

## **REGULAR MEETING OF THE BILLINGS CITY COUNCIL**

### **October 9, 2007**

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

**ROLL CALL** – Councilmembers present: Ronquillo, Gaghen, Stevens, Brewster, Veis, Ruegamer, Ulledalen, Boyer, and Clark. Councilmember Jones was excused.

**MINUTES** – September 24, 2007, approved as distributed

**COURTESIES** – Councilmember Clark announced Vince Ruegamer had been elected the 3<sup>rd</sup> Vice President of the League of Cities and Towns.

#### **PROCLAMATIONS**

- Fire Prevention Week – October 7–13, 2007
- Rimrock Opera's *The Girl of the Golden West Month* – October 2007
- National Community Planning Month – October 2007
- White Cane Safety Day – October 15, 2007
- National Martial Arts Day – October 13, 2007

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

- City Administrator Tina Volek reminded Council of the agenda review meeting scheduled for October 10, 2007, at 5:30 in the City Hall Conference Room.
- Ms. Volek noted additional documents for Agenda Items 2, 3 and 4 had been distributed that evening and advised they were included in the Ex-Parte notebook for public reference.
- Ms. Volek noted the wording in Agenda Items 5(a) and 5(b) had been changed from Miller Trois LLC to Cabela's and South Billings Center LLC, due to the sale of the property earlier in the week.

**PUBLIC COMMENT on "NON-PUBLIC HEARING" Agenda Items: 1, 5b, and 6 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.)

- EILEEN MORRIS, 1323 JANIE STREET, said she was there to encourage Council to vote yes to begin using bio-fuels in the City's fleet of vehicles. She said she was affected by air pollution and exhaust emitted from City buses.
- MICHELLE HIPPLER, 906 N. 31<sup>ST</sup> ST., asked that Council vote yes on the bio-diesel issue. She said vehicles using bio-diesel fuels would be the first step in

becoming economically sound for the future. She stated that when bio-diesel was grown and used locally, 75 cents of each dollar spent on the fuel remained circulating in the economic community.

- PAUL MILLER, 1109 DELPHINIUM DR., said he strongly recommended the use of bio-diesel in City vehicles.
- JEFF BUTTS, 615 ½ AVENUE F, encouraged the use of bio-diesel in City vehicles.
- KELLY BUSTELL, 1001 VICTORY AVE., said he wanted to commend the City for their work on economic development. He stated providing money for bio-diesel would provide prosperity within the state and local region.
- MELINDA NIELSON, 1228 AVENUE F, stated that farmers were excited about the possibility of the Culbertson plant processing bio-diesel fuel. She said she saw it as a large boom for the rest of the state.
- RYAN MERSHON, 1915 11<sup>TH</sup> AVE. N., stated he was a self-employed carpenter and drove his diesel fueled truck to transport his equipment. He said he was in support of the bio-diesel issue.
- SARAH YOUNG, 620 NORTH 32<sup>ND</sup> ST., #4, said it was important for Montanans to address global warming. She stated Mayor Tussing signed the US Conference of Mayor's Climate Protection Agreement and supporting the use of a bio-diesel blend in our City vehicles would be consistent with the act.
- ERICA SPARHAWK, 907 N. 25<sup>TH</sup> ST., said Council had an opportunity to do something pro-active and positive for the community of Billings and urged Council to support the bio-diesel issue.
- RON FENEX, 1146 HOWARD AVE., said bio-diesel was happening everywhere; local, state, regional, and global. He said he felt implementing bio-diesel fuel in the City fleet would be an excellent idea.
- BERNIE KETULEBAK, 933 YALE AVE., said over 700 communities had already switched their fleets to bio-diesel, according to the National Bio-Diesel Board. In doing so, they had found the benefit of cleaner air.
- WALTER GULICK, 2018 12 ST. W., stated he was in favor of bio-diesel fuel.
- THERESA KEAVENY, 2005 CLARK AVE., thanked Mayor Tussing and City Council for establishing the Energy Conservation Commission. She encouraged the council to adopt the use of bio-diesel in City vehicles.
- ANYA FIECHTL, 512 AVE. C, said she would like to see the Council and the City of Billings take the incentive as a leader in Montana, and felt bio-diesel was a good investment for the local economy. She stated in 2006 she helped canvas Billings' neighborhoods and found wide support. She felt supporting the issue would provide more jobs and cleaner air.
- JOSEPH WHITE, 926 N. 30<sup>TH</sup> ST., (Testimony inaudible)
- RAYMOND SHELDON, P.O. BOX 155, HUNTLEY, MT, stated he worked for Diamond D Companies, 3525 Gabel Road. He said they had invested in a bio-diesel production facility in North Dakota and were looking to establish bio-diesel production locally.

Mayor Tussing stated no one wanted to produce bio-diesel if no one would buy it; and no one wanted to buy it if the cost was high. Mayor Tussing asked Mr. Sheldon if

the City of Billings was to spend \$2 million dollars on bio-diesel, would someone produce it locally. Mr. Sheldon stated there was a high chance of something being developed locally. He also stated that economics were dependent not only on fuel prices, but also on crop prices. Mr. Sheldon explained the difference between blends of diesel fuel. Councilmember Ronquillo asked Mr. Sheldon what kind of turn-over there was in the plant in North Dakota. Mr. Sheldon said they were in the production phase and were still learning the business. Councilmember Ronquillo asked Mr. Sheldon what part of North Dakota the plant was in. Mr. Sheldon stated it was in York, North Dakota, near Devil's Lake.

- ED GULICK, 3015 10<sup>TH</sup> AVE, N., stated he was an attorney representing the Yellowstone Valley Citizen's Council, which advocated for a healthy, inviting, and stable community. Mr. Gulick encouraged the Council to adopt a bio-diesel blend for the City vehicles. He stated he compared this year's diesel bid to last year's, and the total price had increased by 38%.
- TOM ZURBUCHEN, 1747 WICKS LANE, said he believed bio-diesel was a great idea; however, he was concerned about trimming the budget to afford it. He asked that the City not lay off a fire fighter or a police officer, or quit mowing the parks in order to afford bio-diesel. He felt taxes were high enough. He stated the City's budget was tight and did not see how the City could afford bio-diesel at this time.
- CHARLIE YEGEN, P.O. BOX 959, said he was present to talk specifically about Sword's Park. He stated he felt removing the paved section of Black Otter Trail was unnecessary. Mr. Yegen urged Council to maintain the existence the road and configuration.

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

## **CONSENT AGENDA:**

### **1. A. Bid Awards:**

**(1) Purchase of Seven (7) 2008 Truck Cabs and Chassis with Refuse Compactor Bodies for the Solid Waste Division (Opened 9/11/07) Recommend:**  
Schedule I – Two Units, Tri-State Truck & Equipment, \$443,580.00  
Schedule II – Two Units, Northwest Truck & Trailer, \$291,382.00  
Schedule III – Three Units, Tri-State Truck & Equipment, \$667,092.00

**(2) Replacement of 17 City Vehicles Scheduled in the City's Equipment Replacement Program for FY 2007/2008. (Opened 9/25/07) Recommend:**  
Schedules I & IV with trades & Schedules II & VIII without trades, Archie Cochrane Ford, \$151,490.00.  
Schedules VII & XI with trades & Schedules III, V, & VI without trades, Denny Menholt Chevrolet, \$141,309.00.

**(3) Gasoline and Diesel Fuel Products Supply** (Opened 9/25/07) Recommend Town & Country Supply Association, \$2,019,550.50 based on Oil Pricing Information Services (OPIS).

**(4) Cascade Pump 20 MF and 200 HP Motor – Wastewater Plant** (Opened 9/25/07) Recommend Cascade Pump Company, \$91,000.00.

**(5) SID 1379 – Utility and Street Improvements to King Avenue West from S. 31<sup>st</sup> Street West to Shiloh Road** (Opened 9/25/07) Recommend JTL Group, Inc., \$4,971,752.50.

**B. Declaring surplus property** and authorizing the Aviation and Transit staff to sell two aircraft and rescue fire fighting trucks through a competitive bidding process.

**C. Approval** of lease renewal for storage space at the Billings International Airport to the Bureau of Land Management, revenue first year \$3,532.95, revenue subsequent years adjusted by CPI.

**D. Assignment and Transfer** of west end hangar ground lease from John M. and/or Marcia N. Nash to James C. and/or Gail G. Heatherly.

**E. Acceptance** of Internet Crimes Against Children (ICAC) grant award in the amount of \$250,000.00.

**F. Approval** of contract with the State of Montana Department of Public Health and Human Services, Developmental Disabilities Division, for MET Transit specialized transportation, revenue FY07/08 of up to \$161,039, with three possible annual extensions.

