

**REGULAR MEETING OF THE BILLINGS CITY COUNCIL
December 15, 2008**

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

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

MINUTES – December 8, 2008, approved as distributed

COURTESIES – None

PROCLAMATIONS - None

ADMINISTRATOR REPORTS – Tina Volek

- Ms. Volek said revisions reflecting comments from the City Council and County Commissioners for Agenda Item 6 were included in the Friday Packet and were available in the Ex-Parte Notebook for public review.
- Ms. Volek advised this was the last meeting of 2008. She said the first work session for 2009 was scheduled for January 5, and the first regular meeting for 2009 was scheduled for January 12.
- Ms. Volek said the meeting was not being televised by Channel 7 due to a conflict with televising the School Board Meeting.
- Ms. Volek wished the City Council happy holidays on behalf of the City Staff.

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

There were no speakers.

CONSENT AGENDA:

1. A. Mayor's appointments:

Mayor Tussing recommends that Council confirm the following appointments:

| | Name | Board/Commission | Term |
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|--|------|------------------|------|

| | | | | |
|-----|-------------------|-----------------------------|----------|----------|
| 1. | Sandy Weiss | Animal Control Board | 01/01/09 | 12/31/12 |
| 2. | Dennis Ulvestad | Animal Control Board | 01/01/09 | 12/31/12 |
| 3. | | Animal Control Board | 01/01/09 | 12/31/12 |
| 4. | | Animal Control Board | 01/01/09 | 12/31/12 |
| 5. | Richard Larsen | Aviation & Transit Board | 01/01/09 | 12/31/12 |
| 6. | Mark Kennedy | Aviation & Transit Board | 01/01/09 | 12/31/12 |
| 7. | Stanley Hill | Aviation & Transit Board | 01/01/09 | 12/31/12 |
| 8. | *Jeff Bollman | Board of Adjustment | 01/01/09 | 12/31/09 |
| 9. | | Board of Appeals | 01/01/09 | 12/31/12 |
| 10. | Rebekah Wales | Board of Ethics | 01/01/09 | 12/31/12 |
| 11. | Andrew Parker | Board of Ethics | 01/01/09 | 12/31/12 |
| 12. | Rod Ostermiller | Board of Health | 01/01/09 | 12/31/11 |
| 13. | Sandy Weiss | Community Development Board | 01/01/09 | 12/31/12 |
| 14. | | Community Development Board | 01/01/09 | 12/31/12 |
| 15. | Charles Hamwey | EMS | 01/01/09 | 12/31/12 |
| 16. | Meridith Cox | EMS | 01/01/09 | 12/31/12 |
| 17. | | EMS | 01/01/09 | 12/31/12 |
| 18. | * | EMS | 01/01/09 | 12/31/09 |
| 19. | Lisa Harmon | Homelessness Committee | 01/01/09 | 12/31/12 |
| 20. | Paul Chinberg | Homelessness Committee | 01/01/09 | 12/31/12 |
| 21. | Joseph Chalupa | Homelessness Committee | 01/01/09 | 12/31/12 |
| 22. | Sue Runkle | Homelessness Committee | 01/01/09 | 12/31/12 |
| 23. | Judy Steward | Homelessness Committee | 01/01/09 | 12/31/12 |
| 24. | John Hines | Homelessness Committee | 01/01/09 | 12/31/12 |
| 25. | Mary Lou Affleck | Homelessness Committee | 01/01/09 | 12/31/12 |
| 26. | Ken Chase | Homelessness Committee | 01/01/09 | 12/31/12 |
| 27. | | Homelessness Committee | 01/01/09 | 12/31/12 |
| 28. | | Homelessness Committee | 01/01/09 | 12/31/12 |
| 29. | Mary Lou Affleck | Housing Authority | 01/01/09 | 12/31/13 |
| 30. | Lynda Moss | Housing Authority | 01/01/09 | 12/31/13 |
| 31. | | Housing Authority | 01/01/09 | 12/31/13 |
| 32. | *Maureen Jurovich | Housing Authority | 01/01/09 | 12/31/10 |
| 33. | Patt Leikam | Human Relations Commission | 01/01/09 | 12/31/12 |
| 34. | *Diane Foley | Human Relations Commission | 01/01/09 | 12/31/10 |
| 35. | * | Human Relations Commission | 01/01/09 | 12/31/10 |
| 36. | | Parking Advisory Board | 01/01/09 | 12/31/12 |
| 37. | * | Parking Advisory Board | 01/01/09 | 12/31/10 |
| 38. | Tom Iverson | Parks/Recreation/Cemetery | 01/01/09 | 12/31/12 |

