

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

August 22, 2005

The Billings City Council met in regular session in the Council Chambers located on the second floor of the Police Facility, 220 North 27th Street, Billings, Montana. Mayor Charles F. Tooley called the meeting to order and served as the meeting's presiding officer. The Pledge of Allegiance was led by the Mayor, followed by the Invocation, which was given by Councilmember Peggie Gaghan.

ROLL CALL – Councilmembers present on roll call were: Gaghan, McDermott, Brewster, Brown, Ruegamer, Veis, Boyer, Ulledalen, Clark, and Jones.

MINUTES – August 8, 2005. Approved as printed.

COURTESIES

- Councilmember Veis recognized 25 off-duty firefighters who worked from 9-3 on August 13th at the intersection of 24th Street West and Central Avenue collecting a “voluntary toll” for the Muscular Dystrophy Association. Those firefighters raised \$11,800 during the “fill the boot” drive. He noted that since 1954 the IAFF has raised over \$200 Million. He thanked the Billings firefighters for their time and efforts to support MDA.
- Councilmember Boyer commended the Police Department in their heroic actions during the recent events of the past weekend.

PROCLAMATIONS – NONE

BOARD & COMMISSION REPORTS – NONE

ADMINISTRATOR REPORTS – Tina Volek

- Interim City Administrator Tina Volek noted four updated or revised council memos and information on the Councilmember's desk this evening. Included are a revised certificate of insurance for Item J3 and an email relating to a question raised on the proposed tank site as parkland for the Zone 4 reservoir (Item K). Item 13 is a letter of support for the Sandstone project and Item 15 is a revised memo for the recommendation on the QuickRange Shooting Range bid award.
- Ms. Volek also noted that due to a requirement in the funding source, Item F of the Consent Agenda should be removed for a revised recommendation allowing for a tax savings that will be resubmitted at a future council meeting.

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: #1, 12, 13, 14, & #15 ONLY. Speaker sign-in required. (Comments offered here are limited to 1 minute per speaker. 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.)

- BILL LUCAS, 2488 ASPEN WAY, said he is the chair of Big Sky Economic Development Authority (BSEDA). He spoke in favor of Item 14, a project coordinator for implementation of an east downtown Billing Tax Increment Finance District and Shiloh Road Corridor Project. He said the Board approved funding for BSEDA's portion on August 11th. He said he would be available for questions.
- DAVE BOVEE, 424 LEWIS, spoke on the Sandstone Development proposal. He said the rationale for "giving away" public funds and land is to increase the tax base in the downtown. He also noted the proposed creation of a tax increment district. He said the public should be aware that if both of these activities occur the money going into the General Fund from property tax is not going to be the same as it would be without a Tax Increment Funding District.
- GREG KRUEGER, 2815 2ND AVENUE NORTH, said he is the Director of the Downtown Billings Partnership. He noted that downtown Billings represents 1.5% of the area of the City of Billings. Because of tax increment financing and funding the base value of the taxable value, that district is 3% of the entire taxable value of the City. With tax increment factored in by 2008 this will increase to 6%. Mr. Krueger said the Sandstone project will increase the taxable value of the associated land by 97% and will grow the increment by another 1.5%. The downtown property owners will then be paying nearly 8% of the entire tax base of the City. This has been occurring since 1882 when the City was incorporated. Without tax increment assistance the Sandstone project will not happen because downtown development will always be too expensive to develop and will be left to deteriorate, he added.
- MICHAEL BURKE, 2101 LOCUST, said he represents the Sandstone project developer. He said the short-term Fannie Mae loan of \$2 Million will not be invested until the housing portion of the project begins. Thirty-five (35) percent of the loan will be paid as the pre-paid condos are purchased. When 50% are sold, that loan will be entirely distributed. He noted the City's contribution of \$400,000 via the land and the \$1.8 Million in Parking Division funds (\$800,000 of that is from the Downtown Billings Partnership) goes toward the parking facility. He said the bonds will be repaid from the taxes that are generated. No existing City resources will be given to the developer, he stated. Mr. Burke said the benefits to the City will be that the City will own the parking garage portion of the project. He noted that the properties that will be involved in the project have sat empty. As the bonds are repaid the money will be "in-hand before the City knows it." Mr. Burke stated that the value of 40-plus new investors living in the downtown area is priceless.
- ERNIE DUTTON, 2046 MARIPOSA, said the Downtown Billings Partnership and the Downtown Property Owners were excited 6 years ago when several investors from out-of-town proposed a mixed-use condominium project for the downtown. Since that time luxury condos have become the rage around the entire country. Downtown development is good for the entire community and will increase the local taxes by at least \$15 Million. He said \$200 Million in

- capital budget expenditures in the next few years is slated to mostly support suburban growth with very little being spent in the downtown area. Without the City parking garages, the Sheraton Hotel, the First Interstate Bank building and the TransWestern building would not have been built, he added. Mr. Dutton acknowledged that without affordable parking the Sandstone project cannot be built. He thanked the Council for their efforts and stated their diligence and perseverance has made the original proposal a more secure “deal” for the City.
- RUSS FAGG, 3031 RIMVIEW, said his parents are part of the team that is “putting together” the Sandstone project. He noted supporters of the project are Deputy City Administrator Bruce McCandless, Downtown Billings Partnership Director Greg Krueger, the Billings Gazette and the Downtown Partnership. This sends a strong message that it is a good project. He asked if the City wants the lots sitting vacant or have a “jewel in downtown Billings”. He presented a letter from Michelle Hood, St. Vincent Healthcare CEO and President stating their support for the Sandstone project. Mr. Fagg thanked the Council for their time spent on this effort.
 - BILL COLE, 3733 TOMMY ARMOUR, said he represents the Downtown Billings Investors, developers of the Sandstone project. He said this is a tremendous opportunity for the community. It is exactly what the City has stated it has wanted for the past ten years, a mixed-use and residential project bringing people to the downtown area. The project is attractive and well located with good designing and financing options. He asked the Council to support the project and approve the original Development Agreement.
 - RANDY HAFER, 2910 MORLEDGE STREET, said he knows first hand that developing in the downtown is extremely difficult. The Sandstone project is one that many people have worked very hard and used many tools to accomplish. He said this project represents an opportunity to state that Billings is “open for business”. Mr. Hafer said this project is a positive contributor to the downtown and even though it competes with other projects he is involved in, he welcomes the opportunity to have more people living in the downtown area. He urged the Council to support the Sandstone development.
 - MARY WESTWOOD, 2808 MONTANA AVENUE, asked the Council to be cautious in the selection of the kind of project coordinator for the east downtown Billings Tax Increment Finance District and Shiloh Road Corridor Project. She is concerned about the balance between those two projects as they seem to be at odds with one another. She noted a letter regarding the Sandstone project that she sent to the Councilmembers stating her concern that it is not the best project for the downtown and for the \$800,000 that would come from the old Tax Increment District and be applied to the new Tax Increment District. She said that is probably illegal and not something this Council should be doing. Ms. Westwood asked the Council to “think long and hard” about the Sandstone project because it may not meet the needs of the community.

CONSENT AGENDA:

1. **A. Bid Awards:**

(1) **Large Format Copier/Scanner and Printer for Public Works Dept - Utilities.** (Opened 8/9/05). Recommend Selby's ESSCO, \$34,401.50.

(2) **W.O. 04-13, Filter Building Expansion and Improvements.** (Opened 7/26/05). Delayed from 8/8/05. Recommend delaying until 9/12/05.

