

## REGULAR MEETING OF THE BILLINGS CITY COUNCIL

**November 26, 2007**

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

**ROLL CALL** – Councilmembers present were Ronquillo, Gaghen, Stevens, Brewster, Veis, Ruegamer, Ulledalen, Boyer, Clark, and Jones.

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

### **COURTESIES**

- Councilmember Stevens thanked Steve Wahrlich, owner of the Clock Tower Inn, for paving the alley behind his establishment at his own expense; and City Engineer, Debi Meling, and the Engineering Division Staff for their assistance.
- Councilmember Gaghen advised that the City of Billings was recognized in the November 12 issue of the National League of Cities & Town's newsletter for having excellent quality drinking water.

**PROCLAMATIONS** - None

### **ADMINISTRATOR REPORTS – Tina Volek**

- City Administrator Tina Volek noted an e-mail on Item #2 in the Ex-Parte notebook.
- Ms. Volek noted an e-mail on Item #4 in the Ex-Parte notebook.
- Ms. Volek reminded Council of the Agenda Review Meeting scheduled for tomorrow evening at 5:30 in the City Hall Conference Room for the meeting of December 10, 2007.
- Ms. Volek reminded Councilmembers of the December 3 Work Session, which would be the last one for the year.
- Ms. Volek said the December council meetings would be held on the 10th and the 17th, due to the holidays.

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

- **Tom Zurbuchen, 1747 Wicks Lane**, said he opposed the approval of the Cherry Creek Estates Development Agreement.
- **Jock Clause, 1940 River Overlook Drive**, said increased traffic flow should have no bearing on the limitation of the Cherry Creek Estates Development Agreement, and asked why Council had approved other developments in the Heights.

There were no other 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.	Joe Muessig	County Water District of Billings Heights	11/26/07	12/31/09

- Unexpired term of Warren Grass

B. **Bid Award**

(1) **One Hundred Ton (100-Ton) Static Pipe Bursting System.** (Opened 11/20/07). Recommend delay of award until December 10, 2007.

(2) **LED Traffic Signal Components.** (Opened 11/20/07) Recommend delay of award until December 10, 2007.

C. **Approval of Lease Agreement** (one-year renewable) with BILAW LLC, DBA Mann Mortgage Billings, for space in Park I, first year revenue of \$24,480.00.

D. **Approval of Lease Agreement** (two-year renewable) with Conoco/Phillips Pipeline Company for space in Park I, first year revenue \$33,014.10.

E. **Approval of Ground Lease** (five-year) for remote parking lot with Edwards Jet Center, first year revenue \$3,664.20.

F. **Approval of Grant** from Montana Department of Transportation, State Highway Traffic Safety Division, for DUI/impaired driving and safety belt law enforcement, \$14,000.00.

**G. Approval of Recreational Trails Program Grant Amendment Agreement** for the Gabel Road Connector-Heritage Bicycle-Pedestrian Trail Project.

**H. Amendment #5, CTA Architects Engineers**, for replacement of Airport Terminal Building's Revolving Doors, \$36,292.00.

**I. W.O. 04-33 Lake Elmo Drive (Hilltop Road to Wicks Lane) Right-of-Way Acquisition** for Parcel #33, a portion of Lot 1 and Lot 2, Stevens-Petter Subdivision, with Janet Croy, \$10,550.00.

**J. W.O. 04-36, Briarwood Sanitary Sewer Main Extension Right-of-Way Agreement and Perpetual Right-of-Way Easement** for a portion of Tracts 6 and 7, Blue Creek Acreage Tracts Subdivision with Yellowstone Valley Electric Cooperative, Inc., \$5,932.50.

**K. Approval of Grant Application** to the Safe Routes to School funding program for the Elementary School Traffic Plan, \$50,000.00.

**L. Resolution #07-18646** amending Resolution #07-18547 annexing property for the Cottonwood Park site located on the northwest corner of the intersection of Colton Boulevard and 54<sup>th</sup> Street West.

**M. Second/Final Reading Ordinance #07-5440** expanding the boundaries of Ward II to include recently annexed property in Annex #07-24: a 5-acre parcel legally described as Tract 1B, Certificate of Survey 1335, Amended, Hanser Capital Holdings, LLC, owner.

**N. Preliminary Plat** of Amended Block 4, Evergreen Subdivision, generally located on the south side of Avenue C between 13<sup>th</sup> and 14<sup>th</sup> Streets West, Sieben Ranch Company, owner; conditional approval of the plat and adoption of the Findings of Fact.

**O. Preliminary Plat** of Amended Lot 4A, Stardust Acres Subdivision, generally located on the southeast corner of Venus Circle and Southern Hills Drive, Arlin Stutznegger, owner; conditional approval of the plat and adoption of the Findings of Fact.

**P. Preliminary Subsequent Minor Plat** of Amended Lot 2, Block 2, Lake Hills Subdivision, 1<sup>st</sup> Filing, generally located southwest of the intersection of Pebble Beach Road and Inverness Drive in Billings Heights, Michael Stock, owner; conditional approval of the plat and adoption of the Findings of Fact.

