

REGULAR MEETING OF THE BILLINGS CITY COUNCIL APRIL 8, 2002

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

ROLL CALL – Councilmembers present on roll call were: McDermott, Bradley, Brewster, Iverson, Poppler, Jones and Larson. Councilmembers Brown, Kennedy and Ohnstad were excused.

MINUTES – March 25, 2002. APPROVED AS PRINTED.

COURTESIES – Parks Dept/Exchange City Golf Course; Police Dept/Officer Brad Tucker

- Jeff Mrachek of the Downtown Exchange Club presented the City of Billings with a check for \$32,000 for a distribution from the proceeds of the Par 3 Golf Course operations for the year 2001. Par 3 Golf Course is a partnership with the City of Billings and the Downtown Exchange Club.
- Police Chief Ron Tussing introduced Officer Brad Tucker. Officer Tucker successfully completed his 1-year probation and his appointment was being confirmed this evening on the Consent Agenda.

PROCLAMATIONS – Mayor Tooley.

- APRIL 19: Fern Nolte Davidson Day, because of her lifelong dedication to music.
- APRIL 20 – 28: Landscape Architecture Week

BOARD & COMMISSION REPORTS. NONE

ADMINISTRATOR REPORTS – Dennis Taylor. NONE

CONSENT AGENDA:

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

	Name	Board/Commission	Term	
			Begins	Ends
1	Mike Schmidt	Board of Appeals	4/01/02	12/31/05
2	Jack Johnson	EMS	4/01/02	12/31/05

3	Bart Murnion	Parking Advisory	4/01/02	12/31/05
4	Mary Fitzpatrick	Parks, Rec. & Cemetery	4/01/02	07/31/04

B. Bid Awards:

(1) CBD Diagonal Parking Conversion. (Opened 3/26/02). Recommend United Rentals, \$99,953.53.

(2) Cellular Phone Service for City of Billings and Yellowstone County. (Opened 1/29/02). Recommend rejecting all bids.

C. C.O. #2, Baggage Belt Reconfiguration, General Contractors Construction Company, \$1,695.85.

D. Transfer of Insurance Consultant Contract for Don Heilman services from Segal Company to Gallagher Benefit Services, Inc., \$21,500.00.

E. Grant application to Montana Dept of Transportation for Traffic Safety Grant, Contract #02-01-03-02 (154AL) for mobile technology project, \$400,000, no City match required.

F. XPLORE Technologies Rugged Computers:

1. Purchase of XPLORE Technologies rugged computers from GSA purchasing schedule for Police Dept patrol cars as part of mobile data technology project, \$406,503
2. Authorization for staff to negotiate and Mayor to execute contract to purchase and install equipment
3. Authorization for Mayor or designee to sign the Participation Certificate to enable the City to purchase from GSA

G. Amendment to IP Building and Ground Lease with State of Montana Dept of Natural Resources for additional office space in the IP-9 office building, \$5,332 additional revenue/year, adjusted by CPI.

H. Consent to Assignment of Rights of Way and Easement for 1996 pipeline easements to Amoco Pipeline and Conoco Pipeline, \$0.

I. Transportation Enhancement Permit with Montana Dept of Transportation for downtown bike connector, \$0.

J. 2002-2006 Transportation Improvement Program (TIP) for the Billings Urban Transportation Area, recommendation to the Policy Coordinating Committee (PCC).

K. Confirmation of Police Officer: Brad Tucker

L. Approval of special event related street closure for EventTures (National

Association of County Commissioners Western Interstate Region Conference), May 23, 2002.

M. Resolutions correcting annexation descriptions:

1. RESOLUTION 02-17818 amending description for Annexation 01-14 approved 1/14/02 via Res 02-17790
2. RESOLUTION 02-17819 amending description for Annexation 02-02 and 02-03 approved 2/25/02 via Res 02-17809
3. RESOLUTION 02-17820 amending description for Annexation 02-04 approved 3/11/02 via Res 02-17814

N. First reading ordinance extending the boundary of Ward I to include recently annexed property described as: Annex #02-01: T1S-R26E-S16: E2NW4 less southerly 112.48 feet and westerly 40 feet, Mary E. & Norman Francis Miller ETAL petitioners, and setting a public hearing date for 4/22/02.

O. First reading ordinances correcting the legal descriptions on ordinances designating ward boundaries of recently annexed property:

1. Annexation #01-14 assigned to Ward II via Ord 02-5182 on 2/11/02
2. Annexation #02-02 and 02-03 assigned to Ward I via Ord 02-5187 on 3/25/02

and setting a public hearing date for 4/22/02.

P. Preliminary plat for Broso Valley Park Subdivision, generally located between Hesper Road and Zoo Drive, east of the proposed Gabel Road.

Q. Final plat of JPM Subdivision, being Tract B of the amended plat of C/S 1136, generally located west of South 24th St. West and north of Phyllis Lane

R. Bills and payroll.

(Action: approval or disapproval of Consent Agenda.)

Councilmember Jones separated Item B (1). Councilmember McDermott moved for approval of the Consent Agenda with the exception of Item B (1), seconded by Councilmember Bradley. On a voice vote, the motion was unanimously approved.

Councilmember McDermott moved for approval of Item B (1), seconded by Councilmember Bradley. Councilmember Jones asked where the diagonal parking would be installed that relates to the bid award. City Administrator Dennis Taylor said the areas are generally in the Central Business District. Finance Director Robert Keefe said the streets that are involved are the north/south streets between N 23rd and N 31st Streets and 3rd Avenue from 27th to 25th Streets. He said the consultant is developing plans for the rest of 3rd and 2nd Avenues North and that will be coming as a change order later. Councilmember Jones asked if 4th Avenue and 6th Avenue are included or affected by this item. Mr. Keefe said they were not. On a voice vote, the motion was unanimously approved.

REGULAR AGENDA:

2. DISCIPLINARY HEARING pursuant to 7-33-4124 M.C.A. and in accordance with City Charter Section 4.03 E and F and City Policy on the suspension of probationary City of Billings Fire Fighter MICHAEL STIEF. Staff recommends approval. **(Action:** approval or disapproval of upholding the disciplinary action imposed.)

Councilmember Bradley moved for approval of upholding the disciplinary action imposed on City of Billings Fire Fighter Michael Stief, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

City Administrator Dennis Taylor stated that this item requires a public hearing and he requested that the Council open the public hearing to allow any interested person the opportunity to speak. Mayor Charles Tooley noted that this is an anomaly between State law and the City Charter. The City Council does not have authority to enforce disciplinary action against its employees, however this particular State law requires that it be brought before the City Council, he said.

Councilmember Brewster moved to reconsider upholding the disciplinary action, seconded by Councilmember Larson. On a voice vote, the motion was unanimously approved. The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Bradley moved for approval of upholding the disciplinary action, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

3. PUBLIC HEARING AND RESOLUTION 02-17821 ordering the installation of curb, gutter and sidewalk improvements proposed in W.O. 02-02, #1: 2002 Miscellaneous/Developer-Related Improvements Program. Staff recommends approval. **(Action:** approval or disapproval of staff recommendation.)

Staff Engineer John Nowak offered to answer questions from the Council. Councilmember Poppler asked what part of town this work order covered. He explained that the work order covers areas scattered all over town because the miscellaneous improvements program deals with tripping hazards and property owner requests for repair work and is usually distributed throughout the community. Councilmember McDermott asked if all property owners' requests have been included in this work order. Mr. Nowak said "yes". The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Brewster moved for approval of the staff recommendation, seconded by Councilmember Larson. Councilmember Bradley abstained from the vote. On a voice vote, the motion was unanimously approved, with one abstention.

4. PUBLIC HEARING AND RESOLUTION 02-17822 ordering the installation of curb, gutter and sidewalk improvements and street reconstruction improvements proposed in W.O. 01-02, #2: Broadwater Subdivision Improvements, Phase IV Program. Staff recommends approval. **(Action:** approval or disapproval of staff recommendation.)

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

5. PUBLIC HEARING AND RESOLUTION approving the City of Billings Annexation Policy. Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)

Planning Director Ramona Mattix said the *Annexation Policy* is one of the goals the City Council set almost two years ago. It has been an eight-month process with one presentation to a joint City/County Group, to the City/County Planning Board and to the City Council. She said this policy is an "intent statement" that the City intends to annex areas to promote orderly growth and urban densities, which are defined as over 4 units per acre with urban services and facilities and to control the type, quality, location and development of areas that are outside of the City, but which are likely to develop into urban densities. The sphere of influence is part of the policy and will be an attached exhibit of whatever the Council decides that sphere of influence will be. She said the City is encouraging joint City/County review by the Planning Board for development. The Planning Board will require annexation as a condition for obtaining municipal utilities services. Ms. Mattix also said that annexations would be approved only if there are existing service plans that identify the needed services within the City's sphere of influence, when services should be provided and special financing needs to serve the annexed areas. An analysis of potential costs and benefits of annexation will be conducted by City staff as part of processing an annexation application. Applicants may propose alternative designs for public improvements as long as they provide the same level of service required by the City code. Finally, all residential annexations shall create or join an existing Park Maintenance or Park Improvement District as a condition of annexation, she said.

Ms. Mattix said in order to minimize adverse impacts of the annexation policy, the City will: 1) determine the City's current baseline service level and service costs, 2) determine when services and capital facilities are needed and permit them to be phased-in as needed, 3) consider alternative service delivery methods that may have lower costs than traditionally supplied City services and 4) develop alternative financing methods that could ease the initial financial burden that owners may experience when annexing.

