

# REGULAR MEETING OF THE BILLINGS CITY COUNCIL

August 27, 2007

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 were Ronquillo, Gaghen, Stevens, Brewster, Veis, Ruegamer, Ulledalen, Boyer, Jones, and Clark.

**MINUTES** – August 13, 2007, approved as distributed.

**COURTESIES** – None

**PROCLAMATIONS** - None

## **ADMINISTRATOR REPORTS:**

- City Administrator Tina Volek introduced Cheryl Smiley, the new part-time Deputy City Clerk.
- Ms. Volek reminded the Council that the Agenda Review meeting was scheduled for tomorrow evening at 5:30 p.m. in the City Hall Conference Room.
- Ms. Volek said an ex-parte communication that was received on Item 1L and the minutes from a meeting referenced in the communication were included in the Ex-Parte book at the back of the room. She indicated Council had seen the communication, and a copy of the minutes was on their desk.
- Ms. Volek referenced the revised Item 4 Ballpark Change Order that Council received via e-mail on Friday and indicated a copy was on their desk.
- Ms. Volek noted revised Item 3 recommending award of sale of bonds for \$168,000 pooled special improvement districts (SID 1375 & SID 1377).
- Ms. Volek noted Items 13 and 14 that were delayed from the previous meeting awaiting copies of insurance and claims releases were received in the Friday packet.
- Ms. Volek referenced a handout from the Lockwood Water & Sewer District that would be discussed at the Public Comment Period at the end of the meeting.

**PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: 1, 3, 4, 13, and 14 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.)*

- WOODY HAHN, 5509 WALTER HAGEN DRIVE, said he wanted Council to know the ballpark committee was willing and able to raise more money to give the taxpayers exactly what was promised in November. Mayor Tussing told Mr. Hahn he appreciated his fundraising efforts and asked what amount the committee planned to raise. Mr. Hahn said he was talking about \$500,000. Councilmember Veis asked if any fundraising efforts were currently underway and for an update on the efforts. Mr. Hahn said he was not able to divulge any information at that point; but he believed there were considerable amounts available. City Administrator Volek said letters were mailed to more than 270 people who had been donors to the two previous campaigns for the school district and the ballpark. She noted a donation had recently been made by the architect on the ballpark project. Ms. Volek said Mr. Hahn had spent a lot of time raising money to help ensure there would be a maintenance fund for the ballpark, and he continued to actively pursue additional donations. Councilmember Boyer thanked Mr. Hahn and others for their commitment and support. Mr. Hahn stated they were doing it because they loved the City and wanted the best ballpark possible. Councilmember Gaghen said it was important the taxpayers received what they thought they would from the initial plans and drawings. She said neither the Council nor the City could control the escalating prices, and the work Mr. Hahn and the other dedicated volunteers were doing was very commendable.
- JIM IVERSON, 406 MONTCLAIR, said he was part of the Steering Committee for the ballpark and asked Council to carefully review the items in the Change Order and how they would change the aesthetics of the ballpark. He said they did not want the front of the stadium and some of the seating capabilities to change.
- JOHN BREWER, 815 S. 27<sup>TH</sup> STREET, said he was president of the Chamber of Commerce and co-chair of the ballpark fundraising committee. He said the committee had spent a tremendous amount of time on presenting the valued engineer items to the community, specifically some of the landscaping items and the concrete walkway that would provide a multi-use purpose for the facility. Mr. Brewer said, in addition to the letters that were sent, the Chamber of Commerce in partnership with Ms. Volek and Mr. Hahn, hosted a luncheon at Cobb Field for local landscapers encouraging them to donate product. He said as a result they were hoping to receive help on the landscaping. He said the multi-use aspects with the walkway and the landscaping elements were very important to the committee. Mr. Brewer said the reduction of the walkway from 22 feet to 8 feet was a major concern because a number of groups had been promised the walkway would be a primary multi-use aspect of the facility that would accommodate booths, etc. Councilmember Veis asked Mr. Brewer if he agreed with the recommendations of the Steering Committee or if there were items he would like to see put back. Mr. Brewer said he had not reviewed the document and was not sure if the 22-foot walkway had been taken out. Councilmember Veis confirmed the 22-foot walkway had not been taken out. Mayor Tussing asked Mr. Brewer to review the document before discussion of Agenda Item 4 in the event Council had questions about items he would prefer to be left in or taken out.

- MICHELLE JOHNSON, 2705 BLUE CREEK ROAD, referenced Item 1L. She said Public Works had provided Council with a modified version of an easement they had drawn up; and they had no intention of signing it. Ms. Johnson said they felt what they presented was fair; and if Council had any intentions of doing the right thing, they would not have a problem with their easement. She said if Council had a problem with it, there must be “something behind the scenes”. Councilmember Stevens told Ms. Johnson that Mr. Mumford indicated she had not supplied the name of her attorney to Staff. Ms. Johnson stated no one had asked for it. She said her attorney’s name was Larry Cozzens and offered his phone number.

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

## **CONSENT AGENDA:**

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

**(1) W.O. 06-09 Big Ditch Trail, Phase 2 (CTEP), Arrowhead Chandelier Connector (Safe Routes to School).** (Opened 8/14/07) Recommend JTL Group, Inc, \$162,000.00.

**(2) W.O. 07-08 Gabel Road & Zoo Drive Intersection Improvements.** (Opened 8/14/07) Recommend JTL Group, Inc., \$301,360.00.

**(3) Mobile Data Terminals - Panasonic Toughbooks for Police Department.** (Opened 8/14/07) Recommend Portable Computer Systems, \$112,445.04, for a 4-year lease with a \$1 buyout.

**(4) Staples Reservoir Interior Coating System.** (Opened 8/14/07) Recommend Purcell Painting & Coatings, \$546,658.64.

**B. Contract** with Red Oak Consulting for Water/Wastewater Rate & Fee Study; \$178,186.00.

**C. Contract** with Thyssen-Krupp Elevator for city-wide elevator service and maintenance (3-year contract); \$146,377.00.

**D. Contract** with Northwestern Energy for light district ownership, energy, and maintenance for Special Improvement Light Maintenance District 301 – Josephine Crossing Subdivision.

**E. Contract Amendment #1** to the Professional Services Contract with Great West Engineering for Tier 2 landfill-gas emissions analysis; \$20,000.00.

**F. Development Agreement** with MWSH BILLINGS LLC, for Certificate of Survey 1648, Amended Tract 1.

**G. Lease** with Edwards Jet Center Montana, Inc. for Airport Commercial Lot 8; \$16,446.12 first year annual revenue.

**H. Lease renewal** with Edwards Jet Center Montana, Inc. for Airport Commercial Lot 2; \$11,727.24 annual revenue.

**I. Lease renewal** with FES Development, L.L.C. for Airport hangar at 2431 Overlook Drive; \$19,110.00 first year annual revenue.

**J. Approval** and acceptance of the Domestic Violence Unit and Victim Witness Assistance Program Grants awarded by the Montana Department of Justice, Board of Crime Control.

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

**Acquisition:**

(1) Parcel 9: Portion of Tract A, Certificate of Survey 622, Fronteer Real Estate Group, Co-Trustees Rick Rosekelly and Sue Marshon. \$10,050.00.

(2) Parcel 26: Portion of Lot 20, Amended Plat of Lot 11, Kuhlman Subdivision, Ludmilla M. Tallmudge, \$15,600.00.

(3) Parcel 50: Portion of Lot 22, Block 1, Broadmoor Subdivision, Mabel M. Dolan, \$7,087.50.

(4) Parcel 53: Portion of Lot 23, Block 2, Broadmoor Subdivision, Rita J. Reinert, \$7,550.00.

(5) Parcel 78: Portion of Lot 18, Block 1, Arrowhead Subdivision, Todd and Julie Grebe, \$4,042.50.

**L. W.O. 04-36 Briarwood Sanitary Sewer Main Extension** approval of Right-of-Way Agreement and Perpetual Right-of-Way Easement with Robert B. Johnson and Michele R. Johnson with changes as recommended by staff, \$3,517.50.

**M. Street Closures:**

(1) Parade of Homes BikeNet Benefit Concert, 5:30 p.m. – 8:30 p.m., September 22, 2007, Josephine Crossing Neighborhood near the intersection of Mallowney Lane and Elysian Road.

(2) Holy Rosary Catholic School Barnyard Bingo and Street Fair, 8:00 a.m. – 6:00 p.m., September 9, 2007, Custer Avenue between 5<sup>th</sup> and 6<sup>th</sup> Streets West.

**N. Acceptance of donation** from ConocoPhillips to the Southwest Corridor Cop Shop, \$1,545.00.

**O. Approval** of sale of City surplus property by public auction on September 29, 2007, at the Billings Operations Center, 4848 Midland Road.

**P. Resolution #07-18591** temporarily suspending Section 24-411, BMCC, Parking for Camping Purposes, for Bureau of Land Management large-scale fire fighting cache staging and tanker base operations, July 16, 2007, through October 31, 2007, in the Billings Airport's Business Park.

**Q. Resolution #07-18592** designating the alley in Block 90, Billings Original Town, located between 1<sup>st</sup> and 2<sup>nd</sup> Avenues North, one-way northbound.

**R. Second/Final reading Ordinance #07-5426** adopting the International Fire Code (IFC), 2006 Edition, as the Billings Fire Code.

**S. Bills and Payroll**

- (1) July 30, 2007
- (2) August 3, 2007

**(Action:** approval or disapproval of Consent Agenda.)

Mayor Tussing separated Item 1A1. He said he had an inquiry in with the Ethics Committee regarding the item. He said his wife had no involvement in the bid process, but since he had not heard back from the Committee, he would recuse himself from voting on Item 1A1.

Councilmember Veis separated Item 1A2. Councilmember Jones separated Item 1C. Councilmember Stevens separated Item 1L.

Councilmember Ruegamer moved for approval of the Consent Agenda with the exceptions of Items 1A1, 1A2, 1C, and 1L, seconded by Councilmember Stevens.

Councilmember Brewster said he had no intention of separating Item 1A3, but asked if upgrading the radio system from simulcast to mobile had ever been considered. He said if it were mobile, it would handle twice the data. IT Director David Watterson said the 800 megahertz did not have a band width at full capacity. He said the cellular would be at DSL speed; but to his knowledge, the 800 megahertz system was not overloaded. City Administrator Volek commented participation in a federal workshop on inoperability, in conjunction with the County, had been requested; and they were waiting to hear on the grant. She said it would provide ideas for the future.

Councilmember Brewster said Item 1D was a contract for a light maintenance district with his employer, Northwestern Energy. He said, at the advice of Council, there would not be a conflict; so he would be voting on the item.

There was no further discussion. On a voice vote, the motion was unanimously approved.

Councilmember Ruegamer moved for approval of Item 1A1, seconded by Councilmember Boyer. Councilmember Ulledalen said there was no curb cut on Chandelier and asked how it would be handled. Staff Engineer Nick Bailey said a handicap ramp would be installed on Chandelier Circle. There was no further discussion. On a voice vote, the motion to approve Item 1A1 passed 10 to 0. Mayor Tussing recused himself from the vote.

