

**REGULAR MEETING OF THE BILLINGS CITY COUNCIL**  
**October 12, 2010**

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

**ROLL CALL** – Councilmembers present on roll call were: Ronquillo, Gaghen, Pitman, Cimmino, McFadden, Ruegamer, McCall, Ulledalen, Astle, and Clark

**MINUTES:**

- September 27, 2010 (Regular Session), approved
- October 4, 2010 (Special Session), approved

**COURTESIES** -- None

**PROCLAMATIONS**

- Pink Day, October 26, 2010, in recognition of breast cancer awareness
- Kendall and Chandler Merrick reported on Pack the Place in Pink fundraising activities

**ADMINISTRATOR REPORTS - TINA VOLEK**

- Ms. Volek referred to Consent Agenda Item 1G, the Resolution Allocating \$8,000 of Council Contingency Funds toward an Economic Impact Analysis of Tax Increment Finance Districts, and said a copy of a letter, dated 9/17/10, to City Council Members from Steve Arveschoug, Executive Director of Big Sky Economic Development Authority, requesting \$8,000 to help pay for Economic Impact Analysis was available for public viewing in the ex-parte notebook in the back of the room.
- Ms. Volek referred to Agenda Item 3, Reconsideration of Resolution for the Donation or Sale of Parkland. She advised that e-mails sent to Mayor and Council from citizens contained 10 against the sale or donation and 4 in favor of the sale or donation, and a copy of the Funding and Development Agreement between the City of Billings and Better Billings Foundation, dated 12/14/09. She said those e-mails and the agreement were available for public viewing in the ex-parte notebook in the back of the room.
- Ms. Volek referred to a memo from City Attorney Brent Brooks and Mike Whitaker, Director of Parks, Recreation and Public Lands that was placed at Council's desks that evening regarding Sahara Park Development Agreement frequently asked questions. She stated that the memo was also available for public viewing in the ex-parte notebook in the back of the room.
- Ms. Volek advised that staff requested removing Item 1D, regarding CTEP projects funding, from the Consent Agenda and placing it on the Regular Agenda as Item 4. She explained that a specific recommendation was needed from the Council to the PCC Representative.

Councilmember Ulledalen moved that Item 1D be removed from the Consent Agenda and moved to the Regular Agenda as Item 4, seconded by Councilmember Ruegamer. Councilmember Clark confirmed that there would not be a public hearing for the item so any public comment would be taken during the regular public comment period. On a voice vote, the motion was unanimously approved.

**PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: 1, 3 AND 4 ONLY.**  
**Speaker sign-in required.** (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. 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 podium.)

The public comment period was opened.

- **Patty Nordland, 1810 Camden Drive**, urged approval of the recommendation for CTEP projects and stated that the 25<sup>th</sup> Street bridge was important and had numerous benefits.
- **Nash Emrich, 230 Avenue C**, expressed his support for the recommendation to the PCC for CTEP projects. He advised he was president of BikeNet and was a member of the Chamber and Visitor Bureau trail committee. He said the current trail system lacked connectivity and the proposed project would provide it.
- **Shane Winden, Billings Police Department**, expressed his support of the CTEP projects, especially the 25<sup>th</sup> Street pedestrian bridge. He spoke about the benefits of being able to cross the tracks during emergency situations when trains were blocking the tracks.

Councilmember McFadden asked what emergency services were located on the south side. Mr. Winden advised there was a fire station and two patrol officers for the entire south side.

- **John English, 1001 Ginger**, stated he supported the pool project at Sahara Park. He said it was an opportunity for a 500% return on the City's investment.
- **Paul Miller, 1109 Delphinium**, spoke on behalf of the Yellowstone Valley Citizen's Council in support of the 25<sup>th</sup> Street Bridge.
- **Joanie Harman, 2605 Minnesota Avenue**, said she lived two blocks from the proposed 25<sup>th</sup> Street bridge and was in favor of the project.
- **Randy Hafer, 631 N. 26<sup>th</sup> Street**, spoke as a downtown property owner, Chair of the Parking Advisory Board, a member of the property owners committee, and a member of the Downtown Billings Partnership. He said all four groups supported the 25<sup>th</sup> Street bridge project. He advised that a lease with Montana Rail Link was in progress and many people had been working on the project for about 10 years.

Councilmember Ronquillo asked how many people would use the bridge because he could not visualize spending \$800,000 on a bridge when that money could be used elsewhere to benefit more people. Mr. Hafer stated he believed the benefits would be more than he could imagine and it would become an attraction.

Councilmember McFadden asked about the train data. Mr. Hafer advised that Darlene Tussing had the train information. Mr. Hafer said he saw several coal trains as well as other trains go through downtown every day during the day and he was sure there were some at night also.

Councilmember Ulledalen asked about right-of-way issues with the railroad. Mr. Hafer said there were not any particular issues, but it was a matter of working through the process. He said they had received a letter from the railroad that said the project had been reviewed and they were concerned with a few safety issues. Mr. Hafer said it was a matter of finalizing a lease with the railroad.

Councilmember Ronquillo asked about maintenance of the bridge. Mr. Hafer advised that the City would own it, and a portion of the revenue from the proposed parking lot would help maintain it. Councilmember Ronquillo asked where the funding would come from if the Council decided not to approve the CTEP funding. Mr. Hafer

said he was not sure he had an answer for that because if there was a plan in place, he did not know why the Council would not approve it.