**G. Maintenance Agreement** between the City of Billings and the State of Montana for state-owned highway within the city limits, 2-year term (7/1/07-6/30/09), annual revenue \$500,000; and **Special Projects Contract Maintenance Agreement** between the City of Billings and the State of Montana, 2-year term (7/1/07-6/30/09), annual revenue \$300,000.

**H. Acknowledging receipt of petition to annex #07-24:** 5.0 acres of Tract 1B, Certificate of Survey 1335, Amended, generally located just south of the intersection of Wicks Lane and Hawthorne Lane, William Hanser, owner and petitioner, and setting a public hearing date of 10/22/07.

**I. Acceptance of Donation:** Approval and acceptance of in-kind volunteers and landscaping materials from Billings Heights Rotary Club for trees and shrubs for Castle Rock Park, \$2,000 landscape materials and 150 volunteer hours.

**J. Second/final reading ordinance for Zone Change #823:** A zone change from Residential 9600 to Neighborhood Commercial, Residential Professional, and

Residential Multi-Family Restricted located on the southwest corner of the intersection of Central Avenue and Brookshire Boulevard, Legacy Homes, Inc., owner; Engineering, Inc., representative. Approval of zone change and adoption of Findings of Fact.

**K. Second/final reading ordinance for Zone Change #824:** A zone change from Residential 9600 to Neighborhood Commercial, Residential Professional, and Residential Multi-Family Restricted located west of the corner of the intersection of Central Avenue and Brookshire Boulevard, Lydia Kramer Real Estate Management Trust, Douglas and Raymond Kramer, Powers of Attorney, owners; Engineering, Inc., representative. Approval of zone change and adoption of determination of the 12 criteria.

**L. Preliminary Plat** of E. D. King Subdivision, 2<sup>nd</sup> Filing, generally located on the southeast corner of Avenue E and Zimmerman Trail, conditional approval of the plat and adoption of the Findings of Fact.

**M. Final Plat** of Central West Subdivision.

**N. Final Plat** of Amended Lots 5 and 6, Block 11, Lake Hills Subdivision, 17<sup>th</sup> Filing.

**O. Final Plat** of Amended Lots 15A, 15B, 15C, and 15D; Block 3; Vista Heights Subdivision, 2<sup>nd</sup> Filing.

**P. Bills and Payroll**

- (1) September 7, 2007
- (2) September 14, 2007
- (3) August 1 – 31, 2007 (Municipal Court)

**(Action:** approval or disapproval of Consent Agenda.)

Mayor Tussing separated Consent Agenda Item A3. Councilmember Gaghen separated Consent Agenda Item I.

Councilmember Brewster moved for approval of the Consent Agenda, with the exceptions of Items 1A(3) and 1I, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

Councilmember Brewster moved for approval of Item 1A(3), seconded by Councilmember Stevens.

Mayor Tussing stated he was under the impression from a work session that Staff would research the possibilities of conducting a pilot project on the use of bio-diesel and asked if a report was available. City Administrator Volek stated a pilot project was discussed but in order to conduct a test, bio-diesel would need to be available at the pump. She said bio-diesel would not be available at the pump until the end of the year. Ms. Volek advised that Mr. McCandless had a brief presentation for the Council.

Councilmember Stevens asked if Ms. Volek was referring to bio-diesel not being available at retail pumps or City-owned pumps. Ms. Volek stated she was referring to retail-owned pumps.

Assistant City Administrator Bruce McCandless said he would not pretend to be a bio-diesel expert, and that Motor Pool Manager, Larry Deschene, and Josh Stark from Town and Country Supply were present to answer any questions. He said the City currently purchased approximately 250,000 gallons of gasoline per year and approximately 520,000 gallons of diesel. Mr. McCandless advised this year's fuel bid included an alternate that called for bids on bio-diesel blends from a B-2, which was a 2% bio-diesel mixed with petroleum diesel, to a B-20, or 20% mixture. He said an option to renew the bid an additional two years (one year at a time) was also included. Mr. McCandless stated the City called for all of the fuel prices to be keyed in as Oil Pricing Information Service (OPIS) to ensure a fair bid. He said vendor markup, which included profit; transportation; additives; and anything in addition to the price of the fuel itself was included. Mr. McCandless advised two fuel bids were received. He said Town and Country Supply submitted a negative markup bid, which took into consideration a discount to the distributor for purchasing a large amount of fuel and allowing savings to be passed onto the customers.

Councilmember Veis asked Mr. McCandless if he knew how many local bio-diesel distributors were notified. Mr. McCandless advised the Energy Commission provided the City with a list of ten distributors who were notified, and the City notified an additional five. Mr. McCandless referenced the two bid sheets included in the Council's agenda packet. He said the bid from GM Petroleum had a markup of 2-3/4 cents per gallon to 6 cents per gallon. He said the bio-diesel bid was only for B20 blend with a mark up of 47-1/2 cents per gallon, increasing the fuel costs \$300,000 per year over petroleum diesel. Mr. McCandless advised the low bid was from Town and Country Supply with the negative markup. He said, based on the price of the fuel and the vendor markup, the estimated cost for diesel would be \$1.35 million. He said the B2 diesel blend included in the bid was about \$20,000 higher. Mr. McCandless advised there would be additional costs for monthly testing and a one time cost for changing the filters, due to a release of carbon that would build up in engines once the use of bio-diesel began.

City Administrator Volek reported the Energy Commission was presented with the information at their meeting the previous week. She said there was some discussion, but no vote was taken.

Councilmember Boyer asked if there was anyone present from the Energy Commission. City Administrator Volek advised the Energy Commission had spoken to Council earlier in the year when Council had asked for a cost comparison of the bio-fuel. Councilmember Stevens asked when bio-diesel would be available at the pump. City Administrator Volek stated she believed it would be available in January of 2008.

Mayor Tussing asked what price the City would pay for the bio-fuel. Mr. McCandless advised it would be whatever price was set by the distributor.

Councilmember Gaghen asked if it was the first time Town & Country Supply had been the successful bidder. Mr. McCandless said they had supplied the City with fuel two years ago.

Councilmember Gaghen asked if other cities were implementing the use of bio-diesel. Mr. McCadless reported Missoula was running part of their transit fleet on bio-diesel fuel, and there were probably others.

Councilmember Ruegamer asked if the City planned to conduct a test using bio-diesel. Larry Deschene, Director of Motor Pool, said the City planned to conduct a test when bio-diesel became available early in 2008.

Councilmember Clark commented there was a station in Billings that had bio-diesel at the pump for awhile, but took it out because no one was buying it.

Councilmember Veis asked Josh Stark of Town and Country Supply where the supply of bio-diesel would come from. Mr. Stark advised he supplied approximately one million gallons of bio-diesel per year, so supply would not be a problem. He said he currently brought in a lot of bio-diesel from Minnesota. He said in addition to two nationally recognized fuel specs, Minnesota had its own high standard and quality spec, which was why he bought the product from there.

Councilmember Veis asked if the plant in Minnesota was competitive to other plants in the region. Mr. Stark stated pricing fluctuated with the diesel pricing in the market place. He said Billings was located in the "Rockies" market, which included Montana, Idaho, Wyoming, Utah and Colorado. He said there would be pricing differences from other markets, such as the "mid-west market". Mr. Stark advised bio-diesel distributors were competitive with petroleum distributors within their own market region.

Councilmember Veis asked Mr. Stark to explain why the bio-diesel market fluctuated with the petroleum market, as they were two different sources. Mr. Stark advised it was an economic decision. He stated people tended to buy the less expensive fuel, even though they knew their vehicles would run more efficiently with higher octane fuel. He said most distributors had to keep their prices comparable, or the demand would go down.

Councilmember Veis asked if the distributors of bio-diesel could compete with a lower price than diesel. Mr. Stark replied they could not. He said he pulled the OPIS pricing for bio-diesel against petroleum in the Denver market, and the B-2 blend was running about 3 cents higher on a wholesale basis.

Councilmember Veis asked if there could be production of bio-diesel in the Billings area if Billings created a market for it. Mr. Stark said he believed the demand that currently existed in the Billings area was already being filled, and the City's use of B-2 blend would not justify an increase at this time.

Councilmember Veis asked if the plants that were developing up on the High Line would drive down the price of bio-diesel in the market. Mr. Stark said they would not drive the price down because the price would continue to rise and fall with the price of diesel.

Councilmember Veis asked what blend of bio-diesel the City would have to purchase in order to make an impact on the market place. Mr. Stark responded it would have to be 20%.

