

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

**September 24, 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 Ronquillo gave the invocation.

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

**MINUTES** – **September 10, 2007**, approved as distributed

**COURTESIES** – None

**PROCLAMATIONS** – **American Indian Heritage Day, September 28, 2007**

## **ADMINISTRATOR REPORTS – Tina Volek**

- City Administrator Tina Volek reminded the Council of the Agenda Review Meeting scheduled for tomorrow evening at 5:30 p.m. in the City Hall Conference Room. Ms. Volek advised, because of the Columbus Day holiday on Monday, October 8<sup>th</sup>, the Council meeting would be held on Tuesday, October 9<sup>th</sup>.
- Ms. Volek referenced Agenda Items 15 and 16 concerning text amendments for electronic signs and commercial sign regulations and requested Council open the public hearings and continue them until the next meeting, due to the length of tonight's meeting. Ms. Volek said the proposed continuations had been publicly advertised.
- Ms. Volek asked the Council to add the 2008 Unified Planning Work Plan to tonight's consent agenda. She said the item had been reviewed at a previous work session.
- Ms. Volek noted a letter in regard to Agenda Item 4b from a property owner on St. Andrews Drive requesting that, due to illness, the fee for weed removal be waived. She said the property owners indicated they would be willing to make monthly payments, if necessary.
- Ms. Volek referenced correspondence provided in the Friday Packet for Agenda Item H requesting postponement of a petition to annex for two weeks. She said the request was made by William Hanser.
- Ms. Volek noted Council had received a protest petition for Agenda Items 14a and 14b and several letters concerning Agenda Item 17. Ms. Volek noted copies of all of the items were filed in the Ex-Parte Notebook in the back of the room for public review.

Councilmember Veis moved to add the 2008 Unified Planning Work Program to

the Consent Agenda, seconded by Councilmember Ronquillo. On a voice vote, the motion was unanimously approved.

**PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: 1, 2, 3b, and 17 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.)*

- GARY DAVIS, 2745 HOMER DAVIS, SHEPHERD, MT, said he represented the stockholders of the Billings Bench Water Association (BBWA) and wanted to speak on Agenda Item 2. He said the BBWA had no problem with the Aronson Avenue project or the legal process of condemnation. He said the land was appraised at \$1.18 a square foot, and 85% of the value was deducted for lack of legal access. Mr. Davis said the issue was whether the land should be valued at \$1.18 a square foot or \$0.18 a square foot. He said the BBWA felt the land had an access, and it should be valued at \$1.18 a square foot. City Administrator Volek advised Staff would continue to work with the property owner to come to an agreement right up until the time of condemnation.
- SHANE GUNDLACH, 3940 PRIMROSE DRIVE, said he was the developer of Tuscany Subdivision. Mr. Gundlach referenced a couple of letters he had submitted to the Council, and said he was available for any questions. Mr. Gundlach told the Council he would like to make a cash contribution in lieu of conducting a Traffic Accessibility Study. Mayor Tussing asked if there were other gated subdivisions in the City of Billings. Mr. Gundlach said he thought there were two, but he could not think of them. City Administrator Volek said there was a gated community on Highway 3 just off of Zimmerman Trail.
- KEVIN JACOBSEN, MORRISON-MAIERLE, INC., 901 TECHNOLOGY BOULEVARD, BOZEMAN, MT, said he represented Shane Gundlach and Tuscany Subdivision. Mr. Jacobson said he wanted to talk about Condition #3, the secondary access requirement. He said he would like Council to consider extending the timeframe to 2010 because Ironwood Subdivision had their 62<sup>nd</sup> Street secondary access extended out until 2010. Mr. Jacobsen said there was currently an agreement being worked on between Public Works and the owner to construct 62<sup>nd</sup> Street West that would provide a secondary access. Mayor Tussing confirmed that Mr. Jacobsen was requesting that the secondary access not be required to be provided with the final plat application. Mr. Jacobsen said that was correct. Mayor Tussing asked when the final plat application would be submitted and how much time beyond that they would need for the secondary access. Mr. Jacobsen said they hoped to have the final plat application within a year, and they would like to have until 2010 for the secondary access, which was what Ironwood Subdivision currently had. Councilmember Stevens asked when in 2010. Mr. Jacobsen said he was not sure.

- TOM EASTWOOD, MORRISON-MAIERLE, INC., 901 TECHNOLOGY BOULEVARD, BOZEMAN, MT, said he was asking for reconsideration of Condition #8 for the Tuscany Subdivision, the Traffic Accessibility Study requirement. Mr. Eastwood said Tuscany Subdivision would generate less than 500 average daily trips and did not require a Traffic Accessibility Study according to City requirements. He said Mr. Gundlach would like to have the condition for the Traffic Accessibility Study removed and make a cash contribution for the intersection of 62<sup>nd</sup> Street West and Rimrock Road instead. Mr. Eastwood distributed an Intersection Construction Estimate to the City Council.
- SALLY JOHNSON, 5835 IRONWOOD DRIVE, said she felt Ironwood Drive and Canyonwoods Drive were too narrow to handle increased traffic generated by the Tuscany Subdivision. She said she felt a Traffic Accessibility Study was warranted. Ms. Johnson also requested an access through Yellowstone Country Club and not two accesses through Ironwood be considered.
- LINDA WING, 5875 CANYONWOODS DRIVE, asked Council if they received the letter from Mr. Wells because it summarized how most of the homeowners felt in Ironwood Subdivision. She said she felt the cart was being put before the horse because there was current litigation over Ironwood Road that was not scheduled to be resolved until August of 2008. She said there were safety issues with the Tuscany development and the narrow access road out of Tuscany Subdivision through Ironwood. Ms. Wing said a Traffic Accessibility Study was necessary, and the width of the road and safety of the children needed to be considered. City Administrator Volek added the letter Ms. Wing referenced from Mr. Wells was dated September 7, 2007, and the Council had received it.

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 9/11/09) Recommend delay of award until October 9, 2007.

**B. Agreement** with Yellowstone County Council on Aging for the senior programs at the Billings Community Center, 7/1/07 – 6/30/08, \$27,202.00 annual.

**C. Approval** of three-month lease with Lynch Flying Service, Inc. dba Edwards Jet Center for Airport Hangar IP-3, \$2,450.01 total revenue, 9/1/07-11/30/07.

**D. Approval** of five-year lease renewal with the Federal Aviation Administration for Garage/Shop Site, \$1,785 annual revenue, 10/1/2007-9/30/2012.

**E. Approval** of assignment of west end hangar ground lease with Steve Vold to First Interstate Bank.

**F. Approval** of amendment to the lease with the Federal Aviation Administration for second floor terminal office and operation space, \$2,961.24 per month for term of lease (decrease of \$533.48 per month), 8/1/2007-9/30/2012.

**G. Amendment #4, W.O. 04-13, Water Treatment Plant Filter and Maintenance Building Expansion and Improvements.** Professional Services Contract, HDR Engineering, Inc., \$125,600.00.

**H. Acknowledge receipt of petition to annex #07-24:** Tract 1B, Certificate of Survey 1335, Amended, 5.0 acres generally located south of Wicks Lane on the east side of Hawthorne Lane, William Hanser, petitioner, and set a public hearing date for 10/09/07.

**I. W.O. 04-33 Lake Elmo Drive (Hilltop to Wicks Lane) Right-of-Way Acquisition:**

(1) Parcel #3: Portion of Tract 2A, Certificate of Survey 1109 Amended, Windsor Mobile Home Park, LLC, \$350.00.

(2) Parcel #12: Portion of Tract 1A, Certificate of Survey 1109 Amended, Windsor Mobile Home Park, LLC, \$9,500.00.

(3) Parcel #41: Portion of N1/2S1/2N1/2SE1/4NW1/4 of S22, T1N, R26E, P.M.M., F. William Baumann and Kathy L. Baumann, \$10,815.00.

(4) Parcel #42: Portion of Tract 3, Certificate of Survey 2866, Kathy Baumann, \$4,200.00.

(5) Parcel #62: Portion of the SW1/4NE1/4 of S22, T1N, R26E, P.M.M., Tasneem F. Khaleel and Shafiq Ahmed Khaleel, \$18,165.00.

(6) Parcel #73: Portion of Lot 7, Block 4, Arrowhead Subdivision, Richard C. Emmons and Diana Emmons, \$2,257.50.

(7) Parcel #74: Portion of Lot 6, Block 1, McCracken Subdivision, RGP Partnership, \$3,050.00.

(8) Parcel #75: Portion of Lots 5 and 6, Block 1, McCracken Subdivision, RGP Partnership, \$2,500.00.

(9) Parcel #76: Portion of Lot 4A, Block 1, McCracken Subdivision, Amended Lots 3 & 4, RGP Partnership, \$2,250.00.

**J. Resolution of Intent # 07-18602** to expand Downtown Business Improvement District No. 0001, Stockman Bank, petitioner, and set a public hearing date for 10/22/07.

**K. Preliminary Plat** of River Rock Estates Subdivision generally located on the west side of 46<sup>th</sup> Street West, south of Rimrock Road between the Hi-Line Ditch and Big Ditch, conditional approval of the plat and adoption of the Findings of Fact.

