

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

August 11, 2008

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

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

MINUTES – July 28, 2008, approved as presented

COURTESIES – Mayor Tussing and Councilmember Gaghen recognized Billings Firefighters who donated time to assist with the recent MDA lockup event, and the “Fill the Boot” campaign during the past weekend.

PROCLAMATIONS – None

ADMINISTRATOR REPORTS – Tina Volek

- ✓ Ms. Volek reminded Council of the Agenda Review Meeting for the August 25, 2008, council meeting, scheduled for the following evening at 5:30 p.m. in the City Hall Conference Room.
- ✓ Ms. Volek advised that revised documents for Items #4a, #4b and #4c were included in the Friday packets and a copy of each was in the Ex-Parte notebook in the back of the room.
- ✓ Ms. Volek advised that three letters regarding Item #4 were forwarded to Councilmembers by email or mail and were included in the Ex-parte notebook in the back of the room.
- ✓ Ms. Volek referenced Item #5b and noted that Montana Rail Link planned to bid the project, but the City had not received indemnification from them. She said staff was recommending approval of the item contingent upon provision of indemnification.

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: 1, 2, 3, 4, 5 and 6. 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.)

- **Joe White, Billings, MT**, said he did not object to Cabela's, but he thought the Council and Mayor should consider the general conditions for a national company to locate here because the City did not have the ground, soil or air for expansion.

He said they should be encouraged to put in a display or catalog order store instead of a full-service merchandise store.

- **Mark Isaac, Carlsbad, CA**, said he represented Foursquare Properties, as Director of Entitlements and Planning, and was available to answer questions regarding Item #4.
- **Kevin Nelson, 4235 Bruce**, distributed a letter to Council and asked for the same courtesy that was being extended that evening for reimbursement of his SID with tax increment funds or arterial street fees. He said if that was not done, he might consider that discrimination. He asked if Council really thought Cabela's needed a tax cut to buy another ranch to lock out Montana hunters. He asked if Council thought Sam's Club needed a tax cut. He said the kids deserved the money for schools rather than Corporate America with one more tax cut.

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

CONSENT AGENDA:

1. A. Bid Awards:

(1) **City Parking Garage Painting.** (Opened July 29, 2008). Recommend ACOM Painting, Inc., \$394,500.00.

(2) **W.O. 08-03, 2008 Street Maintenance Contract No. 1, Street Overlay Maintenance Project.** (Opened July 29, 2008). Recommend Knife River, \$805,082.60.

(3) **W.O. 08-04, 2008 Accessibility Ramps.** (Opened July 29, 2008). Recommend J & J Concrete, \$259,256.00.

B. Agreement with Yellowstone County Council on Aging for senior programs at the Billings Community Center, July 1, 2008 – June 30, 2009, \$26,620.

C. Approval of Assignment of Sarpy Creek Land Company, LLC Non-Commercial Aviation Ground Lease to Yellowstone Bank for financing purposes, with no financial impact to the City.

D. Declaring Surplus Property and authorizing the Police Department to release 15 mobile data terminals to the Red Lodge Police Department.

E. Approval of easement with Montana Dakota Utilities to relocate natural gas lines at Billings Logan International Airport for Airport Road Project MT (009).

F. Approval of easement with NorthWest Energy to relocate electrical power lines at Billings Logan International Airport for Airport Road Project MT (009).

G. Approval of easement with Gold Creek Cellular of Montana Limited Partnership DBA Verizon Wireless to extend a fiber optic line to existing cell tower at Billings Logan International Airport.

H. Street Closure: March of Dimes Boogie for Babies; N. 28th Street between 1st Avenue N. and 2nd Avenue N. from 3:00 p.m. to 10:00 p.m. September 4, 2008.

I. Approval of 2007 High Intensity Drug Trafficking Area (HIDTA) Grant award increase of \$6,620, to purchase a body wire receiver and three 14-hour memory cards.

J. Approval of Domestic Violence Unit & Victim Witness Assistance Subgrants from the Montana Department of Justice, Board of Crime Control, \$90,000 total award.

K. Resolution of Intent #08-18739 to construct W.O. 08-17, Glenhaven Stormwater Improvement, and set a public hearing date for September 8, 2008.

L. Second/Final Reading Ordinance #08-5475 Zone Change #845: A zone change from Residential 9600 to Residential 6000 on a .85-acre parcel located on the southeast corner of the intersection of Monroe Street and Madison Avenue and addressed as 203 Monroe Street. Daniel Dimich and Patricia Rodriguez, applicants; Charles Hamwey, agent.

M. Preliminary Plat of Tuscany Subdivision, located on approximately 115 acres east of Ironwood Estates and north of Yellowstone Country Club Estates, conditional approval of the plat and adoption of the Findings of Fact.

N. Final Plat of Chalice Acres Subdivision.

O. Bills and Payroll
(1) July 14, 2008
(2) July 18, 2008

(Action: approval or disapproval of Consent Agenda.)

Councilmember Veis moved for approval of Item #1, the Consent Agenda, seconded by Councilmember Pitman. On a voice vote, the motion was unanimously approved.

REGULAR AGENDA:

2. RESOLUTION #08-18740 RELATING TO POOLED SPECIAL IMPROVEMENT DISTRICTS BOND, AUTHORIZING THE ISSUANCE AND CALLING FOR THE PUBLIC SALE. A resolution authorizing the sale of up to \$1,075,000 in pooled bonds to finance SID 1378, SID 1379, SID 1380 and SID 1383. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) City Administrator Volek

advised there was no staff presentation on the item but staff was available to answer questions.

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

3. RESOLUTION #08-18741 RELATING TO POOLED SIDEWALK BONDS, AUTHORIZING THE ISSUANCE AND CALLING FOR THE PUBLIC SALE. A resolution authorizing the sale of \$230,000 in bonds to finance W.O. 04-12, Alkali Creek improvements and W.O. 06-18, Broadwater Avenue Subdivision Phase V improvements. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) City Administrator Volek advised there was no staff presentation on the item but staff was available to answer questions. Councilmember Stevens asked what part of Alkali Creek was included in the project. Public Works Director Dave Mumford said he believed it was the section that was done a couple of years ago and it was the spreading of the bonds for the sidewalks that were installed for several properties near Alkali School.

Councilmember Pitman moved for approval of Item #3, seconded by Councilmember Ronquillo. On a voice vote, the motion was unanimously approved.

