

REGULAR MEETING OF THE BILLINGS CITY COUNCIL
August 24, 2009

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

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

MINUTES – August 10, 2009 - approved as presented

COURTESIES – None

PROCLAMATIONS – None

ADMINISTRATOR REPORTS – Tina Volek

- Ms. Volek referenced Agenda Item G and advised Council that a copy of the draft list of items had been placed on their desks that evening and filed in the ex-parte notebook in the back of the room.
- Ms. Volek referenced Agenda Item H2 and advised that Council had received a revised staff report in their Friday packet that had an additional requirement for placement of traffic control signs. She said a copy of the staff report was filed in the ex-parte notebook in the back of the room.
- Ms. Volek referenced Agenda Item M and advised Council that a letter of support from the Chamber of Commerce had been placed on their desks that evening and filed in the ex-parte notebook in the back of the room.
- Ms. Volek referenced Agenda Item 2 and advised Council that a revised staff report had been placed on their desks that evening recommending sale of the bonds to Montana & Wyoming Oil Co. at 5.95% interest. She said a copy was filed in the ex-parte notebook in the back of the room.
- Ms. Volek referenced Agenda Item 6 and advised Council that a copy of an e-mail from Erika Morck to Councilmember Clark had been placed on their desks that evening and placed in the ex-parte notebook in the back of the room.

Mayor Tussing said he had not received the name of the individual he was supposed to nominate for Item 1A, the appointment to the Tourism BID Board. Ms. Volek advised him that as of the previous Friday afternoon, there were no applications for the position. She said the item could be postponed or removed and she would contact the Tourism BID about it.

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: 1 and 2 ONLY.
Speaker sign-in required. (Comments offered here are limited to 1 minute per speaker. Please sign up on the clipboard located at the podium. Comment on items listed as

public hearing items will be heard ONLY during the designated public hearing time for each respective item.)

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

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

CONSENT AGENDA:

1. A. Mayor Tussing recommends that Council confirm the following appointments:

	Name	Board/Commission	Term	
			Begins	Ends
1.	No applications	Tourism BID Board	08/24/09	06/30/10

1. Unexpired term of Linda Gallagher

B. Bid Awards:

(1) **New Awning for Park 1 Parking Garage** (Opened 8/11/09); Recommend Sign Products, Inc.; \$52,646.

(2) **Purchase of Five (5) 2010 Truck Cabs and Chassis with Refuse Compactor Bodies for the Solid Waste Division** (Opened 8/11/09); Recommend:

Schedule I	2 Units	Jack's Truck & Equipment	\$464,081.44
Schedule II	2 Units	Jack's Truck & Equipment	\$341,894.68
Schedule III	1 Unit	I-State Truck Center	\$153,470.00

C. Lease Agreement (3-year lease with 4th and 5th year renewal options) with Tami Kelling, dba Downtown Subs, for ground level space in the Park One Garage located at 224 North 29th St. Annual revenues: first year - \$12,000; second and third years - \$12,600; fourth and fifth optional years - \$12,960.

D. Contract Amendment between State of MT Department of Public Health and Human Services – Developmental Disabilities Division and MET Transit extending contract term an additional year from 7/1/09 through 6/30/10. Estimated revenue - \$100,000.

E. Amendment No. 2, W.O. 04-26, Zone 4 Reservoir and Facilities. Professional Services Contract, HDR Engineering, Inc., \$74,662.

F. Acknowledge Receipt of Petition for proposed street name change of Cynthia Park Drive to Sky Run Drive, and set a public hearing date for 9/14/09.

G. Declaring surplus property and authorizing a public auction of surplus City equipment and police recovered property on September 26, 2009.

H. Street Closures:

(1) ConocoPhillips Billings Refinery “Neighborhood Eat & Meet” on Tuesday, September 8, 2009; 5 p.m. to 7 p.m.; South 28th Street between 5th and 6th Avenues South.

(2) Broadwater School PTA Centennial Celebration on Friday, September 11, 2009; 4 p.m. to 9 p.m.; Fourth Street West from Broadwater Avenue to Wyoming Avenue and Wyoming Avenue from 4th Street West to 5th Street West.

(3) Holy Rosary Catholic Church Barnyard Bingo Fundraiser on Sunday, September 13, 2009; 8 a.m. to 5:30 p.m.; 500 block of Custer Avenue.

(4) Skyview High School Homecoming Parade on Friday, September 18, 2009; 12:30 p.m. to 2:30 p.m.; beginning at Skyview High School parking lot and proceeding down Wicks Lane to St. Bernard’s Church.