B. Amendment #2, Professional Services Contract, W.O. 05-01: Public Works Projects including Water and Sewer Replacement Projects, Morrison-Maierle, Inc., \$38,500.00.

C. Contract with Golden Valley County for Library Services 2005/2006, \$1.70 per item circulated, term: 1 year.

D. CTEP Project Specific Agreement, STPE 1099(47) - Jackson Street Sidewalks, \$69,515.00 CTEP grant; \$75,485.00 local match.

E. Agreement to extend the term of the Inter-Creditor Agreement between the City and six banks for an additional five years.

~~**F. Authorization** to apply for INTERCAP Loan through Montana Board of Investments for W.O. 03-02, Contract #1 and W.O. 02-14, \$288,780.00 to pay for two sidewalk projects.~~

G. 2005 Heritage Trail CTEP Project Applications:

- (1) Big Ditch Trail
- (2) Gabel Road Connector Trail
- (3) Swords Park Trail

H. 2005 CTEP Project Application for Milton Lane as a school route improvements project, \$125,000.00 CTEP funds, \$488,500.00 local match.

I. Acknowledge receipt of petition to vacate Conrad Road between S. 30th Street West and S. 32nd St. West, Harold Miller ETAL, petitioners; Engineering, Inc., agent, and setting a public hearing date for 9/12/05.

J. Street Closure requests:

(1) Native American Development Corporation: "Just Do it" Health Walk, September 23, 2005, Sky Point on the corner of 2nd Ave. N and N. Broadway down 28th St. through 1st Ave. S and cross streets from 2nd Ave. S to South Park.

(2) O'Hara's Family Restaurant Fundraiser for the Optimist Club, September 10, 2005, 33rd St. between Montana Ave and 1st Ave. N.

(3) Beartooth Harley Owner's Group: 911 Remembrance Ride, September 11, 2005, Frontage Road down Montana Ave, 2nd Ave N between 26th and 27th Sts, 27th St. to 4th Ave N onto Main Street and follow Hwy 312 to Huntley.

K. Zone 4 Reservoir Appraisal establishing a fair market value of \$137,024.00 for a portion of Tract 1, C/S 3030 for the purpose of constructing water storage and pumping facilities and authorizing Staff to obtain the property from GSK Partners, LLP. (Delayed from 8/8/05).

L. Resolution 05-18323 to adopt the Revised Stewart Park Master Plan.

M. Resolution 05-18324 to adopt the Lampman Parkway Master Plan.

N. Resolution of Intent 05-18325 to create SID 1372: public improvements consisting of water, sanitary sewer, storm drain, curb, gutter and street improvements on Winter Green Dr., W. Antelope Tr. And Antelope Pl. in Summerhill Sub. and setting a public hearing date for 9/12/05.

O. Resolution 05-18326 relating to \$4,515,000.00 Sewer System Revenue Bonds (DNRC Water Pollution Control State Revolving Loan Program), Series 2005; authorizing the issuance and fixing the terms and conditions thereof.

P. Second/final reading ordinance 05-5338 amending BMCC Section 7-1504(c), providing that the MDU Franchise does not preclude MDU from challenging any fee or tax.

Q. Resolution 05-18327 setting the annual public safety, general obligation debt service parks and general obligation debt service streets mill levies for FY 2005-06.

R. Preliminary Plat of Ironwood Estates Subdivision, 4th filing, generally located east of Molt Road, west of Ironwood Estates Subdivision, 3rd filing., Dan Wells, owner; Engineering, Inc., agent, conditional approval of the preliminary plat, approval of the variances and adoption of the findings of fact.

S. Preliminary Plat of Legacy Subdivision, generally located on 52nd St. West midway between Grand and Central Aves, DC Capital Real Estate, owner; Engineering, Inc., agent, conditional approval of the preliminary plat, approval of the variances and adoption of the findings of fact.

T. Bills and Payroll.

(1) July 25, 2005

(2) July 29, 2005.

(Action: approval or disapproval of Consent Agenda.)

Mayor Tooley separated Item F from the Consent Agenda. Councilmember Veis separated Item K from the Consent Agenda. Councilmember Clark separated Item G from the Consent Agenda. Councilmember Brown separated Item Q from the Consent Agenda. Councilmember Gaghen separated Item L from the Consent Agenda.

Councilmember Ruegamer moved for approval of the Consent Agenda with the exception of Items F, G, K, L and Q, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

Councilmember Ruegamer moved to withdraw from consideration Item F of the Consent Agenda, seconded by Councilmember Boyer. On a voice vote, the motion was unanimously approved.

Councilmember Ruegamer moved for approval of Item G of the Consent Agenda, seconded by Councilmember Brewster. Councilmember Clark asked where the local match funding for this item is coming from. Alternate Modes Coordinator Darlene Tussing said it comes from the 1999 G.O. Bond issue. Swords Parks, the West End and the Downtown Connection were identified in this General Obligation Bond issue as being matching opportunities. She said that approximately \$90,000 of those funds remain reserved and uncommitted for other projects. On a voice vote, the motion was unanimously approved.

Councilmember Ruegamer moved for approval of Item K of the Consent Agenda, seconded by Councilmember Brewster. Councilmember Veis noted the email from Mr. Leuthold from Engineering, Inc. relating to the sale of this property. He asked for clarification as to why parkland cannot be used for this reservoir site. Planning Manager Candi Beaudry said park dedications cannot be used for a utility site because by state statute parkland must be used for the benefit of the subdivision. It is an interpretation of the law that a utility site does not serve that purpose.

Councilmember Veis asked about a current City park that does have a reservoir site on it, noting the inconsistency. Councilmember Brewster said it appears to be a conflict that a reservoir is not viewed as a benefit to the subdivision. Ms. Beaudry said parkland must be used for open space or recreation purposes rather than for a broad community good. Public Works Director Dave Mumford said two City-owned parks (Lyons and Mystic) are not true parkland dedications but are actually utility lands being used as a park for community benefit. On a voice vote, the motion was approved with Councilmembers Veis and Brown voting "no".

Councilmember Ruegamer moved for approval of Item L of the Consent Agenda, seconded by Councilmember Gaghen. Councilmember Gaghen noted the extensive work of the Parks and Recreation Department Staff on ensuring that this Master Plan met the needs of the community. On a voice vote, the motion was unanimously approved.

Councilmember Ruegamer moved for approval of Item Q of the Consent Agenda, seconded by Councilmember Gaghen. Councilmember Brown made a substitute motion to remove the public safety portion of this item from the mill levies, seconded by Councilmember Ruegamer. Mayor Tooley stated that the budget for FY 2005/2006 has been approved by the Council and the next step is to set the mill levies for the annual public safety, general obligation debt service parks, and general obligation debt service streets to meet that budget. To accomplish the motion, the budget would have to be revised.

Councilmember Boyer said this issue has been raised purely for political reasons. She said there have been public hearings and review by the Council and there was no deception involved in this levy. She said the public safety mill levies make it possible for the City to build a new fire station on the West End and hire additional

police and fire personnel. She is very offended that this issue has been raised and strongly objects to the action of a few people using this for political purposes. Councilmember Boyer said the "Council knew exactly what it was doing and did a good job." Councilmember Ruegamer said he seconded the motion because he said the Council needs to discuss this matter. He said he totally agrees with Councilmember Boyer's comments and acknowledged several people who supported the public safety levy when it was being introduced to the community, but now state that they are opposed to it eight months later. He said it is interesting that this issue has recently come up and does not understand the delay. He is offended that this is simply a political ploy. Councilmember Ruegamer confirmed that only two people have stated to him that they were "not familiar" with some of the wording. When he inquired of them what they thought would happen at the end of five years after the City has built the new fire station and hired the additional fire and police personnel, said their response was that they "did not think that far through it."