4. KING AVENUE EAST IMPROVEMENTS

(a) RESOLUTION #08-18742 CREATING SPECIAL IMPROVEMENT DISTRICT 1385, KING AVENUE EAST, for King Avenue East road construction and improvements between Orchard and South Billings Boulevard. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) Public Works Director Dave Mumford said Assistant City Administrator Bruce McCandless would help answer specific finance questions. Mr. Mumford said he would expand on the discussion from the August 4, 2008, work session. He noted that staff from Foursquare Properties and the Director of Retail for Cabela's were present for that work session and helped answer questions about the project and why it was moving forward as it was. He explained that it was originally thought that a tax increment finance district would pay for improvements to South Billings Boulevard and King Avenue East, but due to some delays by Cabela's and other issues with the national bonding market, that could not be done. He said as a result of that, SIDs were considered for those improvements. He said an explanation was needed for Council and the public.

Mr. Mumford explained that the proposed Special Improvement District would only include the three properties that were part of the development – properties of Foursquare Properties, Cabela's, and the Miller family. He said a traffic impact analysis and subdivision development agreement were completed for the project when the development began, with the knowledge that the City could only charge the properties for their share of the necessary traffic signal in front of the store at Calhoun; some improvements at South Billings Boulevard and King Avenue East; and half of a street right-of-way which was one large lane, curb, gutter and sidewalk on their side of the road.

Councilmember Ruegamer said he wanted to be very clear about what Mr. Mumford just explained because there was some confusion about it. He stated that the parties were not getting reimbursed for the improvements. Mr. Mumford explained that

once the tax increment was in place for the development, the tax increment would reimburse the property owners for their portion in the same way it would reimburse the City for its contribution. Councilmember Ruegamer asked why the property owners had to be reimbursed if they had to pay to build the road anyway. Mr. Mumford answered that was part of the reason the tax increment was done to start with. He said it was the idea that the development would stimulate and provide income for the whole area and some of the offset for that would be to build infrastructure.

Councilmember Ruegamer asked what the anticipated property taxes were. Mr. Mumford said the recently-completed appraisal showed a value of just over \$13 million for the three properties combined; the Foursquare and Cabela's property was valued at \$7.8 million. Councilmember Ruegamer asked for a ballpark figure of taxes on that property. Assistant City Administrator McCandless responded that at full build-out, the total property taxes from the entire development would be about \$500-600,000 per year. Councilmember Ruegamer asked how much the SID payment would be. Mr. McCandless responded that the total SID payment would be about \$450,000 per year and the City would be responsible for 57% of that. Councilmember Ruegamer said he wanted to be sure everyone understood where the money came from, where it would go and why it went where it went.

Councilmember Stevens said that muddled it a bit for her. Mr. Mumford explained it was a five-lane road that had to be built regardless to handle the area's growth, not just for the development. He said under a typical SID, the developer would only be required to build one 14-foot wide lane and the City picked up anything beyond one lane on each side, and credit was given to the developer for asphalt that currently existed. He said utilities would also be an extra expense to the City. He noted that on King Avenue West, the City's portion was 94% of the entire SID; and for the proposed SID, the City would contribute 57.5% until the TIF was large enough to make the City's payments and reimburse it as well. He said the nice thing about the proposed SID, with just the three property owners wanting it and with the City's contribution, the road could be built and the property owners on the north side never had to be asked to participate, which would have happened in a normal SID situation. He said the road would be widened and the property owners would not have to contribute to it because it was recognized that the neighborhood was already impacted. Mr. Mumford noted that the road improvements would likely be completed ahead of the project. He said in the past, there projects got ahead of the City and then neighborhoods had to suffer with the traffic and safety issues, along with the inconveniences for years. He noted that with the proposed project, road improvements would be done before or at the same time so the neighborhoods were not so adversely affected.

Mr. Mumford explained that after the SID payments were made each year, there would be several hundred thousand dollars that could go back to the neighborhood to be leveraged in other SID payments to install sewer in neighborhoods that needed it, or could put streets in that weren't there currently but were needed to improve the neighborhood. He said there were health issues that needed to be addressed because many of the properties in that area had septic tanks and with a small lot, it was safer to have a sewer instead.

Mr. Mumford stated that the City worked closely with the property owners and came to an agreement. He confirmed that the City would contribute 57.5% until the

development tax increment became large enough to take that over. He said when that happened, the whole payment, the City's and the developer's, would be reimbursed for whatever was contributed so in the end, the City would be made whole from the tax increment. Mayor Tussing said a reference in the document for Item #4a was for a 57% payment and in Item #4c, 57.5% was mentioned. Mr. Mumford said the correct amount was 57.5%.

Mr. Mumford explained that arterial construction fees could be used to pay for the City's share of improvements without adversely affecting other projects. He noted it got the project done and ahead of development in the neighborhoods and did not affect the adjacent property owners. He said the project could have been handled in two other ways: 1) waited for the tax increment to grow and lived with the half-street, which meant the anticipated one million or more customers drove on a two-lane road with an ad-hoc signal that did not include turn pockets; or 2) a standard SID could have been done in the future that assessed property owners on the north side of King Avenue East, and the City's share would be greater than 57.5%.

Councilmember Astle asked how long the TIF lasted. Mr. McCandless explained that a statutory limit for a tax increment district was 15 years if no bonds were issued; and it could extend to 25 years if bonds were issued. Mr. Mumford said the projection for the proposed SID was 20 years. Mr. McCandless said the maximum term for SIDs was 20 years, but the development agreement committed the City to refund the SID bonds when there was sufficient tax increment. He said that by issuing the tax increment bonds then, it would make the district's term extend to the full 25 years as allowed by statute.

Mayor Tussing asked if there was or would be an SID on the property at 4235 Bruce Avenue. Mr. Mumford responded that he was not aware of an SID on that property and Bruce Avenue was a local street so if there was one in place; it would have been for an upgrade of the street years ago. He noted that the City did not participate in local street SIDs. Mayor Tussing said he thought residents usually requested improvements if they were not in place. Mr. Mumford said that was correct. Mayor Tussing asked if the City anticipated 4235 Bruce Avenue or anyone else in the neighborhood having to pay into an SID because of the development. Mr. Mumford said he did not. He explained that improvements for streets such as Calhoun, Orchard, Bruce, etc., would be funded by the TIF District, not the residents. Mayor Tussing stated that taxes at 4235 Bruce or for anyone else in that area or anyone else in the City would not increase to pay for the improvements, the SID or anything happening as a result of that development. Mr. Mumford said that was correct.