She said the City will prioritize annexation of properties that use existing City services by the following criteria and actions: 1) wholly surrounded county islands that can benefit from City services, 2) encouraging property owners within wholly surrounded islands and providing incentives for annexation, 3) initiate State law that allows those cities that adopt annexation policies meeting State criteria to annex wholly surrounded islands regardless of their land use, 4) annex all areas that presently receive City services, 5) annex areas that meet community goals, such as affordable housing, 6) annex areas that have deficient public infrastructure that threatens public health and safety, 7) annex areas that plan or have high density development on arterial streets, and 8) rate those properties as high priority that are contiguous or near the

present City limits, are larger than 10 acres, have regular boundaries and will not cause a decline in services to the existing City residents below the baseline service level.

Ms. Mattix said the sphere of influence originally proposed a five-mile boundary around the City limits. The City Council and the County Commissioners thought that was too ambitious and too large of an area for a sphere of influence and requested the Planning Department look at smaller areas. They developed four criteria to look at the sphere of influence. The first was to control development along the Yellowstone River to better protect the river. The second was to avoid prime agricultural land to the southwest. The third was to consider the capacity of the sewage treatment plant and fourth was directing development along planned transportation routes.

She said that the way the policy is drafted gives the City Council a wide latitude for consideration of annexations and provides a basis to deny annexations if no public purpose is furthered, if there is a lack of urban density, if they are smaller than 10 acres, or if there is a decline in the baseline service level.

Ms. Mattix said that two items in the policy have fiscal implications. The first item is that a cost of service be established and if the Council requires greater detail, a service cost study would be required with an additional cost that would need to be a budget item. The second item would involve any lobbying efforts to revise State annexation law.

The public hearing was opened. PETE HANSEN, 1435 WICKS LANE, former chairman of the Heights Task Force and current chairman of the United Residents of East Billings Heights, requested that the task forces be notified of any annexation request in their respective task force area. He said something as extensive and as important as an annexation in any portion of the City is of interest to the respective task force. There were no other speakers. The public hearing was closed. Councilmember Poppler moved to postpone approval of the annexation policy to April 22, 2002 due to the absence of three Councilmembers, seconded by Councilmember Bradley. Councilmember McDermott requested a work session on this subject for next Monday. On a voice vote, the motion was unanimously approved.

6. PUBLIC HEARING AND SECOND READING ORDINANCE 02-5188 extending the boundary of Ward IV to include recently annexed property described as: Annex #02-04: C/S 3091, Tracts 1-5, inclusive, Rehberg Ranch Estates LLC, petitioners. Staff recommends approval. (**Action:** approval or disapproval of ordinance on second reading.)

The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Jones moved for approval of the ordinance on second reading, seconded by Councilmember Larson. On a voice vote, the motion was unanimously approved.

7. PUBLIC HEARING AND SECOND READING ORDINANCE 02-5189 extending the boundary of Ward V to include recently annexed property described as: Annex #02-05: C/S 2991, Tract 3B, Mary Kramer, petitioner. Staff recommends approval. (**Action:** approval or disapproval of ordinance on second reading.)

The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Larson moved for approval of the ordinance on second

reading, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

8. PUBLIC HEARING AND SECOND READING ORDINANCE 02-5190 extending the boundary of Ward V to include recently annexed property described as:

Annex #02-06: C/S 2991, Tract 3A, Raymond Kramer, petitioner. Staff recommends approval. (**Action:** approval or disapproval of ordinance on second reading.)

The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember McDermott moved for approval of the ordinance on second reading, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

9. PUBLIC HEARING AND RESOLUTION ANNEXING C/S 3011, Tracts 2B and 3, (more particularly described in the resolution), (#02-07), Roy E. and Jock E. Clause, owners and petitioners. Staff recommends approval of the public services report and conditional approval of the annexation. (**Action:** approval or disapproval of staff recommendation.)

Planning Staff Member Gail Kenson said the 85.131 acre annexation is located in Billings Heights. The purpose of the petition by Roy and Jock Clause for this piece of vacant land, with portions of wetlands, is to connect to City sewer and the Billings Heights Water District. The surrounding zoning is Residential 7000, Residential 9600, Residential Manufactured Housing, Agricultural Open Space and Public. She explained that tonight's action is the approval of the public services report and conditional approval of the annexation. The next action will be the ward boundary extension, followed by the review of the preliminary plat application. Tomorrow evening the Planning Board will consider the preliminary plat review, which will not be a public hearing but a review only. The public hearing for the plat is scheduled for the April 23rd Planning Board meeting. The City Council will consider the plat on the May 13th agenda and will deal with the issues relating to the subdivision at that time. She said the Planning Staff has recommended conditional approval because: 1) it does comply with the proposed annexation policy, 2) it is greater than four units per acre, 3) there are services existing and an ability to hook into the existing system and will be at the owner's expense, 4) adequate water is available to provide for both domestic and fire protection purposes, 5) it is within the sphere of influence, 6) it is contiguous to the City limits, and 7) it will provide affordable housing.

She noted there have been questions about the zoning of two strips of Agricultural Open Space. She said those areas would be automatically converted to Residential 9600 as required by the zoning code. There is a proposed manufactured home court proposal for the area zoned manufactured home that the Council will consider at the time of the subdivision plat review. Ms. Kenson said that City staff is aware that there is litigation involving this portion of the parcel brought against the Yellowstone County Commissioners by United East Residents of Billings Heights. She noted that the Planning Department would continue to review applications based on that particular zoning until such time as our legal staff advises staff to do otherwise. All appropriate City staff have reviewed the application and there were no adverse comments from any City Department as shown in the staff report. The parcel, based on

vacant land, will generate an estimated annual revenue of over \$23,000.00. The estimated taxable value will be approximately \$1.5 million. The City will receive additional taxes from the units that will be placed on the lots. Councilmember Brewster asked why City staff is recommending approval now when the Planning Department recommended denial at the time that the County Commissioners were considering a change in the zoning. Ms. Kenson said the zoning is already attached to the land and is not being considered at this meeting. Annexation is what the Council is considering tonight and the zoning does not change upon annexation.

The public hearing was opened. MAC FOGELSONG, 4203 PALISADES PARK DRIVE, with Engineering, Inc. said he represents the owner, Cherry Creek Development. He said the annexation request is for the fundamental purpose of providing City services. Concurrent with the annexation application is the subdivision application for a low-income housing development classified as infill and will come before the Council separately. He said there is an annexation agreement that has been submitted with the annexation petition that prescribes no building permits will be issued on this property prior to recording the Subdivision Improvements Agreement. There have been meetings with City departments, such as Public Works and Fire to discuss the annexation area and the provision of the services. He noted that no City department has recommended denial of the proposed annexation request. A comprehensive traffic study and storm drain master plan has been submitted with the request, he added. He requested approval of the annexation request.

Councilmember Poppler asked what would happen if the plaintiff prevails in the lawsuit, and would it affect what the Council is doing tonight? Mr. Fogelsong said that may be a condition of the plat but not tied specifically to the annexation. City Attorney Brent Brooks said until the litigation reverses the zoning that has been established by the County, the property will come into the City as it is now zoned. If the Court issues some kind of ruling in the future the City must abide by whatever the Court says. He noted that the City would be covered by immunity as to what the Court does order. He advised that the appropriate action is to wait and see what the Court does.

Councilmember Poppler asked if there is no jeopardy to the City with the annexation and if jeopardy might lie in the future zoning. Mr. Brooks said "yes". Mr. Brooks explained to the Council regarding Councilmember Brewster's question about the effect of a Court ruling that could come some time after the area is developed, noting that the Court will not be ruling on the annexation and will rule solely on the issue of whether or not the County Commissioners' zoning process was appropriate. Councilmember Larson asked if there was a possibility that development would be blocked, through a request of the Court, until the litigation is settled. Mr. Brooks said the Court itself would not typically initiate that process, however the parties to the litigation certainly have that option. He affirmed that the risk is not to the City but to the parties involved in the litigation. The City is only required to match the zoning designation that will be ordered by the Court. He added that the Council has the right to consider any zone change that will be brought before them. He said in his opinion the County has validly exercised its zoning process and because the Court has not made its ruling, the City is bound to proceed with the assumption that what the County Commissioners have established is correct.

Councilmember McDermott expressed concern for the fact that the annexation they are considering is 85 acres with 363 units and there were no concerns or comments expressed by the Police and Fire Departments. Ms. Kenson remarked that Chief Jochems said it would not cause undue stress on the Fire Department and the area is already in BUFSA. The Fire Department has been involved with the subdivision review and does understand the complexities of the property, she added. Chief Tussing also gave his "okay" and did not have an issue with providing police protection to the area.

MARK NOENNIG, ATTORNEY, 208 NORTH BROADWAY, said he represents the United Residents of East Billings Heights in the lawsuit. He said his clients are the surrounding neighbors of the proposed development and have always been opposed to residential manufactured housing. He said there were over 500 petitioners that were opposed to the zone change, the County staff and the Zoning Commission recommended against it, yet the County Commissioners voted 2 to 1 against approval and then voted 2 to 1 against passing. They conceded that they had denied it so they didn't have to vote on the zone change. Next, the developer went to Court and petitioned the Court to review the decision and get more specific findings for the denial. The matter came back before the Commissioners and they reviewed it again and subsequently granted the zone change. Mr. Noennig said his clients appealed that decision to the District Court on two bases: 1) procedure problems due to the original denial and subsequent passage without resubmission of the zoning application, and waiting a year to do so, and 2) the theory of spot zoning, when the use is significantly different from the prevailing use in the area. The position of the United Residents of East Billings Heights is that the City should wait until the case is decided. He said if his clients win on the first procedural point there would have to be a resubmission of the zone change and the development would be in violation of the zone change. If his clients win on the second point he doesn't see how the development could ever be legal. He said his clients feel the decision on annexation is premature.