(5) Montana Marathon Run on Sunday, September 20, 2009; 5:00 a.m. to 2:30 p.m.; start on Molt Road, east along Sam Snead Trail and Walter Hagen Drive, south on 54th Street West, east on Rimrock Road, south on 46th Street West, east on Rangeview, north on 38th Street West, east on Poly Drive, south on Patricia Lane, east on Colton Boulevard, south on 17th Street West, east on Parkhill Drive, south on 3rd Street West, finish at Daylis Stadium.

I. Acceptance of Donation from the Yellowstone County DUI Task Force to the Billings Police Department for purchase of portable breath testers, \$5,000.

J. Acceptance of Donation from Exxon Mobil to fund airfare, hotel, per diem, and training costs for seven members of the Airport Aircraft Rescue Fire Fighting Staff to attend specialized petroleum-based fire training in Mandeville, LA, and College Station, TX, in September and November 2009; estimated total donation - \$14,000.

K. Approval of Grant Application through the State Coal Board for funding of the 25th Street Pedestrian Bridge over the Montana Rail Link tracks to connect Montana Avenue in the historic district of downtown Billings with the Minnesota Avenue Old Town Neighborhood District; \$200,000.

L. Approval of Staff Recommendation to Policy Coordinating Committee for the funding of the Alkali Creek Corridor Trail Connections and the Swords Park Trail, Phase II, CTEP projects.

M. Resolution of Intent #09-18858 to adopt the East Billings Urban Renewal District Master Plan, and set a public hearing date for 9/14/09.

N. Resolution #09-18859 temporarily suspending Section 24-411, BMCC, Parking for Camping Purposes, in the Shrine Auditorium parking lot, 1125 Broadwater Avenue, during the Big Sky Polka Club’s Polkafest, September 4-6, 2009.

O. **Final Plat Approval** of Morledge Family Medical Village Subdivision.

P. **Bills and Payroll**

(1) July 24, 2009

(2) August 3, 2009

(Action: approval or disapproval of Consent Agenda.)

Mayor Tussing separated Items 1A, 1K, and 1L. Councilmember Gaghen moved for approval of the consent agenda with the exception of items, 1A, 1K, and 1L, seconded by Councilmember Ronquillo. On a voice vote, the motion was unanimously approved.

Mayor Tussing asked City Attorney Brent Brooks for advice about Item 1A. Mr. Brooks advised that if the item was tabled indefinitely, it would be removed until it was brought back with a specific proposed appointment. Councilmember Gaghen moved to table Item 1A, seconded by Councilmember Pitman. On a voice vote, the motion was unanimously approved.

Councilmember Gaghen moved for approval of the grant application through the State Coal Board for funding of the 25th Street Pedestrian Bridge, seconded by Councilmember Pitman. Mayor Tussing advised that he would recuse himself from the vote for that item and Item 1L due to his wife's involvement in the projects. On a voice vote, the motion was approved 10-0.

Councilmember Gaghen moved for approval of the staff recommendation to the Policy Coordinating Committee for the funding of the Alkali Creek Trail Connections, seconded by Councilmember McCall. On a voice vote, the motion was approved 10-0.

REGULAR AGENDA:

2. **RESOLUTION #09-18860 RELATING TO \$297,000 POOLED SIDEWALK SERIES 2009 BONDS AWARDING THE SALE for the financing of construction of W.O. 05-02, Miscellaneous/Developer Improvements; and W.O. 02-08, Milton Lane School Route Improvements. Bids opened 8/24/09. Recommendation to be made at meeting. (Action: approval or disapproval of staff recommendation.)** Assistant City Administrator Bruce McCandless reported that no bids were received by the deadline. He advised that a negotiated sale of 5.95% was within a tenth of a percent of the last SID bonds sold and the recommendation was to approve a sale of \$297,000 bonds at that rate to Montana & Wyoming Oil Company. Councilmember Ronquillo moved for approval of the sale of \$297,000 Pooled Sidewalk Series 2009 Bonds, seconded by Councilmember Astle. On a voice vote, the motion was unanimously approved.

3. **PUBLIC HEARING AND RESOLUTIONS #09-18861 and #09-18862 RELEVYING AND RESREADING ASSESSMENTS for (a) SID 1346 - installation of storm drain, curb and gutter, landscaping, and miscellaneous sidewalk on Lot 17, Block 92, Billings Original Townsite - North Broadway Streetscape; and (b) various**

Work Order Sidewalk Improvement Projects on Lot 39, Block 9, Broadwater Subdivision; Lot 17, Block 4, State Realty Addition; and Lot 0, Block 0 of Section 36, Township 01N, Range 25E – Rocky Mountain College. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.) Ms. Volek advised that staff did not have a presentation, but was available to answer questions.

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

Councilmember Clark moved for approval of the reassessments for SID 1346 and the various Work Order Sidewalk Improvement Projects, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.