**L. Final Plat** of amended Lots 1, 2, and 9-14, Block 1; and Lot 1, Block 2, Aspen Gateway Subdivision.

**M. Bills and Payroll**

- (1) August 24, 2007
- (2) August 31, 2007

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

Councilmember Veis separated Consent Agenda Item H

Councilmember Brewster moved for approval of the Consent Agenda, with the exception of Item H, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

Councilmember Brewster moved for approval of Item H, seconded by Councilmember Ruegamer.

City Administrator Volek advised the applicant requested that Item H be postponed for two weeks.

Councilmember Veis made a substitute motion to delay Item H until October 9, 2007, seconded by Councilmember Stevens. On a voice vote, the substitute motion was unanimously approved.

**REGULAR AGENDA:**

**2. RESOLUTION #07-18603 AUTHORIZING CONDEMNATION to acquire right-of-way of Parcel 5 and perpetual easement across the BBWA Canal owned by the BBWA for the Aronson Avenue Extension project. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

Public Works Director Dave Mumford said the Aronson Avenue extension project was moving forward, and there were properties owned by the Billings Bench Water Association and Axlines that the City needed to acquire in order to complete the project. He said negotiations with Axlines were going well, but the City and the BBWA were still very far apart. Mr. Mumford advised that Mr. Repac's appraisal of the BBWA property had been reduced from \$1.18 per square foot to \$0.18 per square foot for lack of legal access. He said a second appraisal was completed by Mr. Rutherford, who agreed with Mr. Repac's appraisal. Mr. Mumford said the issue was that there was no legal access to the BBWA property. He said accessing the property by just coming down the canal was not considered a legal access, and it did not abut any right-of-way. Mr. Mumford stated he hoped the issue could be resolved with the BBWA prior to construction and going to condemnation. He said the project needed to be bid this year, and the City was looking for right-of-entry to allow construction to begin over Alkali Creek this winter. Mr. Mumford said if they could not begin construction this winter over Alkali Creek, the project would be delayed a year.

Councilmember Veis asked if the BBWA had done their own appraisal of the property. Mr. Mumford said he was not aware that they had. Mr. Mumford said Axline's property appraised at \$1.18 per square foot because it had legal access. He said the BBWA felt their property should appraise at \$1.18 per square foot even though it did not have a legal access.

Councilmember Ruegamer asked Mr. Mumford for the definition of "access". Mr. Mumford said "access" was defined as a physical way to a property that was dedicated,

such as a dedicated easement or right-of-way. He said the canal itself was not considered a legal access to the property.

Councilmember Brewster asked if the BBWA would continue to have the opportunity to work with the City to resolve the matter. Mr. Mumford said there was a meeting scheduled for the following evening to try to resolve the matter. Mr. Mumford said the BBWA officials only meet once a month, which was one of the reasons the negotiations had been in progress for the past six months.

Councilmember Ronquillo asked Mr. Mumford if the City needed the entire 41,736 square feet of Lot 5. Mr. Mumford said the City only needed the 10,528 square feet.

Councilmember Stevens explained that the BBWA owned two parcels; Parcel A and Parcel B. She said because the two parcels were connected, the BBWA could cross Parcel B to get to Parcel A. She continued that if the BBWA sold Parcel B and there was no easement across Parcel B, Parcel A would have no access because the BBWA no longer owned both parcels. She said that was where the whole legal access question came in.

Mayor Tussing asked Mr. Davis if he agreed with Ms. Stevens's explanation of the problem. Mr. Davis said the bottom line was that the BBWA owned both parcels. He said resolution of the legal access issue was up to the lawyers.

Councilmember Boyer asked Mr. Davis if he was okay with the condemnation as part of the process. Mr. Davis said he was okay with it, but he said he did not feel it was necessary.

Councilmember Stevens moved for approval of Agenda Item #2, seconded by Councilmember Boyer. On a voice vote, the motion was unanimously approved.

**3. (a) PUBLIC HEARING AND RESOLUTION #18604 amending the FY2008 Budget to add \$120,000 for Tourism Business Improvement District No. 002. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

Financial Services Manager Pat Weber advised Council was being asked to approve an amendment to the FY08 budget in the amount of \$120,000 for the Tourism Business Improvement District created on August 27, 2007. He said the initial assessments would be collected by the County Treasurer in May 2008, remitted to the City in June 2008, and the City would pay the Tourism Business Improvement District/Convention and Visitors Bureau. He said the November 2008 and May 2009 assessments would become part of the regular budget adoption for the FY09 budget.

Councilmember Veis asked Mr. Weber if the TBID would borrow money to get started and then repay it. Mr. Weber said that was correct. Councilmember Veis asked when the City would receive the first payment from the County Treasurer. Mr. Weber said it would be in June 2008. Mr. Weber said the business plan was very conservative. He said the TBID wanted to get started so they would need to borrow money initially but would have enough revenue coming in after that.

**(b) APPROVAL OF THE TOURISM BUSINESS IMPROVEMENT DISTRICT NO. 002 WORK PLAN AND FY2008 BUDGET. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

Mr. Weber reviewed the Budget and Work Plan for the initial \$120,000. He advised the budget would include \$55,000

Personal Expenses; \$8,000 Operations; \$9,000 Office Equipment and Supplies; \$2,500 Interest Expense; and \$45,500 Cash Carryover. The Work Plan would include hiring a sales professional and marketing assistant; recruitment, advertising, marketing, travel, dues, etc.; and furnishing and equipping an office.

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

Councilmember Gaghen moved for approval of Agenda Item #3(a) and 3(b), seconded by Councilmember Boyer.

Councilmember Jones commented the City had recently missed the opportunities to bring in good concerts and asked if the business plan would include bringing in concerts in the future. Bruce McIntyre said when the full amount of the TBID funds was generated, there would be consideration for events at MetraPark. He said funds would be set aside for "opportunity" and those types of events would be addressed.

Councilmember Stevens commented she hoped the monies were used to bring events to town and to improve the quality of life for the Billings residents.

Mayor Tussing asked City Administrator Volek if Council would have the opportunity to make suggestions to the Work Plan. Ms. Volek advised the Work Plan would be brought to Council on an annual basis for review, which would be Council's opportunity to make comment.

On a voice vote, the motion to approve Agenda Item 3(a) was unanimously approved.

On a voice vote, the motion to approve Agenda Item 3(b) was unanimously approved.

#### **4. PUBLIC HEARING AND RESOLUTIONS for annual encroachment and weed removal assessments for FY 2008.**

**(a) RESOLUTION #07-18605 fixing the amount of the annual rental fee for any encumbrances, obstructions, or encroachments on, over, across, or above any street, avenue, sidewalk, or alley. 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. There were no speakers, and the public hearing was closed. Councilmember Ronquillo moved for approval of Agenda Item 4(a), seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

**(b) RESOLUTION #07-18606 levying a special tax upon property within the City of Billings to defray the cost of cutting and/or exterminating weeds. 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. She said the Planning Department had background information on all of the contested properties and a list of the items that had been removed, as well as items that had time payment arrangements. Ms. Volek asked Council to give staff the authority to continue to work to resolve the issues with the

property owners until Friday, September 29<sup>th</sup>, at which time the information would be sent to the Treasurer to be put on the tax roles October 1<sup>st</sup>.

Mayor Tussing asked about making exceptions, and Ms. Volek advised Council could vote to deny any of the particular items.

The public hearing was opened.

- JIM BREWINGTON, 1729 BREWINGTON DRIVE, said he received a letter from the City about weeds, and he did not understand it. Mr. Brewington said City staff came to his place, and he told them he was going to cut his own weeds. He said the City cut tall weeds on the other side of his property where a subdivision was being built. Mr. Brewington said a neighbor called him to tell him someone was cutting weeds on his property, and he told them to get off of his property because he was going to cut his own weeds.

Mayor Tussing asked Mr. Brewington if he had received a notice seven days prior to the day the people came to cut the weeds. Mr. Brewington said he had not. Mayor Tussing asked Mr. Brewington if he had contacted anyone at the City regarding the issue. Mr. Brewington said later that afternoon Don Vegge came out to look at his property but drove off when he tried to talk to him. Mayor Tussing asked Mr. Brewington if he had received a bill, and Mr. Brewington said he had not. Mayor Tussing asked City Administrator Volek if the bills had been sent. Ms. Volek clarified that Mr. Brewington was listed as Brewhinds, Inc. She said the records showed the property was inspected on 5/15/07; the owner was notified on 5/16/07 that the weeds needed to be cut; and the property was re-checked on 5/23/07. She said on 5/23 the weeds had not been cut in front; so the City cut the weeds on 6/15/07. Ms. Volek stated the property owner was billed \$309, and there were 'before' and 'after' pictures available.

Mayor Tussing asked if the property owners were notified by certified letter. Planning Director Candi Beaudry replied the letters were sent with a forward request only. She said over 1,500 letters had been sent out for the current year.

Mr. Brewington stated he had cut his weeds, there had been rain and his sprinklers were still on in the area, and the weeds had grown back within that time. He said his lawn needed to be mowed every week.

Councilmember Stevens asked if only one notification was sent to property owners. Ms. Beaudry said that was correct. Councilmember Stevens asked why the amount on her list was \$461.25 and not \$309. Ms. Beaudry said the \$309 was just the mower charge, and there was a penalty fee and administrative fee added.