Councilmember Gaghen stated that gas prices seemed to be lower in Wyoming and asked Mr. Stark if he had explored the Wyoming market as his supply source. Mr. Stark said he had originally set up a distributor in Powell, Wyoming. He stated the Town Pump on 32<sup>nd</sup> and Central had bio-diesel fuel, but pulled it because there was a low

demand. He also stated Wyoming had different regulations, and that Montana was a 14 cent higher state when it came to pricing because of taxes.

Mayor Tussing asked what the potential was for dispensing bio-diesel by January of 2008. Mr. Stark stated from a retail standpoint, January would be a difficult time to introduce a new bio-diesel product at the pumps. It would make more sense to start a pilot program in the spring.

Mayor Tussing asked Mr. Stark why he thought his customers were using bio-diesel. Mr. Stark stated a lot of his customers were agricultural-based, and they supported the idea of a "home-grown" product. He stated one of his largest consumers was a mining operation, and he felt they used it strictly for environmental and health reasons.

Councilmember Clark asked if bio-diesel was a blend of petroleum and oil. Mr. Stark stated bio-diesel was considered a base product, and the B2 bio-diesel would be a blend with 2% bio-diesel.

Councilmember Ulledalen stated National Renewable Energy Laboratories recently surveyed bio-diesel marketing in the US and found that over 60% of it was off spec to some degree, either residual methanol or another issue. He asked if Town and Country Supply would provide any type of warranty against damage caused by a product that was off spec.

Mr. Stark stated it was the supplier's responsibility to provide fuel to spec. He said if the product was out of spec, there would be compensation; however, inherent damage due to bio-diesel running through a particular type of engine would be a different case. He said since 1984 most vehicles with diesel engines could run a bio-diesel blend up to 20% with very minimal problems.

Councilmember Veis stated he was hoping to come to the meeting and vote yes on the bio-diesel issue, but he felt there were more hurdles to cover. He said the City needed to get a pilot program in place to understand what exactly the on-going operating and maintenance costs were going to be. He said the product would not be coming from Montana farmers, and the local market would not be impacted if the City used bio-diesel.

Councilmember Brewster asked if there would be a test done on a couple of City vehicles. City Administrator Volek said there would be. She stated the intention was to do a comparison on a dozen or so vehicles.

Councilmember Gaghen asked if Town and Country Supply would be the company to provide the bio-diesel for the test and if the City would have to purchase the fuel at the pump. Mr. Stark replied he would be happy to set up a temporary tank at the Motor Pool or wherever the City would like. He said he would also be willing to set up one at MET Transit.

Councilmember Veis asked if the prices included in the bid would be the same to run the pilot program. Mr. Stark replied they would.

Mayor Tussing asked City Attorney Brent Brooks if the motion made to accept the bid included the bio-diesel. Mr. Brooks advised Council needed to make it clear for the record what the motion included.

Councilmember Boyer made an amended motion to include the pilot program, seconded by Councilmember Gaghen.

Councilmember Stevens clarified that the amended motion was for the test only and not for the entire fleet to run on bio-diesel.

Councilmember Boyer asked City Administrator Volek how many vehicles would be involved in the pilot program. Ms. Volek responded she thought it would be 12 vehicles. Councilmember Veis asked if Ms. Volek would provide further details at a future work session. Ms. Volek said she would arrange for further discussion.

Councilmember Stevens asked to have the cost verified, because she did not want the cost to remain open ended. Ms. Volek said she would provide Council a proposal with very specific information.

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

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

Councilmember Brewster moved for approval of Consent Agenda Item I, seconded by Councilmember Ruegamer.

Councilmember Gaghen commended the Heights Rotary for enhancing Castle rock Park and encouraged other similar projects throughout the City.

On a voice vote, the motion was unanimously approved.

## **REGULAR AGENDA:**

**2. CONTINUANCE OF PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #820: A text amendment to Section 17-705(C), BMCC, Commercial Sign Regulations. (Continued from 9/24/07) Zoning Commission recommends approval. (Action: approval or disapproval of Zoning Commission recommendation.)** Aura Lindstrand advised that on July 16, 2007, Council asked Staff to propose revisions to the commercial portion of the Sign Code. She said on September 4, 2007, the City Zoning Commission conducted a Public Hearing and voted 5 to 0 to recommend approval of the revisions to the City Council. Ms. Lindstrand advised revisions would create a simplified version of the Sign Code that could be easily understood by business owners, sign companies, and City staff. Ms. Lindstrand's presentation reviewed the revisions and clarifications as follows:

- Section 27-705(C)(1)(c) - For any off-premises signs located within 660 feet of an interstate or state controlled highway, street, or road right-of-way, a copy of the Montana Department of Transportation (MDT) permit shall be required and submitted with the City of Billings permit application in accordance with Section 18.6.211, Administrative Rules of Montana (ARM).
- Section 27-705(C)(2) - A greater allowance for projecting signs into the right-of-way. The existing regulations permit signs to project 18-inches into the public right-of-way. The proposed regulations would allow for signs to project over 2/3 of the sidewalk, provided that an encroachment agreement is first obtained from the Engineering Division.
- Section 27-705 (C)(2) - There are an unlimited number of signs permitted for all commercial districts for each structure, provided that they do not exceed their allotted square footage for sign area.

Ms. Lindstrand advised the sign code would remain the same with the exception of the three items.

Councilmember Boyer asked Ms. Lindstrand how many committees had been formed to address the sign code issue. Ms. Lindstrand said there had been three. Councilmember Boyer advised Council had received a letter that included a comment that the committee did not represent the property owners. Ms. Lindstrand stated there was a sub-committee created from the property owners. She said the committee included an architect, the new manager of the Crown Plaza, the manager of Wells Fargo, several business owners, and Ron Bockman from Permaletter Signs. She said no other sign companies were on the committee. Councilmember Boyer asked Ms. Lindstrand if there were any photos available before the council voted, and Ms. Lindstrand said there were not.

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

On a voice vote, the motion passed 8-2. Councilmembers Boyer and Gaghan voted 'no'.

Mayor Tussing called for a brief recess at 7:53 p.m. The meeting was called back to order at 8:00 p.m.

**3. CONTINUANCE OF PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #821: A text amendment to Sections 27-703, 27-705(c), 27-706(b), and 27-708, Electronic Signs. (Continued from 9/24/07) Zoning Commission recommends approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

Nicole Cromwell, Zoning Coordinator Supervisor, stated this was a text amendment to the City sign code (various sections) to deal with electronic message display signs. She said in January of 2006 Council asked for a presentation on current city sign codes relating to electronic message signs due to the number of complaints received and the efforts of code enforcement. She said the City Council appointed an Ad Hoc Committee to review the sign code and recommend amendments. She said the Council specifically requested the committee look at Section 708, which stated "*no signs shall be permitted which are animated by means of flashing, scintillating, blinking or traveling lights, or any other means not providing constant illumination, unless specifically permitted in special sign districts. Public service information signs and other electronic message centers classified as 'changing signs' are permitted.*" Ms. Cromwell stated that on September 4, 2007, the City Zoning Commission held a public hearing on the proposed amendments to the City sign code for electronic message signs and were forwarding a recommendation of approval on a 5-0 vote. She said the Zoning Commission was also forwarding a recommendation that Council consider amendments to the ordinance that would provide a minimum separation to residential zones, require landscaping around new "E" signs, and include operations standards that would apply to all existing electronic message signs.

Councilmember Veis asked Ms. Cromwell if a minimum separation was discussed during the Zoning Commission hearing. Ms. Cromwell responded there were suggestions of different set back requirements, but there was no specific linear measurement being recommended by the Zoning Commission.

Ms. Cromwell advised many of the lots zoned commercial on Grand Avenue, Central Avenue, Broadwater, and 24<sup>th</sup> Street West were created as 140' deep lots, and a minimum separation of 150' would basically eliminate electronic signs from a vast majority of these arterial streets. Ms. Cromwell said some of the lots on the arterials were 80' to 100' deep, but most of them were 140' deep. Councilmember Stevens asked if there was a street between a lot and the second zoning. Ms. Cromwell stated typically there was an alley. Councilmember Stevens asked if the width of the alley was taken into consideration and where the zoning changed. Ms. Cromwell said the zoning went to the middle of all rights-of-way, including alleys.

Ms. Cromwell said there were no other minimum separation distances in the City Sign Codes. She said Planning did not have any other zoning districts that required specific landscaping for new signs. She said the Shiloh Corridor Overlay District simply stated that all new free-standing signs had to be located in a landscaped area and did not specify shrubs, square footage, trees, or how much had to be living or non-living.