PETE HANSEN, CHAIRMAN OF UNITED RESIDENTS OF EAST BILLINGS HEIGHTS, said it has long been a policy of the City and the County to be reluctant to approve annexations that create islands between City and County properties. He also said he found it strange that the Fire and Police Departments had no adverse comment about the annexation when the newspapers have reported increased coverage problems for the Police and Fire Departments with the annexation of Briarwood. It has been estimated that it will more than double the traffic on Bitterroot Drive, Yellowstone River Road and Hilltop Road. He said he has considerable concern that this does not involve compatible zoning, noting that is why his group has continued to resist the zone change and has filed suit against the County Commissioners.

There were no other speakers. The public hearing was closed. Councilmember Bradley moved for disapproval of the staff recommendation (of approval), seconded by Councilmember Brewster. Councilmember Brewster said he supports the denial because of the legal issues and said he feels that approval of the annexation would legitimize the zoning and "cast a spell on" and dilute the litigation of the case that the petitioners have before the Court. He said the case would need to be resolved before the property can be brought into the City. Councilmember Bradley said if the Council approves that annexation it would only delay the process for 12 months because it can't

be brought back. The disapproval will give the Court time to make their decision. Councilmember Larson asked staff if this same zone request was turned down previously. Ms. Kenson said this was denied in September 1999 and it was noted in the staff report. The basis for denial at that time was no development or subdivision agreement had been submitted. There was also some indecision as to whether police protection could be provided. There was concern about the proximity of development to the Yellowstone River and that the parcel was much too large to be annexed into the City. All of those issues have been addressed according to the information the Planning Department has received, she added. Councilmember Larson asked if there is a one-year waiting period for a resubmission if the annexation were denied tonight. Mr. Brooks indicated there was not. Councilmember Larson commented that this annexation is not a bad annexation, but the zoning issue is a "mess". This should be developed as a City property because of the density, proximity and the City's ability to require the developer to have less impact on the neighborhood. He urged the Council to separate the two issues, annexation and the zone change.

Councilmember Brewster commented that the legal issue needs to be resolved before annexing the property into the City. He said if the Court would rule at least in the preliminary injunction it would send a message to allow the petitioner to reapply and the Council would have some indication of where the Court was going to go. Councilmember Jones agreed with Councilmember Brewster's comments and voiced concerns about the Fire and Police Departments' ability to provide service to the area. On a voice vote, the motion to disapprove the annexation was approved with Councilmembers Poppler and Larson voting "no". The annexation request was disapproved.

10. PUBLIC HEARING AND SECOND READING ORDINANCE 02-5191 FOR ZONE CHANGE #691: A zone change from Residential-9,600 to Community Commercial on Tract 1 of Certificate of Survey 2277, located at 3933 Central Avenue. Shiloh Properties, LLC, owner; Engineering, Inc., agent. Zoning Commission recommends approval. (Action: approval or disapproval of ordinance on second reading.)

The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Brewster moved for approval of the ordinance on second reading, seconded by Councilmember Jones. Councilmember Jones expressed concern for the size of the street in the back of the Faith Chapel and that it could possibly be used as a "dragstrip" for youths in cars. Ms. Kenson said this would not be a dedicated street, but rather a long driveway that would be private property and there will be some buffering in the form of landscaping and possibly a fence. She said the Planning Department would address this during the subdivision process. On a voice vote, the motion was unanimously approved.

11. PUBLIC HEARING AND SECOND READING ORDINANCE 02-5192 FOR ZONE CHANGE #692: A zone change from Residential-9,600 to Residential Multi-Family-Restricted on Tract 3A of Certificate of Survey 2991, generally located on the north side of Monad Road at its intersection with South 29th Street West. Estate of Raymond Kramer, owner; Engineering, Inc., agent. Zoning Commission

recommends approval. (**Action:** approval or disapproval of ordinance on second reading.)

The public hearing was opened. JERRY STAHL, 2952 MONAD ROAD, said this zone change concerns part of the Lampman Subdivision that just recently had a new SID for sewer and road improvements. He expressed his strong opposition to this Fox Meadows Affordable Development Complex. He commented on the amount of traffic that a 204-unit apartment complex will add to a very busy traffic area. He said he feels the complex will adversely affect the property values in his neighborhood and the houses being built just west of the proposed complex. His last concern was the type of people that the affordable housing will bring into the neighborhood. He said he believes it would be best for all if this zone change were denied.

RICK LEUTHOLD, 4505 PINE COVE ROAD, PRESIDENT OF ENGINEERING, INC. and representing Mark Kennedy of Kenmark, Inc., the developer, addressed the issues of traffic, affordability and property values. He said there would be a standard traffic accessibility study done. Monad is a minor arterial and designed and intended to handle traffic flows that one would expect to see from an apartment complex like the one proposed. Regarding property values on adjacent properties, he pointed out two facilities like the one proposed that are adjacent to homes in the range of those in this area that have not had a detrimental impact on the property values of those adjacent homes. He also noted that this complex is not a proposed low-income facility, but rather a market-rate facility and it is necessary to provide for facilities of this nature in the community. He said this is an excellent location for this type of facility because of its close proximity to amenities in the area. He asked the Council to support this zone change.

There were no other speakers. The public hearing was closed. Councilmember Iverson moved for approval of the ordinance on second reading, seconded by Councilmember Brewster. Councilmember Poppler pointed out that the Mark Kennedy of Kenmark Homes is not the same Mark Kennedy that is a Councilmember. On a voice vote, the motion was unanimously approved.

12. PUBLIC HEARING AND SECOND READING ORDINANCE 02-5193 providing that the Billings, Montana City Code be amended to revise Sections 27-607 and 27-1303 by permitting horses and equestrian facilities, as well as other recreational facilities in the PD zoning district within the City limits. Zoning Commission recommends denial. (**Action:** approval or disapproval of ordinance on second reading.)

Planning Director Ramona Mattix clarified that only the first paragraph in Section 27-607 as underlined in the staff report applies to the City; the second paragraph pertaining to livestock and fowl applies only to properties in the County.

The public hearing was opened. TOM ZURBUCHEN, 1747 WICKS LANE, asked the Council to rethink this issue. He said there is zoning in the County that allows for boarding horses and there is no problem with it in the County. He said he lives on the edge of the City and his neighbors, who are in the County, have horses and most of the time there are no problems with them. He asked what provisions are being made for disposal of the bedding materials and the manure. He expressed concern for another tax bill to dispose of the wastes created by the horses. He also noted the close

proximity of an equestrian path to a tennis court or someone's backyard. He said he feels that city streets, playing toddlers and horses don't mix. Mayor Tooley clarified that this ordinance does not allow horses in the City limits, but changes the ordinance to allow citizens to include horses in a Planned Development.

DOUG JAMES, 1717 IRIS LANE, asked the City Council not to change the ordinance. He said it may not directly allow horses in the City limits, but that will be the net result. He said he believes the distinction between city and country life should be maintained. He asked the Council not to approve this change.

TOM LLEWELLYN, 2110 OVERLAND AVENUE, spoke in favor of the change in the ordinance. What the change will mean to the Rehberg Ranch development is to open portions of State land to recreation use for those persons who want to ride horses. He noted that his client would "love" to have all of the manure that will be created to fertilize the portion of their ranch that is a farming operation.

There were no other speakers. The public hearing was closed. Councilmember Poppler moved for disapproval of the ordinance on second reading, seconded by Councilmember McDermott. Councilmember Larson reminded the Council that this ordinance change would apply to a Planned Development that is a very specific type of development that still needs Council approval. The Planned Development would specify the development standards including boarding care and maintenance and any mitigation of the impacts that any of the uses allowed for would have on the Planned Development. Therefore, all of the questions that have been raised would have to be completely addressed in the Planned Development process. The Council's responsibility would be to listen to the mitigation and decide if it is sufficient or if more is required. Regarding the Rehberg Ranch, people will purchase the lots because of the equestrian center or other recreational uses. He said he feels that the opposition is coming from citizens who have a specific objection to one particular development and not the general concept that is implied in the ordinance change. This is an inappropriate time to be considering the zone change issue. Councilmember Brewster agreed with Councilmember Larson's views, saying that this offers developers alternatives and gives the Council greater control over developments. On a voice vote, the motion was defeated, with Councilmembers Poppler and McDermott voting "yes".

Councilmember Brewster moved for approval of the ordinance on second reading, seconded by Councilmember Larson. On a voice vote, the motion was approved, with Councilmembers McDermott and Poppler voting "no".

13. MILLER PROPERTY:

A. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #689: A zone change from Agricultural-Open Space to Planned Development with (underlying zoning of Commercial), generally located on the south side of the South Frontage Road, approximately 150' west of Mirco Circle. The property is described as the portion of T1S-R26E-S16: SE¼NW¼ lying south of the South Frontage Road (a more detailed description may be obtained from the Planning Department). Joseph J. Miller, owner; Sunworks, LLC, agent. Zoning Commission recommends denial. (**Action:** approval or disapproval of Zoning Commission recommendation.)

