

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

April 28, 2008

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

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

MINUTES – April 14, 2008, approved as distributed
April 21, 2008 – Special Meeting, approved as distributed

COURTESIES – New Website Announcement – David Watterson

PROCLAMATION - National Prayer Day, May 1, 2008

ADMINISTRATOR REPORTS:

- City Administrator Tina Volek reminded Council of the Agenda Review Meeting scheduled for the following evening at 5:30 p.m. in the City Hall Conference Room.
- Ms. Volek referenced the following agenda items included in the Friday packet or distributed that evening:
 - ✓ Agenda Item #4 -- Minutes from the November 19, 2007, Work Session regarding Community Development Board Funding Priorities.
 - ✓ Agenda Item #5 – Letter from the Yellowstone County Board of Planning.
 - ✓ Agenda Item #7 – Letters and e-mails in support of or against the zone change.
 - ✓ Agenda Items 11a & 11b – Copies of the ordinances.

Ms. Volek advised copies of the above-noted agenda items were located in the Ex-Parte notebook in the back of the room for public view.

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: 1 and 12 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. Bid Awards:

(1) Water System Backup Power – Phase I. (Opened 4/15/08)

Recommend Colstrip Electric, Inc., \$390,268.00, for Schedules I and II; and reject all bids for Schedule III.

(2) Yard Waste Containers for Solid Waste Division. (Opened 4/15/08) Recommend Rehrig Pacific Company, \$51.00 per container.

(3) Airport Improvement Program (AIP) 34 Airport Perimeter Security Fence Project. (Opened 4/15/08) Recommend delay of award until 5/12/08.

B. Change Order #8, SID 1379-Utility and Street Improvements to King Avenue West, Knife River Corporation \$336,315.25.

C. Certified Local Government Program Grant Contract with the State of Montana Historic Preservation Office for historic preservation activities, \$5,500 (4/1/08 – 3/31/09). Local matches: City of Billings - \$1,031.00; Yellowstone County - \$1,000.00; City of Laurel - \$469.00.

D. Confirmation of Police Officer Brian Krivitz.

E. Street Closures:

(1) Chase Hawks Association Burn the Point Parade and Street Dance, August 29, 2008 – Parade: standard downtown parade route; Street Dance: North 22nd Street and 2nd Avenue North to 32nd Street North, and 3rd Avenue North to North 27th Street.

(2) Downtown Billings Association Events:

(a) Alive After 5 – Thursdays, 3 p.m. to 9 p.m., 6/5/08 through 8/21/08, various downtown locations;

(b) Strawberry Festival - 3 a.m. to 7 p.m., 6/14/08; N. 28th between 1st and 3rd Aves. N.; 2nd Ave. N. from alley west of N. 27th to N. 29th; N. 29th from 1st to 2nd Aves. N.;

(c) Farmers Market – Saturdays, 6 a.m. to 1 p.m., 7/19/08 through 10/04/08; N. 28th from 1st to 3rd Aves. N.; 2nd Ave. N. from alley east of N. 27th to N. 29th; N. 29th from 1st to 2nd Aves. N.;

(d) Farmers Market – Wednesdays: 3 p.m. to 9 p.m., 8/6/08 through 8/27/08; N. 28th from 2nd to 3rd Aves. N;

(e) Harvestfest - 6 a.m. to 5 p.m., 10/11/08; N. 28th from 1st to 3rd Aves. N.; 2nd Ave. N from alley east of N. 27th to N. 29th;

(f) Holiday Parade – 7 p.m., 11/28/08; standard downtown parade route;

(g) Christmas Stroll – 4 p.m. to 9:30 p.m., 12/5/08; N. 28th from 1st to 3rd Aves. N.; 2nd Ave. from alley east of N. 27th to N. 29th.

F. Acceptance of donation from First Interstate Bank to help send School Resource Officers to National Conference, \$1,400.00.

G. Acceptance of donation from various donors to the Ballpark Construction Fund - \$23,169.00; and Ballpark Maintenance Fund - \$11,600.00.

H. (a) Acceptance of donation from Pepsi Cola Bottling Company of Billings for upgrades to the scoreboard at Dehler Park, \$200,000.00.

(b) Change Order #1, Upgrades to Dehler Park scoreboard, Sign Products, Inc., \$108,317.00.

I. Acceptance of donation from Billings Mustangs Booster Association for purchase and installation of six cash drawers and two beer dispensing stanchions for concession areas at Dehler Park, \$4,242.00.

J. Resolution #08-18703 authorizing condemnation of property on King Avenue East from South Billings Boulevard to Orchard Lane.

K. Resolution of Intent #08-18704 to construct W.O. 02-08, Milton Lane School Route.

L. Second/Final Reading Ordinance #08-5460 for Zone Change #829: A zone change from Agriculture-Open Space (A-1), a county zoning district, to Planned Development with three underlying zoning districts - Mixed Use (MU); Multi-family Residential (MF-R); and Single Family, Residential Multi-Family (Four-plex) (MF-4) located at 4345 King Avenue West. Lenhardt Property, LP; Lenhardt Farm, LLC and Lenhardt Enterprises, LLC, owners, Engineering, Inc. and Bill Cole agents.

M. Second/Final Reading Ordinance #08-5461 amending nuisance weed regulations.

N. Exempt Amended Plat of Tract 1, Certificate of Survey 1815.

O. Final Plat Approval

- (1) Amended Plat of Stardust Acres Subdivision, Lot 4, Block 1
- (2) Twin Oaks Subdivision

P. Bills and Payroll

- (1) March 28, 2008
- (2) April 4, 2008

(ACTION: approval or disapproval of staff recommendation).

Councilmember Veis separated ITEM J; Councilmember Clark separated ITEM G; and Councilmember Ruegamer separated ITEM H. Councilmember Ronquillo moved

for approval of the Consent Agenda with the exception of ITEMS G, H, and J, seconded by Councilmember McCall. On a voice vote, the motion was unanimously approved.

Councilmember Ronquillo moved for approval of ITEM G, seconded by Councilmember Ruegamer. Councilmember Clark said he would like to thank everyone who had made donations to the City. He noted there were four donations on that evening's consent agenda. Councilmember Clark said he appreciated everyone who stepped forward with donations to the new ballpark. On a voice vote, the motion was unanimously approved.

Councilmember Ronquillo moved for approval of ITEM H, seconded by Councilmember Ruegamer. Councilmember Ruegamer asked Parks Director Mike Whitaker how the Pepsi Cola Bottling Company donation would be used. Mr. Whitaker showed a picture of the ballpark scoreboard that Council had previously approved, and a picture of the upgraded scoreboard. He said the major upgrades were the addition of the ballpark name, a larger and better quality video portion, the addition of a small reader board, and upgraded side supports. Councilmember Ruegamer asked how much the current scoreboard would cost. Mr. Whitaker advised the proposed change order was for \$108,317; and the initial scoreboard was \$189,253. Councilmember Ruegamer confirmed the total cost of the current scoreboard would be \$297,570; and the \$200,000 donation would pay for approximately two-thirds of the new scoreboard. Mr. Whitaker advised the change order was a little over \$100,000. Mayor Tussing commented the City would actually be about \$80,000 ahead. Mr. Whitaker said that was correct; minus interest, because the donation was over a 10-year period. Councilmember Ruegamer said he was still not clear on it, and asked if the \$200,000 over a 10-year period would pay for the scoreboard. Mr. Whitaker advised it would pay for the improvements of the scoreboard; because the scoreboard itself had already been paid for in the amount of \$189,253. Mr. Whitaker said they would be making \$108,253 in improvements, and the additional dollars would go towards the overall project. On a voice vote, the motion was unanimously approved.

Councilmember Ronquillo moved for approval of ITEM J, seconded by Councilmember Ruegamer. Councilmember Veis made a substitute motion to delay ITEM J for 30 days, seconded by Councilmember Stevens. Councilmember Veis advised the original plan did not specify there would be any condemnation in the area. He said the document was not amended until it got it to the public hearing, and public meetings were not held advising people that condemnation was a possibility. Councilmember Veis said he did not feel the City needed to go to condemnation right away.

City Administrator Volek advised she was aware there was concern about one private party with a home in the area; and it was her understanding the City had been in contact with them.

Public Works Director David Mumford advised condemnation requests were not brought forward until they were into a project. He said condemnation was a project level issue and not discussed at the planning level. He advised there were five property owners along King Avenue East, and staff was in negotiations with all of them. He said they were a long way apart on property value with the trailer court; and a third party may be necessary to settle the correct value, which was what eminent domain was all about. Mr. Mumford said they were not arguing with the property owners about the need for the

road, and they may need some assistance on coming to terms with the value of the property needing to be purchased. Mr. Mumford said he felt they would reach agreements in the very near future with the other four property owners. He advised they were on schedule to go to construction no later than July 1st in order to make the deadline to have the road built in time for the stores to open. Mr. Mumford said if they waited 30 days and then needed to go before a judge, they would lose the upcoming construction season and not be able to finish the road this year. Mr. Mumford said he understood Councilmember Veis' statement, and it was never meant to be a "blind-side" to the property owners. He said they only used eminent domain when an equitable value could not be agreed upon. He said he believed they had settled with one of the property owners; and the church and the vacant property were just waiting for revised appraisals, which he believed would be acceptable. He said staff had been working with the daughter of the fourth single-family property owner. He said the family was concerned about the noise and protection of the house, and the value was not the issue. Mr. Mumford said staff was looking at installing a retaining wall with a fence and landscaping so the house would be protected and buffered from the new road, and he hoped to have an agreement with the property owner later in the week. He said the trailer court felt their property was worth approximately three times more than the current appraisal, and court may be the only way to settle the discrepancy.

Councilmember Gaghen said the major concern of some of the Council was for the elderly gentleman and his family who had lived there for many years. She confirmed with Mr. Mumford that the family was in negotiation with the City and not adamantly refusing negotiation. Mr. Mumford said staff has had very good conversations with the daughter, and negotiations were going well. Mr. Mumford advised no one was saying they believed the road was not a necessity. Councilmember Gaghen asked if staff was still willing to redesign approximately 20 feet of the road and resolve the problem in the best way for everyone. Mr. Mumford said they were.

Councilmember Astle asked if the trailer court was one of the two zone changes requested in the area. Mr. Mumford said the two zone changes were the church and the vacant lot. He said both of them were not objecting to the sale and were just waiting for the re-appraisals. Mr. Mumford said he believed the re-appraisals would be right in with what they wanted for their property. Councilmember Astle asked if the trailer court would lose spaces. Mr. Mumford said three trailers would need to be relocated back onto the property. He said the road could be built without moving the trailers, but jersey barriers would be required because the road would only be about three to four feet from the trailers. Mr. Mumford said the trailer court owners were asking about a 15-foot landscaped buffer along their property line in addition to compensation.

Councilmember McCall asked Mr. Mumford if a delay of 30 days would cause incompleteness of the project during this year's construction season. Mr. Mumford said it would be very likely. He said they anticipated going to bid the middle of May; and they needed to have the land acquired by that time. He said if they waited 30 days and then if they needed to get on the court docket to get right of entry, it could be into June or July. He said they were on a very aggressive construction schedule and were already laying waterline and trying to get the utilities done ahead of time.

Mayor Tussing asked Councilmember Veis if his main concern was that the City should have been more specific about notifying the public about the possibility of

condemnation. Councilmember Veis said he did not disagree with any of the things Mr. Mumford said about the practicality. He said when the public meetings were held in the area and the TIF District was discussed, the plans very specifically stated no condemnation would be used in the area. Councilmember Veis advised if they were going to change it, they needed to go through the whole public meeting process to inform the public. He said he would like to see the item delayed for at least 30 days so Mr. Mumford could continue with negotiations and come to a resolution without the use of condemnation.