Councilmember McCall asked Mr. Mumford to clarify the relationship and distinction between Cabela's Wholesale, Inc., South Billings Center LLC, and Foursquare Properties. Mr. Mumford explained there were three property owners: Miller Trois, was the original property owner and owned one parcel of land; Cabela's purchased approximately 8 acres from the Millers, and the remaining property was held by South Billings Center, LLC, a subsidiary of Foursquare Properties, which originally bought the entire parcel. He pointed out there were three distinct property owners and South Billings Center LLC would retain its portion and would develop it and be the lessee of the property.

Councilmember Ruegamer said the hard part to grasp was that Cabela's would pay property taxes on its eight-acre parcel and from that property tax money, Cabela's would get some of that money back for the SID payment. Mr. Mumford said that was correct. He

explained it was similar to the downtown situation. Councilmember Ruegamer said Cabela's basically loaned money to the City in advance so the improvements could be completed, then they would get their money back from their own property tax money and when it was all paid back, that money would continue to go to that tax increment district. Mr. Mumford said that was a good analogy. He said the TIF was originally intended to pay for the road, but time ran out and still could if the project did not start soon so it was completed before the store opened in the spring.

Councilmember Ruegamer referenced the earlier testimony about a tax cut. He said he understood there were no tax cuts. Mr. Mumford said nothing was given to the developers or Cabela's for locating in Billings, which was different from other cities in the nation. He noted that Cabela's would pay its full share of taxes on that property, and part of that would go to the City for the improvements the City needed for the community. Councilmember Ruegamer confirmed that Cabela's, not the City, paid for all improvements on the property.

Councilmember McCall said it was stated at the work session that the appraised value of the property was \$11.4 million, but she heard indirectly that the appraisal may have increased and asked for clarification. Mr. Mumford responded that the figure provided by Foursquare Properties representatives was an estimate. He said the City received a copy of the formal appraisal which reflected a value of about \$13 million for all three properties together; with the two properties held by Cabela's and Foursquare valued at \$7.8 million. He said the entire SID was \$5.3 million, which meant the property value was more than two times the amount of the SID. He said if the project began, and for some reason the property owners walked away, the City was first on the property without any liens and the property could be sold at the current appraised value without any improvements on the land. He advised the City was in good shape in that regard.

Councilmember Stevens asked what would happen if a sewer project was needed on an obscure street in the area and if the residents would end up having to pay for that sewer project through an SID. Mr. Mumford said he hoped not, but the City would only be able to fund the amount of increment money available to bond against. He said the intention was that the TIF funds paid for any needed capital improvements in that area. Councilmember Stevens said she was trying to illustrate how those property owners were not being treated more special than any other properties in that area. She asked what would happen if the City "blew its wad" on that project with tax increment dollars and there was not much left to run sewer to those homes or fund improvements. Mr. Mumford said to remember that property would stimulate other growth. He said the development efforts on the other side of the highway were a result of the Cabela's project and the whole TIF area would start to grow. He said that development alone would not pay for all the future improvements, but it would generate other businesses and development that wanted to locate in that area as well. He pointed out that two properties across the street from the Cabela's site had a realtor and the property was re-zoned for eventual commercial development. He said that growth would increase the increment over the years and the money could be used to bond against to build the infrastructure. Councilmember Stevens said the hope was that TIF money would be available for neighborhood projects so the residents did not have to pay SIDs. Mr. Mumford said there would be TIF money for that, but not in the next week. He said as the task force and neighborhoods worked with the Planning Department to determine what was needed, Public Works could start to use that

money on projects. He noted that some investment was already in progress as water mains were replaced in the area as needed.

City Administrator Volek pointed out that the addition of the proposed project was something that came along, but prior to that time, the neighbors had considered creating a tax increment finance district for that area to capture some of the growth that already occurred along King Avenue and had developed a lengthy list of projects they would prioritize and present to Council as funds became available.

Councilmember Veis referenced Mr. Mumford's comments about development that would be spurred in the area. He asked why those developers were not included in the SID. Mr. Mumford said that would mean that the property owners on the other side of the road would be included and they tried to avoid that. He noted that the people on the other side of the highway would not participate in the SID because the assessment could only be against properties that were addressed on the subject street. He confirmed that the only properties participating in the proposed SID were Cabela's, Foursquare Properties, and the Millers.

Councilmember Veis asked about properties on King Avenue East that were recently re-zoned. Mr. Mumford said those properties were not included in the SID and would probably be sold in the near future. Councilmember Veis asked if part of the reason the road would be so big was that those properties would likely become commercial developments. Mr. Mumford said they would probably end up commercial developments. Councilmember Veis asked if the City's percentage of the SID would decrease if the properties on the north side of the road were included in the SID. Mr. Mumford responded that a standard, basic SID would probably result in a higher percentage owed by the City because the City would have to pay for three lanes of the road and would have to give credit for existing asphalt. He said the City paid 94% of the King Avenue West SID. He said that project was also a very large, vacant property and very similar to the proposed project. He noted the King Avenue West SID was accelerated because of the Shiloh Crossing project. He noted that the property owner did the design, but the City paid a large portion of it because there were no other property owners addressed on that road to assess. He said in the case of the proposed project, if property owners on the other side of the street were assessed for the proposed SID, it would be very costly for them due to the size of the project. Councilmember Veis asked if the increased value was the benefit those property owners gained with the zone change. Mr. Mumford said he agreed those properties benefitted significantly and did not pay for it. He said there was discussion with those property owners when they requested the zone change that they would not have to pay for the development across the street. Councilmember Veis said he remembered that discussion differently; that those property owners were warned that they could be on the hook for something like that when they changed their zone classification.

City Administrator Volek pointed out that two of the parcels across the street changed zoning, and there were numerous smaller parcels, many of which were owner-occupied residences, and those folks specifically stated at meetings she attended that they were not interested in an SID for the road. She pointed out that many of them did not even address on that road so it would be difficult to draw them into a district and would probably force people from their residences because they were not interested. Mr. Mumford said there were very few properties that actually had properties addressed on King Avenue and could be assessed, along with the three property owners and the City, so the City's portion

would continue to grow close to the 80-90% range with a standard SID.