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|-----|-----------------|---------------------------|----------|----------|
| 39. | Rachel Cox | Parks/Recreation/Cemetery | 01/01/09 | 12/31/12 |
| 40. | Catherine Grott | Parks/Recreation/Cemetery | 01/01/09 | 12/31/12 |
| 41. | | Parks/Recreation/Cemetery | 01/01/09 | 12/31/12 |
| 42. | | Parks/Recreation/Cemetery | 01/01/09 | 12/31/12 |
| 43. | Ben Surwill | Police Commission | 01/01/09 | 12/31/11 |
| 44. | Barry Nolan | Public Utilities Board | 01/01/09 | 12/31/12 |
| 45. | *Brent Krueger | Traffic Control Board | 01/01/09 | 12/31/10 |
| 46. | Bill Iverson | C/C Planning Board | 01/01/09 | 12/31/10 |
| 47. | Donna Forbes | C/C Planning Board | 01/01/09 | 12/31/10 |
| 48. | Susan Gilbertz | C/C Planning Board | 01/01/09 | 12/31/10 |
| 49. | Fred Rogers | C/C Planning Board | 01/01/09 | 12/31/10 |

- 8. Unexpired term of Leon Pattyn
- 18. Unexpired term of Dr. John Kominsky
- 32. Unexpired term of Mike Hennessey
- 34. Unexpired term of Jean Smith
- 35. Unexpired term of Shoshana Tom
- 37. Unexpired term of Gary Temple
- 45. Unexpired term of Angela Cimmino

B. Agreement with Billings Housing Authority to fund one Police Officer from January 1, 2009, through June 30, 2009.

C. Modification #3 to Law Enforcement Officer 5-year Reimbursement Agreement with Transportation Security Administration. Annual estimated cost to City - \$169,900; Modification #3 for second year reimbursement – up to \$163,286.40.

D. Acknowledging Receipt of Petition to Annex #08-09: Lots 1-3, Block 1, Cereus Subdivision, generally located on the north side of Midland Road east of the Motor Power Equipment business. Brumar Corporation, owner and petitioner; Bruce E. Sunwall, representative; and setting a public hearing date for January 12, 2009.

E. Approval of Bicycle Pedestrian Advisory Committee’s letter of support for the Safe Routes to School Grant Application for Elementary School Traffic Plan.

F. Approval of Legislative Agenda.

G. Resolution #08-18776 adopting the Riverfront Park Master Plan Update.

H. Resolution #08-18777 adopting the Howard Heights/Dickie Park Master Plan.

I. Preliminary Subsequent Minor Amended Plat of Lots 4-19, Block 2, Riverfront Pointe Subdivision, generally located east of the southeast corner of the intersection of Mullowney Lane and Frontier Drive; Frontier Apartments, LLC, owner;

Blueline Engineering, LLC, representing agent; conditional approval of the plat and adoption of the Findings of Fact.

J. Final Plat of Amended Lot 6B, Flanagan Subdivision.

K. Payment of Claims
(1) November 21, 2008

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

Mayor Tussing separated ITEM 1E. Councilmember Veis moved for approval of the Consent Agenda with the exception of ITEM 1E, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved. Councilmember Veis moved for approval of ITEM 1E, seconded by Councilmember Brewster. Mayor Tussing advised he would be recusing himself from voting on ITEM 1E because of his wife's involvement. On a voice vote, the motion was approved 10 to 0.

REGULAR AGENDA:

2. W.O. 04-12 – ALKALI CREEK ROAD SLOPE IMPROVEMENTS CONSTRUCTION CONTRACT AWARD (delayed from 11/24/08). Staff recommends rejection of all bids. (Action: approval or disapproval of staff recommendation.)