Councilmember Ruegamer moved for approval of 1A2, seconded by Councilmember Boyer. Councilmember Veis said it appeared the bid was considerably higher than the Engineer's Estimate and asked where the additional money would come from. Public Works Director Dave Mumford said there was only one bidder, and the bid was \$110,000 above the Engineer's Estimate. He said within the bid, \$70,000 was for traffic control alone, which he felt was high. Mr. Mumford said the Alkali Creek 's-curve'

project was being delayed for a stabilization study, so they were considering utilizing \$110,000 from that project. Councilmember Veis asked how much the cost of the Zoo and Gabel signal was over and above what was estimated versus going in with the infrastructure that was in place. Mr. Mumford said including the materials donated by the State, the cost was approximately \$200,000 above the original estimate. Councilmember Veis asked when construction would commence and finish on the intersection. Mr. Mumford said if the contract was approved that night, construction would begin within two to three weeks. He said the State would be bringing the equipment, so there would be no delay waiting for poles and controllers. Mr. Mumford said the construction should be completed in November. Councilmember Veis asked when the project would commence and end if the City were to go back to the original plans. Mr. Mumford said the City would need to start over with the bidding process, which would cause over a month's delay; and he did not feel the Montana Department of Transportation would approve the original design and installation. Councilmember Veis confirmed going back to the original plan would save approximately \$200,000 and asked how much later the light would go in. Mr. Mumford said the State would probably no longer provide the poles and controllers, which would cause a delay of five to six months because the poles had to be custom-built. Councilmember Veis asked how long it would take to construct the intersection if the State was willing to accept the City's intersection design. Mr. Mumford said it would take approximately six weeks.

Councilmember Boyer asked if the bid was only advertised locally and about the possibility of expanding the bidding process. Mr. Mumford said the bid was placed in the paper, and the Associated General Contractors had it listed. Mr. Mumford said the contractors were all very busy.

Councilmember Ulledalen asked if going back to the original design would create future problems with the State. Mr. Mumford said it would.

Councilmember Gaghen asked what the loss would be without the support of the State. Mr. Mumford said the equipment the State was donating totaled over \$80,000. He said his biggest concern was that the main intersection was state-owned and state-controlled; and the State said it would not allow the City to go into the intersection without doing what they asked. Mr. Mumford said indications were that there would be a lawsuit over passing into State right-of-way without doing what they requested.

Councilmember Veis asked if the State had been approached about paying some of the overruns on the cost of the intersection. Mr. Mumford said they had talked to the State. He said the one undeveloped corner on Mr. Reger's property was not going to be constructed and was not included in the bid because the developer would be required in the future to improve the corner. He said the State was looking at contributing \$32,000 to complete it. Mr. Mumford said the State was not willing to provide any cash considerations for the exceeded bid amount. Councilmember Stevens asked Mr. Mumford to confirm the State was willing to help Mr. Reger develop his portion. Mr. Mumford said the State felt all four quadrants of the intersection should be completed. Councilmember Stevens asked who would normally have to pay for it. Mr. Mumford said Mr. Reger would when he developed his property. Councilmember Stevens said the State was essentially giving a grant to a private individual when the City needed it for the signal. Mr. Mumford said the State looked at it as their contribution to finalizing the entire intersection.

Councilmember Veis said he hoped everyone recognized how the Montana Department of Transportation had dealt with the City on this issue. He said the City needed to start saying “no” to the State. He said he understood the City wanted to work in harmony with the State Department of Transportation to help projects move forward; but the State was getting completely unreasonable, and City projects would be forced to move much slower because of it. Councilmember Veis said the State needed to be “a little more cognizant” about what went on locally instead of everything that went on in Helena.

City Administrator Volek stated that the Zimmerman Road improvements had already been stalled. She said the Mayor, Mr. Mumford, and she had attended a meeting with the State and made them aware of the City’s grave concerns with the additional cost of business the State had imposed and the time that was added to what would have been a simple solution to the intersection.

Councilmember Ulledalen asked Councilmember Veis if the issue was something they could add to their initiative of working with local delegations, so they could begin formulating positive changes before the next session. Councilmember Veis agreed. He said they need to talk to everyone at their meetings. Councilmember Veis said he was considering going to the next Transportation Commission Meeting in Helena. He said there was time allotted for local governments to speak, and they needed to know they were becoming a hindrance to the City rather than a helpful part of the community.

Councilmember Boyer asked if the issue was something that should be taken up with the Montana League of Cities and Towns at the Board level. Councilmember Veis said it would be a possibility. He said he had a discussion with the Mayor of Bozeman last week, who said they were also having the same problems with MDT.

There was no further discussion. The motion was unanimously approved.

Councilmember Ruegamer moved for approval of Item 1C, seconded by Councilmember Boyer. Councilmember Jones asked Facilities Manager Saree Couture if the bid could have been broken out separately between the escalators and the elevators. Ms. Couture said the escalators were bid as an option, and the bid amount was the optional pricing. She said the elevator bid came in less with the Thyssen-Krupp Company. She said if they had taken the lower escalator bid, it would have driven up the cost to the rest of the City for their elevators. Ms. Couture said in reviewing the bids, the Airport was concerned with the bid from Kone because of exclusions in their bid that would have driven up the cost of the escalator service. She said they felt the value was not fully represented in Kone’s bid amount. Ms. Couture also said Kone had one service technician in Billings and Thyssen-Krupp had four. She said a 24-hour escalator service response was specified; and Kone, under warranty, only supplied a daytime hour response; which meant if the escalator at the Airport went down on a Friday night, it would be out of service until Monday morning.

There was no further discussion. The motion was unanimously approved.

Councilmember Ruegamer moved for approval of Item 1L, seconded by Councilmember Boyer. Councilmember Stevens made a substitute motion to delay the item until the next meeting, seconded by Councilmember Ronquillo. She said Mr. Mumford had just received the name of the Johnson’s attorney, and she would like to give Staff a couple weeks to speak with the Johnson’s attorney to work out the easement issue. Councilmember Boyer asked Mr. Mumford if the motion would delay

the work on the project. Mr. Mumford stated that in March of 2007 the Council gave Staff permission to go to condemnation on the property, and Staff had been working with the Johnsons since then. He said the sewer plant was failing, and the project needed to move forward. Mr. Mumford said the biggest item was the free services and no annexation promise. He said Yellowstone Country Club and others had made similar requests that Council denied. Mr. Mumford said Staff would be happy to work with the Johnsons on the language issue regarding indemnification and requested City Attorney Brooks' opinion. Attorney Brooks said he would discuss the language with the Johnson's attorney and did not feel the language would be a major roadblock to the approval of the documents. Mr. Mumford said he had no objection to delaying the item for two weeks or changing the language for indemnification, but he wanted Council to know that the promise the Johnsons would never be annexed and the free services were significant issues and would still remain unresolved. Councilmember Stevens referenced her statement in the March 26<sup>th</sup> minutes that attorney fees would be reimbursed to Ms. Johnson. She said she was indicating the \$161 that had been agreed to and not the entire amount. Councilmember Stevens said the tapes of the meeting may need to be listened to for clarification. Councilmember Stevens also said to give the Johnsons a free hookup in the future would be against any precedent that had already been set with Yellowstone Country Club and Briarwood. She said she would like to delay the matter for two weeks to give Staff time to work on it. She said if Council voted on the issue that night, it would not make a bit of difference because the Johnsons would not have to accept it, and the project would still be delayed. Mr. Mumford said at that point Staff would go to condemnation because all efforts had been exhausted. Mr. Mumford also reminded the Council there were properties on the South Billings Boulevard project that were annexed and had to pay their own hook-up fees.

Mayor Tussing asked if the City had already gone to condemnation. Mr. Mumford said the paperwork was done and ready to submit. He said they were waiting to see if this final effort would come to some resolution with the Johnsons, and re-stated that on March 26, 2007, Council had given Staff authority for condemnation. Mayor Tussing stated Staff still had the authority until the Council rescinded it.

Councilmember Brewster asked Mr. Mumford if the negotiations would continue with the Johnsons if Council approved the item. Mr. Mumford said Staff would continue to negotiate right up until the time the Court made the final ruling.

Councilmember Brewster asked if a separate motion to include the indemnification language could be made if Councilmember Stevens' motion failed. Attorney Brooks said there were two separate issues. He said the legal issue was the indemnification language that could be modified to increase the comfort level of the Johnsons and their attorney; and the policy issue was the decision for Council regarding the terms of how the Johnsons would be compensated over and above a dollar amount for the hookups, etc. that had already been mentioned. Attorney Brooks stated he did not feel the legal issue would hold up the approval process; and that Deputy City Attorney Kelly Addy, who had worked on the issue, was available for any questions. He said staff would be happy to meet with Attorney Cozzens on the legal issue; but he felt the larger issue would be the policy decision of the Council.



There was no further discussion on the substitute motion to delay the item for two weeks. The substitute motion failed. Councilmembers Gaghen, Brewster, Ruegamer, Ulledalen, Boyer, Jones, and Clark voted 'no'.

Councilmember Brewster moved to amend the original motion to include that the indemnification language recommended by the Johnsons be reviewed by legal staff, seconded by Councilmember Ruegamer.

Mayor Tussing asked Attorney Addy to come forward and stated he did not want Council negotiating contracts at a council meeting. Attorney Addy said he agreed. He said the City was uncomfortable with some of the language the Johnsons had proposed, so the City proposed language stating that if there was damage to property during the right-of-way work, the Johnsons would indemnify the City or hold the City harmless for the damage. He said the Johnsons interpreted the language to say if a contractor or the City contractor backed into one of the City trucks, they would have to pay for the damage to the truck. Attorney Addy said that was certainly not what the City intended. Attorney Addy said he was not sure if the Johnsons would accept the hold harmless language the City counter proposed. Attorney Addy said he would look forward to talking with the Johnson's attorney now that he knew who he was; and he would make the phone call first thing that next morning.

Councilmember Jones asked if the amended motion included talking with the Johnson's attorney. Councilmember Brewster clarified that he suggested legal staff meet with the Johnson's attorneys and try to work out the indemnification language and meant exactly what Attorney Addy said he would do. Councilmember Veis asked what would happen if both sides could not agree on the language. Councilmember Brewster said the City would have to proceed with condemnation. Mayor Tussing said he still did not feel comfortable with the amendment.

Councilmember Jones said he was comfortable with the amendment and felt it would be beneficial if the lawyers could come to an agreement and move forward without coming back to Council. He said if they could not come to an agreement, the City should proceed with condemnation.

Attorney Brooks said he was unclear of the amended motion, and asked to have it re-stated. Councilmember Brewster said he moved to amend the motion to direct staff to work with the Johnsons on the indemnification language prior to enforcing the agreement. Attorney Brooks said he agreed with Mayor Tussing that it was difficult to negotiate a contract "out in the open with a client without the other side's legal representation there".

There was no further discussion on the amended motion. The motion passed. Councilmembers Veis and Boyer and Mayor Tussing voted 'no'.

There was no further discussion on the original motion to include Councilmember Brewster's amendment. The motion passed. Councilmember Veis voted 'no'.

