations and if it wasn't specifically named, they could qualify to get funds for their cause.

Councilmember Pitman said it didn't really cost the City anything to set up the fund and it would be there for people to contribute to. He said it would be something from the City that provided an area to donate to help those who had already served us. He said he saw it totally different from other events that were fundraisers or merchants and the group wasn't raising money but was celebrating the war dead or those who served us. He said he felt it was appropriate for the City. He noted it was fine with him if Council wanted to eliminate the \$250 because he already intended to contribute to the fund to cover Memorial Day. Mayor Tussing said Council couldn't contribute funds without a public hearing. Ms Volek said that was correct. Mayor Tussing said it could be done, but not in time for this Memorial Day. Councilmember Ruegamer said he was happy to personally contribute to it but wouldn't vote to use Council dollars to do it. Councilmember Pitman said he understood that completely.

Mayor Tussing asked if Councilmember Stevens's concern should be addressed and the group names more specific. Councilmember Pitman said the American Legion and VFW Posts were well-recognized groups and that Council obviously knew what the names meant as they were listed on the initiative.

Councilmember Gaghen asked Councilmember Pitman if there was a need to have the fund established before the upcoming Memorial Day if funds weren't

taken from the Council's fund but from individuals. She said the fund could be crafted and worked on further. Councilmember Pitman said he thought it was an appropriate thing for the upcoming Memorial Day. He said the veterans approached him and noted that several other communities, like Laurel, invited them to participate and take part in parades without those requirements. He added that he thought it was an appropriate way to let them know they were still welcome in Billings and the City still wanted the parades, celebrations and honor guards there.

Councilmember Veis offered historical background. He said Councilmember Ruegamer and former Councilmember Boyer served on a committee with him that looked at how activities were dealt with because similar problems were encountered. He said it started with a group that couldn't get insurance for a parade, which turned out to be a miscommunication, but the committee spent a lot of time gathering input from the Council and the community to draft the current activity policy. He said he felt if an exception was made for one group, other groups would come forward for the same thing and they were worthy groups as well. He said they could go around the table and everyone probably had a particular group that was an exception for various reasons. He said it was nothing against veterans, but a process was followed to get where the City was with an activity fee now and it was an arduous process that included a lot of people and he felt the current policy should be adhered to for at least the next year or two.

Councilmember Pitman said that was why he came up with the fund. He said he discussed it with the veterans and with City Administrator Volek. He noted it came down to the fact that an exception would open a Pandora's Box and every group would want one. He said the fund was at no cost to the City and allowed people to donate and the City would be covered. He said if the funds weren't there, they could be raised or the group would be informed there wasn't money in it.

Councilmember Clark said he still didn't understand why the veterans didn't set up a fund at a local bank because people would give just as well. Councilmember Pitman said they probably could. He said he just felt that was a nice way for all the groups to have one single place that would be outside the political arena of the VFW or Auxiliaries, etc. and if people wanted to donate to it, they could. Councilmember Clark asked if the City had to authorize the expenditures if the fund was established. Councilmember Pitman said he assumed that was correct. Councilmember Clark said setting up their own fund would be a lot less hassle.

Mayor Tussing said he saw the difference. He said there were a number of good causes but many things that occurred and needed permits were fundraisers and this wasn't one of them because its purpose was to honor people who served the

country and there was a distinction. He said he would donate money himself, but didn't think Council should start that snowball rolling down the hill effect.

On a voice vote, the motion failed 8-2. Councilmembers Ronquillo, Gaghen, Stevens, Veis, Ruegamer, Ulledalen and Clark, and Mayor Tussing Voted 'No.'

- Councilmember Stevens said she didn't have an initiative but had a question for the rest of Council. She said she was out of technological reach the previous week and when she checked her email and voice mail, there were several communications about folf at Pioneer Park. She asked if others were getting the same things and it was the consensus that they were. She asked if anything was being done.

City Administrator Volek advised a master plan for Pioneer Park that would look at the folf issue, was proposed as a supplemental budget request for the 2009 budget and hadn't been recommended for approval at that time. She said it was an issue reviewed by City Council in approximately 1993. She said the course sprang up because of the park terrain; since then a course was developed at Phipps Park but it was very challenging. She said an item on the May 27 Council meeting agenda was a request for Council permission to sell a parcel of land in the west end industrial area and the money that came from that could be used to fund the Pioneer Park Master Plan, which could help look at the site to determine a way to amend the course to move it away from the residences which appeared to be the primary problem. Councilmember Stevens asked if folf was a permitted use in Pioneer Park. City Administrator Volek responded it was; the course was put in place by the City, tee boxes were in place and maintained by the City. Councilmember Ruegamer stated folf had been an issue since he joined the Council. He said one thing that had never been addressed was how many folf players were in Billings. He asked if a good portion of a big beautiful park was dedicated to a small number of people – a question that had to be answered before they could go on. He said another problem he could see was that Phipps Park was about five miles from Billings which he felt was also an issue. He said another thing he heard from people around Billings was the people who lived around Pioneer Park thought it was their own private park. He said there were a lot of obstacles that had to be addressed but that number thing was very important to know.