Public Works Director, David Mumford, advised staff was recommending that the bids for the project be rejected because the bids were twice what they had anticipated. He said staff was looking at other places to locate the trail and other options for building the retaining wall.

Councilmember Brewster asked Mr. Mumford if he had a timeframe for reporting back to Council. Mr. Mumford said they hoped to bring options to Council by February. He said they had also met with Senator Baucus' Office to ask for help with some of the funding.

Councilmember Clark asked Mr. Mumford if they had heard back on the possibility of moving the stream back to where it belonged. Mr. Mumford said the Corps of Engineers told them that Fish, Wildlife and Parks had concerns and would want the same flood plain. He said if the creek was moved over 20 feet, they would need to encroach 20 feet into the existing properties of Morningside, which pretty much eliminated that option. Councilmember Brewster suggested splitting the difference for 10 feet each way. Mr. Mumford advised that when Morningside was annexed into the City, it was required by the City Council that Morningside provide an easement for a trail, which would be a much less expensive way to provide for the trail with the difficulties of the road. He said staff would be looking at that option.

Councilmember Ulledalen asked if there was any indication further upstream that the channel was changed in any way. Mr. Mumford said they did not see any change to the channels above, and the main cause for the washout was from migration.

Councilmember Brewster moved to reject all bids, seconded by Councilmember Veis. On a voice vote, the motion was unanimously approved.

3. PUBLIC HEARING AND RESOLUTION #08-18778 vacating Boundary Waters Circle located within Riverfront Pointe Subdivision; established value of right-of-way - \$15,885. Cal Kunkel, owner and petitioner. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) City Administrator, Tina Volek, advised there was no staff presentation, but staff was available to answer questions.

The public hearing was opened.

- **Marshall Phil, Blueline Engineering**, said he represented the owner and petitioner. He said the only issue they had was with the cost of the vacation. He said they had originally requested that the land be vacated at no cost to the owner but were told they had to put a value on the property, which was where the \$15,885 came from. Mr. Phil referenced the Administrative Order that followed the vacation process and read "If the City of Billings and the Petitioner mutually agree that vacating a public right-of-way is appropriate and the public has a no-cost basis in the right-of-way, staff may recommend to Council that the land be returned to the adjacent property from which it was originally dedicated at no cost." Mr. Phil said the subject property was an empty field with an undeveloped road in front of it. He said the raw land qualified for it; there was no impact to the public; and the water and sewer would be installed as a separate, private system for the apartments that would be built on the parcel.
- **Blaine Poppler, 5403 King Avenue West**, said the property was annexed several years ago and was purchased and developed into Riverfront Pointe Subdivision. Mr. Poppler said the property was approximately 75 acres and was slowly being developed into housing. He said Boundary Waters Circle would not have been developed for several more years, and it was identified as an appropriate location to build approximately 62 affordable apartments. Mr. Poppler said they were hoping to avoid any additional costs to keep the cost of building the apartments and the rent in line with what they had projected. Mr. Poppler said the vacation would relieve the City of the installation of underground utilities, street improvements, and maintenance. He asked that the City return the property at no cost to the developer. Councilmember Clark verified with Mr. Poppler that the developer would be required to pay for the cost of developing the street, and the City would only pay for the maintenance. Mr. Poppler said that was correct.

Mayor Tussing asked Mr. Poppler if someone had asked him to provide the estimate of \$15,885. Mr. Poppler advised that the City Engineering staff told Mr. Phil he would need to provide an estimated value as part of the process for requesting the vacation. He said he looked up how much the property had sold for to the present developer and the cost of the nearby property purchased by the McCall Development to come up with a reasonable value in the range of \$20,000 to \$25,000 per acre. Mayor Tussing asked if there would be a conflict with Mr. Poppler representing the developer and being the person placing the value on the right-of-way. Mr. Poppler said he tried to give an objective opinion and backed it up with actual, comparable sales.

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

Councilmember Pitman moved for approval of the vacation with payment, seconded by Councilmember Ruegamer.