4. PUBLIC HEARING AND RESOLUTION #09-18863 APPROVING AND ADOPTING A BUDGET AMENDMENT FOR THE HEALTH INSURANCE FUND FOR FISCAL YEAR 2008/2009. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) Ms. Volek advised that staff did not have a presentation, but was available to answer questions. Mayor Tussing asked if it was correct that additional revenue was not being appropriated, but that level of appropriation was being authorized. Mr. McCandless explained that the request was for an additional \$300,000 appropriation to cover costs incurred by the health program in FY2009. He added there was also a \$600,000 change in incurred but not reported claims that were not an expenditure of the health fund, but a reporting requirement of the City under the accepted accounting principles. Mayor Tussing asked if the \$300,000 was already in the fund someplace but had not been authorized for appropriation. Mr. McCandless advised that the funds came from the Health Insurance Fund reserves. Councilmember Veis stated that the staff report indicated that reserves for that fund were at \$2.1 million and the recommended level was \$2.2 million. He asked how it was expected to get the fund back to the recommended level if it was below it now. Mr. McCandless explained that the current number was a year-end figure, and during the fiscal year the reserve accounts typically increased, then tapered off toward the end of the year. He said that, as in past years, if reserves were insufficient at the time rates were set, there would be a premium increase, which was already budgeted into the second half of the fiscal year, as well as a premium increase from employees to build the reserves back up to the recommended level. Councilmember Veis asked if the premium increases were expected to generate \$300,000. Mr. McCandless explained that when the FY2010 budget was set, it was not anticipated that the reserves would be used so it could take more than a single year to build the reserves back up. He added that the claims were relatively stable, but the primary reason for the necessary appropriation was due to the large number of claims received in December, 2008. Mayor Tussing asked if part of the issue was that the health insurance rates took effect in January of each year, after the fiscal year was half over. Mr. McCandless responded that was correct, and when the budget was developed, staff had to anticipate what health insurance costs would be in 18 months.

The public hearing was opened. There were no speakers, and the public hearing was closed. Councilmember Astle moved for approval of the resolution approving and adopting the budget amendment for the Health Insurance Fund for Fiscal Year

2008/2009, seconded by Councilmember Pitman. On a voice vote, the motion was unanimously approved.

5. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #856: A zone change from Residential 6000 to Community Commercial on the east half of Lots 22-24, Block 272, Billings Original Town, located at 2215 6th Avenue North. George and Dorothy Wetstein, owners; Joyce Lunder, agent. Zoning Commission recommends approval and adoption of the determination of the 12 criteria. (Action: approval or disapproval of Zoning Commission recommendation.) Planner Nicole Cromwell advised the zone change request was to change zoning for a small parcel of land located at 2215 6th Avenue North that contained a single family home that was currently being rented. Ms. Cromwell's PowerPoint presentation included a map and photos of the property and surrounding area. She noted there were several properties in the area that had been changed to Community Commercial throughout the years. She advised that a pre-application meeting was held June 29, 2009, and a positive recommendation was received from the North Park Task Force. She explained that the applicant intended to use the property for a small special-order catering business. Ms. Cromwell advised that the Zoning Commission recommended approval based on the following 12 criteria:

1. *Is the new zoning designed in accordance with the Growth Policy?*

The proposed zone change is consistent with the following goals of the Growth Policy:

- *Predictable land use decisions that are consistent with neighborhood character and land use patterns. (Land Use Element Goal, page 6)*

The proposed zoning would allow an adaptive re-use of an older residential home for a limited and specialized service provider. 6th Avenue North provides arterial street access to accommodate any traffic generated without impact to surrounding residences.

- *New developments that are sensitive to and compatible with the character of adjacent City Neighborhoods and County Townsites. (Land Use Element Goal, page 6)*

The proposed zoning is consistent with the surrounding character of 6th Avenue North.

- *Contiguous developed focused in and around existing population centers. (Land Use Element, page 6)*

The proposed zoning will provide a good in-fill and re-use of the property that has limited quality for residential uses.

2. *Is the new zoning designed to lessen congestion in the streets?*

6th Avenue North is a principal arterial that carries approximately 13,000 vehicle trips per day. No significant increase in traffic load is anticipated from this zone change although the nature of the traffic will change from daily residential traffic to limited commercial traffic during business hours.

3. *Will the new zoning secure safety from fire, panic and other dangers?*

The subject property is currently serviced by City Fire and Police. The proposed zoning will not affect the ability of these services to access the property.

4. *Will the new zoning promote health and general welfare?*

The current R-60 zoning allows residential uses and limited home-based businesses. Catering and wholesale production of frozen pizza is not an allowable home-based business. The proposed zoning of CC would allow this type of use as well as other limited uses for office space or specialized services.