Zoning Coordinator Jeff Bollman said the lots that are included in this zone change are Lots 1 through 4. The Council at the previous meeting annexed those lots. This request is for a change to Planned Development classification. Mr. Bollman explained that a Planned Development classification means within this area there are standards that are different than the areas that may have similar zoning. The standards for this property were based on the Entryway General Commercial classification. From that standpoint, the applicant changed some of the uses that were allowed, such as the Auto Auction use. Under the Entryway General Commercial the applicant would have had to go through a special review and a variance for this type of use, that included larger sized buildings, to be allowed. The Planned Development Agreement governs the setbacks and uses that are allowed with this type of development. He said that if Council approves the zone change tonight, they would also be approving the Planned Development Agreement. When this is approved, signed by the Mayor and City Clerk and recorded with the County Clerk and Recorder, it will become the binding document for the uses, landscaping, setbacks, etc. that would be allowed for this development. One other part of this process that is different from a standard zone change is that the Development Review Committee is required to hold a preliminary review meeting prior to the Zoning Commission meeting. The surrounding property owners are notified by mail of this meeting that give those owners the opportunity to review the proposal and ask questions of the applicant. The DRC did hold this particular preliminary meeting on February 14, 2002, but did not present a recommendation to the Zoning Commission because the applicant expressed a desire to reconfigure the site plan in response to comments and modifications regarding the Planned Development Agreement that were addressed subsequent to the Zoning Commission meeting. Additionally, the Parks Board discussed this zone change at a meeting and advised the change would have no environmental impact on Riverfront Park. The Zoning Commission held a public hearing on this zone change and recommended denial due to an inappropriate site for this use, a large number of protests received and the incompatibility of the location of the Auto Auction with the existing Single-Family Residential uses. He reminded the Council that their decision tonight must be based on the twelve criteria on zone changes that were included in their packet.

Mr. Bollman noted that a valid protest has been received. State law states that if 25% of property owners living within 150 feet of the zone change sign a protest petition, it requires two-thirds of the Council present to vote in favor of the zone change for approval. He noted there are 8 Councilmembers present this evening, therefore 6 of them must vote in favor of the zone change for approval. Councilmember McDermott asked Mr. Bollman to verify that the citizens that protested were residents of the County and not the City. Mr. Bollman said that was correct.

The public hearing was opened. PAT WHITE, 4133 CORBIN DRIVE, works with Morris-Maierle and represents the developer of the property. He expanded on the stormwater issue by calling attention to the memo that was provided to the Council from Morris-Maierle that addressed the stormwater drainage and what can be done. He referred to the City of Billings' Stormwater Management Manual and said all of the designs will adhere to the requirements in that manual. He said additional steps would be taken to treat the stormwater, which is not required by the City of Billings, or the State of Montana. He said they have developed three proposals that will work well at

this site. They are 1) a grassland swale or bio-filtration swale that takes the original runoff directs it through a grassland swale with the grass acting as a filter, 2) and a baffle box that allows the water to slow down and remaining sediments to dissipate and 3) underground dispersion facilities. Councilmember Jones asked if there was a reason these proposals are not included in the Planned Development. Mr. White said the EPA will require, in the near future “best management practices” to come into larger municipalities with Phase Two of stormwater management. This project will then be “ahead of the curve”. Ms. Beaudry said this requirement for the stormwater drainage is not in the Planned Development Agreement but it will be a condition of the Subdivision Improvements Agreement that will give assurances that it will be performed prior to filing the final plat.

JOHN CARPANI, 40 N. CRESTWOOD, a retired Billings’ police officer and head of security for the auto body shop, said the security will function 24 hours a day, seven days a week and will also include the surrounding properties.

LARRY GRIFFIN, GENERAL MANAGER OF BIG SKY AUTO AUCTION, said that millions of dollars each year are spent in the Billings area in connection with the Big Sky Auto Auction. There is a sale at the auto auction every week of the year. Each week dealers, from as many as 42 states, come to participate in the auction staying in local motels, shopping at local stores, attending local functions and eating in local restaurants. Accounts consigning vehicles for sales range from the east coast to the west coast, including all the major rental car agencies and several large car-makers. The auction also participates in lease liquidation and repossession services for many of the major banks in town. He said the auction also brings in cars from seven surrounding states to provide purchase options for the local car dealers and their customers. He reiterated that all of the above make a positive impact on the economy of Billings, including creating hundreds of jobs.

JOAN HURDLE, NO ADDRESS GIVEN, spoke against the zone change request. She quoted from the “Greenway” Master Plan, saying “the current zoning or lack thereof has tremendous impact upon the land adjacent to the greenway. It is an area that future zone changes take into consideration for the greenway”. She said she was disappointed to see that it was such a narrow, little corridor along the river. She noted that the plan seemed to realize that there would be no meaningful planning adjacent to the corridor when it is needed. She said it is needed now. She added there is no question about the need for municipal services south of town, by the river, but allowing an industrial use is not the way to begin those services. She said she feels there is no planning in this county, noting there are areas less than a mile from downtown that are not in the city and with no services. She said she wished there was a different way to plan for and zone this “whole, neglected area around the freeway and the river”.

MIKE BOYETT, NO ADDRESS GIVEN, has been a resident of Billings for over fifty years and spoke in favor of the Big Sky Auto Auction. He has been associated with the auction through banking positions at Norwest Bank, First Bank and First Interstate Bank. He is very pleased to be associated with the auction and has recommended their services many times. The owners and employees of the auction are good, reputable, trustworthy people. He confirmed Mr. Griffin’s remarks regarding the wide-spread reaches of the auto auction’s business dealings and the economic benefits to Billings. He noted this is a “clean business” with no smoke stacks or piles of slag anywhere. He

assured the Council that Big Sky Auto Auction is concerned about their affect on Billings and will continue to be a good neighbor. Mr. Boyett said he has visited with the surrounding neighbors and states they are happy with them. He said Billings needs more businesses like this and hoped the zone change is approved.

GREG FRANKS, 2733 BETH, spoke about the concern in our area for economic development and the need to create high-paying jobs for our citizens. The only jobs we are creating are for highly-paid consultants, he noted. He said the auto auction is a company that truly facilitates growth in this state. He asked the Council to vote for approval of this proposal.

DEAN SMITH, 2938 RIMROCK ROAD, is a School District #2 educator and frequent user of Riverfront Park in connection with several high school groups that participate in nature walks and study projects. He said a 31-acre site north of Norm's Island has recently been selected by the Montana Audubon Society as a National Audubon Center. This site is located across South Billings Boulevard from the proposed auto auction location. He said he feels this will imperil the aspects that we now enjoy and anticipates some major pollution and noise problems associated with the business of the auto auction that are not compatible with the Audubon Center.

BILL COLE, 5420 BOBBY JONES BLVD., spoke as a member of the Planning Board, to remind the Council that the River is a very sensitive issue and is one of the two "gems in our county jewelbox" that we must protect. It is public policy for the County and the City to pursue putting before the voters an open space mill levy, where the voters could decide if they want to raise money to acquire some of the open space that needs to be protected. At this point, the County or the City do not have the funds to consider acquiring such lands, he noted.

JERRY CANO, 1105 ARLINGTON DRIVE, spoke about the water issue. He said there are over 16 wells in the proposed area. Regardless of what business goes into this area, the runoff will contaminate the existing wells, he said.

PHIL HAMAN, 5260 CLAREMONT VIEW DRIVE, is the local branch president of Rocky Mountain Bank. He said Big Sky Auto Auction is good for the local economy. There are millions of dollars a year that flow through this business and into our economy. He also confirmed Mr. Griffin's comments about out-of-state money that comes into our area and the surrounding communities because of the auto auction. He said the auction employs hundreds of people in good jobs. In his visits to the auto auctions he found it to be a clean, low-impact business that spends "lots of money" with local businesses.

LORETTA FLACK, 1251 TAPPADERO TRAIL, is the office manager of Big Sky Auto Auction. She said the auto auction spends a lot of money in the Billings area. The business employs about 175 persons including part-time persons as well. The dealers and their families that come to the auction spend a lot of money in the area. Construction of the new facility will create construction jobs for a span of 5 to 6 months. She noted the parking area in the present facility has become too small for their operation. She added that this will be a 5-day a week business with minimal activity on the weekends and security will be present continuously. She asked the Council to approve the zone change and keep these dollars in Billings.

LEON PATTYN, 453 NEWMAN LANE, is chairman of the South West Corridor Task Force. At their February meeting they were given a presentation regarding the

auto auction. The approximately 35 members present voted to support the auto auction and the zone change.

KEITH BROWN, 104 SCHREINER ROAD, PARK CITY, is an environmental engineer from Brown and Associates and represents the Agri-Center protesters. He said he is familiar with land use issues and has come to the conclusion that the proposed use is incompatible with the existing uses. This conclusion is based on the potential for impacts on the inhabitants of the existing subdivision, allowing a large car auction to be located adjacent to an existing residential subdivision and very valuable community park. He said the major impacts include 1) air pollution, allowing the continuous operation of diesel trucks whose exhaust includes significant amounts of EPA regulated pollutants, 2) water pollution, allowing oil, grease and heavy metals that will find its way into the stormwater and eventually into the sub-surface where it may contaminate wells currently in use in the subdivision (he noted the treatment proposed will only partly remove the contaminants), 3) noise pollution, allowing a number of diesel trucks to load and unload becoming similar to the noise level of a large truck stop, 4) dust pollution that will generate a large volume of dust particulates, 5) light pollution, the auto auction will operate during night hours and will require a system of street lights to illuminate the large parking area and will be a constant presence to the subdivision and the park. He said the impacts cannot be eliminated therefore should not be allowed. If the proposed use is allowed the adverse effects must be minimized. He said the principle measures are construction of a earth berm or masonry wall a minimum of 6 feet in height between the subdivision and the proposed Planned Development that will reduce the noise, light and air pollution, allow lighting fixtures no more than 6 feet in height reducing light pollution, require regulation of motor vehicle operating hours, locate standing semi-trucks as far from the subdivision as possible and minimize the traffic. He said that because the proposed Planned Development does not adequately provide these protections, the zone change should be denied.

