

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

January 28, 2008

The Billings City Council met in regular session in the Council Chambers 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 Ulledalen gave the invocation.

ROLL CALL – Councilmembers present on roll call were: Ronquillo, Gaghen, Pitman, Stevens, Veis, Ruegamer, McCall, and Ulledalen. Councilmember Clark was excused.

ADDITION TO AGENDA - Mayor Tussing moved that the approval of Mark Astle to fill the vacant seat in Ward V be added to the agenda directly following the Public Comment period, seconded by Councilmember Veis. On a voice vote, the motion was unanimously approved.

MINUTES – January 14, 2008, approved as distributed.

COURTESIES:

- Councilmember Ruegamer advised that Councilmember McCall recently received national recognition for her commitment to children and families in Montana. He said the Yellowstone Boys and Girls Ranch nominated Ms. McCall for the advocacy award. He said the award was presented by the Alliance for Children and Families.
- Mayor Tussing advised that Councilmember McCall had also been named that week's Rotarian of the Week.
- Mayor Tussing advised the Branding Initiative that the City was participating in was kicked off that morning, and there would be a link on the City's website of www.brandbillings.com for citizen input.

PROCLAMATIONS – None

ADMINISTRATOR REPORTS:

- City Administrator Tina Volek reminded Council of the Agenda Review Meeting on Tuesday, February 29th, at 5:30 p.m., in the City Hall Conference Room.
- Ms. Volek referenced a set of minutes distributed that evening for Agenda 4a, the Eagle View Subdivision. She noted Items 4a and 4b both involved Eagle View Subdivision, and 4a was the needed zone change for the plat approval of Item 4b. The items were filed in the Ex-Parte Notebook for public reference.

PUBLIC COMMENT on "NON-PUBLIC HEARING" Agenda Items 1, 4b, and 7 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.)

There were no speakers, and the public comment period was closed.

Mayor Tussing nominated Mark Astle to fill the vacant Ward V council seat, seconded by Councilmember Ruegamer. On a voice vote, the nomination was unanimously approved. Mayor Tussing asked Mr. Astle to come forward to receive the Oath of Office and introduce any family members present. Mr. Astle introduced his son, Joe Astle, and advised his wife was out of town.

The Oath of Office was administered by the City Clerk and signed by Mr. Astle. City Attorney Brent Brooks left the Council Chambers to file the Oath of Office with the Yellowstone County Election Commissioner, who stayed late so the Oath of Office would be on file, allowing Mr. Astle to officially take action at the meeting that evening.

CONSENT AGENDA:

1. A. Mayor Tussing recommends that Council confirm the following appointments:

	Name	Board/Commission	Term	
1.	Steven Tostenrud	Aviation & Transit	01/28/08	12/31/11
2.	Shawn Nelson	Board of Appeals	01/28/08	12/31/11
3.	No Applications	Board of Appeals	01/28/08	12/31/11
4.	*Robert Merchant	Energy & Conservation Commission	01/28/08	12/31/10
5.	*No Applications	Human Relations Commission	01/28/08	12/31/10
6.	*No Applications	Human Relations Commission	01/28/08	12/31/10
7.	Steve Bruggeman	Parking Advisory Board	01/28/08	12/31/11
8.	Don Olson	Parking Advisory Board	01/28/08	12/31/11
9.	*Nick Blake	Parking Advisory Board	01/28/08	12/31/09
10.	No Applications	Public Utilities Board	01/28/08	12/31/11

- 4. Unexpired term of Joseph Keel
- 5. Unexpired term of Jean Smith
- 6. Unexpired term of Shoshana Tom
- 9. Unexpired term of Pamela Godfrey

B. Bid Awards:

- (1) **Airport Operations Center Overhead Door Replacement.**
(Opened 1/15/08) Recommend Alpha Overhead Doors, \$36,399.00.
- (2) **Replacement of Airport Terminal Concourse Fan Coil**

Units. (Opened 1/15/08) Recommend Accent Air, \$57,835.00.

C. Contract with Maximus for Cost of Services Study, Phase I, not to exceed \$21,500.00.

D. Contract Amendment #2, W.O. 05-20 Aronson Avenue. HKM Engineering, Inc., \$215,987.00.

E. Amendment #2, Scheduled Airline Operating Agreement with Horizon Air, Northwest Airlines, SkyWest Airlines, and United Airlines through 6/30/09.

F. Acknowledge Receipt of Petition to Annex #08-05: Lot 1, Sylvia Subdivision, 1094 Lincoln Lane, generally located on the west side of Lincoln Lane, north of the Target Shopping Center in Billings Heights, First Citizens Bank, owner and petitioner; and set a public hearing date for 2/11/08.

G. Acknowledge Receipt of Petition to Vacate portions of S. 24th Street, 4th Avenue S., 5th Avenue S., 6th Avenue S., and the alleys within Blocks 173 and 179, Billings Old Town, for \$95,000.00; ConocoPhillips, petitioner; and set a public hearing date for 2/25/08.

