

REGULAR MEETING OF THE BILLINGS CITY COUNCIL April 23, 2007

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

ROLL CALL – Councilmembers present on roll call were: Ronquillo, Gaghen, Stevens, Brewster, Veis, Ruegamer, Ulledalen, Boyer, Jones and Clark.

MINUTES – March 26, 2007: approved as printed. April 9, 2007: approved as amended. (See discussion at end of minutes).

COURTESIES:

- Councilmember Ruegamer stated he wished to acknowledge Councilmember Veis' accomplishment of becoming an American Marshal Memorial Fellow. Councilmember Veis was one (1) of 57 American leaders from 20 states that won the German Marshal Fund Fellowship. He will go to Europe and study for 23 days in June, 2007. Councilmember Veis has the distinction of becoming the only Montana resident to win this scholarship. Congratulations Councilmember Veis.

PROCLAMATIONS:

- April 25, 2007: Start! Walking At Work Day
- April 22-28, 2007: Administrative Professionals Week
- April 27, 2007: Arbor Day
- May 3, 2007: National Prayer Day

ADMINISTRATOR REPORTS:

- City Administrator Tina Volek reminded the Council that the Agenda Review meeting normally scheduled for tomorrow evening at 5:30 p.m. in the City Hall Conference Room will be postponed to May 1st.
- Ms. Volek noted that there is a revised resolution for Agenda ITEM 1M, authorizing the baseball stadium bond sale and delaying the sale until June 11, 2007, instead of as previously scheduled for May 14, 2007.

PUBLIC COMMENT on "NON-PUBLIC HEARING" Agenda Items: #1 ONLY.
Speaker sign-in required. (Comments offered here are limited to 1 minute per speaker. Please sign up on the clipboard located at the podium. Comment on items listed as public hearing items will be heard ONLY during the designated public hearing time for each respective item.) *(NOTE: For Items not on this agenda, public comment*

will be taken at the end of the agenda. Please sign up on the clipboard located at the back of the room.)

There were no speakers.

CONSENT AGENDA:

1. A. Change Order #10, #W.O. 04-12: Alkali Creek Road Reconstruction, JTL Construction Group, \$78,720.00

B. Parking Security Contract with D-N-D Security, \$24,236.00/year, with a +\$15/hour extra call-out rate and a one-year contract with a one-year option to renew at the same annual rate.

C. Briarwood Water Reservoir Site Use and Access Agreement with the Billings Motorcycle Club and William and C. Diane Morrison on property located in the NE¼ Section 27, T.1S., R.26 E., \$0.00.

D. W.O. 06-17: Contract for Professional Services for the 24th Street West Signal Timing, Kittleson & Associates, \$99,850.00.

E. Wells Fargo (Downtown) Encroachment Fee Variance for streetscape improvements by Wells Fargo Downtown Branch to the N. 27th Street frontage and 2nd Avenue North frontage, consisting of: three (3) planters and two (2) trash receptacles along the N. 27th Street frontage, \$420/year.

F. Grant Application Submittal for the Fair Housing Initiatives Program, U.S. Department of Housing and Urban Development (HUD), \$100,000.00.

G. W.O. 04-33: Lake Elmo Drive (Hilltop Rd. to Wicks Ln) Right-of-Way Acquisition:

(1) Parcel 11: Portion of Lot 1, Block 1, Croy Sub., Richard A. and Brenda K. Rogers, \$550.00.

(2) Parcel 18: Portion of Lot 1A, amended Lot 1, Lammers Sub., Minnie Tomicich and Nancy Rudio Tomicich, \$2,600.00.

(3) Parcel 71: Portion of Lot 5, Block 4, Arrowhead Sub., Mona Reichert, \$2,450.00.

H. Street Closures: Yellowstone Rimrunners request for partial street closures for *Highland Family Fun Run* on Saturday, May 19, 2007 from 9:00 a.m. to 11:30 a.m. The closures are as follows: Parkhill from Highland School east to Virginia Lane, through Pioneer Park then back on the north side of Parkhill to 6th Street West, O'Malley, 7th Street West, and Beverly Hill.

I. Acceptance of donations:

(1) Approval and Acceptance of Donation to the Billings Animal Shelter from the Greater Billings Animal Coalition for a Pet Lift Aqua Quest Stainless Steel Tub and Edemco Double Cage Dryer, \$5,000.00.