City Administrator Volek asked Councilmember Veis if he wanted staff to hold a new series of public hearings during the 30 days or if the 30 days was just to allow Mr. Mumford additional time to negotiate. Councilmember Veis said, in that particular case, it would be to allow 30 more days for negotiations without condemnation. He added, even after the 30 days, he would not be inclined to vote for it again.

Councilmember Stevens asked Mr. Mumford how often staff asked for authorization for condemnation of property prior to an impasse. She said she could not recall the situation coming up before. Mr. Mumford said they had asked for it prior to impasse on every road project and sewer project done in the last couple of years. He said they generally continued negotiations right into court. He said it allowed right-of-entry to keep the project moving. Mr. Mumford said they had been given authorization for condemnation on the Grand Avenue project, the Aronson Extension project, and Briarwood.

Councilmember Ronquillo said he agreed with Councilmember Veis. He said he would like Mr. Mumford to attend the Southwest Corridor Task Force meeting to explain why authorization for condemnation was necessary.

Councilmember Ulledalen said he remembered one concern was the condemnation of private property to foster another private sector project. He said it had been clarified that it was not the case, and that the use of condemnation was to acquire rights-of-way.

Councilmember Stevens said in their discussions about the right to condemnation with the TIFD, they were referring to private property and not necessarily the road because they always had the right to do it for roads. She said they would be two separate issues because regardless if there were a TIFD in place with the road project, they would still be doing the condemnation regardless.

Councilmember Veis said he would have no problem with it if they would have said in the TIFD document that condemnation may be used for right-of-way; but it specifically stated the City would not use condemnation.

Mayor Tussing asked Mr. Mumford if they specifically stated condemnation would not be used. Mr. Mumford referred the question to Planning Director Candi Beaudry because it was a Planning document and not a Public Works document that stated it. Ms. Beaudry advised that on the second reading at the first meeting in January, City Council adopted language that said Council would not use condemnation except for the acquisition of rights-of-way and infrastructure, so the plan had been publicly available for almost five months. Mayor Tussing asked if it was publicly stated in literature that was distributed or at a meeting that the City would not use condemnation. Ms. Beaudry said she could not recall. Mayor Tussing asked Councilmember Veis if he recalled any statement. Councilmember Veis said he did not recall exactly and asked why there

needed to be an amendment to it for rights-of-way if it did not explicitly say the City could not use it. Ms. Beaudry said it was a good question, and she could not answer it.

Councilmember Clark said it was to clarify that condemnation would only be used to build water lines, sewer lines, etc. and not to obtain land to further private enterprise. Councilmember Ulledalen said that was exactly what he remembered. Councilmember Gaghen agreed.

Councilmember Veis said he did not disagree that was what they did. He said he was not happy at the time with the change because the language did not go through the whole process or the meetings.

Councilmember Ulledalen asked Councilmember Veis if he felt they should say up front that the City had the right to use condemnation for claiming rights-of-way with every Public Works project, and said he did not see how it would be any different from any other project. Councilmember Veis said he felt the difference was that there was a series of meetings on the TIF District and the language in the TIF District plans said condemnation would not be used. He said he did not have a problem with it on Grand Avenue and the other project Mr. Mumford mentioned because there was always the possibility from the start. Councilmember Veis said he did not have a problem with it as long as people were well aware condemnation was a possibility before the process began.

Mayor Tussing asked City Administrator Volek, Mr. Mumford, and Ms. Beaudry if they had had any communications from anyone stating they were promised there would be no condemnation but now it was being talked about. Mr. Mumford said none of the five property owners they were working with had brought it up as an issue.

Councilmember Stevens said when developing a TIFD, by definition, there was blight. She asked if there was a right to condemn if there was blight under state law. Councilmember Stevens acknowledged City Attorney Brooks' nod. She said she felt when it was stated at the meetings that there would be no condemnation; it was with respect to blighted areas rather than to rights-of-way. She said she did not attend the meetings, so she was not sure if it had been clearly articulated.

City Administrator Volek said even though she was out of town and unable to attend the last Southwest Corridor Task Force Meeting, she knew the matter was discussed because the staking had started to occur.

On a voice vote, the substitute motion to delay action for 30 days failed 9 to 2. Councilmembers Veis and Ronquillo voted 'yes.'

On a voice vote, the original motion was approved 9 to 2. Councilmembers Veis and Ronquillo voted 'no'.

REGULAR AGENDA:

2. PUBLIC HEARING FOR SITE DEVELOPMENT ORDINANCE VARIANCE #OP-08-02: A variance from the Site Development Ordinance, Section 6-1203(j) regarding off-street parking for a new medical facility located at 708 Broadwater Avenue, Broadwater L.L.C., owner; Collaborative Design Architects, agent. Staff recommends approval with conditional deed restrictions. (Action: approval or disapproval of staff recommendation.) Public Works Director David Mumford advised the property was a reconstruction that was short a few parking stalls. He said

staff worked with the property owner on the proposed use and developed an agreement that was fair to both parties. He said staff supported the variance and asked for Council's support so the reconstruction could begin.

Councilmember Astle asked if Mountain Mudd would be moving. Mr. Mumford said he believed so.

The public hearing was opened.

- **Jeff Kanning, Collaborative Design Architects, 2280 Grant Road**, said he was the agent for the Arthritis and Osteoporosis Center. He advised years ago the property was Kon's IGA and most recently had been sitting empty. Mr. Kanning advised he had been working with the City Engineer's Office with regard to the site plan. He said they had exceeded the landscaping requirements and would be closing a couple of approaches off Broadwater Avenue and using approaches on 7th Street West. He said, upon approval, they would continue to plan and design the project. He said they hoped to get started on the interior of the building this winter and complete the project by next spring. Mr. Kanning advised the owners currently had a lease with Mountain Mudd that would expire in June of 2009. He said their anticipated opening of the facility would be in August of 2009, so Mountain Mudd would be off the site by that time. Mr. Kanning said they were proposing 40 code compliant parking spaces and said he felt it would be a good addition to the neighborhood.
- **Dr. Douglas Roane, 2535 Constellation Trail**, said he was one of the owners of the Arthritis and Osteoporosis Center. He said they were a two-physician practice and employed a number of nurses, technicians, and receptionists. Dr. Roane said their scope of practice covered a broad array of internal medicine. He said they were not primary care providers, but took care of other medical needs not limited to rheumatology. Dr. Roane said they offered bone density testing and screening for osteoporosis and provided infusion therapy for various autoimmune diseases. He said they had simply outgrown their current facility. He said they chose the building on Broadwater in lieu of building a new facility on the west end.

Councilmember Gaghen asked for the location of the current facility. Dr. Roane advised they were currently located in the Yellowstone Medical Center at St. Vincent's.

- **Kathy Evans, 1445 Wicks Lane**, said she was the Business Manager for the Arthritis and Osteoporosis Center. Ms. Evans referred to Attachment 'F', the Conditional Deed Restrictions and asked that the next to the last paragraph could be amended to read, *Arthritis & Osteoporosis Center – The primary use of the property is for those medical practices, and related services, that schedule business by appointment*. She said the purpose of the request was to make sure the scope was broadened so that, as time moved on, they could employ or bring in services necessary to take care of their patients. She said they also wanted Council to understand that their business was a by-appointment business. Ms. Evans said they did not have a walk-in business so there would not be increased requirements for parking.

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

Mayor Tussing asked City Attorney Brooks if it would be necessary to delay action for legal counsel to review the requested amendment to the Conditional Deed Restrictions and if the motion to approve needed to include the amendment. Attorney Brooks said a delay was not necessary, and the motion needed to include the amendment.

Councilmember Clark moved for approval of the variance with the amendment to the Conditional Deed Restrictions as requested by the applicant, seconded by Councilmember Ruegamer.

Councilmember Ruegamer said he felt the medical facility was a very good use for the vacant building, and he would support the variance with the deed restrictions.

Councilmember Stevens said that she felt it was a very good example of people trying to use existing buildings, and that the City's parking regulations tended to be a little too strict with regards to required parking spots.

On a voice vote, the motion was unanimously approved.

3. PUBLIC HEARING AND APPROVAL OF AGREEMENT with Real Estate Dynamics, Inc. for King's Green Subdivision, Phase III, for the construction of 14 new homes. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) Community Development Manager Brenda Beckett recommended holding the public hearing that evening but delaying action on the development agreement in order for the developer, Real Estate Dynamics, Inc., to have a chance to review the agreement in more detail.

Councilmember Stevens asked if it was appropriate to hold the public hearing if the agreement could change.

City Administrator Volek advised the public hearing had been advertised for that evening. She said the public hearing could be opened that evening and continued until May 12, 2008.

The public hearing was opened. There were no speakers.

Councilmember Astle moved for approval of Agenda Item 3. The motion died for lack of a second.

Councilmember Veis moved to continue the public hearing and action on the agreement until May 12, 2008, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

4. PUBLIC HEARING FOR COMMUNITY DEVELOPMENT BLOCK GRANT AND HOME INVESTMENT PARTNERSHIP PROGRAMS AND THE FY2008-2009 ANNUAL ACTION PLAN. Staff recommends delaying final action until May 12, 2008. (Action: approval or disapproval of staff recommendation.) Community Development Manager Brenda Beckett advised the HOME and CDBG dollars were used primarily to assist with economic opportunities for lower income individuals, revitalize older neighborhoods, and promote affordable housing activities. She said they were in the fourth year of a 5-year consolidated plan for activities with both Community Development Block Grant and HOME dollars. Ms. Beckett gave a PowerPoint presentation that summarized information presented to Council at a previous Work

Session and information included in the Council packets regarding areas of low income, budget, consolidated plan strategies and recommendations, and total funding awards and history of past and current applicants.

Councilmember Stevens asked for an explanation on the Lake Elmo Infrastructure. Ms. Beckett advised the Housing Authority owned almost 14 acres of land along Lake Elmo Road north of Uinta. She said it would be for a multi-family project.

Councilmember Stevens asked Ms. Beckett if she saw any of the groups duplicating services. Ms. Beckett said she did not. She said all the board members visit the service providers; and if there appeared to be duplication, the board members would ask very specifically for differences.

Councilmember Ruegamer asked where the applicants received funding other than from the City. Ms. Beckett advised other funding sources were typically outlined in the applications and included in the audits requested by the City. She said the information was on file in the Community Development office.

Ms. Beckett referenced Council's question from last year on whether the City should fund fewer projects with larger amounts or more projects with smaller amounts. She advised the board went through a 6-month review process last year and looked specifically at national allocation trends for similar cities for any information to help make decisions on the best process. Ms. Beckett said, nationally, public services were funded at 11% of the total Community Block Grant money. She said homelessness and AIDS projects, senior services, youth services, employment training, and childcare services and health care were other categories. She said youth services, elderly services, and childcare services were the top categories, with a slight decrease in youth services. Ms. Beckett said another previous question was how much money was actually allocated to Public Services. Ms. Beckett said it had been consistent between \$133,000 to \$158,000; but this year it would only be \$118,000.

Ms. Beckett said the Public Services funded in Billings were for children's services, housing, elderly, and disabled. She said last year the board discussed choosing one area of service every year. She said the area this year would be disabled services and next year it would be elder care services.

Ms. Beckett advised the recommendation to Council last year was to leave the process unchanged. She said the applicants were advised to leverage other larger amounts of funding first, and that CDBG should be the last place they came. She said the applicants were told to have all the pieces in place before coming to CDBG for the final piece of project funding.

Councilmember McCall asked if the category for Disabled under Public Services included services for assisted living programs for the mentally ill. Ms. Beckett said it did. She said CDBG was a popular source of funding for public service agencies because some administrative costs could be funded.