H. Right-of-Way Easement with Northwestern Energy for a 10-foot area of Lot 6 and a 10-foot area of Lot 7, Block 110, Billings Original Town, generally located just south of the Crowne Plaza Hotel and the downtown post office, \$1,980.00.

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

(1) Portion of Lot 14, Josephine Subdivision, Larry C. Hoban and Donna Hoban, at no cost to the City.

(2) Parcel 34: Portion of Tract 1, C/S 979, Michael S. Eastwood Trust, \$23,950.00.

J. Acceptance of Donation from High Plains Psychiatric Associates, PC - Dr. Liz Walter and Dr. Ann Rathe, to the Animal Shelter Building Improvements Fund, \$500.00.

K. Acceptance of Donation from Montana Dakota Utilities of four complete workstations to the Police Substation located at Fire Station #7.

L. Resolution of Intent #08-18669 to create SID 1383, Cherry Hills Road Improvements (water, sanitary sewer, storm drain, curb/gutter, street), and set a public hearing date for 2/25/08.

M. Resolution 308-18670 amending Resolution #07-18655 for Annexation #07-25, correcting an error in the legal description.

N. Second/Final Reading Ordinance #08-5450 for Zone Change #828: A zone change from Residential 9600 to Residential Professional on Lot 3, Block 1, Rocky Village Subdivision, generally located on the northwest corner of Poly Drive and 17th Street West. Ric Heldt, A & E Architects, representative.

O. Preliminary Plat of Lot 1, Block 1, Billings Clinic Subdivision, generally located between North 28th and 29th Streets and 7th and 9th Avenues North; conditional approval of the preliminary plat and adoption of the Findings of Fact.

P. Final Plat of Amended Lot 4, Block 2, Goodman Subdivision.

Q. Bills and Payroll

- (1) December 21 and 27, 2007
- (2) January 4, 2008

There were no separations.

Councilmember McCall moved for approval of the Consent Agenda, seconded by Councilmember Ronquillo.

Councilmember Veis referenced the vacancies in Consent Agenda Item 1A1, and asked if applications were still being accepted. Mayor Tussing advised that appointments to the boards and commissions were made in January and July only and unless a board or commission did not have enough members to constitute a quorum, the positions would remain vacant.

On a voice vote, the motion was unanimously approved.

REGULAR AGENDA:

2. PUBLIC HEARING AND RESOLUTION approving and adopting second quarter budget amendments for Fiscal Year 2007/2008. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) City Administrator Volek advised there was no presentation, but staff was available for questions.

Councilmember Veis noted that some of the budget improvements under the Public Works expenditures for Aronson Avenue, Alkali Creek Road, Jackson Street Phase I, and Highland School Sidewalks did not have revenue to go with them and asked if the funding would be spent from reserves.

Public Works Director Dave Mumford advised most of the expenditures were transfers between projects. He said, for example, the expenditure of \$180,000 was being transferred from Alkali Creek Road to Aronson Avenue. Councilmember Veis asked if part of the \$220,000 for Aronson Avenue was from Alkali Creek Road. Mr. Mumford said that was correct. He said the cost of Aronson Avenue had exceeded

what was anticipated during the bidding; and because the Alkali Creek Road project was postponed due to the slope stabilization, they re-prioritized the funding to keep the Aronson Avenue project moving forward. Mr. Mumford advised there was nothing coming out of reserves, and the expenditures were all within projects currently budgeted.

Councilmember Veis questioned why the \$84,000 listed for SID 1370 did not have a matching expenditure like the other two SIDs listed. Mr. Mumford advised it would be a City contribution. Councilmember Veis asked if it had been previously budgeted. Mr. Mumford said it was previously budgeted. He said he knew there had been transfers within the budget between projects to cover expenses, but he could not explain how it was set up and why it was called an expenditure without a revenue. Mr. Mumford offered to come back to the next meeting with more clarity. Mr. Mumford asked Assistant City Administrator Bruce McCandless if he could answer Councilmember Veis' question. Mr. McCandless offered to come back the next meeting with more clarity. Councilmember Veis said he would appreciate a better explanation.

Councilmember Ulledalen said it looked to him that a couple of columns on the spreadsheet were "scrunched" during formatting, and they did not make sense from an accounting standpoint; but he understood generally what was going on. Mr. Mumford said that made sense to him, and he was beginning to wonder if some of the amounts were in the wrong columns.

Councilmember Stevens asked if the fund numbers had an associated name. Mr. Mumford said they had specific names and went to specific funding sources such as Street Maintenance, Arterial Fee, Utilities, etc. Councilmember Stevens said she felt it would be helpful if the name of the fund was also listed. City Administrator Volek advised Staff could make arrangements to include the fund names.

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

Councilmember Veis moved to delay approval of the resolution for the second quarter budget amendments for two weeks, seconded by Councilmember Ronquillo.

Mayor Tussing advised he would recuse himself from the vote because his wife was involved in some of the projects.

Councilmember Ruegamer asked if there would be any ramifications, such as delay of projects, by delaying the vote. Mr. McCandless advised there would be no negative consequences for delaying action for two weeks.