## **REGULAR AGENDA:**

**2. PUBLIC HEARING AND RESOLUTION #07-18593 creating a Tourism Business Improvement District and RESOLUTION #07-18594 appointing a Board of Trustees. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** Assistant City Administrator Bruce McCandless made a brief

PowerPoint presentation on the Tourism Business Improvement District. He stated that business improvement districts were a method for business owners to assess themselves for costs of making certain improvements and providing extra services beyond services received from a city or county. Mr. McCandless stated House Bill 235 was adopted in 2007 by the legislature creating Tourism Business Improvement Districts (TBID) and allowing non-contiguous properties to participate in the district with a flat fee assessed against the businesses rather than by assessment on square footage or valuation. Mr. McCandless stated that 60% or more of the property owners within the proposed district must petition for the creation of a district. He said the City Council's role was to conduct a public hearing, adopt a resolution creating the district, appoint a Board of Trustees, and adopt an annual work plan and budget. Mr. McCandless said once the budget was adopted, the assessments would be forwarded to the County Treasurer, who would assess the properties with the regular tax collection process, and forward them to the City, who would forward them to the TBID. Mr. McCandless advised that at the June 18, 2007, Work Session, Council heard a presentation from John Brewer and Steve Wahrlich on the TBID. He said the purpose of the TBID was to promote markets for tourism in the Billings area, and the proposed 75¢ per night for an occupied room would generate approximately \$700,000 annually in Billings. He said the TBID would include all hotels with six or more rooms.

Mr. McCandless advised that on July 5, 2007, the City received a petition representing 62% of the hotels in the City, which represented 71% of the property area of all of the hotels in the City. He said on July 23, 2007, the City Council adopted a resolution of intent to create the TBID that triggered notification of all of the hotel owners and started a protest period that concluded on August 10, 2007. Mr. McCandless said there was one written protest received by the deadline from Mr. Struckman of the Lazy KT Motel, and one verbal protest from the Twin Cubs Motel was received by City staff. He said the requirement for a successful protest was 50% or more of the affected properties.

Councilmember Ruegamer verified with Mr. McCandless that 62% of the hotels in Billings signed the petition to create the district. Mr. McCandless said that was correct, and that the 62% represented 71% of the total property area.

Mr. McCandless said the public hearing would be conducted that evening, and the City Council would have the opportunity to adopt the resolutions creating the district and appointing the Board of Trustees. He said in September 2007 a work plan of the proposed budget would be brought to Council, and in April 2008 the County would send amended property tax statements to the 50 properties included in the district for the period October through December 2007. He said it would be a slow start for the TBID, but every six months thereafter new property tax statements would be sent out to the hotels for the full 10-year term of the TBID. Mr. McCandless said it would allow the hotels to collect the fees from their customers and remit them to the County Treasurer up to six months later.

Mr. McCandless stated the City advertised for Board of Trustee members in August; and there must be no less than five and no more than seven trustees. He said a change in state law in 2007 allowed trustees to be the hotel owners or hotel owner assignees, such as hotel managers with written consent of the hotel owners. Mr. McCandless said they received ten applicants; seven of which had been recommended by the Yellowstone County Lodging Association. He noted a change from the paperwork

included in the Friday packet. He said the recommendation of Christian Adams had changed to Cheri Milne.

Councilmember Veis asked Mr. McCandless if the law became effective October 1<sup>st</sup>. Mr. McCandless said that was correct. Councilmember Veis asked how the entities could be created before the law became effective. Mr. McCandless stated the resolutions could be adopted as long as the effective dates were the same as the effective date of the state law. Councilmember Veis asked if the effective dates were included in the resolutions. Mr. McCandless said he would verify the dates were included. Attorney Brooks said they would check for the dates, but the Council had the authority to pass an ordinance or a resolution with a delayed effective date.

Mayor Tussing asked Attorney Brooks if a second reading was necessary. Attorney Brooks said second readings were only required on ordinances, and one public hearing was sufficient on a resolution.

Councilmember Veis said he did not understand how an entity could be created with the appointment of a board of trustees and the development of a work plan prior to October 1, 2007. Mr. McCandless replied that Council had the authority to create that evening with a delayed effective date. He said if the board of trustees could not begin their work plan or budget until later in the fall or winter, there would be no way to start the collection of the assessments on October 1.

Councilmember Boyer commented it was similar to having a work plan. The work plan would be in place by the time the project was ready to go. She said if there was no work plan beforehand, no one would be ready when the project began. She said it was just "good business."

Councilmember Veis said it seemed to him Council would be creating a legal entity before it was legally able to create the entity.

Councilmember Stevens said Council had the legal ability to create the board at anytime; but the assessments could not be collected until October 1.

Councilmember Veis referenced the text *all hotels are to be assessed for their proportionate share of the costs of maintaining the activities of the business improvement district* in Section 9 of the resolution and said it seemed contradictory. He asked if they were assessed their proportionate share, how would it be 75¢ a room. Mr. McCandless said the assessment amount was requested by the Lodging Association and said he would prefer representatives of the Lodging Association address the question. Mr. McCandless said the resolution was constructed in compliance with State law. Councilmember Veis said he did not understand how there could be a set amount for each room if it was done on a proportionate share. Mayor Tussing asked Mr. Wahrlich to comment.

Mr. Wahrlich said he represented the Clock Tower Inn and the Yellowstone County Lodging Association. He said the new law allowed for an option of a flat fee or a disproportionate share and explained that if there were owners on the far end of a BID who did not have some of the services needed as those in the core of the BID, they could have a disproportionate share, or a separate fee. He explained further that a flat assessment was allowed in the law for the Tourism BID, which would be the fee per rented room.

Councilmember Gaghen noted that the Lazy KT was the only written protest, and she assumed it was because they felt they were more of a "long-term" residence for many

of their customers and asked Mr. Wahrlich if he agreed. Mr. Wahrlich said Mr. Struckman stated that reason at a meeting held in May. Mr. Wahrlich said the manner in which the fee would be collected would follow the same statute of collecting occupancy tax. He said a long-term stay was defined as 30 days or more and the occupancy tax was not collected. He said the same thing would occur with a long-term stay under the business improvement district. Councilmember Gaghen asked if Mr. Struckman understood that when he was protesting, and Mr. Wahrlich said he was not sure. Mr. Struckman asked to answer the question. Mr. Struckman said he charged a nightly rate of \$24.58 on a weekly basis. He said if others were charging \$130 per night, the 75¢ charge to his customers was too much. Mr. Struckman also said the state lodging tax has an exemption for the average yearly room rate of \$35.

The public hearing was opened.

STEVE WAHRLICH, 2511 FIRST AVENUE NORTH, said he was president of the Yellowstone County Lodging Association and a hotel owner. He said the Tourism BID had been in the making for the past four years. Mr. Wahrlich said the lodging industry was a \$60 million business. He said hotels were the fourth expenditure of people traveling through Billings; oil and gas was first, retail was second, and food was third. He said bringing people into Billings benefited many other industries. Mr. Wahrlich said the state occupancy tax in Billings of \$3.3 million was sent to Helena, with a return of only \$200,000 to compete with other cities. He said their competition was not Missoula, Helena, or Bozeman but Spokane, Cheyenne, the Tri-Cities, Rapid City, and Bismarck, who were outspending Billings a minimum of four to one. Mr. Wahrlich said for Billings to remain competitive, there needed to be a way to start collecting a fee. He said last year HB235 was created and passed by the legislature, 70% of the area owners were in support, the collection procedure of the fee was established with the City and County, a preliminary budget was created, the Mayor and Council were provided with a tentative board of trustees, and an implementation date of October 1st was established. Mr. Wahrlich said the Tourism Business Improvement District was meant to increase the marketing, promotion, and selling of the City of Billings.

Councilmember Ronquillo asked where the money that was collected would go. Mr. Wahrlich said the end result would be overseen by a Board of Trustees of hotel owners or their designees. Councilmember Ronquillo asked what would be done with the money. Mr. Wahrlich said the money in the preliminary budget would be used to go outside to incorporate new markets such as meetings, conferences, athletic events, and additional tourism. Councilmember Ronquillo commented many other Billings businesses would benefit in addition to the hotels.

Councilmember Stevens said Mr. Wahrlich had indicated in an earlier conversation that the money could also be used for events downtown. She said her concern after listening to what he said to Councilmember Ronquillo was that most of the money would be spent on advertising to bring more people to Billings, which could be a burden to the government because more people meant more services being used. She said without a sales tax, there was no way to recoup the expense. Mr. Wahrlich said he could not cure the sales point issue as much as he would like to. He said when the Harley owners came to Billings there was a \$10,000 shortfall from the \$85,000 budget. Mr. Wahrlich said the

past year the state wrestling tournament was questioning whether to stay in Billings because there was a shortfall of \$20,000. He said when an athletic event came to Billings on a weekend in February, it was like gold, because there was not a lot of business coming to Billings in January, February, or March.

Councilmember Stevens confirmed with Mr. Wahrlich that organizations are paid to come to Billings. She referenced the three other industries that benefited from tourism, and asked Mr. Wahrlich why there was not representation from any of them on the board. Mr. Wahrlich said a goal was to include them.

Councilmember Ruegamer asked Mr. Wahrlich if he had ever seen a budget from the State showing what they did with the \$3 million dollars in bed tax they received. Mr. Wahrlich said he had not. Councilmember Ruegamer asked if a budget would be presented every year to Council showing where the money was going. Mr. Wahrlich said it was a mandate in the business improvement district law that would continue.

Councilmember Ulledalen said he wanted to make two comments; the first was that he really would like to see the TIBD work because it was an important new tool to show how to be successful at controlling the City's own destiny rather than relying totally on Helena; the second was that people coming into Montana were paying the highest fuel taxes in the nation; so the City would definitely be benefiting from that. He said, up to this point, when money has been needed for major events, the hospitality industry had to come up with it.

Councilmember Boyer said she liked the concept of the hospitality industry being pro-active. She said when a conference or event came to Billings, the shoppers were downtown and at the west end, and every other industry benefited, but the hospitality industry took the hit every time.

Mr. Wahrlich said there were 15 owners present at the meeting in support of the tourism district and asked them to stand and be recognized.

Councilmember Veis referenced the second resolution naming the Board of Trustees and asked if there had been any recommendations as far as which trustee would serve which term. Mr. Wahrlich said there had not; and the last time it was done for the Downtown Business Improvement District, the mayor assigned the representatives alphabetically.

KERRY STRUCKMAN, Lazy KT Motel, 1403 1<sup>st</sup> Avenue North, said he knew what was being proposed. He said his dissention was based on the fact that in February, 67% of his occupants were Montanans. He said he had 98.53% occupancy and no advertising would change that; he said he did not need anymore because he did not have room for anymore. Mr. Struckman said if the resolution was passed that evening, he would like to have three exemptions (1) a \$35 minimum on a room, (2) the long term or extended stay be on a weekly basis, and (3) anyone with a verifiable in-state address would be exempt from the 75¢ a night.

Councilmember Boyer asked Mr. Struckman for his occupancy rate in January, February, and March. Mr. Struckman said in February he had 98.53% occupancy rate and the winter month occupancy rates varied only about 2% from the summer occupancy rates.

Councilmember Ruegamer asked Mr. Struckman what he charged per night. Mr. Struckman said his room rate was \$40 per night, with a weekly rate of \$24.58 per night. Councilmember Ruegamer said he could not see where the fee would hurt or help Mr.

Struckman. Mr. Struckman agreed it would not help him or hurt him. He said it would not help him because he was already at full capacity.

Councilmember Gaghen asked Mr. Struckman if he wanted the exceptions just for his facility or for everyone. Mr. Struckman said he would like to see it for everyone. Councilmember Gaghen said it would be very cumbersome to try to monitor. Mr. Struckman agreed.

Councilmember Stevens asked Attorney Brooks if treating in-state people differently than out-of-state people would cause commerce clause issues. Attorney Brooks said the City could not differentiate between in-state and out-of-state accommodations or guests. He said the accommodations tax had certain exemptions but none of them were that in-state or local residents were exempt. Attorney Brooks said he highly doubted it would withstand legal scrutiny.