(2) Approval and Acceptance of Donation to the Police Department from Hardy Construction to help defray costs of sending an officer to the National Association of School Resource Officer Conference (NASRO) in July, 2007, \$800.00.

J. Acceptance of Quitclaim Deed of C/S 1952, Tract 2D, 54th Street West Right of Way from Yellowstone County, \$0.00.

K. Acceptance of Shiloh Drain Quitclaim Deed from the Shiloh Drain District for all rights-of-way and easements, \$0.00.

L. Resolution #07-18546 designating South 12th Street West a two-way street between Central Avenue and Kalmar Drive.

M. Resolution #07-18550 relating to \$12,500,000 General Obligation Bonds, Series 2007A and 2007B, authorizing the Issuance and Calling for the Public Sale Thereof.

N. Second/final reading ordinance #07-5407 expanding Ward I (Annexation #07-03) for a 2.44-acre property described as: North ½, Lot 3, and all of Lot 4 and Lot 7, Sandra Subdivision, and located at 23, 63 and 65 Charlene Street, the City of Billings, owner.

O. Second/final reading ordinance #07-5408 expanding Ward I (Annexation #07-04) for C/S 598, in Lot 30, Clark Subdivision, containing 10,454 square feet and located at 307 Garden Avenue; Lana Jean Bittner, owner.

P. Bills and Payroll.

(1) March 23, 2007

(2) March 30, 2007

(Action: approval or disapproval of Consent Agenda.)

Councilmember Jones separated ITEM 1H. Councilmember Brewster separated ITEM 1K. Mayor Tussing separated ITEM 1M. Councilmember Ulledalen moved for approval of the Consent Agenda EXCEPT ITEMS 1H, 1K and 1M, seconded by Councilmember Boyer. On a voice vote, the motion was unanimously approved.

Councilmember Ulledalen moved for approval of ITEM 1H, seconded by Councilmember Ruegamer. Councilmember Jones said he separated ITEM 1H for clarification on the street closures. On a voice vote, the motion was unanimously approved.

Councilmember Ulledalen moved for approval of ITEM 1K, seconded by Councilmember Ruegamer. Councilmember Brewster stated he separated ITEM 1K to ask a question that related to the federal study proposed for water control and management and located in the Shiloh Drain District. Councilmember Brewster requested information on whether the City would have the responsibility for any mitigation incurred after the City takes ownership. Planning Director Candi Beaudry replied that the City would have responsibility.

Councilmember Ulledalen moved for approval of ITEM 1M, seconded by Councilmember Ruegamer. Mayor Tussing said he separated ITEM 1M because there was a revision to the resolution that will delay the sale until June 11, 2007. On a voice vote, the motion was unanimously approved.

REGULAR AGENDA:

2. PUBLIC HEARING AND RESOLUTION #07-18547 FOR ANNEXATION #07-06: property described as Tracts 1 & 2 of C/S 1323; Tract 1 of C/S 1815; Tract 2D of Corrected Amended Tract 2 of C/S 1952; Yellowstone Meadows - Phase I and III Parkland; Lots 33, 34, 63, and 64 of Sunny Cove Fruit Farms; portion of County Road Petition #49, and all adjacent right-of-way of 54th St. West, 56th St. West and Colton Blvd., and located at the NW corner of 54th St. West and Colton Blvd. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

There was no Staff presentation. The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Ruegamer moved for approval of the Staff recommendation, seconded by Councilmember Veis. On a voice vote, the motion was unanimously approved.

3. PUBLIC HEARING AND RESOLUTION #07-18548 FOR ANNEXATION #07-07: property described as Lots 1-5, Block 1, Western Sky Sub., and located SE of King Avenue West and 48th Street West, Cal Kunkel and Gareld Krieg, owners. Staff recommends conditional approval. (Action: approval or disapproval of Staff recommendation.)

There was no Staff presentation. The public hearing was opened. RICK LEUTHHOLD, ENGINEERING, INC. stated he wanted to make the Council aware of a new partner -- Land Equity Partners of Park City, UT.

SPENCER THUNELL, 1777 Sun Peak Drive, Park City, UT, stated he wanted to assure the Council that the development would be developed as a multi-income development. Mr. Thunell asked the Council if they had any questions. There were no questions. The public hearing was closed.