Ms. Cromwell reminded everyone that all new sign regulations needed to be content neutral and what needed to be regulated was the time, placement, and the manner of display. Ms. Cromwell stated it would be her recommendation that, if Council chose to adopt the landscaping requirements for all new free-standing signs that included electronic signs, it should be applied fairly across the board. She said Boise, ID, required the same amount of landscaping around a sign as the sign displayed on one face. She said Great Falls required landscaping around the base of free-standing signs, with no minimum area, but 75% of the area had to be living plants. Ms. Cromwell said sign codes for Kalispell, Missoula, and Bozeman did not have minimum landscape area requirements for new signs.

Ms. Cromwell stated the third recommendation from the Zoning Commission was to consider whether or not the operational standards and prohibitions in the draft code should apply to all existing electronic message display signs. Her examples included signs at the Play Inn on Main Street, the Player's Paradise on Grand Avenue, Bob Smith's on Central Avenue, and the Big Bear Sports sign at King Avenue and 24<sup>th</sup> St. West. She said the signs all had video capabilities and were installed at different times within the last ten years. Ms. Cromwell stated Council could propose that some of those operational standards or prohibitions not apply to existing electronic message display signs.

Ms. Cromwell advised an effective zoning regulation included definitions. She said the definitions were: what was an animated sign, what was meant by an electronic message display, what was meant by flashing, what was meant by an electronic billboard, and what was meant by video. She reported those were the foundations of the next sections of the proposed Ordinance placing limitations on new electronic message display signs. She said an electronic display message had to be part of a permanent graphic display sign and could not be displayed on its own, with the exception of an off-premise billboard sign. She said the sign had to be part of another sign.

Ms. Cromwell said the proposed regulation required that the display be no greater than 40% of the actual sign area. She said the new regulation also required a business owner could have a wall sign or a free-standing sign; but not both. The regulation also prohibited flashing, blinking, motion borders, video, and traveling lights

on all electronic message display signs. It also required the electronic message display sign to have an automatic dimmer so the brightness could be adjusted at night.

Ms. Cromwell explained a sign would not be allowed to repeat the same symbol, letter, or graphics with a different color, or take away all color faster than five seconds. She also stated a sign owner could still have scrolling messages and items moving across or up and down on the sign, but not in a 20 second frame or faster because, at that point, it would be considered video. She said the regulations would not allow electronic message display signs in any residential, professional, or public zoning districts.

Ms. Cromwell said that if a business owner had to replace an existing sign, or maintain a sign that was equal to or greater than 50% of its replacement value, the sign would have to comply with all of the current regulations in place.

Councilmember Veis asked, under the new regulations, if there were options for current sign owners to continue to operate their signs. Ms. Cromwell stated they would be a prohibited use. She said the City would either have to prohibit the use or allow it as a non-conforming use.

Councilmember Boyer asked Ms. Cromwell how the signs were allowed in the City if they had been prohibited. Ms. Cromwell said one sentence in the prohibition stated that no sign could flash, scintillate, blink, or have traveling lights; and another sentence indicated that changing signs were allowed. She said nowhere in the current code was there a definition for an electronic message center or changing signs. Councilmember Boyer stated when she went through the sign codes of Missoula and other cities in Montana, changing sign codes were defined with time, temperature, and a message that could change every hour. Ms. Boyer asked why the City had never dealt with it before now, and Ms. Cromwell said she thought it was because technology never caught up to Billings until recently.

Ms. Cromwell said the ordinance proposed changes to Section 27-706, which was for special circumstance signs, such as service stations, billboards, churches, schools, the South 27<sup>th</sup> Street district, and the medical corridor. She said each one would be dealt with separately. She said service stations would have to comply with all of the standards that were listed in the previous Section 705. She said the Zoning Commission was forwarding a recommendation to approve the allowance on a billboard, as long as there was no animation, video, moving parts, holograms, sound, and or message change faster than every six seconds. Ms. Cromwell said currently there was no prohibition against electronic message displays on billboards. Ms. Cromwell advised the committee and Zoning Commission agreed that a large retail center over 100,000 square feet, or with more than five retail tenants, should be allowed to have a second free standing electronic message display sign, if the center had more than one street frontage. She gave Rimrock Mall on 24<sup>th</sup> Street West and Central Avenue as an example.

Councilmember Stevens asked Ms. Cromwell if a shopping center bordering a residential street and an arterial street could have a sign on the residential street. Ms. Cromwell stated that, without a required separation distance, it could; but it probably would not pay to advertise on a low volume residential street.

Councilmember Stevens asked if portable signs were allowed. Ms. Cromwell stated portable signs were allowed as temporary signs, as long as they had a permit.

Ms. Cromwell advised the medical corridor and the South 27<sup>th</sup> Street corridor would be allowed to have electronic message displays complying with the limitations stated in Section 705. She said schools, churches and other institutional facilities could have an electronic message display sign or a free-standing sign up to 50% of the square footage, which by code was a maximum of 32 square feet, and they would have to choose one or the other, but not both.

Ms. Cromwell said Section 708 included the prohibition on flashing, blinking, showing motion borders, traveling lights and video on electronic message displays. She said the proposed ordinance for existing signs stated that all existing signs would have to comply with the operational standards within thirty days of adoption.

Councilmember Ronquillo asked about the Lee's Saloon sign that was very bright at night and could be seen from 1<sup>st</sup> Avenue South. Ms. Cromwell reported there was no dimming feature required on signs presently so the sign was not in violation of the code. Ms. Cromwell showed examples of current signs that would be prohibited under the new code.

Councilmember Boyer asked Ms. Cromwell about Bob Smith's current sign. She asked if the sign was moved upward, would it still be out of compliance. Ms. Cromwell stated the sign at Bob Smith's was at the maximum size right now.

Councilmember Ulledalen asked how the proposed changes would conflict with the Shiloh Overlay District. Ms. Cromwell replied the Shiloh Overlay District was a special district that had its own sign regulations. She said the north Shiloh Overlay District did not allow for "video boards" but the south Shiloh Overlay District did. She said both the north and south had different definitions for electronic message signs and different regulations that applied to the signs.

Councilmember Stevens asked for clarification on the separation distance. She asked if there was a way to address the different zoning areas. Ms. Cromwell stated the proposed ordinance had a maximum sign area, based on the type of street the property faced. She said the only variation was between a principal arterial and minor arterial. Ms. Cromwell stated that unless a minimum separation requirement from residential zones was adopted, an electronic message display could be put up in a neighborhood commercial zone. Ms. Cromwell stated that logic typically dictated the location of signs. She said the signs were very expensive, and a business would want them in a location of high visibility, which would not be on a residential street.

Mayor Tussing asked if neon palm trees were regulated by the ordinance. Ms. Cromwell stated they were not signs. Mayor Tussing asked if a permit was required to put up a palm tree. Ms. Cromwell stated a foundation permit would be required to ensure the palm tree did not fall over. Mayor Tussing asked if there was an exception for Christmas displays. Ms. Cromwell advised that holiday decorations were exempt from the sign codes.

Councilmember Ulledalen asked if an electronic sign inside a business to direct patrons would be allowed. Ms. Cromwell stated the definition of a sign was meant to be seen from public right-of-way, so an inside sign would not apply.

Councilmembers Ulledalen and Boyer both commented on the issue of multiple signs on Grand Avenue. Ms. Cromwell said that one of the reason Grand Avenue was inundated with signs was that the City did not have a minimum plane separation between signs. Ms. Cromwell also stated the Zoning Commission concentrated on the

main City sign code that applied to most areas of the City. She also said if Council would like to direct staff to address concerns within the Shiloh overlay sign code, it could be done separately from this ordinance.

The public hearing was opened.

- WALT GULICK, 2018 12<sup>TH</sup> STREET WEST, commended the Council on trying to control the signage on the main streets in Billings. He said he felt the less signs there were, the more clearly one could see them and the more attractive the area would remain.
- JOE WHITE, 926 N. 30<sup>TH</sup> STREET, supported the sign use, especially in the medical corridor. His main concern was the size of the signs.
- PAUL WHITING, 925 BURLINGTON, was concerned that parts of Billings was starting to look like Las Vegas. He said he thought the process was flawed. He said the original ordinance was somewhat contradictory, and the assignment of the Ad Hoc committee was to define the ordinance. He said he felt the committee was also lop-sided. He stated he tried to contact someone to get on the committee, but was never contacted. He felt the City should go back to the drawing board and get a more balanced representation of the community to speak up on the issues.
- ED GULICK, 3015 10<sup>TH</sup> AVENUE NORTH, said he represented High Plains Architects. Mr. Gulick presented a letter to City Administrator Volek and went over the contents of the letter. He said he felt sign companies and businesses with electronic signs were very well organized. He said he was not opposed to signs in Billings and would like the City to conduct a visual preference survey to find out what the residents of Billings actually wanted.
- GORDON TRYAN, 2361 CRIMSON LANE, complimented City staff for their involvement in the process. He said he believed the current code did a good job to meet both sides.
- LISA GILBERTSON, 3225 VIOLA LANE, stated she was a member of the Ad Hoc Committee and the Marketing Director for Western Security Bank. She said the City of Billings assisted her with bringing Western Security Bank's signs into compliance. She said she joined the committee believing her signs were allowed, because she had permits for them. She reported that over 58% of the current signs the City had already permitted were out of compliance.

