

## **REGULAR MEETING OF THE BILLINGS CITY COUNCIL July 28, 2008**

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

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

**MINUTES** – July 14, 2008, approved as presented

**COURTESIES** – Councilmember Ruegamer presented a check in the amount of \$1,400 to the City of Billings Parks Department from proceeds of the Kiwanis sponsored license plate sales.

**PROCLAMATIONS** – None

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

- Ms. Volek thanked the Kiwanis Club for their generous donation.
- Ms. Volek reminded the Council of the Agenda Review Meeting for the August 11, 2008, council meeting, scheduled for the following evening at 5:30 p.m. in the City Hall Conference Room.
- Ms. Volek referenced Item #3 that was on the July 14, 2008, council agenda and advised that she had told them a particular parcel had been inadvertently left out and would need to be brought back before council at a later date. Ms. Volek advised the parcel was actually for a temporary right-of-way easement only and was not one of the parcels being sold, so it would not be coming back to council for approval after all.
- Ms. Volek advised that staff was recommending that Item 1F, the Landfill Gas Sales Agreement with MDU, be delayed until 8/25/08 so the Crowley Law Firm could review it.
- Ms. Volek advised there had been a valid protest received on Item 7, Zone Change #846. She said a copy of the protest was included in the Friday packets, and a copy was located in the Ex-Parte notebook in the back of the room. Ms. Volek told Council the item required a super majority vote.
- Ms. Volek asked that Council delay Item 1B1, the bid award for the King Avenue East Street Improvements, until the meeting of August 11, 2008, as staff was working with Four Square Properties on a possible SID.

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

- **Rudy Grossman, 314 Cody Circle**, said he represented General Contractors Construction, and he felt awarding Fisher Construction the bid for the MET Transit Transfer Center was not right because Fisher Construction had not submitted a signed Non-Collusion Form at the time they submitted their bid. Mr. Grossman advised on the day of the bid, the architect and the owner’s rep called his office to inform them that the Non-Collusion Form needed to be signed and notarized or their bid would be rejected for non-compliance.

City Attorney Brooks advised he had spoken with Mr. Grossman; Tom Binford, the Aviation & Transit Director; and Ronda Carlson of CTA Architects on the matter. He said the document was required in the bid packet but not material or essential to the integrity of the bids received. He said an incomplete packet did not make a bid non-responsive. Attorney Brooks said he had explained that to Mr. Grossman, and he had memos from previous issues unrelated to the MET project he could provide to Mr. Grossman verifying research on the matter. Attorney Brooks advised that Ms. Carlson told him that Mr. Grossman had mistakes in the “Alternates” portion of his bid on the project, which were considered minor irregularities just as the failure to sign the Non-Collusion Form was. He said Mr. Grossman had been treated exactly the same as all the other contractors; they had all made mistakes that were not material to the integrity of enforcing the bids submitted. Attorney Brooks said it was his and Mr. Binford’s recommendation that Council proceed with the bid award recommendation in the staff memo. Attorney Brooks advised he told Mr. Grossman he would be happy to meet with his attorney and provide him with the documentation of how the issue was dealt with in the past.

Councilmember Stevens asked Attorney Brooks if the other bidders had received a phone call telling them if the form was not signed their bid would be rejected. Attorney Brooks said it was his understanding that Mr. Grossman actually called Ms. Carlson. He said he had no idea if the other three contractors had contacted Ms. Carlson. Attorney Brooks advised General Contractors Company had been treated exactly the same as the other three. He said the other option available to the Council would be to reject all bids and rebid the project; but Council was entitled to proceed and award to the lowest bidder that evening.

Councilmember Stevens asked Mr. Grossman if he had phoned Ms. Carlson or if someone had phoned him about the Non-Collusion Form. Mr. Grossman advised two days before the bid he called Ms. Carlson and Kim

Annin about the Non-Collusion Form because he had never seen one in a bid before. He said the day of the bid both of them returned his phone call and advised the form needed to be signed and turned in with the bid. Mr. Grossman pointed out the bid tab listed the required documents, and the last required document listed was a signed Non-Collusion Form.

Councilmember Stevens asked why staff was not requiring the form if it was listed as a requirement. Attorney Brooks advised there was a difference between required documents and documents that materially affected the integrity of the bid document itself. He advised if a bid was not signed, it would be a material mistake because the bidder had not obligated himself to the bid. He said if the bid was not dated but was signed, case law indicated it would be a minor irregularity and could be waived by Council. Councilmember Stevens asked if a signed Non-Collusion Form would be required before a bid moved forward. Attorney Brooks advised that it was noted at the bid opening if documents were signed or not signed; and if it became an issue, it would be presented to the Purchasing Agent, the department who let the bid, and the City Attorney's Office to determine if the mistake was something that affected the integrity of the bid. Councilmember Stevens asked if Fisher Construction would be required to sign the Non-Collusion Form if Council awarded the bid to them. Attorney Brooks advised Fisher Construction would be required to sign it; and if they did not, the award would go to the next lowest bidder.

City Administrator Volek advised she had been informed by Mr. Binford that Fisher Construction had already signed the Non-Collusion Form.

- **Gary Reed, Denver, CO**, said he worked for the Denver Fire Department for 31 years as Chief Purchasing Officer. He said the required documents listed for the MET Transit Transfer Center were common with cities such as Santa Fe, NM and Albuquerque, NM; and if the required documents were not executed prior to the bid opening, the bids were rejected. Mr. Reed suggested, in fairness, that the MET Transit Transfer Center project be re-bid.
- **Joe White, Billings, MT**, said he opposed the location of the new MET Transit Transfer Center and recommended rebidding the project.
- **Kevin Nelson, 4235 Bruce Avenue**, referenced Item P, the boundaries for the TIF District, and asked where the 54 acres noted in Saturday's Billings Gazette were located. He also said since the King Avenue widening project was being delayed, he hoped Council would consider a public hearing on the item instead of just a one-minute courtesy, because he felt it was a very important issue.

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

## **CONSENT AGENDA:**

### **1. A. Mayor's Appointments:**

Mayor Tussing recommends that Council confirm the following appointment:

	Name	Board/Commission	Term	
			Begins	Ends
1.	Gay Easton	Yellowstone Soil Conservation District	07/01/08	06/30/11

**B. Bid Awards:**

(1) **W.O. 07-22, King Avenue East Street Improvements.** (Opened 7/1/08). Delayed from 7/14/08. Recommend Knife River contingent upon receipt of Letter of Credit securing the improvements, \$3,068,058.05.

(2) **W.O. 02-08, Milton Lane School Route – Billings.** (Opened 7/15/08). Recommend Knife River, \$339,595.55.

(3) **MET Transit Downtown Transfer Center.** (Opened 7/15/08). Recommend Fisher Construction, \$3,153,100.

**C. Contract** with Montana Department of Transportation for FY 2009 Operating Assistance through the Federal Transit Administration Section 5317 New Freedom Grant Program, \$10,401 grant revenue.

**D. Approval** of Assignment of B & J Properties Limited, LLC West End Hangar Ground Lease and Non-Commercial Aviation Ground Lease to First Interstate Bank for financing purposes, with no financial impact to the City.

**E. Approval** of two West End Hangar Ground Leases with Pacific Tank and Pipeline, Lots 1 and 2, Taxilane “D”; revenue first year \$1,022.12 each.

**F. Landfill Gas Sales Agreement** with Montana Dakota Utilities; estimated annual net revenue to the City - \$500,000. (Delayed from 6/23/08).

**G. Reimbursement Agreement** for Private Contract No. 594; Lot 1, Block 1 of Arlene Subdivision, Phase I – Zimmerman Homes, \$17,701 total reimbursement to Best Development Corp.

**H. Grant Acceptance and Approval** of the Billings West Wicks Lane Water, Sanitary Sewer, and Storm Sewer Design and Construction Agreement between the Department of the Army and the City of Billings, estimated cost to the City - \$122,500.

**I. Amendment No. 6,** W.O. 04-12- Alkali Creek Road Slope Stability, Professional Services Agreement with Kadrmass, Lee & Jackson, \$156,700.

**J. Acknowledge Receipt of Petition to Vacate** a portion of North 19<sup>th</sup> Street and set a public hearing for August 25, 2008.

**K. Approval and Acceptance** of Quitclaim Deed from Yellowstone County, Certificate of Survey 2350, Tract 2.

**L. Declaring Surplus Property** and authorizing the Police Department to release one Whelen lightbar with control box and two red lenses to the rural fire fighting unit in Waco, MT.

**M. Approval** of Downtown Revolving Loan Fund recommendation for Steven J. and Joni Harman for purchase and renovation of buildings located at 2605 Minnesota Avenue; lesser amount of \$250,000 or 20% of total project costs.