5. *Will the new zoning provide adequate light and air?*

The proposed zoning requires building setbacks and limits building height. Zoning, building and fire codes should provide assurance of adequate light and air for the property and surrounding neighborhood.

6. *Will the new zoning prevent overcrowding of land?*

The proposed zoning limits maximum lot coverage to 50% of the lot area. The current R-60 zoning allows up to 40% lot coverage. Lot coverage only includes the area of the lot covered by structures and does not include pavement. The proposed increase in lot coverage should not overcrowd the property.

7. *Will the new zoning avoid undue concentration of population?*

The proposed zoning allows the same amount of lot area if it were used for residential purposes. The existing zoning of R-60 and the proposed CC zoning requires a minimum of 6,000 square feet for a single family home and 7,000 square feet for a two-family dwelling. The proposed zoning would not unduly concentrate population.

8. *Will the new zoning facilitate the adequate provisions of transportation, water, sewerage, schools, parks, fire, police, and other public requirements?*

Transportation: The proposed zoning should have no impact on the arterial street.

Water and Sewer: The City provides water and sewer to the property through existing lines on the applicant's property.

Schools and Parks: There should be no impact on schools or parks from this rezoning.

Fire and Police: The subject property is currently served by the City of Billings Fire Department and Police Department.

9. *Does the new zoning give reasonable consideration to the character of the district?*

The proposed zoning will allow a commercial re-use of the property along a principal arterial street. The quality of residential use of the building is lower because of the speed and volume of the traffic on 6th Avenue North. The proposed zoning will be more compatible with the adjacent arterial but will maintain compatibility with surrounding uses that include residential homes. The new zoning gives reasonable consideration to the existing character of the district.

10. *Does the new zoning give consideration to peculiar suitability of the property for particular uses?*

The subject property is suitable for the requested zoning district. Properties east and west of the subject property along 6th Avenue North are zoned CC and properties to the south across 6th Avenue North are zoned CI. A CC zone is suitable for this location.

11. *Was the new zoning adopted with a view to conserving the value of buildings?*

Staff cannot determine whether the proposed zoning would appreciably alter the value of structures within the area. As re-development occurs in the East Billings Urban Renewal District south of the subject property, building values should increase as properties are improved.

12. *Will the new zoning encourage the most appropriate use of land throughout such county or municipal area?*

The proposed zoning will encourage the most appropriate use of this land on a principal arterial street in the downtown area of Billings.

The public hearing was opened. There were no speakers, and the public hearing was closed. Councilmember Ulledalen moved for approval of Zone Change #856 and adoption of the 12 criteria, seconded by Councilmember McCall. Councilmember McCall commented that she thought it was a creative way to use an older property because it fit well with the Growth Policy and tied in with the East End TIF. Councilmember Gaghen agreed and said she heard a presentation about it at the North Park Task Force meeting. She said the business would employ six or less employees. Councilmember Ulledalen asked why that was not spot zoning. Ms. Cromwell responded that it was not spot zoning because there were several similar properties that were Community Commercial or used for commercial usage, but still zoned Residential, and there were Community Commercial lots that had frontage on 6th Avenue North also. She noted it was not incompatible or dissimilar from the existing land uses. On a voice vote, the motion was unanimously approved.

6. PUBLIC HEARING AND SPECIAL REVIEW #878: A special review to allow an all-beverage liquor license with gaming within an existing multi-tenant building located on a one-acre parcel legally described as Lot 6D, Block 2, Circle Fifty Subdivision, and addressed as 3839 Grand Avenue. Stock-Naughton, LLP, owner; James Healow, agent. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)

Ms. Cromwell advised that the special review application was to allow an all-beverage liquor license with gaming for one of the five vacant suites at 3839 Grand Avenue. She reported that there were five other liquor licenses in the immediate area. Ms. Cromwell's PowerPoint presentation reviewed the existing zoning for the subject property and surrounding area, some of which was within the County. She reported that the same request for a special review was denied in 2006 when neither the property nor the surrounding area had been developed and Planning staff had been directed by Council to consider developing a casino overlay district.

Ms. Cromwell advised that the Zoning Commission recommended approval of the special review based on the following five conditions:

1. The special review approval shall be limited to Lot 6D, Block 2, Circle Fifty Subdivision generally located at 3839 Grand Avenue.
2. Development of the site shall consist of the existing building, landscaping and parking area. Modifications to the existing building or site that show additional square footage greater than 10% of the existing floor area in Suite #3 (1,673 square feet), increase parking spaces greater than 10%, or the addition of an outdoor patio will require additional special review approval.
3. There will be no outdoor events or music of any kind whether on a continuous or recurring basis or as a special occurrence.
4. 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.
5. 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.