TED WEISS, 1021 AVENUE D, an electrical contractor for Big Sky Auto Auction, addressed the concerns of the lighting project. A lighting system that borders the east and two poles located west away from the residential area will include cut-off fixtures that direct the light into the owners' area only. He said the height of the fixtures has been engineered to be in the 30 to 35 foot range. The light will remain low-key; it will be seen as a background light. He noted there will be no light wash coming in to the mobile home park, especially with the buffer zone in place.

JUNE LAGGE, 4231 ELLINGTON STREET SOUTHWEST, said she has written many letters about the zone change. When health reasons forced her to sell her home of 30 years, she ordered a manufactured home instead and lost several thousand dollars in the process. She asked the Council not to "destroy another home and another life" and to respect her rights as a property owner and the laws of the City. She asked the Council to vote against the zone change.

BRUCE SIMON, 217 CLARK AVENUE, said that the Big Sky Auto Auction is an important economic force in our community that we need to have. He also said he believes in property rights and that Mr. Miller has every right to develop his property. He is also sympathetic to the residents that live just east of the area and their concerns for the effects the proposed industrial site might have on their property. The zoning allows for an auto auction and ancillary uses. He asked, "what is an ancillary use"? He

said there are three buildings proposed, one for a body shop that appears to be a second use in that it is open to the public and not just for the purposes of the auto auction. He noted that body shops are not allowed under the Planned Development Agreement, unless it is under the category of ancillary use. He said the advertisements indicate it is another business. He said he hopes the Council can answer that question before they make their decision.

LORI SORENSON, 4232 ELLINGTON AVENUE SOUTH WEST, said she has written several letters to some of the Councilmembers. She said she is hearing the reason for passing this zone change is that it represents "big money". She said the auto auction is already here and working. She is a single parent that left the Lockwood area because she was located near the Flying J and it took all the money she had to invest in her present location. She said that all of the traffic that will be created by the auto auction will be just like living by the Flying J. She added she thinks it will hurt the Park and her property values as well. She asked the Council to look at the residents and not just the money.

BILL HOUGHTON, 4314 FENTON AVENUE SOUTHWEST, is opposed to the zone change. All of the residents south of the interstate are not in the Southwest Corridor Task Force because they are in the County and are precluded from voting, receiving newsletters and meeting agendas. He said that for the Task Force to be in favor of this proposal does not really include all of the residents that are affected.

JEFF ESSMANN, 927 PARKHILL DRIVE, said the Council is not here tonight to vote on whether Big Sky Auto Auction should remain in business. The issue before the Council is whether the use of an auto auction is compatible with existing uses in the area. He said the neighbors to the east are generally opposed to the zone change. He said he uses Riverfront Park to the south and believes this would be a detriment to the park in terms of noise and light. He urged the Councilmembers to put themselves in the surrounding neighbors' shoes and decide if they would like to have this type of intense facility in their area.

EILEEN MORRIS, 1323 JANIE STREET, represents the Yellowstone Valley Citizens Council. She said the purpose of zoning is to promote the health, safety and general welfare of the community. Zoning regulations are designed to deal with land use conflicts by separating incompatible land uses and to foster quality development to protect these standards. With this ruling in mind, she asked the Council to accept the Zoning Commission's recommendation for denial for the following reasons: 1) residential neighbors in the area are opposed to this change because of the negative impacts of noise, water, light and air pollution, increased traffic, loss of privacy and loss of natural habitat for wildlife, 2) consideration should be given to future needs and uses of Riverfront Park and its wildlife and 3) there is no comprehensive development plan for Southwest Billings, south of the interstate and Yellowstone River. She said the members of YVCC urge the Council to vote to deny the zone change.

ROGER RIEGER, 4720 STONE STREET, said he works part-time for the auction and said that he has not seen a truck running that would cause the noise pollution previously talked about, before or after the sales. He uses Riverfront Park and said he believes the auction would be a good addition to the area. He doesn't understand how a facility that is 200 yards away from the Park will impact the habitat and says the geese are probably just as noisy.

RICHARD DEIS, 4548 MORGAN AVENUE, said a majority of the Southwest Corridor Task Force members voted in favor of the proposal after the presentation was given to them. He said the owner of the property could possibly sell his land to someone who could build something that would contaminate the area more than the auction. The auction is a very clean, well-kept place and is less obtrusive than other uses could be.

MARK EHRLE, 3539 PRESTWICK ROAD, spoke in support of the Big Sky Auto Auction proposal. This business is growing and the location, right off the interstate, is an excellent opportunity. The people in the mobile home park have more air quality problems from the interstate than they would have from the auto auction, he noted.

PAUL PERKINS, 1106 ORCHARD, lives right across the fence from the proposed auto auction. He and his wife are against the zone change. He said the diesel fumes would not help with his wife's health problems.

ALEXANDRO GARZA, 1130 ORCHARD LANE, said he is retired from Western Sugar because of health problems with emphysema. He asked, what will the car auction do to his health? He retired to preserve his life. He agreed that progress is fine, but should it be at the price of life? He has great concern for the fumes that will come from the proposed facility.

TIM SHEEHAN, 3167 VIOLA DRIVE, said he and his family have been in commercial real estate development for over 50 years. He said he feels the developer of this proposed facility has been held to the highest possible standards of disclosure. The engineering skill and planning that have been involved in this project is above reproach, he added. The property owner and the developer are going to great lengths in order to subdivide and comply with the regulations that some businesses could not afford to do. He said the increase in the tax base and the circulation of money into our economy has to be weighed against the benefits of the few in the adjacent subdivision. He said he feels all of their concerns have been addressed and mitigated by the developer. The decision must be what is best for the most. He said the auto auction must stay in Billings and if it does not it would be a tragedy to lose that economic vitality.

DON FLICKINGER, 1112 YORKTOWN STREET, works for Big Sky Auto Auction. When he retired as a federal agent 5 years ago he looked for a job where he would be proud to work and with people he would be proud to work with. He has found that at Big Sky Auto Auction. They maintain the highest standards in their business in the area of safety and their contributions to the community. In his capacity as Driver/Supervisor for Big Sky Auto Auction he has 4 employees who have either emphysema or asthma conditions and none of them have had any health concerns or problems in connection with their jobs, working within the confines of the auto auction. Regarding Riverfront Park and harm to the habitat, he said that immediately south of the present site of the auto auction is a field that feeds dozens of deer, geese, pheasants and ducks.

PAUL DILORENZO, 4138 PHILLIP, noted that two years ago this month the Southwest Corridor Task Force listened to the request for Zone Change #661 concerning 4750 Underpass Avenue. They unanimously voted not to support this zone change, one that is somewhat similar to the zone change that is being considered tonight. He is a member of the Community Development Board and is concerned about the water issue on the north side of the street. It is unclear as to whether this has been

clarified as being taken care of within the proposal for the auto auction. He said he hopes that the concerns and protests of the County residents are being taken into account.

DUANE CLARK, VICE CHAIRMAN OF SOUTHWEST CORRIDOR TASK FORCE, said a presentation was given by Mr. Miller regarding the zone change proposal at the February meeting of the Task Force. At that time the vote was unanimous to support the auto auction. A few weeks later the Task Force facilitated a meeting between the people of the auto auction and the surrounding residents at the South Side Cop Shop. Both sides spoke their concerns. The Task Force is concerned about the issues of the residents but remained in support of the auto auction, he noted. He urged the Council to take the resident's concerns into account when making their decision.

CHERYL WILKS, 1003 MIRCO CIRCLE, said she is not opposed to the auto auction but does not feel that is the right place for them. The area in which she lives does not have expensive homes but is still a good neighborhood. She said the residents work, pay taxes, send their kids to school and they shouldn't be judged negatively because of where they live.

CURTIS WILKS, 1003 MIRCO CIRCLE, spoke regarding open space in the Park and Recreation Master Plan. The study concerns preservation of the heritage and protection of the Yellowstone River and its tributaries. He confirmed that the Big Sky Auto Auction would bring money into the city. He said Riverfront Park hosts many events for kids and he doesn't want those kids breathing the toxins from the fumes of the auto auction. This isn't an appropriate place for the auto auction, he said. He is concerned about putting 1500 cars on 21 acres. He reminded the Council of the historical sites in the area.

TRAVIS ECKERT, 2031 CLUBHOUSE WAY, said he has a lot of concerns about this issue. He has visited with both Loretta Flack and Liz Miller and some friends that are residents of the area. After all he has heard, he still supports the Planned Development.

DEWEY WILKES, 1019 ARLINGTON, said he is concerned about the safety of the children with all of the truck traffic connected with the auto auction.