Councilmember Veis asked if TIF District funds had been used in the past to refund an SID. Mr. McCandless stated he was not familiar with that but knew that in the downtown area, Park I was built by a Parking Commission that issued bonds for the construction of the garage and he thought the tax increment district that came into effect in 1978 refunded those bonds, but he did not believe they were SID bonds. Councilmember Veis asked if any research was done on the City's ability to use TIF funds to refund an SID. Mr. McCandless responded that he did not conduct any personal research, but had been guided all along by Bond Counsel Mae Nan Ellingson, with Dorsey Whitney, who was the foremost expert in the state on any kind of bonding and was one of the authors of the development agreement so she was aware of the proposed SID.

Mayor Tussing asked about a sidewalk and trail going to the nearby school. Mr. Mumford explained that a sidewalk would be in place on the north side of the street and south of the ditch there would be a 10 foot paved asphalt trail for walking/biking from South Billings Boulevard part of the way, then sidewalks all the way to Orchard. He said it was in the County from there.

Councilmember Ulledalen asked for a further comparison/contrast with the proposed project and what was done on King Avenue West. Mr. Mumford said the two projects were similar in that it was significant development on a road that was substandard and could not handle the traffic. He said the differences were that the King Avenue West project was a standard SID with a few property owners and the City paid for the three lanes and the center, the asphalt that was there, and the water and sewer was expanded. He added that the King Avenue East project involved costs for the developer for on-site improvements. He said both projects were on large, undeveloped parcels of raw land. He said the King Avenue West project was accelerated by the developers who funded the design ahead of time. He said the City fronted that for the King Avenue East project and both the design, acquisition of the property and some of the lead items were taken care of by the City. He said the intention of the agreement was for the TIF to pay the King Avenue East project back so the City would be made whole. He noted that Public Works could not fund those large projects on its own and borrowed against Solid Waste reserves to fund the King Avenue West project which impacted the ability to build arterials. He said the reality was that with both projects, they tried to be innovative to build the needed roads with limited resources. He noted the 57.5% contribution was not a gamble. He said the reimbursement was not made until there was proof that 100% of the payment was made. He said the development agreement required the three property owners to make the payment, and then the City reimbursed its 57.5% 10 days later.

Councilmember Ronquillo said there was a little confusion with three controlled intersections at South Billings Boulevard, Orchard and Calhoun. He asked what would happen if a roundabout was put at one. Mr. Mumford responded that there would be a signal at Calhoun and the intersection at South Billings Boulevard would be enlarged, and a roundabout would be difficult because the area was not large enough and it would involve covering the City-County drain which would be cost prohibitive.

Councilmember Gaghen moved for approval of SID 1385 King Avenue East and the resolution that created the district, seconded by Councilmember Ruegamer.

Councilmember Ruegamer said he could say with candor that he always put the taxpayers first and the risk of any venture concerned him. He said he felt staff did a great

job of mitigating the risk and the proposal was as low risk as they could make it. He said it was very creative and he was very comfortable with it.

Councilmember Ulledalen stated he would support the project as well. He said sprawled development was discussed as the growth policy was considered and this was something that could try to get the growth back to the core of the City. He said an engine was needed to get the TIF going and someone handed the City a pretty attractive engine and it would be crazy not to work with them on it. He said he heard criticism about the City's road building but this was done correctly and staff did a good job of thinking ahead.

Councilmember Ronquillo stated he agreed with Councilmember Ulledalen. He said there were numerous meetings with the Southwest Corridor Task Force and a wish list was already developed. He said that Board was waiting for the Council to approve the project. He said the group knew it would take some time to get TIF money for the projects on the wish list.

Councilmember Gaghen said she agreed with all that was said and they needed to be aware of the reception from the developers. She said the three that had been involved answered questions and were very compliant with staff. She said the combination of those individuals made it a win-win situation for the neighborhood and the entire city. She said she believed a boon would be seen from that.

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

(b) RESOLUTION #08-18743 RELATING TO KING AVENUE EAST SPECIAL IMPROVEMENT DISTRICT BONDS, AUTHORIZING THE ISSUANCE AND CALLING FOR A PUBLIC SALE. A resolution authorizing the public sale of \$5,360,000 in Special Improvement District bonds for the design and construction of improvements on King Avenue East between Orchard and South Billings Boulevard. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) City Administrator Volek advised that staff made extensive presentations at that meeting and the August 4, 2008, work session and did not have additional presentations, but were available for questions on that item and the remaining two items related to agenda Item #4.

Councilmember Gaghen moved for approval of the resolution relating to \$5,360,000 for the King Avenue East Special Improvement District bonds which authorized the issuance and called for a public sale, seconded by Councilmember Astle. On a voice vote, the motion was approved 10-1. Councilmember Veis voted 'no.'

(c) DEVELOPMENT AGREEMENT BETWEEN FOURSQUARE PROPERTIES AND CABELAS. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) Councilmember Veis said three property owners were referenced in the discussion about the project, but he wanted to know why the development agreement was only between two of the property owners. Mr. McCandless explained that it was an agreement worked out between Foursquare Properties and Cabela's regarding the SID payments. He said the Millers were also responsible for the SID payments, but there was an agreement between Foursquare Properties and the Millers that Foursquare would pay for the Miller's portion. He said it was anticipated that the Miller property would be sold soon for the development of another retailer. Councilmember Veis asked if a copy of the agreement between Foursquare Properties

and Millers was available to Council. Mr. McCandless said it was not. Councilmember Veis said a legal description was included but he wondered if it would be a good idea to have that agreement as part of the development agreement. City Administrator Volek noted it was a private agreement and could be of short duration. Councilmember Veis commented that it could very well be of long duration. Ms. Volek stated that Foursquare agreed to reimburse Millers and it was a private agreement.

Councilmember Veis referenced the date of the opening of Cabela's and asked if there was a penalty if it did not open on time. Mr. McCandless stated there was not a penalty built into that development agreement, but he said he believed Cabela's had an opening commitment to Foursquare Properties, who could enforce that opening, but he did not know the penalty or sanctions since that was a private contract.

Councilmember Gaghan suggested allowing the Foursquare Properties representative to comment on that. Mr. Mumford added that Mr. Miller was present as well. He noted that no matter what happened, the SID had to be paid for by the property owners and the agreement was moving forward with the condition that once the TIF was in place, it would pay it off. He said the property owners agreed to make the SID payments and the land was worth two and a half times what the SID was. He said the agreement was how the reimbursement would work out and did not affect the SID payments.