Councilmember Veis moved for approval of the Staff recommendation, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.

4. PUBLIC HEARING AND RESOLUTION #18549 ORDERING IN W.O. 06-18: Broadwater Subdivision – Phase V, curb/gutter and street reconstruction

improvements for Broadwater Subdivision. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

There was no Staff presentation. The public hearing was opened. JEFF BENTON, PASTOR OF GOSPEL BAPTIST CHURCH, 1246 COOK AVENUE, stated he was in agreement for enhancing the improvements around the City of Billings. He explained he did not agree with improvements to the sidewalks around the church property. Pastor Benton produced pictures to the Council showing the sidewalk's condition and no need for total improvements. He said he understands that there are areas that would need improvements. Councilmember Gaghen suggested Pastor Benton discuss the project concerns with Public Works Director Dave Mumford.

CECIL HAWKINS, ASSOCIATE PASTOR, GOSPEL BAPTIST CHURCH, 1246 COOK AVENUE, stated he also was in agreement for enhancing the improvements around the City of Billings. He explained he also was not in agreement with total improvements to the sidewalks around the church property. Associate Pastor Hawkins noted that he and Pastor Benton "walked" around the perimeter of the church property and found there was absolutely no need for total improvements. There were no other speakers. The public hearing was closed.

Councilmember Brewster moved for approval of the Staff recommendation, seconded by Councilmember Veis. On a voice vote, the motion was unanimously approved.

5. PUBLIC HEARING FOR COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) and HOME INVESTMENT PARTNERSHIP (HOME) PROGRAMS AND THE FY2007-2008 ANNUAL ACTION PLAN. Staff recommends holding a public hearing to gather public input on the allocation of the City of Billings FY2007-2008 CDBG and HOME funding and scheduling action on May 14, 2007. (Action: approval or disapproval of Staff recommendation.)

Community Development Manager Brenda Beckett introduced two (2) CDBG members who were present for the Council meeting: (1) David Goodrich and (2) Kathy Walters. She reported the City was required to provide no more than 20% (\$168,592) of its CDBG funding for administration, fair housing and planning-type activities, and **must** provide 15% (\$75,126) of its annual HOME allocation for activities carried out by nonprofit housing development organizations or Community Housing Development Organizations (CHDOs). Ms. Beckett explained that the City was required to provide no more than 10% of HOME funding for administration activities (\$67,489). The City can allocate up to 15% of CDBG resources (\$136,112) to nonprofit organizations or other projects classified as public service activities, ranging from daycare to crime prevention activities.

Ms. Beckett noted the City received 18 applications for housing and neighborhood activities and 20 applications for public service funding. Project summaries for activities proposed this year were included as Attachment C in the Council's packet materials. CDBG and HOME resources represent the main federal commitment to communities to address the need to preserve the existing supply of

affordable housing and promote the development of new affordable housing. Few other federal, state or local resources are available to address these housing needs.

Ms. Beckett explained that comments of the speakers at the public hearings may relate to the significant decrease in funding, including the inability for the CDBG administration budget to fund activities traditionally supported including fair housing, historic preservation, and task force planning activities. Last year funding available for public services totaled \$132,602. This year's available funding is \$136,112. The total request for funding in public services was \$301,091 for FY2007-2008.

The public hearing was opened. TESS KECK OF 66 JONQUIL CIRCLE, HRDC District 7, Director of Community Development, reported she wanted to ask the Council's assistance in finding a viable solution for low-income housing for residents, other than mobile homes. Ms. Keck stated that anyone who would like a written copy of the study report may contact her office.

HARRY MERCHANT, NO ADDRESS PROVIDED, Director of St. Vincent DePaul, asked the Council for assistance in receiving funding for a replacement vehicle. He stated the present vehicle is a 1984 truck.

BECKY WEBER, NO ADDRESS PROVIDED, of Big Brothers-Big Sisters stated she wanted to thank the Council for the assistance received by the Big Brothers-Big Sisters organization.

KATHY WALKER OF 3104 RADCLIFF stated she also wanted to thank the Council for the assistance received by the Big Brothers-Big Sisters organization.