Councilmember Boyer asked how high the weeds had to be before they were considered a violation. Ms. Beaudry said the ordinance stated 12 inches.

City Administrator Volek pointed out the City did not voluntarily search for overgrown weeds, and the properties were all complaint driven circumstances.

Mayor Tussing asked Mr. Brewington how long he had owned the property and if he had ever received a weed violation before. Mr. Brewington stated he bought the property in 1976 and had never received a weed violation prior to this one.



Ms. Volek advised in previous years Public Works staff had cut the weeds but because of staffing issues, the work was contracted out to a private individual and the fees had increased. She added the increased rain this year had generated a lot more weed complaints than in previous years.

Councilmember Veis asked Ms. Beaudry how soon the weeds had to be cut after notification. Ms. Beaudry advised the property owner had seven days from the date of the notice to cut the weeds. She said staff inspected the property after seven days and if the weeds had not been cut, the mower was scheduled. She said it could take the mower a day or a week to get to the property. Mayor Tussing stated between May 15<sup>th</sup> and June 15<sup>th</sup>, the weeds could have been mowed and grown back. Ms. Beaudry agreed.

Councilmember Clark asked who paid for the weeds to be mowed. Ms. Beaudry said it came out of the City's General Fund.

Councilmember Stevens asked when Mr. Brewington's property was re-inspected. Ms. Beaudry said the property was re-inspected on May 23<sup>rd</sup>. Ms. Stevens said if the notice was received on May 17<sup>th</sup> or 18<sup>th</sup>, the 23<sup>rd</sup> was not seven days. Ms. Beaudry clarified the seven days was from the date on the notice, not the receipt of the notice. Ms. Volek added the seven days was a requirement of the ordinance.

Councilmember Ronquillo asked Ms. Beaudry if staff would cut the weeds upon re-inspection if they were only three or four inches tall. Ms. Beaudry said if the weeds were less than 12 inches tall, they would be in compliance and would not be cut. She said they take 'before' and 'after' pictures to show a violation.

Councilmember Clark asked if an extension of the seven days was allowed if someone called after receiving the violation notification and said it would take them more than seven days to cut the weeds. Ms. Beaudry said that was not unusual, and arrangements could be made.

- PAT JENSEN, 211 S. 36<sup>TH</sup> STREET, said he received a letter dated 9/10/07 about weed removal charges. Mr. Jensen said he mowed his property right after receiving the letter. He said it rained, the weeds grew, and he started to re-mow them but ran out of gas. Mr. Jensen said when he went to buy more gas, the City came by and began cutting his weeds. He said the City's "weed eater mafia" got him. Mayor Tussing asked Mr. Jensen how much he was charged. Mr. Jensen said he did not know. City Administrator Volek said Mr. Jensen was charged \$323.75 with a notation that only the front needed cut because the back had already been cut. Ms. Volek reminded Council the weed issues were complaint driven.
- JIM CARROLL, 5421 SPRINGSTONE, said he also received notification on a vacant lot he owned in Cottonwood Grove Subdivision. Mr. Carroll said he had the weeds cut in May. He said he received the notification letter sometime in June. Mr. Carroll said Victor Donovan mowed his weeds for \$65. He said his bill from the City to mow the lot was \$391.25. Mr. Carroll said he disagreed and was protesting the charge. He said he understood what the City was trying to do and appreciated it but more time was needed to take care of the weeds. He said the amount of time given was not enough on a vacant lot, and the fee was ridiculous. Mr. Carroll said the weeds were not cut on some of City-owned property.

Mayor Tussing asked when the City had mowed the weeds compared to the two times his weeds had been mowed by Mr. Donovan. Mr. Carroll said Mr. Donovan mowed in May and June.

City Administrator Volek said she had met briefly that afternoon with Mr. Carroll. She said there have been instances where lots in partially developed subdivisions were not clearly identified. She said staff would be happy to meet with Mr. Carroll to look at his property to ensure that the correct lot was mowed and billed. Ms. Volek added that the City's charges were not intended to be the "going rate". She said they were intended to do the job and cover the City with insurance. Ms. Volek said the administrative fee was added to make sure the job was done.

Councilmember Boyer asked how the contractor was charging the City to mow. City Administrator Volek said \$110 was to deliver the mower, which the City paid and passed on to the property owner. Councilmember Boyer asked if the \$110 was charged regardless of the lot size. City Administrator Volek said the \$110 per lot was negotiated with a larger amount of adjacent lots. Councilmember Boyer questioned the other charges. Ms. Volek said there were charges for weed-eater hours and manpower hours (gas, delivery, insurance); and the 25% administrator fee covered the costs of processing paperwork, mailing, etc.

Councilmember Clark stated that last year the City received no bids to mow weeds. Ms. Volek said that was correct, and the City was very lucky to obtain the one bidder this year.

- MR. ROMEE, 224 S. 35<sup>TH</sup> STREET, said he received a letter about cutting his weeds. Mr. Romee said he cut his weeds, and they grew again. He said on July 12 several kids came to his property and used weed eaters on his boulevard. He said the rest of his property had already been mowed. Mr. Romee said the kids were there for about 15 minutes, and his bill was \$323.75. He said he would like to hear the justification for that amount because they were there 15 minutes and no lawnmower was used.

Councilmember Gaghen asked Ms. Beaudry if the teenagers were subcontracted by the contractor. Ms. Beaudry advised the teenagers were the contractor's sons.

City Administrator Volek advised the fees represented \$40 for the City's inspector to make two trips to each site; \$22 for man-hours; \$110 delivery of equipment to the site; \$32 for one-hour of weed eater; and \$35 for supervisor, for a total of \$239, plus the administrative fee of \$59.75 and the \$25 penalty.

Councilmember Boyer asked why the property owner was charged for mower delivery when a mower was not used. Ms. Volek stated the crew carried all of the equipment from site to site.

- TRENT GODFREY, 737 SOUTH BILLINGS BOULEVARD, said he wanted to speak specifically on the resolution for annual encroachment and weed removal assessments levying a special tax on property to defray costs of cutting and exterminating weeds. Mr. Godfrey said, as a horticulturist, he would love to work for the City for those fees. He said to levy a tax to defray the cost of cutting

weeds was a redundant exercise. Mr. Godfrey said he could testify there are several types of weeds in Billings that grow two feet in seven to eight days.

Councilmember Stevens asked Mr. Godfrey if he was on the list of property owners. Mr. Godfrey said he had not seen the list and was just making a public comment on the resolution. Mr. Godfrey said the current manner of handling the weeds was sufficient, and levying a tax was not necessary.

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

Councilmember Gaghen told staff a person on the list had passed away and asked who would be contacted to resolve the issue. Ms. Beaudry said the assessment would go on the taxes and be addressed by the estate.

City Administrator Volek advised if there were properties that Council felt should be excluded from the list, the motion must include an exclusion for each property.

Councilmember Clark moved for approval of Agenda Item 4(b), seconded by Councilmember Veis.

Councilmember Ruegamer said he was concerned the contractor was mowing weeds regardless of the height of the weeds. He said the 'before' and 'after' pictures of Mr. Jensen's weeds did not show they were excessively overgrown. Councilmember Ruegamer moved that Mr. Jensen's penalty be waived.

Councilmember Clark asked if the City would have to cover the expense of the mowing for the penalties that were waived. Ms. Beaudry said unless the City was paid, the General Fund would have to absorb the costs. She said currently the payments had exceeded the budget of Code Enforcement.

Councilmember Veis referenced Mr. Brewington's property and asked Ms. Beaudry why the initial inspection was on May 15<sup>th</sup>, the second inspection was on May 23<sup>rd</sup>, but the lawn was not cut until June 15<sup>th</sup>. Ms. Beaudry stated that particular instance was unusual because the contractor required a 3-day notice, and he had to cut the weeds within three days of the City's notice. Councilmember Veis asked why the contractor was paid if the weeds were not cut within the three days. Ms. Beaudry said it was probably because staff was not aware of it until that evening.

Councilmember Boyer said she had concerns about the fees. She referenced the Romees and said she could not understand how the work of two teenagers with weed eaters for 20 minutes was worth \$323.75. Ms. Boyer said \$110 was for delivery of equipment they did not use.

Councilmember Stevens said she agreed the fees were very high. She said if the contractor worked ten properties a day, he would receive \$1,100 a day just to pay for his truck. Councilmember Stevens said, on the other hand, no one else bid on the project; and if a property owner received a notice and did not take care of the weeds within seven days, the property owner was at the mercy of the contractor.

Councilmember Boyer said it was not actually seven days because by the time the property owner received the notice, it could be only four days or less, depending on the mail.

Councilmember Clark asked how many properties had been mowed. Ms. Beaudry said 1,300 notices were mailed, and about 120 properties were mowed.

City Administrator Volek said she would like to say again that staff was following the ordinance and recognized there were problems with it. She said staff was looking into revising the ordinance.

Councilmember Jones said the weeds did not look close to being a foot tall and in violation in some of the 'before' pictures that were distributed. Ms. Beaudry said she agreed with him. She said the initial inspections determined there was a violation. She said in most cases, the violations were quite obvious.

Councilmember Veis asked why staff was not required to put a pole in the ground with a red mark that indicated the height of the weeds. Ms. Beaudry said a pole would be a very good idea. Mayor Tussing said two pictures would need to be taken because one picture would not represent the actual evidence if a ruler was stuck in it.