**N. Street Closures:**

**(1)** Billings Association of Realtors Quality of Life Run – August 23, 2008; 5:00 a.m. to 10:00 a.m.; 5-mile: start at Masterson Circle, east along Airport Road, down North 27<sup>th</sup> Street, west on Rimrock Road, south on Virginia Lane, through Pioneer Park, north on 3<sup>rd</sup> Street West, east on Parkhill Drive, south on N. 32<sup>nd</sup> Street, finish at N. 32<sup>nd</sup> Street and Division; 2 mile: start at MSU-B on Rimrock Road, south on Virginia Lane, through Pioneer Park, north on 3<sup>rd</sup> Street West, east on Parkhill Drive, south on N. 32<sup>nd</sup> Street, finish at N. 32<sup>nd</sup> Street and Division.

**(2)** Montana Marathon – September 21, 2008; 5:00 a.m. to 2:30 p.m.; start on Molt Road, east along Sam Snead Trail and Walter Hagen Drive, south on 54<sup>th</sup> Street West, east on Rimrock Road, south on 46<sup>th</sup> Street West, east on Rangeview, north on 38<sup>th</sup> Street West, east on Poly Drive, south on Patricia Lane, east on Colton Boulevard, south on 17<sup>th</sup> Street West, east on Parkhill Drive, south on 3<sup>rd</sup> Street West, finish at Daylis Stadium.

**O. Approval of Donation** from Ales for Trails for Swords Park Trail, Phase II, \$25,000.

**P. Resolution #08-18737** clarifying the legal description of the South Billings Boulevard Urban Renewal District.

**Q. Preliminary Subsequent Minor Plat** of Gabel Subdivision, 3<sup>rd</sup> Filing, located on approximately 11.35 acres on the south side of Gabel Road south of the intersection of Transtech Way and Gabel Road, conditional approval of the plat and adoption of the Findings of Fact.

**R. Final Plat** of Amended Lot 2A, Block 1, Shiloh Crossing Subdivision.

**S. Final Plat** of Foxtail Village Subdivision, 2<sup>nd</sup> Filing.

**T. Bills and Payroll**

1. June 27, 2008

Mayor Tussing separated ITEMS B1, F, and O. Councilmember Ronquillo separated ITEM P. Councilmember McCall moved for approval of the Consent Agenda with the exceptions of ITEMS B1, F, O, and P, seconded by Councilmember Astle. On a voice vote, the motion was unanimously approved.

Councilmember McCall moved to delay ITEM B1 until August 11, 2008, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

Councilmember McCall moved to delay ITEM F until August 25, 2008, seconded by Councilmember Stevens.

Councilmember Ulledalen noted a provision in the contract for an annual audit and asked who would set the terms of the audit. Public Works Director Dave Mumford advised the City would set the terms of the audit as part of the contract. Councilmember Ulledalen said he was concerned about the possibility of added costs that the City could not dispute that would affect the bottom line.

Councilmember McCall said she had a concern with the contract and had spoken with City Administrator Volek about it that morning. She said she had become aware of the carbon credits and renewable energy credits within the contract, and that there was a value tied to the credits. Councilmember McCall said she believed, at that point, the City had not done a careful analysis of what the credits could be in the future, and that it could possibly mean significant additional revenues to the City. She said Section 4.2 clearly provided and gifted all of the credits to MDU. Councilmember McCall asked that, with the delay, the credit issue be discussed. Mr. Mumford advised that the carbon credits, at that point, did not exist. He said the Federal Government had recently voted them down. He said if the DEQ told the City the methane had to be removed; the carbon credits would go to a zero value because they were only valued if the City was not told it had to do anything. Mr. Mumford advised the reason for the 15% was in case the carbon credits had a value in the future. Mr. Mumford said there was a lot of ambiguity with it, but staff would be happy to go back and look at it again. Councilmember McCall said she understood there were two different types of credits; one type was on the compliance regulatory side, and the other on the free market side. She said she was talking about credits on the free market side. She agreed with Mr. Mumford that there was ambiguity with it, but said she felt it was something that needed to be analyzed carefully given that it was a valuable resource to the City. Councilmember McCall said she would like to have it included before the document came before Council for approval.

Councilmember Stevens asked if the carbon credits would go to the owners of the equipment. Mr. Mumford advised both types of carbon credits were the property of the owner of the resource and not the owner of the equipment. Councilmember Stevens said she suspected there would be a lot of changes to the contract before it came back to Council. Mr. Mumford advised the Crowley Law Firm was looking at it and making recommendations. Councilmember Stevens said she preferred that a licensed CPA do the audit; and Mr. Mumford said they would add that a licensed CPA would do the audit.

Councilmember Gaghen asked if the Crowley Law Firm would be the most knowledgeable in the area of both types of carbon credits. Mr. Mumford advised that the Crowley Law Firm was not investigating the carbon credit issue because carbon credits did not exist. He said the three major issues Crowley was looking at were mineral rights, taxation, and the role of the Oil and Gas Commission.

Councilmember McCall told Councilmember Gaghen that she had asked City Administrator Volek to put a meeting together regarding the issue, and that she had spoken with an expert who had brought the issue to her attention. She said there were clearly two different opinions on if the free market carbon and renewable credits existed, but felt it would be well worth the research time.

On a voice vote, the motion was unanimously approved.

Councilmember McCall moved for approval of ITEM O, seconded by Councilmember Ruegamer. Mayor Tussing recused himself because of his wife's involvement in the Swords Park project. On a voice vote, the motion was approved 9 to 0.

Councilmember McCall moved for approval of ITEM P, seconded by Councilmember Ruegamer.

Councilmember Ronquillo said there were rumors that Cabela's was not coming to Billings, and he hoped the City would receive a written agreement from Four Square Properties that Cabela's was coming to Billings before the money was spent to widen the roads and create a tax increment district.

City Administrator Volek said it was her understanding Four Square Properties had an agreement in-hand with Cabela's to open by summer of next year. She said the City was continuing to work with them to structure the road improvements; and staff would have answers for Council before bringing them a final vote.

Mayor Tussing asked Ms. Volek if Item P would require expending any funds. Ms. Volek said it would not, and a map was available that evening to show the area in question. Ms. Volek advised it was not related particularly to the Cabela's project but to the timing of the creation of the TIF District. Ms. Volek asked Planning Director Candi Beaudry to explain.

Ms. Beaudry advised that when the Department of Revenue was examining the last resolution creating the TIF District, they noticed the description referenced a city boundary on the south side. She said between the original resolution to create the TIF District and the resolution correcting the description boundary, property to the south was annexed. She said they did not mean to expand the TIF District, and all they meant to do was clarify the boundary where it was on December 10, 2007. Ms. Beaudry advised that the Department of Revenue suggested that Council pass a resolution clarifying the south boundary. She said between the time of the second correction and the current correction, another property was annexed; so the legal description again changed. Ms. Beaudry advised the resolution in front of them that evening stated very precisely the boundaries as they were created back on December 10, 2007, with the original ordinance for creation of the Urban Renewal District.

City Administrator Volek advised the annexed areas could be added later. Ms. Beaudry said they could be added later, but it would involve updating the Urban Renewal Plan and specifically calling in the areas.

On a voice vote, the motion was unanimously approved.

## **REGULAR AGENDA:**

### **2. RESOLUTION APPROVING AND ADOPTING FOURTH QUARTER BUDGET AMENDMENTS FOR FISCAL YEAR 2007/2008 (Budget Item #3 delayed from 6/23/08 and 7/14/08). Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

City Administrator Volek advised that staff had provided a more complete description of the item in their packets. She said there would be no additional presentation, but staff was available to answer questions.

Councilmember Ronquillo said he was still confused and asked where the obligation was to pay since staff was unsure if the funds had not been drawn or properly coded.

City Administrator Volek said she did not believe it would ever be known. She said some of the expenditures occurred in the 1990's, and there was no longer documentation available to track them. She said if the Council did not approve the transfer; the City would have a negative fund balance in one of its funds, which was normally not allowed by state law. Ms. Volek said staff was recommending rectifying the situation by making the transfer that met accounting standards. She said if it would have been a more recent situation where there were better records, the City might be penalized through the loss of future grants; but said, under the circumstances, she did not believe that would be the case.

Councilmember Ronquillo asked how the auditors were able to find the error in 2006 and staff was not. Ms. Volek advised that the City conducted a detailed audit each year as part of the budget process within one particular division. She said, in 2006, the audit was done of the HOME Program, which was when the error was discovered. Councilmember Ronquillo asked if the money was ever missed. Ms. Volek said an in-depth audit had not been done before. She advised the funds were granted on the federal budget year (October), which was different than the City's budget year (July), and it had always been problematic for local governments because it made the process much more difficult. Councilmember Ronquillo said he felt the Council should take a harder look at the Community Block Grant money and get more involved. He said he felt the way the money was divided up was not right.