Councilmember Stevens asked about financial accountability and what kind of controls were in place to make sure the funds were used properly. Ms. Beckett explained an audit review was part of the funding process and an external audit was required at the end of the grant period. She said unacceptable audit findings would be addressed prior to an award, if any, of funds.

Councilmember Ronquillo stated at the last meeting he attended, funds were allocated and as he left the meeting, he found out there were leftover funds so the committee was going to redistribute them. He said he later got an email that the committee was short of funds and he asked how that would be resolved. Ms. Beckett said due to an error with the presentation of the calculations, \$12,000 was over committed. The recommendation was to decrease the amounts by a certain percentage to be under the public services cap. She said an alternative recommendation could be presented after the Community Development Board's May 6 meeting.

Councilmember Clark asked if the groups were all still functional. Ms. Beckett responded that most of them were. Councilmember Gaghen advised many of them received community development funds at the beginning and because of shortfalls and groups with less capacity for fundraising on their own; there was an effort on the part of the Community Development Board to encourage grant writing and independent fund raising. She said several groups were successful in that way and then weaned themselves from CDBG funds. Ms. Beckett added that the amount of paperwork and accountability didn't always make it worthwhile for groups that received small grants.

Mayor Tussing asked if there was a public hearing May 12 too. Ms. Beckett said the public hearing was that night and action was on May 12.

The public hearing was opened.

- **Keith Burrowes, 3120 Solar Blvd**, said he served on the Board of Directors for Big Sky Senior Services. He said that was a combination of two other senior organizations that agreed to start a new one to lessen administrative expenses and enable them to effectively deliver services to elderly citizens. He said those services were delivered to needy elderly without regard for their ability to help pay under three programs – the Senior Helping Hands Program; Prevention of Elder Abuse, and The Friends program. He thanked the volunteers and staff of the Community Development Board for their effort and the often-difficult services they provided. He said the Board and staff of Big Sky Senior Services felt it had been blessed to receive CD funds in the past and pledged it would continue with its best efforts to provide a better life to the elderly citizens if funding was continued.
- **Robin Grinsteiner, 1306 Lewis Avenue**, said she also served on the Board of Big Sky Senior Services. She said the CDBG money was well used. She said the Senior Helping Hands helped the lowest of the lowest income group of senior adults with homemaking and nursing services to help keep them in their own home. She said many of the people didn't have the resources to hire privately funded programs. She added the Prevention of Elder Abuse was active in the prevention of elder abuse and served as a management payee program that helped people of a variety of ages, not just seniors. She said she supported the recommendations of the CDBG Board as presented. She said the funds helped, as small organizations that wanted to help people, did it on an austere budget and with a small staff so all support was appreciated.
- **Duane Loken, CDBG Board Chairman**, said he would address some of the questions that came up earlier. He said duplication was a paramount issue as site visits were conducted and the Board addressed it as much as possible. He

said he personally visited every applicant over his five years on the Board. He said sometimes it appeared that Big Sky Senior Services and Yellowstone County Council on Aging had duplicate services, but they were different and specific questions were asked. He said the question always arose during the allocation process of giving larger amounts to a few or to continue the process of smaller amounts to a greater number of organizations. He said that subject was visited last year and was directed to all the recipients. The feedback indicated a slight majority preferred spreading the wealth further. He said the Board tried to reach out to as many people as possible and welcomed input from the Council. He said a work session to address that would be helpful and the board would welcome that.

Councilmember McCall asked how recipients were talked with regarding the allocation issue. Mr. Loken said a letter that asked that specific question was sent to all recipients.

- **Lucy Brown, Housing Authority of Billings**, distributed handouts of preliminary concepts and thanked the Community Development Board for its consideration of the Lake Elmo housing project. She said the concepts on the handout would be taken to the Heights Taskforce for review and input. She thanked the Council for its approval of \$62,000 for the design work for the project. She noted the project was on 13.77 acres that the Housing Authority had owned for about 5 years between Uinta and Heather Heights, and was intended to offer affordable housing to the community. She said Section 8 folks had a difficult time finding rentals in the community because the market was tight. She noted most of the people served in that housing community would be below 50% of area median income and may be working two jobs to make ends meet. She said rents in that development would be affordable with minimal increases each year, with the hope to keep the units in the subdivision for low income in perpetuity because the Housing Authority's mission was to provide low-income housing for the community, so it wouldn't be sold. She encouraged support of the program which would be phased in four to five years. She noted the Housing Authority was also considering selling to other non-profits or another developer for one of the phases.
- **Patty Webster, 4432 Vaughn Lane** said she was present to thank the Community Development Board for its support of an application for Section 8 deposit assistance. She said the Housing Authority served over 1500 families in Billings, and 75% of those were at 30% or below median income levels and the remaining 25% were between 30-50% and also needed help. She noted deposit and affordable housing assistance were greatly needed and met the consolidated plan strategies very well.
- **Joe White, 926 N. 30th Street**, said he wasn't familiar with the programs and didn't endorse them specifically. He said treatment of the elderly was necessary.

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

Councilmember Ulledalen moved for approval of item #4 to delay final action to May 12, seconded by Councilmember Stevens. On a voice vote, the motion was unanimously approved.

5. PUBLIC HEARING AND FIRST READING ORDINANCE repealing Ordinance 07-5441 and creating the South Billings Boulevard Urban Renewal District. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) City Administrator Volek said staff didn't have a presentation but was available to answer questions. She noted Ms. Beaudry asked her to point out that in the Urban Renewal Plan for the South Billings Boulevard Urban Renewal Area adopted on second reading, there was the following phrase, '*Eminent Domain. In no case shall eminent domain be used as a tool in the redevelopment of the South Billings Boulevard Urban Renewal District except as a last resort in the case of needed public infrastructure improvements and/or rights of way.*'

The public hearing was opened.

- **Dave Bovee, 424 Lewis Avenue**, said everyone present knew it would be passed because the Council always did that and it would do the City's side a lot of good for 32 years. He wanted to point out to everyone that the last time the City presented any facts on the Downtown Urban Renewal District was 14 months ago. He said the Urban Renewal District was a failure. He said 14 months ago, the Director of the Downtown Billings Partnership pointed out that 81 of 211 properties had failed so badly in the intent of the urban renewal district that they didn't even match inflation in their taxable value. He said to keep in mind that the Department of Revenue did a reappraisal stepped in over five years, beginning in 2001, so that would have had all that gain.
- **Kevin Nelson, 4235 Bruce Avenue**, said a letter was in front of Council that requested that he and his wife's property be removed from the Urban Renewal District because it failed to meet the statutory requirements for blight. He noted that the second page was the Department of Revenue's letter to the City of Billings and the first line was the statement of blight. He said there were documents the City didn't provide to the Department of Revenue and when they were asked for, the City withdrew it because it couldn't provide any of those 8 requests. He referenced Statute 7-15-4202 and said he and his wife firmly believed they didn't constitute a serious and growing menace injurious to the public's health, safety, morals and welfare. He said they didn't spread disease, crime, depreciate property values; were not an economic and social liability. He said the State said it needed to prevent and eliminate such areas as a matter of State policy because the City determined them to be local centers of disease, promoted juvenile delinquency, were conducive to fires, difficult to police and to provide police protection for, contributed little to the tax income of the state and its municipalities, consumed excess portions of its revenues because of extra services required for police, fire, accidents, hospitalization and other forms of public protection and facilities. He said his research showed that every other state went to a third party analysis to make a determination that properties included met the definition of blight. He said the City went to third party for water

rates, for condemnation and were always going to need a third party to alleviate the liability if they wanted to place them into a blighted area. He said every other state relied on a third party analysis because he didn't believe any Councilmembers were experts in blight and certainly none had visited one property there to make that determination.

- **Christina Leininger, 3560 King Avenue East**, said she wanted to clarify the condemnation that was in the Urban Renewal Development. She said Ms. Volek said it was to be used for infrastructure. She said the people in the Urban Renewal District didn't understand that condemnation could be used so in the future the City should make that clear to people in those situations. She thanked Council for trying to stand up for them. She noted she wasn't against development because she realized it was a part of a vital community, but hoped Councilmembers protected and balanced the interest of large corporations versus small property owners. She said it was important to protect small property owners who, in this case, lost their land. She asked if Cabela's gave any of its land to the City for the road. She said she knew revenue was generated from the TIF and heard it was about \$10 million over 10 years, which wasn't much money so she wanted to know how much would go toward widening King Avenue East and how much would be left over for the people in the community that were under the impression that the TIF was going to improve their neighborhood. She said the majority of the money was probably used for the widening and the new overpass for King Avenue East.

City Administrator Volek advised she wanted to address issues that were brought up. She said the developer of the parcel, Foursquare Properties, provided an easement across its property for a trail. Councilmember Ruegamer asked if there was a cost to the City for that and Ms. Volek responded that Foursquare gave the easement to the City. She stated the City did not dispute Mr. Nelson's letter from the Department of Revenue, but it reflected the new requirements the Department of Revenue considered imposing upon tax increment districts. She said the assessor codes for all personal property, as noted in the letter, were not within City control and that was disputed through a letter in a public hearing last week. She noted the City's objection was its ability to provide that and the Department's ability to require it because it was something the City didn't have access to. She said the City spoke against the Department of Revenue's capacity to impose some of the new rules at that public hearing and fact-finding prior to imposition of the rules.

- **Michelle Johnson, 2705 Blue Creek Road**, said she had three things to address. She said she appreciated Councilmembers Veis and Ronquillo for asking for a 30 day delay of the condemnation. She said property owners were in shock and didn't have enough time to do things and she thought that was rude. She said Ms. Volek said the TIF was talked about at the last task force meeting and she and Councilmember Ronquillo were there and the City didn't show up like it said it would at the previous month's meeting. She said the whole process should be gone through again because she thought people were misled and something the magnitude as eminent domain, even if it was for something that

was usually done, should have a public hearing so people could understand and voice their opinions before the decision was made. She said if Council made the decisions on its own, there was no sense in having a public process.

Mayor Tussing said he wanted to point out that the public process was what was happening right then. He said she commented on the very thing that she said she hadn't had an opportunity to comment on.

Councilmember Ronquillo said there was a misunderstanding because the engineers were to attend the April meeting, and the City Administrator came in March and the engineers were out of town. He noted the engineers indicated they couldn't attend in April but planned to attend the May meeting to explain some of the situations they've come up against. Ms. Johnson said that would be after the item was passed and she found that awful convenient; things like that were what she took issue with.

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

Councilmember McCall moved for approval of item #5, repealing Ordinance 07-5441 and creating the South Billings Boulevard Urban Renewal District, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.

6. PUBLIC HEARING AND FIRST READING ORDINANCE expanding the boundaries of Ward III to include recently annexed property in Annexation #08-01: a 114-acre property located north of King Avenue West between 48th Street West and Shiloh Road and described as Tracts 1A-5A, C/S 2063. Lenhardt Property, LP; Lenhardt Farm, LLC and Lenhardt Enterprises, LLC, owners and petitioners. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) City Administrator Volek advised 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 Ruegamer moved for approval of item #6, seconded by Councilmember Veis. On a voice vote, the motion was unanimously approved.

7. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #836: A zone change from Residential 8000 to Residential Professional on Lots 4, 5, and 6, Block 19, of Lampman Subdivision, generally located on the northeast corner of South 32nd Street West and Rosebud Drive. Lais Development, Inc., applicant and agent. Zoning Commission recommends approval. (Action: approval or disapproval of Zoning Commission recommendation.) Mr. Green advised the zone change was for property on the northeast corner of the intersection of Rosebud and South 32nd Street West. He presented a PowerPoint display of the area. He noted that the current R8000 zoning allowed construction of duplexes on the lot with a maximum height of 34 feet. He advised the proposed Residential Professional zoning allowed office buildings, some neighborhood services such as salons, day spas, dance studios and single family residences with a maximum height of 34 feet. He noted multiplexes were not allowed in the RP zoning.