Councilmember Administrator Volek said she stood corrected because she always thought the City maintained the folf course. She said the tees were installed by private individuals and the City felt there was a better option for them and worked with that group to relocate the tees. She said those tee boxes were actually installed and maintained by a private organization. She said Mr. Whitaker told her that a recent survey on park needs indicated that there's a high demand for a folf course somewhere in the City. She reiterated that the tee boxes were maintained privately and the City helped redirect them to areas that might keep them from the more public areas.

Councilmember Ulledalen said he thought about the time Mr. Whitaker came on board there was a discussion about folf and one comment from the group was they wanted to pursue installation of tee boxes which would control where each launch was from to cut down on the wear and tear and help direct where the discs went in the park. He said he thought things could be done to help mitigate some of the issues and the course was a relatively small portion of the park and in the rough terrain portion of it. He said he felt it could be managed. Councilmember Clark said it seemed that nobody was taking control of the area. He said the group could have people there to make sure players stayed within the course.

City Administrator Volek said with the beginning of warmer weather and the release of School Resource Officers from schools, additional patrols would be assigned to parks to address some of the concerns. She said, obviously, it couldn't be done 100% of the time, but bicycle patrols were effective and the police department would look at Pioneer Park and others that had received complaints to ensure illegal activity wasn't going on. She said police officers weren't there to control behavior of persons who weren't violating laws so complaints would probably still be received because of the proximity of the residences to the course.

Councilmember Veis said when the budget hearing was held for the Parks Department, there should be discussion about what could be adjusted in the budget to move the master plan up as a priority.

Councilmember Gaghen said folf used a more sizable portion of the park than some realized and the natural activities that took place in the park prior to folf was what made it difficult for the residents other than those surrounding the area to relinquish their ability to wander through or have a picnic. She said the infringement that took place wasn't from the best of the citizens who urinated in lawns, lounged and littered and other things that were certainly not pleasant for neighbors to observe. She said some concerns were valid. She said she had heard that from the time she came on Council and it was a difficult thing to resolve. She said activities were needed for young people and the proximity to Senior High was a natural magnet. She said she heard quite often that it infringed on the rights of the individual and they felt they weren't being protected for the property taxes they paid and their right to live in the proximity of the park.

Mayor Tussing said he went there about one week each year when his grandkids visited, which meant he wasn't very good at folf, and he had never come close to going outside the park boundaries with his disc so he didn't know how that happened. He said he hadn't had trouble there and wasn't afraid to take his grandkids there when people were there playing folf. He said he was there last year right before the start of the State Games when a lot of people were practicing and didn't have any problems. He said he wasn't saying there weren't

some that weren't polite, but he didn't see how they were hitting people's houses with their discs.

Councilmember Stevens said she thought the discussion held at a previous Council meeting brought up the idea of limiting the golf hours. She said funding the master study was the next step and the different ideas could be brought in at that point.

Councilmember Clark suggested some police patrol because something needed to be done now. Lt. Mark Cady stated that he was constantly in Pioneer Park. He said officers stood at the trees and watched the players which usually consisted of group of three to five people who seemed to be playing and not bothering people. He said he agreed with Mayor Tussing in that he didn't see how the discs went out of the park, and he had yet to see a problem there unless it occurred after the park closed for the night. Lt. Cady stated people should contact the police department directly when the problems occurred rather than reporting them to Councilmembers, and then the Police Department didn't hear about it until two weeks after they happened. He said calls were responded to as quickly as possible.

Councilmember Veis said when he received calls from residents, their usual comment was they were done calling in because they had called in numerous times and nothing was done. He said the perception was that golf brought folks to the park that were doing things they shouldn't and residents didn't get satisfaction from calls to the Police Department. Lt. Cady said he understood that but if people called the dispatch center, there would be quicker response to the complaints. Councilmember Gaghen said attempts were made to address that at community meetings. She said that was heard as a perennial concern and not from people who were angry and felt superior, but she felt there was basis for their concerns. Ms. Gaghen said there was illicit activity that went on in the park after hours in secluded areas so that was a situation that needed to be worked on. She said she hoped it was made a priority through the master plan so it wasn't an ongoing burden to everyone involved.