JOHN BREWER, Chamber of Commerce, said bringing a Tourism Business Improvement District to Billings has been a passion and priority for the Chamber and the Convention and Visitor's Bureau for the past 2.5 years. He said he had seen first hand the positive affects it had on a community in other states. Mr. Brewer said direct non-resident visitor spending in Billings exceeded \$280 million. He said the average city the size of Billings had a budget of approximately \$750,000 to market their destination; and the City of Billings had a \$200,000 budget. He said the funds would enable Billings to recruit more visitors, leisure visitors, group tours, and groups such as the Harley owners group, Goldwinger Road Riders, American Bowling Congress, and others. Mr. Brewer asked for the Council's support of the resolution creating the TIBD and the resolution appointing the Board as presented.

Councilmember Ruegamer asked if the list included all of the hotels in Billings. Mr. Brewer said it was all the hotels within the city limits.

Mayor Tussing asked Mr. Brewer if it was a correct assumption in his opinion that the City would benefit indirectly because more businesses would come to Billings who would pay property taxes. Mr. Brewer said he felt more businesses would relocate to Billings and existing businesses would expand. He said the 5,500 businesses that currently had licenses within the City limits would benefit directly or indirectly.

ROGER HUEBNER, 304 Eastlake Circle, said he was Chairman of the Board with the Billings Chamber of Commerce and had been personally involved in the planning process of the Tourism Business Improvement District (TBID) for two years. He said the TBID would be a positive impact to all the businesses and the entire community and urged the Council to vote yes.

KENDALL MERRICK, 2927 Monty Circle, said she was the manager of Rimrock Mall. She said she was a proponent for creating the Tourism Business Improvement District and asked for the Council's support.

DAVE BOVEE, 424 Lewis Avenue, said he felt the Tourism Business Improvement District was a really good idea because the people who would have the immediate direct benefit would be the people generating the income to fund it. Mr. Bovee said he did not feel the rest of the retail sector would step forward to share in the cost and increase the overall benefit to the community, because history had shown in this area it would not necessarily happen.

CHRIS ERVIN, 1203 N. 27<sup>th</sup> Street, said he was the General Manager of the Rimrock Inn. He said he had 69 rooms and did not run 94% occupancy year round. He

said his occupancy in January was about 50%. Mr. Ervin said the district would help him increase his occupancy in the slack periods and once full, raise his rates to make more money. He asked for the Council's support.

Councilmember Ulledalen asked Mr. Ervin to confirm the tax would not come out of his margin but would be collected from the occupant and then passed on. Mr. Ervin said that was correct.

The public hearing was closed.

Councilmember Brewster asked Attorney Brooks if two motions were necessary for the two resolutions. Attorney Brooks suggested voting on the resolutions separately.

Councilmember Brewster moved for approval of the resolution creating the Tourism Business Improvement District effective October 1, 2007, seconded by Councilmember Gaghen.

Councilmember Ruegamer stated the issue was very simple; motels were going to charge 75¢ extra to stay in their motel. The 75¢ would be put into a BID district and used to bring tourists to Billings. He said "all of the other stuff was fluff and he did not know how they got into it." He said 96% of the motels in Billings did not protest the district. He said the one protestor said it would not help him but it would not hurt him either, and the other motels that did not have extended stay were willing to take a risk and charge the 75¢.

Councilmember Brewster moved to amend his motion to amend the agreement to add "*stays by persons who are otherwise exempt from paying a transient occupancy tax shall be exempt from the assessment,*" seconded by Councilmember Veis. Councilmember Brewster said he felt it would address a lot of the issues raised by the Lazy KT Motel and if the long-term occupants were exempt from the other taxes, they should be exempt from this one because a lot of the occupants were the working homeless that stayed there until they could get a more permanent residence.

Councilmember Jones asked Councilmember Brewster to clarify the amendment. Councilmember Brewster said if people were exempt from paying the other room taxes because they were residents of a motel for 30 days or more, they should be exempt from the 75¢, as well.

Mr. McCandless stated the exemption was contained in the petition submitted by the Lodging Association to the City, but he neglected to put it in the resolution Council had before them that evening. He said that was why he was recommending it be added as an amendment to the resolution. Councilmember Boyer asked if the hotels supported the exemption. Mr. McCandless said they did.

Councilmember Veis asked if exemptions were allowed in other BID's within the City. Attorney Brooks said it was specific because the accommodations tax had specific exemptions. He said what he thought the hotel association was trying to do was make sure this petition in this district had the same exemptions. He said other BID's were different because they were a maintenance district and not a tourism district.

Councilmember Veis asked if the business improvement district statutes allowed for exemptions. Attorney Brooks said he was not aware of any. He said it was like an SID where you either voted to create the district or voted not create the district. Councilmember Veis asked if they were creating this BID under the BID statutes and not under the bed tax statutes. Attorney Brooks said it was actually a tourism business improvement district statute enacted by the legislature. Councilmember Veis asked if that statute allowed for exemptions. Attorney Brooks said it did not; but the accommodations

tax did. He said both statutes needed to be read together, and he thought that was what the hotel association was communicating. Attorney Brooks said he felt it would create problems if the exemptions were not put into the TBID.

Councilmember Ruegamer asked Attorney Brooks if the legislation disallowed exemptions. Attorney Brooks said the TBID statute was silent on it, but state statute needed to be followed. He said the intention of the hotel association was to make sure the new TBID was consistent with the statutorily mandated accommodations tax.

Councilmember Brewster called for the question on the amendment, seconded by Councilmember Ruegamer. The call for the question was unanimously approved. The amended motion to insert the text allowing the same exemptions as the state lodging tax was unanimously approved.

Councilmember Veis moved to amend the first resolution where it mentioned Section 7-12-1133, by replacing subsection c with subsection 2, seconded by Councilmember Stevens. The motion was unanimously approved.

The original motion as twice amended was unanimously approved.

Mayor Tussing made a motion to create the Board as outlined in the statute of the Tourism Business Improvement District with the following terms:

- 1 year – Ervin
- 2 years – Kennedy
- 2 years – Walters
- 3 years – Milne
- 3 years – Johnson
- 4 years – Wahrlich
- 4 years – Mann

The motion was seconded by Councilmember Clark.

Councilmember Veis moved to amend the resolution to name the Board Chair as Mr. Ervin since he had the one-year term, seconded by Councilmember Brewster. Councilmember Boyer asked why the Board did not elect its own Chair. Mayor Tussing referenced Section 2 of the resolution and asked Attorney Brooks for comments. Councilmember Veis said it was in the BID statute. Attorney Brooks stated every time a new board was created, the terms had to be staggered. He said the same reasoning would apply to naming the initial Board Chair. The motion was unanimously approved.

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

Mayor Tussing called for a brief recess at 8:25 p.m.

The meeting was called back to order at 8:35 p.m.

**3. RESOLUTION #07-18595 awarding sale of bonds relating to \$168,000 Pooled Special Improvement District Series 2007 to US Bank, 5.05% true interest rate. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** Financial Services Manager Pat Weber advised there was one bid received because it was such a small issue. Mr. Weber stated the US Bank bid had a good interest rate. Councilmember Veis moved for approval of Item #3, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.



**4. CHANGE ORDER #1, New Baseball and Multi-Use Stadium at Athletic Park, Langlas & Associates, Inc., for a net decrease of \$454,758.00. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** Parks Director Mike Whitaker advised the proposed change order was based on the recommendations of the Steering Committee and CTA. He noted he was recently advised the City had until Wednesday to make a decision on Alternate #2, the footings for the future skyboxes, in the amount of \$57,000.

Councilmember Veis asked if the \$57,000 was per footing. Mr. Whitaker said it was for the footings of all of the skyboxes. Mr. Whitaker said Mr. Wertman from CTA was available for any specific questions.

Councilmember Ulledalen asked if Item #7 included the 22-foot concourse, as stated. Mr. Whitaker said the initial design work showed a decrease from 22 feet to 8 feet. He said the Steering Committee recommended that Item #7 be pulled and reviewed further with CTA to determine if there could be a better design.

Mr. Wertman reviewed each of the Site Value Engineering Items that were being recommended and not recommended for acceptance by the Steering Committee, as follows:

1. Change all southwest entry concrete to gray with typical construction/score. No planter wall. No planter wall lights. No concrete bollard lights. May need to add back some lighting. Budget: \$40,000; Actual: \$40,000; Recommend Accept.

2. Change all ornamental fences to black chain link. No CMU pilasters in fence. Add back ornamental fence between Administration and 1<sup>st</sup> Base and 3<sup>rd</sup> Base Concessions areas. Budget: \$33,400; Actual: \$33,400; Recommend Accept.

3. Both entries – Eliminate concrete block columns, steel canopy structure canopies and ornamental iron gates. Replace with black chain link gates. Eliminate steel canopy and canvas canopy at administration building over the ticket windows. May need to add back some lighting. Budget: \$40,000; Actual: \$38,500; Recommend Accept.

4. At the new stadium seating, eliminate cup holder. Budget: \$10,100; Actual: \$10,100; Recommend Not Accept.

5. Retaining wall, make it an 8-inch wall, dowel concrete bleachers to wall, no ledge on wall, typical of details A10/401, J1/401. Engineer to review. Budget: \$5,600; Actual: \$4,730; Recommend Accept.

6. At grass berm along 1<sup>st</sup> base line eliminate a good portion of the retaining wall at elevation 30, eliminate the ramp retaining wall and stairs between the ramp and grass berm. Run the ramp over to the grass berm, take care of elevation changes with grading in the berm area. Budget: \$6,500; Actual: \$6,500; Recommend Accept.

7. Eliminate segmental retaining wall in left out field, replace with 4' black chain link fence, slope grade at 2:1 away from field, eliminate portions of concrete walk approx., change scope of work of protection pads, eliminate some concourse railing. Budget: \$77,000; TABLED; Recommend Not Accept.

8. Eliminate bollard lights at northwest entry ramp. May have to add some lighting back. Budget: \$10,000; Actual: \$8,200; Recommend Accept.

9. Change railing from stainless cable to 6x6/4x4 mesh. Budget: \$17,000; Actual \$17,000; Recommend Accept.
10. Eliminate picnic tables and trash receptacles. Budget: \$9,400; Actual \$9,400; Recommend Accept.
11. Eliminate landscape planter at northwest entry adjacent to the future Corporate Tent area. Leave concrete wall only for ramp. Budget: \$4,100; Actual: \$4,100; Recommend Accept.
12. Leave all proposed grades as shown except raise ball field area grade 6" and eliminate the handicap lift at the end of the third base line. Budget: \$33,500; Actual: \$332,780; Recommend Accept.
13. Landscaping, reduce nursery stock size. Budget: \$7,200; Actual: \$7,200; Recommend Accept.
14. Add grass at berm third base and eliminate concrete terrace and stairs. Budget \$7,000; Actual: \$8,025; Recommend Accept.
15. Eliminate one section of seating and concrete bleacher risers and extend the grass berm at the end of the first baseline. Replace one section of stadium seating with owner provided aluminum benches from the old Cobb Field. Budget: \$30,000; Actual \$31,300; Recommend Accept.
16. Change the outfield warning track to gray color locally available crushed material. Budget \$20,000; Actual: \$20,000; Recommend Accept.
17. Change the concourse drainage pipe to SDR 35. Budget: \$10,000; Actual \$3,782; Recommend Accept.
18. Credit sewer work, water taps and water tap abandonment work performed by City of Billings PUD. Budget \$0; Actual \$23,529; Recommend Accept.
19. Credit back Building Permit fee in bid, larger than quoted amount from City of Billings Building Department. Budget: \$0; Actual: \$5,000; Recommend Accept.