There were no other speakers. The public hearing was closed. Action is scheduled for the May 14, 2007 meeting.

Mayor Tussing called a brief recess at 8:07 p.m.
The meeting was called back to order at 8:17 p.m.

6. PUBLIC HEARING AND FIRST READING ORDINANCE amending Article 18-1000 and STET of the Billings Montana City Code re: aggressive solicitation. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

Police Chief Rich St. John reported that a review of the existing Aggressive Solicitation (i.e. panhandling) Ordinance resulted in recommended changes to the ordinance. He stated the original ordinance was approved on February 9, 2004, adding the ordinance needed to be revised because it was weak and difficult to enforce. He explained that "panhandling" is a challenging issue faced by cities of all sizes and Billings was no exception. While some panhandlers go about their business in a passive manner, others are much more aggressive, making loud, sometimes repeated demands, or persistently following the pedestrian down the street after a request had been denied. Additionally, some panhandlers choose to solicit in places that are particularly intimidating such as near ATM machines, public parking structures, outdoor cafes, on public transportation, etc. He explained that unfortunately, panhandling was often used as a tool of deception and was fraudulent.

The public hearing was opened. DAVE BOVEE OF 424 LEWIS AVE. stated he was in agreement with the new ordinance and asked the Council to approve it tonight.

LISA HARMON OF 2815 2ND AVENUE NORTH stated she wanted to express her thanks to Councilmembers for their efforts and support. There were no other speakers. The public hearing was closed.

Councilmember Stevens moved for approval of the Staff recommendation, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.

7. PUBLIC HEARING AND SPECIAL REVIEW #842: A special review to permit an on-premise beer and wine license in a Controlled Industrial zone for the Marriott Residence Inn Hotel (currently under construction) on property described as: Lots 13A-1 and 13B, Block 3, Midland Subdivision, 5th Filing Amended and located at 956 South 25th Street West. LADS Hospitality Associates, LLC, owner. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)

Planner Aura Lindstrand reported that the special review was to permit an on-premise beer and wine license at the Marriott Residence Inn Hotel that is currently under construction. Ms. Lindstrand referenced Section 27-1503(D) which specifies that all special reviews shall comply with the following three (3) criteria and noted the proposals compliance status with regard to each criterion.

1. Complies with all requirements of this Article (27-1500).

This application complies with the requirements of the zoning regulations.

2. Is consistent with the objectives and purposes of Chapter 27 and the Growth Policy.

This application is generally consistent with the purposes of Chapter 27 with the recommended conditions of approval.

3. Is compatible with surrounding land uses or is otherwise screened and separated from adjacent land in such a way as to minimize adverse effects.

The proposed use is compatible with the surrounding uses, will be screened from existing residential properties and fits in with the local neighborhood.

She explained that the letter submitted by the applicant for the special review application states that the beer and wine will be served within the onsite restaurant and as a courtesy service to guests. Ms. Lindstrand noted that the Planning Department did not receive any comments from city departments. There are no schools, churches or public parks with playground equipment within 600 feet of this proposed location. The Little Gym, which is a fitness center for children, is located approximately 615 feet northeast of the subject property; Old Chicago Pizza is located within approximately 200 feet of the Little Gym and was approved for an all beverage license with gaming in 2005. The nearest park is Valley View Acres Subdivision Park approximately ¾ miles northeast of the subject property.

The public hearing was opened. DAVID VEETER, NO ADDRESS PROVIDED said he is one of the owners of the Marriott Residence Inn Hotel. He said he attended the meeting to answer any questions the Council might have. There were no questions. There were no other speakers. The public hearing was closed.

Councilmember Gaghen moved for approval of the Zoning Commission recommendation, seconded by Councilmember Ronquillo. On a voice vote, the motion was unanimously approved.

8. PUBLIC HEARING AND SPECIAL REVIEW #843: A special review to allow drive-in banking service in a Community Commercial and Controlled Industrial zone adjacent to a residential zone at 952 Central Avenue. Rimrock Credit Union, owner; A&E Architects, agent. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)

Planning Manager Wyeth Friday explained this is a request for a special review to allow a banking drive in service adjacent to residential zoning at 952 Central Avenue. The property is zoned Community Commercial and Controlled Industrial. The properties on the east and west are commercial properties; to the north there are baseball fields belonging to School District #2; to the south is single-family residential. The new Rimrock Credit Union building is proposed to be a 6,300 square foot building on the 1.22-acre parcel located on the southwest corner of Central Avenue and Prickett Lane and will have drive in banking as one of the services offered with the new building.