Councilmember McDermott said the Council cannot "tinker" with the mill levy as it was approved by the voters, the Council and is contained in the budget. She said it can only be "rolled back through a petition drive or a lawsuit by the citizens who voted it in." It is completely out of the Council's hands at this point, she added.

Councilmember Boyer noted that a citizen group led the movement in the public safety levy, involving many people in the community through approximately 30 public hearings. She said those involved citizens have confirmed that this was not deceptively presented to the voters and that the public safety levy was needed in the community.

Councilmember Gaghen said she can assure the voting public that they were not "hoodwinked" as that is not how the Council perceives their role in the community.

Councilmember Brewster said the mill levy must go forward for the first year. The consequences of withdrawing this public safety levy at this point would be \$2 Million in budget authority and would result in removing twenty employees, not building a new fire station, and eliminating fire apparatus. He said he is sure that is not what the public has in mind. Councilmember Jones agreed with Councilmember Brewster and stated the initial year must move forward. The following years are where the concern is. Councilmember Brown said "the blocking of the right of the people to revisit this item is a travesty." Mayor Tooley stated that this Council is not blocking the right of the people to do anything. On a voice vote for the substitute motion, the motion failed. On a voice vote for the original motion, the motion was approved with Councilmember Brown voting "no".

REGULAR AGENDA:

2. PUBLIC HEARING AND FIRST READING ORDINANCE expanding the boundaries of Ward IV to include recently annexed properties in Annexation #05-07: an undeveloped 172-acre parcel located east of the Ironwood Subdivision along Molt Road between the Yellowstone Country Club and the Rims, described as Tract 1, C/S 3030, GSK Partners, LLC petitioner. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

There was no Staff report. The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Brown moved for approval of

the Staff recommendation, seconded by Councilmember McDermott. On a voice vote, the motion was unanimously approved.

3. PUBLIC HEARING AND SPECIAL REVIEW #790: a special review to allow on-premise beer service without gaming on Block 2, Lot, 10 Claimstake Subdivision, located at 2701 Enterprise Ave., Suite 1. Delbert L. Bailey and Timothy Dernbach, owners; Tim Mohr, agent. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)

Zoning Coordinator Nicole Cromwell said this is a microbrewery that is asking for permission to have an on-premise beer service. The location, 2701 Enterprise Avenue is zoned Controlled Industrial. She said the property has not been finished for tenant spaces; this is the first tenant in the complex. Concerns from the Staff and the Zoning Commission related to available parking for other potential tenants. She said there are additional developed parking sites within 400 feet.

Ms. Cromwell said the Zoning Commission is recommending conditional approval with the following conditions:

1. The special review approval shall be limited to Lot 10, Block 2 of Claimstake Subdivision at 2701 Enterprise, Suite 1, as shown on the submitted site plan.
2. All limitations on expansion of the alcohol service area shall be in accordance with Section 27-613 of the Billings Montana City Code.
3. Trash enclosures shall be constructed of wood, vinyl, brick, stone or concrete block or other building materials and provide a closing gate on one side. No chain link or wire material is allowed for this enclosure.

Councilmember Clark said he is concerned that there is not enough on-premise parking. Ms. Cromwell said there is enough parking (10 spaces) for this use. She confirmed that the parking spaces are shared but the requirement from the future tenants is unknown at this time, and information was unavailable to make a determination for sufficient parking. Currently there is sufficient parking.

Councilmember Jones asked why there is no condition relating to the restriction against live music or entertainment. Ms. Cromwell said the license is a very restricted liquor license because it will be a production facility with a sampling room.

Councilmember Gaghen expressed concern about the potential for expanded hours of operation and the large amount that can be served to one individual (48 oz.). Ms. Cromwell said the expanded operating hours are provided for under Montana law, but the applicant is stating their hours will be from 4PM to 8PM and operated by a single staff person. She said the license is not often seen and is specifically for small breweries that don't want gaming and food service.

The public hearing was opened. KEN REINHARDT, 4205 WELLS PLACE, said he owns property across the street from the proposed facility. He presented the Council with a petition with 98% signatures of the property owners against the special review. He asked the Council to deny the special review. He also presented a petition with signatures of employees that do not want to have the brewery located there. Mr. Reinhardt noted there is a school for the handicapped called Aware, a cheerleading school, and a church that is located one block from the proposed facility. He said there are only 6 available parking spaces for this facility and he does not want their customers using his parking lot

which is the only lot nearby. He also noted he did not see a sign notifying the surrounding property owners of the Zoning Commission public hearing, nor did he receive a notification by mail. He asked the Council to reverse the Zoning Commission recommendation.

MICK BROWN, 2404 21ST STREET WEST, said he is the owner of Brown's Plumbing and Heating that is located next door to the proposed facility. He said his parking lot is adjacent and stated that the parking area allocated to the microbrewery is not sufficient for the business. He does not want those customers parking in his lot or using his garbage dumpster which is also nearby. Mr. Brown said he is opposed to the special review because he is concerned about the potential for vandalism of his property, garbage strewn all around and usage of his parking area. He asked the Council to deny the special review. He noted there was a sign notifying the property owners of the Zoning Commission meeting, but it got wet during the big rain and did not last long.

TIM MOHR, 1020 HARBOR AVENUE, said he is the agent for the applicant. He said there would be no sales or "give aways" before or after 10 AM to 8 PM according to the law. Only the brews produced on premise can be served and there is no gaming or hard alcohol. He said this is a manufacturing license and a special option to assist microbreweries to survive. He said food and live entertainment are options, but it is the choice of the owners not to participate in those activities. The zoning requires 10 parking spaces and there are 18 total spaces with off-street parking available. He also confirmed the notification sign was up and the storm took it down.

Councilmember Brewster asked if beer is sold from the facility. Mr. Mohr said beer can be sold for off-premise consumption. Kegs in three sizes are also sold.

Councilmember Boyer asked if the owners contacted the neighbors regarding their plans for the microbrewery. Mr. Mohr said the neighbors were not directly contacted.

Councilmember McDermott asked if the 600-foot restriction would apply to this special review due to the location of the Aware School.

DEBBIE REINHARDT, 2702 ENTERPRISE AVENUE, said she is against this special review and location of the microbrewery in the area. She said the neighbors were not informed, especially the nearby schools. She also expressed concern for the traffic and possible vandalism.

There were no other speakers. The public hearing was closed. Councilmember Veis moved for approval of the Zoning Commission recommendation, seconded by Councilmember McDermott. Councilmember Boyer asked if notification of the Zoning Commission's public hearing was sent to the adjacent property owners. Ms. Cromwell said she had a notarized list of the property owners that were sent notifications and both public comment speakers are listed. She noted that the Aware School is not on the list as it does not appear on the listing that is obtained from the County. They may be an unnamed tenant, she suggested.

Councilmember Brewster made a substitute motion to send this special review back to the staff to determine how the 600 foot restriction would apply to it, seconded by Councilmember Boyer. Councilmember Jones said he does not support the special review and thinks it should end with Council denial tonight. On a voice vote, the substitute motion was approved with Councilmembers Gaghen, Clark and Jones voting "no".

4. PUBLIC HEARING AND SPECIAL REVIEW #791: a special review to allow the change from one nonconforming use (gasoline service station) to another nonconforming use (automobile sales) on Lots 18, 19, Block 1, Descro Subdivision.