City Administrator Volek said they did not know if the reimbursements were ever requested or whether they were simply not accounted for in the right place. Ms. Volek advised if the Council wished to have a discussion on the Community Block Grant money before the next cycle, one could be scheduled. She said at the recommendation of the Community Development Board, they had chosen to award the funding to many organizations; however, in communities she had worked in previously, the entire amount of money was used for a single large project and not divided up between individual organizations. Ms. Volek advised

the new process would begin in January and said if Council wanted to discuss the funding, it could be scheduled at a work session.

Councilmember McCall said she was concerned that the audit was done in 2006, but it did not come up until after the budget had been approved. She said it should have been discussed during the budget preparation because it may have made a difference in some of the other decisions.

Councilmember Ronquillo asked if more audits would be done. Ms. Volek advised the Community Development Block Grant funds would be subject to another audit in September. She said they tried to do spot audits without a lot of advanced warning across the organization to target funds where there was cash handling.

Assistant City Administrator Bruce McCandless advised that, for the FY07 budget, Eide Bailey, the City's auditor, went back to the CBDG and HOME Programs and looked at the updated accounting procedures they were using and were satisfied with the changes that had been made. Mr. McCandless said the transfer of General Fund monies in the FY08 time period still would not exceed the Council approved budget for the General Fund – Non-Departmental. He said, with that large of a transfer, it was recommended that Council give specific authority to make the transfer. He said it was not as though the funds needed to be budgeted in FY09 or FY10 because the funds were available in FY08. He said they were budgeted and because they had saved in other areas, the funds were available within the budgeted authority.

Councilmember Ruegamer moved for approval of Item 2, seconded by Councilmember Gaghen.

Councilmember Stevens said she would not support the motion because there was no way she was going to give away \$135,000 of taxpayers' money because there was sloppy accounting years ago and the fact that the City did not know if they even owed it. Councilmember Pitman said he would not support the motion because it should have been part of the budget process; and since it was not critical to any major programs at the current point, it could be addressed in next year's budget. Mayor Tussing advised he would reluctantly support the motion in order to maintain the integrity in the City's budget process. He said it was possible the City did not owe the money, but it could not be proven.

Councilmember McCall asked City Administrator Volek if any of the services, programs, and other items currently being supported would be affected if the reimbursement was not approved. Ms. Volek advised they would not.

On a voice vote, the motion failed 8 to 2. Councilmembers Ronquillo, Pitman, Stevens, Ruegamer, McCall, Ulledalen, Astle, and Clark voted 'no'.

**3. RESOLUTION #08-18738 RELATING TO \$7,400,000 SEWER SYSTEM REVENUE BOND SERIES 2008; AUTHORIZING THE ISSUANCE AND FIXING THE TERMS AND CONDITIONS. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** City Administrator Tina Volek advised that on July 14, 2008, City Council authorized the Commitment Agreement for issuance of Department of Natural Resources and Conservation Revenue Bonds for the extension of the Briarwood Sanitary Sewer. She said

Item 3 authorized the issuance of and fixed the terms and conditions of the bonds. Ms. Volek advised the loan was \$7.4 million at 3.75% for 20 years, and the service would be paid from wastewater revenues. She said staff had no additional presentation but was available to answer any questions.

Councilmember Ronquillo asked if the property owners in Briarwood would be paying for any of it. Public Works Director, David Mumford, advised they were not paying anymore than any other rate payer in the City of Billings. He said it would be coming out of the revenues from sewer operations. Mr. Mumford advised the City assumed the operations of a plant in Briarwood at the time of annexation, and the plant was failing. He said they went through a cash evaluation of either upgrading the plant or putting in a new line; and the cost benefit was to put in a new line. Mr. Mumford said everything was in place, and the contractor would start work in two weeks.

Councilmember Stevens moved for approval of Item #3, seconded by Councilmember Gaghen.

Councilmember Stevens asked how much the annexation of Briarwood had cost the City. She said they were spending \$7.4 million to get to a remote subdivision, and asked how many projects were being postponed within the city in order to do it. Mr. Mumford advised no projects had been postponed. He said the residents of Briarwood paid for the waterline extension and the system development fees to come into the system. He said the sewer line was no different than what had been done for Yellowstone Country Club.

On a voice vote, the motion was unanimously approved.

**4. PUBLIC HEARING FOR SPECIAL REVIEW #863: A special review to allow the location of a beer and wine license with gaming on a 42,148 square-foot parcel of land in a Controlled Industrial zone described as Lot 4A, Studer Acreage Subdivision, located on the southeast corner of the intersection of Cel Avenue and South 32<sup>nd</sup> Street West. George Frank, owner; Design Lab Architects, agent. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

Planner I, Dave Green, began his PowerPoint presentation showing the location of the subject property and describing the surrounding properties. He said there was discussion at the Zoning Commission level regarding the number of casinos in the area; and concern from neighbors that the casino was directly across from a residential area. Mr. Green advised, based on the zoning code criteria, the subject property was not within 600 feet of any schools, churches, or playgrounds. He said the Zoning Commission was recommending approval based on the following 10 conditions:

1. The special review approval shall be limited to Lot 4A, Studer Acreage Tracts Subdivision located at 1101 South 32<sup>nd</sup> Street West.
2. Development of the site shall be in substantial conformance with the site plan submitted with this application and shown in this staff report. Deviations from the approved site plan that show the addition of outdoor

- patio areas, parking lot access or parking areas will require additional special review approval.
3. There shall be no background music or amplified announcement system outside the building.
  4. The solid waste storage area shall be enclosed on three (3) sides by a sight-obscuring fence or wall and by a sight-obscuring gate on the remaining side. This enclosure shall be constructed of normal fencing materials. Chain link or wire fencing cannot be used for sight-obscuring enclosure.
  5. 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).
  6. Landscaping shall be provided as required by Section 27-1100 of the Unified Zoning Regulations.
  7. Applicant must install all street improvements on Cel Avenue required by City Engineering.
  8. Applicant must meet the current storm water management requirements of the City of Billings on their site.
  9. 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.
  10. The proposed development shall comply with all other limitations of Section 27-613 of the Unified Zoning Regulations concerning special review uses, and all other City of Billings, regulations and ordinances that apply.

Councilmember McCall asked if a recent assessment had been done on the number of casinos currently located in Billings. Mr. Green advised a study had been done last summer; and as of July 2007, there were 131 casinos with a total of 2,129 machines, for a 17 machine average per casino. He said, since July 2007, Council had approved four new casinos, and two were pending that evening.

Councilmember Astle if it was a transfer of a license or a new license. Mr. Green advised it was a new license authorized by the state.

Councilmember Clark asked if another casino could be built on the large lot. Mr. Green advised if the owners were to expand anymore than 10% of what they were currently showing, another special review would be required. Councilmember Clark asked if another building could be built without moving either one of the existing buildings. Mr. Green said another building could be built on the lot, but another special review would be required. Mr. Green said the current special review was for the entire lot.

Councilmember Ulledalen asked if it meant there would be two Doc & Eddy's separated by a parking lot. Mr. Green said the two casinos would have different names but the same owner.

Mayor Tussing asked Attorney Brooks if Council could deny a special review just because they felt there were too many casinos in Billings. Attorney Brooks said they could not.

The public hearing was opened.

- **Meredith Cox, 1908 Colton Boulevard**, said she owned Golden Meadows. She said she felt they were creating “casino row” on 32<sup>nd</sup> Street. She said the City did not present the item to the Zoning Commission properly because the map showed Golden Meadows as a very small section. She said Golden Meadows extended to the corner of King Avenue West and to 33<sup>rd</sup> Street West. Ms. Cox said she felt there were too many casinos.
- **Joe White, Billings, MT**, said he wanted to speak on behalf of himself and (inaudible), and they opposed any additional casino permits.
- **Tom Williams**, said he was the operations manager for the future All-Aboard Casino. Mr. Williams stated the beer and wine license was not a new license. He said it was currently at Doc & Eddy’s West and would be moved from 1251 S. 32<sup>nd</sup> Street to the All Aboard Casino location. He said arrangements had been made to lease the present Doc & Eddy’s West location to LME Corporation for a microbrew lounge and casino.

Councilmember Ulledalen asked if there was room to build another casino on the property. Mr. Williams said there was not, and it was not their intention at all. Mr. Williams advised there had to be 150 feet between doors according to state law.

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

Councilmember Pitman moved for conditional approval of Special Review #863, seconded by Councilmember Ruegamer.

Councilmember Clark asked Attorney Brooks if there were any other legitimate reasons to not approve the Special Review. Attorney Brook said it would have to be researched because he could not think of any at that time. He said the State Department of Revenue controlled the number and types of licenses; and the City Council controlled, to a limited degree, the locations where the licenses were utilized. Councilmember Clark asked for the status of the study on the location of casinos.

City Administrator Volek advised there had been a study done and a presentation to Council in the summer of 2007.