Councilmember Veis asked why an opening date was necessary in the agreement. Mr. Mumford said there was an agreement with Foursquare and Cabela's to be open by that time and he felt it was something the Council wanted as a demonstration that Cabela's was serious. He said a letter was also provided to the City Administrator by Cabela's that stated their intention to be open by that date. He said the land was available to pay the SID off and he felt it was a good faith effort on the part of Cabela's to set an opening date and they had an agreement with Foursquare Properties to open at that time. He said the purpose was to provide comfort to the Council when a lot of questions were asked whether Cabela's really intended to locate in Billings. He noted that Cabela's response to those questions was 'yes, we intend to be there.' He said Cabela's representatives offered to fly from Nebraska to attend that night's meeting but City staff did not feel it was necessary.

Councilmember Stevens stated they were banking on the value of the property not changing. She said if there was a recession and the value of the land plummeted, the City could be SOL. Mr. Mumford responded that was the case with every SID and the stores being built on King Avenue West could also shut down if a recession hit. Councilmember Stevens said in the case of a subdivision, a landowner generally had to provide a letter of credit. Mr. Mumford responded that not every developer had to provide a letter of credit. Mr. McCandless explained that was part of the previous week's work session discussion and Councilmember Stevens was unable to attend that meeting so she missed the discussion. He explained that the creation resolution waived the City's raw land SID policy in that instance and there were a number of justifications to do that. He added that under that policy, in order to get access to the revolving fund which was the first level of security for any SID bond, 50% of the construction costs had to be paid by the developer of that raw land. He said if a developer wanted the City to sell SID bonds that had access to the revolving fund to bring about a lower interest rate, then the developer had to pay 50% of the construction costs up front. Mr. Mumford said it was common for the developer to pay off his portion and the rest of the property owners remained in the SID.

Mark Isaac from Foursquare Properties commented that they asked the Millers to take part in the SID with them. He said they did not want the Millers to have the financial burden, but wanted that land in the SID because a retailer was ready to close as soon as it knew Cabela's was underway. He said it behooved the City and the area to have that land in the SID because the retailer would likely have greater sales than Cabela's. He said that was a strategic plan to retire the debt in the area faster for both the SID and eventually the TIF. He said the reason Foursquare, Cabela's, and the Millers wanted to obligate only their land was that all along that was represented in the discussion about creation of a TIF District. He said the drastic change in the bond market resulted in the creative measure to allow the infrastructure to be in place, allowed Cabela's to open and brought another retailer to town. He said they wanted that parcel in the SID and hoped that helped Council understand. He said the Millers were generous to have their land attached to that valuation and Foursquare did not want them to have the financial obligation of that payment.

Councilmember Ruegamer asked if Cabela's had ever delayed a project before. Mr. Isaac said they had not. He explained that the decision to delay the Billings store was on the corporate level and nearly the entire real estate department was new and still adjusting to the change. He stated that the delay caused Foursquare a lot of grief and in return caused a lot of grief for the community, but they were excited to locate in Billings and would be a great resident.

Councilmember Gaghen moved for approval of Miller Crossing Subdivision off-site improvements as amended and restated in the development agreement, seconded by Councilmember Ronquillo. On a voice vote, the motion was approved 10-1. Councilmember Veis voted 'no.'

(d) BID AWARD: W.O. 07-22, King Avenue East plus Alternate #1. (Opened July 1, 2008.) Delayed from July 14 and July 28, 2008. Recommend Knife River, \$3,068,058.05, contingent on receipt of letter of credit securing the improvements. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) Councilmember Gaghen moved for approval of W.O. 07-22, King Avenue East plus Alternate #1 to Knife River for \$3,068,058.05, seconded by Councilmember Ronquillo. On a voice vote, the motion was approved 10-1. Councilmember Veis voted 'no.'

5. (a) RESOLUTION #08-18744 AMENDING RESOLUTIONS 07-18636 AND 08-18680 AND AMENDING THE DOWNTOWN BILLINGS PARTNERSHIP DEVELOPMENT AGREEMENT. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) City Administrator Volek explained that City Council approved a resolution in November, 2007, that outlined the conditions under which the downtown TIF District would sunset and approved a development agreement with the Downtown Billings Partnership that specified how the final allocation of tax increment funds was to be expended. She said that resolution and development agreement were amended February 25, 2008. She noted that project conditions had changed since February and one was that the quiet zone project costs came in higher than anticipated. Ms. Volek said the amended agreement presented that evening reallocated the remaining funds from that downtown TIF District. She stated that Greg Krueger from the Downtown

Billings Partnership and Lisa Harmon from the Business Improvement District were in the audience. She noted that staff had no additional presentation but was available for questions.

Councilmember Veis asked why the cost of the quiet zone project went from \$1 million to \$1.5 million. Public Works Director Dave Mumford said the estimates were based on conversations with the railroad and MDT. He said when Montana Rail Link announced they had to bid it; their estimate was \$1.5 million. He said neither he nor Mr. Krueger knew why it increased that much because it was the same design that was originally estimated.

Mayor Tussing said that troubled him too because even though he understood that the railroad was the owner, public money was used indirectly and there was no control over assuring that the lowest bidder would get the bid. He said he was concerned that the cost went up and the railroad was going to bid it. He said he would not support it unless it was contingent on the indemnification as Ms. Volek alluded to in her Administrator's Report. Mr. Mumford stated he believed MRL went for the low bid, but administrative costs were added to it. He said under the federal CFR's, they had control over that and the City was currently indemnifying them for that intersection. He said the railroads were in place first and roads came second, so the City was in a secondary position on the project.

Mayor Tussing asked where the extra \$500,000 would come from. Mr. Mumford said it would be paid from the TIF, and the funds would be reallocated. Ms. Volek noted that \$800,000 was originally allocated for the street lighting district, but it was reduced to \$100,000 so a good portion of that money went to the quiet zone project.

Councilmember McCall asked for a brief explanation of why the lighting project increased from \$900,000 to almost \$4 million. Mr. Krueger explained that the street light issue had been worked on for the last three or four years and it was still not resolved. He said the cost went up by about \$1 million and the original assessment to the property owners for a possible SID or light maintenance district was contingent upon the City replacing the intersection lights with City-owned lights and the cost of that was significant and the City did not have the ability to finance it. He said the Board and property owners decided that the street light district should become a component of the new North 27th Street district and that work would continue on it until it could be done cost effectively. He said the \$100,000 was left as a placeholder and would allow the City to continue looking at engineering costs and a true value. He said the total estimate for the street light district, both the City's component and the property owner component, actually exceeded the \$4 million that was left in the TIF.