- **Darlene Tussing, 3033 Demaret**, said there were property owners in the area of the connection that would become part of the Business Improvement District and their tax assessments would help fund the maintenance. She reported that the train data came from Kelly Duray, the person that handled the transportation with railroads. She said prior to the Signal Peak opening, there were eight cars per day and as more coal was gathered, there would be about 18 cars per day.
- **Morris Hall, 460 Tabriz**, asked the Council to vote against the donation of Sahara Park land.
- **Christine Willnow, 710 N. 30<sup>th</sup>**, spoke in favor of the donation of Sahara Park land.
- **Don Crawford, 2905 Bunker Hill**, said that although he was not a City resident, he did business in the City. He spoke against the donation of park land, but said he was not against an aquatic park in the Heights. He said that evening he heard references to \$800,000 for a bridge; a budget crunch, and that the City did not have money, so he wondered why land was being given away unsecured.
- **April Seekins, 380 Camel Place**, requested that land not be donated or sold to the Better Billings Foundation. She said she did not feel there was enough green space around the planned aquatic park and there were safety issues.
- **Dennis Ulvestad, 3040 Central Avenue**, spoke about his review of the difference between agreements and contracts. He said the pool project could be expedited by the donation of land and the vote would affect both the current council and the next council.
- **Jolene Roberts, 505 Poppy Place**, stated that she trusted the Council would act in accordance with the funding and development agreement put in place in 2009, which was to not donate or sell the land to the Better Billings Foundation until the funding had been provided. She asked for a vote against it.

Councilmember Ruegamer asked Ms. Volek to clarify that the agreement did not state anything about the transfer of land prior to having the money. Ms. Volek explained that the agreement required \$4 million before construction began, but she and Legal staff determined it did not require the money in hand prior to the land transfer. She pointed out that the agreement called for construction to begin within 90 days after the funding contingency was satisfied and that might not be sufficient time to complete the land transfer. Councilmember Ruegamer said he had no memory of the transfer of land being barred by any part of the agreement. Ms. Volek said it was contemplated as taking place after the subdivision plat and review, which occurred recently, and it did not tie that specifically to the \$4 million. Councilmember Ruegamer said it was never said that the land would not be transferred prior to having the money.

Councilmember Ruegamer asked Ms. Roberts if that made her feel more comfortable about it. Ms. Roberts responded that it did not. Councilmember Ruegamer asked Ms. Roberts if it made her comfortable knowing that if they did not start work within three years, the land went back to the City. Ms. Roberts said it did not.

- **Leann Christianson, 707 Bazaar Exchange**, asked the Council to vote against the aquatic park. She said she would like the land left as it was and mentioned safety issues related to traffic on Aronson.
- **Andrew Billstein, 614 Crawford**, advised that he drafted the development agreement and was available to answer any questions. He provided background of the master plan and the subdivision plat process. He said the Foundation was asking for the land at the current time because from a legal perspective, the land did not exist at the time of the development agreement. He said the agreement was not being changed; they were simply following the legal steps the City and Foundation agreed upon.

Councilmember Ronquillo said he thought the agreement required the money first before the land transfer and as far as he was concerned, that was where the agreement stood. Mr. Billstein advised that the Foundation would be at peace if the Council adopted a resolution that said the land would be donated when the money was raised. He said what he was trying to explain was that the park had existed as one large parcel, but there was now a subdivision of the 6.775 acre parcel, and the Foundation was asking the Council to go on record saying it would donate it either now or when the funding was complete. He noted that the feasibility study, traffic study, subdivision, and other testing were done at the Foundation's expense, which was a significant amount of money to expend without knowing that they would ultimately get the land. He said it was his understanding that there was a Plan B in the park's master plan, of a neighborhood park, that would be in effect if the Foundation was unable to raise the money. Councilmember Ronquillo stated he knew that the citizens in that area were upset that an alternate was not initially offered. He mentioned that the makeup of the Council would change and the current Council could not obligate a future Council. Mr. Billstein stated that the deed would protect the City.

Councilmember McFadden asked if his assumptions were correct that it was not easy to raise \$4 million, and without something solid in hand, it was even harder. Mr. Billstein said that was correct.

Ms. Volek advised that if the Council considered changing the agreement, it needed to be done at another meeting to provide the necessary advertising.

Councilmember Pitman asked Mr. Billstein if he believed the agreement protected both the park and the City. Mr. Billstein said he did.

- **Tom Iverson, Parks Board Chairman**, advised that the Parks Board recommended donation of the Sahara Park land now to allow the fundraising to continue.

Councilmember Gaghen said she was supportive of private sector efforts, but was concerned with the issues that had been voiced, and she was not convinced that was the best location. Mr. Iverson advised that he understood the traffic concerns, but noted that Castlerock was not big enough for the facility.

Councilmember Astle asked why the Parks Board wanted the transfer that evening when the Better Billings Foundation had indicated it was at peace knowing the land would be transferred when the funds were raised. Mr. Iverson said they wanted a commitment, and he understood one did not currently exist.

Councilmember Pitman asked about the Parks Board vote on the issue and if it had any concerns other than fundraising. Mr. Iverson said the vote was unanimous even though there were concerns about the fundraising. He said the Board came up with the \$4 million figure so the Foundation had a solid number to reach.

Councilmember McFadden asked how long the Board had worked on that project. Mr. Iverson said it had been about 1-1/2 years.

Councilmember Ronquillo asked Mr. Iverson to read Section 6 of the agreement out loud. Councilmember Ronquillo said based on that, he did not know why the transfer was even being considered at that point. He said if the Parks Board helped write the agreement and now wanted to do something different, they might as well throw that agreement out and start over. He said it had been voted on already. Mr. Iverson said he thought Ms. Volek addressed that fact that there was nothing in the agreement that required the money before the land transfer.

Councilmember Ruegamer said he agreed with everything Mr. Iverson said except that the Council and Mr. Barthuly came up with the \$4 million figure, and he had never heard from the Parks Board. He said it might have been discussed at the Parks Board, but was not said to the Council.