Mayor Tussing asked Mr. Mumford why staff was recommending payment. Mr. Mumford advised that the property had already been subdivided and the right-of-way existed when Mr. Kunkel purchased it. He said Mr. Kunkel purchased the property minus the right-of-way. Mr. Mumford said in the past if it was the same developer who had donated it to the City and then wanted it back for some reason, the City had not charged for it. He said this instance was no different than anyone else purchasing City right-of-way to be used for their own personal development.

Councilmember Ruegamer asked Mr. Mumford if the person who donated the land to the City was no longer the owner. Mr. Mumford said that was correct.

Councilmember Astle said he did not feel the current motion was clear as to the amount of payment being recommended.

Mayor Tussing asked Mr. Mumford if he agreed with Mr. Poppler's assessment with the value of the property. Mr. Mumford said Mr. Poppler looked at comparable values in the area and what had been paid for the land, so staff had no reason to believe the value of \$15,885 was incorrect.

Mayor Tussing called for an amendment to the motion to specify the recommended amount of payment.

Councilmember Astle amended the motion to specify payment in the amount of \$15,885, seconded by Councilmember Ruegamer.

Councilmember Veis asked Mr. Mumford if a decrease in operation and maintenance was considered when determining a price for a right-of-way vacation. Mr. Mumford said they did not figure the estimated savings in maintenance costs and only considered the value of the land. He said no maintenance reduction had ever been considered on any right-of-way vacations.

On a voice vote, the amendment to the motion specifying the purchase amount of \$15,885, was unanimously approved.

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

4. PUBLIC HEARING AND SITE DEVELOPMENT ORDINANCE VARIANCE #OP-08-04: A variance from Section 6-1203(j) of the Site Development Ordinance reducing the required number of parking stalls by five on a 7,200 square foot building proposed for Lots 18-20, Block 4, Sunset Subdivision, 1st Filing. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

City Administrator, Tina Volek, advised there was no staff presentation, but staff was available to answer questions.

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

Councilmember Gaghen moved for approval of Item 4, seconded by Councilmember Pitman. On a voice vote, the motion was unanimously approved.

5. PUBLIC HEARING AND RESOLUTION #08-18779 establishing a Master Site Plan Review Fee in the amount of \$240. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) City Administrator, Tina Volek, advised that Council had approved an ordinance the previous month that allowed for creation of the review fee. She said it was part of this year's planned budget for the Planning Department. Ms. Volek said there was no staff presentation, but staff was available to answer questions.

Councilmember Brewster asked why they were not going with a sliding scale. Planning Division Manager, Wyeth Friday, said the staff looked at a variety of different options, including a scale. He said smaller projects could be more complicated or less complicated, larger projects could be more complicated or less complicated, and there were differences in terms of how each project was reviewed in both directions. Mr. Friday said it would be very difficult to use a sliding scale and attaching it to the size of the property would not necessarily reflect the complexity of the review. Councilmember Brewster said a fixed rate would be the same thing because the same fee would be charged regardless of how complicated the review was. Mr. Friday said they were taking an average and charging the same across the board.

Councilmember Gaghen asked what the maximum amount of time was spent for a very complex plan review. Mr. Friday said there were projects that took quite a bit of extra time with the applicants and potential property owners on the phone or in meetings. He said they looked at an average of five hours, but they could go twice or more above the five hours depending on the issues.

Councilmember Clark asked if they had tried to use a sliding scale with a top amount and a bottom amount. Mr. Friday said they looked at it as an average option. He said his initial analysis of other communities around the country showed a range in review fees from \$1,500 down to \$500 with some reviews a little lower. He said one of the complications with his analysis was that the one review fee of some of the other communities included multiple department reviews. He said the proposed \$240 was just for Planning Department review.

Councilmember Veis asked why they did not charge a straight hourly rate. Mr. Friday said an hourly rate had been discussed, and the challenge would be possible disagreements with applicants on how long the review actually took. He said they felt it would cause additional issues trying to sort out how much staff time it took and if the applicant would pay.

Councilmember McCall asked how many cases they looked at when establishing the rate. Mr. Friday said they estimated looking at 25 to 30 per year.

Councilmember Brewster asked if someone would have to pay the fee to schedule a meeting if they just wanted to run some ideas by staff. Mr. Friday said they would not. He said they held general discussions with people at the front counter and over the phone all the time.