Planning Director, Candi Beaudry, advised that in June 2007 a planning intern completed a study on the locations of casinos in Billings and the revenue the casinos brought into Billings. She said, at Council’s request, they put together a prototype of a casino overlay district and found that 31 existing casinos would be non-conforming. She said it was the Council’s recommendation to go back and adjust some of the parameters in the overlay district to lessen the number of potentially non-conforming casinos. Ms. Beaudry said in order to lessen the

number of non-conforming casinos, the buffer zone originally established at 150 feet would have to be reduced to 20 feet. She said staff was ready to bring the results back to Council.

Councilmember Clark asked how quickly the special review had to be acted on. Ms. Beaudry said it could be delayed for 30 days, but a text amendment required going back to the Zoning Commission and the Council, which would take approximately two months.

On a voice vote, the motion was approved 9 to 1. Councilmember Clark voted 'no'.

**5. PUBLIC HEARING FOR SPECIAL REVIEW #864: A special review to allow an all-beverage liquor license with gaming on a 38,072 square-foot parcel of land in a Controlled Industrial zone described as Lot 6A, Block 3, Midland Subdivision, 4<sup>th</sup> Filing, located on the southeast corner of the intersection of South 29<sup>th</sup> Street West and King Avenue West. Eagle-Fairview Investment Company LLC, owner; Montana Stewards, LLC (Town Pump), agent. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

Planner I, Dave Green, began his PowerPoint presentation showing the location of the subject property and describing the surrounding properties. He said there had been ten special reviews, including Special Review #864, for alcohol licenses in Midland Subdivision since 1996. Mr. Green advised that the Zoning Commission was recommending approval based on the following nine conditions:

1. The special review approval shall be limited to Lot 6A, Block 3, of Midland Subdivision, 4<sup>th</sup> Filing, located at 2850 King Avenue West.
2. Development of the site shall be in substantial conformance with the site plan submitted with this application and shown in this staff report. Deviations from the approved site plan that show the addition of outdoor patio areas, parking lot access, or parking areas will require additional special review approval.
3. There shall be no background music or amplified announcement system outside the building.
4. The solid waste storage area shall be enclosed on three (3) sides by a sight-obscuring fence or wall and by a sight-obscuring gate on the remaining side. This enclosure shall be constructed of normal fencing materials. Chain link or wire fencing cannot be used for sight-obscuring enclosure.
5. The existing drive-up lane on the west side of the building must be blocked or removed. The drive-up window on the west side of the building must be removed.
6. Landscaping shall be provided as required by Section 27-1100 of the Unified Zoning Regulations.
7. 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).

8. 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.
9. The proposed development shall comply with all other limitations of Section 27-613 of the Unified Zoning Regulations concerning special review uses, and all other City of Billings, regulations and ordinances that apply.

Councilmember Ronquillo referenced Condition #6 and said the grass at the location was completely brown and weeds had take over, and he hoped they would start taking care of it. Councilmember Stevens asked if they should be maintaining it now. Mr. Green said the current owner was required to maintain it, and he did not know if the property had been sold. Councilmember Stevens asked why the City had not been after the current owner to maintain it. Mr. Green advised there had been no complaint filed, and staff did not go out and actively look for violations. Councilmember Stevens said it was a building issue and not a code issue and part of the special review agreement. Zoning Coordinator Nicole Cromwell advised that, regardless of what the violation was, staff needed to receive a complaint in order to act on it.

The public hearing was opened.

- **Dave Bernhardt, 426 12<sup>th</sup> Street West**, asked Council how many casinos they were going to allow in Billings. He asked if the citizens had any say in how many casinos there were. Mr. Bernhardt said Rimrock Foundation was trying to solve alcohol, drug, and gambling problems, and the City did nothing about it. He said it was time Billings woke up because they did not need any more casinos.

Councilmember Astle commented the whole idea of gambling in Montana started out as a way to fund teacher retirement, but it had become such a “cash cow” for the state so the state was not going to eliminate casinos. He said it was controlled by the state and the only way to run out of casinos was to run out of people to fill them; or if the cost to run the casinos was more than they were bringing in.

Mayor Tussing advised Mr. Bernhardt that it would be more productive to take his concern to the state legislative representatives. Mr. Bernhardt said he already had.

- **Joe White, Billings, MT**, said he was opposed to the beer and wine licenses and beer and wine being sold in gas stations.
- **Meredith Cox, 1908 Colton Boulevard**, said it was up to the City to decide in its ordinances what to do about the casinos, and not up to the state. Ms. Cox recommended staff look at the zoning and give the Zoning Commission better guidelines.

Mayor Tussing asked Attorney Brooks about the potential for lawsuits if they decided to unilaterally limit the number of liquor licenses and casino licenses in the city. Attorney Brooks said he would need time to research the question, but one observation he would make was that beer and wine and all-beverage liquor licenses were often considered by the courts as a property right or interest. He commented the City could not determine who received a license or how many licenses were issued; and the City's primary role would be to determine where the licenses were utilized.

- **Rick Leuthold, Engineering, Inc.**, said he represented Town Pump. He said they were aware of the conditions and upon approval, it was Town Pump's intention to take over the operation and begin maintaining the lawn and landscaping. Mr. Leuthold said they would move forward with closing off the drive-up lane and window. He said it was an existing license that was being reactivated. Mr. Leuthold said the property was a general commercial retail location with no immediate residential uses.

Councilmember Stevens asked if the casinos made their money off of liquor sales or gambling. Mr. Leuthold said he thought they made income off of both. He commented that Chuck O'Brien was present and could answer the question.

- **Chuck O'Brien, 600 S. Main, Butte, MT**, said he was the Construction and Development Manager for Town Pump. Mr. O'Brien said the majority of their money was made from the gaming as opposed to beer and wine. He said very seldom did Town Pump have to operate a casino with a bouncer because people came in to gamble more than to drink.

Councilmember Astle asked when the license was last used. Mr. O'Brien said he could not answer the question, but their legal department could. He said it was probably last used in Billings.

Councilmember Ulledalen said the Council was increasingly being criticized by the community, and the gaming industry needed to understand there was rising opposition. Mr. O'Brien said he understood, but according to their market surveys, people were choosing to gamble. He said gaming generated revenue and commerce.

Councilmember Stevens asked if the market surveys had been done in Billings or other areas. Mr. O'Brien said the market surveys were done in general. Councilmember Stevens asked how many more casinos Billings wanted according to the surveys. Mr. O'Brien said Casino Operations would be better to answer that question because he was in the construction portion, but he would be happy to furnish any information he could. Councilmembers Stevens and Gaghen said they would be interested in receiving the information.

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

Councilmember Gaghen moved for approval of Special Review #864, seconded by Councilmember Pitman.

Councilmember Ruegamer commented there would be as many casinos as people wanted. He said they were against something without all the facts. He said a lot of people gambled for enjoyment and did not get addicted.

City Administrator Volek advised staff would work with Town Pump and attempt to get a copy of their marketing surveys. She said she would ask Attorney Brooks to check with the state regarding how many mothball licenses existed that had not been used and if there were caps on beer and wine and full liquor licenses.

On a voice vote, the motion was approved 9 to 1. Councilmember Clark voted 'no'.

**6. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #845: A zone change from Residential 9600 to Residential 6000 on a .85-acre parcel located on the southeast corner of the intersection of Monroe Street and Madison Avenue and addressed as 203 Monroe Street. Daniel Dimich and Patricia Rodriguez, applicants; Charles Hamwey, agent. Zoning Commission recommends approval and adoption of the determinations of the 12 criteria. (Action: approval or disapproval of Zoning Commission recommendation.)**

Planner II and Zoning Coordinator, Nicole Cromwell, advised the zone change request was the result of a mapping error. She said the applicants had engaged Charles Hamwey to help them with refinancing the property. She said, at that time, Mr. Hamwey approached the Planning Division and asked for a zoning clarification on the property, as it was shown as Public Zoning. Ms. Cromwell said, through research, she discovered a mapping error had occurred in the early 1990's. She said the property was shown on the original hand-drawn maps as Residential 15,000. She said Residential 15,000 had been eliminated in 1986 as an allowable city zoning; and the map was not updated to the default zoning of Residential 9600. Ms. Cromwell said in late 2007 the Planning Division and the County GIS Department corrected the mapping error and changed the zoning from Public to Residential 9600. She said predominate zoning in the surrounding area was actually Residential 6000, and the applicants would like to make the subject property compatible with the surrounding residential area.

Ms. Cromwell advised the Zoning Commission was recommending approval on a 5 to 0 vote 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 consistent with the following goals of the Growth Policy:
  - *Predictable land use decisions that are consistent with neighborhood character and land use patterns. (Land Use Element Goal, page 6)*  
The proposed zoning would allow the re-use of the existing office building for professional offices and is consistent with the surrounding single-family uses.

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

The proposed zoning is consistent with the surrounding character of the neighborhood.

- The proposed zone does not create an illegal spot zone.
  1. The requested use is not significantly different than the prevailing use in the area.
  2. The area requested for the use is not small in area.
  3. The requested zoning benefits both the property owner and the surrounding property owners.