Councilmember Veis asked Mr. Mumford if it was correct that a quiet zone crossing would be installed for pedestrians. Mr. Mumford said the State of Montana required a pedestrian gate as part of the crossing. Councilmember Veis asked where MDT came up with that. Mr. Mumford responded that it was not required by the railroad or the safety systems, but MDT put that requirement on 27th Street, which was their street. Councilmember Veis asked if they did that on any other railroad crossing. Mr. Mumford answered that he was not aware of any. Councilmember Veis asked where the direction came from at MDT. Mr. Mumford said it came from the Helena Traffic & Railroad group.

Councilmember Ronquillo moved for approval of Item #5, a resolution amending resolutions #07-18636 and #08-18680 and amending the Downtown Billings Partnership

Development Agreement, seconded by Councilmember Gaghen.

Councilmember Ruegamer said the reason the price went up was because they were dealing with the railroad and the state and the only way it could be worse was if the federal government was involved. Councilmember Veis commented that it was another example of MDT adding things that cost the City money. He said they did that on Shiloh Road on an intersection that was perfectly fine and now on the quiet zone project for something that made no sense. He asked how a pedestrian could be stopped from walking across a railroad crossing. He said it was another unfunded mandate the City had to pay. He said he wished they had pushed MDT a little harder because MDT needed to understand that was not a good way to do business. He said he would vote for it because once again the City was backed into a corner and if it was not approved now, the cost would increase. He said the City had to start telling MDT they would not do the dumb things that made no sense.

Councilmember Ulledalen said the City had come to the conclusion that MDT was not their ally to the degree it should be and had to get assertive. He said the Congressional delegation should be aware of that too to make sure they understood the difficulty of dealing with some of the decisions that came from the bureaucracy in Helena. He said he was not sure that the local delegation got that message yet and communication of that had to continue.

Councilmember McCall said she agreed that the additional costs were frustrating. She said the Downtown Billings Partnership had done a tremendous service to the community and the plan they had for the funding was good and it was a project that had been on the deck for a long time and she would support it.

Mayor Tussing said he knew the quiet zone was important to the people who lived downtown or slept at downtown hotels. He stated his disappointment at the turn of events and the cost increase, but said in some ways, we were held hostage by the requirements imposed and had little control over them. He said he would support it.

Councilmember Ruegamer asked what would happen if the City said it would build the crossings the way it wanted. Mr. Mumford responded that we could not build it. He said the City had to follow what the railroad and the state said or the project could not move forward because the state owned 27th Street.

Councilmember Stevens asked how long the City had known about the MDT requirement. Mr. Mumford said it was fairly recent, within the past few months. Councilmember Stevens suggested informing the Council sooner in the future so political pressure could be attempted. Mr. Mumford agreed that could be done.

Councilmember Pitman pointed out that it was not just about the downtown quiet zone, but anyone who had traveled Montana Avenue. He noted it also improved the lighting system and the timing to get on or across Montana Avenue. He said it would improve transportation in the City.

On a voice vote, the motion was unanimously approved.

(b) UPGRADE AND MAINTENANCE AGREEMENT, W.O. 03-17, RAILROAD QUIET ZONE, WITH MONTANA RAIL LINK. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) City Administrator Volek advised the additional staff recommendation was that it be made contingent upon the provision of the indemnification by Montana Rail Link.

Councilmember Ronquillo moved for approval of W.O. 03-17 upgrade and maintenance agreement for the Railroad Quiet Zone, seconded by Councilmember Gaghen. Mayor Tussing asked if anyone wanted to offer an amendment. Councilmember McCall moved to amend the motion to add that the agreement was contingent upon receiving indemnification from MRL, seconded by Councilmember Ruegamer. On a voice vote, the amendment was unanimously approved.

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

A recess was taken 7:44 p.m. to 7:54 p.m.

6. RESPONSE TO MONTANA MUNICIPAL INSURANCE AUTHORITY'S REQUEST FOR REIMBURSEMENT/CONTRIBUTION. Staff recommends approval of Alternative Four. (Action: approval or disapproval of staff recommendation.)

City Administrator Volek advised that a judgment of \$1.6 million was awarded last summer in the case of Feuerstein v. City of Billings, et al, and the City's insurance carrier, Montana Municipal Insurance Authority, had requested reimbursement for two-thirds of that judgment, approximately \$1,056,000. She noted that the issue was discussed at a previous work session and alternatives were developed. Ms. Volek reviewed the four alternatives as: 1) offer no reimbursement and send a letter to the MMIA indicating the City declined the request for contribution; 2) offer a specific contribution that was less than the two-thirds requested; 3) agree to contribute the requested two-thirds amount; 4) ask MMIA to engage in mediation. Ms. Volek said mediation normally included some discussion of financial reimbursement and the cost of mediation would be equally shared. She noted that staff recommended mediation as an initial first step with MMIA.

Ms. Volek advised that she received a phone call from Alan Hulse, Executive Director of MMIA, the previous Friday and he indicated that MMIA would also consider binding arbitration if the City was inclined to that.

Councilmember Clark moved that Council proceed with Alternative #1 to refuse any reimbursement to the insurance company, seconded by Councilmember Ruegamer.

Councilmember Clark stated that option was discussed at the work session and he also asked the City Attorney if there were ramifications for the Council to go with Alternative #1. He said the attorney's response was that there were none, so the insurance company could come back with a request for mediation or whatever they wanted, but he wanted to tell them 'no.'

Councilmember Stevens asked what the estimated costs for mediation were. City Attorney Brooks responded that based on his recent experience; it was probably about \$3,000-4,000 per day and this issue could take about two days. He said the cost would be split with MMIA.

Councilmember Astle asked Mr. Brooks if MMIA's next course of action would be to file a declaratory judgment action if the City stayed with alternative #1. Mr. Brooks said that was possible. He said that meant that either side could petition District Court to interpret the Memorandum of Coverage, which was the insurance policy, to determine if it required a contribution by the City. He said that would be a legal issue rather than a factual one and involved an interpretation of provisions within the

Memorandum of Coverage. Mr. Brooks said that would likely be resolved through cross motions for summary judgments.

Councilmember Ruegamer advised that he talked with a mediator from within the state who charged \$175 per hour and without knowing all the facts, indicated it sounded like a one or two day case.