Councilmember Stevens asked what items Council needed to make an immediate decision on and what items could be added back in if more money was available. Mr. Wertman said he was "kind of okay" right now for most of the items but that Langlas would need to provide the specific deadlines.

Councilmember Boyer asked what "kind of okay" meant and if it meant a couple of days or a week. Mr. Wertman said in 30 to 45 days the work on the front entry would begin, so decisions would need to be made by the next meeting.

Mr. Whitaker said in their regular construction meeting on Friday Brad Sinclair told him he would need a decision on most of the items this week.

Councilmember Ulledalen asked for clarification that the two issues right now were the Site Value Engineering issues and the potential alternatives that were not being addressed that evening. Mr. Whitaker said Mr. Sinclair told him the only alternate Council needed to make a decision on that evening was Alternate #2, the footings.

Mayor Tussing said he did not want to eliminate any of the items that could be added back in. He said the voters were promised what they would get for \$12 million, and that no more than \$12 million would be spent. He said he did not want to rely on "the pie in the sky" for what donations might or might not happen; yet the decisions to eliminate some of the items that night would be a done deal regardless of how much money came in later. Mayor Tussing asked for Mr. Whitaker's best advice. Mr. Whitaker recommended

making the valued engineering decisions and the decision on Alternate #2 that evening. He said the decision on the other alternates could wait until the first of October

Councilmember Boyer verified that if items were taken off the list that evening, they could not be added back on.

Mr. Wertman said Item #7 was recommended tabled to allow the Steering Committee and the Design Team to work further and figure out a better way. Councilmember Boyer asked how much time would be needed. Mr. Wertman said it would take another two or three weeks so it could go through another Steering Committee cycle.

Mr. Wertman reviewed the Building Value Engineering Items, as follows:

1. Lower overall height of buildings, lower both club houses and both concessions buildings by eliminating block, lower the admin and press box by eliminating 8" of block. On all buildings change elevation note #3 from ground face to standard smooth face block Kanta "Natural". Budget: \$50,000; Actual: \$46,500; Recommend Accept.

2. Change high strength CMU block to a regular strength CMU block. Budget: \$3,500; Actual \$0; Recommend Not Accept.

3. Change 6 x 6 wall tile to 90% group I and 10% group II, change wall grout to standard unsanded grout with sealer. Budget: \$9,700; Actual \$9,700; Recommend Accept.

4. Make west administration building exterior CMU straight, no radius. Included in Item No. 1. Budget: \$3,000; Actual: \$0; Recommend Accept.

5. Eliminate all electric flush valves from toilets and urinals, use manual flush valves. Budget: \$11,800; Actual \$11,800; Recommend Accept.

6. Lavatory faucets use American Standard with sensor at 1<sup>st</sup> and 3<sup>rd</sup> base restrooms, use single handle manual faucets for lavatories in clubhouses, dugouts and admin buildings. Budget: \$5,200; Actual \$5,200; Recommend Accept.

7. Removed. No recommendation.

8. Change roof drains to PVC. Budget: \$5,800; Actual: \$5,800; Recommend Accept.

9. Change Marlite Symmetrix to a standard Marlite FRP panel. Budget: \$6,370; Actual: \$6,370; Recommend Accept.

10. Drawing E002, voice/data communications riser diagram asks for 2-3" conduits to be installed from the main communications room in the administration building to each of the other 4 buildings. One of the 3" conduits was to have 3 inner ducts; the other was to be a spare. It may be possible to remove the extra 3" spare conduit. Budget: \$3,300; Actual: \$3,300; Recommend Accept.

11. Specification 16130-3, 3.1 B – 3 states that no AC/MC cable to be used in concealed indoor areas. Allow AC/MC where concealed indoors. Budget: \$4,000; Actual \$4,000; Recommend Accept.

12. Provide no extra electrical material. Budget: \$1,000; Actual: \$1,000; Recommend Accept.

13. Modify interior light fixture package. Budget: \$14,500; Actual: \$9,500; Recommend Accept.

14. Change transformer, panels, disconnects and contactors from copper to aluminum. Budget: \$6,000; Actual: \$900; Recommend Not Accept.

15. Change the toilet partition to solid polymer type. Budget: \$7,400; Actual: \$7,400; Recommend Accept.

16. Change wood lockers to metal lockers. Budget: \$10,500; Actual: \$2,792; Recommend Accept.

17. Electrical – delete specified NETA testing equipment. Budget: \$11,000; Actual: \$11,000; Recommend Accept.

18. Delete a portion of the Visitors club house to eliminate the batters cage area. Deleted work to include foundation, CMU, structural steel and roofing. Budget: \$50,000; Actual: \$41,950; Recommend Accept.

Councilmember Veis asked what the cost reduction would be on Site Value Item #15 if two sections were replaced with old Cobb Field bleachers instead of just one. Mr. Whitaker stated it had been discussed earlier with the design team, and there were only enough useable bleachers for one section. Councilmember Clark said some of the older bleachers were already in the plan to be used in other areas of the stadium.

Councilmember Stevens asked “what the big deal was about cup holders.” Mr. Whitaker said it was related to ongoing maintenance. He said it had to do with a cleaning issue, and the cup holders would help people from spilling their drink. Councilmember Stevens said the cup holders were \$10,000. She said picnic tables and trash receptacles could be added for that amount; the bollard lights could be added back in for that amount; or a landscaping planter could be put back in for half of the amount. She said there were other items she felt were more important than cup holders. Mr. Whitaker stated that cup holders could be added in at any time. Councilmember Stevens said because the cup holders could be added at any time, she felt some of the items that could not be added back in should be a priority.

Councilmember Ruegamer said he agreed with Councilmember Stevens that the \$10,000 could be better spent somewhere else.

Councilmember Veis asked Staff if Alternate #2 was part of the Change Order. City Administrator Volek said it could be added to the Change Order.

Councilmember Stevens asked for the description of Alternate #2. Councilmember Veis said Alternate #2 was the future skybox footers for \$57,000, which included all of the materials, labor, and incidentals required to construct foundations for future skybox suites. City Administrator Volek advised it also included the footers for the community room, which would have a public rental function. Councilmember Veis asked if there was a cost estimate to put the footers in at a later date. Mr. Wertman said adding the footers later would require tearing out and replacing the concrete slab, which would add another \$15,000 to \$20,000.

Councilmember Gaghen said eliminating Item #5 of the Building Value Engineering Items, the automatic flush valves from toilets and urinals, was just a short-term savings because of maintenance and aesthetics. Mr. Whitaker stated they would greatly assist from the sanitation perspective.

City Administrator Volek stated that earlier that evening Council had asked Mr. Brewer to review the items and return with comments. She advised Mr. Brewer had to leave; but he delegated Mr. Hahn as his spokesman.

Councilmember Jones referenced Building Value Engineering Item #4 and asked Mr. Wertman if the committee felt a straight exterior on the west administration building

exterior looked better. Mr. Wertman said the exterior was drawn as a series of short, straight segmented walls that looked like a radius.

Councilmember Ruegamer asked if most of the changes would be noticeable. Mr. Wertman said the only changes that would be noticeable would be Item #1, downscaling the main entry, and Item #7, reducing the width of the concrete walk.

Councilmember Clark asked if the pylons were originally decorative and not just plain concrete. Mr. Wertman said that was correct. Councilmember Clark asked if the covering over the ticket booth was also taken out in the same area. Mr. Wertman said that was correct and referenced Item #3. Councilmember Clark stated the appearance of the main entrance would be noticeably changed. Mr. Wertman said the main entrance would definitely be scaled back and not as attractive.

Councilmember Stevens asked Mr. Wertman if the landscape planter in Item #11 could be added back in later. Mr. Wertman stated the planter could be added later. Councilmember Stevens asked Mr. Wertman to go through the items and specify which could be added back in at a later date. Mr. Wertman referenced the Site Value Engineering Items.

Item #1. The concrete could be stained at a later date. The bollards could be added but not the type originally specified.

Item #2. The vinyl fence could be changed to ornamental fencing at a later date.

Item #3. The steel canopy structure canopies over the ticket windows could be added in at a later date.

Item #4. The cup holders could be added in at a later date.

Item #5. Retaining wall would not be worth worrying about.

Item #6. The grass berm and ramp could not be changed later.

Item #7. Already discussed

Item #8. The bollards at the northwest entry ramp would already be replaced.

Item #9. The railing from stainless to mesh would not need to be changed.

Item #10. The picnic tables and trash receptacles could be added in at a later date.

Item #11. The landscape planter could be added in at a later date with a small premium added for working around existing surfaces.

Item #12. Grades could not be changed later.

Item #13. No change would be necessary.

Item #14. Berm on third base could be added later, but it would be costly.

Item #15. Seating could be added at a later date, but it would be costly.

Item #16. No change would be necessary.

Item #17. No change would be necessary.

Item #18. No change would be necessary.

Item #19. No change would be necessary.

Mr. Wertman referenced the Building Value Engineering Items.

Item #1. No change would be necessary.

Item #2. No change would be necessary.

- Item #3. No change would be necessary.
- Item #4. No change would be necessary.
- Item #5. Electric flush valves could be added at a later date.
- Item #6. All faucets could be changed at a later date.
- Item #7. N/A
- Item #8. Change would not be recommended.
- Item #9. Change would not be recommended.
- Item #10. No change would be necessary. (Duplicate)
- Item #11. Change would not be recommended.
- Item #12. Materials could be purchased as needed.
- Item #13. Upgrades could be made at a later date.
- Item #14. Not accepted.
- Item #15. No change would be necessary.
- Item #16. No change would be necessary.
- Item #17. No change would be necessary.
- Item #18. Could be added at a later date with a 15% to 20% premium.

Councilmember Clark made a motion to approve all items recommended by the Steering Committee, seconded by Councilmember Veis. Mayor Tussing asked Councilmember Clark if his motion included the footings for the skyboxes. Councilmember Clark said it did not, and the alternate for the footings would need to be a separate motion. Attorney Brooks advised the footings would be an amendment to the motion.

Councilmember Veis asked Mr. Hahn for Mr. Brewer's overview of the items. Councilmember Veis asked if Council would satisfy Mr. Brewer's requirements if they did not accept the elimination of Item #7 of the Site Value and the change of the concourse from 8 feet to 22 feet. Mr. Hahn said he believed that would satisfy Mr. Brewer's requirements.

Councilmember Ulledalen asked Mr. Hahn if he felt the steering committee, the community, the Mustangs, and the Chamber of Commerce would be content with what Mr. Wertman had presented. Mr. Hahn said they all wanted the 27<sup>th</sup> Street entrance to be "marvelous" and presentable to all types of people. He said the cup holders were necessary, and they would like to see the decorated pillars left in.

Councilmember Boyer asked Mr. Hahn if he would like to see Item #3, the concrete block columns and steel canopy structures, left in. Mr. Hahn said he would very much like to see those items left in. Councilmember Clark asked Mr. Hahn if he would go along with the items at the main entrance gate but not at the northwest entrance gate. Mr. Hahn said they would be okay with the additions at the main gate and not the other gate.

Mayor Tussing asked Mr. Hahn how confident he would be of recouping the expense of the skybox footings at a later date through donations or the sale of the skyboxes. Mr. Hahn said it would be a "lead pipe cinch".