Councilmember Boyer said she struggled with the City not being a good model for its own policy. She said there was City property that was in violation. Ms. Cromwell said the Street Department had problems with their summer maintenance program, which was one of the reasons why it stopped mowing for Code Enforcement.

Mayor Tussing made an amended motion to ask staff to contact the people who testified that evening or contacted staff earlier with a protest and ask if they felt the charge was reasonable or if some accommodation needed to be made, seconded by Councilmember Jones.

Councilmember Stevens asked staff what affect it would have to postpone five of the items. City Administrator Volek asked Council to approve the list and allow staff to void certain properties, if necessary.

Councilmember Veis asked what relief the property owners would be offered if review showed the documentation was consistent. City Administrator Volek said the property owners would be offered the opportunity to make time payments.

Mayor Tussing said the intent of his motion was not to reduce the payments, but to work with the property owners that had special circumstances.

Councilmember Boyer made a substitute motion to exempt the property owners who testified at the meeting that evening, seconded by Councilmember Gaghen.

Councilmember Veis stated there were people who took time to come to the meeting that evening to talk to Council, and there were inconsistencies on mowing times. He said he would be happy to exempt those people.

Mayor Tussing asked Councilmember Boyer if her substitute motion was to exempt just the people who testified at the meeting that night. Councilmember Boyer said her motion also included the people who contacted staff and the property owner who was terminally ill.

Councilmember Veis clarified the exemptions of the following five property owners from Exhibit B: AR #7861 - Brewhinds, Inc.; AR #19437 - Daniel & Eileen Buckley; AR #19492 - Jim Carroll; AR #19478 - Pat Jensen; and AR #19467 - Carolyn Jo Romee.

Councilmember Gaghen referenced AR #18632. Councilmember Clark said that was a different discussion and should not be included in the motion.

On a voice vote, the substitute motion passed 8 to 3. Councilmembers Clark and Ruegamer and Mayor Tussing voted 'no'.

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

**5. PUBLIC HEARING AND RESOLUTION #07-18607 relating to petitions for reduction of Arterial Construction Fee assessments. 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. There were no speakers, and the public hearing was closed.

Councilmember Jones moved for approval of Agenda Item #5, seconded by Councilmember Ruegamer.

Councilmember Brewster made an amended motion to add Austin Kaufman to the list of exemptions, seconded by Councilmember Veis. Councilmember Brewster said he asked Mr. Kaufman to apply for exception this year. He said Mr. Kaufman traded his big house elsewhere for the smaller house on the current property and behind his house was a building where he did fiberglass work as a sole proprietor. Councilmember Brewster said there were some old business signs on the property that were there when he traded for the property, but he did not conduct a business there. He said he felt Mr. Kaufman's situation was what the exemption was designed for and said he would appreciate Council's support.

Mayor Tussing asked if Mr. Kaufman was going to take the signs down because the signs might be the biggest part of the problem. Councilmember Brewster said he would talk to Mr. Kaufman about it for next year.

Councilmember Stevens asked if Mr. Kaufman put his fiberglass figurines for sale along the road. Councilmember Brewster said he did not, and his current project was battery boxes for BN. He said prior to the battery boxes he made special order fiberglass horses. Councilmember Brewster said Mr. Kaufman did not sell from the property, and it was not a "cash-register business".

City Administrator Volek advised Mr. Kaufman had a business license for his property.

Mayor Tussing asked how many other exemptions had business licenses or were conducting business out of the exact location. Public Works Director Dave Mumford said he was not aware of anyone else. He said the original exemption was for a single-family home on property zoned Commercial or Medical. Mr. Mumford said Mr. Kaufman had a green house, a trailer, a home, and the signs.

Councilmember Brewster said Mr. Kaufman's property had a single-family home with an outbuilding. He said other properties on the exemption list had outbuildings they could run businesses from. Councilmember Brewster said the top of the greenhouse was caved in, and there was nothing in it.

The amended motion to add Mr. Kaufman to the exception list failed 8 to 3. Councilmembers Ronquillo, Gaghen, Stevens, Veis, Ulledalen, Boyer, and Clark and Mayor Tussing voted 'no'.

On a voice vote, the motion to approve Agenda Item #5 with the exceptions as distributed was unanimously approved.

**6. PUBLIC HEARING AND RESOLUTION #07-18608 approving the re-spread of Special Improvement District 1358 based on construction cost. 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. There were no speakers, and the public hearing was closed.

Councilmember Boyer moved to approve Agenda Item #6, seconded by Councilmember Ronquillo. On a voice vote, the motion was unanimously approved.

**7. PUBLIC HEARING AND RESOLUTION #07-18609 approving the original spread of Special Improvement District 1375. 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. There were no speakers, and the public hearing was closed.

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

**8. PUBLIC HEARING AND RESOLUTION #07-18610 approving the original spread of Special Improvement District 1377. 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. There were no 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 RESOLUTIONS approving the re-spread for property being split or combined in various special improvement districts.** City Administrator Volek advised there were no staff presentations, but staff was available for questions.

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

**(a) Special Improvement District No. 1358, Resolution #07-18611 - Lake Hills Subdivision, Lot 6, Block 13. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** Councilmember Veis moved for approval of Agenda Item 9(a), seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.

**(b) Special Improvement District No. 1360, Resolution #07-18612 - Tierra Yellowstone Industrial Park Subdivision, Lots 3, 4, 5, and 02A, Block 6; and Lots 03A and 05A, Block 2. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** Councilmember Veis moved for approval of Agenda Item 9(b), seconded by Councilmember Clark. On a voice vote, the motion was unanimously approved.

**(c) Special Improvement District Nos. 9606 & 9698, Resolution #07-18613 - Suburban Subdivision, Lot 18, Block 12. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** Councilmember Veis

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

**(d) Special Improvement District No. 1334, Resolution #07-18614 - Billings Original Townsite, Lot 5, Block 109. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** Councilmember Veis moved for approval of Agenda Item 9(d), seconded by Councilmember Boyer. On a voice vote, the motion was unanimously approved.

**(e) Special Improvement District No. 1327, Resolution #07-18615 – Claimstake Subdivision, Lot 5, Block 4. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** Councilmember Veis moved for approval of Agenda Item 9(e), seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.

**(f) Special Improvement District Nos. 1341 & 1353, Resolution #07-18616 - Circle Fifty Subdivision, Lot 7, Block 2. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** Councilmember Veis moved for approval of Agenda Item 9(f), seconded by Councilmember Stevens. On a voice vote, the motion was unanimously approved.

Mayor Tussing called for a brief recess at 8:28 p.m. The meeting was called back to order at 8:38 p.m.

**10. PUBLIC HEARING AND SPECIAL REVIEW #853: A special review to construct and operate a commercial bakery on a 49,000 square foot parcel in the South 27<sup>th</sup> Street Corridor Zoning District on Lots 1-14, Block 230, Billings Original Town, addressed as 802 S. 26<sup>th</sup> Street, Gilbert Hornung, Trustee of the Aurthur Hornung Trust; Steven Kenney, representing agent; Kyle Nielsen of Grains of Montana Bakery, proposed owner. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)** Planner II Aura Lindstrand began her PowerPoint presentation showing the location of the subject property with the Billings Chamber of Commerce to the west, the U.S. Postal Service to the east, and the Montana Women’s Prison to the north. Ms. Linstrand displayed the proposed site plan and said there would be three phases of development for the property. Ms. Linstrand advised the Zoning Commission recommended approval subject to the following six conditions.

1. The special review approval shall be limited to Lot 1-14, Block 230, Billings Original Town located at 802 S. 26<sup>th</sup> St.
2. Development of the site shall be in substantial conformance with the site plan dated August 24, 2007. Deviations from the approved site plan that change the location of buildings, parking lot access or parking areas will require additional special review approval.

3. Final building elevations shall be amended to break up any long flat façades of more than 100 feet with a suitable architectural and/or landscape feature of a minimum of 8 feet in length.
4. Landscaping shall be as required by Section 27-805 of the Unified Zoning Regulations. It shall be in substantial conformance with the site plan but shall include a minimum of 28 canopy trees.
5. 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.
6. 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 questioned the 28 canopy tree minimum. Ms. Linstrand said the number of trees was based on the landscaping code within the Unified Zoning Regulations for the 27<sup>th</sup> Street Corridor. Councilmember Ronquillo asked if everyone moving into the Corridor would be required to put in 28 trees. Ms. Lindstrand said the number would be based on the lot size and street frontage. Councilmember Ronquillo said the mail service did not put in 28 trees. Ms. Linstrand said the U.S. Postal Service was in Public Zoning. Councilmember Ronquillo said he was talking about the private mailing service across the street from the Chamber Building. Ms. Linstrand said she was uncertain about that location. Councilmember Ronquillo commented Energy Lab, which took up a whole block, had no trees at all.

Councilmember Stevens asked how much parking was required and if there would be retail at the location. Ms. Linstrand said there would be no restaurant or retail. She said the business would be required to have 28 parking spaces, and they were providing 29 spaces.

The public hearing was opened.