Councilmember Cimmino asked Mr. Brooks to clarify Section 6, and as a point of order, asked if it was a public comment period of one minute, or a public hearing. Mayor Hanel stated that the Council was allowed to question someone that testified. Mr. Brooks explained that all the sections of the agreement had to be read together. He referred to the FAQ memo that addressed the land transfer issue. He noted that the Council and Better Billings Foundation always had the option to agree to amendments to the agreement if they chose.

Councilmember Clark stated that they should be reminded that was not the time for the Council to debate the issue.

- **Chad Broderius, 511 Poppy Place**, referred to a recent survey regarding parks that asked for the top 10 needs. He said the survey indicated that 71% of the respondents agreed that Billings needed more regional parks and Sahara could never be a regional park. He asked that the land not be transferred based on that fact along with traffic counts.
- **Julie Thomason, 265 Caravan**, asked that the Council not donate the land in Sahara Park. She said she felt that the neighborhood got the short end of the stick because the residents did not have opportunity for input until after the fact when Plan B was added to the master plan. She said she did not think the land was needed to reach the financial goals.
- **Michael Adams, 532 Poppy Place**, said traffic on Aronson was really bad and he was worried about that. He said he did not think Sahara Park was the correct location for that pool.
- **Samantha Morris, 491 Tabriz**, expressed her support of the pool project for reasons the Council had already heard. She agreed that traffic on Aronson was bad, but said development would force traffic to slow down and would result in a better patrol by the Police Department.
- **Stan Morris, 491 Tabriz**, stated he supported the pool project and donation of the land. He stated that traffic would be an issue no matter where the facility was located.
- **Josh Reno, 1326 Galway**, advised he was directly related to the fundraising for Better Billings Foundation. He said donation of the land would help the fundraising efforts.
- **Chuck Barthuly, 300 Eastlake Circle**, stated that Jim Soft of Yellowstone Boys and Girls Ranch Foundation confirmed that having the land secured was essential to a successful fundraising effort. He referred to Section 3 of the agreement that said the Council would consider sale or donation of land. He said they were asking for the assurance that once the funding contingency was reached, the donation would take place. He said the transfer could take place later if the Council would agree to the donation now.

Councilmember Ruegamer asked how the in-kind donations could be monitored. Mr. Barthuly said they would address that with a bond that secured the City. He said he hoped the Council understood that some of the development costs had already been encumbered with engineering, surveying, land work, etc. He said some had already been received and some would be coming in the future. Mr. Barthuly provided a letter from Jim Duncan of Billings Clinic Foundation which reiterated what he had said before about the need for the assurance of the land.

- **Scott McCulloch, 611 Tabriz**, referred to his previous testimony about 12-14 months ago, that he just wanted a park. He distributed a handout that contained about 100 signatures gathered a year ago from people that supported a park development. He said about 25 more signatures had been added. He said he disagreed with Councilmember Ruegamer about whether the land could be donated prior to the money being raised, and he asked for a vote against the donation.

- **Brian Corneliusen, 575 Tabriz**, said he and his family supported a pool in the Heights, but not at that location. He said traffic was bad on Aronson and it would become a horrific spot. He said the Councilmembers from Ward II needed to listen to the residents in that subdivision.
- **Pamela Ask, 5320 High Trail**, advised she was Chairman of the Better Billings Foundation. She explained fundraising segments and that the upcoming phase of the process was to seek large donations from philanthropic people that wanted to know exactly where their money was going. She stated that some of the people that signed the petition provided that evening had indicated that they would not have signed it if they had all the information.

Councilmember McFadden referred to traffic concerns mentioned and asked if a good deal of it was related to school students, which would mostly be during the time the pool was not operating. Ms. Ask advised that it was her experience that when a destination was constructed, it naturally slowed traffic. Ms. Ask added that it would not even impact morning traffic when people were going to work. She pointed out that Lake Elmo Road was being improved and would be another arterial from the area and would ease the Aronson traffic.

- **Larry Seekins, 380 Camel Place**, requested the land at Sahara Park not be deeded to the Better Billings Foundation until the Unified Zoning Regulations were enforced. He said the present regulations did not allow a waterslide at that park. He referred to a letter and attachments for additional information. He stated a Special Review would be required to have a waterslide at Sahara Park.

Councilmember Ruegamer asked if the waterslide at Rose Park was illegal. Mr. Seekins said he did not know.

- **Alex Tommerup, 170 Erickson Court**, said he supported the project and was the architect on the pool project. He advised that he, Mr. Whitaker and Mr. Barthuly met to look at the impact of development of a park next to a neighborhood. He said that in their research, they discovered two projects that increased the value of the homes in the neighborhood, and for him, it increased the value of the neighborhood.

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

## 1. CONSENT AGENDA

### A. Mayor Hanel recommends that Council confirm the following appointments:

	Name	Board/Commission	Term	
			Begins	Ends
1	No Applications	Board of Adjustment	10/12/10	12/31/13
2	No Applications	Board of Adjustment	10/12/10	12/31/13
3	No Applications	Board of Appeals - Architect	10/12/10	12/31/13
4	No Applications	Board of Appeals - Electrical	10/12/10	12/31/13
5	No Applications	Community Development	10/12/10	12/31/10
6	No Applications	Housing Authority	10/12/10	12/31/13
7	No Applications	Human Relations	10/12/10	12/31/10
8	No Applications	Human Relations	10/12/10	12/31/13
9	Jennifer Quinn	Library Board	10/12/10	12/31/13

10	Todd Cormier	Traffic Control	10/12/10	12/31/10
11	No Applications	City/County Planning Ward I	10/12/10	12/31/10
12	No Applications	City/County Planning Ward V	10/12/10	12/31/10

1. Unexpired term of LaVerne Bass
2. Unexpired term of Terry Madtson
5. Unexpired term of Uriah Edmunds
7. Unexpired term of Everall Fox
9. Unexpired term of Tony Hines
10. Unexpired term of Keith Lang
11. Unexpired term of Bill Iverson
12. Unexpired term of Fred Rogers

**B. Bid Awards:**

1. **2011 56,000 GVW 10-Yard Dump Truck with Snow Plow Assembly and Sander.** (Opened 9/28/10). Recommend IState; \$148,064 plus 5-year warranty of \$1,625, for total of \$149,689; with trade-in of Unit #1159, \$15,000.
2. **W.O. 10-03, 2010 Street Maintenance Program, City Crack Seal.** (Opened 9/28/10). Recommend Z & Z Seal Coating; \$146,958.06.