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

Councilmember Ronquillo moved for approval of Item 5, seconded by Councilmember Gaghen.

Councilmember Gaghen said she would like to see more latitude at the top end. She said as the economy changed, the reviews could become more complex and

require more time than the average five hours. She said she did not want to see Planning stressed more from a financial standpoint or workload standpoint. Councilmember Gaghen said she liked the idea of a sliding scale but realized it was complex.

On a voice vote, the motion was approved 10 to 1. Councilmember Gaghen voted 'no'.

6. PUBLIC HEARING AND RESOLUTION OF INTENT #08-18780 to adopt the 2008 Growth Policy Update. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) Planning Division Manager, Wyeth Friday, began his PowerPoint presentation explaining where they were in the process and what it had taken to get there. He said the Growth Policy was a guiding document that established a community vision and supported it with goals and objectives and strategies to achieve the objectives. Mr. Friday said the community, city staff, county staff, Big Sky Economic Development, Chamber of Commerce, and the school district were all potential parties to the document. Mr. Friday advised that state law required the city and county to draft and maintain a Growth Policy. He said every five years they were required to review the policy for necessary updates, and Planning staff had found there had been a lot of changes in Billings and Yellowstone County the past five years. He said the Growth Policy was a collection of ideas for the community, and they received a mix of input from individual citizens, representative groups, conservation groups, realty groups, etc. Mr. Friday said the community had experienced a continued growth rate of 1.5 percent since 2003. He said the number of households had increased 10 percent, the median home price had increased 44 percent, employment had increased 15 percent, per capita income had increased 12 percent, parkland had increased by 110 acres since 2000, and 12 miles of trails had been constructed. Mr. Friday said three bond-funded street projects had moved forward within the past five years, and the arterial fee was implemented to provide revenue for maintenance and arterial construction. He said the Billings Operations Center and a new ballpark were constructed within the past five years, the City overhauled its website, and the CIP process was updated and improved. Mr. Friday said six new sites had been added to the National Registry of Historic Places, and there was a greater interest in preventative health care measures through Community Health. Mr. Friday said there were over 200 pages of background information in Chapter 4 of the new policy. He said of the 235 implementation strategies developed in 2003, 203 had been completed or attempted. Mr. Friday said the past several months they held three public community meetings, they provided overview information to the community, they received a lot of input from the community, they had extensive media and press coverage, and they posted an entire page devoted to the Growth Policy update on the city website. Mr. Friday briefly explained the purpose of each chapter of the Growth Policy. He said the Broadview Town Council adopted the policy on December 9; the County Commissioners would be acting on the Resolution of Intent on December 12 and the final Resolution on December 30; and the City would be acting on the Resolution of Intent that evening and the final Resolution on January 12, 2009. Mr. Friday referenced the updated information Council had received in their Friday packets.

Councilmember Veis referenced Chapter 5 and said it seemed like a “wish list” of everything, and it appeared inconsistent. He asked Mr. Friday how Chapter 5 was compiled, if anything was left out, how the steps were issued, and how it was checked for consistency.

Councilmember Ulledalen added one of his concerns was that anyone who commented was included. He said it appeared as though a number of items were pulled “onto our plate” and there was not enough staff or funding to address them all. He asked how they could drive accountability through the City Administrator back to the staff for some of the listed outcomes that were impossible to get done.

Mr. Friday said the process and strategies for Chapter 5 were based on the input they received. He said they received editing and changes to existing issues and new issues, such as in the health section. He said there was also a lot of sub-editing within specific strategies. Mr. Friday said there was definitely overlap and repetition in Chapter 5, and it was difficult to eliminate it. He said the repetition and overlap were reminders of the different tie-ins between different issues and did not mean there would be duplication. He said they intentionally did not try to get rid of the overlap because some of the information needed to show up in the different places. Mr. Friday said the “wish list” was not a bad way to characterize it because it was the community’s list of what they wanted looked at. Mr. Friday said there were items listed that staff would need direction from Council or Administration, and they would never assume to tackle everything.

Councilmember Ronquillo said he had attended two of the meetings, and he felt staff had done a good job. He said when people were asked for their opinions, they gave them; and he felt it would not be appropriate for staff to exclude any of the opinions in the report.