Mr. Green reported that neighborhood meetings were held December, 2007, and March, 2008, and neighboring property owners attended each meeting. He advised the

applicant attended the Zoning Commission meeting and explained his intent to build a one-story office building for a chiropractic practice on the site. He noted that two neighboring property owners attended the Zoning Commission meeting and questioned the proposal and the applicant addressed those concerns at that time. Mr. Green advised the Zoning Commission forwarded a recommendation for approval of the zone change based on the following 12 criteria for zone changes:

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

The proposed zone change is generally 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 5)*

This property is in an area of Billings that is a mix of uses near a major arterial intersection, King Avenue West and South 32nd Street West. RP zoning will allow for professional office buildings or single family only. This zoning will provide a buffer between the heavy commercial use farther to the south and the residential to the north.

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

RP zoning will provide a buffer between the existing commercial uses to the south and the residential uses north of this property. This area of Billings currently has a mix of uses.

- *Contiguous development focused in and around existing population centers separated by open space. (Land Use Element Goal, page 6)*

This property is vacant land between single family dwellings to the north and condominiums and commercial uses to the south. Zoning requires specific building setbacks and landscaping to provide separation. This zone change and proposed building by the applicant could be viewed as infill development.

- *More housing and business choices with each neighborhood. (Land Use Element Goal, page 6)*

The proposed zoning will permit the development of professional offices or single family housing which will provide more choices within the surrounding neighborhood for a more mixed-use neighborhood.

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

- *Affordable housing for all income levels dispersed throughout the City and County. (Land Use Element Goal, page 6)*

The proposed zone change and what the applicant is proposing for the site will not provide housing choices.

- *Reduced traffic congestion in Billings. (Transportation Goal, page 10)*

The proposed zone change will increase traffic in an area of Billings that is already experiencing high volumes of traffic.

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

The new zoning will not decrease the congestion on the streets of this neighborhood. This area of Billings is experiencing high volumes of traffic. The current road construction on King Avenue West is causing more traffic to travel through the residential neighborhood that would normally travel on King Avenue West and South 32nd Street West. This is a temporary situation.

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

With the proposed zoning, there are requirements that help to insure safety from fire, panic and other dangers. Also, when the developer submits a proposed site plan, the Engineering Division, Planning Division and the Fire Department review what the developer is proposing to build and have input to insure that it is designed to meet safety requirements.

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

The proposed zoning will permit professional office or single family residential uses only. The Unified Zoning Regulations specify minimum setbacks, lot coverage requirements and height restrictions. RP zoning is restricted to requirements very similar to residential zoning so it will better fit into residential neighborhoods.

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

The proposed zoning provides for sufficient setbacks to allow for adequate separation between structures and adequate light and air.

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

The proposed zoning, as well as all zoning districts, contains limitations on the maximum percentage of the lot area that can be covered with structures. This requirement will help prevent overcrowding of land.

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

The proposed zoning is for RP uses which will not cause a concentration of population.

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

Transportation: This area of Billings currently has high volumes of traffic on the streets. South 32nd Street West is a principle arterial street and so is King Avenue West. The intersection of these two principle arterial streets is two blocks south of this property. Any development on this property will increase traffic in the area.

Water and Sewer: The City will provide water and sewer to the entire property through existing lines.

Schools and Parks: The proposed zoning will have no effect on the school system or parks unless it is developed as single family residential.

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

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

The proposed zoning will allow smaller office buildings to be built on the lots with required setbacks, separations and heights. These restrictions will help ensure that the buildings blend in with surrounding residential structures.

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. It is on a Principle Arterial street that currently handles high volumes of traffic where a single family residence may not be appropriate or desirable. The RP zoning will provide a service to the surrounding residential neighborhood.

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

The new zoning will conserve the value of the surrounding buildings because the use restrictions do not allow intense commercial uses on the site.

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

The proposed zoning will encourage office space on a busy street where a single family residence may not be appropriate or desirable.

Mr. Green said the Zoning Commission felt that was the best and highest use for the property. He noted that a valid protest was received. He pointed to a display of the

subject property and the units in a condominium development that signed the valid protest to the zone change.

Councilmember Astle asked when the two people spoke in opposition. Mr. Green responded it was at the Zoning Commission meeting. He noted that multiple people were at the neighborhood meetings and multiple questions and answers were exchanged, but only two people attended the Zoning Commission meeting on April 1, 2008.

Councilmember McCall asked Mr. Green to outline the access to the business because letters sent to Councilmembers mentioned concerns that the location of the business would result in their homes being more or less invaded by people who took shortcuts. Mr. Green said the business had legal access to 32nd Street West and could have access along Rosebud Drive. He said the Planning Department had not seen a site plan so the applicant would have to answer that question. Councilmember Ruegamer asked if access on 32nd Street was allowed and Mr. Green responded that it could be because there wasn't a 'no access' strip along that street. Councilmember Stevens stated that she drove by the townhouse association that day and wondered if the internal streets were private streets. Mr. Green responded they were.

Mayor Tussing asked City Attorney Brooks if a simple majority vote was required since there was a valid protest. Mr. Brooks responded that by State Statute a two-thirds vote of those present and voting would be required, which meant 8 votes were needed to approve the item.

Mayor Tussing called a brief recess at 8:27 p.m. The meeting reconvened at 8:37 p.m.

The public hearing was opened.

- **Dave Hawkins, 3648 Vickery Drive**, said he and his wife owned the subject property on Rosebud Drive. He explained his reason for the zone change request.

Councilmember Ruegamer said one complaint he heard from residents in the area was that they moved into a residential area and were told it would stay residential. Mr. Hawkins responded the people moved into a commercial area to begin with. Councilmember Ruegamer disagreed that Rosebud was commercial. Councilmember Ruegamer said he looked at the area and felt it encroached on a residential area. He said if the building was proposed on 32nd Street, he could see that, but it was going down Rosebud into a residential area. He said he didn't see anything commercial in the area, so what Mr. Hawkins said was that Rosebud would become a main thoroughfare. Mr. Hawkins stated he had no intention of that happening to Rosebud. He said the zone request was for the three lots because in order to build the office building, the parking lot and landscaping, most of all three lots would be needed. He said his intent was to continue with residential, put a fence on the east side of the three lots and continue residential down the rest of the street. He said the neighborhood concern was that if it wasn't opposed now, a complex of office buildings would be built all the way down the street and that wasn't ever his intent. He said office buildings there weren't

conducive because the businesses wouldn't have exposure they would see on 32nd Street West. He said his plan was to fill in with residential the rest of the way down the street and if he requested a zone change to go further into the residential neighborhood, there would be more opposition and he wouldn't disagree with it. He said he wouldn't try to do that because more people would show up to say they were going to be totally surrounded by commercial because there were vacant community commercial lots directly east of the condos. He said the two lots were sold to Valley Federal Credit Union for its expansion and one lot was currently for sale. He said Liberty Motors expressed interest in that lot and if that happened, the condos would have commercial development on the east side and he knew the condo owner's concern voiced many times over was that it didn't want to be an island in the middle of commercial development. He said again it was his intent to continue residential units further east from that but that much property was needed to build an office building on 32nd Street West. He noted the building site would back up to the R9600 and by City ordinance, a fence would be in place. He said he built two office buildings on Grand Avenue that backed up to a patio home association he also built and developed and those owners initially opposed it even though the office building was on Grand Avenue. He said now he received comments from those people that they were happy the buildings were there.

Councilmember Astle said he received numerous letters and phone calls about the issue. He asked Mr. Hawkins why he hadn't developed the other lots since he was a developer. Mr. Hawkins said he had various subdivisions around town. He said since he purchased that property, he developed property north of Grand, east of Zimmerman Trail, Britannia Subdivision, and other locations. He advised that he also developed 200+ patio homes and condos, and Greenfield Subdivision, between 35th and 36th Street West between Broadwater and Terry, where homes were still for sale because the market changed. He offered to provide other examples of development and indicated he was busy and hadn't gotten to that property yet but had built one house at the east end of the street. He noted they had re-platted some lots at the east end and wanted to build houses there but didn't because the market changed. Mr. Astle asked if most of his developments were patio homes or association-type of homes as opposed to single family dwellings. Mr. Hawkins responded that he developed both.

Councilmember Veis said a number of letters were received on the zone change and those were available in the back of the room in the Ex-Parte book as mentioned earlier by City Administrator Volek. He said he told people that communication would be available to anyone who wanted to see it. Councilmember Ulledalen said he wanted to comment on the Britannia complex at 3307 Grand Avenue. He said he received calls from people in that area who had issues with employees from those businesses that parked on Golden Boulevard. Mr. Hawkins said they were asked to widen the lower portion of that street to provide parking and still had the correct number of spaces for those two buildings. He noted the employees parked on the street to free up spaces for patients.

Councilmember Pitman asked who owned the property on Rosebud prior to Mr. Hawkins' purchase. Mr. Hawkins couldn't remember the person's name, but thought it was Benjamin. Councilmember Pitman said his concern was when realtors made promises for property they didn't own, it created problems. Mr. Hawkins said the person

he bought the land from was a private individual who lived at 30th and Rosebud and he wasn't a realtor.

- **Scott Mullen, 3106 Myrtle Drive**, said he wanted to reiterate if a realtor stated a property was zoned residential, it was zoned residential and even though that wasn't saying houses would be built, if it was zoned residential, it was evident that houses would be put in there. He said in fairness to Mr. Hawkins and his wife, he was opposed to the development at the first public meeting and the second meeting cleared up a lot of his concerns. He said after that second meeting, he and another gentleman met with Mr. Hawkins and his wife, Barb, regarding the project and their intentions. He advised that other residents still showed concern and his major concern was the building tenant, the chiropractor Dr. Williams who stated he needed to double his size; he currently had 4 doctors in his building. Mr. Mullen said he called other chiropractors and found out an appointment normally lasted 15 minutes, so that would mean 36 appointments per day per doctor, which totaled 176 appointments for the doctors only. He said there were also two massage therapists in the practice for 32 appointments each day. He said there was talk of the addition of a stylist or beauty shop which could add another 27 appointments, for a total of about 213 vehicles coming and going each day on those three residential lots and that number didn't even include the staff for those businesses. He said he'd like each and every Councilmember to think about where they lived and having an office building immediately behind or across the street from their house and the impact it would have on their property value or lifestyle.
- **Jack Payne, 3177 Henesta**, said most Councilmembers received letters from him regarding the issue. He said in answer to Councilmember Pitman's question, not all those houses were built at one time but were built around 1977-2004, and some of the later buyers had the same comments. He said he opposed the zone change because he felt the proposed complex was spot zoning. He said the traffic on 32nd Street West was a problem and he felt traffic would go through the private driveways into the business access. He said no business from King Avenue south to Monad had access from 32nd Street so he didn't think it would happen for that proposed office building either. Mr. Payne pointed out that there was land already zoned community commercial and Mr. Hawkins sold that property within the last few years. He presented a petition signed by 17 of the 24 units, which accounted for 23, or 71% of the residents. He said he was president of the association and wasn't speaking on behalf of all residents but on behalf of 71% of them.

Councilmember Ruegamer said Mr. Payne called him twice within the last 10 days to discuss the zone change. He noted Mr. Payne said he would bring people with him that may not want to speak but opposed the issue. Councilmember Ruegamer suggested asking for a show of hands of those people. Mayor Tussing said the Council was happy to recognize individuals who didn't care to reiterate the same thing but wanted to indicate agreement to Mr. Payne's statements and opposed the issue, and asked those people to stand. Mayor Tussing noted it was quite a number of individuals

and announced they were still welcome to testify if they wanted to, but the Council saw there were a significant number of individuals who opposed the zone change. Mr. Payne counted 19 people standing.