JOHN MILLER, NO ADDRESS GIVEN, pointed out that no one is against the auto auction or the workers that are involved there. He said there is a better place for this facility rather than near Riverfront Park. A scientific study should be done to acquire the baseline data that is needed to assess the effects on wildlife in the Park. He noted that the field the wildlife now graze in near the proposed auto auction site will no longer be there and therefore will displace them. This will be more open space and prime agricultural land that will be eliminated, he added. He noted that citizens must come up with ways to buy and preserve open space. Parks and open space bring jobs to the area, too.

HOWARD LEE, 1108 ORCHARD LANE, was against approval of the zone change. He said he doesn't believe that a "no" vote will be the death of the auto auction.

CHUCK PLATT, 610 30TH STREET WEST, is the owner of Diamond Realtors. He is currently involved in working on an affordable housing project in King's Green Subdivision. He said he did a study in King's Green from 1997 to 2001 of property

values. He found they increased about 24%. He compared this to similarly priced homes on the West End and found only a 10% increase. He found that sales of property in the Agricultural area were 14% higher than sales of property on the north side of the interstate. In checking with two appraisers, he found that their opinions were that property values would increase due to the unique configuration of the lots. The zoning of manufactured housing is another benefit to these lots. He encouraged the Council to vote for the zone change.

NORMAN MILLER, 4507 PALISADES PARK DRIVE, is a member of the family that wishes to sell the property to Big Sky Auto Auction. The zone change will directly impact the sale of the property. The property has been farmed for over 100 years and now that times have changed they would like to exercise their right to sell their property. He said the family has chosen not to sell to many other types of intrusive developments, feeling that many of the offers they have had would not fit the area. He said the family believes Big Sky Auto Auction represents a positive change for the immediate area and for the Billings community as a whole. The owners of the auto auction have earned the Miller's trust by changing their plans to accommodate the concerns of the residents about groundwater, lights, diesel fumes and noise. He noted the City previously obtained land from the Millers to use as a buffer for Riverfront Park. He added that Mr. Norm Shoenthal, former Parks and Recreation Director said this "won't hurt the Park, you can quote me on this". Mr. Miller assured the Council that the 5 acres on the flood plain will stay agricultural. The auto auction fits the master plan for South Billings Boulevard and could be viewed as infill development. He asked the Council to consider the benefits to the entire Billings community and approve the zone change.

CARL HOWARD, 4312 BROCKTON AVENUE SOUTH, said while working on infrastructure with the Southwest Task Force, he found the auto auction to be a clean operation and a good project for the area. He remembers when Riverfront Park used to be a gravel pit and the Millers got together with the City and built the Park. He assured the Council that the Millers would not do anything to hurt the community. The owners of Big Sky Auto Auction and the Millers are very involved in the community.

JIM CAPSER, 657 SAHARA DRIVE, is one of the owners of Big Sky Auto Auction and an owner of Sunworks, LLC. He said the National Audubon site will be four times farther from the new facility as they are now. He noted that every parking lot in Billings dumps their stormwater runoff into the Yellowstone River with zero filtration for contaminants. The auto auction will be filtering the contaminants before they reach the river. He said the auto auction averages 2 to 5 diesel trucks per day in their truck transport area which is 1,200 feet from the center of the subdivision, whereas the interstate is 600 feet from the center of the subdivision and has a much greater amount of diesel traffic. There are dozens of trucks that travel South Billings Boulevard that could cause the westerly winds to send diesel fumes into the subdivision, he added. He quoted the staff report, saying the proposed use is consistent with the 1990 Yellowstone County Comprehensive Plan and the South Billings Boulevard Interchange Plan. He said the auto auction is consistent with Billings' growth plan.

LIZ MILLER, 4507 PALISADES PARK DRIVE, is a licensed realtor, a license professional geologist and a member of the family selling the property. She said she believes the auto auction is an excellent choice for the area. The developers have gone to great lengths to address the concerns of the neighbors with their engineering

designs. The developer will be hooking up to City water and sewer. The surrounding neighbors have County water, but all have septic tanks and drainfields that were installed in the 60's and are at the end of their design life. She said these septic tanks and drainfields are impacting the groundwater now. This type of development will fit the draft annexation policy and comprehensive plan, she noted. She asked the Council to approve the zone change.

ROD POVSHA, 1147 ORCHARD LANE, said there is plenty of land at the Shiloh Interchange for an operation such as the auto auction. He said the auto auction plans will not fit into the proposed area. He showed a picture that allows a view of the Park from the auto auction entrance in opposition to Mr. Capser's statement that he could not see the Park from the proposed site. He said that chain link fences that are proposed are not allowed for this type of facility in the proposed zoning. He noted that according to the City code, wholesale trade over 3,000 with outside storage is only allowed in Controlled and Heavy Industrial zones.

KEVIN NELSON, 1912 AVENUE B, said it is time to meld environmental concerns and growth together. He said environmental issues are killing the State. At the Task Force mediation meeting, the comment from the residents that lived in the County and use City Parks and services everyday really struck him. He said the County residents don't participate in the tax base and yet they want to "shoot proposals down". The City needs the revenue from this project to move the City forward, he said.

FRAN WILKS, BURLINGTON AND ORCHARD LANE, said she has listened to all the pros and cons and does not want the auto auction "in there". She doesn't want the zone change.

JIM USSIN, 1120 ARLINGTON DRIVE, was a licensed realtor in Montana and Wyoming for over 40 years, specializing in farm and ranch properties. He reminded the Council that he delivered several documents from the EPA and the American Medical Association expressing concerns about particulates that come from the diesel exhaust. His concern is for the health and welfare of the residents in the subdivision and the wildlife in Riverfront Park. These particulates are proven to be carcinogenic to both humans and animals. He said he cannot believe that the real estate will increase in value, but would decrease due to traffic, noise and the fumes. He said he hired a certified appraiser who did research and found there is not a city in Montana that would allow an auto auction to go in next to a residential subdivision. He disagreed with Mr. Capser's estimate of the amount of diesel trucks that come into the truck transport area. He said he has counted 12 to 15 diesel trucks at the site at one time. He added he has hired legal counsel and an environmental engineer to pursue any legal matters that may be necessary. He asked the Council to disapprove the zone change.

CHUCK DICKERSON, 501 WEST 13TH, LAUREL, said he was a Councilmember for the City of Laurel for 9-1/2 years and knows what revenue and taxable dollars can mean to a city. He said Big Sky Auto Auction is just trying to grow, maintain and stay in the City of Billings and provide those revenue and taxable dollars. He said with the close proximity of sewer and water lines to the adjacent existing subdivision, perhaps the residents there would consider hooking up to those utilities and prevent any concerns about future well and septic contamination that might occur with the development of the area in general. He strongly urged the Council to vote for approval of the zone change.

DAVID WILKENS, 10 NORTH 27TH STREET, said he is an attorney with WRIGHT, TOLLIVER AND GUTHALS, and is representing the protestors of Agri-Sub. He said the mitigation, tax revenues, and jobs cannot mitigate this subdivision and proposed zone change into compliance. It is simply an incompatible use, constitutes illegal spot zoning and violates the Comprehensive Plan. He will pursue those issues to the fullest and respectfully requests the Council to deny the request for the proposed zone change and subsequently deny the subdivision application as well.

There were no other speakers. The public hearing was closed. Councilmember Jones moved for approval of Zone Change #689, seconded by Councilmember Larson. Councilmember Larson noted that Riverfront Park has survived with South Billings Boulevard just across the street where all of the impacts that have been talked about already exist. Big Sky Auto Auction is virtually as close to Riverfront Park now as they will be in their proposed new location. He said that farming has always been a contentious issue. The only way to preserve farm land is to buy it, he stated. He added that health issues are also a great concern; and no one can guarantee that persons with emphysema will not be impacted. He noted that his asthma appears to do better in an urban environment rather than the farm environment. He said that during his seven years on the Council he cannot remember a single zone change that has not impacted property values of the surrounding neighbors. He noted that his own property view has changed from the Prior Mountains to the back of an Albertson's store and several nursing homes and his property values have nearly doubled. He said he thinks that mobile home parks that can add City sewer and water utilities to their amenities will become a better development. He noted he feels the proposed plan is a fairly reasonable plan of mitigation and that the stormwater mitigation could be used as an excellent model for the rest of the community that also should be dealing with the runoff issue. He supports the zone request and says it is a positive step forward for this area.

Councilmember Jones said after additional research and attending several of the preliminary meetings regarding the issues, his judgment is this is a good development and he is impressed with the efforts of the people involved. He acknowledges the surrounding neighbors are not in favor of the proposed development but there could be worse alternatives. During his visits to the present auto auction site, he heard more noise from the freeway than from the auto auction itself. He said this is a good development, the developers have done more than required and he will support the zone change.

Councilmember McDermott said it is a good project and was impressed with the Miller families' and Mr. Capser's attempts to mitigate the issues for the residents. On a voice vote, the motion was unanimously approved.

B. Preliminary plat for Willowbrook Minor Subdivision, generally located ¼ mile east of the South Billings Boulevard Interchange along South Frontage Road. Staff recommends conditional approval. (**Action:** approval or disapproval of staff recommendation.)