Mr. Friday noted this property was surrounded by a mixture of uses, including commercial, public and residential uses. On Central Avenue east of Rimrock Credit Union there was Car Quest Auto parts store and the former County Market was located to the west; residential uses are located to the south across the alley where the proposed drive up banking area will be. Section 27-612(b)(1) BMCC requires a special review when a drive-in service adjoins a residentially zoned property (including any location across an alley).

He noted the application also conforms to the second and third criteria. The submitted drawing with this application appears to meet all zoning requirements for setbacks and landscaping. The proposed New Rimrock Credit Union building is consistent with goals of the 2003 Growth Policy, specifically the goals of “coordinated economic development efforts that target business recruitment, retention, and expansion” and “visually appealing communities”.

Mr. Friday referenced Section 27-1503(D) which specifies that all special reviews shall comply with the following three (3) criteria and noted the compliance status for this proposal.

1. Complies with all requirements of this Article (27-1500).
This application complies with the requirements of the zoning regulations.
2. Is consistent with the objectives and purposes of Chapter 27 and the Growth Policy.

This application is generally consistent with the purposes of Chapter 27 with the recommended conditions of approval.

3. Is compatible with surrounding land uses or is otherwise screened and separated from adjacent land in such a way as to minimize adverse effects.

The proposed use is compatible with the surrounding uses, will be screened from existing residential properties and fits in with the local neighborhood.

The public hearing was opened. PAUL SIDERIUS OF 608 NORTH 29TH explained he attended the meeting as a representative for the owner. He noted that the conditions set-forth would be complied with. Mr. Siderius reported that ITEM #7 of the Conditions of Approval would not be pursued. Councilmember Boyer asked for an explanation. Mr. Siderius explained that ITEM #7 of the Conditions of Approval was where Rimrock Credit Union is to obtain a reciprocal access agreement for the proposed access between Rimrock Credit Union and the former County Market property to the west. He stated the Rimrock Credit Union and the former County Market could not come to terms as far as access on the property. Councilmember Brewster explained this would mean that the special review would not be approved. Mr. Siderius asked the Council if they could amend ITEM #7 of the Conditions of Approval. City Attorney Brent Brooks stated if that would not be a condition because of the changed circumstances it would have to be amended out of the conditions when approving the motion. There were no other speakers. The public hearing was closed.

Councilmember Ronquillo moved for approval of Special Review #843 with the recommendations of the Zoning Commission and that the Rimrock Credit Union shall obtain a reciprocal access agreement if an access is created between Rimrock Credit Union and the former County Market to the property to the West, seconded by Councilmember Jones. On a voice vote, the motion was unanimously approved.

9. PUBLIC HEARING AND SPECIAL REVIEW #844: A special review to permit the storage of vehicles used for parts in a Controlled Industrial (CI) zone on property described as an unplatted parcel in the SW¼ of Section 9, Township 1S, Range 26E and located at 2069 South Billings Blvd. Ralph Hanser, owner. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)

Planner Juliet Spaulding explained the subject property is located across the street from Hanser's existing automotive salvage and wrecker service headquarters. It is currently being utilized as a storage area for inoperable "parts" vehicles, and also has a 330'x90' parking lot along the S. Billings Blvd. frontage for Hanser's employee parking. A steel 9-foot high site-obscuring fence surrounds the perimeter of the parts vehicles parking area.

She reported that Planning staff and the City Zoning Commission had reviewed the Special Review and recommended **conditional approval**. The main reason the applicant requested this Special Review was to obtain a State Motor Vehicle Wrecking Facility License. This license is required for dealers or wrecking yard owners who pull

parts from inoperable vehicles. Under the purview of the state license, a lot owner could sell used vehicle parts from the lot and crush vehicles onsite. However, the City has the ability to place restrictions on the use of the state license. In this case, the restriction would specify that there shall be no crushing of vehicles at this site (recommended Condition #5). This condition is necessary due to the location of the property in close proximity to residential uses located to the north, east and south.