J and D Industries, owner, John Bonner, agent. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)

Zoning Coordinator Nicole Cromwell said this special review requests a change from one nonconforming use to another in a Neighborhood Commercial zone. She said the site is the former Conoco gas station located at 2404 Broadwater Avenue. She noted that a 2002 zone change request to Community Commercial was opposed by the neighbors, so the application is seeking a special review for the automobile sales.

Ms. Cromwell said the Zoning Commission is recommending conditional approval with the following conditions:

1. The special review approval shall be limited to Lots 19, 20 and the east 10 feet of Lot 18 of Block 1, Descro Subdivision.
2. The special review is for a new and used vehicle sales lot. No other use is allowed or intended by this special review approval.
3. Any lighting on the building or within the parking lot shall have full cut-off shields so light is directed to the ground and not onto adjacent property. Lighting of signs shall be as allowed within the City Sign Code (Section 27-701 BMCC).
4. There shall be no auto body repair work done on this site including but not limited to painting and sandblasting.
5. Building alarms and security devices for vehicles shall be silent alarms.
6. There shall be no public address system designed to broadcast outside the building.
7. All vehicles parked or stored on the site shall be operable and shall not be stored across sidewalks or on the street right of way.
8. A change to any other use shall be in conformance with the uses and restrictions for Neighborhood Commercial zones.

The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Boyer moved for approval of the Zoning Commission recommendation, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

5. PUBLIC HEARING AND SPECIAL REVIEW #792: a special review to permit the location of a cabinet maker in a Highway Commercial zone of Southgate Planned Development on Lot 7A, Block 2, Southgate Subdivision. Willie Dowdle, owner; Blaine Poppler of Coldwell Banker, agent. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)

Zoning Coordinator Nicole Cromwell said this special review is to permit the location of a cabinet maker facility in the Highway Commercial zone of Southgate Planned Development located in a vacant warehouse at 5201 Southgate Drive.

Ms. Cromwell said the Zoning Commission is recommending conditional approval with the following conditions:

1. The special review approval shall be limited to Lot 7A of Block 2, Southgate Subdivision.

2. Dust from woodworking shall be controlled within the structure. Exhaust fans and dust collection equipment may be installed outside of the building. No stockpiling or storage of wood waste, sawdust or other debris will be allowed outside of the building except within a closed waste container.
3. All other limitations on expansion shall apply in accordance with Section 27-613(c) of the Billings Montana City Code.

The public hearing was opened. BLAINE POPPLER, 5403 KING AVENUE WEST, said the cabinet maker is an appropriate use for this area. He said the building is sitting vacant and would make a great site for this business. The building is constructed of masonry that will contain and limit the noise of the operation. He asked the Council to approve the special review.

There were no other speakers. The public hearing was closed. Councilmember Ulledalen moved for approval of the Zoning Commission recommendation, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

6. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #761: a zone change from Residential 7,000 to Residential 5,000 on Tract 1A of C/S 1335, located at 1545 Hawthorne Lane. First Free Will Baptist Church, owner; Wesley Prouse, agent. Zoning Commission recommends denial of the zone change and adoption of the determination of the 12 criteria. (Action: approval or disapproval of Zoning Commission recommendation.)

Zoning Coordinator Nicole Cromwell said the Zoning Commission voted 3-2 to deny this zone change from Residential 7,000 to Residential 5,000 because of concerns that the Residential 5,000 zoning is not greatly utilized and could be considered spot zoning and inconsistent with the surrounding area. She explained that spot zoning is determined with a three point test: 1) that it benefits a single person, 2) that it involves a small area and 3) it is inconsistent with the surrounding area. Ms. Cromwell stated there was one letter of objection sent to her office from Pete Hanson who is not in the audience tonight.

The public hearing was opened. WES PROUSE, 8232 SHEPHERD ROAD, said he is affiliated with the First Free Will Baptist Church and said he has a petition with signatures from the surrounding neighbors in support of the zone change. He noted there is another Residential 5,000 zoning request in the area (on Wicks Lane) that will be considered this evening. He asked the Council to approve the zone change.

BLAINE POPPLER, 5403 KING AVENUE WEST, said he attended the Zoning Commission public hearing and noted there were several items considered that may have confused the Commission that led to their vote of denial. He also noted that there were some people at the hearing that impugned the church, which was not appropriate or relevant. Mr. Poppler said there are several small lots in the area and Hawthorne Lane. He asked the Council to reverse the Zoning Commission recommendation as 8,000 square feet of lot space is required for a duplex in the Residential 5,000 zoning. Ms. Cromwell added that only 40% lot coverage is allowed in Residential 5,000 zoning.

TOM ZURBUCHEN, 1747 WICKS LANE, said Residential 5,000 is spot zoning, but the benefit is for the church and not one single person. He said duplexes cannot be

placed on Residential 5,000 lots due to the restrictions, but also because of a potential fire hazard. He said he would hate to say that a church could not do something.

There were no other speakers. The public hearing was closed. Councilmember Clark moved for approval of the Zoning Commission recommendation, seconded by Councilmember Brown. Councilmember Brewster said he supports this zoning when it is close to arterials such as this one is. Councilmember Brown noted that some people like smaller lots so there is a need to satisfy that market. On a voice vote, the motion was unanimously approved.

7. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #762: a zone change from Residential 9,600 to Neighborhood Commercial on Lots 3A and 4, Block 1, Missions United Subdivision, located at 2117 and 2223 Shiloh Rd. St. Vincent's Healthcare, owner; Jim Shepard of CTA Architects and Engineers, agent. Zoning Commission recommends approval of the zone change and adoption of the determinations of the 12 criteria. (Action: approval or disapproval of Zoning Commission recommendation.)

Zoning Coordinator Nicole Cromwell said this zone change would allow for the location of a physical therapy and out-patient service at this currently vacant property. She said the Zoning Commission voted 5-0 to approve the zone change. She also noted that Big Sky Economic Development Authority supports the change as well.

Councilmember Ruegamer asked about the distance from the proposed facility to the nearby ball fields. Ms. Cromwell said the distance is approximately 500 feet.

The public hearing was opened. JIM SHEPHERD, CTA ARCHITECTS AND ENGINEERS, said he has been working on this development for over a year. He said it is a cooperative development between St. Vincent's Healthcare and St. John's Lutheran Ministries. It is a great development for the long term. He noted that two neighbors have expressed support for the project and only one couple in Circle 50 Subdivision had concerns. He said the planned development tried to stay in keeping with the surrounding area whose primary focus is a senior living campus.

Councilmember Ruegamer asked about the noise factor for the residents with the ball fields in close proximity. Mr. Shepherd said the St. John's folks are embracing a new concept with the 12-bed cottage making them a more home-like environment with a number of programs that involve the seniors. This promotes interaction with the seniors and young folks and small animals (the Eden concept) avoiding isolating the seniors from everyday life. St. John's Lutheran Ministries is well aware of the location of the ball fields that have been there for a long time. The noise concern has not been voiced throughout the process. Councilmember Boyer noted that St. John's has developed the first intergenerational daycare that has been very successful.

There were no other speakers. The public hearing was closed. Councilmember Jones moved for approval of the Zoning Commission recommendation, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

8. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #763: a zone change from Community Commercial to Highway Commercial on Lot 4, Block 1, North Pointe Square Subdivision, located at 2376 Main St., (former K-mart retail center site). KMT DIL, LLC, owner; Michael Dockery, agent. Zoning

Commission recommends approval of the zone change and adoption of the determinations of the 12 criteria. (Action: approval or disapproval of Zoning Commission recommendation.)