**C. Approval** of Right-of-Way Easement with Montana Department of Transportation for W.O. 02-10, 6th Avenue North to Bench Blvd.

**D. Approval** of staff recommendation to Policy Coordinating Committee for the funding of the 25th Street Pedestrian Bridge, Broadwater Avenue Trail Connection, Metra Park Sidewalk, Central Avenue Sidewalk, City-Wide ADA Ramps, Rimrock Road Sidewalks, and Northern Hotel Sidewalk Improvements CTEP projects.

**E. Second/final reading Ordinance #10-5524 for Zone Change #867:** A zone change from Residential 6,000 (R-60) to Neighborhood Commercial (NC) on Lot 6, Block 6, Central Acres Subdivision, 4th Filing, located at 3333 Central Avenue. Paul and Sharon Allen, owners. Zoning Commission recommends approval of the zone change and adoption of the determinations of the 12 criteria.

**F. Resolution #10-19006** allocating up to \$2,500 of Council Contingency Funds for campaign materials to publicize the Distracted Driving Ordinance taking effect on October 31, 2010.

**G. Resolution #10-19007** allocating \$8,000 of Council Contingency Funds towards an Economic Impact Analysis of Tax-Increment Finance Districts.

**H. Bills and Payroll:**

1. September 10, 2010 Approved
2. September 17, 2010 Approved

Councilmember Cimmino separated Items 1C, 1H1, and 1H2. She asked Mr. Mumford to provide an explanation of the parties involved in Item 1C. Mr. Mumford advised that the land for the connection of 6<sup>th</sup> Avenue North and Bench Boulevard was all on County property. He

advised that the City, County and State were the parties involved in the project. He said an agreement was worked out for the County to donate the land and the value of it would go toward offsetting the County's match for the project. He advised that one of the conditions of the donation was that a pedestrian underpass be constructed as part of the project to allow access from part of the parking lot and the maintenance area into MetraPark. He said that was being incorporated and a change order would be presented to the Council at the next regular meeting.

Councilmember Astle moved for approval of the Consent Agenda with the exception of Items 1C1, 1H1, and 1H2, seconded by Councilmember McCall. On a voice vote, the motion was unanimously approved.

Councilmember Astle moved for approval of Item 1C, seconded by Councilmember Pitman. Councilmember Cimmino stated that in light of the fact that there were three jurisdictions involved in that transaction, it was a perfect example that land donations worked well for the benefit of the entire community. On a voice vote, the motion was unanimously approved.

Councilmember Ronquillo moved for approval of Items 1H1 and 1H2, seconded by Councilmember Pitman. Councilmember Cimmino advised that she would recuse herself from the vote due to employment with a consulting firm for invoices within those items. On a voice vote, the motion was approved 10-0.

## **REGULAR AGENDA**

**2. PUBLIC HEARING AND RECONSIDERATION FOR VARIANCE: A variance from the Subdivision Improvements Agreement for Ironwood Subdivision, 2nd Filing, requiring installation of sidewalk along property frontage located at 5835 Ironwood. Neal and Sally Johnson, owners. Staff recommends denial. (Action: approval or disapproval of staff recommendation.)** Mr. Mumford explained that the reconsideration was due to the fact that the public hearing date was improperly posted. He said it was not actually a variance request, but should be a revision to the Subdivision Improvement Agreement. He recommended denial of the variance request with direction to staff to work with the Johnsons to revise the SIA, and then present it for Council approval at a future meeting. He advised that the property was part of the 2010 miscellaneous projects and staff could be directed to delay or not include that property in the projects until the issue was resolved. Councilmember Clark asked if the fees for the variance application would be applied to the fees that would be charged for the SIA revision. Mr. Mumford advised that there would be a fee for the SIA and Public Works would cover it for the Johnsons.

The public hearing was opened.

- **Dan Wells, 4241 Cedarwood Lane**, said he was one of the original developers of Ironwood Subdivision. He asked for approval of the variance, mainly to provide assurance to the Johnsons that the Council was leaning in their direction. He said he believed everyone had a clear understanding of the correct action, and earlier that day he informed Mr. Mumford that he would contact the engineering firm that first developed the Subdivision Improvement Agreement to have them put the wording together to allow the necessary changes.
- **John Stockman, 5992 Ironwood**, advised that he was President of the Homeowners Association for Ironwood Subdivision. He urged approval of the variance to assure the Johnsons that they had support of the Council. He provided a description of the Johnson property that was beautifully landscaped and already had walkways on three



sides of it. He advised that the homeowner association was in favor of the variance request.

Councilmember Astle asked if Mr. Stockton and Mr. Wells were at odds with what Mr. Mumford said. Mr. Stockton advised that was correct; they wanted approval of the variance to assure the Johnsons they were not wasting their time if they went through the process.

Councilmember Gaghen asked if there were other homes in the same situation within the subdivision. Mr. Stockton said there was another homeowner in the same situation, but he did not believe that homeowner had been put on notice by the City that a sidewalk would be installed whether they liked it or not. He explained that he did not know the history and how it all came about, but knew that only the Johnsons had been threatened with that action. He pointed out that in the write-up, there was mention of the possibility of extending the sidewalk to the east, but there was no possibility of that because that was another parcel and there was no roadway going there so the sidewalk would end at the road.