- KYLE NIELSEN, 606 CALYPSO, said he was one of the owners of Grains of Montana on Grand Avenue. He said they were excited to move forward with the project, and he would be happy to answer any questions. Mr. Nielsen said part of the reason they were building the bakery in Billings was they had sold three of their franchises to date and wanted an upscale bakery to introduce prospective franchisees to the business.

Councilmember Ruegamer asked Mr. Nielsen if they were locally owned and operated. Mr. Nielsen said they were.

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

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

**11. (a) PUBLIC HEARING AND RESOLUTION #07-18617 accepting the Urban Planning Study and approving the expansion of the Urban Planning Area boundary to include the Dover Ranch property described as Tract 1, Certificate of**



**Survey 2017. Yellowstone County Board of Planning recommends approval. (Action: approval or disapproval of Yellowstone County Board of Planning recommendation.)**

Planning Division Manager Wyeth Friday began his PowerPoint presentation outlining the procedural history of the project, and advised the Planning Board had made their recommendation to include the property within the Urban Planning Area on August 28, 2007. Mr. Friday advised the property was included in the limits of annexation area approved by Council in February 2007. He said the property was currently dry land agriculture, and the proposal was to bring the property into the city limits, re-zone it to Residential 7000 Restricted, and move forward with development. He said the property was consistent with the City's Growth Policy and Annexation Policy. Mr. Friday said the estimated number of units would be 1,300 single family dwellings with approximately 3,000 people. He said the estimated build-out time frame would be 12 to 14 years. Mr. Friday said the property was near the future development of the Inner Belt Loop and Billings Bypass. He said the extensions for water, storm water, and sewer would be the cost of the developer.

Councilmember Boyer asked if the School District owned property on Matador. Mr. Friday said they owned property to the south across Matador.

Councilmember Gaghen asked if installation of a lift station would be a cost to the City or to the developer. Mr. Friday said there was an existing lift station in the area that would need to be expanded as the development was constructed. He said the developer would be involved.

Councilmember Boyer asked if the development had been discussed by the Heights Task Force. Councilmember Brewster said he had talked to the Heights Task Force about the development, and a member of the Planning Board talked to them at each meeting. Councilmember Stevens commented that when the property came up for subdivision, there would be a lot of public input.

The public hearing was opened.

- JERRY OAKLAND, CEO OF OAKLAND COMPANIES, SUITE 99, WELLS FARGO CENTER, said they developed High Sierra Subdivision just south of the Dover Ranch property. He said the development had been very successful because it offered reasonably priced lots and homes. Mr. Oakland said Phases I and II were sold out, and Phase III was two-thirds sold. He said because of the success of meeting the public need with the current project, they wanted to continue the project over the next 12 to 14 years. Mr. Oakland said they would also be building parks within the project. He said over the next 12 to 14 years, the project would contribute close to \$2 million to the City in park improvements, streets, water, and sewer facilities; and approximately \$350 million to the tax roles.

Councilmember Gaghen asked how many homes had been completed the past three years. Mr. Oakland said approximately 75 homes had been built each year.

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

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

**(b) PUBLIC HEARING AND RESOLUTION #07-18618 annexing 400.94-acres located north of the Lake Hills Golf Course and Matador Avenue in the Billings Heights (Annex #07-10). Frank Sindelar, owner. Staff recommends conditional approval. (Action: approval or disapproval of staff recommendations.)**

The public hearing was opened.

- ANTHONY RAUE, 2436 GREENBRIAR ROAD, said he lived directly east of the proposed annexation. He said he was opposed to the annexation. He said a petition was circulated the first part of September on the zoning process. Mr. Raue said R7000 would double the houses, traffic, and people. He said he did not believe the City had the water and sewer to handle it, and Independent School could not handle any more students. Mr. Raue said the public hearing before the Zoning Commission scheduled for September 4 was postponed by Mr. Oakland so he could meet with the neighbors. He said Mr. Oakland only met with one neighbor.

Councilmember Veis asked Mr. Raue if he would be against the annexation if the lots were zoned R9600. Mr. Raue said he would not be against it because R9600 were nice-sized lots. Councilmember Veis asked if Mr. Raue was more against the zoning and not the annexation. Mr. Raue said he “guessed so.”

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

Councilmember Stevens moved for approval of Agenda Item 11(b), seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

Mayor Tussing advised Agenda Items 12 and 13 were two adjacent properties near the intersection of Central Avenue and 29<sup>th</sup> Street West. He said 12(a) and 13(a) were the annexations of the two adjacent properties and 13(a) and 13(b) were the zone changes for the two adjacent properties. Mayor Tussing asked Planner Aura Linstrand if there were separate reports for Items 12 and 13. Ms. Lindstrand said there were separate reports; but the annexations and zoning change requests were mirrored, so she could combine the presentations into one. Mayor Tussing said he felt the two properties should be considered together since they were right next to each other, and staff was asking Council for the same approvals. Ms. Lindstrand said the only difference was the ownership, which triggered the two separate applications.

**12. (a) PUBLIC HEARING AND RESOLUTION #07-18619 annexing property 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 (Annex #07-21). Raymond and Douglas Kramer for the Lydia Kramer Real Estate Management Trust, owners and petitioners. Staff recommends conditional approval. (Action: approval or disapproval of staff recommendation.)**

**(b) PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #824: A zone change of Lot 1C, Certificate of Survey 2991, 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, Raymond and Douglas Kramer for the Lydia Kramer Real Estate Management Trust, owners; Engineering, Inc., representative. Zoning Commission recommends approval and adoption of the 12 determinations. (Action: approval or disapproval of Zoning Commission recommendation.)**

13. (a) **PUBLIC HEARING AND RESOLUTION #07-18620 annexing property 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 (Annex #07-22). Todd Icopini, owner and petitioner. Staff recommends conditional approval. (Action: approval or disapproval of staff recommendation.)**

(b) **PUBLIC HEARING AND FIRST 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, owner; Engineering, Inc., representative. Zoning Commission recommends approval and adoption of the 12 determinations. (Action: approval or disapproval of Zoning Commission recommendation.)**

Planner II Aura Linstrand began her PowerPoint presentation showing the location of the subject properties. She said staff was recommending approval of the annexations for Items 12(a) and 13(a) subject to the following conditions:

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

Ms. Linstrand advised 12(b) and 13(b) were identical zone change requests. She said commercial was proposed for along Central Avenue; light offices in the center of the property; and multi-family restricted along the southern portion. Ms. Linstrand said the Zoning Commission forwarded recommendation of approval for both properties based on the 12 criteria.

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

The proposed zoning is generally consistent with the following goals of the Growth Policy:

- *Predictable land use decisions that are consistent with neighborhood character and land use patterns. (Land Use Element Goal, page 5)*

This property is in an area of West Billings that is experiencing rapid commercial and residential growth. The rezoning of this parcel will focus new growth in a developing and expanding population center.

- *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 will be compatible with the multi-family residential uses located to the south and will provide a transitional zone between the commercial uses along Central Avenue and the proposed multi-family residences located on the southern portion of the site.

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

The proposed zoning will permit light commercial uses, offices, and multi-family residential uses, which will provide for more housing and business choices in this neighborhood.

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

The proposed zoning is expected to generate more traffic than the current vacant use. During the subdivision review or with a development agreement to be executed with the annexations, there may be improvements to the intersection of 32<sup>nd</sup> Street West and Central Avenue or a cash contribution for these improvements. As specified by the Engineering Division, there may also be a requirement for a reciprocal (shared) access for Tracts 1B and 1C, upon development.

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

Access will be from Central Avenue bordering the northern boundary of the property. Additional review of the site will be discussed with the annexations and site development of the property.

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

The proposed zoning will permit multi-family uses, commercial uses, and offices. The Unified Zoning Regulations specify minimum setbacks and lot coverage requirements, as well as height restrictions for the proposed zoning districts.

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

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

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

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

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

The proposed uses should not cause an undue concentration of population, as there is surrounding residentially developed properties.

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

*Transportation:* Any improvements identified by the City Engineering Department will be required with the subdivision approval.

*Water and Sewer:* Water and sewer lines are located within Central Avenue and will serve the subject property.

*Schools and Parks:* The proposed zoning could result in an overcrowding of West High School which is currently over capacity. The middle and elementary schools that serve this property have capacity for additional students. A park dedication will be required if the property is subdivided.

*Fire and Police:* The subject property is currently served by the City of Billings fire and police departments. Provisions for adequate emergency service will be further reviewed with site plan development.

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

The proposed zoning will be similar in character with the adjacent multi-family residential uses and duplexes to the south, as well as the office structure to the east.

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.

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

The applicant has proposed the RMF-R south of the commercial properties fronting Central Avenue, which provides for a transition zone between the commercial uses and the single-family residential uses on the southern portion of the property.

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

The proposed zoning will permit commercial, offices, and multi-family residential uses, which are compatible with the surrounding commercial and residential uses.

Councilmember Ulledalen asked what type of development could happen under the Residential Multi-Family Restricted zoning. Ms. Linstrand said she calculated approximately 30 multi-family units. She advised the applicant's representative was at the meeting and could provide more information on what was being proposed.

Councilmember Boyer asked if the Residential Multi-Family Restricted would be abutting R7000. Ms. Linstrand said that was correct.

The public hearings for Agenda Item 12a and 12b were opened.