**Q. Final Plat** of Cenex Park Subdivision, Amended Lot 4, Block 4.

**R. Bills and Payroll**

- (1) October 26, 2007
- (2) November 5, 2007

Mayor Tussing separated Consent Agenda Items G and K and recused himself from voting because his wife was involved with both projects.

Councilmember Ronquillo moved for approval of the Consent Agenda, with the exception of Items G & K, seconded by Councilmember Stevens. On a voice vote, the motion was unanimously approved.

Councilmember Ronquillo moved for approval of Item G, seconded by Councilmember Ruegamer. On a voice vote, the motion was approved 10-0.

Councilmember Ronquillo moved for approval of Item K, seconded by Councilmember Stevens. On a voice vote, the motion was approved 10-0.

## **REGULAR AGENDA:**

**2. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #826: allowing small retail services to be developed by special review approval within existing residential zoning districts. Zoning Commission recommends approval (Action: approval or disapproval of Zoning Commission recommendation.)** Nicole Cromwell, Planner II, began her PowerPoint presentation explaining Zone Change #826. She advised Section 27-305 of the Unified Zoning Regulations defined and regulated the types of uses allowed within residential zoning districts in the City and the jurisdictional zoning area in Yellowstone County. She said the 2003 Growth Policy recommended several goals to direct changes to city land use regulations, including more housing and business choices within each neighborhood, contiguous development focused in and around existing neighborhoods, reduction of traffic congestion and adaptive reuse of vacant property. Ms. Cromwell advised the proposed amendments to Sections 27-201, 27-305, and 27-612 would allow small retail services to be developed by special review approval within existing residential zoning districts. Ms. Cromwell noted that past efforts to re-zone or create special zoning districts had been unsuccessful. Ms. Cromwell showed pictures of existing, abandoned buildings within residential districts. She stated some of the abandoned properties had become a burden to the residential neighborhoods and tended to attract transients, graffiti, and criminal activity.

Ms. Cromwell advised the proposed regulation excluded uses such as gasoline or fueling stations but would include small bakeries, restaurants, coffee shops, and laundromats. She said the maximum proposed size of the convenience stores would be 3,000 square feet, and there would be other standards on limitations of deliveries, signage, and site lighting. Ms. Cromwell said the amendment would allow neighborhood convenience services without special review approval in Residential Multi-Family (RMF) and Residential Multi-Family-Restricted (RMF-R) zoning districts. She said the proposed standards would apply to all new locations, and existing locations could remain as developed until a remodeling or expansion project changed the existing conditions of the property.

Councilmember Clark asked if an establishment would be required to have a special review in order to sell alcohol. Ms. Cromwell said it would not be a special review specific to the sale of alcohol for off-premise consumption. She said that requirement was not included in the Zoning Code.

Councilmember Boyer asked if alcohol could be sold in any of the convenience stores going into a neighborhood. Ms. Cromwell said it could, but Council could limit the alcohol sales through a special review process stating there could be no more than so many square feet of the convenience store used for the sale of off-premise consumption of beer and wine.

Mayor Tussing said there was some concern expressed at the Zoning Commission about tattoo parlors going into residential neighborhoods. Ms. Cromwell advised the City Council would be able to determine which types of facilities would be allowed.

Councilmember Ruegamer asked if adult entertainment shops would be allowed. Ms. Cromwell said there was a separate section of the City Code that dealt with adult entertainment.

Councilmember Ulledalen asked who had brought the rezoning issue forward. Ms. Cromwell advised it was at the direction of the City Council and the Board of County Commissioners based on the goals of the 2003 Growth Policy and Implementation Plan to make the zoning code more neighborhood friendly and allow convenience services and businesses within neighborhoods.

Councilmember Boyer said she felt neighborhood convenience stores would cause more of a problem to a neighborhood than a help. Councilmember Ronquillo said he agreed with Councilmember Boyer and felt smaller neighborhood stores were a thing of the past and would not be able to compete with the big box stores.

Councilmember Stevens asked Ms. Cromwell about the parking requirement of one space per 500 square feet with a 3,000 square foot limit on the building. She said that would only allow six parking spots and asked if the requirement was adequate. Ms. Cromwell said typically the City required one space per 200 square feet for retail establishments like Walgreen's or Albertson's, which seemed like too much parking for residential neighborhoods.

Councilmember Clark asked if a State liquor store could go into one of the residential locations. Ms. Cromwell said she did not think most State liquor stores would want to be on a small lot restricted to 3,000 square feet with only six off-street parking spaces. She said most State liquor stores were located on arterial streets.

Councilmember Ulledalen asked why the owner of the vacant building on 5<sup>th</sup> Street West and Yellowstone shown in the presentation could not put a grocery store in the building right now. Ms. Cromwell said the owner had ceased using the building for that purpose more than one year ago. She said once the non-conforming use had been ceased, it could not be re-established. Councilmember Ulledalen asked if the owner could ask for a variance. Ms. Cromwell said the owner could not because he had lost his grandfathering and could only use it currently for residential purposes. She said he would not be able to insure it or re-finance it as a commercial property.