Mayor Tussing asked Mr. Friday for the date of the final draft. Mr. Friday said the final draft of 5.1 was completed on December 9 or 10 following the December 8 council meeting. Mayor Tussing asked what version the Broadview City Council approved. Mr. Friday said Broadview saw the version right after the December 8 council meeting. Mayor Tussing said he was concerned because a lot of the “ex-parte” comments they asked for from the council, commissioners, and Planning Board were included in the final update sent in the December 12 Friday packets, and he did not feel the public was fully aware of some of the final changes. Mr. Friday said the changes were very minor, and they had tried to keep the public fully informed by posting the final document on the website and holding the public hearing that evening. He said that evening was the Resolution of Intent and Council’s final action would not be until January 12, 2009, so if there were concerns or issues, they could still be addressed. Mayor Tussing referenced Pages 21, 23, 24, 25 & 26 and asked why they were a little “watered down”. Mr. Friday said many were from the County Commissioners. He said the Planning Board and the City Council talked about not necessarily eliminating some of the strategies but changing a lot of the initial language to “will consider it, will explore it, or will encourage it” so as not to appear as though staff was being directed to do something they may or may not be able to do. Mayor Tussing said he did not disagree with many of the changes, he was just wondering at what point they happened. Mr. Friday said the last of the changes happened after the City Council input on December 8. Mayor Tussing

asked Mr. Friday to confirm that the e-mails and letters they received had come in before the final version was completed. Mr. Friday said that was correct.

Councilmember Veis referenced Page 12, Issue 4, on Urban Sprawl. He said he struggled with the language that urban sprawl threatened the rural character....and threatened the vitality of the city core in downtown. He said it continued on in the Economic Development part that said safety was an important element for downtown and the economic viability of downtown Billings was uncertain. He asked Mr. Friday when they talked about downtown Billings, were they talking about urban sprawl or safety or all of those things and how those different elements within the growth plan affected how the Planning Department went forward with issues of the downtown. Mr. Friday said the Planning Department would not be the only one dealing with it. He said there were a lot of other downtown agencies that were more familiar in dealing with economic development issues and downtown urban revitalization work. He said they were all issues that affected downtown in some way or that the community perceived as affecting downtown. Mr. Friday said public safety ranked highest on the list of concerns for downtown on the survey they sent out. Councilmember Veis asked if the City Council would ever have to coordinate all the elements together. Mr. Friday said they could come to the Council separately or not at all. Councilmember Veis asked what aspects of the document would Council deal with. Mr. Friday said Council could be dealing with a lot of it, such as placing an officer downtown or amendments to the zoning regulations, if they were brought forward.

Councilmember Ulledalen referenced Page 37 – encouraging grocers within mixed use neighborhoods, and asked how they were supposed to drive something that would not be economically viable. He said he felt they were pulling tasks onto their plate that they did not have any accountability for and that would be very difficult to implement. He asked who on the city staff would be accountable for promoting healthy eating in the schools. Mr. Friday said they would lean on School District No. 2 to take the lead, and city staff might not be involved in it at all.

Councilmember McCall said the point was that the policy was a guiding document and not a mandate. She said it was a collection of thoughts, ideas, and strategies from all of the stakeholders. Councilmember McCall asked City Attorney Brooks if she was correct in saying the policy was used strictly as a guiding document. Attorney Brooks said by state statute it was not intended to be or allowed to be used as a regulatory document.

Councilmember Brewster said they tended to become regulatory by their nature. He said a person could be depicted as someone who was opposed to the public if he did not agree with them. He said his concern revolved around the idea of promoting mixed neighborhoods and in his experience, every time they tried to pass something that provided mixed use, it was voted down. Mr. Friday said they continued to hear from people that mixed use neighborhoods were still something they wanted to look at. Councilmember Brewster asked who the leaders were behind the mixed use neighborhoods. Mr. Friday said they were developers, individual citizens, and non-profits who saw mixed use as an advantage.