Councilmember Clark asked if there were any churches or schools in the immediate vicinity. Ms. Cromwell advised that there were no churches or schools within the 600 foot separation. Councilmember Astle asked if that was a transfer or a new license. Ms. Cromwell explained it was a transfer from the Moose Breath Saloon located on State Avenue.

Councilmember Ulledalen asked if there was a point when the number of casinos would become self limiting in terms of separation from each other. He also asked if there was a possibility of more liquor license applications in the vacant properties now that there were a greater number of businesses in that area. Ms. Cromwell responded that each application would be reviewed as it came forward, and she did not know when the tipping point would be reached. She stated that she thought the market would limit the number of liquor licenses in one area because the area would be too saturated. Councilmember Clark asked if the State had some control over the location of the licenses. Ms. Cromwell advised that the State required a separation if the licenses had the same owner.

Councilmember Pitman asked if condition #3 referred to events that could be in the parking lot. Ms. Cromwell explained that previous conditions required properties to seek a special review to construct an outdoor patio lounge, which did not prohibit outside events and when those were held, the Planning Department received complaints. She said the condition was changed to prohibit outdoor events of all types. Councilmember Pitman asked what happened if a business violated that condition. Ms. Cromwell said it was a zoning violation and a misdemeanor citation could be issued. She added that Planning staff worked in conjunction with the Engineering Department and Police Department to be aware if businesses with that condition in place were planning an outdoor event.

Councilmember Veis asked if the Planning Department had changed its mind about the number of casinos in that area because of the development of other

businesses in the area. Ms. Cromwell said a variety of businesses were now in the area and the addition of a small casino to an existing building would not have had the same impact as a large casino as an anchor tenant in a building that had not been constructed would, which was the case in 2006. Ms. Cromwell said it was about the size of the building, the nature of the tenants and the uses of the surrounding buildings. Councilmember Veis said there were four casinos already in the area, and asked if the residents of the area felt like one more casino was needed. Ms. Cromwell explained that the Community Commercial zone was designed to serve more than just the immediate neighborhood and there was a much greater variety of businesses now than there were in 2006. Ms. Volek asked if it was fair to say that due to the additional business, the impact of an additional casino was much less than it would have been if it was the only structure. Ms. Cromwell agreed. Councilmember Pitman stated he did not know why a special review was needed for a property that was a rented space and already built. Ms. Cromwell explained that the current zoning code allowed a business to have a liquor license, but when it included gaming, the special review process was required.

Councilmember Ulledalen asked if one of the iterations of one of the zoning overlay districts previously considered indicated that if it was adopted, there was no room for more liquor licenses on that corner. Ms. Cromwell said she believed it was separation from other liquor licenses with gaming and separation from parks. She said under that proposed district, that corner would have had all available liquor licenses in use. Councilmember Ulledalen commented that Councilmembers received complaints from tenants at other locations about parking, trash and delivery access issues which meant that there were things other than zoning that complicated businesses already in place.

Councilmember Veis asked if the 2006 denial was primarily based on the lack of development or if there were other issues at that time. Ms. Cromwell explained that a primary consideration for a special review was compatibility with surrounding properties and whether the business fit in with the zoning and existing or potential businesses in the area. Councilmember Veis asked if that criteria could include whether those types of businesses were already in the area. Ms. Cromwell responded that it could, and one reason for the special review was to determine if issues would arise that were not foreseeable if the special review process was not conducted. Ms. Volek referred to the Alternative Analysis included in the staff report and said that if the Council chose not to approve the special review, the reason or reasons it did not meet the determinations made by the Zoning Commission needed to be cited. Councilmember Gaghen said she thought there was considerable concern from the neighborhood and the other casinos in the area. Ms. Cromwell noted that only one person testified at the public hearing and that testimony was in favor of the special review.

The public hearing was opened.

- **Corey Welter, 3111 Henesta**, said he was the current owner of the Moose Breath liquor license and he planned to move it to the smaller space. He said he had no intention of having any outdoor events and would adhere to the conditions. He said he would give his personal guarantee that he would run a good clean ship and encouraged approval of the special review.

Councilmember Ulledalen asked what Mr. Welter suggested a neighboring business should do if it had a complaint about broken glass in its parking lot. Mr. Welter said if the neighbor felt it came from his business, the neighbor should call him.

Councilmember Ronquillo asked what was going to happen to the Moose Breath building. Mr. Welter said he had some interest from people who wanted to open a casino with just beer and wine. Councilmember Ronquillo stated there was a church in the nearby IGA building and Moose Breath might not meet the 600 foot separation. Ms. Cromwell advised that it would depend on whether there was an existing special review for the Moose Breath location, and if not a waiver would be required.