Zoning Coordinator Nicole Cromwell said this is a zone change request for the former K-Mart property in the North Pointe Square Subdivision in the Heights. All American Nutrition is the prospective buyer of the property desiring to move their packaging and manufacturing operation from 1831 Main Street to this facility using the entire property. Rezoning to Highway Commercial is not unusual in the area as there is Highway Commercial on the east side of Main Street and on portions of the west side of Main Street.

Ms. Cromwell said the Zoning Commission is recommending approval of the zone change and Big Sky Economic Development Authority supports the application as well. She noted there were no opponents at the Zoning Commission meeting. The Planning Board initiated a text amendment to change the regulations for Highway Commercial to allow limited manufacturing and packaging of pharmaceuticals and botanical materials in that zone. It is currently not an allowed use. This amendment will come before the Council next month. Ms. Cromwell said the entire facility will be used as the proposed owner is planning to double the staff (to 100 employees) to accommodate the business demands.

The public hearing was opened. MIKE DOCKERY, 3009 MCCONNELL LANE, said he represents the owner. He said the owner of the property is opposed (verified as accurate) to All American Nutrition, who is represented by someone else. He said his client has spent many months trying to redevelop the site because of its great parking and location, but has the disadvantage of the site being ~~9,000~~ 90,000 (verified via tape) square feet which is limiting in who will utilize that large of a facility. He said all of the uses that have been interested in the building have been for uses consistent with Highway Commercial and redevelopment of the site as retail with the current Community Commercial zoning is remote. Mr. Dockery concurs with the Zoning Commission recommendation and the 12-criteria. The proposed zoning is consistent with the uses and zoning to the south and east, has good access and no adverse impact on surrounding streets because it was designed to handle large amounts of traffic. It would get this large vacant commercial site back into use. He urged the Council to approve the zone change.

ERNIE DUTTON, 2045 MARIPOSA LANE, said he is working with All American Pharmaceutical to acquire the property. He said this business is a real success story that has grown from less than a 5,000 square foot warehouse to the need for this larger facility and marketing their products around the world. He said the company has found a way to improve a nutrient found in protein and anticipates expansion of the current business. The current facility is not adequate and is substandard. This site will allow compliance with the FDA. Councilmember Boyer said the current business location is fairly unattractive and she expressed concern that the new site will detract from any existing retail operations. She asked if the property is planned for redevelopment and enhancement. Mr. Dutton said the financing package includes provisions for remodeling and that would be part of the package. He added there is nothing about the business that would affect other neighbors, such as noise or pollution. Activities such as parking in the front and loading and unloading in the back will be conducted the

same as K-Mart did. Mr. Dutton said there will be a small retail operation. He noted that there is a deed restriction on the property, so even if the zoning were to be approved the operation would still require working out details with the retail neighbors. Councilmember Brewster noted that this zoning would “seal the fate of this facility” and he means that in a good way.

BLAINE POPPLER, 5403 KING AVENUE WEST, said he does not object to the zone change request or the proposed use for the property. He noted the large area of Community Commercial in the area and in today’s market it is not attracting users to it. He said there are other allowed uses other than retail. Mr. Poppler said it is great to get this building utilized, and asked the Council to take note of the Community Commercial that is not going to be appropriate for retail of the future. He said it would be appropriate to anticipate future zoning requests in the surrounding area.

There were no other speakers. The public hearing was closed. Councilmember Gaghen moved for approval of the Zoning Commission recommendation, seconded by Councilmember Ruegamer. Councilmember Jones asked what other uses could utilize the Highway Commercial zoning if the All American Pharmaceutical does not. Ms. Cromwell said warehousing, wholesaling, lumber and building materials yards, hotels, motels and RV parks could utilize the current Highway Commercial zoning.

On a voice vote, the motion was unanimously approved.

9. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #764: a zone change from Residential 9,600 to Residential 7,000 and Residential 6,000 on portion of Tract 123 of Sunny Cove Fruit Farm, located at the northeast intersection of Grand Ave. and 60th St. West. Mark Kennedy of Kenmark Corporation, owner and applicant. Zoning Commission recommends denial of the zone change and adoption of the determination of the 12 criteria. (Action: approval or disapproval of Zoning Commission recommendation.)

Planning Manager Candi Beaudry said she received a withdrawal request on August 11th for this zone change request. The request was received after publication of the public hearing so it is necessary for the Council to hold the public hearing. Because the request was received after the Zoning Commission hearing, the applicant cannot reapply for four (4) months. She said the Zoning Commission did deny the zone change request noting that Residential 6,000 is not compatible with the rural character of the area. A valid protest was received on the day of the hearing and would have required a 2/3 vote of the Zoning Commission.

The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember McDermott moved to allow withdrawal of the application, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.

10. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #765: a zone change from Residential 7,000 to Residential 5,000 on Tracts 1 and 2 of C/S 3190, located at 120 Wicks Lane. Ernest and Francisca Shaw, owners; Engineering, Inc., agent. Zoning Commission recommends approval of the zone change and adoption of the determinations of the 12 criteria. (Action: approval or disapproval of Zoning Commission recommendation.)

Planning Staff Member Aura Lindstrand said the applicant is requesting a zone change for the northern portion of the property located at 120 Wicks Lane. The subject property contains approximately 33 acres and the proposed zone change involved 18 acres. The northern portion of the site is zoned Residential 5,000. The southern portion of the site is zoned Residential 6,000 and will remain. She said the plan is to construct 98 duplex units (a total of 196 units) on the subject property. There is a concurrent annexation request that will be brought to the Council on September 12th. Surrounding zoning is Residential 7,000 to the north, Residential Multi-Family to the east, Residential 7,000 to the south with Single-Family Residential in Unita Park Subdivision, Neighborhood Commercial and Residential 6,000 and Residential Professional to the west.

Ms. Lindstrand said the Zoning Commission is recommending approval of the zone change based on the 12 review criteria. She said the application satisfies several goals of the 2003 Growth Policy. Councilmember Brewster said there have been concerns expressed about the traffic flow. He asked if there would be a traffic study. Ms. Lindstrand said the subject property will eventually go through the subdivision process and a traffic study will be done at that time.

The public hearing was opened. MAC FOLGELSONG, ENGINEERING, INC., 1300 TRANSTECH WAY, said he represents the owners of the property. He said a concept meeting for the subdivision was held last week. This property is currently a County island with adjacent City services. The annexation request will be brought to the Council on September 12th. He said the problem of consistency on the entire property stems from the fact that current zoning in the northern portion is different from the southern portion making the structure setback and lot coverage different for a single project. Mr. Fogelsong said the project proposal is for duplexes on single lots on the entire property. The plan is to remain consistent on the entire project and not incorporate greater density. Changing to Residential 6,000 was not considered because it is not needed with a duplex project. In the proposed Residential 5,000 a larger lot is required to construct the duplexes making the density lower. He said the plan is to make the structure setbacks and the same lot coverage consistent throughout the entire project. He asked the Council to approve the Zoning Commission recommendation.

The public hearing was opened. JOSEPH WHITE, 926 N. 30TH STREET, said he is concerned about adequate air supply on the property. He said the duplexes would cause a reduction in air. He said a detailed air supply study should be required and performed by a government agency before the zoning is changed.