Councilmember Cimmino asked if staff had pictures of the property that could be displayed. Ms. Mattox indicated she did not.

- **James Pennington, 5859 Ironwood**, advised that he was the neighbor to the immediate west of the Johnsons and he had been told he had to install that sidewalk as well. He said his home was also surrounded by walkways on three sides. He advised that he and the Johnsons had been talking with the City about that issue for about two years.

Councilmember McFadden asked Mr. Pennington if he agreed with Mr. Stockman that granting the variance would somehow expedite the process of getting the subdivision regulations changed. Mr. Pennington said they had been dealing with the issue for more than two years, and at that point, he was just looking for a resolution.

Mayor Hanel asked Mr. Brooks if a variance had any bearing on the timing of the SIA modification. Mr. Brooks said he thought staff was trying to communicate that the incorrect procedural mechanism to achieve no sidewalks on the south side of those properties was used, which was why staff recommended denying the variance and suggesting the SIA be modified. He said if the variance was denied, the amendments to the SIA would have to be researched and submitted to the Council at a future meeting.

Councilmember McCall asked Mr. Mumford if they came to an agreement that evening to get the homeowners into the SIA revision procedure, what had to happen to get other homeowners like Mr. Pennington into the same due process. Mr. Mumford explained it would all happen at one time because there would be an amendment to the section of the SIA which stipulated where sidewalks had to be installed for that phase of the subdivision.

Councilmember Gaghen confirmed that if the SIA was modified, the City would not require the sidewalks in question now. Mr. Mumford explained the steps of the amendment process and that if approved by the Council, the requirement to ever construct those sidewalks would be eliminated.

Councilmember Ronquillo asked if other homeowners would be in the same situation. Mr. Mumford advised they were the only two in that situation due to the way the subdivision was developed and the modification of the original plat. He explained that staff asked to have the variance denied so that it would go away since it was not the correct procedure for that situation.

- **Sally Johnson, 5836 Ironwood Drive**, thanked the City, especially Dave Mumford and Councilmember McCall, for acknowledging the errors and for helping them work through the proper procedure. She advised they did not want sidewalks in front of their home because there were trails that bordered three sides of their property, and that the

addition of a sidewalk would not connect their property to any future development. She said the addition of a sidewalk would create an undue hardship and expense for their established landscape and drainage.

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

Councilmember McCall stated that they had been working on that for some time and apologized for the errors that were made. She stated that the Johnsons and Mr. Mumford had been good to work with on that issue. She advised that she crafted a motion for the item earlier that day and ran it past Legal staff and Mr. Mumford to make sure the wording was correct. Councilmember McCall moved that the Council not approve the variance request as stated in Item 2 and direct staff to go back to the property owners, Sally and Neal Johnson and James Pennington, to assist them in working with the proper procedure to modify the existing Subdivision Improvement Agreement (SIA); also directing staff not to install the sidewalk under the 2010 Miscellaneous/Developer Related Projects, until the City Council had voted to approve or disapprove the SIA modification, and that the City would absorb the fees related to the SIA modification, seconded by Councilmember Ulledalen. Mayor Hanel provided clarification that the reason to deny the variance was to go back to the SIA. He added that he took offense to the fact that the City was spoken of as threatening the homeowner with installation of the sidewalks. He said there were no threats, it was all written documents, whether it was an SIA or variance, and was normal business procedure, not threats. He said he drove out to the properties and it was clearly visible that there were walkways on all three sides and he did not see the need for the sidewalk. Councilmember Cimmino asked Mr. Brooks about whether it was okay to add Mr. Pennington's name to the motion since it was not on the variance application. Mr. Brooks explained that it was really a two-part motion with the first part being denial of the variance and the second part was to include both the Johnsons and Penningtons in the amendment of the SIA. Councilmember McCall agreed and added that the sidewalk would not be installed on either property. On a voice vote, the motion was unanimously approved.

**3. RECONSIDERATION OF THE DONATION OR SALE OF PARKLAND, RESOLUTION #10-19008, a 6.775 acre parcel of parkland at Sahara Park, to the Better Billings Foundation to construct and operate a pool. Staff recommends donation of the Aquatic Project Land. (Action: approval or disapproval of staff recommendation.)** Mr. Brooks referred to Item 3 of the FAQ memo distributed at the beginning of the meeting, and advised that if the Council voted against the transfer of the land to the Better Billings Foundation that evening, staff needed direction whether that was a final, permanent, or temporary 'no,' and direction for further amendments if it was not a permanent 'no.' He briefly reviewed the items on his memo and said most of them spoke for themselves. He mentioned that if the agreement became null and void for any reason, the alternative plan in the master plan for Sahara Park would be implemented. He said that issue was similar, but more complex, than the Council's previous donation and transfer to the Montana Rescue Mission. He noted that the Rescue Mission was not able to raise the necessary funds and the property was in the process of reverting back to the City.

Mayor Hanel referred to the language within the agreement regarding the warranty deed and asked if it would be simpler to transfer the land back to the City, if that became necessary, through a quit claim rather than a warranty deed. Mr. Brooks explained that it was necessary to use the warranty deed to ensure there were no outstanding liens on the property. Mayor Hanel stated that the land automatically reverted back if the conditions of the agreement were not met.

Mr. Brooks pointed out the need for at least six votes in favor of the land transfer in order for it to be approved.