- **Jon Gaustad, 124 N. 19th Street**, encouraged the Council to not approve the special review, not because of the business itself, but because another casino would open in Moose Breath location. He said there were over 100 casinos in the City already and he did not see the need for another one.

Mayor Tussing clarified that the State controlled the number of casino and all-beverage licenses that were granted in the City. He explained that the only thing the City could control was where the casinos were located. He said the City could not set a limit on the number of casinos and would incur significant liability if it tried to do that. Councilmember Ulledalen added that it was a special review and the use was already allowed under the zoning criteria, but the special review allowed staff to attach conditions to the use.

- **Michael Stock**, said he was the property owner and was present to answer any questions.

Councilmember Ulledalen said he had heard some positive things about Mr. Stock's business on Grand Avenue, Off the Leaf, and he wondered if he had considered putting something like that in the area because he believed it would be welcomed and supported. Mr. Stock said he would probably do something in the area. He commented that the casinos would go somewhere and he felt it was better to keep them together in one area rather than having them spread across town. He said he was in favor of the special review.

Councilmember Gaghen asked Mr. Stock if he built the building, and if the other tenants were aware of his plan to have a casino in it. Mr. Stock said he built the building, and that was not his plan from the offset, but he had not received any protests about it from the tenants. Mr. Stock commented that casinos were typically a clean, quiet business.

Councilmember Brewster asked why Mr. Stock thought it was a good thing to cluster the casinos together. Mr. Stock said the casinos did not cause any trouble and he felt it was better to keep them together. Councilmember Brewster stated that a lot of them caused problems.

Councilmember Ulledalen commented that he heard the most complaints about the way people drove and the proliferation of casinos. He said a common comment about improving Billings was to limit the number of casinos. He advised that the City had worked with the Montana League of Cities and Towns and sought advice from the Attorney General about what could be done to limit the number of casinos. He said providers and owners of those establishments

had to understand there was a groundswell of opposition from the community and he felt there would be a reaction at some point, but the City's hands were tied at this point. Mr. Stock said he did not believe there were too many casinos out there.

Councilmember Ulledalen stated that he heard complaints from businesses about trash and debris left in their parking lots from casino patrons and asked Mr. Stock about his recommendation about that. Mr. Stock responded that he managed the property and would make sure it was cleaned up. He said he had problems with the neighboring bar and the problems that existed with a bar did not usually happen with a casino. Councilmember Ulledalen said the problem was that once a casino was located there, someone could come along in a couple of years and change the concept or expand it, and the frustration was that once the footprint was established; there was not much that could be done about it. Mr. Stock stated that the space was less than 1500 square feet and if it did not remain a casino, it would likely turn into a restaurant or small boutique type of business. Mr. Stock advised that the State had a process that had to be followed if a casino wanted to expand. Ms. Volek pointed out that a condition of the special review was that an expansion of more than 10% required an additional special review.

- **Joe White, Billings, MT**, said his position was the same that he opposed the expansion of the area for casinos and liquor licenses. *The remainder of Mr. White's testimony was inaudible.*

There were no other speakers, and the public hearing was closed. Councilmember McCall moved for approval of Special Review #878, seconded by Councilmember Pitman. Mayor Tussing stated that he agreed with Mr. Stock that he thought it was better to have the casinos together and if he had his way, there would be five square blocks where all the casinos had to be and they could not be anyplace else in town. Councilmember Ruegamer stated that the same conversation had occurred during his past six years on the Council when the special reviews came up. He said it was a matter of supply and demand and sooner or later some of the casinos would not succeed, or the City would continue to grow and there would be more. Councilmember Ruegamer said he thought Ms. Cromwell had told him a while back there had not been any new casino licenses issued for quite a long time. Ms. Cromwell advised that they were issued based on the estimated population that was updated each July, and if there was an increase, the Department of Revenue made more licenses available. She explained that all-beverage licenses were very limited and she did not believe there had been any new ones available for about eight years. Councilmember Ruegamer stated that the new casinos were ones that just changed locations. Councilmember Ulledalen said he thought three or four new ones had come in during the last couple of years. Ms. Cromwell explained that those were floater licenses that came from other locations, even though the two businesses that received them did not intend to use the gaming license.

Councilmember McCall stated that she frequented businesses in the area of the proposed casino and had not heard any complaints from those businesses about the

casinos in the area. She said if the phrase “it is what it is” was ever appropriate, it was that evening.

Councilmember Brewster stated that one of the issues was land use. He said the Council took the time to get public input and made decisions based on the input about what was appropriate for the area, and that was the situation in that particular area. He explained that what happened was that time passed before anything was proposed and people lost interest because they did not believe anyone would listen to them a second time, so when things like the casino were later approved, it did not give any credibility to the decisions made. On a voice vote, the motion was approved 8-3. Councilmembers Brewster, Clark, and Veis 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.)