Councilmember Astle reported Mr. Payne called him on more than one occasion as well and he also received a letter from him. He asked if a copy of the protest was available. Mr. Payne responded he learned from Ms. Cromwell that they did have a valid protest he and could provide a copy of the signed petition but not the protest.

Mayor Tussing informed Mr. Hawkins he had the same opportunity to recognize individuals who didn't want to testify in favor of the zone change but supported it. Those individuals were asked to stand.

- **Mike Wiser 3015 Rosebud**, said he was one of three houses on Rosebud and had no problem with Mr. Hawkins' proposal because he lived in mixed-use places before, but he shared the concern about traffic on Rosebud. He said the 30th and Rosebud intersection was dangerous without a stop sign and there was heavy usage to avoid the King and 32nd Street intersection. He said police officers told him they were powerless. He said he was told there was a limit on the number of stop signs and asked how expensive a stop sign was versus a human life.

Councilmember Stevens advised she drove Rosebud earlier that day and agreed that the traffic in the area was unsafe. Mr. Wiser said kids or pets were in danger in that area. Councilmember Veis explained that stop signs were controlled by warrants based on traffic counts at those intersections. He said if Mr. Wiser thought it was necessary, he should visit with the Public Works Department to get a clear indication of the counts and if that intersection met them. Mayor Tussing asked who Mr. Wiser spoke with at the police department. Mr. Wiser responded it was an officer that was at his residence to verify a VIN on his vehicle, and while he was there, someone blew by the intersection. Mayor Tussing asked why the police officer indicated he or the department was powerless. Mr. Wiser responded he couldn't answer that. Mayor Tussing said he disagreed with that statement because the police department had the authority to enforce traffic violations.

- **Jennifer Morrison, 3179 Henesta Drive**, said Councilmember Stevens asked about the private drives at the townhouses. She said they were marked private and there was constant traffic through there and the drivers didn't go slowly. She said the added business would increase that. She said Mr. Hawkins referred to the chiropractor who wanted to move into the building and rumor was that Dr. Williams found space elsewhere and wouldn't take that space. She said she was told that by one of his patients. She said Mr. Hawkins said his intent was to build residential on the other lots, however, when he bought the property, his intention was to build residential, but intent could change. She said if that became commercial or residential/commercial, what was to say that the rest of those lots couldn't become commercial also. She said many people lived on 32nd Street; her backyard was against 32nd, and he said he couldn't sell residential property

on that corner. She said the people who lived along 32nd didn't live there because it was quiet, but because it was convenient.

- **Christopher Rowan, 2704 Cook**, said he was a real estate agent and lived in a residence that backed up to commercial property and viewed it as a good neighbor because they were gone at 5pm and took care of their business. He said a business kept a nice storefront at all times to attract business, but residential people could paint their house an unsightly color and not take good care of the appearance. He said he took that into consideration when he bought his house. He said a real estate agent was not allowed to indicate what property development could occur in the future nor could an agent promise that a property would or would not change.

Councilmember Astle asked Mr. Rowan what commercial property was behind him. Mr. Rowan responded he lived behind an accountant's office and a grocery distribution office behind Target on St. Johns Avenue. He noted his alley was shared for garbage facilities and the building was kept very nice. Councilmember Astle asked if the business was there when he purchased his house. Mr. Rowan said it was and he wouldn't have a problem saying it was good to have the commercial neighbors when he sold his home. Councilmember Astle asked Mr. Rowan if he sold property for Mr. Hawkins. Mr. Rowan responded that he had.

- **Trish Brooks, 3295 Granger**, said she lived on the other side of 32nd Street West in the Wheatstone Townhouses and noticed a significant traffic increase but felt it was due to the opening of Zimmerman Trail. She noted that once King Avenue West opened again, it would be worse. She said she would rather see an office building in that area. She said the population density was overwhelming in the area, especially since the apartment complex went in. She said with an office building, everyone would leave at 5 or 6pm and it would cut down on the evening traffic. She said duplexes would end up as rentals which would create more problems because renters were typically the younger population which meant parties and a lot of noise, so she preferred the office building. She said she was sorry about the private driveways and drove past it that day and saw they were marked. She said people would probably continue to drive through the private drives whether the office building was built or not.
- **Louella Linger, 3116 Henesta Drive**, said she sent letters to Councilmembers and everything she said was what she believed. She said she asked her builder why more condos weren't built on that piece of ground and he responded it was only zoned for residential, so she wanted to clear up that fact.
- **Gwen Hoffman 32nd & Rosebud**, advised she lived at corner of 32nd Street and Rosebud and the business would be outside her front door. She said the access would likely be on Rosebud instead of 32nd Street so it would come out of there and right straight across to the private drive. She said that would be a nightmare because little kids played on that street and there would be no control. She said her house was the last one built in that townhouse association in 2003 or 2004 and Mr. Hawkins owned that property across from there then. She said she was told it was residential and would always be residential.

- **Barbara Hawkins**, said she and her husband owned Lais Development and the property proposed for the zone change. She said in answer to the last person's statement, she didn't know who told people the property would always remain residential, but nobody ever asked her or her husband. She said the property was undeveloped when they bought it, the street was unfinished, water, sewer, curb and gutter weren't there and it was for sale so anyone could have purchased it and they chose to. She said they purchased the land, went in with the SID, finished the street, hooked up water and sewer to all the lots, and then she received a phone call from Jack Payne who wanted to buy a lot to build a house and they told him they didn't sell lots because they were in the business to build houses. She said Mr. Payne called her three times to buy a lot to build his own house and she turned him down all three times. She said all she wanted was to build an office building, not hurt the value of property because she and her husband owned the property to the east of it and it would be stupid of them to put something there that would hurt the value of rest of that property. She said they built very nice office buildings, had a nice complex at 33rd Street West and Grand, and that was similar to what they wanted to do. She said she had not heard that Dr. Williams wasn't moving into their building. She said he was not the only tenant they talked with about an office at that location. She said she considered putting her real estate office there and guaranteed she didn't have 200 cars in and out every day. She said if she had an office building there and other people they've talked with had an office in that building, there would be a lot of people in their offices doing their work but traffic wouldn't be in and out. She said they would rather have the access onto 32nd Street than Rosebud. She said they wanted the access on 32nd so it didn't affect the people who lived on Rosebud. She said she didn't know where Mr. Payne came up with the 71% number because she spoke with several people from the association and the past president told her yesterday that it was about 50/50 every time they spoke with someone in the association.

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

Councilmember Veis moved for approval of zone change #836, seconded by Councilmember Stevens.

Councilmember Veis referred to the 12 criteria in the staff memo, specifically the finding in #1 regarding new developments that were sensitive to and compatible with the character of adjacent neighborhoods. He said that finding indicated the RP zoning provided a buffer between the existing commercial uses to the south and the residences to the north. He pointed out that the townhouses to the south would be in a residential zone, not the existing commercial uses as stated in the memo. Mr. Green said it also provided a buffer between the R9600, R6000 which was the community commercial to the south. Councilmember Veis asked how a zone change to residential professional provided a buffer zone. Mr. Green responded the residential professional allowed a business office to be built on the land and a one-story building was proposed. He noted the current zoning allowed two-story duplexes which would be a more intense use in regard to size and height of the building. He said a duplex could be built on each lot and there would be no requirement for landscaping or fences. Councilmember Veis

said if left alone, there would be R9600 above it, R8000 in the middle, and R6000 below it. He said he didn't see what the property was buffered from. Mr. Green said it was buffered from more intense uses that could be built as part of R8000 zoning. Councilmember Veis asked if it went from residential to commercial in that regard. Mr. Green replied it wasn't commercial in the sense that it wasn't a business but commercial in the sense that it was a professional office building, conducted business and it could be any type of office building. He said it could be a commercial business that had no traffic. He explained the purpose of residential professional was to put a small office building in a residential neighborhood so it had the residential amenities plus smaller uses and it gave business owners the opportunity to work near their homes.

Councilmember Veis referred to another section under item #1 regarding contiguous development focused in and around existing population centers. He referred to the last sentence of that finding that indicated the zone change could be viewed as infill development and asked how that was different if it was zoned R8000. Mr. Green said it wouldn't be any different. Councilmember Veis said that particular point was not really in support of the zone change and Mr. Green said it stated it 'could be viewed as' rather than 'is.' Councilmember Veis commented it was generally consistent with the growth policy but if it was no different than what was already there, why was it in support of the Growth Policy. Mr. Green said it wasn't opposed to the Growth Policy; it was in support of the Growth Policy by being a form of infill development. He said that either zone classification was infill because it built in a vacant area between two existing developments.

Councilmember Veis said staff and the Zoning Commission recommended approval of the zone change and one supporting reason was it would support infill development, but it really didn't support it one way or another. He asked why that was a reason to vote for it because if left alone, it did the same thing. Mr. Green said he didn't understand where he felt the contradiction was. Councilmember Veis said if he followed the Zoning Commission recommendation and supported it, he didn't understand why infill development was a reason to support it.

Councilmember Astle said he needed some clarification about a professional office building as opposed to a duplex. He said he understood that a duplex could be taller than the building. Mr. Green said 34 feet was the maximum height for a duplex or the building, but 34 feet would allow a two-story building and the applicant proposed a one-story building. Councilmember Astle said he could propose a one-story building, but could make it 34 feet tall.

Planning Director Candi Beaudry explained that Mr. Green's findings about the buffer didn't claim it was a buffer between the condominiums to the south, but to the more intense commercial uses to the south. She said Mr. Green didn't claim that R8000 or RP was infill, but meant that any development in that area would be consistent so it wasn't contrary to the Growth Policy but was consistent with it. She said the interpretation that anything on that property was consistent was correct.

Councilmember Veis said he had several more to go through and if 8 votes were needed to pass it, he had very big hesitations that it would. He asked if reasons it didn't pass had to be based on the criteria. He asked if the things he asked about were good, solid criteria to deny the zone change. Ms. Beaudry said it wasn't because the findings in the report supported the zone change. Councilmember Veis asked if he could vote

against it based on the reason that he didn't agree with the findings. Ms. Beaudry said that was his prerogative and the last item he mentioned was a good case in point that it could go either way.

Councilmember Astle advised when he read the statement, '*this property is vacant land between single family dwellings to the north and condominiums and commercial uses to the south*' it appeared that a lack of a comma or a prejudicial thought meant that condominiums and commercial uses were the same thing. He said they were townhomes; individually owned and he thought the property underneath them was owned as well so that made them a single family home. Ms. Beaudry agreed the staff memo should have referred to single family homes rather than condominiums. Councilmember Astle said the townhomes were the buffer between King Avenue and Henesta, Myrtle and Rosebud. Ms. Beaudry agreed.

Mayor Tussing asked when the valid protest was received. Ms. Beaudry said it was required by 5 p.m. the previous Friday and was received by that time. Mayor Tussing said the Zoning Commission wouldn't have been aware of the protest other than the people who testified at their hearing. Ms. Beaudry advised that was correct.

Councilmember Stevens said they had discussed north/south buffering but she wondered about east/west. Ms. Beaudry said there was commercial development kitty-corner from the subject property and a day care directly across from it, with vacant land to the east that remained zoned residential. She said it was probably lower intense use than what was to the west.

Councilmember Clark asked kind of business could be located at the site if it was Residential Professional. Ms. Beaudry said they were classified as non-cash register businesses which meant it was a use such as real estate, insurance brokers, salons, and engineers. Councilmember Clark asked if a karate school could be there. Ms. Beaudry responded it could. Councilmember Clark said there could be things there that stayed open until midnight and just because it was called an office building, that didn't mean it closed at 5 p.m.