Councilmember Boyer asked Ms. Cromwell how many buildings currently existed in Billings neighborhoods where businesses once were located but now were empty. Ms. Cromwell estimated between 50 and 100.

The public hearing was opened.

- JOE WHITE, 926 NORTH 30<sup>TH</sup> STREET, said he was concerned about the small business owners who sold items out of their garages or homes, such as craft items, cleaning items, etc., and said he felt people should be allowed to continue.

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

Councilmember Clark moved for approval of Item #2, seconded by Councilmember Brewster.

Councilmember Veis moved to amend the ordinance under Section 27-305, requiring a special review on Residential Multi-Family and Residential Multi-Family Restricted, seconded by Councilmember Jones. Councilmember Veis said he felt there should be a special review for all cases before allowing businesses to go in anywhere. Mayor Tussing said he supported the amended resolution.

On a voice vote, the motion for the amendment was unanimously approved.

Councilmember Veis moved to amend the ordinance to not allow special reviews on Residential 15,000 and Residential 9,600 Zones, if not more zones, seconded by Councilmember Stevens. Councilmember Veis said he felt Council needed to keep a tight leash on them until they were proven to be successful.

Ms. Cromwell advised Residential 15,000 was a County zoning district and did not apply within the City. She advised she would need specific zoning districts if Council wanted to eliminate special review use. Mayor Tussing asked City Attorney Brooks if Council could vote on an amendment that contained language that did not exist in the City. Attorney Brooks advised that Council did not have the authority to vote on Residential 15,000 if there were none in the City. Councilmember Stevens asked why it was in the City Ordinance. Attorney Brooks advised it was a Unified City and County Zoning Code. Councilmember Veis corrected his motion to include only Residential 9,600. Councilmember Stevens, the second on the previous motion, said she agreed with the corrected motion.

Councilmember Brewster said he opposed the motion because he felt businesses should have the option, and the purpose of special review was to consider each case accordingly.

Councilmember Gaghen asked Ms. Cromwell who would be monitoring the enforcement of the new regulations. Ms. Cromwell said if Council passed the regulations, new regulations could be proposed through special review process, and each special review approved would have conditions to be enforced by the code enforcement officers. Ms. Cromwell advised if Council did not pass the regulations, the City still had non-conforming uses that were monitored through the building permit process and through the complaint line.

Councilmember Stevens asked how the zone change would mesh with neighborhood plans since neighborhood plans indicated where commercial should be located. She said she felt bringing the matter forward would be harmful to the neighborhood plans already in place. She said she felt the definition was poorly written and difficult to understand as to what was allowed and what was not allowed. She said the document needed to be sent back for clearer definition.

Councilmember Boyer asked if the issue had been brought before a neighborhood task force. Ms. Cromwell said all the text amendments had been circulated to the neighborhood task forces at least a month prior to the public hearing at the Zoning Commission. She said four members of different neighborhood task forces had testified; some in favor and others not. She said the information was included in Council's staff report and discussions were held with the City and County Legal Departments during the development of the code. Councilmember Boyer reiterated that it had to be part of the neighborhood plan process.

The motion on the second proposed amendment to not allow Special Reviews in R9600 failed 8 to 3. Councilmembers Ronquillo, Gaghen, Stevens, Brewster, Ruegamer, Ulledalen, and Clark and Mayor Tussing voted 'no'.

Councilmember Jones said the alcohol issue was discussed during a work session, and alternatives were given for selling alcohol. Councilmember Jones said one of his concerns was someone could come in and, based on the current definition, start selling food to begin with and then start selling alcohol under the definition of pre-packaged food. Councilmember Jones said he felt restrictions needed to be built into the regulations and not approved on a case-by-case basis.

Councilmember Stevens made a substitute motion that Zone Change #826 be postponed until Council received a better definition that would take into account the issues with alcohol, seconded by Councilmember Boyer. Councilmember Stevens said she wanted categories stating what would be allowed and what would not be allowed.

City Administrator, Tina Volek, said there was a zoning process called adaptive reuse, which would allow a residence to be turned into a book store or coffee shop, etc. She said the process had just started to be looked into and if Council would like additional information on it, staff would need additional time to prepare.

Councilmember Stevens restated her substitute motion to postpone the item until the first council meeting in March 2008, approved by Councilmember Boyer.

Councilmember Ulledalen said he would like to see alternatives addressed. He said his concern was that the City was trying to bring back the 1940's and 1950's with neighborhood stores and asked for clarification on who brought the idea forward.

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

**3. PUBLIC HEARING AND FIRST READING ORDINANCE adopting a South Billings Boulevard Urban Renewal District. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** Lora Mattox, Neighborhood Planner, began her presentation defining the boundaries of the

urban renewal district. She said at the November 5 work session, the City Council received a presentation on the Urban Renewal Plan and its elements, and on November 13, 2007, a Resolution of Intent adopting the Urban Renewal Plan and setting a public hearing was approved. Ms. Mattox advised the Planning Department sent out over 2,000 invitations to all property owners within the district for two public meetings held in September and October. She said during the meeting in September there were over 200 property owners in attendance, and over 100 residents were present at the October meeting. Ms. Mattox advised the Planning staff had met regularly with the Southwest Corridor Task Force to engage their input and support of the process. She said Big Sky EDA and Downtown Billings Partnership had been very supportive and helpful creating the plan.