- **James Knox, 661 Garnet Avenue**, said he felt the sale of Park IV was “short-sighted.” He stated it would only generate revenue at the rate the City charged, but a private party would charge much more, which would generate a higher price if it went up for sale. He said the garage could be used as an asset to obtain financing to build additional parking structures.
- **Amy Cowley, 546 Avenue F**, said she represented Friends of Pioneer Park and wanted to remind the Council that disc golf was placed in Pioneer Park without due process. She said the group wanted to know if that activity would be removed from the park. She mentioned safety issues of discs hitting cars and houses, continued illegal drug activity, and fighting. She said the nearby residents had been told multiple times they could move away or call the Police, but she had no intention of moving and the Police had been called, although the response time was sometimes slow. She said the Police Department had promised its bike patrol would be present in the park, but it had not happened. She said she understood that the Police Department was staffed at maximum, and she was not blaming the department, but she had issues with the entities that had the responsibility of following through so the Police Department could do its job. Ms. Cowley stated, “if a business or individual wants to propose a new business idea or expansion of their existing business, especially concerning zoning, does this not have to appear at the City Council meetings that are scheduled Monday nights? Also would not the general public as a whole need to be aware, especially if this plan has the potential or possibility for environmental concerns? Is it legal to zone an area for an area that has already been zoned for a different use (*inaudible*) the City of Billings as a whole ought to be aware and should the same presentation should have taken place here tonight versus in a private setting. Do you have any questions?”

Mayor Tussing said “what are you talking about?” Mayor Tussing said he understood the first part of the testimony but did not know what she meant about the zoning. He explained that all zone requests went through the Zoning Commission and had to be voted on by the City Council, and she implied that did not happen so he asked her to be more specific. Ms. Cowley explained that she was going to attend a neighborhood task force meeting at South Park the past

week and was told to be there at 6 p.m., and when the meeting did not take place, she started making the rounds in the neighborhood and was told that a meeting was occurring at a business in town. She said the business was presenting an oil and water separator which concerned her and others that there was a potential for it getting into the water and soil process that could promote contamination. She said she did not have a problem with someone presenting something, but felt it should be done in front of everybody as a Council. She said she felt that should happen on Monday night and asked if that was true. Mayor Tussing responded that it was true. Councilmember Clark advised that the meeting she referred to was held because the business wanted to have a zone change on the property across the street. He said the separator had always been there and that was just part of a tour for some of the people at the meeting so they could learn more about the business. He said the meeting was held to show where the zone request was and that request would come before the Council. Ms. Volek advised that the meeting was the neighborhood pre-meeting for that application, which would then go through the established zoning process. She said it concerned a piece of land acquired from the City with an easement. Councilmember Ulledalen explained that the prior procedure was that an application went to staff before it went to the Zoning Commission, but about four years ago the process was changed and a separate neighborhood meeting was required, with specific notification requirements, to address neighborhood concerns. He said the public process happened in the Zoning Commission and the City Council meeting.

Councilmember Gaghen stated she was the one who told Ms. Cowley that the South Side Task Force meeting was at 6 p.m. because that was her understanding after the previous meeting. She stated that she provided incorrect information unintentionally. She said she attended the neighborhood meeting concerning the zone change and pointed out that the Council strongly suggested informing the neighbors prior to Zoning Commission decisions. She stated that there was no actual notification other than to the neighbors within the 300 foot radius as required. Ms. Cowley said the only reason she asked the question was because the people who showed up at the meeting told her they felt the whole thing was handled inappropriately. Councilmember Gaghen asked Tom Ruschkewicz, Chair of the Southwest Corridor Task Force, if he was aware of the procedure and of the issue Ms. Cowley brought up. Mr. Ruschkewicz responded that he was. Councilmember Gaghen stated it was not anything done in a covert sense and it was an open process.

- **David Bovee, 424 Lewis Avenue**, said he felt that over the last few years, the traffic signals downtown were affected by the presence of the trains that came through downtown. He noted that if a train was going through downtown, the lights did not change with the same rotation. He said something must be set with the switches, and it created traffic issues. He asked if that could be reviewed and if there was a better way to manage the traffic.

Mayor Tussing advised that it could also be that the lights on N. 27th and N. 28th were stuck on red when the trains went through which prevented cars from turning right on those streets from Montana Avenue.