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

The additional traffic from a professional office of less than 2,000 square feet would not be significant considering the existing vehicle trips per day on Colton Boulevard and 17<sup>th</sup> Street West.

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

The subject property is currently serviced by City Fire and Police. Any development will require a provision of commercial access to city streets and buildings will need to meet minimum building and fire protection standards.

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

The proposed zoning would permit the re-use of an existing professional office building. The applicant has stated that property improvements would be made if the zone change is approved. The Unified Zoning Regulations do specify minimum setbacks and lot coverage requirements for the proposed zoning district in order to promote health and safety.

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, like all zoning districts, contain limitations on the maximum percentage of the lot area that can be covered with structures. The R-96 zone allows 30% lot coverage and the RP zone allows 50% lot coverage. The proposed site plan does not increase the foot print of the existing 1,775 square foot building.

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

The new zoning does avoid undue concentration of population. The R-96 zoning only allows single family homes on a minimum lot size of 9,600 square feet. The proposed zoning also only allows single family homes on a minimum lot size of 6,000 square feet.

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

Transportation: The proposed zoning may impact the surrounding streets, although this is dependent on the actual commercial use intended for the property.

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

Schools and Parks: School District #2 will provide education to students within the development.

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 permit the re-use of an existing professional office. The structure was built in 1969 through a special exception granted by the City Council. The use became a nonconforming use in 1972 when the City Council adopted the current zoning regulations and zoning map. The re-use of this building for office space gives consideration to the existing character of the district.

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

The subject property is suitable for the requested zoning district. The property is located at a traffic-controlled intersection of an arterial street and a collector street. There are several other small office buildings north and south along 17<sup>th</sup> Street West.

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

In 2005, the tax category for this property was changed from “commercial urban” to “residential urban”. This reduced the annual property taxes from \$2,600 per year to approximately \$1,900 per year. Surrounding residential property to the north, west and east have similar taxable value as residential property. The building at 1702 Colton Boulevard was not built as a residential dwelling and the taxable and market value of the structure would significantly increase if the underlying zoning were changed to allow professional and commercial uses. The zone change will conserve and enhance the value of this existing building.

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

The proposed zoning is the most appropriate zoning for this location.

The public hearing was opened.

- **Charlie Hamwey, 1010 Grand Avenue**, thanked Nicole and the Planning Department for their help. He said in 1973 the property was in the county and zoned R15,000. He said when it was annexed into the City, for a reason nobody knew, it was zoned Public. Mr. Hamwey said the property owners applied for financing in September 2007 and were told by the loaning institution they could not finance Public. Mr. Hamwey said they had been to the Zoning Commission and held neighborhood meetings with no opposition.

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

Councilmember Ronquillo moved for approval of Zone Change #845, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.

Mayor Tussing called for a brief recess at 8:25 p.m. The meeting was called back to order at 8:33 p.m.

**7. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #846: A zone change from Residential 9600 to Residential Professional on a 16,843 square-foot parcel generally described as Lots 1 and 2, Block 20, Kober Subdivision, 4<sup>th</sup> Filing, and located at 1702 Colton Boulevard. Sunday Creek Land Company, Ronald Scariano, owner; Heather McDowell, Crowley Law Firm, agent. Zoning Commission recommends approval and adoption of the determinations of the 12 criteria. (Action: approval or disapproval of Zoning Commission recommendation.)**

Planner II and Zoning Coordinator, Nicole Cromwell, advised the zone change was for property that was originally developed as the district offices for the Assembly of God Churches. She said the Assembly of God Churches sold the property in 2001. Ms. Cromwell advised in 1969 the City Council allowed the office building to be built in a residential zone by a special exception. She said the new owner, Ron Scariano, would like to change the zoning so the existing office-type building could be used for professional offices. She said it was currently being rented as residential housing and was very non-traditional housing because it was converted from an office to a dwelling. She explained the property was surrounded by Residential 9600 to the west, north, and south across the BBWA Canal; and by Residential Professional on the northeast corner of Parkhill Drive and 17<sup>th</sup> Street West and the corner of Poly Drive and 17<sup>th</sup> Street West. Ms. Cromwell advised that Colton Boulevard was designated as a collector street, and 17<sup>th</sup> Street West was designated as a minor arterial.

Ms. Cromwell advised the Planning Division recommended denial on the proposed zone change to the Zoning Commission. She said the Planning Division was concerned a zone change to Residential Professional north of the BBWA Canal surrounded by residences would be considered a spot zone under the three criteria for spot zone. She advised the Zoning Commission took testimony from the applicant, the applicant's agent, and surrounding property

owners and made a determination to recommend approval on a 3 to 2 vote. She said the Zoning Commission determined that the proposed zoning would allow for the re-use of an existing office building and was consistent with surrounding single-family uses. Ms. Cromwell advised there was a minimum lot size of 10,000 square feet in a Residential Professional zone and uses were limited to strictly office; no retail uses would be allowed except for a minor accessory to an office such as a small drug store included in a doctor's office. She said the Zoning Commission found that Residential Professional would not create an illegal spot zone; the property was as large, or larger, than many of the developed properties in the area; the requested zoning benefited both the existing property owner of the lot and the surrounding property owners; and Residential Professional was the most appropriate zoning for the location. The Zoning Commission recommended approval based on the following 12 criteria.

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

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

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

The proposed zoning would allow the re-use of the existing office building for professional offices and is consistent with the surrounding single-family uses.

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

The proposed zoning is consistent with the surrounding character of the neighborhood.

- The proposed zone does not create an illegal spot zone.
  1. The requested use is not significantly different than the prevailing use in the area.
  2. The area requested for the use is not small in area.
  3. The requested zoning benefits both the property owner and the surrounding property owners.

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

The additional traffic from a professional office of less than 2,000 square feet would not be significant considering the existing vehicle trips per day on Colton Boulevard and 17<sup>th</sup> Street West.

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

The subject property is currently serviced by City Fire and Police. Any development will require a provision of commercial access to city streets and buildings will need to meet minimum building and fire protection standards.

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

The proposed zoning would permit the re-use of an existing professional office building. The applicant has stated that property improvements would be made if the zone change is approved. The Unified Zoning Regulations do specify minimum setbacks and lot coverage requirements for the proposed zoning district in order to promote health and safety.

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, like all zoning districts, contain limitations on the maximum percentage of the lot area that can be covered with structures. The R-96 zone allows 30% lot coverage and the RP zone allows 50% lot coverage. The proposed site plan does not increase the foot print of the existing 1,775 square foot building.

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

The new zoning does avoid undue concentration of population. The R-96 zoning only allows single family homes on a minimum lot size of 9,600 square feet. The proposed zoning also only allows single family homes on a minimum lot size of 6,000 square feet.

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

Transportation: The proposed zoning may impact the surrounding streets, although this is dependent on the actual commercial use intended for the property.

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

Schools and Parks: School District #2 will provide education to students within the development.

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 permit the re-use of an existing professional office. The structure was built in 1969 through a special exception granted by the City Council. The use became a nonconforming use in 1972 when the City Council adopted the current zoning regulations and zoning map. The re-use of this building for office space gives consideration to the existing character of the district.

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

The subject property is suitable for the requested zoning district. The property is located at a traffic-controlled intersection of an arterial street and a collector street. There are several other small office buildings north and south along 17<sup>th</sup> Street West.

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

In 2005, the tax category for this property was changed from “commercial urban” to “residential urban”. This reduced the annual property taxes from \$2,600 per year to approximately \$1,900 per year. Surrounding residential property to the north, west and east have similar taxable value as residential property. The building at 1702 Colton Boulevard was not built as a residential dwelling and the taxable and market value of the structure would significantly increase if the underlying zoning were changed to allow professional and commercial uses. The zone change will conserve and enhance the value of this existing building.

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

The proposed zoning is the most appropriate zoning for this location.

Ms. Cromwell advised the Council had received a valid protest against the zone change. She said there were 13 properties within 150 feet of the proposed zone, and seven of the property owners had signed a protest petition. She said it would require a 2/3 majority vote of the present voting members in order to approve the requested zone change.

Councilmember Astle asked which members of the Planning Commission voted for or against the zone change. Ms. Cromwell said Barbara Hawkins, Ed Workman, and Michael Larson voted in favor; and Chairman Leonard Dailey and Tom Grimm voted against.

Councilmember Astle asked if the owners of the subject property had made zone change requests in the past. Ms. Cromwell advised there had been two special review requests that were both denied, and two zone change requests in January 2000 and September 2004 that were both denied. Councilmember Astle asked if the Zoning Commission had recommended approval for the previous zone change requests. Ms. Cromwell said she did not have that information with her; but she ventured to guess the Zoning Commission had recommended approval in 2004 but the City Council denied it.

Councilmember Gaghen said she and Councilmember Clark were on the City Council in 2004, and there was valid protest so it required a 2/3 vote of the Council to deny the zone change request.