TOM ZURBUCHEN, 1747 WICKS LANE, said the subdivision plan includes green spaces that the developer wants to donate to the City as parkland. He asked if that is what the City wants for the Parks and Recreation Department. Meadowlark Park, within two blocks recently went through a master plan process that "is screaming for dollars to develop." Castlerock Park is ½ mile to the west of this proposed subdivision, is partially developed and in the same situation. He stated there are plenty of parks in the area. He reminded the Council of last year's unsuccessful effort to sell several miscellaneous parks because of neighborhood resistance. Parks development should not come during the zone change request, but during the subdivision process. He also wondered if the Parks Department really wants to take on the maintenance of small portions of green space that are difficult to mow. Mr. Zurbuchen said the subdivision should provide funds for their parks.

ROB FOSTER, 330 STILLWATER, said he owns Lots 12 and 13 west of the subject property. He said his concern is for future development that will “cut off” the access to his lots. He said the lots have remained undeveloped for several years because of lack of access. During that time he has paid taxes on the lots for services that he does not receive such as storm water maintenance and street maintenance. Mr. Foster said he has been informed that there are no laws that provide for relief from the taxes even though he does not receive the services. He wants an equitable solution for his tax dollars. He stated that the green space makes the subdivision more attractive.

GARY OAKLUND, WELLS FARGO CENTER, said the change of zoning will not determine the parkland allocation or Mr. Foster’s access to his property issues. These concerns have been addressed through the planning aspects. He said this parcel is unusual in that there is one parcel with one legal description that has two different zoning classifications. The southern portion is Residential 6,000 that allows the developer to build a 10-plex on 19,000 square feet and the northern portion is Residential 7,000. Without a zone change the developer could build over 500 apartment units on the tract of land. He said the proposed plan is much less dense than this and would construct 91 duplex lots allowing 180 units. Residential 5,000 provides for a lot less density than Residential 6,000 so the decision by the owners was to use the less dense zoning of Residential 5,000 to avoid objections and concerns from the neighbors that a large tenement-style complex was planned. In response to Mr. Zurbuchen’s comments, he said as a developer he does not have the option of not providing park allocation and small children and older folks are not likely to walk across Wicks Lane or a mile away to access park space.

Councilmember Brewster said that the speaker may have misunderstood Mr. Zurbuchen’s point in that people living adjacent to the small types of parks are inclined to take greater ownership of the area and less inclined to allow access to others, such as the case with Pow Wow Park. Councilmember Brewster said Mr. Zurbuchen is stating that these types of parks are not as effective for the people when compared to larger parks when the money that is spent to maintain them is considered.

Mr. Oaklund said this is more of a planning and subdivision issue. He added that there is a park currently under development in the area when the Unita Park Subdivision was constructed. He added that the feedback he is receiving from the Planning Department is that the City would like to see connectivity of a park in the subject parcel with the existing park. The choice was made to expand the park rather than offer a cash contribution allowing more connectivity to the surrounding residents.

There were no other speakers. The public hearing was closed. Councilmember Brewster moved for approval of the Zoning Commission recommendation, seconded by Councilmember Ruegamer. Councilmember Brewster noted there would be a lot to discuss during the subdivision process. On a voice vote, the motion was unanimously approved. Interim City Administrator Tina Volek noted that the annexation request and the second reading of the zone change would both appear on the September 12th agenda.

Mayor Tooley called for a recess at 9:20 P.M.

Mayor Tooley reconvened the meeting at 9:26 P.M.

11. PUBLIC HEARING AND RESOLUTION 05-18328 CREATING A DOWNTOWN BUSINESS IMPROVEMENT DISTRICT for litter control, snow removal, graffiti

removal, security and other services. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

There was no Staff report. The public hearing was opened. STEVE WAHRLICH, 2511 1ST AVENUE N., said he is a newcomer to the Billings area and just recently purchased the Ponderosa Inn. When he first considered this purchase he talked with several people and the Downtown Billings Partnership to determine if the downtown was a viable entity. He said the formation of the Business Improvement District (BID) said the downtown is here to stay, there is an opportunity for growth and it is a viable part of the community. He asked the Council to approve the BID.

RANDY HAFER, 2910 MORLEDGE STREET, said he is a partner in several projects in the proposed Business Improvement District. He said he is a big supporter of this effort and stated it is critical for the downtown to "take care of what we have accomplished." A super-majority of the property owners have spent a lot of time developing this concept and have agreed to assess themselves for the services that are desired. Mr. Hafer said the idea has started modestly but hopes to encompass more of downtown. He urged the Council to support and approve the BID.

LISA HARMON, 156 ROLLING MEADOW DRIVE, said she is Operations Director for the Downtown Billings Partnership. She said the Business Improvement District's appeal is that it is an entity that can exercise control over a certain area of the downtown that currently lacks controls, which can detract and discourage visitors, residents and locals. The BID is a tool used to maintain and enhance a downtown's competitive position. She introduced the Purple People Program (started in July 2005) and said this program provides a variety of significant services that benefit everyone in the community such as graffiti removal from Park I, alleys, dumpsters and electrical boxes. This first year is funded through the Partnership and the assessments won't begin until 2006. She noted that Parks and Recreation Staff are glad to have the assistance of this program through the BID. Ms. Harmon said during the past month, the Purple People team has disposed of 600 pounds of trash and debris (including drug paraphernalia) and removed graffiti from over 10 downtown properties. They have also assisted property owners who have not elected to join the district. She said there was 67% support from the downtown property owners. She added they will also participate in construction of a Habitat for Humanity home to show support for the community at large. Mr. Harmon asked the Council to support the creation of the BID, a potential valuable partner with the City.

Deputy City Administrator Bruce McCandless noted there were two written protests filed with the City against the district.

There were no other speakers. The public hearing was closed. Councilmember Ruegamer moved for approval of the Staff recommendation, seconded by Councilmember Boyer. Councilmember Clark asked what was the percentage of support from the downtown property owners not including City properties. Mr. McCandless said that percentage was approximately 60% without the City properties (which is the mandatory number). On a voice vote, the motion was approved with Councilmember Brown voting "no".

Councilmember Jones asked about information pertaining to the board. Mr. McCandless noted that the board would include 5 to 7 members with the term limits set by statute and those appointments will be the next step the Council will consider. The

board will be responsible for creating a work plan and submitting the work plan and budget to the Council for approval and assessment setting.

12. SOUTH 27TH STREET CORRIDOR REDEVELOPMENT 2005-2.

(A) RESOLUTION authorizing disposal of City-owned land described as: Lots 1-8, Block 226, O.T. Staff recommends delaying authorization indefinitely. (Action: approval or disapproval of Staff recommendation.)

(B) AWARD OF BID for purchase of subject property. No bids were received. Staff recommends delaying sale of subject property indefinitely. (Action: approval or disapproval of Staff recommendation.)

Councilmember Brown moved for approval of the Staff recommendation to delay indefinitely the resolution authorizing disposal of City-owned land described as Lots 1-8, Block 226, O.T., seconded by Councilmember Brewster. Ms. Volek noted the City understood that a property owner was interested in the property but was unable to bid on it due to a hospitalization. Subsequently, at the second bid opening, the interested party chose not to submit a bid. In light of this, the Staff is recommending indefinite postponement which has the effect of permanently tabling the matter. There will be future action at another time. On a voice vote, the motion was unanimously approved. On a voice vote, the motion was unanimously approved.

Councilmember Brown moved for approval of the Staff recommendation to delay indefinitely the award of bid for the purchase of the subject property, seconded by Councilmember Boyer. On a voice vote, the motion was unanimously approved.