City Administrator Volek noted Councilmember Astle's Oath of Office had been certified by the Election Commissioner and returned, so he was eligible to vote.

On a voice vote, the motion to delay was approved 8 to 1. Councilmember Ulledalen voted 'no'.

3. PUBLIC HEARING AND RESOLUTION 08-18671 FOR ANNEXATION #08-02: 54 acres legally described as Tract 2-B-1, Certificate of Survey 1121, generally located west of Washington Street, south of Interstate 90, and north

of the Yellowstone River, King Business Park LLC; Richard Dorn, Samuel Rankin, and Hannah Elletson, owners and petitioners. Staff recommends conditional approval. (Action: approval or disapproval of Staff recommendation.) City Administrator Volek advised there was no presentation, but Staff was available for questions.

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

Councilmember Veis moved for approval of Item 3, seconded by Councilmember Ronquillo. On a voice vote, the motion was unanimously approved.

4. (a) PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #827: (Postponed from 1/14/08) A zone change from Residential 9600 to Residential 7000 on a 44,644 square-foot property located north of Saturn Place in the Billings Heights. Dorn Property LLC, owner; Engineering, Inc., agent. Zoning Commission recommends approval and adoption of the 12 Zoning Commission Determinations. (Action: approval or disapproval of Zoning Commission recommendation.)

Neighborhood Planner Lora Mattox advised that City Council delayed action on the zone change request at the January 14, 2008, meeting to give the applicant the opportunity to hold an additional neighborhood meeting within the vicinity of the subject project. She said the original neighborhood meeting was held on October 10, 2007, at the office of Engineering, Inc. in the TransTech Center, and the additional neighborhood meeting was held on January 24, 2008, at the east end of Almadin Lane. Ms. Mattox advised three residents attended the second meeting, and the minutes and sign-in sheet had been distributed to Council that evening for review. Ms. Mattox restated the applicant intended to subdivide the property into five lots ranging in size from 7,100 to 9,800 square feet.

Ms. Mattox advised the Zoning Commission recommended approval of the zone change based on the following 12 criteria.

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

The proposed development is consistent with the following goals and objectives of the 2003 Growth Policy:

- *Predictable land use decisions that are consistent with neighborhood character and land use patterns. (Land Use Element #1, pg. 5)*

The proposed land use is consistent with the existing land uses adjacent to the proposed zone change property.

- *New developments that are sensitive to and compatible with the character of adjacent City neighborhoods and County townsites. (Land Use Element #2, pg. 6)*

The proposed zone change would allow a single-family or two-family subdivision with similar lot sizes and residential densities to those existing developments to the south and east.

- *More housing and business choices within each neighborhood. (Land Use Element #6, pg. 6)*

The developer proposes to offer an affordable housing supply similar to what is currently developed adjacent to this property.

2. *Is the new zoning designed to lessen congestion in the streets?*
The development should not negatively impact the local streets in the area.
3. *Will the new zoning secure safety from fire, panic and other dangers?*
The nearest fire station is located nearby at 1601 St. Andrew's Drive. 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 would allow single-family or two-family residences to be built with City services. No public health or safety issues have been raised with this application.
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 would allow the development of single-family homes on lots that are a minimum of 7,000 square feet or two-family homes on lots that are a minimum of 9,600 square feet. The proposed site plan indicates that the lots will range in size from 7,147 square feet to 9,778 square feet. It also indicates that 5 lots are proposed for the property. At the time of development, setbacks, lot coverage, height, and other requirements will help to prevent overcrowding of the land.
7. *Will the new zoning avoid undue concentration of population?*
The new zoning would allow the development of single family homes on lots that are a minimum of 7,000 square feet or two-family homes on lots that are a minimum of 9,600 square feet. The R-70 zoning would allow for approximately 6 single family homes or approximately 4 two-family homes. The R-70 zoning is set up to avoid undue concentrations of population.
8. *Will the new zoning facilitate the adequate provisions of transportation, water, sewerage, schools, parks, fire, police, and other public requirements?*
Transportation: The development should not negatively impact the local streets in the area.

Water and Sewerage: The City will provide water and sewer service to the property and has adequate facilities to serve this property.

Schools and Parks: There should be no negative effect on parks or schools from this rezoning.

Fire and Police: The property is served by existing services and there should be no effect on these services from the new zoning.

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

Staff is comfortable that the new zoning does give reasonable consideration to the character of the surrounding community in that it would allow development of similarly-sized single and two-family lots. The developer did host a neighborhood meeting and invited surrounding property owners. No property owners attended this meeting.

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

The subject property is located in an area of R-96 and R-70 zoning districts. The proposal is suitable for the requested zoning district.

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

As noted in #9 above, the new zoning would seem to conserve the value of the similarly priced residences to the south and east of the subject 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.

Mayor Tussing asked if the public hearing, as well as the vote, had been continued from the previous meeting. City Administrator Volek advised the public hearing had been re-advertised, so it would need to be held.

The public hearing was opened.