Councilmember Astle referred to Section 6 of the Funding and Development Agreement and asked if that said the Better Billings Foundation got the land if it met the funding contingency. Mr. Brooks explained that it meant if the funding contingency was met and the Council decided to convey the property under Section 3. Councilmember Astle asked where the 'and' showed up. He said the agreement stated they would do it as a private owner. Mr. Brooks said the agreement had to be read so that all sections were read together. Councilmember Astle asked if they became a private owner if the funding contingency was met. Mr. Brooks said they did, but all the sections had to be read together. Mr. Brooks pointed out that the agreement was thoroughly vetted out by the Council and Legal staff last year.

Councilmember Astle asked about Mr. Seekins' comments about zoning. Mr. Brooks deferred to Planning and Community Services Director Candi Beaudry. Ms. Beaudry explained that the property was zoned Public and within that district, public pools were allowed. She said the proposal was considered a pool with accessory uses, which was an allowed use in that zoning district. Councilmember Astle asked if she was aware there was not a pool included in Phase I. Ms. Beaudry advised there were several swimming facilities zoned Public that were not actual pools, but spray parks or wading pools. She said the version of the code that was used to classify uses was slightly old and did not have a definition of water slides, but the Unified Zoning Regulations allowed some discretion to the Zoning Administrator to interpret as to whether the intent of the use was being met, and heretofore, they had considered those accessory uses to constitute public swimming pools.

Councilmember Pitman referred to Councilmember Astle's comment about private ownership and asked if it was correct that the six votes in favor of the transfer were still needed. Mr. Brooks advised that was correct.

Councilmember Clark advised that a round pool was included in the first phase.

Councilmember Ulledalen asked if there were any right-of-way issues with the pipeline. Mr. Brooks advised they were not aware of any, but a title report would be part of the transfer of property process to make sure those types of issues were checked.

Councilmember Ronquillo asked if there was any plan to install a stop light or other control where the five streets met going into that facility. Mr. Mumford explained that those were residential streets and would have to meet traffic warrants to have a traffic control device there. He said the 6300 trips per day was actually a low volume for an arterial road. He said it would be watched and if something was needed, it would be addressed at that time.

Councilmember Ulledalen asked if the community center was considered as part of the master plan. Mr. Whitaker said a community center was never discussed, but a meeting area for functions such as pool parties or staff training was mentioned.

Councilmember Ruegamer asked Mr. Whitaker to explain why Castlerock was not being used as it had been suggested. Mr. Whitaker said his concern with Castlerock was that it was the busiest park in the Heights and a pool would displace a lot of users, and if that happened, another location would have to be identified for those users. He added that the irrigation system covered about 30 acres and was a \$1 million infrastructure, but it could be done.

Councilmember Astle asked why staff wanted to give the land now and who the staff was. Mr. Whitaker advised that City staff wanted to donate the land to make sure the Foundation had all possible means to raise the funds for the project. He said staff did not think it would hurt anything to transfer the land now because they could not begin construction until the money was raised. Councilmember Astle asked if it would preclude people from walking on or using the land. Mr. Whitaker stated that would be up to the Foundation once the land was transferred. Councilmember Astle stated they could fence the land.

Councilmember Gaghen asked if High Sierra was a possible location for groups that would be displaced at Castlerock. Mr. Whitaker said it was, but an irrigation system would have to be installed and the area would have to be leveled.

Councilmember Pitman moved for the approval of donation of the parkland, a 6.775 acre parcel of parkland at Sahara Park, to the Better Billings Foundation to construct and operate a pool, seconded by Councilmember Cimmino. Councilmember Ruegamer clarified that he wanted \$4 million in the bank before construction started and there was nothing in the agreement that talked about the land transfer, so he was not concerned about that. He said it was not the time to start splitting hairs. He said Mr. Barthuly had answered every question asked, at least to his satisfaction. He stated that he agreed with the testimony that a park would slow the traffic down. He said he spoke with someone in the street department that indicated the traffic on Aronson was mainly people going back and forth to work, and he did not think it would be an issue. He said their goal was always to protect the City, and in that situation, they had done everything they could to protect it. He said they should move on and give them the land.

Councilmember McFadden said he felt it was a worthy and worthwhile project, and the group behind it was capable and sincere. He stated he would support the project.

Councilmember Pitman mentioned that they learned during the Citizen Survey that the citizens wanted public/private partnerships. He said the City should encourage the partnership, not fight it, and it would possibly start other things in other places of the City.

Councilmember McCall expressed her support of the project and said it was a huge opportunity for collaboration.

Councilmember Clark asked if they had thought about the Foundation's comment that the land did not have to be transferred now if they could have the commitment that the title would be transferred when they had the \$4 million. Councilmember Ruegamer referred to the timing issues Ms. Volek mentioned. He said the City was protected because if they did not raise the money, the land came back. He said if he were them, he would want something absolute in hand. Councilmember McCall referred to the two significant fundraisers, Jim Soft and Jim Duncan, who had clearly stated what Councilmember Ruegamer just said that the City had to step up as the public partner so the funding sources knew of the City's commitment to it.

Mayor Hanel spoke about the concerns that had been raised, and said that in relation to the traffic, he would like to see better traffic enforcement in that area. He said the land donation was simple because if the Foundation was unable to raise the funds, the land went back to the City. He said he hoped that the land would not be fenced other than normal development areas until the funds were raised. He said he felt there had been good testimony for and against, but enough had been said. He expressed his support of the project.

Councilmember Clark asked if something could be added to the motion that a fence could not be constructed. Councilmember Pitman stated he thought a fence would be part of construction, so one could not be built. Mr. Brooks said neither the development agreement nor the resolution addressed that specifically. He said if the Foundation took title of it, they would be entitled to do that. Councilmember Ruegamer said it was very expensive to fence in six acres and he did not think the Foundation would spend the money for that. Mr. Brooks stated that the development agreement stated that the Foundation would be solely responsible for the land when it was transferred.

Councilmember Cimmino stated that she had received an overwhelming amount of support from different people in different parts of the community. She expressed her support of the project.