Councilmember Ulledalen asked if it was possible to allow access only on 32nd Street West. Ms. Beaudry said that couldn't be done during a zone change, the use of the property was all that was considered and in that case, there wasn't a site plan to review.

Councilmember Ulledalen said he was puzzled because he could see the buffering issues. He said if it was laid out as a brand new development, the more intense commercial uses would be at the corner, then the RP, then the condos, then the single family. He stated he struggled with why it fit and the east to west issue sometimes made more sense than the north to south issue. He said he was puzzled how the zoning commission voted 4-0 because to him, it was a toss-up at best. He said some criteria selected as positive could be argued as a negative as well. Ms. Beaudry said only two people spoke in opposition at the Zoning Commission hearing so they didn't hear the same level of opposition that was heard at the Council meeting. Councilmember Ulledalen said from the staff report, he had trouble seeing a 4-0 vote.

Councilmember Veis said he didn't expect answers to his questions but wanted to state them for the record. He said he wasn't sure that the restrictions mentioned in #9 helped the building blend in with surrounding residential structures and there may not be a better way to blend in with other residential structures other than as a residential structure.

Councilmember Veis stated his concern with #11 was that he didn't see how the zone change was different than if the current zoning remained.

Councilmember Veis said criteria #12 stated that single family homes may not be appropriate or desirable and there were single family homes across the alley to the north, so if they weren't appropriate in that area, then why would they be appropriate to the north. He said he saw the items he mentioned as weak support for the criteria.

Mayor Tussing said he had questions that weren't rhetorical. He mentioned criteria #11 and said the property wasn't zoned commercial so obviously that wouldn't happen. He said it seemed like inverse reasoning was used, meaning if it wasn't bad, then it must be good. He said #12 stated a single family home wouldn't be appropriate or desirable and asked why they wouldn't be appropriate or desirable. Ms. Beaudry said that was based on the fact that 32nd Street was a principal arterial. She said the findings were marginal, as someone pointed out, yet it was the Council's job to strengthen the findings for its own decision. She said Councilmembers may not agree with the findings, but that's what the Zoning Commission felt comfortable with forwarding. She said in regard to conservation of values, the surrounding properties were probably preserved more by Residential Professional than by an intense commercial. Mayor Tussing said Council wasn't voting on intense commercial. He asked if a zone change to Residential Professional added value in a way that wouldn't be there if the current zoning remained. Ms. Beaudry said she didn't know but thought the findings meant the change wouldn't detract from the value.

City Attorney Brooks advised Roberts Rules of Order didn't allow a person to speak against a motion he or she made. He said the person could vote against the motion, but couldn't speak against it. He advised Council to clearly and specifically articulate the criteria that was or was not met and used as a basis for its decision. He said it was helpful to point specifically to criteria that led Council to its decision about the zone change. Mayor Tussing said if Council indicated the zone change may meet the criteria but didn't want to approve it because there was too much neighborhood opposition to the change and no opposition to maintaining the existing zoning, it seemed there should be a reason to approve rather than reasons not to approve it. Mayor Tussing said Mr. Brooks implied that if Council couldn't come up with a reason not to approve it, it had to approve it. Mr. Brooks said what he said was the decision reached by Council needed to follow the 12 criteria and the facts as Council found them needed to be articulated. He added Council was entitled to disagree with the Zoning Commission's recommendation, but had to be careful that opposition or favorable comments were not considered as one of the 12 criteria. He said the 12 criteria needed to be adhered to and the conclusions Council reached through its own independent judgment needed to be articulated.

Councilmember Stevens said when houses were built on 32nd Street, it was a somewhat quiet street and Zimmerman didn't feed into it. She said the nature of the street was different and it was more difficult to build a house on that corner now than it would have been 5-10 years ago. She said whenever property was purchased next to vacant property, there was always a risk it would change and the only way to control land was to own it. She said vacant land could always be purchased and a zone change requested. She noted that people couldn't always rely on what realtors told them.

Councilmember Stevens said she had an office at 2719 St. Johns which was across the alley from the realtor who lived at 2704 Cook Avenue. She said it was very

quiet and zoned Residential Professional just like the zone change request. She said the office complex was a good neighbor. She noted the sum of the request made some sense and it buffered part of the neighborhood from the higher intensity of 32nd Street West, once the east to west buffering was considered versus the north to south.

Councilmember Veis said he tried to ask questions and tried to articulate the differences. He asked Mr. Brooks if he overstepped the bounds and spoke against the motion. Mr. Brooks responded he did not as long as he didn't speak against the motion he made. He said if Councilmember Veis deliberated with the body and stated his intention to vote against it and urged the rest of the Council to do the same, Roberts Rules of Order required the motion and second to be withdrawn and someone else could make a motion. Councilmember Veis asked if he could articulate what he saw as problems with the 12 criteria and Mr. Brooks responded he could discuss the 12 criteria and point out strengths and weaknesses as presented in the staff report and by the testimony.

Councilmember Ulledalen referenced the finding in criteria #1 regarding predictable land use decisions and said he had a problem if it stayed on the east side of the street because it was residential, so if anyone looked at it, they would assume it would be residential. He referenced the finding in the same criteria regarding new developments that were compatible with the character of the neighborhood and said residential professional in that area was a significant departure from the residential character to the north and south of it. He pointed out that criteria #1 stated inconsistency with goals of the Growth Policy in terms of affordable housing and reduced traffic congestion.

Councilmember Ulledalen said criteria #2 referenced congestion in the streets and the finding stated it would not decrease the congestion of the neighborhood streets. He said a business there would probably mean more traffic than a residence provided. He advised those were the key concerns he found in the first five criteria.

Councilmember Ulledalen referenced criteria #9 and said the dominant characteristic of the east side was residential only.

Councilmember Ulledalen referenced criteria #11 and said he believed that was the Mayor's issue too because commercial wasn't looked at as an alternative; it was residential versus residential professional.

Councilmember Ulledalen referenced criteria #12 and said that was a toss-up in terms of whether that was a reasonable thing to put there.

Councilmember Astle advised he would vote against the zone change. He said his reasons were the land use decisions and that it wasn't a buffer because a buffer was already there and to him, it was encroachment. He said the infill was residential and there wouldn't be access to 32nd Street when it got to the master traffic plan so people would drive on Rosebud and use the private driveways. He said if criteria #12 was true, every house against 32nd Street as far as Monad could be zoned commercial because it was against a commercial street too. He advised he didn't agree the 12 criteria were met.

Mayor Tussing said Councilmember Ulledalen articulated issues he also had with the criteria and had no reason to doubt that Mr. and Mrs. Hawkins intended to do what they said. He said if the zone change was approved, something else could occur there that wasn't considered. He said in some cases, protestors needed to be careful what they wished for because something else that was allowed with the current zoning might be less desirable. He stated he planned to vote against it.

Councilmember Ruegamer said he heard compelling arguments for and against the zone change and Councilmember Stevens made a good point. He said he realized if a person wanted to control the use of land, they should buy it, but the problem with that was not many people could afford to purchase the vacant land. He said most people didn't know real estate or zoning laws or knew the questions to ask. He said he wouldn't have known those things if he hadn't served on the Council. He said if a realtor told a buyer land was zoned residential, the buyer would think it would stay that way, so he had no doubt that's what the buyers thought when they moved to that neighborhood. He stated he felt the people moved in with a reasonable expectation that land would always be zoned residential. He advised he didn't like a zone change once people moved into the area because he didn't think it was fair. He said if there was a compromise he would suggest it but didn't see one in this case; it was an either or deal.

Councilmember Ulledalen commented that the traffic in the area could be a result of King Avenue's closure because residents who lived in the northwest part of town and wanted to reach anything on King Avenue used Monad Road and 32nd Street to reach King Avenue. He noted once King was re-opened, some traffic on Monad and 32nd may stop.

Councilmember Stevens asked Mr. Green what was allowed with the current R8000 zoning. Mr. Green listed allowed uses as: amateur radio antenna support systems, broadcast radio and tv stations and studios, cemeteries, child care facilities, community residential facilities for 8 or fewer persons with 24 hour care, single family, duplexes, modular homes, townhomes, greenhouses, home occupations, kennels, museums and other special review uses. Councilmember Stevens pointed out that some high-intense use could be there with the current zoning. Councilmember Clark stated a lot of things could be read into other zonings, even into R9600.

Councilmember McCall advised she would vote against the zone change. She said the criteria could be rationalized either way and it would work, but the large number of constituents definitely opposed it, so she didn't support it. Councilmember Stevens advised Mr. Brooks said opposition to it couldn't be listed as a reason to vote against it; the reason to vote against it had to be articulated and based on whether it met the 12 criteria. City Administrator Volek commented that Council was asked to convert those things it had heard and apply it to the 12 criteria. She explained if Council disagreed with the finding made at the zoning level and believed the argument of those in the audience; that was what had to be articulated. She noted her past experience was if it wasn't done and there was resulting litigation, a judge would ask Council to do it later.

Mayor Tussing said that wasn't required for every person on Council. Ms. Volek said the person who made the motion should summarize the reasons. Councilmember Veis said he made a motion for approval and a substitute motion could be made. He asked if it was true that if there weren't 8 affirmative votes, which meant a failure, that the failure needed articulation. Mr. Brooks said Council would need to articulate the obvious which was that the motion failed because there was a valid protest that required 2/3 approval of the Council, and that would be apparent from the vote. He noted that was required by Statute under 76-2-305-(2). Councilmember Veis said the 12 criteria Council didn't agree with should be articulated. Mr. Brooks agreed that Council was entitled to agree or disagree with the staff or Zoning Commission recommendations, either in whole or in part, but the conclusion reached should be articulated, especially in land use or

special review issues. He said down the road, anyone who reviewed the record should be able to see from the comments made what reasons Council felt compelling for its decision and that the decision was based on facts, testimony and reports presented to Council overlaid over the 12 criteria.

Councilmember Clark said not every person had to articulate as long as the group articulated. Mr. Brooks advised that was correct; the point was that neighborhood support or opposition was not allowed as one of the 12 criteria. Councilmember Veis asked Mr. Brooks if he was comfortable with how the Council articulated objections it may have to the zone change. Mr. Brooks said a factual basis was laid.

On a voice vote, the motion failed. Councilmembers Ronquillo, Gaghen, Veis, Ruegamer, McCall, Ulledalen, Astle and Clark and Mayor Tussing voted 'no.'

8. PUBLIC HEARING AND RESOLUTION #08-18705 annexing a 20.6-acre property located north of Alkali Creek Road and described as: Tracts 1A, 1B, and 1C, Certificate of Survey 2055, Amended, (Annexation #08-06). Best Development Corp., petitioner. Staff recommends conditional approval. (Action: approval or disapproval of staff recommendation.) City Administrator 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 Stevens moved for approval of item #8, resolution for annexation #08-06 with the following conditions:

- a. Prior to site development a Development Agreement shall be executed between the owner(s) and the City that shall stipulate specific infrastructure improvements and provide guarantees for said improvements; or
- b. A Subdivision Improvements Agreement (SIA) and Waiver of Right to Protest the Creation of SIDs shall be approved and filed that will stipulate specific infrastructure improvements and provide guarantees for such infrastructure improvements.