- **Rhonda Moore, 1731 St. Andrews Drive**, said she was the seller of the subject property and had she realized the zone change was planned, she probably would not have sold the property. She said she was under the impression the land would remain zoned R9600. Ms. Moore said when Mr. Dorn's agent approached her about the sale, she asked the agent what the plans were for the property, and the agent said they did not have a current plan. Ms. Moore said the agent asked her what she would like to see, and she told her she did not want to see a "bunch of houses stacked up back there" and preferred green space or a common area for the neighbors. Ms.

Moore said she originally thought a road was intended from Venus Circle through the subject property to the next lot but found out the owner of the adjacent property to the north decided not to sell. She said she felt that was why the developer decided not to put the road in, to add more homes, and cut off the access to the other side of the property. She said doing it that way meant more profit for the developer. Ms. Moore said she was a member of Leadership Billings with the Chamber of Commerce, and Councilmember Veis attended their December meeting. She said Councilmember Veis told them that the Council always took into consideration the voice of the citizens when they made a decision, and she hoped the Council would consider her request to vote no.

Councilmember Ulledalen asked Ms. Moore if she considered keeping the land and allowing it to remain open space. Ms. Moore said it was a hard decision for her to sell, but she gave in and sold not knowing the developer planned to stack five houses on the property.

Councilmember Stevens asked Ms. Moore if the ditch ran through the property and asked how to access Tract 1A above the tract she sold. Ms. Moore said the people who lived there got in through their backyard. She said the bottom of Venus Circle right off of East Almadin Lane was originally supposed to be connected to Venus Circle at the top, which was why she thought a road would be built with four homes instead of five. Councilmember Stevens asked Ms. Moore if she lived directly adjacent to the property she sold. Ms. Moore said she lived just west of it.

- **Rick Dorn**, said he was the buyer and developer of the subject property. Mr. Dorn said at the time he developed Eagle Ridge, which was the tract immediately to the south, he approached Ms. Moore about buying the property to finish the tract so it would conform with the rest of the neighborhood zoned R7000. Mr. Dorn said he talked to the owner of the neighboring property to the north, and they were not interested in selling their property. He said they chose to make the lots R7000 to conform with the rest of the neighborhood in Eagle Ridge. Mr. Dorn said he felt it would make a nice finish to the development.

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

Councilmember Stevens moved for approval of Zone Change #827, seconded by Councilmember Ronquillo.

Councilmember Veis told Ms. Moore he appreciated her coming to the meeting. He said when dealing with land use issues, Council needed a good reason to go against the alternatives provided by the Planning Staff, and it was tough to find anything that was contrary to what Staff had provided.

On a voice vote, the motion was unanimously approved.

(b) PRELIMINARY PLAT of Eagle View Subdivision, approximately 1.02 acres of land located north of Saturn Drive in the Billings Heights. Dorn Property LLC, owner; Engineering, Inc., representative. Staff recommends conditional approval of the preliminary plat and adoption of the Findings of Fact. (Action: approval or disapproval of Staff recommendation.) City Administrator Volek advised there was no presentation, but staff was available for questions.

Councilmember Stevens moved for approval of the preliminary plat of Eagle View Subdivision, seconded by Councilmember Ruegamer.

Councilmember Pitman thanked the developer for holding the neighborhood meeting in the neighborhood. He said the point was to receive input from the neighbors, and the meeting was very effective.

On a voice vote, the motion was unanimously approved.

5. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #830: A zone change from Residential 7,000 to Residential 6,000 on a 15,000 square foot vacant parcel legally described as the North Fraction 100 feet by 150 feet in Block 305 Billings, 1st Addition, and Sunnyside Subdivision, 3rd Filing, generally located on the southwest corner of the intersection of North 22nd Street and 10th Avenue North. Steve Kerns, owner/applicant. Zoning Commission recommends approval and adoption of the 12 Zoning Commission Determinations. (Action: approval or disapproval of Zoning Commission recommendation.) Planner II Aura Lindstrand began her PowerPoint presentation showing the location of the subject property. She said it was the intent of the property owner to build two duplexes on the property. She said under R6000, the property owner would only need to obtain a building permit for the duplexes and would not need to have a Special Review. Ms. Lindstrand indicated if anything above a duplex was built, a Special Review and a Public Hearing would be required. She said a neighborhood meeting was held at the North Park Community Center on November 7, 2007, and she and the owner were the only people present. She advised the Zoning Commission conducted a public hearing on January 2, 2008, and recommended approval on a 5 to 0 vote based on the following 12 criteria.

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

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

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

The proposed duplexes for this property would be consistent with the surrounding residential properties. The proposed use will also be in conformance with the North Park Neighborhood Plan.

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

The proposed zoning will be compatible with the surrounding single-family residential uses and duplexes.

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

The proposed zoning will allow for more housing choices in this area.

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

The proposed zoning is expected to generate more traffic than the current vacant use. Developing the site under R-60 zoning district with two duplexes would generate approximately twice the traffic generated by developing the parcel for two single family units or a two-family unit as allowed by the R-70 zone. Both North 22nd Street and 10 Avenue North have been constructed to city standards and can handle additional traffic created by this development.