Mayor Tussing said it seemed to him a small price to pay to have an independent individual provide an opinion. He said the mediation would be non-binding and would give the City an idea of where it was headed. He said he thought too often the City was not willing to talk with people and if a situation ended with a lawsuit, the City usually lost. Mr. Tussing said it would be prudent to have someone else evaluate the case and provide an independent opinion. He said both sides would have the opportunity for input regarding the choice of mediator.

Councilmember Ronquillo referenced the information provided to Council previously regarding other insurance claims and asked if MMIA asked for reimbursement for any of the other cases. Mr. Brooks said that would only be in situations where the City knew that the coverage was not provided for attorneys fees and court costs. He added there were certain types of cases where we paid the settlement, if any. He said he did not recall any other case during his 10 years at the City in which the MMIA issued liability coverage and then asked the City to contribute to the verdict. Councilmember Ronquillo commented that during all the meetings about the case with the attorney, nothing was presented to Council regarding a reimbursement if the case was lost. Mr. Brooks stated that was one of the issues discussed at the previous work session and other public forums. He said the so-called Reservation of Rights letters that were submitted to the City from MMIA did not mention that as a possibility. He referenced the insurance industry article attached to the staff memo that mentioned that type of issue. Mr. Brooks said he knew that the recent Reservation of Rights letter received in a relatively small property damage case was significantly changed, which could have been a result of the City's discussions with MMIA. Mr. Brooks said the absence of the specific information in the two Reservation of Rights letters would be a legal issue that would be resolved by a district court or discussed by a mediator.

Councilmember Pitman asked for clarification that the outcome of the trial was not mediated, but it was the coverage by the insurance company. Mr. Brooks said that was correct. He noted that the judgment was paid by MMIA and it was a narrow issue whether or not the City was legally obligated to reimburse the MMIA for some of it.

Councilmember Astle referenced what Mr. Brooks said about the Reservation of Rights letter and that it had to be stated specifically what was known was not covered regarding the allegations as they were presented. He said an additional statement in the letter should indicate that it was possible additional facts could be uncovered that precluded coverage. Councilmember Astle said none of those Reservation of Rights letters had specifics at all. He said that based on his experience in the insurance industry, a mediator would help identify the arguments. He said Alternative #4 was a good idea.

Councilmember Clark stated he did not agree with Councilmember Astle because there was no reason to go to mediation. He said there was no downside to Alternative #1.

Councilmember McCall said she was not on the Council when that judgment occurred, but she sided with Mayor Tussing that it was prudent to seek mediation to look at the issues.

Councilmember Ruegamer agreed with Councilmember McCall and Mayor Tussing in the sense that we had not spoken out in the past. He noted that the City invited MMIA to talk with the Council and he was totally dissatisfied with what they said. He said they did not tell them why the City owed the money. He said he did not feel it was the City's place to ask for mediation because MMIA paid the settlement and should have because it is an insurance company. Councilmember Ruegamer said he was also concerned that it seemed like people from outside the state were always hired to do things, such as mediate. He said he was sure someone from within Montana could do it and he agreed with the Mayor that the cost of it was worth it to find out if the City should provide reimbursement. He said he did not think it was the City's place to offer mediation and he was always concerned that some expensive mediator would be hired when a local person could do just as good and tell the City where it stood.

Councilmember Stevens asked Mr. Brooks if the issue would go to District Court for jury trial. Mr. Brooks said he thought it would be a legal issue subject to cross motions for summary judgment. He said that even though either party could request it, a declaratory judgment was typically before a judge, not a jury. Councilmember Stevens said if MMIA did not like the City's unwillingness to provide reimbursement, they would file the first brief. Mr. Brooks said either party could file a declaratory judgment action. Councilmember Stevens asked if their legal arguments would be known if MMIA filed a petition. Mr. Brooks said they would probably be stated generally and the initial pleadings that were filed could be brief. He said that even though there was a healthy exchange of authority and positions between MMIA's general counsel and the City's legal staff, it was possible to learn more from mediation. Councilmember Stevens said even without mediation, at some point, the City would learn their arguments. Mr. Brooks said that was correct. Councilmember Stevens said we would not really learn anything new through mediation that we would not learn through a lawsuit. Mr. Brooks said he could not say that because there were some mediation cases when not all positions were revealed until the mediation occurred. Councilmember Stevens commented that everything would be found out at a trial. Mr. Brooks said that was true. Councilmember Stevens said for that reason, she was afraid that mediation would not tell us anything that would not be found out otherwise and therefore it would be a waste of taxpayer money and she would support Councilmember Clark's motion.

Councilmember Veis asked Mr. Brooks or Mr. McCandless if either had a sense of what MMIA would do if the City sent a letter declining the request for reimbursement. Mr. Brooks said he had not gotten a feeling about MMIA's response. City Administrator Volek said MMIA would meet and discuss the City's response on August 20. She said MMIA initiated the phone call the previous Friday and offered binding arbitration and she suspected that may be the way they would request to proceed.

Assistant City Administrator McCandless stated that because he served on MMIA's Board of Directors, he recused himself from discussions of the lawsuit because of potential conflicts of interest. He said he could not respond to Councilmember Veis's question.

On a voice vote the motion was approved 7-4. Councilmembers Astle, McCall and Veis and Mayor Tussing voted 'no.'

7. 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.)

Mayor Tussing pointed out that the public comment period was intended for non-agenda items only.

- **Susan Grasso, 1005 Moon Valley Road**, said she wanted to respond to Councilmember Ruegamer's request for suggestions for improvements at the Billings Animal Shelter. She stated that Yellowstone Valley Animal Shelter was a newly-formed organization without a proven track record. She said Catherine Schaeffer, of the Last Chance Cat Sanctuary, suggested something similar at an Animal Control Board meeting in April that the YVAS not be given the contract to privatize but that they maintained their organization and worked within the existing shelter framework by implementing badly needed educational programs, spay/neuter functions, and fundraising. She said all of those things were needed and the City shelter could not do them alone and the rescue organizations were busy with rescue work. She said if any of the board members had experience in the rescue field they would know that a plan on paper did not equal success in the real world. She said if the YVAS was still interested in a year or two, they could then submit a proposal to privatize after they had proven they could work together and were not interested in taking over the entire City Animal Shelter at once. Ms. Grasso said she wanted to ask Councilmember Stevens what she had personally done in the rescue and shelter field that made her an authority. She said she took an hour and a half discussion between them when Ms. Grasso tried to explain the reality of rescue and sheltering and reduced it to one sensationalized sentence. Ms. Grasso said Councilmember Stevens' arrogance and her breach of the public trust she had placed in her as a constituent were appalling. She asked why other YVAS board members did not attend City Council meetings to answer questions about the proposal. She said Councilmember Stevens claimed to have great public support but the multitude of volunteers who were to contribute man hours to the YVAS shelter were not vocal with their support. Ms. Grasso said she was not against privatization of the Billings Animal Shelter, but did not want a contract given to a newly-formed group of people with no experience.
- **Kevin Nelson, 4235 Bruce Avenue**, asked if the Council wished to deny his constitutional, statutory right to participate in government matters of significant public interest. He asked Mayor Tussing to answer that question and Mayor Tussing responded 'no.' Mr. Nelson asked if he was denied that right because he was going to speak on agenda items that were already discussed and not available for public comment.