Mayor Tussing told those in attendance who opposed the zone change that they could stand and be recognized if they did not want to testify, or they were welcome to come forward and testify. Six members of the audience stood in opposition.

The public hearing was opened.

- **Anita Benton, 3114 17<sup>th</sup> Street West**, said she was a member of Parkhill Assembly and worked at the subject property for 27 years for the Montana Assemblies of God, so she was very familiar with the building. She said, while in the building, they employed five full-time employees and a couple part-time employees. Ms. Benton said they always kept the inside and outside of the building in good condition. She said she felt the building would serve well as another office and would be a credit to the neighborhood. She said the layout of the building would not serve as a private home.
- **Cecilia Emerick, 1736 Colton Boulevard**, said it was the fifth time she had been before City Council regarding a zone change on the property. She said she and her neighbors did not feel the zoning requested was appropriate for the particular location, they were concerned about impacts on the neighborhood, and they felt the zone change would set a precedence for future zone changes further west on Colton Boulevard. Ms. Emerick said the zone change had been denied on four separate occasions, and she saw no difference in the current proposal from the previous proposals. She said the issue was not what they would do with the property; the issue was they did not want a business in their neighborhood, especially on the west side of 17<sup>th</sup> Street West. She said when the church was granted the non-conforming use exception 40 years earlier, the neighbors were told the property would be used for churches only, and on good faith the neighbors believed it. She said the church office eventually outgrew their space and made their problem the neighbors' problem. Ms. Emerick said to purposely run the property down to force the neighbors to vote for a change was not a good way to go about it. She quoted a former councilmember from the minutes in 2000 when the zone change was requested on the property as saying "Churches enjoy a unique position in our community of being able to place themselves into a residential area. To use that as an entrée into a commercial venture into that same neighborhood is bad policy." She said other churches had tried to go through the same process, including a church on Lewis Avenue, and the City denied the zone changes. Ms. Emerick asked Council not to pass the zone change request.
- **Dennis Martin, 2110 Cullen Court**, said he was against the zone change because his home was his greatest asset, and he believed the zone change and possible future zone changes along 17<sup>th</sup> Street West and Colton would have a negative impact on the neighborhood and decrease the value of his property. He said the traffic on Colton seemed to increase every year and adding a business with multiple tenants would increase traffic even more. Mr. Martin said he was also concerned that once the zoning was changed, there would be no going back. He said the current owner of the property had shown no respect for the neighborhood by allowing the property to deteriorate to the current condition, and had used

“strong arm tactics” by renting the building to “out-of-control” college students without any regard for the neighbors and his own property. Mr. Martin said the current owner only cleaned the property and removed the tenants when he was trying to have the property re-zoned. He said he felt the property owner was looking strictly for a “quick sale for a greater return on his investment” at the cost of the neighborhood.

Councilmember Stevens asked if the property could currently be used as an office as a non-conforming use. Ms. Cromwell said it could not because the non-conforming protection lapsed when the office use was abandoned for more than one year. Councilmember Stevens said if the zoning stayed as it was, there was a likelihood the property would continue to deteriorate and asked Mr. Martin if that was preferable to re-zoning and having a better maintained business on the property. Mr. Martin said that was something he would have to continue to look at and if he could salvage the value of his property. Councilmember Stevens asked if a deteriorating rental or a well-maintained office building was more preferable. Mr. Martin said he felt the property could be maintained as a rental if the property owner chose to.

- **John Lunney, 1726 Colton Boulevard**, said he was protesting the zone change. He said his main concern was that once the R9600 zoning was gone, it would never come back. He said the current owner could sell the property and the only thing the new owner would have to do was meet the professional designation, which could be whoever had the best lawyer. Mr. Lunney said for two years after Mr. Scariano bought the property, the property looked fine. He said before Mr. Scariano asked for the zone change, he came to his house and explained what he planned to do with the property and the more he talked, the more “grandioso” it got because he said he was going to build a playground on the ditch bank for the children. Mr. Lunney said when he told Mr. Scariano he was not in favor of a zone change, Mr. Scariano told him he would rent it to a “bunch of college kids who would party all the time and see how he liked that.” Mr. Lunney said it took Mr. Scariano about a year and a half to get the right college kids who had a scanner and who would quiet down when the police were called. Mr. Lunney said the roof on the building had deteriorated down to the tar paper, the roof leaked, the air conditioning did not work, and the grass had never been watered since Mr. Scariano became the owner even though there was a well on the property. Mr. Lunney said Mr. Scariano had used the property to intimidate the neighbors into begging for the zone change.

Councilmember Stevens asked Mr. Lunney if he thought a family with small children would move into a home on the corner of Colton and 17th if the property stayed residential. Mr. Lunney said he raised a family living right next to the ditch and if parents controlled their children, they could raise a family anywhere.

- **Len Ventling, 3114 17<sup>th</sup> Street West**, said the request to change the zoning to Residential Professional made sense to him. He said the

building would make a good professional office for an insurance agent, attorney, accountant, dentist, doctor, or financial planner, which would have minimal traffic going in and out. He said it would be difficult to change the construction, shape, and size of the building for residential. Mr. Ventling said his State Farm office at 5<sup>th</sup> and Broadwater had increased the value of the surrounding residential properties, and he felt the same thing could happen with the subject property.

- **Heather McDowell, Crowley Law Firm**, said she represented Ron Scariano and began her PowerPoint presentation showing the shape of the parcel that abutted 17<sup>th</sup> Street West and Colton. She said it was on a busy intersection and had an asphalt parking lot that covered a large portion of the lot. Ms. McDowell said it was an office building and not a residence. She showed a slide of the 17<sup>th</sup> Street West Corridor and all the existing businesses and said she felt the zoning map was misleading because there were a lot of businesses on 17<sup>th</sup> Street West. She said the Zoning Commission found the zone change met the 12 criteria, and a 9 to 5 office space would result in less congestion than a 24-7 residence. Ms. McDowell said the zone change would enhance the neighborhood character and increase the tax base; and it was a great place for a Residential Professional office. Ms. McDowell said she realized there was a valid protest that evening. She said Mr. Scariano was not in good health and not present that evening. She said she would like to point out that the standard of review, if they would ever have to litigate the issue, was an arbitrary and capricious standard, and the complaints shown that evening simply did not rise above that level. She said there was fear of increased traffic, but there was indication there would be less traffic with the new use. She said there was fear of similar zoning, but each zone change would have to be analyzed separately. She said there was fear of the unknown with regard to use, but there were items in place subject to permitting in the city code that would take care of some of the concerns. Ms. McDowell said the zone change would take care of the rental to college students. She said the spot zoning issue was a red herring and if it was an issue, it would have been addressed in the three other changes from R96 to Residential Professional in the past ten years.

Councilmember Ulledalen asked if Mr. Scariano was fully informed of the zoning and restrictions that were inherent with the property when he bought it. Ms. McDowell said he was aware of it at the time. She said he paid cash for the property and thought he could improve it. She said he did not realize how difficult it would end up being. She said Mr. Scariano had planned to move his Edward Jones business there, but health concerns had caused him to retire. Councilmember Ulledalen said Mr. Lunney indicated that Mr. Scariano had threatened the neighbors to rent the property to any group of college students he could find and asked Ms. McDowell if Mr. Scariano had actually made that statement. Ms. McDowell said she did not know if that was the case or not. She said Mr. Scariano was a good man, but she was not there at the time.

Councilmember Astle asked to see pictures of the building again and commented that Ms. McDowell's pictures looked healthier than the staff's pictures. Councilmember Astle asked what the timeframe was between the photos. Ms. Cromwell advised their pictures were taken when the property was posted in approximately the second week of June. Ms. McDowell said her pictures were taken on the day of the Zoning Commission hearing around the first of July. Ms. McDowell added that because it was hard to find renters, they had not always kept up the place; and there were currently no renters in the building.

Councilmember Ronquillo asked if a new owner could put any business in the building if the zone change passed that evening and Mr. Scariano sold the property the next day. Ms. Cromwell advised the new owner would have to comply with the regulations for Residential Professional, which would allow residential use or office use. She said the new owner would likely need a building permit to convert the building to an office space. She said it probably already conformed to landscaping requirements because it was a small area covered by buildings and parking. She said the parking requirements would depend on the use.

Mayor Tussing asked if a professional tattoo parlor could move into the building. Ms. Cromwell said she believed tattoo parlors were allowed in Residential Professional. Mayor Tussing asked if a professional escort service would be allowed. Ms. Cromwell said she would need to look that one up. Mayor Tussing asked if a beauty parlor could potentially increase the amount of traffic. Ms. Cromwell said a beauty parlor was an allowed use in Residential Professional.

Councilmember Gaghen asked how many renters the building would accommodate. Ms. Cromwell said depending on which rooms were designated as bedrooms, there could be two persons per bedroom under the code. Ms. Cromwell advised when the last zone change was denied in 2004, the property was re-designated by the Department of Revenue from Commercial Urban to Urban Residential. She said the building was designated as having three bedrooms, so maximum would be six people.