Councilmember Gaghen asked Mr. Hahn if he would like the items in Item #1 added back in. Mr. Hahn stated he would like everything back in. Mr. Hahn said the items could be added back in and he did not feel they would distract from the entrance.

Councilmember Stevens asked about Item #14, the grass berm third base line and eliminating the concrete terrace and stairs, and if additional seating could be added at

that location in the future. Mr. Hahn said he thought that would be the first place looked at for additional seating. Councilmember Stevens asked if the City would be better off to add the seating now instead of trying to do it later. Councilmember Clark said it would be easier to add seats with the grass berm than with the terraces and the steps.

Mr. Whitaker said the landscaping on North 27<sup>th</sup> was bid as an alternate, so the Council had until October 1<sup>st</sup> to make that decision. He also stated Mr. Hahn's committee was currently working with local nurseries that might step forward and provide the landscaping on North 27<sup>th</sup>.

Mayor Tussing asked if Item #3 included both entrances and what the dollar difference would be for each. Mr. Wertman said the main entrance would be approximately 75% of the cost, and the back entry would be 25% of the cost.

Councilmember Brewster moved to add back in or not accept the change on Site Value Engineering Items #1, 2, 3, and 6, seconded by Councilmember Gaghen.

City Administrator Volek stated originally there were three potential sources for funding. She said the additions totaled approximately \$120,000. She said the three alternatives were (1) find additional resources; (2) make the cuts discussed; and (3) contract with the Mustangs for payment back to the City. Ms. Volek said it was possible to take the payment and use it over a period of time because it was not currently budgeted anywhere.

Councilmember Veis said he could support Item #1 but not Items #2 and #3. Mr. Wertman said Item #3 could be added in later.

Councilmember Boyer said the community was expecting some kind of design and not just a bunker-type building. She said she was concerned what the entrance would look like from N. 27<sup>th</sup>. Mr. Wertman said he felt the entrance would be close to what the community expected, but not as nice as everyone would like it to be.

Councilmember Stevens stated she agreed with Councilmember Boyer and did not want another less than aesthetically pleasing structure like Park II.

Mayor Tussing said he supported the amendment, and he had confidence in Mr. Hahn and his committee.

Councilmember Boyer said she did not feel Items #1 and #2 were as essential as Item #3. Councilmember Gaghen said she felt they needed to do as much as they could to make the stadium an attractive structure.

Councilmember Jones said he would not be supporting the amendment.

On a roll call vote, the amendment to add back in or not remove Site Value Engineering Item #'s 1, 2, 3, and 6 passed 6 to 5. Councilmembers Ronquillo, Gaghen, Brewster, Ruegamer, and Clark and Mayor Tussing voted 'yes'. Councilmembers Stevens, Veis, Ulledalen, Boyer, and Jones voted 'no'.

Councilmember Veis moved to add back in Site Value Engineering Item #15, seconded by Councilmember Gaghen.

Councilmember Jones said he would not support the amendment because he felt the grass berm was a great place for families to sit and watch a game.

Councilmember Ulledalen said he would not support the amendment, as well.

Councilmember Stevens said she would also like to see the grass berm

Councilmember Clark stated the item would be very easy to add back in.

On a voice vote, the amendment to add back in Site Value Engineering Item #15 failed 9 to 2. Councilmembers Ronquillo, Gaghen, Stevens, Ruegamer, Ulledalen, Boyer, Jones, and Clark and Mayor Tussing voted 'no'.

Mayor Tussing moved to approve Alternate #2 for the footings for the skyboxes, seconded by Councilmember Ronquillo.

Councilmember Ruegamer said he was very optimistic the money would become available, and he would support the amendment.

Councilmember Jones said the amendment made sense, and he would support it.

On a voice vote, the amendment to approve Alternate #2 passed 10 to 1. Councilmember Veis voted 'no'.

Councilmember Gaghen moved to include Item #5 under the Building Value Engineering Items, the automatic flush valves, seconded by Councilmember Veis.

Mayor Tussing verified with Mr. Wertman that battery-operated flush valves could be added at a later date. Mr. Wertman said that was correct, and an adapter kit would be added.

On a voice vote, the amendment to include Item #5 failed 7 to 4. Councilmembers Ronquillo, Stevens, Ruegamer, Ulledalen, Boyer, and Jones, and Mayor Tussing voted 'no'.

City Administrator Volek stated that #7 was an item the steering committee recommended Council table, and there had been no action taken on it. Councilmember Clark said it was accepted on the previous amendment.

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

Councilmember Jones confirmed that Item #7 was tabled. He asked if Item #7 had to be decided anytime soon. Councilmember Brewster stated it could be taken "off the table" at the next meeting. Parks Director Mike Whitaker said it was the intent of the Steering Committee to redesign and present Council with another proposal.

**5. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #813: A zone change from Residential 9600 to Planned Development generally located on the southeast corner of the intersection of Rimrock Road and Avalon Road; including the Yellowstone Racquet Club. TenFish Company, owner; Engineering, Inc., representative. Zoning Commission recommends approval and adoption of the 12 Zoning Commission Determinations. (Action: approval or disapproval of Zoning Commission recommendation.)** Planner II Aura Linstrand began her PowerPoint presentation describing the subject property location of the zone change request. Ms. Linstrand pointed out multi-family condo units to the east and single-family residential to the west, north, and south. Ms. Linstrand advised the current Racquet Club would be removed. She said Council approved the preliminary minor plat of Trailhead Subdivision on July 23, 2007, that aggregated nine lots and the certificate of survey for the subject property. She said the proposed site plan would include four-plexes, tri-plexes, and single-family dwellings. She said there would be two cul-de-sacs into the subdivision that would be private streets. Ms. Linstrand said a neighborhood meeting was held on July 11, 2007, and the biggest concern was the additional traffic the development would create. She said the application did not trigger a traffic accessibility



study because there would be less than 50 units built. Ms. Linstrand advised the Zoning Commission held a public hearing on August 7, 2007, and was recommending approval.

Councilmember Ronquillo asked if the area around the gas meter on Rimrock Road would be built up or guardrails installed to protect the meter from being hit by a vehicle. Ms. Linstrand said she was unsure what was being proposed. She stated there would be a park area along Rimrock Road, and the access from Rimrock Road currently used by the Racquet Club would be removed.

Councilmember Brewster asked if the City would be responsible for maintaining the park area. Ms. Linstrand advised it was not a dedicated park and would be maintained by a homeowners association.

The public hearing was opened.

RICK LEUTHOLD, ENGINEERING, INC. said he represented the developer on the project, and he would be happy to answer any questions.

There were no further questions, and the public hearing was closed.

Councilmember Stevens moved for approval of Zone Change #813, seconded by Councilmember Ronquillo.

Councilmember Ruegamer said the development would be a great addition to the neighborhood, and he was in support of it.

Councilmember Boyer stated that the Racquet Club had been there for almost 35 years. She said Billings had a very large tennis community, and the elimination of the Racquet Club was a traumatic situation because there would be no other place for people in Billings to play tennis. Ms. Boyer said as far as quality of life, losing the Racquet Club was a very sad situation and a major impact to the tennis community.

Councilmember Stevens said if losing the Racquet Club was a major impact to the tennis community, someone else would probably step up and provide another facility.

On a voice vote, the motion passed. Councilmember Boyer voted 'no'.

**6. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #816: A zone change from Residential 7000 to Neighborhood Commercial on a 1.14-acre lot addressed as 848 Wicks Lane and generally located on the south side of Wicks Lane, east of Bench Boulevard. Colleen Baker, owner. Zoning Commission recommends approval and adoption of the 12 Zoning Commission Determinations. (Action: approval or disapproval of Zoning Commission recommendation.)** Planner II Juliet Spalding began her PowerPoint presentation describing the subject property location of the zone change request. She said the property was situated approximately 460 feet east of the intersection of Wicks Lane and Bench Boulevard in the Billings Heights. Ms. Spalding said the adjacent properties were zoned Neighborhood Commercial, Residential Multi-Family Restricted, and Residential 7000. Ms. Spalding advised a single-family dwelling was currently on the front of the subject property, and the back of the lot was vacant, open space. She said a neighborhood meeting was held on July 26, 2007, and the Zoning Commission public hearing was held on August 7, 2007, with no opposition to the zone change. She said the Zoning Commission had made a recommendation for approval.

The public hearing was opened.

COLLEEN BAKER, 848 Wicks Lane, said she was the owner of the property and was available to answer any questions.

The public hearing was closed.

Councilmember Gaghen moved for approval of Zone Change #816, seconded by Councilmember Ruegamer.

Councilmember Brewster advised he had attended the neighborhood meeting, and there were only three people in attendance. He said none of the neighbors attended; and he felt the zone change was a good idea.

Councilmember Stevens said she had received communication from Ms. Baker prior to the neighborhood meeting indicating there were some neighbors concerned about the zone change. She said she never heard from anyone with questions or concerns.

On a voice vote, the motion was unanimously approved.

**7. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #817: A zone change from Public to Residential 8000 on 48,799 square feet of property located north and south of the Lake Hills Golf Course Clubhouse on the east side of Clubhouse Way; north of Lake Hills Drive. Lake Hills Golf Club, owner; Patrick Ludden, representative. Zoning Commission recommends approval and adoption of the 12 Zoning Commission Determinations. (Action: approval or disapproval of Zoning Commission recommendation.)** Planner II Juliet Spalding began her PowerPoint presentation describing the subject property location of the zone change request. She said the property was currently zoned Public because it was part of the golf course and was vacant, un-irrigated land. Ms. Spalding said changing the zoning to R8000 would allow four duplex units on minimum 10,000 square foot lots. She advised the Zoning Commission meeting was attended by three opponents, whose main concern was increased traffic on Clubhouse Way. She said there was also concern because the property was used for “spillover” parking for the club house on league nights. Ms. Spalding advised the current paved parking lot of the club house had been reviewed by the City, and it met all of the City standards for required parking. She said the “spillover” parking was used more by owners of larger vehicles who chose not to park in the paved parking lot.

Councilmember Brewster said he thought storm water was being drained into the north end of the property. Ms. Spalding said she understood the storm water drained south of the property, and she would defer the question to the applicant’s engineer, who was present at the meeting. Ms. Spalding added the subdivision had not come in for review by the City Engineer’s Office.

Mayor Tussing asked for clarification of Public zoning. Ms. Spalding said it was zoning reserved for public uses, such as golf courses, cemeteries, airports, recreational facilities and public use. She said Public did not allow housing, residential, or any type of commercial use.

Councilmember Stevens asked what the reasoning was behind the one ‘no’ vote of the Zoning Commission. Ms. Spalding said it was a sympathetic vote for the opponents.

The public hearing was opened.

MARSHALL PHIL, Blueline Engineering, said he represented Lake Hills Golf Course. He said a neighborhood meeting was held, and approximately 20 to 30 people attended with concerns about the Residential Multi-Family zoning that was initially proposed. He said after hearing the concerns, the proposed zoning was changed to Residential 8000, which was then supported by adjacent property owners. Mr. Phil said

the spillover parking was used by vehicle owners wanting to avoid parking in designated parking lot spaces. He said the current paved parking lot was adequate for the facility. Mr. Phil said the storm water drainage was located on the very north lot between the existing duplex and the duplexes being proposed. He said there was an additional 20' area with a swale and storm drain inlet built with a previous SID that accommodated the storm water. Councilmember Brewster asked who would maintain the area. Mr. Phil said he was not sure, and it was a condition that would need to be worked through.