Ms. Mattox said there were some edits and additions they would like made to the Urban Renewal Plan, that if approved that evening, would be included in the December 10th Urban Renewal Plan Council memo. She said the first change was under Section 13 that referenced neighborhood goals. She said they would like to change the word "goals" to "projects." Ms. Mattox said in Section 13, they recommended adding the statement that it would be the intent of the City of Billings to use TIFD to finance public improvement projects identified by residents. She said another suggestion was to add a section on a sound and adequate financial program. Ms. Mattox advised it was suggested through Administration they remove Paragraph 3, Conditional Commitment, of the ordinance because it related to the Downtown TIFD and East End TIFD for negotiations with private developers, which would not occur in the South Billings Boulevard District.

The public hearing was opened.

- MICHELLE JOHNSON, 2705 BLUE CREEK ROAD, said she was concerned with some of the wording in the ordinance and asked if the ordinance superseded a TIFD plan. Ms. Johnson referenced the third paragraph and asked what the opportunities were that were presented to the City to make it desirable and how did the City intend to acquire the vacant, blighted properties. She asked if the residents would be making the improvements to the properties or if the funding would come straight from the TIFD funds. She said if the property owners could make the improvements on their own without a TIFD telling them what to do. Ms. Johnson referenced 1a, and said she had a problem with the words "inappropriate" (inappropriate by who's definition), "sound functioning" (what was meant by sound functioning), and "conducive to juvenile delinquency". She said any house feeding a teenager would be conducive to juvenile delinquency. Ms. Johnson said she did not know what constituted an economic and social liability, and said it could mean anything. She asked for the definition of a menace and said there were a lot of things she would consider a menace that others might not. Ms. Johnson said she felt the ordinance appeared broad to her and caused her great concern. She asked how the City planned to eradicate and diminish blight when the ordinance stated "this Council finds the undertaking measures to eradicate or diminish

the blight affecting the property will help foster a more dynamic and vibrant area."

Councilmember Ulledalen told Ms. Johnson some of the verbiage was taken from state law defining 'blight' that was incorporated into the ordinance. He said there was an opportunity for redevelopment; and the whole point of tax increment financing was there had to be an increment. Councilmember Ulledalen advised the tax collections generated from the property would continue to flow into the City, County, State, School District, etc. He said the increment would create extra tax revenue to support the infrastructure, such as storm drainage, paving, curb and gutters, etc., that private owners were not in a good position to finance on their own.

Councilmember Stevens told Ms. Johnson the hope was that if the City put in new curbs and sidewalks, the homeowners would start improving their properties, resulting in a better neighborhood. She said she thought one of Ms. Johnson's concerns was the City was going to try to use eminent domain or condemnation. Councilmember Stevens advised it specifically stated in Section 8 that "in no case shall eminent domain be used as a tool in the redevelopment of the South Billings Boulevard Urban Renewal Plan." She said the taxes on the properties would increase at the same rate they would whether the TIFD was there or not. She said if a homeowner added an extra living room constituting additional square footage, their property taxes would go up accordingly, and the amount of the tax increase would go into the TIFD instead of going to the State. The TIFD could then use the funds to build new sidewalk or gutter without having to do an SID directly assessed to the property owners. Councilmember Stevens explained a TIFD was a way to revitalize a neighborhood without costing the homeowners anything extra. Ms. Johnson asked if individual property taxes would go up once the area was revitalized or improved. Councilmember Stevens said only if the homeowner made improvements to his property. Ms. Johnson asked if sidewalks would improve a home's value and increase the property taxes. Councilmember Stevens said the value of a home was not based on if there was a sidewalk. Councilmember Stevens told Ms. Johnson improved water and sewer pipes would make a property more valuable without raising taxes.

Mayor Tussing advised Ms. Johnson the TIFD would not affect her because she lived in the County. Ms. Johnson said her husband worked in the area and she had several friends who lived in the area, so it did not matter if she was a County or City resident. Mayor Tussing asked Ms. Johnson if she understood the TIFD did not affect her residence. Ms. Johnson said she understood that but her concerns did not make a difference if she were a city resident or not.

Councilmember Gaghen explained to Ms. Johnson that the monies generated from improved values were mandated to stay in the tax increment district for improvements. She said property taxes would not go up for the improvement of infrastructure. Councilmember Gaghen asked Ms. Johnson if she had attended the two meetings. Ms. Johnson said she had attended the first meeting, which she felt was interesting because of the way the pros were spelled out to the participants. Ms. Johnson said none of the cons were ever spelled out

and it was all “smoke and mirrors.” Ms. Johnson questioned the demolition of blighted structures and asked what structures would be blighted and demolished. Ms. Mattox said most of the blight that was identified was the need for improved infrastructure, and all the projects dealt with infrastructure improvements. She said there was nothing stated where any properties would have to be demolished.

Councilmember Jones advised before the City would demolish blighted properties, it would buy them and not be obtained through eminent domain.