The motion was seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

9. PUBLIC HEARING AND SPECIAL REVIEW #858: A special review for expansion of a church facility on an existing 5.939-acre parcel of land zoned Residential 9600 and described as: Tracts 2A-1 and 3A-1, Certificate of Survey 1876 located at 4125 and 4135 Grand Avenue. King of Glory Lutheran Church, Inc., applicant; Engineering, Inc., agent. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.) Planner David Green said the special review was for the expansion of a church located at 4125 and 4135 Grand Avenue and was currently in R96 zoning. Mr. Green provided a PowerPoint display of the subject property, the surrounding area and the master plan for the expansion. He said the proposed expansion closed two access points but one would be added. He said neighbors spoke in favor of the special review at the Zoning Commission meeting and nobody spoke in opposition. He added that neighbors stated that the church was a good neighbor that provided public and

community services through special programs for the neighborhood, and the Pastor offered church space for public meetings. Mr. Green advised that the Zoning Commission forwarded a recommendation of conditional approval based on the following conditions:

1. The special review approval shall be limited to Tracts 2A-1 and 3A-1, COS 1876 addressed at 4125 and 4135 Grand Avenue, 5.939 acres on the northwest corner of the intersection of Grand Avenue and 41st Street West.
2. Any expansion of the proposed building, building occupancy or parking lot greater than 10 percent of what is shown on attachment C of this report will require an additional special review approval as per BMCC 27-613(c).
3. The development of Tracts 2A-1 and 3A-1, COS 1876 shall be in complete accordance with all provisions of Section 27-1100 Landscaping and all provisions of Section 27-308 building height and setbacks.
4. Dumpsters shall be enclosed in a three sided sight obscuring enclosure with sight obscuring gates, Section 27-1107 BMCC.
5. All exterior lighting with the exception of sign lighting shall have full cut-off shields so light is directed to the ground and not onto adjacent property.
6. 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.
7. 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.
8. The King of Glory Lutheran Church shall install a solid 6 foot site obscuring fence, chain link is not acceptable, along the property line between them and the neighboring property, Lot 3 Block 7, Goodman Subdivision, 1st Filing, that extends from the north property line of Lot 3, Block 7, Goodman Subdivision, 1st Filing, to the north property line of Tract 3A-1 Certificate of Survey 1876 Amended, when they construct Phase I of this project as shown on drawings provide to the Planning Division and dated 2-27-08.

Mr. Green noted that condition #8 was added by the Zoning Commission to provide privacy to the neighboring house's outdoor patio beside the church property. He noted that both the neighbor and the church were happy with that condition.

Councilmember Gaghen asked if the neighbor to the north had specific comments. Mr. Green responded that none of the surrounding property owners had negative comments.

The public hearing was opened.

- **Michael Sanderson, Engineering, Inc.** stated he was the agent for the applicant, King of Glory Lutheran Church. He said the staff report spoke for itself in terms of the project that would enhance the property considerably with the new architecture. He noted that the access to 41st Street was reduced and the property would hook up to City water and sewer services.

- **Tom Slaughterback, 4938 Stoner Circle**, said he was Pastor of King of Glory Lutheran Church for the last 10-1/2 years. He explained the expansion was due to the growth of the church's ministries and it had also outgrown the existing facilities. He said the congregation was pleased to serve the community as well.
- **Marcia Welliever, 3753 Polly Drive**, said she was the chairperson of the task force that planned the expansion project. She stated that the church wasn't aware of condition #8 prior to the Zoning Commission meeting but felt it was a reasonable condition. She said church representatives met with the neighbors and agreed upon the type of fence and a schedule for installation of it.
- **Russ Plath, 3617 Tommy Armour**, said he was the current president of King of Glory Lutheran and the congregation had worked on the project for 2-1/2 years and believed it would be a wonderful addition to the building and a great asset for West Billings.

There were no other speakers, and the public hearing was closed. Councilmember Pitman moved for conditional approval of special review #858, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.

10. PUBLIC HEARING AND SPECIAL REVIEW #859: A special review to allow an all beverage license without gaming on property described as Lots 7-12 and 14-24, Block 9, Billings Original Townsite; and Lot 13A, Block 58, Fosters Addition, Amended, less 642 square feet. Yellowstone Art Center Foundation, owner; James Heallow, agent. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.) Planner David Green reported the special review was to allow an all beverage license without gaming at the Yellowstone Art Museum. He reviewed the subject property and the surrounding area. He advised the Museum occasionally hosted events and wished to serve alcohol and without the all beverage license, a caterer with a license was hired to provide the alcohol service. He said that the license enabled the Museum to hold events without the need to coordinate with outside vendors for the alcohol service. He noted that in most beverage license cases, there was a requirement of a 600 foot separation between churches and child care providers, and schools, but it didn't exist in a central business district. He noted that the applicant had a letter from the nearby United Church of Christ in support of the license without gaming. He pointed out that the church was the nearest facility that had a playground. Mr. Green reported that the Zoning Commission forwarded a recommendation of approval with the following conditions:

1. The special review approval shall be limited to Lots 7-12 and 14-24, Block 9, Billings Original Townsite and Lot 13A, Block 58, Fosters Addition Amended less 642 square feet as shown on the site plans submitted with this application. The all beverage liquor license without gaming shall be limited to the interior space and existing outdoor central patio of the existing building.

2. Any future increases of floor area for the all beverage liquor license without gaming beyond current interior space and existing outdoor central patio or the addition of a new outdoor patio will require another Special Review application (BMCC 27-613).

The public hearing was opened.

- **James Healow, 1250 15th Street West**, said he looked at the liquor license quota and Billings had 92 all beverage licenses and 54 beer licenses, which meant a person could go into a different gambling establishment for five months before a second visit to any establishment. He noted there were only four or five places in Billings to have a gourmet lunch and a glass of wine and of those, none provided the opportunity to stroll through an art museum while waiting for food; the Museum would be unique in that way. He stated that rationale and the reasons presented by Mr. Green should convince Council to approve the special review. He explained when he addressed the Council in February, he discussed the proximity to the church and that issue was resolved by the State. He said he was down to two loose ends, one of which was the special review approval and the other was with the City's building department which should be settled in a week or so. He hoped to serve patrons in a smoke-free, gambling-free gourmet environment in the first place that it could be done. He noted that a couple of Councilmembers were skeptical during his initial discussion of an all beverage license. He stated that the zoning code didn't have a classification for non-gambling, all beverage licenses and he put that in the application to eliminate any concerns or skepticisms anyone had. He said his client was very adamant that gambling was not desired at that location. He urged approval of the special review.

Councilmember Stevens asked if a membership was required to stroll through the museum while waiting for lunch to be served. Mr. Healow said an entry fee was required. Councilmember Ruegamer asked if the restaurant planned to expand its hours beyond its current 25 hours per week schedule. Mr. Healow replied there was no immediate intention to do so but it was always a possibility. He said the museum allowed the licensee to operate all allowable hours and according to the all beverage license, the restaurant could operate 8 a.m. - 2 a.m. each day but would have to provide on-site security and that wouldn't be practical. He said the current plan was to operate 11 a.m. - 2 p.m. five days a week and 3 p.m.-8 p.m. on Thursdays.

- **Joe White, 926 N. 30th**, said he spoke on the issue previously and still opposed it even though the United Church of Christ didn't oppose it. He said it was bad for the public, the children, and artwork.

There were no other speakers, and the public hearing was closed. Councilmember Gaghen moved for conditional approval of special review #859, seconded by Councilmember Ronquillo. On a voice vote, the motion was unanimously approved.

11.(a) PUBLIC HEARING AND FIRST READING ORDINANCE – Model Cable TV Ordinance. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) City Attorney Brent Brooks advised that he and City Administrator Volek were the staff individuals involved in items 11a and 11b and since both ordinances were submitted to Bresnan Communications that day, additional time was needed to allow their review of them. He said two ordinances were before Council; one was a new, general ordinance that established criteria and standards for any cable operator that entered the Billings market. He said the existing telecommunication ordinances needed revision and this general ordinance was intended for that purpose. He advised that item 11b was the specific franchise ordinance with Bresnan Communications. He said Mr. O'Donnell from Bresnan Communications was present to comment on the items.

Mr. Brooks noted that Bresnan was very amicable about renewal of their franchise agreement and recognized the need to bring the City's ordinances to a modern standard based on Federal Telecommunications Law. He said it was his and City Administrator Volek's recommendation that after items 11a and 11b each had its first reading, that the first reading and public hearings were continued to May 27, 2008, to allow both ordinances to be fine tuned for final approval.

The public hearing was opened. Mayor Tussing informed Sean O'Donnell that he could have extra time if needed since he would likely address both items.

- **Sean O'Donnell, Bresnan Communications**, said he worked with City staff on the franchise agreement. He said he knew there were other pressing priorities but they would commit to having the document ready for final approval by May 27, 2008. He stated that Bresnan continued in its commitment to Billings and grew like gangbusters in the market. He noted that its reputation and service statistics were among the best in the industry and that those characteristics were part of the requirements of the document.

Councilmember Veis asked if it was possible for Bresnan to televise all the Seattle Mariners games. Mr. O'Donnell replied that Fox Sports offered to provide the games, but the expense was too great, so Bresnan chose not to accept that offer.

Councilmember Stevens asked for background on the issue because she didn't understand how one business was singled out and charged almost \$1 million in franchise fees. City Administrator Volek explained there were a couple of factors at work on that issue; that within the last year, the federal government created new FCC rules related to local governments and cable franchises. She advised that adoption of the first ordinance gave the City some control with general standards and procedures if another company decided it wanted to provide the same service as Bresnan Communications. She said it was highly recommended by an expert in the area to adopt a general ordinance to replace the existing ordinance that was at least 30 years old. She stated that the Bresnan ordinance needed to be updated as well and she could provide background material on that issue.

Councilmember Stevens asked how telecommunications got singled out as an industry and subjected to those regulations. City Administrator Volek said it went back

to the federal level and the City had a non-exclusive franchise agreement in place for many years; originally with AT&T before it was purchased by Bresnan. Ms. Volek explained that the federal government required local governments to address franchise requests within 120 days, which was a short time period for that process. She said the general ordinance provided framework to enable the City's response to a request if necessary. She added that Bresnan was a good partner and pledged the maximum 5% to the City to provide additional cameras to televise Council meetings and other activities. She said some language in the proposed ordinance addressed the federal rules and what communities experienced in the eastern part of the country so it needed to be modified for local operations. Councilmember Stevens said that didn't answer her question because she didn't understand why one business was singled out. City Attorney Brooks said it may be helpful as part of the continuance of both items if an additional staff memo provided the statutory authority of a local municipality to grant a non-exclusive franchise. He indicated that he sensed part of Councilmember Stevens' question was why the City had a non-exclusive franchise with cable television operators to begin with and where the source of that authority came from. He said he would be happy to provide that supplemental information.

Councilmember Veis moved to continue the public hearing and first reading ordinance of the model cable tv ordinance to May 27, 2008, seconded by Councilmember Ruegamer. Mayor Tussing asked if anyone else wanted to testify on item 11a and there were no speakers. On a voice vote, the motion was unanimously approved.

11.(b) PUBLIC HEARING AND FIRST READING ORDINANCE repealing existing Cable TV Franchise Ordinance and enacting new Franchise Ordinance with Bresnan Communications. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) Mayor Tussing opened the public hearing and there were no speakers present.

Councilmember Veis moved to continue the public hearing and first reading ordinance repealing the existing cable tv franchise ordinance and enacting a new franchise ordinance with Bresnan Communications, seconded by Councilmember Stevens. On a voice vote, the motion was unanimously approved.

12. CINCO DE MAYO CELEBRATION MODIFIED STREET CLOSURE REQUEST extending time of closure from 10:00 p.m. to 12:00 midnight, May 3, 2008, 100 block of 26th Street North. Don Luis Restaurant, applicant. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) City Administrator Volek advised that the item was an initiative by the City Council from its April 21, Special Meeting. She said there was no presentation but staff was available to answer questions.