Councilmember Ulledalen asked for the average size of an electronic sign in Billings. Ms. Cromwell stated it was 32 square feet. Councilmember Boyer asked Ms. Gilbertson how large the Western Security Bank signs were, and she replied the largest one was 44 square feet. Councilmember Ronquillo asked if all the Western Security Bank signs had dimmers. Ms. Gilbertson said they did and that they had to obtain assistance from the sign company to program their signs so they would be in compliance.

- JOSI WILGUS, 2010 VIRGINIA LANE, said she was a member of the Ad Hoc committee. She said she felt the City needed to value the visual quality of its urban landscape, and the appearance of the City affected the people who lived and worked in Billings and made a big impression on those who visited and vacationed in Billings. She said some of the current signs were very unattractive. Ms. Wilgus said she was aware that business owners needed to communicate with their customers but a balance of common sense and sensitivity to the rest of the community was needed. She said under the proposed draft the electronic portion of the sign could be up to 40% of the primary sign, with a maximum of 100 square feet. She said she felt that was too large and there needed to be an appropriate maximum size placed on the electronic portion. Ms. Wilgus suggested a more appropriate size of 24 square feet.

Councilmember Ulledalen asked Ms. Wilgus why people had waited so long to start making comments about the signs. Ms. Wilgus said she thought it was due to lack of awareness.

- PAT CORMIER, 220 NORTH 28<sup>TH</sup> STREET, said his wife and family ran Player's Paradise on Grand Avenue. He said they had a brand new sign on their establishment and thought it was tastefully done. Mr. Cormier said he had two concerns. His first concern was the distance requirement, because his lot was 140' and with Grand Avenue being widened in the future, it would prevent him from putting up his sign again. His second concern was with the animation. He said the vendor provided him with the animation at 20 frames per second. He said there was no control available for him to turn his machine down to 19 frames per second. He said he was concerned that this "20 second rule" would put him out of business.
- JACK JOHNSON, 2303 VIRGINIA LANE, stated he attended a number of the meetings of the committee as an interested citizen. He thanked the Mayor and Councilmembers for all their hard work. He said his major concern was the appearance of the City, and said he would like to see a new broad-based committee formed to bring recommendations to Council at a later date.
- RICH HAGEMAN, 1212 ROMELDA LANE, stated he was the manager of Dairy Queen. He complimented Ms. Cromwell on the professional and informative presentation she delivered, and said he felt it covered almost every point. He stated he was very much against the changes, but would support the recommendations of the Ad Hoc committee and would ask others to do the same. He said he felt there was a very serious problem with the distance requirement.
- MICHLELLE CORMIER, 1616 AVUNE F., said she was the daughter of the owner of Player's Paradise. She said they could live with the changes and were willing to compromise. She said she had two concerns; one was with the video capacity or animation in the new ordinance. She said their

video provided by their vendor was at 20 frames per second, and the new ordinance would require 19. She said she did not feel one frame per second would make a difference. She stated the animation was all she ran on their sign and had no problem removing the flashing or any motion words. Ms. Cormier asked the council to change the frame per second to 20, instead of 19, or grandfather them in for the use of their animation. She stated that losing their animation would essentially cost them the entire sign. She said the animation was their sign and they needed it.

- MICHAEL NORRIS, 1432 MAIN STREET, said he was the owner of the Play Inn in the Heights and had put in a new video sign about a year ago. He stated he spent a lot of extra money to install the new video sign, and it had been very effective. He said his food and beverage sales had gone up 28%, and he attributed it to the video portion on his new sign. Mr. Norris asked that the Council grandfather in the existing signs. Mr. Norris said, if not, he would then have to try and find a way to get the money back he had spent on the sign and would look to the City of Billings.

Councilmember Stevens stated she was uncomfortable with Mr. Norris finishing his talk by threatening a lawsuit, and asked what context within the messages displayed was increasing his revenue. Mr. Norris said he did not believe it was one particular message, and his sign got people's attention. He stated he had a real problem with the Council wanting to get rid of videos. Councilmember Stevens again asked what particular words were on his sign that he believed attracted people to his business. Mr. Norris stated they had different videos at different times and said during the horse racing at the METRA, he had a video clip of horses running around a track. Councilmember Stevens asked Mr. Norris if he could do the same advertising without the videos and said the videos distracted drivers. Mr. Norris stated that a flag blowing in the breeze was also a distraction to drivers, as well as cheerleaders jumping up and down along the street advertising carwashes.

Councilmember Gaghan asked Mr. Norris if he had talked to his clients to see if his signs were actually what drew them in. Mr. Norris stated he had turned in a petition earlier this year and he had 350 people that stated they enjoyed seeing his video sign. He stated all he could do was a year-to-date analysis on what the business had done, and he contributed the increase in sales to his video sign.

Councilmember Brewster asked Mr. Norris if the real issue was that he was previously permitted to use his new sign, and now the new ordinance would restrict him and he felt his sign should be grandfathered in. Mr. Norris agreed.

- CONNIE WARDELL, 1302 24<sup>TH</sup> STREET WEST, commended the committee and Ms. Cromwell for an excellent job. She said she felt neighborhood planning groups should become involved. She said if the Council adopted the ordinance, there should be grandfathering allowed.
- ANGIE CORMIER, 220 N. BROADWAY, said her family owned the Player's Paradise, and felt the sign ordinance, as proposed, had several problems. She stated the industry "standard" for electronic signs was 20 frames per second, and they purchased the sign because of that capability

and technology. She stated they spent a sizeable amount of money on the new sign and would be paying for it for the next five years. Ms. Cormier suggested raising the number from 19 to 20 frames per second and not allow anything higher than 20. She also suggested that Council grandfather or “exempt” all of the existing signs. Ms. Cormier stated they could not afford to pay for a sign for the next five years that was not allowed to do what it was capable of doing. She said another problem was the 150’ rule, and she would like the Council and Mayor to consider the business owners when making their final decision.

- THERESA CADANY, 2005 CLARK AVENUE, thanked the members of the committee and the City staff. She said they would like them to reduce the size of electronic signs, address the issue of distance in residential areas, address landscaping and consider alternatives. Ms. Cadany requested that Council not make a hasty decision in adopting the ordinance as proposed, but to take a couple more months to let City staff explore some of the options. She said she felt the City had an opportunity to make Billings the Magic City and felt staff should go back to the drawing board and look at other alternatives.
- JIM DUNCAN, 2711 GREGORY DRIVE NORTH, stated he was there representing himself, but felt many people knew he worked at Billings Clinic and was involved in “Celebrate Billings.” He said he was very concerned with how the City of Billings looked, but commented that 55% of the clinic’s patients were from outlying areas so their signage was very important. He said he felt the medical corridor was an example of an area that had worked together. Mr. Duncan said he felt it was all about striking a balance and having a community that was attractive and safe for families. Mr. Duncan said he felt Billings could end up with “sign pollution” if too many restrictions were lifted. Councilmember Gaghen asked Mr. Duncan if he agreed with the comment on getting the neighborhoods involved and giving their input on signage. Mr. Duncan stated he felt it was about consensus and felt stakeholders needed to be involved.

Councilmember Gaghen moved for approval of the Zoning Commission recommendation on electronic signs, seconded by Councilmember Veis. Mayor Tussing asked Councilmember Gaghen if she was moving for approval of Zone Change #821, to include the Zoning Commission recommendations. Councilmember Gaghen said that was correct.

Councilmember Veis asked how the committee arrived at 20 seconds per frame for video. Ms. Cromwell stated Channel 7 defined video as 20 seconds per frame. She said 20 seconds per frame was the slowest frame speed that would visually give the illusion of movement.

Councilmember Ruegamer asked Ms. Cromwell if the recommendation was for approval of 19 seconds per frame. Ms. Cromwell said that was correct. Councilmember Ruegamer asked if 20 seconds per frame would make a huge impact. Ms. Cromwell stated she did not think it would be a “huge” impact.

Councilmember Brewster stated he believed this particular part of the Ordinance would do away with video; and in all fairness to the people who had already purchased the signs, they should be allowed to use them as a non-conformance.

Councilmember Stevens asked what the depreciation rate (time wise) was for video signs. Gordy (last name not given) replied if a sign were classified as a capital improvement, depreciation could be 30 years. If a sign were classified as an improvement, the depreciation rate would be about seven or eight years.