Mayor Tussing explained that all the items on the agenda were available for public comment at the start of the meeting and not scheduled for public hearings.

Mr. Nelson asked if Mayor Tussing was denying his right to participate and Mayor Tussing responded 'yes.'

Mr. Brooks explained that the opportunity to comment on any agenda items was provided at the beginning of the meeting as the agenda stated so there was no denial of the public's right to participate. He said Council could set the timeframe and general parameters for public participation by offering comments and he did not see anything that occurred that evening that deprived anyone the right to express their opinion on any of the agenda items. Mayor Tussing pointed out that under *Public Comment on Non-Agenda items*, it stated it was restricted to only items not on this printed agenda and the word only was capitalized and underlined.

Councilmember Veis asked why someone would not be allowed to comment on an item after it had been discussed. Mr. Brooks said that could be done if the Council wanted to do it. He said those rules for participation were set by Council. He stated that participation was not denied to anyone and Council could allow a person to comment on something if they wished.

Mayor Tussing asked Mr. Nelson what he wanted to talk about. Councilmember Ruegamer asked if a precedent was being set. Mr. Brooks said he did not think so, but in fairness to people who had left the chambers, the Council had to be careful how it judged situations on an individual basis because someone who left might have had a comment on what would be discussed now and that person was subjectively deprived of the opportunity because they thought the item was concluded.

Mr. Nelson stated that if wanted to speak on several items, one minute was not enough time to participate and there were several items on that evening's agenda. He said if the timeframe was closed, he would wait until the next meeting. Mayor Tussing noted that Mr. Nelson did not take his full minute at the beginning of the meeting. He said at other meetings, he had allowed him one minute for each item he spoke on and that night he did not even use one minute total.

Mr. Nelson said he wanted to correct the record and that he was currently paying an SID on his property for a sewer. Mayor Tussing asked when that was established. Mr. Nelson responded that it was four or five years ago. Mayor Tussing asked if he knew the time remaining on his SID. Mr. Nelson said he did not. Councilmember Veis said Mr. Nelson's SID was not on the agenda and he could be allowed three minutes to speak on his SID. Mayor Tussing stated that Mr. Nelson indicated he wanted to speak about items that were already discussed.

Councilmember Gaghen asked Mr. Nelson if the SID was something the City placed on his property or if the neighborhood agreed to it. Mr. Nelson responded that the neighborhood agreed to it.

Mayor Tussing advised the Deputy Clerk to re-set the timer for Mr. Nelson's three-minute comment period to discuss his SID or items that came up based on that night's discussion that he could not have commented on at the public comment period at the beginning of the meeting.

Mr. Nelson referenced the SID on Item #4a that indicated there were no funds set aside for the project. He stated that the 2008-09 budget included \$4.9 million for road improvements so he was curious what the Council intended to do with that \$4.9 million now that an SID was enacted. He asked if the money would

be returned to the taxpayers since it was no longer needed.

Mr. Nelson referenced Item #5b and said an example was set that Council clearly stated it would never do by using 27th Street TIF District money to fund \$6,000 in maintenance for a railroad crossing that was not in that TIF District. He said Council had said the money had to say in the TIF, but money was taken from the N. 27th TIF and directed toward the crossing.

Mr. Nelson said he was also bothered by the sidewalk issue. He mentioned that a lot of streets in the King Avenue East area were north and south running and did not have sidewalks. He stated it was the City's obligation to install the sidewalks, but the City did not fulfill its part of the agreement to install sidewalks, curbs and gutters where there were not any before.

City Administrator Volek pointed out that the CIP contained a list of items that had a variety of sources of funding and some items listed in the CIP could be listed but not funded. She said because the project was listed in the CIP for funding, it probably anticipated a TIF District or SID funding to help offset those costs. Councilmember Ulledalen confirmed that those items listed were budgeted without a funding source or ability to go ahead and there was no obligation of money.

Councilmember Stevens expressed her concern about using TIF funds for ongoing maintenance and asked if that was a problem. She said approximately \$5,640 would be used for maintenance. Mr. McCandless said he believed the staff report on Item #5b indicated that the plan was to use North 27th Street TIF funds to pay ongoing maintenance of the three crossings for an estimated annual cost of \$5,400, but those funds were not budgeted by the City Council and could not be budgeted because the property was not in the North 27th Street district and until or unless those funds were budgeted, there was not a binding commitment made by the City.

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

Council Initiatives

- **Mayor Tussing** said a committee was needed to develop criteria and suggestions for the City Administrator's annual evaluation. Councilmembers Ronquillo, Ruegamer, McCall and Astle volunteered. Mayor Tussing said he believed the evaluation was due in October. He asked Mr. Brooks if a vote was needed to form that committee. Mayor Tussing indicated it could be placed on the next agenda as a consent item. He said he contemplated a recommendation on the process, not an evaluation. Mr. Brooks asked for a few moments to consult the City Code. It was consensus to place the item on the next agenda.

Councilmember Clark asked if the committee would provide an evaluation process, not the evaluation. Mayor Tussing said he expected the committee would recommend the process to follow. Councilmember Gaghen said she would be uncomfortable with a small committee having the burden of the full assessment and the entire Council needed to be part of the overall evaluation.

She noted that the previous evaluation sheet developed by former Councilmember Boyer was quite effective and could be useful.

ADJOURN

The meeting adjourned at 8:30 p.m.

CITY OF BILLINGS

Ron Tussing, Mayor

ATTEST:

Cari Martin, City Clerk