On a roll call vote, the motion was approved 6-5. Councilmembers Pitman, Cimmino, McFadden, Ruegamer, McCall, and Mayor Hanel voted 'yes.' Councilmembers Ronquillo, Gahen, Ulledalen, Astle, and Clark voted 'no.'

**4. APPROVAL OF STAFF RECOMMENDATION TO POLICY COORDINATING COMMITTEE for the funding of the 25th Street Pedestrian Bridge, Broadwater Avenue Trail Connection, Metra Park Sidewalk, Central Avenue Sidewalk, City-Wide ADA Ramps,**

**Rimrock Road Sidewalks, and Northern Hotel Sidewalk Improvements CTEP projects.**

Transportation Planner Lora Mattox stated that a detailed presentation was made at the previous week's work session, but she would provide a brief overview of each project and the funding request for each. She stated that the Policy Coordinating Committee (PCC) identified the 25<sup>th</sup> Street Pedestrian Bridge as a number one priority. She reviewed the recommendation of the Technical Advisory Committee (TAC) and the recommendation of the Bicycle Pedestrian Advisory Committee (BPAD), and the differences between the two recommendations. She advised that during the work session, a question was asked whether Safe Routes for Schools funds could be used for the Will James connection. She said she spoke with staff and MDT about that and explained that although the project qualified, about \$700,000 was available in that fund and it typically received applications totaling about \$3 million. Ms. Mattox advised that staff met with the Board of County Commissioners and they recommended forwarding the TAC recommendation to the PCC.

Councilmember Ulledalen asked about the rationale for including the Northern Hotel in the funding request since it was a private business. Ms. Mattox explained that the sidewalk at the Northern was public right-of-way and CTEP funds had been used in the past similar to the Montana Avenue streetscape. Councilmember Ulledalen asked if anyone downtown could apply for those funds. Ms. Mattox said they could if they were looking at an historic streetscape and sidewalk replacement. Ms. Volek advised that Ms. Beaudry had just informed her that most of Montana Avenue was done that way.

Councilmember Ruegamer asked about the \$573,000 shortfall. Ms. Mattox said the TAC recommendation was to fund all seven projects, but not all of them would be fully funded. She said the Rimrock Road, Northern Hotel and ADA ramps would be scaled back equally. Councilmember Clark clarified that the project, such as the ADA ramps would only bid as many ramps as there were funds. Ms. Mattox said that was correct. Councilmember Clark asked where extra funds might come from to finish the Broadwater connection. Ms. Mattox said she thought the BPAD hoped that the Will James Connection was left in and bid as an alternate.

Councilmember Ulledalen stated he favored the BPAD recommendation because he felt the Broadwater/Will James connection was important. He said he was concerned if it was not done as part of the project, it would be more expensive to do later.

Councilmember Clark asked what the vote was of the County Commissioners. Ms. Mattox said it was 2-1 in favor of the TAC recommendation. She said she thought the dissenting vote had to do with maintenance concerns regarding the 25<sup>th</sup> Street bridge and the Broadwater connection.

Councilmember Ulledalen moved to recommend the Bicycle Pedestrian Advisory Committee recommendation to the PCC, seconded by Councilmember Ronquillo. Councilmember Ulledalen said the Council was back to where it was a couple of years ago when the projects were presented about a week before the recommendation had to be made and there really was not time to discuss priorities and issues, and they had to vote on the staff recommendation. He said the key thing for the Council to understand was he would take the Council's recommendation to the PCC and it would be discussed there. Councilmember Astle stated that Ward V was in favor of the Will James connection to keep the kids from having to walk in the mud along Broadwater.

Councilmember Ruegamer stated that he was initially concerned with the bridge project and spoke against it the previous week. He said he listened to people talk about it and considered the practical part, but he was now convinced with the vision of it and would support it. He compared it to the pool and the tunnel being dug under Main Street that cost a lot of money. He said if it was there, people would use it, maybe not right at first though, but after a while.

Councilmember Cimmino asked if it was correct that CTEP funding could not be used for maintenance of that bridge. Ms. Mattox advised that was correct, however the project had

received interest in partnerships from the Business Improvement District as well as the Parks Department for maintenance. Councilmember Clark advised that there was talk about expanding the BID to include that area. Ms. Mattox said that was correct and the BID could be expanded to that area now that Minnesota Avenue was listed as an historic district with the National Register.

Councilmember Clark commented that at their recent meeting, the County Commissioners had discussed how the trails could be maintained and wanted to sit down and discuss the entire trail system with the City.

Councilmember McCall said she supported the motion. She said she and Councilmember Ronquillo agreed to disagree on that issue, but it was a great example of partnership and collaboration.

Mayor Hanel stated he agreed with the motion and would support it.

Councilmember Gaghen said the announcement about the historical district finally being acknowledged was good timing. She said she wanted to be frugal, but wanted to look ahead and was excited about the possibility of a convention center and future development across the tracks, so she would support the motion. Councilmember Gaghen advised that she and Councilmember McFadden toured the Cloud Peak Mine and spoke about the coal trains that would be traveling through Billings.

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

**PUBLIC COMMENT** on Non-Agenda Items -- Speaker Sign-in required. (*Restricted to ONLY items not on this printed agenda. Please sign up on the clipboard located at the podium.*)

The public comment period was opened.

- **Gary Temple, 118 N. 29<sup>th</sup>**, asked to speak at a future work session regarding discrepancies with the process of gifting projects to the City. He said he emailed a packet related to the issue. He said it was quite lengthy and debatable.

Councilmember Ruegamer asked Mr. Temple what he wanted to talk about. Mr. Temple said it was disputing the sculpture project.