Councilmember Boyer stated it was a tough issue and commended the committee for their work. She said once the committee got into the review process, they saw how complicated the issue was. Councilmember Boyer said she felt Council needed to take future technology into consideration.

Councilmember Boyer made a substitute motion to send the issue back to staff to review safety, setbacks, separation, landscaping, and size and report back to Council in two months with a proposal, seconded by Councilmember Ruegamer.

Councilmember Stevens said she did not feel it was fair to take the video capability away from current business owners, nor did she feel it was fair that they should be allowed to have video forever when their competition was not allowed to have it. Councilmember Stevens suggested when grandfathering these signs in, depreciation needed to be considered.

Councilmember Brewster stated the committee was formed to address specific issues in the code, and there had been a three month wait before the committee was ever formed because of lack of volunteers. Councilmember Brewster said he felt going back to expand the scope of the issue would be counter productive.

Councilmember Stevens asked Planning Director Candy Beaudry to explain "interim zoning." Ms. Beaudry explained interim zoning was zoning that could be applied to a geographic area for the purpose of addressing an urgent or emergency situation and allowed applying certain restrictions and prohibitions on a particular zone that would stop something from going forward.

Councilmember Stevens asked if the City could use interim zoning for a two-month period to prohibit new signs. Ms. Beaudry replied it could, but there would be a delay period involved due to drafting, advertising, etc. Ms. Beaudry referenced the statute that stated "interim zoning will be in effect for no more than six months from the date of adoption." Mayor Tussing and Councilmember Stevens both stated a concern that during the interim, a business could purchase the biggest 20-second per frame sign and expect to be grandfathered. Mayor Tussing asked how long it took a business owner to get a sign permit. Ms. Beaudry said the Planning Department had up to 25 days to approve the permit; but it usually only took about a week.

Councilmember Ruegamer stated the ordinance had such far-reaching affect into the future, and he felt Council needed to get it right the first time.

Councilmember Ulledalen asked if someone who had a project already on the drawing board would be kept in limbo with the interim zoning. Ms. Beaudry said they would. Councilmember Boyer stated the sign code issue had gone on for twenty years and two more months would not make a difference.

Councilmember Veis said he thought the committee addressed the task that was in front of them. Councilmember Veis commended the committee on their work and said he felt the additional issues would take longer than two months.

City Administrator Volek stated there were obvious, separate viewpoints from the Council, and staff needed direction from them on how to proceed. Ms. Volek said if a committee from the community could not create an ordinance that was satisfactory to a majority of the Council, she did not see how staff could. Ms. Volek asked for further direction from the Council.

Councilmember Ulledalen read an e-mail from a constituent that said some of the electronic signs and reader boards looked great, while others did not and there were only two options for the City to pursue – ban the signs, or do nothing. Councilmember Ulledalen said he felt the two major concerns were some type of residential limit and the landscaping issue. He said he would like put some operating ground rules in while the issues was being explored. Ms. Beaudry commented it would just prolong the issue and said Staff needed something very specific to take back to the committee.

Mayor Tussing asked City Attorney Brooks if there was a time limit on amending an ordinance. Mr. Brooks said there was not a time limit on a regular ordinance. He said there was a first and second reading on a regular ordinance, and the ordinance could be amended at anytime in the future.

Councilmember Clark asked where the video signs stood currently and if there were no changes made to the ordinance. Ms. Cromwell stated in Section 3, Page 27, of the staff report, there was a compliance section for existing electronic message signs. She said Council could either leave the section in the ordinance and not grandfather video signs or take it out so the operational standards would not apply to existing signs.

Councilmember Brewster stated he felt Council should grant current electronic sign owners the exemption and grandfather them.

Councilmember Ulledalen asked Councilmember Boyer to restate her substitution motion.

Councilmember Boyer said her substitute motion was to send the issue back to Staff to address safety, separation, landscaping, size, and grandfathering. She said she would also like staff to come back within two months with a report. She said she also wanted to make an addendum to her motion that the current codes be reviewed and compared to other cities within the state.

Councilmember Ulledalen asked if the substitute motion meant the existing regulations would be in place and apply to any sign permits that came forward within the next two months. Mayor Tussing said he would not support the substitute motion, as he felt the City needed to have something in place sooner.

Ms. Cromwell advised that if Council adopted the ordinance on 1<sup>st</sup> reading ‘as is’, there would be a second reading on the same ordinance on the Consent Agenda on the 22<sup>nd</sup> of October, and thirty days after that would be when the new code would go into effect. She said any sign permits received from now until the 22<sup>nd</sup> of November would be reviewed under the current code, and sign permits received on or after the 22<sup>nd</sup> of November would be reviewed under the new code.

Councilmember Stevens made a substitute, substitute motion for approval of Zone Change #821, as written, directing staff to look at the five issues of safety, landscaping, separation, size, and grandfathering; and notifying anyone who applied for a sign permit that the five issues were outstanding and there was a possibility they would not be grandfathered in.

Mayor Tussing asked City Attorney Brooks if a substitute, substitute motion was allowed. Mr. Brooks said Council's two pending motions were the limit and suggested voting on the substitute motion before continuing.

Councilmember Boyer withdrew her substitute motion, seconded by Councilmember Ruegamer.

Councilmember Veis called for the question, seconded by Councilmember Ruegamer. On a voice vote, the motion passed 8 to 2. Councilmembers Brewster and Clark voted 'no'.

Councilmember Ulledalen asked for clarification on Councilmember Stevens substitute motion. Councilmember Stevens clarified that sign owners with video be allowed to continue using the signs until the grandfathering issue had been solved.

Councilmember Stevens clarified her motion to approve Zone Change #821, not allowing Section 5 to affect current sign owners, while directing Staff to look at the five issues of minimum separation, landscaping, operational standards (grandfathering), size of the sign, and safety; report their findings to Council by December 3<sup>rd</sup>; and direct Staff to give any new sign applicants written notice of the outstanding issues that were being addressed.

Councilmember Ruegamer seconded the substitute motion.

Councilmember Brewster moved to amend Councilmember Stevens' substitute motion to include Section 5 and grandfather in existing video signs until December 3<sup>rd</sup>, 2007, at which time Council would look at the issue again.

City Attorney Brooks expressed his concern regarding the temporary grandfathering issue and cautioned the Council to be very careful of their decision.

Councilmember Stevens said she wanted to clarify the intent of the substitute motion by stating there was not anything temporary in what they were stating. She stated Council could always amend an ordinance. City Attorney Brooks agreed, but suggested clarification on the term 'grandfathering'.

Councilmember Brewster called for the question on the amendment, seconded by Councilmember Clark. The motion passed. Councilmembers Boyer and Gaghen voted 'no'.

City Administrator Volek stated the key seemed to be referenced on Page 13, which was the definition of video, and wondered if striking the definition of video would achieve what Council was trying to accomplish that evening.

Mayor Tussing asked the City Clerk to read back the motion.

The City Clerk read Councilmember Brewster's motion to amend Councilmember Steven's motion to include Section 5, grandfathering in existing non-conforming video signs, seconded by Councilmember Clark.

Councilmember Brewster said he wanted to reword his motion as "to include Section 5, non-conforming video sign use" and eliminate the word "grandfathering". Councilmember Clark approved of the wording change.

Mayor Tussing stated if the motion passed, nothing would be made retroactive, it would be for changes made "down the road". Councilmember Clark asked if someone coming in to the City tomorrow for a permit would be grandfathered. City Attorney Brooks stated they would operate under the current existing ordinance. He stated staff could not say, "Yes, you can apply for a sign permit tomorrow; but by the way, the application standard and the ordinance may change so you may have to reapply."

Councilmember Clark called for the question, seconded by Councilmember Stevens. On a voice vote the motion was unanimously approved.

On a voice vote, the substitute motion, as amended, was passed 9 to 1 Councilmember Veis voted 'no'.

Mayor Tussing called for a second recess at 10:45 p.m. The meeting was called back to order at 10:55 p.m.

4. **PUBLIC HEARING AND AGREEMENT with Lockwood Area/Yellowstone County Water and Sewer District for treatment and disposal of wastewater. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** City Administrator Volek advised there was no staff presentation, but staff was available for questions.

The public hearing was opened.

- Richard Larsen, 1733 Parkhill, said he represented the Lockwood Sewer District and said the wastewater agreement established a contractual relationship. He referenced Paragraph 1 and read "the only relationship established by this agreement shall be that of a municipal wastewater utility, and contractual customer of the district". He said the agreement identified the Lockwood Water and Sewer District as a non-owner customer. Mr. Larsen said the service area could not be expanded without written consent of the City of Billings. Mr. Larson said the point of connection was at or near the municipal wastewater treatment plant, and the construction standards were the City of Billings testing and inspection standards. He said the agreement provided that if annexation by petition of 55% of the property owners was achieved, the Lockwood Water and Sewer District would be resolved. He stated the Montana statues provided for a specific method to dissolve the district and the district would follow those provisions.