Mayor Tussing asked if off-street parking would be provided for the proposed units. Mr. Phil said all the units would have a two-car garage with a 20-foot driveway, so there would be ample parking for each of the duplexes.

KEN PETERSON said he was an attorney in Billings who represented Schneider Enterprises and George Schneider, who owned several single-family dwelling lots and several multi-family dwellings in the subject area. Mr. Peterson said Mr. Schneider also owned a mortgage on the subject property. He said Mr. Schneider provided him with a copy of the Covenants and Restrictions and a copy of the mortgage. Mr. Peterson said he felt the "cart was kind of before the horse" because the subdivision had not been proposed; and because Mr. Schneider owned the mortgage, he would have to sign off on the subdivision in order for it to be approved. Mr. Peterson said Mr. Schneider did not feel the zoning should be approved at this time. He said Clubhouse Way was a narrow street, and the zoning would create traffic and parking congestion. Mr. Peterson said it was not a good use for the property, it had been with the golf course since the 1950's, and it should stay that way.

PHIL DAHL, Lake Hills Golf Club, Inc., said he was the secretary of the corporation. He said the zoning request was an idea of the corporation to "keep in the spirit" of what was currently built near the club house. He said their hopes were to eventually build a new club house. Mr. Dahl said he wanted to take issue with Mr. Schneider's attorney about Mr. Schneider being a mortgage holder. Mr. Dahl said their attorney had contacted Mr. Schneider's attorney several times to have the mortgage released because the loan had been paid in full for a number of years. He said there was a dispute about some late payments and interest, but they had never received an invoice of what they owed Mr. Schneider. He said Mr. Schneider had just simply not released the mortgage to them.

Councilmember Boyer asked if it was a mortgage on the golf club. Mr. Dahl said it was a mortgage on the golf course. He said Mr. Schneider was a previous partner with his family and owned 49%. He said Mr. Schneider was court-ordered to sell his portion to his family that ended up in a lengthy court battle. Mr. Dahl said he felt Mr. Schneider had bitter feelings so would not release the mortgage. Mr. Dahl stated some of their payments were returned in the mail because Mr. Schneider failed to make them aware of several address changes between Salt Lake City and Las Vegas. Mr. Dahl said, as a result, Mr. Schneider was claiming late charges with compounding interest. Mr. Dahl said Mr. Schneider had been paid in full for at least three to four years.

Councilmember Clark asked City Attorney Brooks if the dispute between the current owners and Mr. Schneider had any bearing on the zone change request. Attorney Brooks stated in his opinion it did not. He said the Council was limited to the 12 criteria placed by statute. Attorney Brooks said the matter was a private civil dispute between the two parties.

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

Councilmember Ronquillo moved for approval of Zone Change #817, seconded by Councilmember Stevens.

Councilmember Ruegamer asked Attorney Brooks if the City could get sued for changing the zoning. Attorney Brooks said not as long as Council based their decision on the statutory criteria.

On a voice vote, the motion was unanimously approved.

**8. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #818: A text amendment to Section 27-623, Zoning Compliance Permits Required. Zoning Commission recommends approval. (Action: approval or disapproval of Zoning Commission recommendation.)** Planning Director Candi Beaudry advised when Council approved the 2008 budget, they also approved a supplemental budget request authorizing the Planning Division to establish a zoning compliance review fee. Ms. Beaudry stated the zoning text needed to be changed to implement the zoning compliance review fee. She said it was estimated the Planning Division would lose approximately \$70,000 due to change in practice of transferring funds from the Building Division to the Planning Division, which was not allowed by state law. She said most of the funds were used for payment of the Director's salary. Ms. Beaudry said the proposal was to establish the fees and try to make up at least a portion of revenue that was lost because of the lack of transfer. Ms. Beaudry said the fees would be charged at the time a building permit was issued. She said there would be two fees for residential and commercial that would be established by Council by resolution. She said \$41 was being proposed for a residential fee and \$16 for a commercial fee; and the difference was due to the person who did most of the commercial plan review was paid by the Building Division. Ms. Beaudry stated the Zoning Commission was recommending approval on a 4 to 1 vote.

Councilmember Ronquillo stated Angela had concerns that the entire problem had not been addressed. Ms. Beaudry said they estimated a loss of approximately \$70,000 because that amount could not be transferred from Building to Planning. She said they estimated the fee would only generate about \$33,000. Ms. Beaudry said Angela's concern was that the entire problem had not been addressed, and there would still be a deficit.

Mayor Tussing asked if it was the Planning Department having the shortfall and not the City. Ms. Beaudry stated the Planning Department was experiencing the shortfall, and it would be collecting a new fee based on an existing service they had not collected a fee on before.

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

Councilmember Clark moved for approval of Item #8, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.

**9. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #819: A text amendment to Section 27-1429 and Map Amendment to Section 27-1430, Extension of Shiloh Corridor Overlay, extending the South Shiloh Corridor Overlay District along the south side of King Avenue West between Shiloh Road**

**and 32<sup>nd</sup> Street West. Zoning Commission recommends approval. (Action: approval or disapproval of Zoning Commission recommendation.)** Planner I Dave Green advised the extension of the South Shiloh Corridor Overlay District to the south side of King Avenue West between Shiloh Road and 32<sup>nd</sup> Street West was a Council initiative. Mr. Green stated the residents along the north side of King Avenue West were concerned with how the development on the south side of King Avenue West would affect their neighborhood. Mr. Green advised the Shiloh Overlay would affect commercial development only and not residential. He said the Zoning Commercial recommended approval 5 to 0. Mr. Green clarified the overlay would not affect single family or duplex residential, only 3-plex and above.

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

Councilmember Jones moved for approval of Item #9, seconded by Councilmember Boyer. On a voice vote, the motion was unanimously approved.

**10. PUBLIC HEARING AND SPECIAL REVIEW #848: A special review to add an outdoor patio lounge to a location with an existing on-premise all beverage liquor license zoned Community Commercial described as Lots 1 through 6, Block 1, Houser Subdivision; located at 1425 Broadwater Avenue and known as Doc & Eddy's Plaza. CNJ Distributing, owner; Tom Williams, agent. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)** Planner II Nicole Cromwell advised that Doc & Eddy's would like to add an outdoor patio on the south side of their existing building located at 1425 Broadwater Avenue in a Community Commercial zone. Ms. Cromwell began her PowerPoint presentation describing the subject property location. She said the original application was submitted in June, but the proposed site and development plans raised several public safety and engineering concerns. Ms. Cromwell advised that the Planning staff recommended denial to the Zoning Commission on July 3<sup>rd</sup>, and the applicant requested a 30-day delay to address the concerns. She said the applicant hired an architectural firm and submitted a second site plan addressing the original concerns. Ms. Cromwell stated the patio would be located directly adjacent to a public sidewalk and a principal arterial street; and the issues of traffic, speed, and protection of the patrons were paramount. Ms. Cromwell advised the alternate plan recommended for conditional approval by the Zoning Commission included a 6-foot tall combination CMU brick and ornamental iron fence to run behind the property line and only one entrance to the patio through the interior portion of the building. She said there would be two "exit only" exits from the proposed patio area; one on the west and one on the east, and there would be an accessible route from the patio to the exits. Ms. Cromwell stated the fence would be independent of the building and not considered an extension of the building. The Zoning Commission's conditions of approval were:

1. The special review approval shall be limited to Lots 1 through 6, Houser Subdivision as shown on the site plan dated July 18, 2007.
2. This special review approval is for an outdoor patio lounge and no other use or expansion of this use is approved or implied with this authorization.

3. Development of the site shall be in substantial conformance with the site plan dated July 18, 2007. Deviations from the approved site plan that change the location of structures, parking lot access or parking areas will require additional special review approval.
4. Any expansion of the gross floor area of the patio or number of parking stalls greater than 10 percent will require an additional special review approval as required by Section 27-613(c) of the Unified Zoning Regulations.
5. The owner shall provide a block wall of at least 6 feet in height around the outdoor patio lounge. The block wall shall have at least one exit-only gate to provide an emergency exit. Access to the outdoor patio lounge area shall be through the main indoor area of the business.
6. The owner is allowed to have background music and un-amplified live outdoor entertainment on the outdoor patio lounge. Background music is amplified music not audible beyond the outdoor patio lounge.
7. There shall be no outdoor public address system or outside announcement system of any kind.
8. All exterior lighting with the exception of sign lighting shall have full cut-off shields so light is directed to the ground and not onto adjacent property.
9. These conditions of special review approval shall run with the land described in this authorization and shall apply to all current and subsequent owners, operators, managers, lease holders, heirs and assigns.
10. Failure to comply with these conditions of approval of the special review use shall be deemed a violation of the zoning regulations. Enforcement of the regulations and conditions shall be as set forth in Section 27-1601 et seq. of the Unified Zoning Regulations.
11. The proposed development shall comply with all other limitations of Section 27-613 of the Unified Zoning Regulations concerning special review uses, and all other City regulations that apply.

Councilmember Boyer asked if the 6-foot fence requirement was something new. Ms. Cromwell said under state regulations, a minimum 4-1/2 foot fence was required for outdoor service all beverage. She said the 6-foot fence was to address the public safety concerns and would act as a significant barrier between the traffic on Broadwater Avenue and the outdoor seating area. Councilmember Boyer asked why the Mustard Seed on Grand Avenue and George Henry's Restaurant on 4<sup>th</sup> Avenue North did not have any protection from traffic. Ms. Cromwell stated both the Mustard Seed and George Henry's were very close to a controlled intersection, and the proposed Doc & Eddy's patio was located between 14<sup>th</sup> and 15<sup>th</sup> Streets West where people travel 35 to 50 mph on Broadwater Avenue. Ms. Cromwell stated the traffic volume and potential traffic speed were major safety concerns. Ms. Cromwell said the patio could have been relocated to several other areas outside the building, but they would have had a greater impact on the existing parking.

Councilmember Jones asked what the gain of safety would be with an extra 2-1/2 feet. Ms. Cromwell said it would prevent a vehicle from flipping into the seating area. Councilmember Jones said he felt a 6-foot fence would not be aesthetically pleasing, and a 4-1/2 foot fence would be better. Councilmember Jones asked if there were any

limitations on the block wall and said he did not feel a block wall would be very attractive. Ms. Cromwell said it would not have to be just a cinder block wall and could be decorative. Ms. Cromwell stated if Council would like to reduce the height of the patio wall, the condition could be amended.

Councilmember Stevens confirmed with Ms. Cromwell that, according to state law, the wall could be reduced to a height of 4-1/2 feet.

The public hearing was opened.

TOM WILLIAMS said he represented the petitioner and complimented Ms. Cromwell on her explanation of the plans. Mr. Williams stated the block wall would be decorative block with rod iron railing; so it would be pleasing to look at and provide protection.

Councilmember Boyer asked if there would be landscaping along the wall. Mr. Williams advised there was not enough room for landscaping.

Councilmember Jones asked Mr. Williams if he wanted the wall to be 6-foot tall or if he would be comfortable with 4-1/2 to 5 feet. Mr. Williams stated the original design was at 5 feet with rod iron railing providing a separation from the block.

Councilmember Brewster said having the 6-foot wall would provide protection and keep the traffic exhaust fumes from coming over onto the patrons. Mr. Williams said that was part of the reason. He said the Police Department was initially concerned about the safety issue, so the architect compromised with the block decorative wall.