Councilmember Boyer said one of the questions that had been asked was if the City had ever revitalized without tearing down. Councilmember Boyer said the whole downtown area was revitalized without tearing anything down.

Ms. Johnson said there was still one question that had not been answered and that was if the ordinance superseded the TIFD plan. Councilmember Stevens advised the plan adoption was approved, and there would be no eminent domain.

Councilmember Ruegamer suggested Ms. Johnson sit down with Ms. Mattox and go over all of her concerns. Ms. Johnson said she attended the first meeting and all she got was a lot of “double-talk.” Councilmember Ruegamer told Ms. Johnson he would sit down with her and go over every word with her, and Ms. Johnson agreed to call him.

Ms. Johnson said she did not feel the trailer court on South Billings Boulevard would be renovated and felt it would be demolished. She said the downtown area had buildings that could be renovated, and there were none of those elements in the South Billings Boulevard area. Mayor Tussing told Ms. Johnson her time to testify was over and asked if Council had anymore questions.

Councilmember Boyer said she was grateful that Ms. Johnson came forward, because she felt it was an education process and difficult to understand TIF districts and an Urban Renewal Plan.

City Administrator Tina Volek said staff pointed out there had been circumstances where the City had to exercise eminent domain for infrastructure improvements, so Staff's suggestion was to change the wording to read “in no case shall eminent domain be used as a tool for redevelopment of the South Billings Boulevard Urban Renewal District, except in the case of infrastructure development, as necessary.”

- JOE WHITE, 926 NORTH 30<sup>TH</sup> STREET, said he did not live on the south side, and proposed the development.
- DARWIN OAK, 44 BURLINGTON, said he had residential/commercial property at 32, 34, 36, 38, and 40 Orchard and asked if his taxes were going to increase.

Councilmember Stevens said property taxes would not increase unless the property owner improved his property or if there was a mill levy.

- GREG KRUEGER, 3408 ST JOHNS, said he was with the Downtown Billings Partnership but speaking as a citizen. He said he lived at 3408 St. Johns Ave. but raised his family on Cambridge Drive in the South Billings Boulevard District. He said his daughter and son-in-law lived in the proposed

district and were anxiously awaiting the TIFD because they lived on a gravel road within the City and have no sidewalks. He said he was somewhat of a state-wide expert on the issue of tax increment, and said the TIFD was the only local tool the City had for urban renewal. He said the Montana Constitution prohibited the use of eminent domain for private redevelopment.

Councilmember Jones asked Mr. Krueger if he would mind giving his phone number so people with questions could contact him. Mr. Krueger said he would be happy to talk to anyone about the TIFD. He said his cell phone number was 670-3379 and his e-mail address was [gregk@downtownbillings.com](mailto:gregk@downtownbillings.com).

- DEAN LEININGER, 3560 KING AVENUE EAST, said per a Gazette article, Ms. Mattox said \$4M of the \$8M would be used to widen King Avenue East to five lanes with sidewalks from Parkway to Riverside Drive. He asked why the City would go all the way to Riverside Drive with five lanes of traffic, and asked if the City would take out homeowners' driveways and yards to accommodate the five lanes.

Dave Mumford, Public Works Director, said the five-lane road would only go from South Billings Boulevard to Orchard Lane. He said other than approximately 10 feet in the vicinity of Calhoun Lane and a small section at the intersection of South Billings Boulevard and King Avenue East, the right-of-way currently existed.

- TOM (last name inaudible), 4125 VAUGHAN LANE, said he was the Chairman of the Southwest Task Force. He said at the last meeting held at Ponderosa School, 98 of the 100 people in attendance were in favor of the improvement projects, and two were not.
- CARL HOWARD, 4312 BROCKTON AVENUE, said he was just one-half block from the development and a past chair of the task force in the late 90's. He said at that time they tried to get a TIF district but failed. He said they lost three years of a school sidewalk program for Ponderosa School and a street lighting district because of it. Mr. Howard said he saw the district as a great tool and opportunity to improve the whole area for the residents.
- FLOYD MARTIN, 4645 PHILLIP, said he attended both meetings on the TIFD and was in support of it. He said the Planning Board did a very good job in presenting it to the people. He said there were a lot of areas where people were still on septic tanks, and a TIFD could help put them on city sewer without being taxed with an SID. He said a meeting was held with the task force and a committee was set up of eight people who would represent the TIFD.

Mayor Tussing asked Mr. Martin if he attended the first meeting and if his questions were answered. Mr. Martin said he had attended and felt his questions were answered, and that everyone had done a very good job. He said at the first

meeting there were several people who were skeptical; but at the second meeting there were only two who were against it

- RICHARD DEIS, 4548 MORGAN AVENUE, said he was a member of the South Side Task Force. He said they wanted the area improved, so they could drive down paved streets.
- CHRISTINE LEININGER, 3560 KING AVENUE EAST, said she had concerns regarding the five lane highway and said the Gazette indicated the City would widen King Avenue East from Parkway to Riverside. She said she wanted assurance it was only to Orchard Lane. She said she was concerned about the five lanes and the increased traffic, congestion, safety to children, and the impact to property owners on King Avenue East.