13. RESOLUTION APPROVING THE SANDSTONE DEVELOPMENT AGREEMENT. (PH held 7/25/05. Action delayed from 7/25/05). Staff recommends approval of the resolution and development agreement. (Action: approval or disapproval of Staff recommendation.)

Deputy City Administrator Bruce McCandless noted the Council was sent a revised Development Agreement in their Friday packets. That agreement modified several sections. There are four major elements included in the proposal that is associated with: 1) the land, 2) the Tax Increment District, 3) parking and Parking Funds, and 4) a Fannie Mae loan for the housing portion of the project.

He said the land component remains the same as has been reviewed in previous drafts of the agreement, but the Tax Increment District has been revised substantially due to the input from the City's Bond Counsel. The term of the proposed bond issue has been lengthened to 25 years and provides for an assessment agreement with the developer that the property taxes and assessments due on the property before it is complete would be insured by the developer. There is no minimum bond amount stated in the agreement, but refers to the work sheet that shows what the expected amount would be.

The Fannie Mae loan portion has been revised and is clearly reserved for the housing component of the project and those funds will be dispersed as the housing related costs are incurred. He said the parking has been split into two portions, a public parking unit that would be funded by the Tax Increment dollars and a building parking unit that would be funded by the Parking Division Reserve Funds.

Councilmember Ulledalen asked if the Bond Counsel had other concerns that were not stated in this report. Mr. McCandless said he was not aware of any other concerns; the

draft the Council received included the revision from the Bond Counsel. He added that the Legal Staff has reviewed the agreement and requested one additional change.

Councilmember Ulledalen asked about the request for a letter of credit from the developer. Mr. McCandless said it is not included in the agreement, but is a condition the Council could apply. He added that Mr. Fagg has confirmed affirmatively at last week's Work Session that this would be available. Mr. McCandless stated that a letter of credit is a more liquid form and readily available form of security over a personal guarantee which would make the assets of the developer more difficult for the City to access in the event of a default. Councilmember McDermott noted that the developer was agreeable to submitting a personal financial statement to a limited number of people. Mr. McCandless confirmed that was correct and is a usual practice of the City's Revolving Loan process. Because a bank loan is involved, personal financial statements will be required by the bank and could be reviewed by designated City officials at that time.

Councilmember Veis asked about the disposal of the City parking lots as part of the agreement. Mr. McCandless said the lots would be transferred to the developer via a process included in the City Code that includes a public solicitation for bids to purchase the property and included in the urban renewal statute. The Council must make the determination (considering all elements) that the City is receiving fair value (not fair market value) for the property. Councilmember Veis asked if the public process for the disposal of the property is bound by the agreement making it difficult for another party to acquire the property. Mr. McCandless said that is why the development agreement is structured which includes all the elements and requirements of the project. Councilmember Brewster asked why this portion of the agreement was not structured more as an exchange rather than a sale for repurchase. He noted the City is essentially taking street parking and elevated it; exchanging street rights for "air" rights, essentially. Mr. McCandless said he was not sure how that would be legally structured, but the concept is correct.

Councilmember Ulledalen asked if a termination date has been addressed. Mr. McCandless said the only deadline that has been addressed was in the original bank loan commitment, which has lapsed. There is no such deadline in the proposed Development Agreement.

Councilmember Ulledalen said he would like to ensure that the City's interests are protected with either a letter of credit or personal guarantee and with the person(s) who would be evaluating those financials. A letter of credit would not need to be evaluated and is the preferred document, he added. Mr. McCandless said the City's representative on the Revolving Loan Fund Committee is Financial Services Manager Pat Weber who has the capacity to do the evaluation. If the Council is more comfortable with someone who specializes in that function, that service can be arranged, he noted. Councilmember Boyer said the City should consider employing a person with expertise in the review of development agreements to assure the City has the protection that is needed. Councilmember Ulledalen asked who drafted the Development Agreement. Mr. McCandless said the City obtained draft development agreements from the City's advisor, Springsted and those drafts were transmitted to Mr. Fagg's attorney who developed the original draft agreement. Since that time there have been several "hands" on the agreement "trying to massage" it.

Councilmember Boyer asked if this agreement could work with less funding committed from the Parking Division. Mr. McCandless said that would depend on the

financial resources of the developer. The question of how much and what kind of subsidy the City would be providing is dependent upon the Council.

Councilmember Clark asked if the parking funds could be used for the public parking. Mr. McCandless said they could be used for that purpose but the complication that creates is that the Tax Increment Bonds, as explained by the Bond Counsel, must be used for public improvements (which is well defined in the urban renewal statutes). The most obvious public improvement is the publicly available parking within the structure. If parking reserve funds are used for that portion of the parking, the potential uses for the Tax Increment Funds are eliminated. The Development Agreement is structured so that the Tax Increment Funds are used for the construction of the public portion of the project and the parking reserve funds for construction of the parking that is reserved for owners of the condominium units through a long term lease to the unit owners or the owner's association created under the condominium agreement. He noted that the City would own all of the parking. He added that the developer has been involved in discussions where this has been addressed.

Councilmember Ulledalen asked what would happen if the Council makes a positive recommendation with conditions attached (related to items discussed tonight) to the Development Agreement. Mr. McCandless said the developer has always been interested in the type and level of assistance the Council is willing to commit to. The developer has the ability to accept or reject any offer the Council makes. Councilmember Ulledalen said he wants to discuss the public policy aspect of the project (relating to the parking funds) and look closely at the deal to be assured that the City has an agreement that is for the benefit of the City and the taxpayers.

Councilmember Gaghen expressed major concerns for the impact and burden that the amount of traffic from the parking garage facility (215 spaces) will have on 27th Street, which is slated to be at maximum capacity in the year 2020.

Councilmember Veis moved for approval of the Staff recommendation, seconded by Councilmember Boyer. Councilmember Ruegamer made a substitute motion to offer to subsidize the Sandstone project to the extent of: 1) the value of the land (5 lots of surface parking), and 2) underwriting the Tax Increment District Bonds for use of the public parking, seconded by Councilmember Brewster. Councilmember Ruegamer said the City should not sign or commit to anything at this point and the rest of the agreement is open for negotiation. Councilmember Brewster said he would like more detail as to how this motion fits into the agreement as it doesn't answer all the questions. Councilmember Ruegamer said that the parking funds for the private parking and the Fannie Mae loan guarantee are excluded with this motion. Councilmember Clark asked if the Fannie Mae loan is not possible unless the City guarantees it. Mr. McCandless said the City must be the borrower of the funds, and the City would in turn re-lend them to the ultimate borrower. The City would secure the loan with \$500,000 that would be placed in escrow. The funds are approved by Fannie Mae, but are subject to agreements and program guidelines put in place by the City.

Councilmember Brewster asked if the private parking could still be included if the City constructed it and then leased it back. Councilmember Ruegamer said that would be acceptable if the City "breaks even", but the details would have to be worked out. Councilmember Brewster asked what form should be used to work out the details as this is difficult for the Council to negotiate.

Councilmember Ruegamer said the banks involved in the project are going to protect their interests and he asked why the City would not want to do the same thing. He said there must be more negotiations due to the complexity of the project. The City has the right to make a counter proposal and protect the taxpayer's interests. Councilmember Ruegamer said the Fannie Mae loan "is okay and can be done" as long as the City is "not on the hook for it in any way".