Planning Staff member Candi Beaudry said the Willowbrook Subdivision is a five-lot minor subdivision. The applicant is Sunworks, LLC and the property owners are the Millers. The preliminary plat submittal involves the same property as the zone change and a fifth lot to the south. A public hearing is not required because it is a minor

subdivision with 5 or fewer lots. She noted that Lots 1 through 4 are in the City and Lot 5 is in the County and remains in agricultural use. The plat is located $\frac{1}{4}$ of a mile from the South Billings Boulevard Interstate interchange and adjacent to a residential subdivision to the east. There is a remainder lot represented by a small triangular piece to the southeast that will remain in agricultural use due to an agricultural covenant. Ms. Beaudry said if the Council approves the zone change tonight it would go to Planned Development zoning that is modeled after the Entryway General Commercial zoning district. This allows for a variety of commercial uses including retail, lodging and auto sales. The Planned Development zoning allows for auto auctions of the size that is proposed. The owners are proposing to develop Lot 4 as the auto auction, including a body shop and detail shop. Because Lot 5 will remain in agricultural use, the existing irrigation facilities will still be required.

Ms. Beaudry noted the differences between Planned Development and Entryway General Commercial requirements with regard to the yard and landscaping requirements. She said a lot of issues have been raised about the proximity of residential to this development. The Planned Development is the proposed method the developers are using to mitigate those effects. The building setback under the Entryway General Commercial classification is only 25 feet when it is adjacent to residential property. The subdivider is proposing a 35-foot setback. A buffer yard, an undeveloped piece of land between the adjacent residential and the commercial development, requires a 10-foot berm in the Entryway General Commercial and the Planned Development is proposing a 15-foot berm. The effect is the subdivider is proposing much higher standards for landscaping and setbacks. The 6-foot high chain-link fence in the Planned Development being proposed by the subdivider is required for security purposes. Ms. Beaudry said the recommendation is for these items to be included in the Subdivision Improvements Agreement, which is another level of security to insure that the subdivider will provide what he has agreed to provide.

Ms. Beaudry said that water will be extended to the subdivision and a contract is already in place to bring it to the west edge of the subdivision. From that point the City and the subdivision will share the costs of water main installation. There is an existing sewer line located in the South Frontage Road and future uses will connect to that.

She noted there are currently two approaches off of the frontage road. These will be altered to new locations to allow for internal access and will have to be approved by the Montana Department of Transportation. Only emergency access will be allowed from Orchard Lane onto Lot 5 and will not cause increased traffic on Orchard Lane; access will only be allowed off of the frontage road.

Stormwater drainage was a major concern for staff and from concerned citizens and the Councilmembers, she noted. Wastewater generated from car washing and other operations that use solvents or oils will drain into the City sanitary sewer. Surface run off from the paved parking lots will be retained in an underground dispersion facility. The Councilmembers have received information on best management practices that will be employed. She said these practices are designed to remove contaminants from the wastewater through gravitation separation.

Ms. Beaudry said staff is recommending conditional approval of the preliminary plat. The conditions are designed to mitigate the impacts on agricultural water user facilities, agriculture, local services, natural resources and wildlife habitat and public

health and safety. The conditions are: 1) the subdivider show and record an easement for Suburban Ditch and other irrigation facilities to insure the continued agriculture on Lot 5, 2) at least two ways in and out of Lot 4 for Fire Department usage, 3) submit a revised Traffic Accessibility Study that would address the peak hours of traffic and turning lane traffic, 4) a "no access" strip along Orchard Lane, 5) obtain required approach permits from Montana Department of Transportation for each approach, 6) submit a detailed engineered stormwater design report that addresses stormwater retention and pre-treatment 7) develop an owner's association or maintenance agreement by the individual lot owners, 8) all utilities be constructed in accordance with Public Utilities Department requirements, 9) record a certificate of survey claiming an agricultural exemption covenant on the remaining parcel located along and south of Grey Eagle Ditch, 10) incorporate the proposed bufferyard, building setbacks and landscaping requirements shown on the preliminary plat in the Subdivision Improvements Agreement and 11) obtain approval from the Department of Environmental Quality for sanitary, water and stormwater facilities. Lot 5 will need to qualify for an agricultural exemption that will limit it to agricultural use only.

Councilmember Bradley asked if the sanitary sewer connection from the car wash would create any problems with the treatment plant facilities. Ms. Beaudry said she has not received any negative comments back from the Public Utilities Department, but she understands that the wastewater plant has a method to de-contaminate this type of wastewater. Councilmember Bradley asked if the storm drain would be a surface storm drain. Ms. Beaudry likened the system to an underground septic tank that will receive the stormwater drainage from the paved areas and road with a baffle box that will create a separation between the water and any other contaminants and allows the cleaner water to flow out. She noted that Planning does not yet have a detailed plan of the process and it must be available prior to the final plat that will be approved by Council.

Councilmember McDermott questioned the comments of the Police Department that state there would be an increased burden on staff, however she noted the facilities would be a retail outlet that will provide their own security system. Ms. Beaudry replied that she tries to report the comments of each department as they are reported to her.

Councilmember Bradley expressed concern for the fact that there is not a specifically engineered design for stormwater drainage and cautioned the Public Works Department that flooding north of the Interstate with the subdivision adjacent to the north of this property could be a potential problem.

Councilmember Jones moved for approval of the staff recommendation, seconded by Councilmember Larson. Councilmember Jones questioned the lighting poles and the maximum height for them in the Entryway Light Industrial zoning. Ms. Beaudry said the height requirements are still under review. Mr. Bollman said, after consulting the code, the height is 35 feet for cutoff lighting and 18 feet if it is not cutoff lighting. He noted that 35 feet is what has been considered for this project. On a voice vote, the motion was unanimously approved.

14. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #690: A zone change from Agricultural-Open Space to Planned Development with (multiple underlying zoning districts), generally located along the west side of

Rod and Gun Club Road, approximately one-half (1/2) mile north of Highway 3 and is described as Tracts 1-5 of Certificate of Survey No. 3091. Rehberg Ranch Estates, LLC, owner; H. Thomas Llewellyn and Engineering, Inc., agents. Zoning Commission recommends denial. (**Action:** approval or disapproval of Zoning Commission recommendation.)

Zoning Coordinator Jeff Bollman said the zone change is for 815 acres known as the Rehberg Ranch Estates Subdivision, located on the north end of Rod and Gun Club Road, which is the same as the annexation. The surrounding zoning is all Agricultural Open Space and the subject property is basically a City island in the County. The proposed zone change is to the Planned Development classification and the specific rules and regulations of the development would be governed by the Planned Development Agreement. The subdivision includes 155 lots located on the far southeastern corner that will include 1,200 dwelling units at full build out. He noted the large amount of open space with a golf course in future planning. Mayor Tooley and Councilmember Brewster asked that Mr. Bollman point out the intersection of Zimmerman Trail and Highway 3 and the surrounding State lands respectively. Councilmember Brewster asked if the State has a master plan for these properties. Mr. Bollman said he was not aware of any plan. However he noted the Inner Belt Loop project and the possibility of obtaining rights-of-way. He stated that the main concern of the surrounding property owners is the mitigation with the Rod and Gun Club. Staff had three main concerns with the development, they were: 1) emergency or secondary emergency access to this development; an easement with the State that is in progress to mitigate, 2) the development will generate additional traffic that will need to be addressed in the first phase of the subdivision, 3) potential conflict with the Rod and Gun Club with regard to existing and new land uses to which a signed agreement has been prepared. The agreement included provisions for buffering along the southern end of the property and eastern property line. The staff has recommended approval of the zone change. He said the Zoning Commission recommended denial based on too much information presented too late, leaving not enough time to review and their desire not to delay action on the project. He noted that since this property has been annexed into the City, many of the major concerns that existed with the project have been mitigated. He said a positive feature of the development, not including the golf course, is that 13.5% of the land will remain open space.

The public hearing was opened. TOM LLEWELLYN, 2110 OVERLAND, cautioned the Council that this is a land use and not a subdivision process issue at this point. Regarding the emergency access, he said the DNRC signed a safety easement agreement across Section 16 to provide an access. The agreement with the Rod and Gun Club has been signed that addressed the rights-of-way and encroachments and will be turned in to the Planning Board on Tuesday, April 9th. He said the traffic accessibility study was completed and the requirements were being mitigated up front. All financing is in place and the appropriate bond will be given to the City when the building permit process begins. All of the requests of the City have been completed, he noted. He asked for approval of the zone change.

RICK LEUTHOLD, 1001 24TH STREET WEST, ENGINEERING, INC., is representing the Rehbergs in the development of the project. He noted that there are no development projects that are without impacts. He said the staff has supported the

question of compatible uses. He noted that the letter from Attorney Doug James may possibly contain a misrepresentation of the facts about public safety and the responsibility of the costs. Public safety issues extend to the Rod and Gun Club and Highway 3 concerns. He said the compatible uses questions have been put to rest with the agreements and proposed additions and improvements to traffic signals. He noted that the Rehbergs have expressed a willingness to support a speed study. In the Subdivision Agreement, the developer will be responsible for costs that involve impacts to the area, such as off-site street improvements and Highway 3 improvements. He asked for support for the land use change.

MICHAEL SANDERSON, 3030 FORSYTHIA BLVD., ENGINEERING, INC., manages the transportation group that put together the traffic study for the development. He noted that traffic issues are more a part of the subdivision process rather than the zone change process. He said as a licensed professional engineer, he is obligated by an oath to protect the safety and welfare of the public beyond his responsibility to the client. With that said, he noted that he applied the usual methods as are done on every traffic study, assessing the first 400 units and the impacts, according to Montana Department of Transportation standards. He would recommend installation of right turn and left turn bays on Highway 3 that would accommodate the design speeds present. He noted that Zimmerman Trail is a principal arterial and part of the Inner Belt Loop in the Transportation Plan and the expectation is that increased traffic would occur there.