Mayor Tussing explained Council was prepared to approve an extension from the original application but that request was retracted prior to Council's action. He asked if there were protests to the 12:00 midnight closure request. City Administrator Volek said it was her understanding that there were none. Councilmember Ronquillo moved for approval of the street closure for the Cinco De Mayo Celebration from 3:00 p.m. to 12:00 midnight, seconded by Councilmember Ruegamer. Councilmember Astle said it

was read again as the 100 block and it was the 0-100 block so that needed correction. Council agreed that was what they were voting on. On a voice vote, the motion passed unanimously.

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.)

- **Doug Ruebke, 110 S. 31st Street**, said he and his dog were attacked by a neighbor's pit bull. He explained the dog that attacked him was a neighbor's family pet, wasn't licensed and was put down after the attack. He said several states adopted laws to protect the public from such incidences and even banned pit bulls, which he didn't think was fair, but thought there should be some control of them. He noted postal carriers didn't know if they were in danger or not when they delivered mail to that particular house. He stated that he thought pit bulls should be registered and special insurance should be required. He noted that many renters had pit bulls and wouldn't have homeowners insurance, so there would be no coverage when something happened. He said the owner of the pit bull that attacked him said he would cover his medical expenses, and he wasn't sure if he had any permanent damage from his injuries. He said he would like to see some type of study or law to protect the public. He said the CDC statistics indicated that one-third of fatal dog attacks were by pit bulls and most of those fatalities were children 12 years old and younger. He said the attack on him almost killed his dog and it would have killed a kid. He said his quality of life declined since the attack because he needed assistance for daily household chores and bathing. He said the attack happened the previous Wednesday at 7:30 p.m., on 31st and 1st Street.

Councilmember Ruegamer asked Mr. Ruebke if he carried pepper spray. Mr. Ruebke responded that he didn't. He said he was aware that more pit bulls and rottweilers were present in his neighborhood. Councilmember Ruegamer said a pit bull came after him once and he started carrying pepper spray after that. Mr. Ruebke said the dog was in the chain link fenced yard at the house across the street from him and the dog came from under the fence. He said he had bites on his leg and back, a broken bone in his finger and his dog was seriously injured.

Councilmember McCall said she was sorry to learn of the attack and visited with a good friend of his about it earlier that day. She said she had experienced attacks on her dogs also and agreed that something was needed, but she didn't know how the Council should proceed. Mr. Ruebke said he knew that some other states required registration and penalties for not doing it. He noted that one community automatically destroyed the animal if it was in the dog pound.

Councilmember Stevens commented that the issue was probably something that should be referred to the Animal Control Board for public input and dialog to try to reach a solution that protected people but was also fair. She said she agreed that a blanket 'no pit bull' regulation wasn't fair either. She said she heard rumors that more pit bulls

were in the area and there was the possibility they were bred as fighters which concerned her. Mr. Ruebke said he walked the neighborhood every night and noticed more pit bulls and larger numbers of them in each yard. Councilmember Astle pointed out that he used to work for an insurance company that had exclusion and wouldn't insure homeowners that owned pit bulls, and if the homeowner got one during the life of the policy, it was cancelled immediately. He added that some pit bulls were trained as fighters and it seemed to be the attitude of owners that went along with the reputation of the pit bull in general. Mr. Ruebke said the pit bull that attacked him was a family pet and the family also had a pit bull puppy. He stated that he thought the dog owner might have an exclusion on its insurance because it wouldn't provide him with any insurance information so he may have to seek legal action.

Councilmember Gaghen stated that Mr. Ruebke had been in contact with her and other Councilmembers and she admired his bravery. She said she was shocked that Mr. Ruebke had the courage to push his finger into the dog's eye socket to stop the dog but it kept up the attack. She said she agreed with Councilmember Stevens that the Animal Control Board needed to review the issue because there could be far worse situations. Mr. Ruebke said he believed there was a limit on the Animal Control Department's system to keep records of all the complaint calls and he felt that system could be improved.

Councilmember Ulledalen said he knew of a man who had a similar experience when his dog was attacked in Riverfront Park. He said he agreed it was an issue that needed to be addressed. Mr. Ruebke said the dog that attacked him wasn't licensed and lived close to Garfield School so if it got out and was found on school property, the dog might not be claimed. Councilmember Ruegamer said he felt it was a legislative issue because the City could pass an ordinance but there wouldn't be teeth in it. He said he read about a state that enacted regulations and had problems with dogs that weren't 100% pit bull and whether the regulations applied to it. He said that raised the issue of rottweilers and whether the same type of regulations applied to that breed. He said he felt it was best to regulate it at a state level. Councilmember Ruegamer said the type of law needed required that the dog owner went to jail for having a dangerous dog that wasn't controlled if the dog attacked someone or inflicted injury because he felt that dog owners should be held responsible. He noted he didn't think that could be accomplished with a City ordinance. Mr. Ruebke said he wanted a control factor in place to deter people from owning pit bulls. Councilmember Stevens said there were laws in place because an attack was negligence. She said in Mr. Ruebke's case, the owner was liable, however, there was the question of whether the owner had anything he could go after. She said it was the mentality of people that owned that type of animal and if pit bulls were banned, they would get rottweilers; it was Doberman's before that and German Shepherds before that. She said she felt the best way to go about it was similar to Los Angeles which recently instituted a mandatory spay/neuter regulation with the exception of some breeding purposes. She said if the source was eliminated, there would be fewer of them or it would be more difficult to obtain one. She felt that was an option in that type of situation along with education so dog owners understood their liability. She said people were already required to license dogs and if they didn't, it fell under the authority of the Animal Control Board.

- **Joe White, 926 N. 30th**, said he wanted to make an official motion to appoint Candi Beaudry as City Administrator and give her the authority to remove Ms. Volek from the position.

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

Council Initiatives

- **Pitman:** Moved to direct staff to work with School District #2 regarding options to control pet waste on school grounds, seconded by Mayor Tussing. Councilmember Stevens indicated that she thought Councilmember Ruegamer planned to address that at the upcoming Animal Control Board meeting so she wondered if an initiative was necessary. It was Council's consensus that an initiative was supportive of the kids that made the presentation prior to the start of that night's meeting. Councilmember Ronquillo said there were bags provided at the city parks for pet waste but something different was needed because the bags were usually taken by kids and there weren't any for pet owners. Councilmembers agreed that it was common to see dogs run loose in other parks, and public places. Mayor Tussing said he supported Councilmember Pitman's motion and was curious to know what authority the City had to control that activity on school property. City Attorney Brooks said he would look into it and would start with the premise that the City could, it would just be a matter of working together with School District #2. Mayor Tussing stated there were laws related to dogs at large and clean up of pet waste, which didn't solve the problem but was a step in the right direction. Councilmember Stevens stated that if Billings wanted to be an animal-friendly community, more education on the topic was required. She suggested public service announcements to heighten awareness and application of peer pressure among dog owners. On a voice vote, the motion was unanimously approved.
- **Ruegamer:** Moved to direct staff to research whether the state statute which allowed the resort tax was discriminatory; and if so, what options were available, seconded by Councilmember Veis. City Administrator Volek stated that she attended a meeting of the Revenue and Transportation Committee with the initial purpose of TIF District discussion. She reported that Department of Revenue Director Bucks indicated that the sales tax was a dead tax. She said Mr. Bucks distributed written comments he made at the committee's February meeting and she would pass them along to Councilmembers. She said it was indicative of the State's direction on the issue. Mayor Tussing asked what was meant by "dead tax." Ms. Volek said it meant it failed as a revenue source across the country. She noted that she was in Gillette, Wyoming, the previous week and had an \$87.00 nightly hotel bill and paid an additional \$4 each night for a city/state/county tax. She said she knew that Powell, Wyoming, implemented a 1 mill sales tax levy for a limited duration to build a new library in 5-10 years. She said the next committee meeting was in July and it had been charged by the State Legislature to discuss increased school funding without any tax increases.

City Administrator Volek reported that the Revenue and Transportation Committee also reviewed a report from the Office of Public Policy and Research and the Department of Revenue related to removal of 95 mills from TIF districts. She said those were critical issues and she suggested attendance at the July meeting to the Chamber President and the BSEDA. She said the meeting was not publicized in advance and the only other person present besides her and committee members was a representative from the Taxpayers Defense League. She said part of the problem was that issues were addressed 200 miles away and we weren't informed. Ms. Volek said she spoke with other City Managers and the consensus was that those issues and concerns needed to be watched. Ms. Volek said she would provide related information in the Friday packets.

Councilmember Astle said he believed the state resort tax was unconstitutional because Red Lodge and West Yellowstone did whatever they wanted. He said he didn't feel that Billings was treated equally. Councilmember Veis said there needed to be caution with that issue because it could be unconstitutional, and the simple fix was if the legislature corrected it and then all the legislators would try to keep it from going to the big cities. Councilmember Ruegamer said it appeared that the smaller communities dictated what the larger communities were able to do. He said most cities favored the tax and it was evident by the success the local motel/hotel owners had collecting it that it was worthwhile so other businesses should have the same opportunity. Mayor Tussing stated that Billings could approach the Legislature once the opinion was secured. City Attorney Brooks said it would be necessary to obtain the legislative history on the resort tax and the testimony on the local option sales tax bill which failed. He said legal analysis was required and an option was to attempt another request to the legislature to allow municipalities to put a local option sales tax on the ballot for voter consideration. Councilmember Veis asked Councilmember Ruegamer what he intended to do with the results of the research. Councilmember Ruegamer said he wasn't sure and wouldn't know until the research was completed. He told Mr. Brooks that he wasn't in a hurry for the information but wanted the small towns to know that Billings was serious about the tax and that was a step in that direction. Mr. Brooks said he felt there were probably two options; to return to the legislature through local representatives, and another was a declaratory judgment action which challenged the constitutionality of the issue. He said that action was usually directed to the Attorney General. Councilmember Ulledalen asked if advice could be sought from the Attorney General rather than an opinion. Mr. Brooks responded that based on State Statute, the Attorney General usually rejected any opinion request regarding constitutionality of an issue. On a voice vote the motion was unanimously approved.

- **Stevens:** Moved to reconsider Item 5 and exclude the Nelson property from the South Billings Boulevard Urban Renewal District, seconded by Councilmember Veis. Councilmember Ruegamer stated that if the improvements were made up to his property and Mr. Nelson decided to sue the City, a judge wouldn't be favorable to Billings. Councilmember Gaghen said it would open a floodgate of

people who wanted special treatment. Councilmember Ulledalen said it would trigger a concept that people could choose the municipal services they wanted. Mayor Tussing said he believed the people who opposed the TIF didn't realize that their taxes wouldn't change and the only difference was that they wouldn't get the benefits from the improvements. Councilmember Veis stated that he believed Mr. Nelson understood the process and what he wanted, so if a person took the time to make a formal request, it should be considered. On a voice vote, the motion failed 9 to 2. Councilmembers Ronquillo, Gaghen, Pitman, Ruegamer, McCall, Ulledalen, Astle, and Clark, and Mayor Tussing Voted 'No'.

Councilmember Ulledalen reported that he attended a Shiloh Stakeholders meeting that day and there were still 15 landowners that hadn't signed right-of-way agreements. He advised the State was nearing its date to accomplish that to be able to meet the targets. He added that the project was currently \$11-12 million under-funded and the Council may be faced with an option of phasing the project. Councilmember Clark stated that the land not yet acquired was mostly near Zoo Drive.

Councilmember Gaghen stated that she wanted to share a story about two good things that happened to her daughter in San Diego; she participated in a Parkinson's Disease fundraiser that raised a substantial amount of money and then made a hole-in-one on a golf outing.

The meeting adjourned at 11:07 p.m.