Councilmember Ulledalen amended the substitute motion to: 1) require a letter of credit (preferably) or personal guarantee from the developer for the Fannie Mae loan, and 2) the City to employ a mutually agreed upon third party attorney who specializes in contracts related to construction, real estate law and land development paid for by the developer to review the Development Agreement, seconded by Councilmember Boyer. On a voice vote on the amendment, the motion was approved with Councilmember McDermott and Gaghen voting "no". On a voice vote, the substitute motion as amended was approved with Councilmember McDermott, Brown and Gaghen voting "no".

14. APPROVAL OF A PROJECT COORDINATOR for implementation of an east downtown Billings Tax Increment Finance District and Shiloh Road Corridor Project. Staff recommends approval for one year, with a 1-year renewal. (Action: approval or disapproval of Staff recommendation.)

There was no Staff report. Interim City Administrator Tina Volek said the Downtown Billings Partnership is one of four partners in the Project Coordinator consideration. Other members are Celebrate Billings and Big Sky Economic Development Authority who have already pledged their support to this position. Councilmember Boyer moved for approval of the Staff recommendation, seconded by Councilmember Ruegamer.

Councilmember Jones asked where the funds that would be allotted for this position would normally have been spent. Ms. Volek said the funds are from the General Professional Services account (for projects under \$10,000 for engineering primarily) and recently received and unallocated Federal Transportation funds. Councilmember Ruegamer said this is money well spent, to have someone overseeing these projects at all times. Councilmember Clark asked who would oversee the actual hiring. Ms. Volek said that would be accomplished by a group of the principles and supervised by BSEDA.

Councilmember Jones amended the motion to require budgetary approval for the position at the end of the first year for the City's second year contribution, seconded by Councilmember Clark. Councilmember Jones said he would also like the City to receive a report on the progress of the project also. On a voice vote, the amendment was approved with Councilmember Brown voting "no". On a voice vote, the motion as amended was approved with Councilmember Brown voting "no".

15. BID AWARD: ONE NEW QUICKRANGE SELF-CONTAINED, TWO-LANE, PREFABRICATED SHOOTING RANGE FOR POLICE DEPARTMENT. (Bids opened 8/19/05). Recommendation to be made at meeting Shooting Ranges, International, \$192,658.00.

Councilmember Ulledalen moved for approval of the Staff recommendation, seconded by Councilmember Boyer. Ms. Volek said the City received approval from the Federal government to sole source purchase the shooting range, but discovered that state law required that the City utilize a bid process. One bid was received and opened

Friday, August 19th. The Staff recommendation is on the Councilmember's desks this evening. On a voice vote, the motion was unanimously approved.

16. PUBLIC COMMENT on Non-Agenda Items. (Restricted to ONLY items not on the printed agenda; comments limited to 3 minutes per speaker.)

- TOM ZURBUCHEN, 1747 WICKS LANE, urged the Council to take the Public Safety Mill levy back to a vote of the people. He was also outraged that this has been brought up nine months after the fact, but the wording appears deceiving. A mail-in ballot would be much less costly than a lawsuit, he added. "Save the taxpayers dollars and revote on it to put an end the hoopla." He said this would end the public accusations that the Council tried to deceive the public, and added, "I know you didn't deceive me because I didn't vote for it. Mr. Zurbuchen said put it back out there and I'll vote for it this time."
- MARY WESTWOOD, 2808 MONTANA AVENUE, said she understood the ballot language on the Public Safety levy – "that it was cumulative and forever." She also said the City should oversee and assure that the attorney hired for the review of the Sandstone Development Agreement has in mind the City's best interests solely. Ms. Westwood said the BID is an experiment. She asked the Council to also be vigilant in the participation of everyone in the downtown in what happens to the future downtown. She said the BID is a limited area with limited interests. She asked the City to monitor how it is working because there are not definite benchmarks to assess the success of the district.
- JOSEPH WHITE, 926 NORTH 30TH STREET, said he is concerned about the large signs that are advertising beer along with gas at local gas stations, particularly the one at 24th Street West and Grand Avenue. He said the "beer depot" advertising is a corrupting influence on today's youth.
- FRANCIS HARRIS, THE TERRACE, said she agrees with Councilmember Gaghen regarding her concern for the impact the traffic from the Sandstone project will have on 27th Avenue. She said the City should have gotten a feasibility study on that issue. She said the City has only changed the wording of the agreement but is still "giving" the developer what he wants. Ms. Harris said the Council should look after the City's and taxpayer's interests first. She said the Council needs a "sharp pencil and a sharp mind" when considering the Sandstone project. "It's not figured out right," she added.

COUNCIL INITIATIVES

COUNCILMEMBER MCDERMOTT: Councilmember McDermott moved to request Staff to assist the Downtown Property Owners in determining the feasibility of returning 33rd, 34th and 35th Streets back to two-way streets in the downtown, seconded by Councilmember Gaghen. Councilmember McDermott said this has been on the Downtown Property

Owner's agenda for several months, but due to lack of staff time in the Traffic Engineering Division the request would need Council approval. Councilmember Brewster noted the huge expense involved in change the traffic signals to two-directional. On a voice vote, the motion was approved with Councilmember Ruegamer voting "no".

COUNCILMEMBER MCDERMOTT: Councilmember McDermott moved to form a 5-10 member citizen's committee appointed from each ward to study the ward boundary redistricting and submit to the Council two options for a final decision, seconded by Councilmember Brown. Councilmember McDermott asked that the services of a person knowledgeable in the Voting Rights Act and redistricting law be employed. Councilmember Ruegamer said this is prejudicial and is a waste of time and money. Councilmember Boyer said the lawsuit was brought by a small minority and is a waste of the Council's time and money. On a voice vote, the motion failed with only Councilmember McDermott voting "yes".

COUNCILMEMBER BOYER: Councilmember Boyer asked about the status of the Council Initiative she raised relating to Group Homes. Ms. Volek said the subject is scheduled for a Work Session in October.

COUNCILMEMBER CLARK: Councilmember Clark moved to direct Staff to aggressively enforce the sign code ordinance with regard to campaign signs before the election, seconded by Councilmember Ulledalen. Councilmember Clark said there are four and five of the same signs on some properties and many in the right-of-way. Planning Manager Candi Beaudry said Code Enforcement Officers are currently beginning a campaign to notify people of the requirements for all signs. An ad has been drafted that will appear in the Gazette several times. Individual candidates will be contacted directly about their signs, she added. She said a "sweep" is scheduled. Councilmember Clark withdrew his motion based on information presented, Councilmember Ulledalen withdrew his second.

COUNCILMEMBER VEIS: Councilmember Veis moved to direct Staff to develop more than one option (2-3) for the parking rate increase, seconded by Councilmember Ulledalen. Councilmember Ulledalen would like to see creativity used in the process. Councilmember Veis would like to see the increase be completely borne in the parking garages and a different option to include 45 minutes of street parking costing a quarter. Councilmember Gaghen noted that recalibrating the timing on the parking meter heads would be expensive. On a voice vote, the motion was unanimously approved.

COUNCILMEMBER RUEGAMER: Councilmember Ruegamer publicly proclaimed Council support for the Police Department after the two incidents of the past weekend. Councilmember Boyer thanked Interim City Administrator Tina Volek for keeping the Council informed of those events.

ADJOURN – With all business complete, the Mayor adjourned the meeting at 11:17 P.M.

MINUTES: 08/22/05

THE CITY OF BILLINGS:

By: _____
Charles F. Tooley MAYOR

ATTEST:

BY: _____
Susan Shuhler, Deputy City Clerk