Ms. Spaulding said other conditions that are recommended to help mitigate potential impacts on the surrounding residences include that all outdoor lighting on the site shall be equipped with full cutoff shields so that no light spills onto the adjacent properties; hours of operation shall be limited to between 7:00 am and 9:00 pm; and the automobiles shall not be stacked in such a way that they are visible above the fence line. She noted also, that currently there are around 20 salvaged "semi" trailers in the storage yard. These appear above the 9-foot fence line. Staff is recommending that these be removed or somehow lowered so that they are not visible over the fence. Additionally, the sight-obscuring entry gates are to remain closed.

Ms. Spaulding said the last two recommended conditions of approval deal with the City's site development ordinance that is triggered whenever a business expands. The employee parking lot located on the front 90 feet of the property along S. Billings Blvd. is to be paved. Also storm water for the entire site shall be retained on-site unless otherwise approved by the City of Billings and/or Montana Department of Environmental Quality. She emphasized that this is important when dealing with inoperable vehicles that may leak oils or other fluids onto the ground. Approval of a storm water management plan for the site shall be obtained prior to the City's sign off on the state license.

Ms. Spaulding referenced Section 27-1503(D) which specifies that all special reviews shall comply with the following three (3) criteria and noted the status of compliance.

1. Complies with all requirements of this Article (27-1500).
This application complies with the requirements of the zoning regulations.
2. Is consistent with the objectives and purposes of Chapter 27 and the Growth Policy.
This application is generally consistent with the purposes of Chapter 27 with the recommended conditions of approval.
3. Is compatible with surrounding land uses or is otherwise screened and separated from adjacent land in such a way as to minimize adverse effects.
The proposed use is compatible with the surrounding uses, will be screened from existing residential properties and fits in with the local neighborhood.

The public hearing was opened. RALPH HANSER OF 430 SOUTH BILLINGS BLVD. explained he stores stripped vehicles and added that he wanted to diversify due to the fact that inclement weather proposes a problem. Mr. Hanser asked the Council for approval of the junk vehicle license/permit.

SCOTT HANSER of 3420 DONEGUL asked the Council if they had any questions. There were no questions. There were no other speakers. The public hearing was closed.

Councilmember Clark moved for approval of the Staff recommendation, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

10. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #802: A zone change from Agricultural Open Space (AO) to Community Commercial (CC), Residential Multi-Family Restricted (RMF-R), Residential 5000 (R-50), and Residential 7000 (R-70) on property described as: Lots 1-5, Block 1, Western Sky Subdivision and located at the southeast corner of the intersection of King Avenue West and 48th Street West. Gareld Krieg and Cal Kunkel; owners, Engineering, Inc., agent. Zoning Commission recommends approval and acceptance of the determination of the 12 criteria. (Action: approval or disapproval of Zoning Commission recommendation.)

Planner Aura Lindstrand explained the applicant was requesting to rezone Lots 1-5, Block 1, Western Sky Subdivision from Agricultural Open Space (AO) to Community Commercial (CC), Residential Multi-Family Restricted (RMF-R), Residential 5000 (R-50), and Residential 7000 (R-70). She noted it is the property owner's intent to create approximately 400 lots for commercial and mixed residential uses on the subject property.

The Zoning Commission was forwarding a recommendation of approval for this application and had based the recommendation on the 12 criteria for zone changes discussed below.

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

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

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

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

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

With the extension of the City limits and as surrounding properties develop with similar densities along this portion of King Avenue West; the proposed rezone is compatible with the character of the neighborhood. However, there are still agricultural lands and low density housing located to the north, south, and west of this property.

- *More housing and business choices with each neighborhood.*

The proposed zoning will permit commercial, multi-family, duplexes and single-family residential uses within this neighborhood.

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

The new zoning is expected to generate more traffic than current agricultural uses. A Traffic Accessibility Study (TAS) will be submitted with the subdivision application. Monetary contributions for intersection and street improvements will be determined with the subdivision review.

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

There is one access to the subdivision from King Avenue West, located adjacent to the existing farmstead. King Avenue West is a state maintained right-of-way at this location, therefore the Montana Department of Transportation (MDT) controls where accesses to properties can be located. A second access will be from 44th Street West located along the eastern border of the subdivision, which will be improved to a city street standard with curb, gutter and sidewalk for a 30-foot half width; several accesses to the subject property will be provided along this street. Three accesses are proposed along 48th Street West, which is located along the western border of the subject property. The fire department and police department have been involved with determining access to the property with both the subdivision pre-application meeting and the annexation; the accesses are adequate where proposed.