Mayor Tussing advised the City had already annexed the property and approved the zoning, so the development most likely would occur. He said all of the traffic would drive on existing streets, and it would be a nightmare if the City did not improve the infrastructure. Ms. Leininger said she was concerned about future development of the highway going further down King Avenue East and how the City would create five lanes with houses so close to the street. She asked if the City would take property from the owners, and take their driveways and yards. Public Works Director Dave Mumford said if right-of-way was needed, the City would have to acquire it, but there were no current plans to go farther east.

- KEVIN NELSON, 4225 BRUCE AVENUE, said he thought it was just one more failed government program. He said it could be called tax increments, revitalization, or any number of things but it would always be the same. He said all the City was doing was “covering up the stink on the street with the smell of money.” He asked how property became blighted, and said he believed they just kept piling the trash up on the streets and coming up with programs to cover it up with the smell of money. He said there were people who moved in who would not abide to standard social rules, forcing the good people to move out. He said there were people who came to a Council meeting approximately three months ago who were frustrated. He said they went to the Task Force and asked for help because the cops were not doing anything, He said he was not picking on one particular agency, but the cops did not want to go pick up those people; Brent did not want to deal with them; and he did not know what the judges wanted to do. He said it was very evident they would end up in hell and in the correctional facilities. He said the problem was people who sat on the Governor’s Board of Corrections and that 77% of the people in prison were in programs.

Mayor Tussing asked Mr. Nelson if he was relating to Item # 3, and Mr. Nelson said he was because he thought the City should take a more pro-active approach. He said he did not think it was healthy and said the neighborhood was still going to be blighted; no one had addressed the social issues; and they wanted to drop another 400 convicts on the streets right now. He said he felt they were

going to be right back where they were, and that Foursquare was not going to give anyone any money. Mr. Nelson said if the plan was so good, why North Park was not included.

Councilmember Gaghen advised Mr. Nelson that North Park was included in the TIF District that covered North Park, and asked Mr. Nelson what some of his suggestions would be to take care of the “stench of money”, as he called it. Mr. Nelson said he felt it was just another government program, and that the City was just putting more money on top of more money to get rid of the smell.

Councilmember Ruegamer said Mr. Nelson called it a failed government program and asked how he would explain the downtown, as it was a tax increment district that was very successful by replacing a lot of infrastructure and removing a lot of blight. He said the East End TIF District was started by a grass roots effort by the businessmen to improve the area, and it would not fail. Mr. Nelson said it was the commercial businesses that generated the tax base, not residential, and said he guaranteed the commercial businesses would not give up their money. Mr. Nelson suggested making the whole city a tax increment district.

- DAVE BOVEE, 424 LEWIS AVENUE, said if people were worried about how the tax increment or urban renewal money was spent, all they had to do was examine the complete, open and honest disclosure that Council provided to everyone in the City of Billings and then said “Oh wait, you refused to do that, didn’t you?” He said none of the current members of Council or any of their predecessors had disclosed to the public openly and completely where all the money had gone. He said people in economic development would think of employment and significant increases in the amount and quality of employment. Mr. Bovee said “the most people could hope for was when the City started writing the huge checks, and the first one would go to CTA Architects, then a whole bunch to every single board member, past and present of the Billings Downtown Partnership, and every single board member of the Big Sky Economic Development Association, and then took all the money that was left over and started paving streets, and doing gutters, and sewers and things like that, because after all, there was a huge amount of state mandated documentation over the last 32 years about where all the money had been spent to prove how whoever got a hold of the tax money would spend it correctly and legally and honestly for the benefit of the rest of the population and just for the insiders.”

Councilmember Boyer asked Mr. Bovee if he had ever attended a Downtown Billings Partnership Board meeting. Mr. Bovee said he had not. Councilmember Boyer told Mr. Bovee she had explained to him before that the meetings were open to the public. She said every document was on the internet for his observation and asked if he had ever read them. Mr. Bovee said he liked black and white paper documents, the kind of thing that could be taken into Court. Councilmember Boyer said the documents were there and Council had pointed them out to him several times and hoped that he would attend one of the board meetings since he was so eloquently describing them. Mr. Bovee said he had

looked at the list and saw plenty of people that probably had some interest in the way the tax dollars were spent because certainly none of the rest of the people ever saw a penny of it.

Councilmember Ruegamer advised Mr. Bovee that the people he mentioned were not paid and did not receive any benefits. He said they participated out of the "goodness of their hearts". Mr. Bovee said they had financial interests they could benefit from it. Councilmember Ruegamer said everyone in the City of Billings had a financial interest in everything that was done here.

Councilmember Stevens said she had a comment that would be a follow-up to Councilmember Ruegamer's comment and not a comment to Mr. Bovee, so she did not expect a comment back from him. She said what she heard Mr. Bovee imply was that some of the board members were receiving improper payments, and as far as she was concerned, that was slander.

Councilmember Ronquillo invited Mr. Bovee to the Gateway Triangle to see the improvements the City had made to the streets and advised there had been no charge to the residents in the area. Mr. Bovee thanked Councilmember Ronquillo for the invitation, and thanked Council for their time.