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

The lot has public street frontage and is served by the City Fire Department. The front setback requirement for the R-60 zone is 15 feet and the R-70 front setback is 20 feet. The allowable height and lot coverage in the R-60 are 34 feet and 40% respectively. In the R-70 zone, the height and lot coverage are 30 feet and 30%. The increased bulk and height in the R-60 should not effect the provision of emergency services to the lot.

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

The proposed zoning would allow for two duplexes on the lot and should not have an effect on the general health and welfare of surrounding properties.

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

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

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

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

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

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

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

Transportation: The new zoning will increase the traffic generated from this site but the adjacent streets are designed to handle the volume of traffic this use may generate.

Water and Sewer: The City has adequate facilities to serve this property.

Schools and Parks: This proposed re-zone should have no substantial effect on schools or parks.

Fire and Police: The subject property is currently served by the City of Billings fire and police departments.

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 residential uses.

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 should not have significant effect on the value of residential buildings in the area.

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

The proposed zoning will permit single-family residences and duplexes as an outright use. Any building containing three (triplexes) or more units will require a special review.

Councilmember Stevens asked if the subject lot had always been vacant. Ms. Lindstrand said she believed so. She said in 2004 the property owner

requested a zone change, and staff recommended denial at that time because the owner was proposing multi-family uses on the property.

Councilmember Astle asked for clarification on the number of duplexes the property owner planned to build. Ms. Lindstrand confirmed there would be two duplexes built.

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

Councilmember Pitman moved for approval of Zone Change #830, seconded by Councilmember Ronquillo. On a voice vote, the motion was unanimously approved.

6. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #831: A zone change from Controlled Industrial to Central Business District in an area with general boundaries from the east side of North 25th Street to North 20th Street, and the south side of 6th Avenue North generally south to the railroad right-of-way. Zoning Commission recommends denial based on the determinations of the 12 criteria. (Action: approval or disapproval of Zoning Commission recommendation.)

Planner I Dave Green advised the item was a council-initiated zone change for an area located in an older part of Billings. He began his PowerPoint presentation showing the property for the proposed zone change and noting the current zoning of the surrounding properties. Mr. Green advised staff visited the site to determine the effects the re-zoning would have on existing buildings and businesses. He said they found the area included business offices, apartments and houses, storage buildings, open outdoor storage, the Salvation Army, an auto repair facility, a site for a proposed carwash, and other businesses of similar nature. Mr. Green indicated the current multiple homes on a single lot and the use of open outdoor storage would become non-conforming with the proposed zone change. Mr. Green advised in Central Business District zoning an entire lot could be covered by a building; there were no required setbacks; no maximum height requirements; no required parking; no required landscaping; and no open storage, manufacturing, car lots, or outdoor sales lots of any kind would be allowed. Mr. Green advised the Zoning Commission held a public hearing on January 2, 2008. He said a representative from the Billings Industrial Revitalization District (BIRD) spoke at the public hearing in opposition to the zone change stating the zone change was premature; and there was no master plan or any guidance provided for the zone change. Mr. Green advised the representative stated the BIRD was currently working on a master plan and matching funds. He said staff was advised that day the BIRD was short \$7,000 of the \$100,000 needed to match funds. Mr. Green said other concerns were the lack of a master plan that would result in additional sporadic zoning that would create a hodgepodge of uses and set a precedent for additional zone change requests to accommodate building issues. Mr. Green advised the Zoning Commission recommended denial based on the following 12 criteria.

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

The proposed zone change 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)*

The properties in the proposed expansion of the CBD are in an area of Billings that has experienced decline over the past years. The proposed zone change will remove some restrictions to help encourage redevelopment that should promote more growth in the area to revitalize the neighborhood.

- *Coordinated economic development efforts that target business recruitment, retention, and expansion. (Economic Development Goal, page 6)*

With the proposed zone change it will encourage more business recruitment in the area and encourage expansion of existing businesses within the existing neighborhood.

- *An economically and culturally vibrant Downtown Billings. (Economic Development Goal, page 7)*

The proposed zoning accommodates more flexible development and will promote economic development of this portion of Downtown Billings.

The proposed zone change is generally inconsistent with the following goals of the Growth Policy:

- *Contiguous development focused in and around existing population centers separated by open space. (Land Use Element Goal, page 6)*

The proposed zoning will focus development in and around existing population centers but CBD zoning does not require landscaping or building setbacks from property lines so it does not encourage open space.

- *Attractive and accessible communities. (Economic Development Goal, page 7)*

While the proposed zoning does “Encourage new businesses to locate in Billings” and “Convey a business-friendly attitude”, there are no requirements for building setbacks or landscaping which may not increase the visual appeal of the neighborhood.

- *Visually appealing communities (Aesthetics Goal, page 7)*

The proposed zoning may limit the visual appeal of the neighborhood because there are no requirements for building setbacks from property lines or landscaping to soften the edges of the lot or the hard surfaces of a building façade. On a principle arterial street with a speed limit of 35 it may be less appealing to walk on a sidewalk between a building front and higher speed traffic. With no landscape to soften building lots or street frontage it is not visually appealing or inviting.