Councilmember Clark asked if he was going to talk about gifts in the future or past ones as well. Mr. Temple said it would be about future and past. Councilmember Clark advised he was not interested in having a discussion about the past projects, but he was willing to discuss future ones.

Councilmember McFadden said he thought the fear on the Council, or at least on his part, was that people would ask for taxpayer dollars to reimburse a mistake. Mr. Temple said he was not asking for that.

Councilmember Ulledalen said he got the packet from Mr. Temple, and the comment he had on that was that the City was not good at getting gifts. He said he would like to hear ideas about how to keep from screwing up. He said there was a controversy and nobody wanted to talk about it, but it would be a festering problem. He said he would like some kind of policies regarding gifts. He used the example of Phipps Park that was donated, yet the City did not have funds or staff to maintain it. He said a future Council would likely criticize the current Council for not maintaining it. He said it was a two-step process, one was to put policies in place so the City did not get into predicaments in the future, and second, if there were possibilities to correct the McNally sculpture situation the Council could listen to them and reject them if it wanted. Mr. Temple said that was all he wanted. He asked to be allowed to discuss that at a work session.

Councilmember McCall asked Mr. Temple if he was hoping that the Council would come forward with a remedy. Mr. Temple said he was.

Councilmember Ronquillo said he was on the committee and the majority of the members wanted nothing to do with it. He said there were two or three members that said the taxpayers did not have to pay for it, they would do their own fundraising. He said he agreed with most of what Councilmember Ulledalen said, except the Council just agreed to accept a bridge to nowhere, and things were accepted all the time and someone had to pay for maintenance. Councilmember Ronquillo said they already heard everything about the statue, but he was willing to discuss future policies. Mr. Temple asked if they did due diligence and checked credit references. Councilmember Ronquillo said it was not up to the committee to do that, it was up to the three people.

Councilmember Cimmino commented that she agreed a policy needed to be developed to address issues in the future.

Ms. Volek said she discovered a policy that was developed when the figure for the skate park was accepted. She said she also believed that the City Council was not the entity that accepted the statues for the ballpark, but accepted \$10,000 donations from each of the artists involved with the bases for the sculptures. She said the policy in place was not followed because the Council was not asked to approve those donations. She explained that the fundraising had already begun when Mr. Temple asked her to take it over, but she respectfully declined because she was concerned that if she stepped in, it would create liability on the City's part. She noted that the concerns at that time were not about Mr. Rains, but the other artist. She said she could provide a copy of that ordinance and schedule a discussion on it as a work session item. Mayor Hanel stated he felt that was the best way to start.

Councilmember McCall said she agreed they should review the existing policy, and it might be good to have Mr. Temple present as part of that discussion, but she did not want the Council to seek a remedy for something that had already occurred because it was not their responsibility.

Councilmember Ruegamer said the Council did not screw up and was not involved in it. He said he was concerned that if the Council got involved, the citizens would think the City was involved. He said it was artists and people that bought things from them that were involved.

Councilmember Astle said what was getting lost in the whole thing was that he believed Dave McNally was an excellent athlete and a good representative for the City, and using the McNally name with anything that might throw mud at him was a bad idea and it was a bad idea to treat his widow that way. He said if anyone had that in mind, they should not bring it up in his presence.

Councilmember Ulledalen said the Council had the opportunity to reiterate that it was not their issue or their idea and they had nothing to do with it. He used the example of the Chamber with Swords Park and a similar project could be coming toward the City in the future, so if there was a policy, it was good to get it out and dust it off.

Councilmember Gaghen said she agreed with much of what was said, but felt there might be merit in hearing from staff and Mr. Temple. Councilmember Clark pointed out that if staff brought the item forward at a work session, there would be an opportunity for public comment after the staff presentation.

Ms. Volek advised that the item could be placed on a November work session agenda.

Councilmember Pitman said he thought the Parks Board had discussed art acquisition. He suggested going through staff first to determine if there were policies that were not being used. Mayor Hanel stated it should be understood that any review did not mean there was any involvement, as Councilmember Astle clearly indicated. He said he agreed with Councilmember Astle about that.

- **Chad Broderius, 511 Poppy Place**, said he thought some of the policies in place were guiding documents. He asked if the 2008 Growth Policy was current and was being used. He said he had asked and could not get clarification if it was used.

Mr. Brooks explained that a growth policy was required by statute, but was a planning document as opposed to a regulatory document.

Councilmember Ulledalen stated there were a number of policies and documents that had to be considered as a whole. Councilmember McCall stated that Ms. Beaudry would call it a guiding document.

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

### **COUNCIL INITIATIVES**

Councilmember Cimmino asked Councilmembers to wear their pink shirts at the next meeting so a photo could be taken.

Councilmember Astle asked for an update on the skate park restroom and streetlights that were not working on Broadwater. Ms. Volek advised that she thought the lights were in the Northwestern Energy District and she would contact their representative.

Councilmember Clark asked if 24<sup>th</sup> Street West would be repaved. Mr. Mumford said it would be rotomilled and overlaid summer 2011.

Councilmember Ronquillo asked about Jackson Street sidewalks. Mr. Mumford explained that they would be working with neighbors on design and the SID. He said the Safe Routes for School work was already done.

Councilmember Cimmino asked for an update on the Inner Belt Loop. Ms. Volek advised that it was on the October 18 work session agenda.

Councilmember Ulledalen noted that the bike paths on Poly had been installed and looked great.

Councilmember Ruegamer said there was good attendance at the recent League of Cities and Towns conference in Butte. He said the conference would be in Billings in 2011 and, as suggested, a brainstorming session should be held soon.

Councilmember Ronquillo congratulated Mr. Brooks on his excellent presentation on medical marijuana at the League of Cities and Towns conference. Councilmember Gaghen acknowledged the participation of the Council at the conference.

**ADJOURN** – The meeting adjourned at 9:40 p.m.