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

Councilmember Jones moved for approval of Item #3 with the planned edits and additions as presented by Ms. Mattox, seconded by Councilmember Boyer.

Councilmember Stevens asked if Councilmember Jones' motion included the eminent domain language referenced earlier, and Councilmember Jones said it did not.

Councilmember Stevens made an amended motion to add the language to Section 8 that in no case should eminent domain be used as a tool in the redevelopment of the South Billings Boulevard Urban Renewal District except in the case of infrastructure development, as necessary, seconded by Councilmember Gaghen.

On a voice vote the amended motion passed 8 to 3. Councilmembers Brewster, Veis and Jones voted 'no'.

On a voice vote, the motion was unanimously approved.

**4. CHERRY CREEK ESTATES DEVELOPMENT AGREEMENT compliance approval of Phase I and conditional approval of Phase II. Delayed from 10/22/07. Staff recommends conditional approval. (Action: approval or disapproval of staff recommendation.)** Juliet Spalding, Planner II, advised there were still three outstanding issues with Phase I of the development. She said there were still 58 trees missing, a storm water swell on the north side of the property that needed a sump pump to move water to the west, and the updated Traffic Accessibility Study (TAS) established 27% more peak traffic counts than were originally predicted. Ms. Spalding said Legal Staff had presented four options: Option 1: Conditionally approve the 363 total dwelling units allowed for Phase I and Phase II, with all required improvements for Phase II installed or financially guaranteed prior to the issuance of any home site permits for Phase II; the missing

58 trees must be planted and any required street trees that were dead in the spring must be replaced by May 1, 2008, or financially guaranteed; any damaged or missing portions of the fence line for Phase I should be repaired, or installed; and increased contributions for off-site intersection improvements be based on an updated cost estimate for both Phase I and II. Option 2: Should the owner fail to satisfy the conditions in Option One, the Council would limit the total development in both phases to 300 sites. Option 3: Allow the owner to withdraw the application for Phase II development and complete Phase I conditions before proceeding with Phase II. Option 4: Conditionally approve all 363 dwelling sites with the conditions previously mentioned in Option 1, and amend the 2003 Development Agreement to allow for an increased cash contribution for any off-site improvements to mitigate traffic. Ms. Spalding advised staff was recommending Option One or Option Four for conditional approval and that either option would require staff to return to Council at a future date for approval of the discretionary 63 units.

Councilmember Ruegamer asked Ms. Spalding if the new phase would have different access and egress. Ms. Spalding said it would. Councilmember Ruegamer asked what could be done about the expected 27% increase in traffic. Ms. Spalding said the purpose of the Traffic Accessibility Study (TAS) was specifically for the intersections of Hawthorne and Yellowstone River Road and Bench Boulevard and Hilltop Road and the original TAS indicated how much the developer would need to contribute to the two intersections. Ms. Spaulding advised the initial contribution could be recalculated to take into consideration the increase in traffic during peak hours to make the contributions more realistic.

Councilmember Boyer asked if the TAS was just to determine the amount of money a developer would contribute. Public Works Director, Dave Mumford, said the TAS looked at where traffic was coming from and then made a recommendation of off-site mitigations. He said the TAS would help determine the amount of traffic caused by the development, and the developer would then pay a percentage of the needed improvements. Mr. Mumford said there were already turn lanes installed. He said the turn pocket at the intersection of Yellowstone River Road and Hawthorne had already been completed. Councilmember Brewster asked how much the developer had contributed. Mr. Mumford said he believed it was about \$12,000.00.

Councilmember Stevens asked if the TAS ever looked at on-site mitigations. Mr. Mumford said it did not, and the TAS was based on what the developer planned to develop to determine what impact the plans had on the system. He said the only impacts that were looked at that would be considered on-site would be how many access points there would be and what kind of circulation issues there would be for access that would be concerns to the neighborhood.

Councilmember Clark asked Ms. Spalding if there was any way to enforce the performance in Phase II. Ms. Spalding said enforcement would be through the issuance of the building and zoning permits and said Planning would not issue any permits for the development until they completed all the improvements or financially guaranteed the improvements outlined in the Subdivision Improvements Agreement. Ms. Spaulding said the enforcement would come down through code enforcement and building commercial code enforcement.

Councilmember Boyer said she was very concerned with Development Agreements and felt that the developer should be held accountable for the Development Agreement through benchmarks and dates for deadlines, etc. She said accountability did not appear to be occurring with the Cherry Creek Estates Development. Ms. Spalding said it was not a typical Development Agreement where outlined improvements or agreements between the developer and the City had to be reached prior to moving forward. Councilmember Boyer asked when the Cherry Creek Development Agreement had been written. Ms. Spalding said it was written in 2003.

Councilmember Stevens asked who had written the Agreement, and Ms. Spalding said it had been written by City Legal and City Planning and agreed to and signed by the developer and the City Council at the time. Councilmember Stevens asked when the current, standard Subdivision Improvements Agreement (SIA) came into existence. Ms. Spalding said it was adopted in 2006.