Councilmember McCall asked Attorney Brooks if the Growth Policy from 2003 to current had slipped into regulatory for the City. City Administrator Volek advised she had just asked the same question of Ms. Beaudry. Ms. Volek said there were 235

strategies in the document, and 205 of them were addressed in one way or another and not all of them by the City. She said they did not have an exact count that evening of how many were addressed by the Planning Department. Attorney Brooks said he did not know of any zone change or special review where the Growth Policy was the defining document that allowed the Council to either grant or deny an application.

The public hearing was opened.

- **Kevin Nelson, 4235 Bruce Avenue**, said the City and County may prioritize neighborhoods for urban renewal plans, #2, Policy 1. He referenced #4, provide incentives for urban renewal development. Mr. Nelson said there are neighborhoods that private enterprise cannot rehabilitate and only through government action can revenues be redirected into that particular area for redevelopment and revitalization. Mr. Nelson said he found it quite amazing that, as a policy of the City, it would want to “incentivize” urban renewal. He said it seemed quite the opposite that they would provide strategies to remove and eliminate the need for urban renewal. He asked why the City would want to go out and destroy old neighborhoods, drive them into such disrepair that they then became available and in need of urban renewal just to incentivize them and to redirect the revenues into the pockets of the City, plus reducing the base from which they were garnered a tax revenue for the support of the schools and other tax services to cities and counties. He said he noticed one of the policies was that there was a need for an urban renewal district in the Heights. He asked if every board member had to have an urban renewal district in their neighborhood to garner accomplishment. He asked if it was the goal of the City to have an urban renewal district in every part of town. Mr. Nelson said it was unbelievable that the policy of our city would be to drive our neighborhoods into disrepair so they could be entered into urban renewal and a tax increment district.

Councilmember Ulledalen asked Mr. Nelson what his thoughts were about the North Park area where there was small, turn of the century lots that were under-utilized. He said he knew people that agreed with Mr. Nelson and felt the area should be left alone to rot. Councilmember Ulledalen asked Mr. Nelson for his suggestions for areas like North Park. Mr. Nelson said he was not against urban renewal that was just and proper and where it was needed. Councilmember Ulledalen said that was not the way Mr. Nelson came across, and he was always against whatever Council did. Mr. Nelson said he was thoroughly convinced that the South Billings Boulevard Urban Renewal District was never needed and never met the qualifications of blight and what urban renewal actually was. Mr. Nelson told Councilmember Ulledalen to read the state statutes. Councilmember Ulledalen asked Mr. Nelson if he felt the area from King Avenue to the Sugar Factory needed redevelopment or if it should be left as is. Mr. Nelson said areas like Cabela’s, the Holiday Inn, or the new distribution center for Intermountain did not even come close to what an urban renewal district and urban renewal law was ever intended to be. He said it was only the distressed, run-down areas where no private enterprise would come in until some type of government action was needed to spur the development. Councilmember

Ulledalen asked Mr. Nelson where the increment would come from to develop the area from King Avenue to the Sugar Factory. Mr. Nelson said there were areas in the city that were in need of urban renewal but not Cabela's, the distribution center, or areas of town that were viable and productive and that produced the tax base. He suggested reading the American Law Reports, 2nd Edition, starting at 1096, Criteria #4, for urban renewal. Mr. Nelson stated again the South Billings Boulevard Urban Renewal District was so far beyond what urban renewal was supposed to be. He said the area was so small there was no room for growth, so the tax base would never get large enough to draw enough revenue back in to offset the costs.

- **Steve Arveschoug, 2730 41st Street West**, said he was the Executive Director of the Big Sky Economic Development Authority (BSEDA). Mr. Arveschoug said an area could be designated as an urban renewal area but unless there was a catalyst project to help it kick off, it would not happen; and he felt Cabela's would be the catalyst. He said their staff spent time working with the City/County Planning staff and said he really appreciated Mr. Friday's effort meeting with everyone and gathering everyone's input. Mr. Arveschoug said there was a specific section in the policy document that spoke to economic development. He said he wanted Council to know they had gone through the section and considered it a guiding document as they made an effort to help the community grow economically. He said there were two issues identified in the document that were carried over from 2003. He said Issue #1 under Economic Development was discussion on lack of focus and where economic development was headed. He advised Council that BSEDA took the issue very seriously and would be launching a strategic planning effort in January that would involve their board members, city staff, and city council. Mr. Arveschoug said the second was Issue #5, the Vitality of Downtown Development. He said BSEDA participated in the Downtown Billings Partnership, and they were also working with City/County Planning to lead the effort on the East TIFD master planning process. He said part of the economic vitality for downtown was coordinating the effort BSEDA was doing on the East TIFD project with what was happening in the core of downtown. He said as they worked on the East TIFD, they wanted to make sure it was consistent with what was happening in the core of downtown and make sure they understood what the plans were for the medical corridor.