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

Councilmember Boyer moved for conditional approval of Special Review #848, seconded by Councilmember Clark.

Councilmember Ruegamer said he hoped the second request was not turned down. He said they came to Council once and were sent back to the drawing board to put a wall around the area; they came back with a wall and Council said it was too ugly. Councilmember Ruegamer said he lived about a block and a half from Doc & Eddy's, and they were good neighbors that kept their business clean. He said the 6-foot wall seemed high to him.

Councilmember Stevens moved to amend the motion for Conditional Approval Item #5 that the fence be at least 4-1/2 feet in height rather than 6 feet, seconded by Councilmember Jones. Councilmember Stevens said they could either go back closer to the original plan or stay with their current plan.

Councilmember Ronquillo said he felt the 6-foot fence would better address the safety concerns of the Police Department.

Councilmember Jones said the drawing looked like the block would be 6 feet but the railing would be lowered. Mr. Williams said that was the original design that was returned. He said they would prefer 4-1/2 feet; but if it was necessary, they would go 6 feet. Councilmember Jones said he felt the 6-foot fence would not be aesthetically pleasing, and he would support the amendment.

On a voice vote, the amended motion passed 6 to 5. Councilmembers Ronquillo, Gaghen, Brewster, Veis, and Clark voted 'no'.

On a voice vote, the motion passed. Councilmember Clark voted 'no'.

## **11. PUBLIC HEARING AND SPECIAL REVIEW #850: A special review to expand a location with an existing on-premise all beverage liquor license zoned Controlled**

**Industrial described as Lot 2A, Sugar Subdivision, located at 4900 Laurel Road and known as the Muzzleloader Café and Powderhorn Lounge. Marlon Engberg and Rick Steinmetz, owners; Jerry Jones, agent. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)** Planner II Lora Mattox began her PowerPoint presentation describing the subject property location and the site plan for expansion. Ms. Mattox said the Zoning Commission held a public hearing on August 7, 2007, and recommended the following conditions on a 5 to 0 approval.

1. The special review approval shall be limited to Lot 2A (to be amended), Sugar Subdivision located at 4900 Laurel Road.
2. Development of the site shall be in substantial conformance with the site plan dated June 26, 2007. Deviations from the approved site plan that change the location of buildings, parking lot access or parking areas will require additional special review approval.
3. The owner is allowed to have background music on the outdoor patio lounge. Background music is amplified music not audible beyond the outdoor patio lounge. Also the owner is allowed live music, non-amplified, not audible beyond the outdoor patio lounge.
4. The owner shall provide a fence of at least 4 feet in height around the outdoor patio lounge. The fence shall have at least one exit-only gate to provide an emergency exit. Access to the outdoor patio lounge area shall be through the main indoor area of the business.
5. The solid waste storage area shall be enclosed on three (3) sides by a sight-obscuring fence or wall and by a sight-obscuring gate on the remaining side. This enclosure shall be constructed of normal fencing materials. No chain link or wire fencing will be used for sight-obscuring enclosure.
6. Landscaping shall be provided as shown on the site plan and as required by Section 27-1100 of the Unified Zoning Regulations.
7. These conditions of special review approval shall run with the land described in this authorization and shall apply to all current and subsequent owners, operators, managers, lease holders, heirs and assigns.
8. The proposed development shall comply with all other limitations of Section 27-613 of the Unified Zoning Regulations concerning special review uses, and all other City of Billings, regulations and ordinances that apply.
9. The proposed development shall comply with all other limitations of Section 27-613 of the Unified Zoning Regulations concerning special review uses, and all other City of Billings, regulations and ordinances that apply.

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

Councilmember Ulledalen moved for conditional approval of Item #11, seconded by Councilmember Stevens. On a voice vote, the motion was unanimously approved.

**12. PUBLIC HEARING AND SPECIAL REVIEW #851: A special review for expansion of a church facility on a 20-acre parcel of land zoned Residential 9600**



**described as Tracts 5A-1 and 5A-2, Certificate of Survey 1648, located at 328 South Shiloh Road. Emmanuel Baptist Church, owner; Durward K. Sobek and Ray Cucancic, agents. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)** Planner I Dave Green began his PowerPoint presentation describing the subject property location. Mr. Green stated a building permit was submitted on June 11, 2007, and research indicated there was no special review done initially for the building. The building was located in the county when it was built in 1984 and annexed into the city in 2004. Mr. Green said Section 27-613, BMCC, Special Review for Churches, required churches go through a special review if the building addition was more than a 10% increase; if the occupancy increased by more than 10%, or if the parking lot increased by more than 10%. He said the proposed expansion was larger than 10% in all three categories. Mr. Green advised the Zoning Commission conducted a public hearing on August 7, 2007, and recommended the following conditions on a 4 to 0 approval.

1. The special review approval shall be limited to Tracts 5A-1 and 5A-2 of Certificate of Survey (COS) 1648, 23.6 acres (gross) on the west side of Shiloh Road north of Monad Road, see attachment C.
2. Any expansion of the proposed building, building occupancy or parking lot greater than 10 percent of what is shown on attachment D will require an additional special review approval as per BMCC 27-613(c).
3. The development of Tracts 5A-1 and 5A-2 of COS 1648 shall be in complete accordance with all provisions of Section 27-1400 Shiloh Corridor Overlay District and all provisions of Section 27-309 building height and setbacks.
4. Dumpsters shall be enclosed in a three sided sight obscuring enclosure with sight obscuring gates, Section 27-1107 BMCC.
5. These conditions of special review approval shall run with the land described in this authorization and shall apply to all current and subsequent owners, operators, managers, lease holders, heirs and assigns.
6. The proposed development shall comply with all other limitations of Section 27-613 of the Unified Zoning Regulations concerning special review uses, and all other City of Billings regulations and ordinances that apply.

The public hearing was opened.

JEFF LEE, 3933 Temple Place, said he represented the long-range planning committee for Emanuel Baptist Church. He said the contractor, architect, and church members were present at the meeting in support of the addition.

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

Councilmember Ruegamer moved for conditional approval of Item #12, seconded by Councilmember Boyer.

On a voice vote, the motion was unanimously approved.

**13. APPROVAL AND AWARD OF FIELD LIGHT SALVAGE from the existing Cobb Field to the American Legion Baseball organization. Delayed from August 13, 2007, Council agenda. Staff recommends approval. (Action: approval or disapproval of**

**staff recommendation.)** Parks Director Mike Whitaker advised all of the proper insurance forms had been submitted. There was no further discussion.

Councilmember Veis moved for approval of the award for the field light salvage from the existing Cobb Field, seconded by Councilmember Stevens. On a voice vote, the motion was unanimously approved.

**14. APPROVAL AND AWARD OF RED DIRT AND SOD SALVAGE from the existing Cobb Field to the Montana District 1 and American Legion Baseball. Delayed from August 13, 2007, Council agenda. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** Parks Director Mike Whitaker advised all of the proper insurance forms had been submitted. There was no further discussion.

Councilmember Veis moved for approval of the award for the red dirt and sod salvage from the existing Cobb Field, seconded by Councilmember Stevens. On a voice vote, the motion was unanimously approved.

**15. 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.)**

- TOM ZURBUCHEN, 1747 WICKS LANE, said the City Charter stated the City Administrator was to bring the budget forward but approval was to be by the City Council. He stated the City Administrator was amending the budget, and he encouraged the City Council to take action that evening and “rein in” the City Administrator. He told the Council if they did not take action, they were in violation of their duties as Mayor and Councilmembers. He said if Council did not take action, they were “conspiring” to have the City Administrator “trample” the charter into the ground. Mr. Zurbuchen said when the Public Safety Mill Levy was first passed, it did not have the correct wording, but the City said not to worry about the wording and to go with what the City had said. He said the City also told the people that 15 new firefighters would be hired with the Public Safety Mill Levy. He said the City could not change their stance “just because they dirtied their shorts”, and needed to stay consistent and follow the budget.

City Administrator Volek stated the City had not received a final decision from the District Court, so the exact dollar amount was not certain. She said once a formal dollar amount was known, budget amendments and loan agreements would be brought to Council for action. Ms. Volek said the City frequently left positions vacant for a number of reasons; and some of the positions being referred to as vacancies would not be vacate until the end of the current year.

- DICK LARSEN, 1733 PARKHILL, said he represented the Lockwood Water and Sewer District. He asked the City Council to reconsider the renewal of the Wastewater Treatment Agreement.

There were no other speakers. The public comment period was closed.

Councilmember Clark asked for clarification on Item #7 of the Site Valuation Engineering for Cobb Field. He said it was in the contract and by tabling it, it was his understanding it was still in the contract. Mayor Tussing stated that it was left “as recommended”. Councilmember Jones asked if it was still in the contract. Mayor Tussing again advised it was left as recommended in the contract.

## **Council Initiatives**

- **BREWSTER:** Moved to direct staff to bring forward the contract with the Lockwood Water and Sewer District at a Work Session for full discussion, seconded by Councilmember Ruegamer. The motion was approved. Councilmember Ulledalen voted ‘no’.
- **BREWSTER:** Moved to direct a committee of the Council to discuss amending the by-laws of the PCC with the County Commissioners, seconded by Councilmember Stevens. Mayor Tussing asked for committee volunteers. Councilmember Brewster moved to name Councilmembers Boyer, Ronquillo, and Veis to the committee, seconded by Councilmember Ruegamer. The motions were approved.
- **STEVENS:** Moved to direct staff to form a committee to review the building codes in the TIFD districts for revitalizing old buildings, seconded by Councilmember Veis. Councilmember Stevens said it came out of the East End TIFD district. She said health and safety could not be compromised but trying to remodel old buildings was not easy. Councilmember Boyer advised the topic had come up with the Downtown Billings Partnership, and they were on the same track at one time. She said the people involved had all moved on, but the Partnership was still interested in participating. City Administrator Volek said Mr. Mumford had worked with a Renaissance Review Program in Alaska and would present information on the program. The motion was approved.
- **TUSSING:** Moved to appoint Councilmembers Gaghen, Ulledalen, Ruegamer, and Boyer to a committee to determine the contract criteria for the City Administrator’s annual review and bring back recommendations to the Council, seconded by Councilmember Veis. The motion was approved.
- **GAGHEN:** Asked staff to review the measure of noise or music allowed on outdoor patios.
- **STEVENS:** Moved to direct staff to research the possibility of extending the Central Business District to include the East End TIFD; particularly for parking issues, seconded by Councilmember Jones. Councilmember Boyer said she felt the Partnership should talk about it first before moving forward. She said it impacted the TIFD and parking issues. Councilmember Clark said the motion was only to research and not move forward with doing it. The motion was approved.
- **VEIS:** Moved to have staff present additional information on the changes to the MET bus schedules at a Work Session, seconded by Councilmember Ulledalen. Councilmember Veis said he understood why the changes were made, but he had received a lot of questions on how they were made, why times were changed, and why it was the best that could be done. Councilmember Stevens

said Mr. Binford had indicated a study would be conducted soon on the timing of the buses. City Administrator Volek said there would be a study in conjunction with the construction of the new transit center currently under design. She said the City asked if implementation of the new schedule could be postponed until then; however, the union insisted the new schedule move forward.

- VEIS: Moved to direct staff to research the feasibility of selling Lampman Park and using the funds for the Lampman Strip Park, seconded by Councilmember Brewster. The motion was approved.

**ADJOURN** – The meeting adjourned at 11:10 p.m.