- RICK LEUTHOLD, ENGINEERING, INC., 1300 N. TRANSTECH WAY, said he was referencing both Items 12(a & b) and 13 (a & b). Mr. Leuthold presented a colored exhibit to better explain the two parcels involved. He said the parcels were approximately eight acres a piece and the two remaining Kramer parcels out of the original nine. Mr. Leuthold said both of the property owners would like to move forward with an in-fill project and add "harmony" to the last two remaining parcels. He said the idea and concept was for mixed use development. He said the parcels were paired, and improvements would be completed along Central Avenue. Mr. Leuthold said the development would include light neighborhood commercial services such as coffee shops, small restaurants, etc. that people in the general area would walk to. Mr. Leuthold said there was the question of congestion this type of development might create. He said because the two parcels were working in harmony, there would be a center access (Kramer Drive) that would come down the middle allowing access to Central Avenue. He said there would be another access to the west and a couple of accesses onto Brookshire. Mr. Leuthold said a Traffic Accessibility Study would be completed, and the developer would be responsible for its share of impact to the intersection. Mr. Leuthold said the neighborhood center types of uses would cut down on the amount of vehicular traffic by providing services within walking distance. Mr. Leuthold asked the Council to support the Zoning Commission's recommendation on the zoning and the staff recommendation for the annexations.

Councilmember Clark asked how much heavy commercial could be put into a Neighborhood Commercial zone. Mr. Leuthold said they were looking at light retail use such as coffee shops, hairdressers, exercise facilities, and small

restaurants. Ms. Lindstrand added gambling, casinos, or beer and wine licenses would not be allowed.

Councilmember Stevens asked what Multi-Family Restricted would allow. Ms. Linstrand said it restricted the heights to 40 feet and allowed 40 units.

- **BOB PAUL, 222 BROOKSHIRE BOULEVARD**, said he was Colonial West's homeowners' association vice president. Mr. Paul said on August 5, 2007 he visited with Mr. Warmer, Mr. Poplar, and Mr. Hansen. He said he was unable to attend an earlier meeting concerning the new development. Mr. Paul said he checked with other neighbors in his development, and no one other than himself and one other individual had received a letter. He said the reason the letters were not received was because the other neighbors were about 50 feet from the 300-foot notification area. Mr. Paul read the letter he received. He said the neighbors in his development did not want anything that would cause problems with their property values, create issues with traffic flow, and cause problems with the current sewer system, as most of the sewer systems in the area required a lift station. Mr. Paul said he was assured the development would only be commercial similar to what was currently on Central Avenue and Brookshire, and the residential commercial housing would rent for at least \$1,000 a month.

Councilmember Gaghen asked for the date on the letter, and Mr. Paul said it was August 5<sup>th</sup>. Ms. Gaghen said she attended one of the meetings and was the only one there other than staff and the developers.

Rick Leuthold clarified that Mr. Warmer and Mr. Poplar sent out letters to the same property owners that received the zoning notification. He said there was also a west Billings Neighborhood Task Force meeting.

- **GEORGE WARMER, 2608 HIGHWOOD DRIVE**, said he had been asked to address how neighbors were contacted. Mr. Warmer said they contacted the Zoning Coordinator to see what would be feasible zoning. He said they contacted the Kramers to see what their interest would be, and then met with Mr. Boyer. Mr. Warmer sent notices to the same neighbors that received the zoning notification. He said a meeting was held, but they did receive a good neighborhood turnout. Mr. Warmer said they received a call from Mr. Paul, and they met with him at City Brew. Some of Mr. Paul's concerns were gangs and tagging associated with lower income property. Mr. Warmer said they assured Mr. Paul that the development would not be low income and gave Hunter's Point and Mr. Boyer's property as examples of Residential Multi-Family Restricted. He said the task force invited them to talk about the development and a week before the meeting a notice was published in the Billings Gazette specifying the topic of the meeting. Mr. Warmer said there were only 10 to 15 individuals who attended the meeting. He said Councilmember Jones attended the meeting, as well.
- **BLAINE POPLAR, 5403 KING AVENUE WEST**, said he would like to address several concerns that had been raised. Mr. Poplar said there was a major sanitary sewer line in 32<sup>nd</sup> Street West for the southern end of the development and the northern end of the development would gravity flow into the existing lines in Central Avenue, so a lift station would not be necessary. Mr. Poplar said one of the concerns raised was that the Billings West End Plan indicated the property

was supposed to be zoned R9600. He said the Billings West End Plan did not even include the subject property. Mr. Poplar said the proposal was for mixed use development and a perfect example of infill where there was an island of county land in the middle of west Billings. Mr. Poplar said there was a lot of concern about the traffic load on Brookshire Drive. He said with the plans to put Kramer Drive between Tract B and Tract C entering and exiting exclusively on Central Avenue, a large majority of the traffic would be directed onto Kramer. Mr. Poplar said there were also concerns about the impact on the School District. He said Neighborhood Commercial and Residential Professional took up approximately two-thirds of the use of the property and would not have any impact on the schools. Mr. Poplar asked Council to follow the recommendations of staff and the Zoning Commission.

Councilmember Veis asked Mr. Poplar to explain again how the sewer would flow out of the development. Mr. Poplar said there was a sewer line in Central Avenue that would service at least the northerly half of the tracts through gravity flow. He said the sanitary sewer line in 32<sup>nd</sup> Street would accommodate the southerly portion. He said the sewer line was deep in 32<sup>nd</sup> Street West and would not require any lift stations.

Mayor Tussing asked staff if lift stations would be necessary. Public Works Director Dave Mumford was not available for comment. Rick Leuthold of Engineering, Inc. confirmed there would be no need for lift stations.

Councilmember Veis asked if Colonial West would be able to change their sewer to hook into the gravity main. Mr. Leuthold said he did not know.

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

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

Councilmember Gaghen moved for approval of Agenda Item 12(b), seconded by Councilmember Veis. On a voice vote, the motion was unanimously approved.

The public hearings for Agenda Item 13(a) and 13(b) were opened. There were no speakers, and the public hearings were closed.

Councilmember Gaghen moved for approval of Agenda Item 13(a), seconded by Councilmember Veis. On a voice vote, the motion was unanimously approved.

Councilmember Gaghen moved for approval of Agenda Item 13(b), seconded by Councilmember Clark. On a voice vote, the motion was unanimously approved.

**14. (a) PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #815: A zone change from Residential 7000 to Residential 6000 on a 25,273 square foot parcel known as Lots 2 and 3, Carrie E. Smith Subdivision, 2<sup>nd</sup> Filing, located at 1248 Clark Avenue, Jack L. Robinson and the Estate of Genevieve E. Robinson, owners; Ackerly-Hurlburt Architects, agents. Zoning Commission recommends denial and adoption of the determinations of the 12 criteria. (Action: approval or disapproval of Zoning Commission recommendation.)** Nicole Cromwell began her PowerPoint presentation reviewing the location of the subject property, the zoning of the surrounding property, and the history



of the zone change request. Ms. Cromwell discussed the concept site plan submitted with the zone change and special review showing the proposed layout of a duplex on the southern end of Lot 3 and a four-plex on Lot 2 straddling over to Lot 3. She said the concept site plan would meet the zoning requirements if re-zoned to Residential 7000, as proposed. Ms. Cromwell advised the Zoning Commission held two public hearings and was recommending denial 4 to 1 based on the 12 criteria for zone changes and the three criteria for special reviews. Ms. Cromwell told Council if they adopted the recommendation of the Zoning Commission, the special review would not have to be considered because multi-family units were not allowed in the existing zoning of R7000. Ms. Cromwell advised she had received petitions against the zone change and special review and determined there was a valid protest, so the Council would need to approve the zone change by a two-thirds majority vote.

The public hearing was opened.

- JON DOAK, 1223 CLARK, said he lived east of the subject property at the end of the cul-de-sac on Clark Avenue. Mr. Doak said he had sent a letter to the Zoning Commission on September 4<sup>th</sup> addressing the criteria. He said a number of the neighbors in the notification area signed the petition and addressed the traffic and safety issues at the intersection of the half lane of gravel and Lewis Avenue.

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

Councilmember Ronquillo moved for denial of Agenda Item 14(a), seconded by Councilmember Ruegamer.

Councilmember Ruegamer said he went to the property and said he did not feel it was conducive to duplexes and four-plexes. He said he would not support the zone change request.

Mayor Tussing asked if the owners were in the audience. Ms. Cromwell advised they were notified.

On a voice vote, the motion to deny was unanimously approved.

**(b) PUBLIC HEARING AND SPECIAL REVIEW #849: A special review to allow a four-plex multi-family dwelling on a 25,273 square foot parcel in a proposed Residential 6000 zone on Lots 2 and 3, Carrie E. Smith Subdivision, 2<sup>nd</sup> Filing. Jack L. Robinson and Genevieve E. Robinson, owners; Dave Hurlburt, agent. Zoning Commission recommends denial. (Action: approval or disapproval of Zoning Commission recommendation.)** Ms. Cromwell advised no action was necessary due to the denial of the zone change request.

**15. 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. Zoning Commission recommends approval. (Action: approval or disapproval of Zoning Commission recommendation.)** Mayor Tussing advised it was the intention to continue Agenda Item 15 to the October 9, 2007, meeting. Mr. Tussing stated he would open the public hearing for anyone who was waiting to testify that evening and encouraged people to wait until October 9<sup>th</sup> when

Council would be voting on the item. City Administrator Volek advised there was no staff report.