Councilmember Gaghen asked how many lots in Phase I remained undeveloped. Ms. Spalding said she thought about 50.

Assistant City Administrator, Bruce McCandless, said he was working in the Planning Department in 2003 when the Development Agreement was approved. He said the Development Agreement was a standard form the City used with all developers. He advised that Engineering, Inc. was the engineer for the developer at the time, and City Staff, Planning Staff, and Engineering Staff reviewed it with Engineering Inc. and the developer. Mr. McCandless said one distinct difference between the Cherry Creek Estates Development Agreement and a typical development agreement was the Cherry Creek Estates Development Agreement focused exclusively on property improvements.

Councilmember Brewster said the reason there were so many restrictions in the Development Agreement was because the people who lived in the area had experienced a bad relationship with the developer, which created a lack of trust. He said the developer had promised a show place for people to be proud of and if you were to go out to the residents today, they would tell you they were not proud of it. Councilmember Brewster said the reason for the conditional approval of Phase II was to ensure there was compliance with Phase I, and restricting the number of units to be developed was the only way to enforce compliance.

Councilmember Brewster moved to deny approval of Phase I compliance and limit the total development to 300 units, as per the Development Agreement, seconded by Councilmember Stevens. Councilmember Brewster said staff had outlined several items that were not in compliance, and the developer had more than ample time to bring the development into compliance before applying for approval of Phase II. Councilmember Brewster said the developer needed to bring Phase I into compliance before starting Phase II, even with the limited numbers.

Mayor Tussing said he favored proposed Option Four and asked if it would provide Council with "more teeth" than the motion on the floor. Attorney Brooks said it would. Mayor Tussing said he preferred Option 4 and would not support the current motion.

On a voice vote, the motion passed 10 to 1. Mayor Tussing voted 'no'.

**4. 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.)*

There were no speakers.

## **Council Initiatives**

- **Veis:** Asked Councilmembers for a volunteer to take Councilmember Boyer's seat on the PCC committee. He advised the next PCC committee meeting was scheduled for December 5, 2007, at 4:00 p.m. in the Library (4<sup>th</sup> floor).
- **Brewster:** Stated he attended a conference with Marv Jochems, Commissioner Reno, and the Sheriff on interoperability. He said the four of them would like to bring forward a joint resolution between the City and the County as a guideline for policy on interoperability reflecting that they supported using the State system as long as it supported the needs of the City. Councilmember Brewster said he would not be on the Council by the time the issue came forward, so he would like to brief another Councilmember on it. Councilmember Stevens volunteered.
- **Gaghen:** Advised she had received a call concerning snow removal at 13<sup>th</sup> Street West and Grand Avenue. She said the snow had been piled on the sidewalk, making it difficult to walk. City Administrator Volek stated it was a code enforcement issue, and Staff would address the complaint.

**ADJOURN – The meeting was adjourned at 8:40 p.m.**

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

**Visit our Web site at:**  
**<http://ci.billings.mt.us>**

## CALENDAR

### (Council AND Boards & Commissions)

#### DECEMBER:

12/03/2007	Council WORK SESSION	5:30 p.m.	Community Center 360 N. 23 <sup>rd</sup> St
12/04/2007	Community Development Board Zoning Commission Aviation & Transit Commission	3:00 p.m. 4:30 p.m. 5:30 p.m.	4 <sup>th</sup> Floor Library Council Chambers Airport Terminal
12/05/2007	Board of Adjustment	6:00 p.m.	Council Chambers
12/06/2007	EMS Commission Human Relations Commission	7:30 a.m. 12:15 p.m.	Main Fire Station CH Conference Room
12/10/2007	Energy & Conservation Commission  Parking Advisory Board REGULAR Council Meeting	3:00 p.m.  4:00 p.m. 6:30 p.m.	Billings Operations Ctr. 4848 Midland Rd. CH Conference Room Council Chambers
12/11/2007	Council Agenda Setting Meeting Planning Board	5:30 p.m. 6:00 p.m.	CH Conference Room 4 <sup>th</sup> Floor Library
12/12/2007	Parks/Recreation/Cemetery Bd	11:30 a.m.	Community Center 360 N. 23 <sup>rd</sup> St.
12/13/2007	Library Board Committee on Homelessness	NOON 2:00 p.m.	Library 3 <sup>rd</sup> Floor Library
12/17/2007	REGULAR Council Meeting	6:30 p.m.	Council Chambers
12/18/2007	Yellowstone Historic Preservation Board	8:00 a.m.	4 <sup>th</sup> Floor Library
12/20/2007	Public Utilities Board	6:30 p.m.	Public Works-Belknap 2251 Belknap Ave
12/25/2007	CHRISTMAS DAY OBSERVED – CITY OFFICES CLOSED		
12/26/2007	Development Process Advisory Review Board (DPARB) Planning Board Housing Authority Traffic Control Board	1:00 p.m. 6:00 p.m. NOON NOON	CH Conference Room 4 <sup>th</sup> Floor Library 2415 1 <sup>st</sup> Avenue North 4 <sup>th</sup> Floor Library
12/27/2007	Yellowstone County Board of Health		TO BE ANNOUNCED