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

Councilmember Clark moved for approval of the Resolution of Intent to adopt the 2008 Growth Policy Update, seconded by Councilmember McCall.

Councilmember Veis recommended placing the item on the full agenda for January 12, 2009, and not the consent agenda. City Administrator Volek advised and Council agreed that another public hearing should be advertised and held on January 12, 2009, to allow the public additional time to comment.

Councilmember Ulledalen commented it was his concern that about 20 percent of the items in the policy would be very difficult for staff and council to be held accountable for.

Councilmember Astle said he felt the policy was written “for living in perfect harmony, which only happened in the Coke song” so he would not support it.

Councilmember Veis said it appeared that the policy was just a “wish list” and not something they had to follow. He said if it was not going to be a regulatory document, it might as well include every wish anyone ever wanted to have.

Councilmember Brewster said since they were very successful at implementing most items in the last plan, it sort of became regulatory. Councilmember Veis said they were not necessarily implemented but assessed or addressed.

Mayor Tussing commented he was not crazy about all of it, but he would support it until they heard differently on January 12, 2009.

Councilmember Clark asked what would happen if Council did not pass the update. City Administrator Volek said the primary impact would be that the zoning matters in front of Council could potentially be challenged for lack of a new growth plan in place in compliance with state law.

Councilmember Veis asked Ms. Beaudry if a zoning request could be approved by Council if it was inconsistent with the Growth Policy. Ms. Beaudry said it could because the Growth Policy was not a regulatory document. Ms. Beaudry said the Growth Policy could be called a “wish list” but it was a community vision. She said it was peoples’ desires for quality of life. She said they may not be attainable in the next five years, but they were not making small plans and were looking 20 to 50 years in the future and ways to keep the desires in front of Council. Ms. Beaudry commented the only way for Billings to improve was to grow and the only way to grow was to offer great service and quality of life amenities.

Councilmember Clark commented the input was from a very small percentage of the 100,000 people living in Billings. Ms. Beaudry said it was input from the people who cared enough about their community to get involved.

(Councilmember Ruegamer left the council chambers at 8:12 and returned at 8:14.)

On a roll call vote, the motion was approved 7 to 4. Councilmembers Ronquillo, Gaghen, Pitman, Veis, Ruegamer, McCall, and Mayor Tussing voted in favor of the motion. Councilmembers Brewster, Ulledalen, Astle, and Clark voted against the motion.

7. PUBLIC HEARING AND FIRST READING ORDINANCE correcting the legal description in Ordinance #08-5480 for Zone Change #848 previously adopted by City Council on 10/14/08. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) City Administrator, Tina Volek, said there was no staff presentation, but staff was available to answer questions.

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

Councilmember Astle moved for approval of Item 7, seconded by Councilmember McCall. On a voice vote, the motion was unanimously approved.

8. PUBLIC COMMENT on Non-Agenda Items -- Speaker sign-in required. (Restricted to ONLY items not on this printed agenda; comments limited to 3 minutes per

speaker. Please sign up on the clipboard located at the back of the Council Chambers.)

- **Kevin Nelson, 4235 Bruce Avenue**, said he heard a disturbing comment during the Growth Policy presentation that three city councilmembers gave input. He said he attended the council work sessions and felt that council was dangerously close to violating the 2005 Attorney General's opinion requested by Attorney Brooks that stated no action could be taken at a work session. Mr. Nelson cautioned the City Council about taking action on items at any work session and advised the public's business was to be conducted at the regular meetings.

Council Initiatives - None

ADJOURN – The meeting adjourned at 8:17 P.M.