The public hearing was opened. There were no speakers.

Councilmember Veis moved to continue the public hearing until the October 9, 2007, meeting, seconded by Councilmember Boyer. On a voice vote, the motion was unanimously approved.

**16. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #820: A text amendment to Section 27-705(C), BMCC, Commercial Sign Regulations. Zoning Commission recommends approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

Mayor Tussing advised it was the intention to continue Agenda Item 16 to the October 9, 2007, meeting. Mr. Tussing stated he would open the public hearing for anyone who was waiting to testify that evening and encouraged people to wait until October 9<sup>th</sup> when Council would be voting on the item. City Administrator Volek advised there was no staff report.

The public hearing was opened. There were no speakers.

Councilmember Veis moved to continue the public hearing until the October 9, 2007, meeting, seconded by Councilmember Boyer. On a voice vote, the motion was unanimously approved.

**17. PRELIMINARY MAJOR PLAT of Tuscany Subdivision generally located east of Ironwood Estates and north of Yellowstone Country Club Estates, conditional approval of the plat, approval of the variances, and adoption of the Findings of Fact. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

Planner II Aura Linstrand began her presentation with a brief history of the subdivision. She said the property was a 49-lot major subdivision located east of Ironwood Subdivision, 1<sup>st</sup> Filing. Ms. Linstrand pointed out Canyonwoods Drive that entered the proposed subdivision and indicated there would be another proposed access from Ironwood Drive into the subdivision. Ms. Linstrand said there was an exempt plat in process that would break up one lot to be given to the City for a water reservoir site. She said the developer was proposing two accesses internal to the site, which would be a gated, private community. Ms. Linstrand said the roads in the subdivision would be built to City standards, and the major subdivision process required secondary access. She said the secondary access would be provided by Ironwood Drive, with the primary access as Canyonwoods Drive. Ms. Linstrand advised there was ongoing litigation with Ironwood Drive and that access had not been obtained, which was a required condition of approval of the subdivision before the final plat could be brought forward. Ms. Linstrand stated the applicant was asking that Council consider eliminating the secondary access requirement for Tuscany Subdivision until 2010 when the second access of 62<sup>nd</sup> Street West to Ironwood Subdivision was required.

Councilmember Veis asked for the location of 62<sup>nd</sup> Street West. City Administrator Volek advised that 62<sup>nd</sup> Street West came in and turned onto Sam Snead in Yellowstone Country Club, through a coulee, and up into Ironwood. Ms. Volek said there was only a single primary access to Ironwood currently, and 62<sup>nd</sup> Street West

would be the secondary access to Ironwood. Mayor Tussing added that currently Ironwood Subdivision could not be accessed from 62<sup>nd</sup> Street West.

Councilmember Brewster said the developers of Tuscany felt they should be allowed the same time period as Ironwood Subdivision for a secondary access.

Ms. Linstrand clarified that a secondary access was different from an emergency access. She said a secondary access was required to be built to subdivision standards of 56 feet right-of-way with 34 feet back-to-back curb width. An emergency access was required to be built to a 20-foot wide standard, and that was what was being proposed with the exempt plat for the water reservoir. She said the City was proposing to build the 62<sup>nd</sup> Street emergency access to get to the water reservoir site.

Councilmember Stevens said there would be no secondary access for the Tuscany Subdivision. Ms. Linstrand said there would not be if the condition for Ironwood Drive was removed that evening, which was one of the requests of the developer. Councilmember Stevens asked what would happen if the developer did not get the Ironwood access. Ms. Linstrand said it would require a variance from the subdivision regulations. Councilmember Stevens asked since it was a preliminary plat, would the developer have to get the secondary access before final plat and before anything could be built other than the infrastructure. Ms. Lindstrand said under the proposal Mr. Gundlach was requesting Council delay the construction of Ironwood Drive until 2010. Ms. Lindstrand said the condition of approval of the subdivision as it stood required access be obtained on Ironwood Drive, which was still in litigation. She said Ironwood Drive did not go through because of the litigation. Ms. Lindstrand said the condition before Council that evening was that the developer would have to obtain the access before coming in with a final plat. Councilmember Stevens confirmed that if the developer did not obtain the access, he could not come in for final plat. Ms. Lindstrand said that was correct. Ms. Lindstrand advised that Fire Chief Jochems was present to attest to the need for a secondary access.

Councilmember Veis asked Ms. Lindstrand if the developer was asking Council to grant him a variance from a secondary access until 2010. Ms. Linstrand said that was correct. Councilmember Veis asked what would happen if Council granted a variance, final plat approval was obtained, the entire subdivision was built out in 2010, and the developer found out he could not get onto Ironwood Drive. He asked if the City would have any leverage to make the developer build a secondary access.

City Attorney Brooks said if it was written in the Subdivision Improvements Agreement that a secondary access would be obtained by 2010 and it was not, it would be a breach of the contract, and the City would be entitled to pursue enforcement of the contract. Attorney Brooks said as a practical matter he did not know how effective it would be to try to enforce the provision in the contract if there was no second access obtainable. He said it would be a matter for district court and would be complicated.

Ms. Lindstrand advised the developer was requesting a subdivision variance allowing private, internal subdivision streets where dedicated public rights-of way were required and a subdivision variance allowing sidewalks on one side of the internal subdivision streets where boulevard-style sidewalks were required on both sides, due to the grade of the site and elevation; and a subdivision variance allowing one access into the subdivision where two access roads built to standard were required.

Ms. Lindstrand advised if Council would like to make the findings for the variance to delay construction of the secondary access until 2010, staff would ask that the Council make the following findings associated with the variance request for subdivisions.

1. The granting of the variance will not be detrimental to the public health, safety, or general welfare or injurious to other adjoining properties.
2. Because of the particular surroundings, shape, or topographical conditions of the specific property involved, an undue hardship to the owner would result if the strict letter of the regulation was enforced.
3. The variance will not result in an increase in taxpayer burden.
4. The variance will not in any manner place the subdivision in nonconformance with any adopted zoning regulations or growth policy.
5. The subdivider must prove that the alternative design is equally effective and the objectives of the improvements are satisfied.

Ms. Lindstrand noted the requirement of secondary access is to allow for emergency access into the site, and the subject property had a higher than normal danger for fire.

Ms. Lindstrand referenced the Traffic Accessibility Study (TAS) that was placed as a condition of approval. The Planning Board required a TAS because of the property owners who voiced their concerns at the public hearing that there would be only one way in and one way out of all of Ironwood Subdivision and Tuscany Subdivision until 62<sup>nd</sup> Street West was built. Ms. Lindstrand said Tuscany Subdivision would produce approximately 490 trips per day, just ten trips under the 500 trips that would require a TAS.

Councilmember Jones asked if 62<sup>nd</sup> Street West in Ironwood satisfied the requirement or if they needed to have another access. He asked if the emergency access qualified as the second access. Ms. Lindstrand said Ironwood Subdivision was developed under old subdivision regulations where a secondary access was not required, just an emergency access. She said under the new subdivision regulations a secondary access was required.

Councilmember Veis asked if Condition #3 was being asked to be amended by the variance to give the developer until 2010. Ms. Lindstrand said that was correct. Councilmember Veis asked if Condition #8, the requirement for the Traffic Accessibility Study, was being asked to be removed. Ms. Lindstrand said that was correct. Councilmember Veis asked if a 50-lot subdivision was the cut-off for the TAS requirement but Council could require it for less than 50 lots. Ms. Lindstrand said, under state law, if it was determined by the Planning Board to mitigate health and safety, a Traffic Accessibility Study could be placed as a condition on the plat. Councilmember Veis asked if it was the sole discretion of the Planning Board. Ms. Lindstrand advised the City Council would have the right to strike the condition if they desired.

Councilmember Stevens asked Fire Chief Jochems to comment. Chief Jochems said it was a subdivision regulation issue and not a Fire Department issue. He said two ways in and two ways out are needed for any subdivision. Mr. Jochems said that even though Ironwood was developed under an old standard, there was still only one way in and one way out. Chief Jochems referenced the recent Emerald Hills fire where residents had a hard time driving out on one road with the flames right behind them. He

said that was an obvious reason why the Billings Fire Department liked to have two accesses to a subdivision.

Councilmember Ruegamer asked how a fire truck accessed a gated community. Chief Jochems said the community would provide the Fire Department with a code to get inside the gate.

Councilmember Veis asked how much distance was required between two accesses. Ms. Lindstrand said she was not sure that the subdivision regulations directly addressed that question. She said it would be an Engineering concern. Ms. Lindstrand commented it would not meet the intent of the secondary access if two roads were right next to each other. Ms. Lindstrand said there was no set of criteria on how far a secondary access must be from a primary access.

Mayor Tussing asked how a gated community could not allow the public in but could receive all of the public city services. Ms. Lindstrand said there would be an overlying public access and utility easement that would allow certain entities in, such as the City utilities and all of the other utility companies. She said typically a gated community would have private water and sewer, but Tuscany Subdivision would be on public water and sewer.