Councilmember Stevens asked about reserve capacity and what would happen if there came a time when there was no more reserve capacity. Mr. Larsen stated the agreement went through the year 2020, and he did not believe Lockwood would exceed the .91 gallons per day. He also stated the district cannot be expanded without the City's approval. Mr. Larsen said he felt the City would notify the district when they were getting close to capacity, and the district would then stop allowing any future connections.

Councilmember Boyer asked if the contract could be changed. Mr. Larsen said any contract could be negotiated.

Councilmember Ulledalen asked what would protect the City from a lawsuit by Lockwood over increased rates. Mr. Larsen said he thought the agreement addressed the issue of rate increases. Councilmember Ulledalen asked what the agreement said Mr. Larsen stated referenced Page 8, Paragraph 20, that said accordingly the wastewater rates charged to the district in the future for treatment would be based upon

cost of service principles and calculated against the whole process, and if the two parties did not agree, they would resort to arbitration.

- NANCY BELK, 1744 ROBIN, stated she was on the board of the Lockwood Sewer and Water District and thought taking steps to a cleaner environment was very important to the citizens of Billings, even at a higher cost. She said the contract with the Lockwood Sewer and Water District would provide the opportunity for a cleaner, safer environment at no additional cost to the City of Billings. Ms. Belk asked for the Council's support.
- CARL PETERS, 1548 ROSEBUD LANE, said he was there to speak in support of the proposed wastewater service agreement between the City of Billings and Lockwood Water and Sewer District. He said the agreement would be step one toward a central sewer; it would address a growing health issue; and it would be a step toward obtaining \$6.7 million dollars in federal aid.

Councilmember Stevens asked Mr. Peters if he had alternatives. Mr. Peters said in 1998, Morris and Maierle, Inc. identified five alternatives. Councilmember Stevens stated there were other options available, and the agreement with the City was the least expensive one. Mr. Peters said that was correct, due to the expense of building a new plant.

Councilmember Ulledalen said he was concerned the City could not restrict the gallon capacity sent by Lockwood. He said there was no effective way to limit the use of the wastewater system.

Councilmember Stevens asked who wrote the agreement. Mr. Peters said it was originally written in 1999 by the Public Utilities Director and Morris and Maierle, Inc.

- IVAN (last name unknown), 1808 GEM STONE DRIVE, said he was the owner of Emerald View Mobile Home Park in Lockwood, which had 106 mobile homes. He said he would like Council to look at the agreement as a business deal. He said they were not asking for something for nothing.
- TED ANDERSON, 851 GOVERNORS BOULEVARD, said he was in favor of the City allowing Lockwood to hook into the sewer treatment plant because of the consequences of building a second plant, the impact on the Yellowstone River, the drought we have experienced for the last 8 to 10 years, and the mixing zones. He said there would be more pollution for the cities downstream. He said Lockwood people work in Billings, go to school in Billings, and spend their money in Billings, and go to church in Billings. He encouraged the Council to approve the agreement.
- BRIAN RICHARDSON, 940 N. 17<sup>th</sup> STREET, said he felt the agreement should be approved. He said he was concerned about the contamination of the groundwater.
- CARLOTTA HECKER, 3325 DOVE AVENUE, said she was the chair person for the Lockwood Steering Committee. She said she would like

Council to approve the agreement. Ms. Hecker stated they were only a community of 7,200 people and the cost of building a plant for \$10–12 was prohibitive. She said there was plenty of capacity in this Billings plant. Ms. Hecker stated there could be a plant built in Lockwood eventually.

- TOM ZURBUCHEN, 1747 WICKS LANE, said the contact was lopsided in Lockwood's favor. He referenced Item # 4, exceeding the reserve. He asked where the 900,000 gallons of sewage would go if the service was disconnected. He said there was not a court in the Country that would allow Billings to disconnect the service. Mr. Zurbuchen asked what would happen if Lockwood wanted to enlarge the district. He said there was a clause in the agreement that the Lockwood Sewer District would not take new customers or new hookups at a certain point, and asked what would happen if they did. He said there were more problems with the agreement than he mentioned, and Council should make a counter-proposal.

Councilmember Brewster asked what could be done with item #4. Mr. Zurbuchen stated one of the problems was the reserve they expected by 2020. He said a fifteen year contract would go until 2022, so right off the bat their projections exceeded the reserve. Mr. Zurbuchen said he felt the whole contract needed to be rejected, and something was needed to regulate their flow so the reserves are not exceeded.

Councilmember Stevens said she agreed with Mr. Zurbuchen and the contract was "frightening silent" on remedies and damages. She said the City needed to know what its liquidated damages were and what the remedies were. Mr. Zurbuchen encouraged Council revisit the issue before voting.

- DANIEL BELK, 1744 ROBIN AVENUE, encouraged Councilmembers to approve the contract.
- MARY WESTWOOD, 2808 MONTANA AVENUE, said she wanted to discourage Council from signing the contract. She said the agreement needed more work, and the City did not have the permission of its own voters. Ms. Westwood stated it was a terrible contract, suggested using Briarwood as a cautionary tale. She said the City of Billings needed to find a way to assist Lockwood, but Lockwood needed to assist themselves first, and get a system in place worked for everyone.
- DEBRA (last name unknown), said she was the manager of Little Horn State Bank in Lockwood the employees of Little Horn State Bank supported the agreement.
- CONNIE WARDELL, 1302 24<sup>th</sup> STREET WEST, said she put together questions that she felt the Council needed to ask and have answered before voting on the contract. She said there was a difference between the citizens of Lockwood and the citizens of Billings because the citizens of Billings paid taxes for the sewer plant and that was why it was cheaper for Lockwood to use the Billings sewer plant. She asked why the residents of Lockwood should be given sewer services without being charged SID fees. Ms. Wardell said when Yellowstone Country Club was annexed, they

had to pay between \$3,000.00 and \$5,000.00 per lot. She said Rehberg Ranch would have to pay SID fees. Ms. Wardell asked why favorable treatment should be given to Lockwood. She asked why Billings should abandon its long standing policy of refusing sewer service to areas that were not part of the City. Ms. Wardell said the City recently borrowed from the Solid Waste Division in order to accelerate infrastructure on Shiloh Road and King Avenue. She said by extending sewer service to the commercial area of Lockwood, they would be putting cheaper, commercially zoned land in competition with Shiloh Road and King Avenue. Ms. Wardell asked why Council would do it and delay paying back the Solid Waste Division. She asked what plans had been made to accelerate the treatment facilities for the City of Billings, what it would cost, and who would pay.

Councilmember Gaghen asked Ms. Wardell if her concerns had anything to do with environmental issues. Ms. Wardell said they did, and was concerned with the affect on the Yellowstone River.

- TONY REED, ASSISTANT MANAGER, LOCKWOOD WATER & SEWER DISTRICT, said he did not live in Billings or Lockwood and lived in Huntley. He said he believed we had a responsibility to our children and our grandchildren to keep the pollution down and thought the agreement was a win-win situation for everyone. He said Lockwood Water and Sewer was willing to work with the City of Billings, and the idea was to keep it fair and equitable for everyone. He encouraged Council to vote in favor.
- CARL ANDERSON, 935 BURLINGTON AVE., said from a technical prospective, he felt it boiled down to a political issue. He said there were benefits for the City of Billings. He said the treatment facility was twenty five years old, the useful life of concrete was about 50 years, and the useful life of equipment was about 25 years. He said more people would be added to pay for future expansion or regulations. He said Billings would be cleaning up a septic situation in the Lockwood area that could potentially relax future discharge permit limits relaxed.
- RICHARD KANE, 1620 16<sup>th</sup> STREET WEST, said he had worked in Lockwood for 24 years and encouraged the Council to approve the contract.

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

Councilmember Stevens asked if the City's discharge point was upstream from Lockwood. Public Works Director Dave Mumford said it was downstream from Lockwood. Councilmember Stevens asked if there was any way to measure the discharge to the river as compared to how much is already there. Mr. Mumford said they were in the process of having a consultant look at the TMDL nutrients and requirements. He stated it would be difficult to tell at this point what the full permit requirements would be. Councilmember Stevens asked Mr. Mumford how long the City

had capacity at current projections. Mr. Mumford stated the City would have to have a 60–70% increase in population in order to reach capacity. He also stated the City would have to rebuild the plant before ever reaching capacity. Councilmember Gaghen asked what the inclusion of Lockwood would cost up front or in the future. Mr. Mumford stated his personal opinion was that it would not affect the City much one way or another. Councilmember Gaghen asked if Mr. Mumford if the State would place more stringent restrictions if Lockwood were added. Mr. Mumford stated that Lockwood was only 4% of the plant, so he did not think it would affect the outcome significantly.