Councilmember Pitman advised the issue was dealt with on the Parks Board and the master plan was the key to the whole thing. He said the Parks Department had a course planned out, rules for the game and went before the Council but because it wasn't part of the master plan, funding couldn't be put in place to do what needed to be done. He said everything currently in place was from private individuals. He said the master plan would allow something more formal and the potential to control it.

- Councilmember Ronquillo said he received three calls about Briarwood. He said those callers said they were told there would be a meeting but a date wasn't provided to them. Mr. Whitaker said the Master Plan update would be held at the regular monthly meeting of the Parks and Recreation Board, May

14, at 11:30 a.m., with the only difference being that it would be at the Zimmerman Center because of other functions at the Parks office building.

- Councilmember Stevens asked for clarification on Pioneer Park because Councilmember Pitman just informed her there was a master plan for Pioneer Park that didn't include golf. Mr. Whitaker said there was a master plan completed 25-30 years ago and it was a very rough document and before golf's time. He said the tees started springing up throughout Pioneer Park and there were user conflicts so the Parks Department met with the organization and moved the tees to one end of the park to help regulate the activity, which was how it got to where it was now. He said the players were using buildings, trees, etc. as part of the course and that was how the Parks Department got involved to rearrange things.
- Mayor Tussing asked City Administrator Volek if the Downtown property owners were meeting Wednesday. Ms. Volek said that correct. Mayor Tussing said the grant for the LED lighting was due Thursday; Ms. Volek said it had to be postmarked that day. Mayor Tussing asked for Ms. Volek's opinion about that project. He said he felt the only harm in applying for the grant was the possibility that Mr. Doty wasted time writing it because the City wouldn't have to accept it if there were too many strings attached or the property owners didn't want to do a pilot project. He said he knew there was initial interest but that was when they thought DOE had money available to help offset the costs. Ms. Volek said the owners understood that long-range the cost of operation was less, but they thought the grant was available to offset the cost of the lighting they're looking at and the more expensive LED lights, so in the long run it would be beneficial. Mayor Tussing said he had seen anything from a three to five-year payback to a 10-15 year payback, depending on the literature. He asked if Ms. Volek knew how many lights were in the downtown lighting district. Ms. Volek said it was approximately 1,000 lights. Councilmember Veis said he thought if a decision was made to go forward with the downtown lighting district, a consultant would be hired to make those kinds of recommendations as far as removing the current lights and installing new ones and numerous options would be considered. City Administrator Volek responded an extensive engineering study was already completed for that area and several alternatives were explored, but LED lights were not something actively considered at that point. She said the property owners were concerned with the cost of the project which was in excess of \$2 million already and they would bear the majority of that cost and the City would pay for the street light intersections. She said she couldn't predict their reactions to the LED lighting option. Councilmember Veis said he wanted to know if the downtown partnership would consider other alternatives if they already agreed to move forward with the downtown lighting district. City Administrator Volek said at that point, one option proposed by the engineer was chosen. Councilmember Veis asked if they would have an opportunity to change their mind. Ms. Volek said they could.

Mayor Tussing asked how soon the lights would be changed if the downtown group already agreed to move forward and were willing to consider the LED lighting because the advantages despite the increased initial cost. Ms. Volek said the district still had to be formally created and we were waiting for a determination of what would be done with the funds remaining from the TIF District. She said if they were absorbed into a hotel or theatre project, that money wasn't available. She said that discussion with the lighting district was put on hold until the fall. She said she thought they were anxious to move forward before the costs increased significantly. She said their consultant looked at spacing issues and they planned to reduce the number of proposed fixtures in the downtown, which was an option they chose. Mayor Tussing said where he was going with his question was that it would probably be done before 2011 when the next opportunity came to go to the Legislature to get grant funds if it was awarded. Ms. Volek said she believed that to be the case.

Councilmember Stevens said the project cost was \$2.7 million and if they chose LED lighting, it could possibly double and the grant was only worth \$100,000. Councilmember Clark said the project wouldn't totally double because the lamp posts would be a significant part of the cost and that cost wouldn't change; the difference would be change of the bulbs.

Mayor Tussing said he wasn't sure it was worth the effort to try to get it done with such short notice since there were so many variables involved.

## **ADJOURN**

The meeting adjourned at 8:17 p.m.

***(NOTE: Additional information on any of these items is available in the City Clerk's Office)***