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

The new zoning will have no effect on the current traffic on the streets. With future changes and development in the proposed CBD zoning, parking may become an issue.

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

Because the area is already developed, the safety issues of the existing neighborhood will not change with the proposed zone change. Future redevelopment of the area will address these issues with applicable zoning codes.

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

Because the area is already developed, the health and general welfare of the area will not change with this zone change. Future redevelopment of the area will address these issues.

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

Because the area is already developed, adequate light and air in the area will not change with this zone change. Future redevelopment of the area with CBD zoning may reduce the light and open space areas. CBD zoning allows buildings to cover the entire lot and there are no requirements for landscaping. With CBD zoning allowances, development may reduce light and open space in this area.

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

CBD zoning allows for the entire lot to be covered by a structure, and there are no height restrictions. This zoning is intended for very high density. With the right developments the area can be developed to not cause overcrowding of land.

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

The proposed zoning is generally for commercial uses. It does allow for residential uses but these are generally over the commercial uses in multi-story

buildings. Existing single family residential uses in the proposed CBD zoning are there because they were built before current zoning.

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

Transportation: Traffic patterns are already established in this neighborhood. Any future large development would be expected to submit a TAS.

Water and Sewer: All water and sewer services are currently in place in this neighborhood and in some areas most likely need to be updated.

Schools and Parks: The proposed CBD zoning is not required to contribute park land and will have minimum to no effect on the school system.

Fire and Police: The subject property is currently served by the City of Billings fire and police departments.

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

The proposed zoning will be alike in character with the current adjacent zoning as it is used now. With time and redevelopment the character could change with more dense development of the neighborhood within the area of this zone change.

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. The area of the proposed zone change is an area where redevelopment could be encouraged along a principle arterial street. The Northpark neighborhood plan visualizes this area as a commercial corridor along 6th Avenue North which is a principle arterial.

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

The proposed zoning will conserve the value of existing buildings and in some instances increase the value because some lots currently have nonconforming uses on them. With the possibility of future redevelopment value of buildings may increase.

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

The proposed zoning will permit redevelopment of the area with a minimal amount of restrictions to the developments compared to other commercial and industrial zoning districts. It will also provide tax revenue to the City of Billings and add to the overall economic vitality of the neighborhood.

Mr. Green advised one of the reasons the Zoning Commission recommended denial was that a zone change must be made in accordance with growth policies. He said the Growth Policy recommended a Neighborhood Plan or Urban Renewal Plan be used to address zoning changes and different land uses. Mr. Green said the Urban Renewal Plan for the area deferred dealing with land use issues until a master plan could be developed. He said the East TIF District that was created in 2006 specifically addressed the urban renewal and the need for a master plan.

Councilmember Stevens asked City Administrator Volek about a past Council initiative to review parking issues and look at Central Business District zoning across the entire area. Ms. Volek acknowledged the initiative and advised Staff had begun to work on it. Councilmember Stevens asked how the zoning request affected or tied in with the initiative. Ms. Volek advised there would be an ordinance change; and if Council approved the current zone change request, it could create legal, non-conforming use because the change had been approved prior to the changes to the ordinance. Councilmember Stevens also asked about renaissance-type laws. Ms. Volek advised the whole situation was being looked at. She said many of the lots were developed when properties were in the County. She said the County did not have the same setback requirements as the City, and Staff was looking at ways to creatively address some of the issues. Councilmember Stevens asked how everything would tie in with the Master Plan the BIRD was working on and said she felt people were going in different directions and not communicating with each other. Ms. Volek asked Planning Director Candi Beaudry to address Councilmember Stevens' questions and comments.

Ms. Beaudry advised there had been communication between the parties. She said they expected the Master Plan to outline ideal development standards for the area recognizing that adaptive re-use of buildings needed to be taken into consideration, there were limitations due to infrastructure, and there were other unique issues not common in other parts of Billings. Ms. Beaudry said the area would probably have its own customized site development standards. She said they would be working with BIRD through the master planning process. She advised they had already formed a development review committee to assess the current area and offer modification recommendations.

Councilmember Stevens asked if approving the zone change request would carve out an area and make it an exception unless it conformed. Ms. Beaudry said approval would change the zoning but not any of the site development standards. She said the Master Plan could recommend a different zoning district or a whole

different style of zoning that addressed performance standards or form-based zoning instead of just land uses.

Mayor Tussing said it appeared that the Salvation Army was the main issue in the zone change and asked if it would be possible for the Salvation Army to request a variance instead of changing the whole area. Ms. Beaudry said Staff had not talked directly to the Salvation Army; but it was her understanding the Salvation Army could not meet on-site parking standards, and a variance from the standards could be requested. She said it would then be up to the Council to make a decision on the variance request. Mayor Tussing confirmed a variance would be a possibility to solve the Salvation Army's issue without changing the entire area. Ms. Beaudry said that was correct, and it would isolate the issue of on-site parking for the Salvation Army property, as opposed to effecting multiple properties with the zone change.