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

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

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

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

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

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

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

The proposed density for the subject property is approximately 642 residential units. This may cause an undue concentration of population in this portion of Billings until surrounding properties further develop.

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

Transportation: A TAS will be submitted with the subdivision. Any improvements identified by the TAS and the City

Engineering Department will be required with the subdivision approval.

Water and Sewer: The applicant is in the process of annexing the property. Water and sewer lines will be located within King Avenue West and will be extended from the east by the applicant.

Schools and Parks: The proposed zoning could result in an overcrowding of West High School which is currently over capacity. The middle and elementary schools that serve this property have capacity for additional students. Further review of the parks and schools will be completed with the subdivision.

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

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

The proposed zoning will be similar in character with the adjacent commercial to the east. However, the properties to the north, south, and west are still rural in nature.

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

The subject property is suitable for the requested zoning district.

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

The applicant has proposed the RMF-R and CC zoning along King Avenue West, which is a principle arterial, and along the eastern portion of the property. The lower density residential uses will be located along the western and southern borders to create a buffer area between the high densities and the adjacent single-family residences and agricultural land.

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

The proposed zoning will permit more dense development than what currently exists in the area. However, the applicant has proposed zoning that complies with the West Billings Plan, which does identify the intersection of King Avenue West and 48th Street West as a Neighborhood Center with approximately 5-acres of commercial at each corner of the intersection. The areas surrounding the Neighborhood Center are proposed as residential development.

The public hearing was opened. RICK LEUTHHOLD, Engineering, Inc. stated he wanted to assure the Council that all criteria would be met. He said the units were a mixture of three (3) and four (4) plexes.

SPENCER THUNELL OF 1777 SUN PEAK DRIVE, requested the approval of the Council on this item.

JOE WHITE OF 926 NORTH 30TH STREET stated he opposed this development. Mr. White suggested the Council do an agricultural study. There were no other speakers. The public hearing was closed.

Councilmember Clark moved for approval of the Zoning Commission recommendation, seconded by Councilmember Ronquillo. On a voice vote, the motion was unanimously approved.

11. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #803: A zone change from Agricultural-Open Space (AO) and Residential-15,000 (R-150) to Public (P) on a 38-acre parcel located at the northwest corner of 54th St. West and Colton Blvd. City of Billings, owner; Parks, Recreation and Public Lands Department, agent. Zoning Commission recommends approval and acceptance of the determination of the 12 criteria. (Action: approval or disapproval of Zoning Commission recommendation.)

Planner Juliet Spalding stated this is a zone change request from Agricultural Open Space and Residential-15,000 to Public on a 38-acre parcel of land owned by the City of Billings. The property was donated to the City Parks, Recreation and Public Lands Department (PRPL) in 2002 for the purposes of establishing a future regional park on the site to be known as Cottonwood Park. In addition, a portion of the property will be deeded to School District #2 (SD2) for a future elementary school.

She noted the subject property is located at the northwest corner of 54th St. West and Colton Blvd. Since the City accepted the property in 2002, the land has remained vacant, and the area around it (specifically to the south and east) has begun to develop at urban densities. PRPL and SD2 have decided that it is now time to start the master planning process on the park and school site, so they have requested that the property be annexed into the City limits, zoned for public use, and subdivided to separate the school site from the parkland. The annexation request will be presented to the Council concurrently with the Zone Change this evening and the subdivision will follow in the coming months.

Ms. Spalding noted the Planning Department reviewed this application and recommended approval based on the attached twelve (12) criteria for zone changes. The new zoning will facilitate the development of a much needed regional park in this area, as well as allow SD2 to proceed with the request of the voters for a mill levy to help fund a new elementary school on the site.

Ms. Spalding stated the City Council may approve, deny, delay or allow withdrawal of the zone change. All zone changes must be evaluated utilizing the 12 criteria set forth within Section 76-2-304, MCA. The 12 criteria and the Zoning Commission's determinations are listed below.