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

Council Initiatives

- **Gaghen:** Said she was aware that Missoula was attempting to curb the use of talking and texting on cell phones while driving. Councilmember Gaghen moved to have Legal staff research the measure put into place by Missoula restricting the use of texting on cell phones while driving, seconded by Councilmember Astle. She referred to international and national newspaper articles regarding statistics related to driving while being distracted with cell phone use. She said she felt it was something that should be looked at because 17 states had already outlawed cell phone usage while driving. Councilmember Ruegamer said all of Councilmember Gaghen's information related to the danger of cell phone usage yet her initiative specified text messaging. He asked why she did not include all cell phone usage. Councilmember Gaghen stated she would prefer to do that but felt it needed to be researched further. Councilmember Ruegamer stated that Councilmember Gaghen had not answered his question. Councilmember Gaghen responded that texting required manipulation of the keypad and felt there was room to go beyond that. She referred to the Missoula Council attempt to pass an ordinance that was vetoed by the Mayor. Councilmember Ronquillo agreed with Councilmember Gaghen that cell phone usage should be looked at even though he thought it could be defeated. Mayor Tussing noted that a police officer was not present at the meeting, which was a violation of the Charter, but he wanted to know how the Police Department would enforce such an ordinance and how they would be able to tell the difference between dialing and texting. He agreed it was a problem, but felt it would be an issue for enforcement. Councilmember Astle said he seconded the motion to hear the discussion. He said he did not disagree about texting, but felt it would be difficult to impose sentences for that offense when appropriate sentences were not imposed for multiple drunken driving offenders. Councilmember Astle stated that he had observed Police Officers using cell phones while driving as well, and that was not a criticism, just an observation. Councilmember Veis said he agreed it was a problem but he could not support texting only, however, he would support a ban on both talking and texting. He stated he felt it would be very difficult for an officer to determine if a person was texting. Councilmember Gaghen clarified that she was throwing it out as a beginning step to get the information from Missoula regarding the process they went through. She said she supported outlawing any cell phone usage while driving. Mayor Tussing asked Councilmember Gaghen if she would frown on the use of personal navigation devices as well. Councilmember Gaghen said she would not because they were not the same thing. Councilmember Gaghen withdrew her earlier motion, and Councilmember Astle agreed to withdraw his second. Councilmember Gaghen moved to have Legal staff research a policy that would outlaw the use of cell phones while driving, seconded by Councilmember Astle. Councilmember Pitman asked if there was a law in place regarding people who caused an accident because they were distracted. Mr.

Brooks stated that some states had laws regarding distracted driving, but Montana did not and it would be considered careless driving. Councilmember Astle pointed out that the only time those citations were issued was in the event of an accident. Councilmember Brewster stated that cell phones would be like fireworks, in that there would be very little prosecution. Mayor Tussing asked if the motion could include a contingency to allow emergency situations. Councilmember Gaghen said emergency personnel would have to be in a separate category. She said she wanted her initiative to allow research of the issue. Councilmember Pitman stated that he agreed with the idea of trying to promote a safer driving environment but felt it would be hard to enforce. Councilmember McCall said she felt the point was for staff to research it; that it did not have to be defined that night. She stated that City employees could be prohibited from using cell phones while driving and it had to be all usage, not just texting. Councilmember Veis stated that he would also like to hear from the Police Department on enforcement. On a voice vote, the motion was approved 10-1. Councilmember Brewster voted 'no'.

- **Clark:** Encouraged Councilmembers to announce the community conversations at any organization they had contact with. Councilmember McCall provided the dates of those events: September 9, 9-11 a.m. and 7-9 p.m. at Faith Chapel; September 10, 9-11 a.m. and 7-9 p.m. at Western Security Bank on Wicks and Main; September 16, 9-11 a.m. and 7-9 p.m. at the Garfield Center; and September 17, 9-11 a.m. and 7-9 p.m. at the Community Center Downtown.
- **Ronquillo:** Said it had been two years since Passages moved to the south side. He said the man who ran the facility attended a recent task force meeting and said the City had dropped the ball, but he wanted to make up some differences and pay in lieu of taxes for that facility that were neglected during the last two years. He moved to have staff meet with Dave Armstrong of Passages, to discuss the agreement between Passages and the City, seconded by Councilmember Ulledalen. Mayor Tussing asked if the facility had paid anything. Ms. Volek stated she would have to check on it and that it was a subject of threatened litigation. Councilmember Gaghen stated that the facility had not paid, but hoped that whatever payment made was directed to south side activities. Ms. Volek said that would be a Council decision. Ms. Volek said Mr. Brooks indicated that the facility was billed but had not made a payment. On a voice vote, the motion was unanimously approved.

ADJOURN – The meeting adjourned at 8:10 p.m.

Additional information on any of these items is available in the City Clerk's Office.

Reasonable accommodations will be made to enable individuals with disabilities to attend this meeting. Please contact Cari Martin, City Clerk, at 657-8210.