Councilmember Astle asked who owned the property in 2004 when the zone change was denied. Ms. Cromwell said the owner was Mr. Scariano.

- **Scott Emerick, 1736 Colton Boulevard**, said he was also opposed to the zone change. He said the most important reason was that he had to live with his wife, and the other reasons had been echoed by the other speakers in opposition. He said he did not buy his home to have it reduced in value, and there was a broad spectrum of businesses that could locate on the property and de-value his property. Mr. Emerick said it was a good neighborhood, and the zone change would bring it down. He said he had been in the building, and the property could be converted to a residence fairly easily.

Councilmember Pitman said he did not see it getting any better and asked if Mr. Emerick preferred to have college kids living there. Mr.

Emerick said he would have no problem with college kids living there as long as Mr. Scariano enforced the upkeep of the property. Mr. Emerick said they posed the question of upkeep to Mr. Scariano several times, and he kept saying it was the renter's responsibility when, in fact, it was his responsibility.

Councilmember McCall asked if Mr. Emerick had seen a decline in his property due to the offices located across 17<sup>th</sup> Street West on the other side of the ditch. Mr. Emerick said he had not. Councilmember McCall asked if the property across 17<sup>th</sup> Street West was currently not there, would he be in favor or opposed to its development. Mr. Emerick said he would probably support it because it would not impact his property.

Councilmember Astle asked Ms. McDowell what had changed since the zone change denial in 2004 and why it was a better idea now. Ms. McDowell said it was a good idea in 2004 because it was turning it into the best use of the property. She clarified that Mr. Scariano did not own the property and bought it after the last City Council hearing on the zone change in 2004. She said nothing had changed, and it would have been the right decision in 2004.

Councilmember Gaghen said she was sure it was Ron Scariano who brought the proposal forward in 2004, and asked Councilmember Clark if he remembered. Ms. McDowell advised he was the agent on the property but did not actually purchase the property until after the zone change denial. She said he bought the property knowing the zone change had been denied.

Councilmember Stevens advised there had been a change because the non-conforming use had lapsed.

Councilmember Astle said the last use of the building that he could remember was as a daycare. Councilmember Stevens said that was also her recollection. Ms. McDowell advised it was an in-home use. Councilmember Pitman said he had looked at the subject property at one time to use as a daycare; but because of the zoning, only 6 to 12 children would be allowed. He said as long as there were less than 12 children, a residential home could be used.

Councilmember Ulledalen asked Ms. McDowell if she was saying Mr. Scariano did not own the property at the time of the prior request but he was looking for the zone change as a part of the purchase. Ms. McDowell said that was correct. Councilmember Ulledalen asked if Mr. Scariano bought the property after the zone change had been denied. Ms. McDowell said that was correct. Councilmember Ulledalen said Mr. Scariano knew exactly what he was getting into. Ms. McDowell said that was correct, but it was not the issue and not a bad investment. Councilmember Ulledalen said he was not talking about the investment standpoint at all. He said he understood Mr. Scariano was pursuing the zone change as a contingency to completing the purchase; and asked Ms. McDowell if Mr. Scariano went through the process and had a buy-sell on the property contingent upon getting the zone change. Ms. McDowell said

that was her understanding. Councilmember Ulledalen asked Ms. McDowell to clarify that when Mr. Scariano did not get the zone change, he bought the property anyway. Ms. McDowell said she did not know the details of the buy-sell. She said she did know that Mr. Scariano had not purchased the property at the time of the last City Council meeting on the zone change request.

- **Fern Steenie**, said she did not live in the area but owned a house at 1804 Colton and a house at 1706 Mariposa. She said she felt the zone change would negatively impact the value of her properties, and asked that the zone change request be denied.

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

Councilmember Clark moved for denial of Zone Change #846, seconded by Councilmember Gaghen. Councilmember Clark said his reason for denial was that he felt it was spot zoning.

City Attorney Brooks advised Council they needed to articulate as many of the criteria they felt applied to the facts as they found them as to which of the criteria were satisfied or not satisfied. He said spot zoning was a component of primarily legal determination and was not one of the criteria directly; but it did go with the compatibility of the surrounding uses.

Councilmember Clark asked why staff could recommend denial based on spot zoning and the Council could not. Attorney Brooks advised Councilmember Clark he could use spot zoning but recommended more of the criteria than spot zoning because spot zoning was developed primarily by case law. He said the 12 criteria were established by statute, and he recommended Council find as many of the 12 criteria as possible to support their position factually.

Councilmember Gaghen said she felt #10 was extremely pertinent and considering the wide variety of unsuitable businesses that could be allowed, such as tattoo parlors or escort services, she felt the zone change could impact the neighborhood in a negative way.

City Administrator Volek advised Council that Ms. McDowell had hardcopies of her slideshow presentation that she would like distributed to them. Mayor Tussing asked Ms. Volek to distribute the copies.

Mayor Tussing said, even though Ms. McDowell had laid out the basis for her lawsuit without using the word "lawsuit", he would vote to support the motion to deny. He said he was not convinced of #2 that the new zoning would be designed to lessen the congestion in the streets. He said it would depend on the use, but he felt a number of uses could increase the traffic. Mayor Tussing said #9 really depended on what types of businesses went in. He said if there were five people working 9 to 5 at a church office again, it would be fine; but there was no guarantee what businesses would go into the building. Mayor Tussing said he felt #10 depended on the use, and there was no guarantee what use the building would be put to if the zone change request was granted.

Councilmember Ruegamer said he was on the Council in September 2004 when the last zone change request was turned down. He advised he had said it

then, and he would say it now, that he would vote to not allow the zone change. He said the property owners who lived in the area may wish Council had approved it because the property was run down and there were wild parties going on. Councilmember Ruegamer said he could not see anyone fixing it until it could be fixed for a good reason. He said he did not believe it would reduce property values, and said he believed Mr. Scariano was probably going to sell it. Councilmember Ruegamer said what affected him was the valid protest, which was important to him. He said it was also spot zoning in his opinion, and the unknown future use was a concern to the neighbors, and he did not blame them. Councilmember Ruegamer said one of the over-riding factors to him was the neighbors that lived there said they thought it was a church and now it was going to be an office building or a securities business. He said he needed to consider the neighbors' feelings. He said if someone moved in next to a high school and then started complaining about the parking and the kids in their yard, it would be hard for him to be sympathetic. He said the neighbors on Colton Boulevard were already there, and they thought it was a church they were living next to, and now it may become a securities sales office. He said it would be a problem to him. Councilmember Ruegamer said his point was that the residents were there before the current proposal, and the neighbors were seeing a change in something they did not want.

Councilmember Ulledalen advised he would vote in favor of the denial. He specified #1 and said he felt any neighborhood could be dismantled by making zoning decisions based on what was happening down the streets. He specified #12 and said he did not agree it was the most appropriate zoning for the location.

Councilmember Astle said he would be voting in favor of the denial. He specified #9 and said it was non-conforming, it was given a special exception, three years later it became non-conforming when the zoning rules were adopted, and then it was not used as a professional building for over a year. He said he also felt it was spot zoning. He said the building could be torn down and a residence could be built.

Councilmember McCall said she would support the denial based on spot zoning and #12.

Councilmember Pitman said he would vote against the denial because the 12 criteria had been met, the building was set up as an office, it had a paved parking lot, and the person owning the property had rights. He said he felt the owner's rights had been addressed in the 12 criteria.

Councilmember Clark said the person who owned the property knew it was zoned for residential when he bought it.

Councilmember Stevens said she could see both sides of it and she understood the homeowners' concerns. She said she would not support the motion to deny because it was an eyesore and had been for a long time. She said she did not feel a tattoo parlor would move into the building. She said it was an area that real professionals were looking at such as medical, lawyers, accountants, etc. Councilmember Stevens said she felt the property would be improved by becoming Residential Professional because those types of professionals would not move into a building that was not a nice building. She

said the property owner would need to do some remodeling to make it a nice building. She said she thought Residential Professional would improve the property and, in turn, improve the values of the rest of the neighborhood. She said Residential Professional was generally 8 to 5, Monday through Friday, so there would not be weekend traffic, college kids coming and going at all times of the day and night, etc. She said she felt the property would become an asset to the neighborhood if it was re-zoned.

On a roll call vote, the motion to deny the zone change request passed 7 to 3. Councilmembers Gaghen, Ruegamer, McCall, Ulledalen, Astle, Clark, and Mayor Tussing voted to deny the zone change request. Councilmembers Ronquillo, Pitman, and Stevens voted in favor of the zone change request.