1. *Is the new zoning designed in accordance with the Growth Policy?*
The new zoning will support many of the land use and open space and recreation goals and objectives of the Growth Policy. The proposed zoning will allow the land to be used for public facilities only, which will serve the recreational and educational needs of the citizens in the surrounding area.
2. *Is the new zoning designed to lessen congestion in the streets?*
Simply rezoning the site to Public will not increase street congestion; development will. As with any development of the property, traffic to and from the site will increase. However, a Traffic Accessibility Study (TAS) will be completed upon site development to identify necessary mitigation measures for the increased traffic flow.
3. *Will the new zoning secure safety from fire, panic and other dangers?*
This property has public street frontage on Colton Blvd. and 54th St. West. The property is served by the City Fire Department and Police Departments which will soon be located at the new fire station at 54th St. West and Grand Ave. The property will also be served by City water and sewer services when development occurs. No public health or safety issues have been raised with this application.
4. *Will the new zoning promote health and general welfare?*
The new zoning will allow the development of a future school and regional park. It will definitely promote health and general welfare of the citizens of the City and County who use these facilities.
5. *Will the new zoning provide adequate light and air?*
The new zoning provides for sufficient setbacks for structures to allow for adequate light and air.
6. *Will the new zoning prevent overcrowding of land?*
The new zoning will allow the development of a future school and regional park. This will provide large amounts of open space and recreational facilities for the surrounding area.
7. *Will the new zoning avoid undue concentration of population?*
No residences or businesses are proposed on the site with the new zoning. It should not provide for undue concentrations of people.
8. *Will the new zoning facilitate the adequate provisions of transportation, water, sewerage, schools, parks, fire, police, and other public requirements?*
All of the public requirements will be provided as necessary, as the site develops.
9. *Does the new zoning give reasonable consideration to the character of the district?*

The new zoning will compliment the changing character of the area. In recent years, areas to the south and east have been zoned and subdivided for urban density housing and commercial developments. A regional park and school use will be a perfect added amenity to the area.

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

The subject property is suitable for the requested zoning district.

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

The new zoning will conserve the value of the surrounding land and property.

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

Yes, the new zoning will encourage the most appropriate use of this land in the area. A regional park for Billings' west end and the surrounding county area has been planned for many years. This site will become a valuable amenity to the neighborhood as it develops.

The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Boyer moved for approval of the Zoning Commission recommendation, seconded by Councilmember Veis. On a voice vote, the motion was unanimously approved.

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

There were no speakers.

MINUTES DISCUSSION

Mayor Tussing and Councilmembers held a general discussion on any additions or corrections to the minutes of 3/26/07 and 4/9/07.

Mayor Tussing made an amended motion to remove the words "as distributed" or at least as they are attributed to Councilmember Veis if he in fact did not say that then attribute it to Mayor Tussing or the Councilmember who did say it. APPROVED.

Mayor Tussing made an amended motion to approve the minutes of March 26, 2007 meeting as distributed and the minutes of the April 9, 2007 meeting as distributed with the exception to change 35 South Crestwood to 401-403 Sharron Lane. APPROVED.

Mayor Tussing moved to reconsider as recommended by Staff which was ITEM #4 on the April 9, 2007 agenda that the Council reconsider WO: 05-02 which would include discussion about 2033 Main Street on May 29, 2007, seconded by Councilmember Clark. On a voice vote, the motion was approved. Councilmembers Veis and Boyer voted "no".

Council Initiatives

- **TUSSING:** Moved to RECONSIDER Item 4 of the April 9, 2007, agenda -- Work Order 05-02, 2005-2006 Miscellaneous/Developer-Related Improvements, at the May 29, 2007 meeting. APPROVED
 - **TUSSING:** Amendment to remove the words “as distributed” or at least as they are attributed to Councilmember Veis if he in fact did not say that then attribute it to me or someone who did say it. APPROVED
- TUSSING:** Moved and seconded that the notification will be made to the 200 – any – of the property owners that will be affected by this reconsideration. On a voice vote, the motion was approved. Councilmembers Stevens, Veis and Brewster voted “no”.

ADJOURN -- The meeting was adjourned at 10:25 p.m.

THE CITY OF BILLINGS:

By: _____
Ron Tussing, Mayor

ATTEST:

Cam Trudeau, Deputy City Clerk