Councilmember Ulledalen asked if flood issues had been addressed. Ms. Lindstrand said the subject location was determined not to be a sufficient flood area. She said it was considered more of a fire danger. She said in speaking with the Fire Department and the Public Works Department, it was determined a second access would be necessary because there were 49 lots with people who would need to get out.

Councilmember Boyer referenced the Emerald Hills fire where homes were lost and said it was not worth taking a chance as far as she was concerned.

Councilmember Jones said he was still confused about 62<sup>nd</sup> Street West and thought there would be another emergency access. He said he did not realize 62<sup>nd</sup> Street West would be classified as a second access and asked if there would be another exit somewhere else. Ms. Lindstrand said there would not be another access at the present time. She said the City would be constructed 62<sup>nd</sup> Street West to a 10-year flood event but there was no other access determined at the present time.

Planning Director Candi Beaudry said 62<sup>nd</sup> Street West was always the emergency access for Ironwood Subdivision, 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> Filings. She said there was nothing else currently.

Councilmember Ulledalen asked if there had been any attempt to obtain access to Highway 3 or would Ironwood Drive be it. Ms. Lindstrand said there had been no discussion to date.

Councilmember Veis asked to confirm that the developer wanted to contribute \$6,800 toward the construction of the intersection of Rimrock Road and 69<sup>th</sup> Street West. Ms. Lindstrand she was not aware of that proposal until that evening, and Public Works would review and determine the cash contribution.

Councilmember Ulledalen asked if the cash contribution amount would be approximately what the Traffic Accessibility Study would cost. Ms. Lindstrand said she was not sure.

Councilmember Veis asked if a connection could be made to the easement that went down into the Yellowstone Country Club. Ms. Lindstrand said they could not at this time.

Councilmember Veis asked the consultant to address the cash contribution proposal in lieu of the Traffic Accessibility Study. Tom Eastwood of Morrison-Maierle said they compared recent subdivisions in the area and what kind of contributions had been made to area intersections, such as in Falcon Ridge and Copper Ridge. Mr. Eastwood said they took the number of lots shown in each subdivision. Councilmember Veis asked Mr. Eastwood if they were proposing to contribute \$6,800 to the intersection instead of having a Traffic Accessibility Study done. Mr. Eastwood said that was correct.

Councilmember Ulledalen asked what the Traffic Accessibility Study would cost. Mr. Eastwood said it varied depending on the level of involvement. He said the biggest expense was data collection. Mr. Eastwood said there would be traffic counts done on Ironwood Drive, and the 62<sup>nd</sup> Street West and Rimrock Road intersection had already been completed during the previous study required for Ironwood Subdivision. Mr. Eastwood said the Traffic Accessibility Study for the Tuscany Subdivision would run \$4,000 to \$5,000.

Councilmember Boyer said the residents of Ironwood Subdivision wanted a Traffic Accessibility Study and by proposing only 49 lots, it appeared the developer skirted around the issue. Councilmember Boyer asked why the developer did not want a Traffic Accessibility Study. Mr. Eastwood said he could not speak for the developer; but he could not see making any improvements to Ironwood Drive by widening the road to increase capacity. He said improvements were already in place at the Ironwood Drive intersection with the roundabout and at Molt Road.

Mayor Tussing asked if he could be arrested for walking on a city sidewalk or driving on a city street within the gated community. City Attorney Brent Brooks said it depended on the Subdivision Improvements Agreement and the conditions of the plat approval. Mr. Brooks said the City had never had to address the issue before. Ms. Lindstrand added the subdivider had specified very clear easements that would allow only certain entities into the private subdivision, which would include city utility employees to access the water reservoir and the other utility companies. She said other than those entities, visitor passes would need to be assigned. Attorney Brooks added a person could conceivably be asked to leave the area if they did not have permission to be there. Mr. Brooks said he did not know if a person could be charged criminally for trespassing.

Councilmember Brewster asked if the final plat could be approved if Council did not accept the requested variances. Ms. Lindstrand advised the condition of approval for #3 would remain on the subdivision and if Ironwood access was obtained, a final plat could be filed. She said the developer had three years from the preliminary plat approval to file the final plat with a one-year extension if granted by City Council.

Councilmember Gaghen asked Ms. Lindstrand if there was an understanding with the residents of Ironwood that there would not be a second access in and out of the subdivision until 2010. Ms. Lindstrand said the SIA language for either the 2<sup>nd</sup> or 3<sup>rd</sup> filing of Ironwood was revised to reflect that 62<sup>nd</sup> Street West did not have to be constructed until 2010.

Councilmember Stevens asked if the other two gated communities in Billings were on public utilities. Ms. Lindstrand said they were on private.

Councilmember Veis asked if an access through Yellowstone Country Club was obtained, would the condition of approval need to be changed. Ms. Lindstrand advised the condition of approval could be amended.

Councilmember Brewster asked if the development of Tuscany Subdivision would eliminate the public's current access to the "unofficial" trail along the rims. Ms. Lindstrand said there was a public access easement being proposed along the southern portion of the site but accessibility would be limited.

Councilmember Clark moved for approval of Agenda Item #17 as recommended by the Planning Board with no variances, seconded by Councilmember Ulledalen.

Mayor Tussing advised he would be recusing himself from the vote because the Alternate Modes Coordinator had some involvement with discussion on the matter.

Councilmember Veis asked if there were two variances already approved by the Planning Board. Ms. Lindstrand said that was correct.

Councilmember Clark restated his previous motion to approve Agenda Item #17 to include the two variances as recommended by the Planning Board.

Councilmember Ruegamer asked if the City could be brought into the current litigation involving Ironwood Drive if Council approved or did not approve the recommendation. City Attorney Brooks said it was possible but remote. Attorney Brooks said as long as the Mayor and City Council followed the criteria of denying or granting the variances presented and followed the statutes of preliminary plat approval, everything would have been done to minimize the City being drawn into the litigation. Attorney Brooks said Council was only being asked that evening to approve the preliminary plat with or without a second access and not to decide if access should be granted through Ironwood Drive.

Councilmember Stevens said she was bothered by the fact the developer wanted public utilities but wanted private streets and asked if there would be an issue. Attorney Brooks said there may be an issue, but he had never researched if a private, gated community would be entitled to use public utilities.

Councilmember Veis moved to remove Condition #8, seconded by Councilmember Brewster. Councilmember Veis said he understood the concern of the neighbors, but the rules said a Traffic Accessibility Study was not required for less than 50 lots, and the rule needed to be followed.

Councilmember Stevens asked Ms. Lindstrand if Council could still require a Traffic Accessibility Study for less than 50 lots. Ms. Lindstrand advised that under public health and safety based on surrounding property concerns, a Traffic Accessibility Study could be required for less than 50 lots.

Councilmember Gaghen asked if the developer was limited to 49 lots or if 49 lots were a personal choice. Ms. Lindstrand said she would need to defer the question to the applicant.

Councilmember Boyer commented she felt the rules were being used against the City instead of for the City. Councilmember Brewster said maybe it was just a good business decision on the part of the developer. Councilmember Boyer said Council needed to listen to the other citizens that lived nearby.

Councilmember Ulledalen said he dealt with an increasing number of phone calls from Ironwood residents that were frustrated over a number of issues, particularly about

the current traffic. He said a Traffic Accessibility Study would help address a lot of the concerns and help Council make the best decision.

City Administrator Volek referenced a letter, dated September 14, 2007, from the Gundlachs in which they wrote, "A *Traffic Accessibility Study is not required for subdivisions with fewer than 50 lots. Tuscany was designed to have only 49 lots and as such, no traffic study is required. Surprisingly, the City/County Planning Board recently recommended that a Traffic Accessibility Study be done. We believe that is contrary to City Code. We specifically designed Tuscany Subdivision with forty-nine lots. We did so in conformance with City code that specifically indicates that no traffic study is required for subdivisions with less than fifty lots. We opted to forego the potential profit of additional lots to avoid requirements and the cost of time needed to conduct a Traffic Accessibility Study.*"

On a voice vote, the amended motion to eliminate Condition #8 failed 7 to 3. Councilmembers Ronquillo, Gaghen, Stevens, Ruegamer, Ulledalen, Boyer, and Clark voted 'no'. Mayor Tussing had recused himself from the vote.

On a voice vote, the original motion passed 8 to 2. Councilmembers Stevens and Ruegamer voted 'no'. Mayor Tussing had recused himself from the vote.

- 18. 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**

- **STEVENS:** Moved for Staff to look into the arterial fees for zoning of Residential Manufactured Housing with a single home on a lot that was owner occupied, seconded by Councilmember Brewster. She said the property owner should receive the same exception as a single owner in a commercial zone. Motion passed.
- **GAGHEN:** Said the contractor that worked on the corner of 2<sup>nd</sup> and Avenue C left grooves in the street wide enough to catch a bicycle tire that could cause a liability for the City, and asked Staff to look into it. Councilmember Ronquillo said there was the same situation on the block of 9<sup>th</sup> Avenue South between 27<sup>th</sup> and 28<sup>th</sup>. He said the City does not hold the contractors responsible for fixing the streets they tear up.

Mayor Tussing asked for a volunteer to attend the PCC meeting on Wednesday, September 26, as his designee because his schedule did not allow him to attend. No one volunteered.

**ADJOURN** – The meeting adjourned at 10:55 p.m.