City Administrator Volek advised the Salvation Army would need to make application for a variance, another public hearing would be held, and Council would then move forward with the variance request.

Councilmember Ruegamer asked who paid for master plans. Ms. Beaudry advised they were usually done in-house. Councilmember Ruegamer asked if the master plan was being done for free. Ms. Beaudry said it was being created through an Economic Development Agency Grant, and the grant had a 50% match.

Councilmember Veis asked if there were time restrictions placed on a variance for parking or if it ran with the land. Ms. Beaudry advised it ran with the land in perpetuity.

Councilmember Astle asked how long it would be before the Master Plan would be completed. Ms. Beaudry said they expected to start the master planning process this year. She said it required a lot of public involvement, staff work, and work from other individuals. She said she would estimate two years before a Master Plan would be adopted.

Councilmember McCall asked Ms. Beaudry if the BIRD would be supportive of a variance. Ms. Beaudry said she was not aware of their preferences.

Councilmember Ulledalen said he understood the original initiative was to bring forward ideas that would alleviate the limited parking issue under the current zoning and not move forward with a broad-based re-zoning of a large area. Ms. Beaudry said she spoke with former Councilmember Brewster in an attempt to understand his initiative, and Staff understood the initiative was to expand the Central Business District. She said she recalled the Salvation Army was not initially interested in a variance, so that was why the zone change was pursued.

City Administrator Volek read the following sentence from the Introduction paragraph on Page 2 of the staff memo, "*The initiative stated that 'the Salvation Army' would like to build a youth center, and being part of the Central Business District would help resolve most of the problems they have with parking and building placement.*"

The public hearing was opened.

- **Major Keith Bottjen, 2100 6th Avenue North**, said he was the Executive Director of the Salvation Army in Billings. He said the Salvation Army had been in Billings since 1897, and its ministry was dedicated to changing lives by offering encouragement, spiritual understanding, and real help to the most needy. He said there were approximately 1,500 teenagers in Billings who were homeless or moving house to house, and 50% of them could not stay at home because of dysfunctional homes due to drugs, alcohol, abuse, etc. Major Bottjen said it was the Salvation Army's desire to build the "Solid Rock Youth Center" on the eight vacant lots across the street from North Park in order to reach the homeless young men and women before they became trapped in a life of crime or homelessness. He distributed a drawing of the proposed "Solid Rock Youth Center" and explained it would have three stories – the ground floor was planned for a gymnasium, showers, training kitchen, and a lounge area available in the afternoons and evenings; the second floor was planned for classrooms that would work in conjunction with other agencies that work with young people; and the third floor was planned for temporary housing for teens who were doing their best and who could not stay at home for the previously-described circumstances. Major Bottjen said the Salvation Army felt the young people were worth saving and wanted to bring Billings a program that would save the taxpayers thousands of dollars in the long run by steering the youth into productive lives. He said they were informed the East End TIFD group wanted to hold off for two years, but the Salvation Army did not want to wait that long. Major Bottjen advised unless they used the funds they currently had, they would lose them.

Councilmember Veis asked Major Bottjen to show the location of the proposed building on the overhead map. Major Bottjen showed the location of the existing Salvation Army building and the eight lots they planned to use to build the youth center. He said the current zoning required 150 to 170 parking spots to build the youth center, and the lot itself would not hold that much parking. Councilmember Veis asked how much the project would cost and how close they were to raising that amount. Major Bottjen said it was a \$5 million project, and they had \$1 million designated to go towards operations and \$1 million to go towards the project. He said they received \$500,000 of the funding approximately three weeks ago, and it needed to be used in 2008.

Councilmember Gaghen asked approximately how many people would be served in the temporary housing portion of the project. Major Bottjen said third floor would be temporary housing to get the youth off the streets only until permanent housing could be found. Major Bottjen said he could not give an exact number. He advised the principal of Senior High indicated they had between 40 and 60 students who were "couch-surfing", homeless, or living in boxes.

Councilmember McCall asked Major Bottjen about the \$500,000 that would only be available for this year. Major Bottjen said it was the intent of the donor to be used this year. Councilmember McCall asked if the

remaining \$1.5 million would remain secured if the project was put on hold. Major Bottjen said it would not be secured.

Councilmember Ulledalen asked how many current parking spaces the Salvation Army had and how many more they thought they would need. Major Bottjen said they currently had approximately 80 parking spaces on the Salvation Army property, and he anticipated they would need 20 additional spaces. He said they planned to have a staff member living on the property.

Councilmember Veis asked Major Bottjen why the expansion of the Central Business District would be more advantageous than a variance. Major Bottjen said a variance would be difficult with the setbacks. Councilmember Veis asked Major Bottjen if he felt they could not meet the building setbacks. Major Bottjen said he would prefer a 10 to 15-foot setback instead of a 20-foot setback. He said they had a zero setback in the alley and a zero setback on the property behind them. Councilmember Veis asked Ms. Beaudry if the Salvation Army could get a variance on the setback. Ms. Beaudry advised that setbacks were a zoning item that would need to go to the Board of Adjustment. She said if it just involved parking, the variance would come before the Council.