**8. 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.)*

- **Catherine Schaeffer, 2113 Walter Road**, said she would like to thank Denis Pitman and Jani McCall for going on the tour. She said everyone enjoyed the article Mr. Pitman wrote about the Billings Animal Shelter. She said she felt they needed more good publicity for the shelter. Ms. Schaeffer said she would like to see something similar to Dr. Jordan's weekly advice in the Billings Gazette for the Billings Animal Shelter and Rescue. She addressed Councilmember Ruegamer with her idea for getting more money into the shelter. She said she felt the shelter should be allowed to use the funds it generated through city licensing, adoption fees, and fines instead of it all going into the General Fund. She said she felt a big problem at the shelter was financial. She said they needed to get more money into the shelter and more qualified people employed by the shelter.

Councilmember Clark asked Ms. Schaeffer how she expected to get more money into the shelter when the shelter was being financed out of the General Fund now and would probably get less if the shelter kept the other funds. Ms. Schaeffer said she would like to see the budget for the Animal Shelter remain the same but allow the money generated by the shelter to go back to the shelter instead of into the General Fund. Ms. Schaeffer said she felt the budget at the shelter needed increased, and a supervisor was needed at all times to help with the volunteers.

City Administrator Volek pointed out to the Council that the Animal Shelter was funded as part of the Public Safety Fund. She said 58% of the General Fund went to the Public Safety Fund, in addition to the money raised from the mill and from the levy approved by the voters. She said she suspected, in general, that the amount of money actually budgeted into the Animal Shelter far exceeded the amount they took in for fines, fees, and licensing.

Councilmember Ruegamer asked Ms. Schaeffer why she directed her comments to him. Ms. Schaeffer said at a previous meeting he had asked for solutions to make things better at the shelter. Mr. Ruegamer thanked Ms. Schaeffer and said he liked her suggestions, especially regarding supervision.

Councilmember Stevens asked Ms. Volek what the budget for the Animal Shelter was that year. Ms. Volek said it was between \$700,000 and \$800,000, which included the animal control operation, as well as the shelter operation.

Councilmember Ulledalen said he had heard there were at least 10 animal rescue groups in Billings and asked Ms. Schaeffer if that number was correct. Ms. Schaeffer said she would say there was more like six, and there was a big difference between a group calling itself a rescue organization and a non-profit organization. She said she only knew of four actual non-profit organizations in Yellowstone County.

- **Angie Cook, 2910 Hannon Road**, said the current shelter needed supported because it had dedicated employees, supervisors, and animal control officers who needed support to keep the morale up. Ms. Cook said re-working the schedule to 7 days a week; offering more spay/neuter programs; senior citizen discounts; sponsorships; and special promotions would provide some solutions to the current Animal Shelter problems. She said the shelter could also offer rabies, micro-chipping, distemper shots, and parvo shots at a reduced fee.

Councilmember McCall said she appreciated the ideas and asked if there had been an opportunity for staff to sit in on any sort of planning sessions or strategic planning to talk about a solution-oriented policy.

Ms. Volek said she was sure that had been done in the past, and they were continuing to work on the concept of whether or not the shelter would be privatized. She said if the shelter remained in the city operation, changes would be made.

Councilmember Ruegamer told Ms. Cook she may have inadvertently quoted him out of context. He said the context of his comment was that several animal groups came and criticized either the shelter or the Yellowstone Valley Animal Shelter (YVAS) group. He said he had asked them for solutions and they did not have any. He said if getting misquoted spurred people like her and Ms. Schaeffer to come up with ideas, he was all for it and he appreciated them coming forward with the good suggestions.

Councilmember Stevens told Ms. Cook that when the YVAS proposed to have a sliding scale for animals, she was one of the people who opposed it, and now she was saying she was for a sliding scale. Ms. Cook said she never said that, and Help for Homeless Pets had always had a sliding scale.

- **Kevin Nelson, 4235 Bruce Avenue**, said he was confused about the

properties on King Avenue East and said he thought they were annexed to be put in the district. He asked Ms. Beaudry if she had said they would go out of the district. Ms. Beaudry said the properties were not in the district, and it took a different process to bring them in. Mr. Nelson said the City used the same process when it extended North 27<sup>th</sup> and added old district property into the expanded North 27<sup>th</sup>. He said the City was using proposed TIFD dollars to improve their property, which was well beyond the scope of what a TIFD dollar was actually suppose to be used for. Mr. Nelson said he talked to the person at the Gazette who put the insert in the paper on Sunday, and she said she received her information from Greg Krueger. He said the flyer said the urban renewal law was born in the 70's; when in fact it was 1947. He said a lot of issues he had raised had to do with personal, private property rights without State mandated searches and seizures that would come onto private property. He said many laws were outdated. He told Council they were going down a road, and they had no idea where they were going because they had not sought legal advice as to how many statutes they were violating. He said Council was showing reckless disregard for his private property, constitutional, and civil rights by moving forward with the district because none of them had been tested in court.

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

### **Council Initiatives** - None

- **Stevens:** Referenced the arterial fees for Residential Multi-Family (RMF) zoning and asked if it was determined a year or so ago that residents owning a single-family home on land zoned RMF could get relief from the arterial fee.  
Ms. Volek said she would need to do some research but she believed the City had done so. Councilmember Stevens said someone had gone to Public Works on the 4<sup>th</sup> Floor of the Library to pick up a form, and she said the form had not changed. Ms. Volek advised she would check on it.
- **Astle:** Said at an earlier work session the bus fees and schedules were discussed. He said it was reported in the Gazette that the bus fees were going up. He said they had specifically talked about the one that only went up \$2 and that should go up more. He said it was reported in the Gazette just exactly the way it was laid out on the proposal. He asked for the status and if it would have to come before Council. Ms. Volek advised it would need to come before Council for action.
- **Astle:** Said in March or April there was discussion about speed limits on Central Avenue from the ditch to Shiloh and asked about the status. Ms. Volek advised there had been a traffic study done, and she would report back on it.
- **Tussing:** Told Councilmember Stevens that he had been contacted by some of her constituents with concern that there would be a gap in service, and he

told them he would ask if she had made a decision if she would be leaving and when it would be. Councilmember Stevens said she had not made the decision yet. She said that was why she announced a head of time so that people would start thinking about it in case they wanted to run. She said she did not want to wait to announce it and then leave at the last minute and leave a gap. She said, due to some of the press lately, it was getting more difficult to find people who would want to take it on. She said it was actually easier to get a hold of her now than it had ever been because messages on her home phone was converted to an audio file, which was sent to her e-mail, and she picked up her e-mail on her cell phone. She said she received messages or e-mails wherever she was within two to three minutes. Mayor Tussing said the concern was not being able to get a hold of her, it was because she had indicated she would possibly make a decision by the end of this month and leave possibly by the end of August. Councilmember Stevens assured Mayor Tussing she would not leave a gap in service.

- **Ruegamer:** Asked City Administrator Volek and Attorney Brooks for the status on the mediation issue with MMIA. Attorney Brooks advised the issue was tentatively set for the regular agenda of August 11, and there would be a staff memo repeating the options available that were discussed at the July 21 work session. Councilmember Ruegamer said he got the feeling from the last work session that someone from out-of-state would be hired to mediate. He said he called a man in Missoula, who had done insurance mediation for many years. He said his name was Bob Sheridan, his phone number was 523-2546, and he said he would be happy to do it. He said Mr. Sheridan told him Ron Ladders of Billings could also do it. He said Mr. Sheridan charged \$185 an hour, and an out-of-state person flying in and staying at least two nights would probably charge between \$2000 and \$5000 a day. Councilmember Ruegamer said he had complained about it for the last five years and would continue to complain about the out-of-state consultants. He said there were people in the area that could do it, and the City should be looking at them.

Councilmember Clark said he thought they had discussed at the work session that mediation would not even be offered. He said he thought the decision was to send it back and tell them the City was not going to pay them.

Councilmember Gaghen said she had mentioned there might be a need to go out-of-state because of a perceived prejudicial slant. She said, if they were going to look at expenses, Cody and Powell were closer than Missoula. She said having dealt with similar situations with her husband's career, she knew it was important to have someone looking at all sides of the issue with the most non-prejudicial feelings. She said her intent was not to spend more money.

Councilmember Astle said the point had to be made that the City could pick a mediator, and MMIA could reject him; and MMIA could pick a mediator, and the City could reject him. He said they were extremely premature because the last he heard was that they were well on the road to telling them to "pound salt".

- **Ulledalen** Said he and his wife were hiking in Phipps Park a couple of weekends ago, and the park was an asset that was being allowed to deteriorate and become a huge liability in the future. He said he would take pictures and send them to Council in the next couple of weeks. He said there were major erosion issues with the road. He said he just wanted to raise the attention of the Council. He said they talked about spending \$68,000 on a master plan for Pioneer Park that seemed to be working fine. He said they needed to spend some time coming up with ideas on what might be needed at Phipps Park in terms of a land use protection standpoint.
- **Stevens**: Said she had a phone call today about parks in general. She said a park maintenance district may be something that needed to be discussed.

The meeting adjourned at 10:00 p.m.

CITY OF BILLINGS

---

Ron Tussing, Mayor

ATTEST:

---

Cari Martin, City Clerk