Councilmember Ruegamer asked Mr. Larsen what would happen if Lockwood exceeded its 910,000 gallon reserve. Mr. Larsen said that would be controlled by the City of Billings.

Councilmember Brewster said there were a lot of issues brought up that evening and asked Mr. Larsen if he would be opposed to Council delaying action for a week or two. Mr. Larsen said he would not be opposed to a delay

Councilmember Ronquillo moved to delay Item #4 for two weeks, seconded by Councilmember Brewster.

Mayor Tussing asked City Attorney Brooks if he had reviewed the contract and if he was satisfied the issues had been addressed. Attorney Brooks said as long as the City was satisfied they could come to terms with the agreement, he would help articulate the legal aspect of the issue.

Councilmember Ronquillo moved to delay Item #4 for two weeks. Councilmember Brewster seconded the motion.

On a voice vote, the motion was approved. Councilmember Ulledalen voted 'no'.

5. **(a) PUBLIC HEARING AND APPROVAL of quitclaim deed to Cabela's and South Billings Center, LLC, for property legally described as Lots 2A-2 and 2A-3, Block 1, of Amended Plat of Lot 2A of Amended Plat of Lots 2, 3, 4, & 5, Block 1, Miller Crossing Subdivision, at no cost to the City. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) City Administrator Volek advised there was no staff presentation on either item 5(a) or 5(b), but staff was available for questions. Ms. Volek reminded everyone this is the agenda item that we changed the participating parties.** City Administrator Tina Volek stated there was no presentation, but staff was available for questions.

The public hearing was opened.

- RICK LEUTHOLD, ENGINEERING, INC. said he represented the developers. He reported there was a very slim strip of City property recently conveyed to the developers and Cabela's. He said this was an equal exchange on the property, with a common lot line relocation, and said he was available to answer any questions.

Councilmember Ronquillo asked Mr. Leuthold if Cabela's had broken ground. Mr. Leuthold said they had not due to the recent wet weather.

- PAT BENNET, FOURSQUARE PROPERTIES LLC, said they planned to break ground on Thursday and were looking at a 6-month build-out. Mr. Bennett thanked the staff and said he was most appreciative of their assistance.

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

Councilmember Clark moved for approval of Item 5(a), seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.

**(b) APPROVAL AND ACCEPTANCE of quitclaim deed from South Billings Center, LLC, for property legally described as Lot 2A-1, Block 1, of Amended Plat of Lot 2A of Amended Plat of Lots 2, 3, 4, & 5, Block 1, Miller Crossing Subdivision. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

Councilmember Clark moved for approval of Item 5(b), seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.

**6. 2007 CTEP PROJECT APPLICATIONS funding construction of various community pedestrian and/or bicycle facilities. Staff recommends Council formulate a recommendation. (Action: approval or disapproval of staff recommendation.)**

Scott Walker of the Planning Department advised five CTEP projects were being brought before Council that evening for approval. He said they were the Broadwater Crossing, which was a continuation of the Bike Path system; a Poly Drive sidewalk project; Sword's Park Trail, Phase II; Lampman Strip Park Trail; and a bike lane striping project. Mr. Walker advised they currently had \$581,000 to spend and over \$1 million in projects. He said the chore was to mix and match and try to reach the \$581,000 figure. Mr. Walker said the Technical Advisory Committee's recommendations were to fund the Broadwater Crossing, the Poly Drive sidewalk project, and the Lampman Strip Park Trail at the full funding amount, and reduce the amount of funding for the on-street bike lanes from \$110,000 to \$100,000, which would leave approximately \$63,000 to be applied toward the development of Sword's Park design. Mr. Walker advised the County Commissioners were in favor of the recommendations.

Mayor Tussing advised he would recuse himself from voting on the item, because of his wife's involvement of the project.

Councilmember Stevens stated when they toured the Swords Park and spoke with the engineer, she was concerned about the road and its historical value. She felt the road was a part of history for the citizens of Billings.

Councilmember Boyer moved for approval of Agenda Item #6, seconded by Councilmember Ruegamer.

Councilmember Stevens moved to amend the motion to stipulate the portion of Sword's Park Trail from Skeleton Cliff to the Airport Road project remain in its current state with the exception of resurfacing the road, seconded by Councilmember Veis. On a voice vote, the motion was approved 9 to 0. Mayor Tussing had recused himself from voting.

**7. PUBLIC HEARING AND RESOLUTION creating Special Improvement Lighting Maintenance District 303 – King Avenue West from 31<sup>st</sup> Street West to Shiloh Road. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** City Administrator Volek advised there was no staff presentations on Items #7 through #12, but staff was available for questions.

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

Councilmember Ulledalen moved for approval of Agenda Item #7, seconded by Councilmember Stevens. On a voice vote, the motion was unanimously approved.

**8. PUBLIC HEARING AND RESOLUTION vacating a portion of South 12<sup>th</sup> Street West in exchange for dedication of an equal area of property from MDU at no cost to the City or MDU. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

The public hearing was opened.

- DAN FARMER, 1565 FORREST PARK DRIVE spoke on behalf on MDU and stated the vacation was a non-controversial issue.

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

Councilmember Ruegamer moved for approval of Agenda Item #8, seconded by Councilmember Stevens. On a voice vote, the motion was unanimously approved.

**9. PUBLIC HEARING AND RESOLUTION vacating a portion of an alley between N. 29<sup>th</sup> Street and N. 30<sup>th</sup> Street north of 10<sup>th</sup> Avenue North for a value of \$71,750.00. Billings Clinic, petitioner. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

The public hearing was opened.

- MICHAEL SANDERSON, ENGINEERING INC., said he represented the Billings Clinic. Mr. Sanderson stated the packet that Council received was self-explanatory, and he was available to answer any questions.
- JOE WHITE, 926 N. 30<sup>TH</sup> STREET, (inaudible)

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

Councilmember Veis asked where the sewer main in the alley would go, who would pay for it, and what would be done with it. Mr. Mumford advised it would be moved at the applicant's expense. Mr. Sanderson said the Billings Clinic would re-route it to N. 29<sup>th</sup> Street where there was currently a sewer main. He said it would be done and paid for by Billings Clinic. He added he had met with MDU that day and they no longer have a facility in the alley south of the Research Center.

Councilmember Veis moved for approval of Agenda Item #9, seconded by Councilmember Stevens. On a voice vote, the motion was unanimously approved.

**10. PUBLIC HEARING AND FIRST READING ORDINANCE expanding the boundaries of Ward II to include recently annexed property in Annex #07-10: a 400.94-acre parcel legally described as the S1/2 SE1/4 of Section 8, T1N, R26E and the S1/2 SW1/4 of Section 9, T1N, R26E, Tract 1 of Certificate of Survey 2017, generally located northwest of the Lake Hills Golf Course and north of Matador Avenue in Billings Heights. Frank Sindelar, petitioner. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

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

Councilmember Brewster moved for approval of Agenda Item #10, seconded by Councilmember Stevens. On a voice vote, the motion was unanimously approved.

**11. PUBLIC HEARING AND FIRST READING ORDINANCE expanding the boundaries of Ward V to include recently annexed property in Annex #07-21: an 8.868-acre parcel legally described as Tract 1C, Certificate of Survey 2991, generally located west of the intersection of Central Avenue and 29<sup>th</sup> Street West. Raymond and Douglas Kramer, Powers of Attorney for the Lydia Kramer Real Estate Management Trust, petitioners. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

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

Councilmember Stevens moved for approval of Agenda Item #11, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.

**12. PUBLIC HEARING AND FIRST READING ORDINANCE expanding the boundaries of Ward V to include recently annexed property in Annex #07-22: an 8.868-acre parcel legally described as Tract 1B, Certificate of Survey 2991, generally located on the southwest corner of the intersection of Central Avenue and 29<sup>th</sup> Street West. Todd Icopini, petitioner. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

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

Councilmember Gaghen moved for approval of Agenda Item #12, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

**13. PUBLIC COMMENT on Non-Agenda Items -- Speaker sign-in required. (Restricted to ONLY items not on this printed agenda; comments limited to 3 minutes per speaker. Please sign up on the clipboard located at the back of the Council Chambers.)**

There were no speakers.

### **Council Initiatives**

- **RONQUILLO:** Said he received a lot of inquiries as to why the City did not accept credit cards at the Water Department. City Administrator Volek said it was an issue they would be looking into.

**ADJOURN** – The meeting adjourned at 12:20 a.m.