PETE HANSEN, 1435 WICKS LANE, said this is a wonderful project but foresees the following problems for the City: 1) a potential homeowner's coalition to petition the City to change flight patterns or move the airport due to noise and 2) concern for the safety of the residents and their children due to the close proximity of the Rod and Gun Club. He suggested a solid fence rather than chain link to better prevent children exploring areas that are potentially dangerous. Councilmember McDermott asked about the previous airplane crashes in this area. Mr. Hansen confirmed there have been small aircraft crashes in that area but said this would be a danger in the Billings Heights area as well. This could be mitigated by the fact the airplanes will be routed over the golf course.

DOUG JAMES, ATTORNEY WITH MOULTON, BELLINGHAM, LONGO, AND MATHER, said he represents Steven and Jennifer Corning and Jerry and Sandy Dernbach. He said he and his clients believe this zone change is a bad idea, to build a high-density subdivision at the end of a jet runway and next to the Rod and Gun Club. He noted the second and third points of the twelve criteria in the Municipal Code, that determine whether a zone change is appropriate, are directly applicable to the traffic issues of this zone change. Those points state zoning should lessen congestion and promote health and general welfare. He said it clearly does not do either of these things. He does not see any mitigation of the impact on Zimmerman Trail. He also said he does not think the deceleration lanes on Highway 3 are adequate to mitigate against the increased traffic, nor to provide safety. He suggested the developer should work with the State, County and City to address the traffic issue on a comprehensive basis. He noted insurance premiums for all City of Billings' taxpayers would potentially increase due to this subdivision and the delayed response time of the Fire Department. He said this is a mammoth subdivision project for the City and the details have been

rushed. It is spot zoning on a mega scale and not looked at comprehensively with the neighborhood. The Planned Development does not discuss any prohibited commercial development. He said he feels the twelve criteria dictate this zone change should be denied.

STEVE KRINER, 3222 LEEANN BLVD., is a physician in town and a member of the Rod and Gun Club. He opposes the zone change on all of the issues mentioned. His greatest concern is the traffic coming down Zimmerman Trail that will potentially travel north/south in the West End. He noted Shiloh Road, Rimrock Road, and 24th Street West are already overwhelmed. He said he feels the mitigation should also include those areas. He said that even as a member of the Gun Club, he would not want to live that close to it. He noted the proposed subdivision would be a much denser population than the already present 5 and 10 acre tracts. His last concern was for the possible fire hazard due to the pine trees in the adjacent valley.

JEFF ESSMANN, 927 PARKHILL DRIVE, supports the Planned Development and approval of the zone change. As a former member of the Planning Board, he studied the growth rate. This plan will create appropriate housing opportunities that will accommodate the growth rate. He acknowledges the concerns for traffic on Zimmerman Trail and Highway 3.

RICHARD VANDEVEEGAETE, 3470 MASTERSON CIRCLE, lives in the subdivision immediately south of the proposed subdivision. His concern is that approval of the zone change is premature. He said he thinks the Rehberg's proposal as it now stands is not well developed. This subdivision will be one of the largest additions to enter the City. Twelve hundred new homes, a golf course, an equestrian center, a belt-way, a commercial district, new roads, and a City sewage disposal plant on site. Extension of the current City water system is such a large undertaking and should be thoroughly researched, planned and adequately structured. He said he feels the developer has failed to demonstrate an intention and ability to do this. He noted the Subdivision Improvement Agreement says the developer is not obligated to construct the improvements to Highway 3 until the City of Billings issues the 80th building permit which contradicts the statement that traffic mitigation will begin immediately. He questions whether this proposal has adequate financing to gracefully move forward and asked if the social cost be a burden to the taxpayer, the developer or the City of Billings.

JOHN EISEN, 3209 LEEANN BLVD., said he lives in a subdivision below Zimmerman Trail. He is not speaking against development on top of the Rims, but he is concerned about the many unanswered, non-funded questions. He said the residents can't have promises or assumptions. He doesn't want to see Zimmerman Trail turn into an expressway, a freeway or whatever it takes to accommodate the increased traffic safely. There needs to be a community process to discuss this issue alone. He noted the details are the problem in this development.

PAUL LEMIRE, 2312 ELM STREET, said this plan is not adequately planned. His concern is that the details are not worked out at this time and the taxpayers will end up with the burden. As a hydrologist, he was concerned about the original plan to use groundwater. He noted there was not enough groundwater to cover 1,200 units and water a golf course. He recommends denial of the zone change until more information is available. He added the citizens of Billings need new development and the Rims are certainly an option for the future.

SHERRY CORNETT, 3222 LEEANN BLVD., agrees with what has been said tonight and what has been written to the Councilmembers and the Mayor regarding the proposal. Her main concern is the increase in traffic and resultant safety issues generated by the zone request. She said Zimmerman Trail is not designed to be a major thoroughfare and she does not want to see it become more heavily used. She also noted that she does not want to see the addition of white crosses along the road. The residential areas that exists below the Rims, where Rimrock Road intersects with Zimmerman Trail, are already impacted by rush-hour traffic. She said she doesn't think a signal light at that intersection is an adequate answer for the traffic and safety issues. She asked the City Council to deny the zone change request until choices are made for traffic safety and to lessen congestion in all areas that this development will impact.

JAN REHBERG, 4401 HIGHWAY 3, is the manager of Rehberg Ranch Estates. She reiterated that the zoning and land use issues are what is being considered at this time. She noted the plans for this development have been in progress since February of 2001, with ongoing talks with the City, the County, the State, the State Highway Department, the Airport, the City/County Planning Department and those talks have tried to touch as many bases as they could during this process. The initial application was in November with several extensions granted to allow the City/County Planning Department time to address issues and review the proposals. She said they have tried to address each concern as it has arisen. She noted that the zone request is for the entire project, but the subdivision proposal is for only the first 155 lots. She said she anticipates this will be a 2 to 3 year project alone, with the entire project spanning 10 to 15 years. Because of this time frame it is impossible to predict what the traffic impacts will be in 15 years. What can be addressed is what is known now and that is what has been done and included in the Subdivision Improvements Agreement language, she noted. She said they anticipate that future traffic studies will be done, other measures will be taken and they will be asked to pay their proportional share of the costs of those improvements. She said they intend to listen to public comment and try to incorporate that into their plan. She asked for approval of the zone change and said she looks forward to working with the Council in this process.

JOE CARROLL, 3107 POLY, totally supports the proposal of the Rehberg Ranch Estates. He noted the 10 to 15 year time frame and said the traffic concerns should be addressed when they come to pass.

FRAN LECLAIRE, TRAILS END, said she hopes the future residents will not complain about the shooting noise at the Rod and Gun Club because they were there first. She concurs with a 6 foot solid fence and noted that the Rod and Gun Club Road needs to be widened.

JOE GERBASE, 3305 HARLOU DRIVE, represents the Rehberg family. He said the Zoning Commission decision only contained three concerns: 1) the Rod and Gun Club issue with whom an agreement is in place, 2) no emergency access; an easement with the State of Montana has been obtained, and 3) the traffic situation. He called attention to the fact that if the zone change was denied the zoning would default to R9600 and the impact could be up to 2,700 dwelling units. Therefore, this proposal is decreasing the inevitable traffic situation by allowing only 1,200 units while preserving open space. This proposal will put an end to the continuous complaints against east/west expansion, he added. He noted that the City of Billings would not have

expanded as it has if all of the problems that impact the citizens had to be solved in advance. He said this subdivision is a great spearhead to save agricultural land.

There were no other speakers. The public hearing was closed. Councilmember Larson moved for approval of the zone change request on first reading, seconded by Councilmember Iverson. Councilmember Larson asked if the zoning would indeed revert to R9600 if the Planned Development does not pass. Mr. Bollman confirmed that was correct. Councilmember Larson asked if the subdivision process would still be required. Mr. Bollman said "not necessarily". They would not have to go through subdivision review if condominiums were considered, he said. Mr. Bollman confirmed Councilmember Larson's statement that without the Planned Unit Development the developer could possibly continue without dealing with the mitigation issues that have been discussed.

Councilmember Poppler asked if there will be a road constructed to utilize the easement for the emergency access. Ms. Rehberg said there is an existing dirt road that will be improved to a 20-foot gravel road that will serve as the second access that has to be constructed as part of the process.

Councilmember Larson asked if there will be additional hearings in this process that will address the concerns that the citizens have expressed with regard to a lack of details in the proposal. Mr. Bollman noted the Planning Board hearing is scheduled for Tuesday evening, April 9th and they will consider and make recommendations concerning the subdivision. This will come to the Council at the April 22nd meeting, he added. He noted that included in this agenda item will be the final copy of the Subdivision Improvements Agreement, a copy of the Rod and Gun Club Agreement and final access agreements with the State.

Councilmember Larson urged the Councilmembers to allow the zone change to be approved circumventing the R9600 zoning. Councilmember Jones asked how many houses would be required to bring the 3,500 trips on Zimmerman Trail per day figure into reality. Mr. Sanderson said the 3,500 trips per day would apply to the first 400 units. On a voice vote, the motion was approved with Councilmembers McDermott and Poppler voting "no".

Council Initiatives -- NONE

ADJOURN —With all business complete, the Mayor adjourned the meeting at 12:30 A.M.

THE CITY OF BILLINGS:

By: _____
Charles F. Tooley MAYOR

MINUTES: 04/08/02

ATTEST:

BY: _____
Marita Herold, CMC/AAE, City Clerk