Councilmember Astle asked if it was the Salvation Army's idea to include the entire area as part of the zone change. Major Bottjen said he understood it had to be contiguous to existing zoning, which is why the entire area was included.

Mayor Tussing asked Major Bottjen if he was still an official member of the Salvation Army Board. Major Bottjen said he did not feel the Mayor was officially on the Board. Mayor Tussing said, since he was not officially on the Salvation Army Board, he could vote on the issue.

Councilmember McCall asked Major Bottjen if he was willing to look at a variance. Major Bottjen said he would not have much choice if the zone change was not approved. He said he had a timing issue and to start over and go through all the hearings of a variance would take a lot of time. He said they would like to get the project on the ground by July 9, 2008.

Councilmember Veis asked what the timeline was for a variance. Major Bottjen said the first hearing would not be until March if he got his plans in by Monday. He said it would then go before a committee and more hearings. Major Bottjen said he thought it would take approximately four or five months. He said he had not planned on any opposition, and he thought everything was understood. He said the owner in the back, who used his property for open storage, was the only negative person at the first public meeting. Major Bottjen said he did not attend the second meeting. Councilmember Veis asked Major Bottjen if he had a Plan B for the subject property if something would go wrong with the project after Council had granted the zone change. Major Bottjen advised he did not have a Plan B. Councilmember Veis said he thought the youth center was a wonderful idea and everyone supported it; but it was not set in stone. Major Bottjen said the

center was a dream of his before he came to Billings from Denver, so there was no secondary idea available.

Councilmember Stevens asked what Major Bottjen meant when he said he would like to get it on the ground by July 9th of this year. Major Bottjen said it would not happen this year because they had the rest of the money to raise and the permits and drawings to take care of. Councilmember Stevens said since they were still \$3 million short, she did not understand why they could not take a few months to complete a variance. Major Bottjen said one of the problems with a variance was the setback issue, as well as the time issue. He said he could not raise funds or complete the drawings until he knew what he was building; and he would not know what he was building until he could draw the plans; and he could not draw the plans until he knew what the parking requirements were going to be.

City Administrator Volek advised the parking issue could come before Council on February 25, 2008, if application was made promptly. She said the setbacks would need to go to the Board of Adjustment in April.

- **Jerry Leggate, 1315 2nd Street West**, said he was a member of the Advisory Board and not a member of the Salvation Army itself. Mr. Leggate advised the Salvation Army did not build things for the good of the Salvation Army but for the good of the community. He asked the Council to consider the fact that the project was consistent with the Downtown Business District because it would be bringing good things to the area that would benefit the Central Business District and the surrounding area. He asked that consideration be given to what would happen if they received a variance, built the center, and someone decided to build a steel fabrication plant next door. Mr. Leggate asked if a steel fabrication plant would be compatible with a youth center.
- **Kathy Durkin, 924 Delphinium Drive**, said she owned property within one block of the zone change and was a past owner of property on North 22nd Street. She said the neighborhood had established businesses dependent upon Controlled Industrial zoning and changing the zoning would place undue economic hardship on long-term property owners. She said although existing uses were usually grandfathered in, when the property changed hands, the status would become void. Ms. Durkin advised if the City really wanted to facilitate revitalization of the area, they needed to address the problems of snow being plowed onto the business accesses, walks, and parking when the main streets were plowed and address the long history of periodic flooding due to the inability of the storm sewers to carry the current volume of rain runoff that accumulated in the area. Ms. Durkin advised that in the 15 years she owned property on North 22nd, she had numerous discussions with the Zoning Department about options, including the possibility of a variance. She said she never found a use that was economically viable for the neighborhood that would also conform to the property's Central Business District zoning. Ms. Durkin said although she supported the Salvation Army and the long-range goal to revitalize the

neighborhood, she did not believe changing the zoning was the correct solution.

- **Bill Kennedy, Yellowstone County Commissioner**, said he had attended the meetings for the Salvation Army and talked to them about the zone change. Mr. Kennedy said Billings was in need of a youth home, and timing was a real issue. He said if a project was delayed over and over, people who donated would feel the project would never get off the ground. He said the Salvation Army had \$1.8 to \$2 million, and they needed to raise another \$3 million. Mr. Kennedy said he agreed with Councilmember Stevens that it would take more time to raise the \$3 million, but in order to go out and talk to possible donors, drawings were needed. He said if the project was delayed, the funding would be lost; and the youth center would never be built. Mr. Kennedy asked the Council to table the zone change and direct Staff to work with the Salvation Army to look at options for getting the project off the ground.

Councilmember Ulledalen asked Mr. Kennedy how likely it would be that the Salvation Army could raise the rest of the money. He said if the zone change was granted or a variance was approved and then something happened to stop the project, the Council would have made a major change in the future direction of how the land would be used. Mr. Kennedy advised the property was currently zoned for industrial, and “a little bit of anything” could go in. He said the youth center would bring landscaping and a “real marriage” with the park in the neighborhood. He said if Council did not grant the zone change and the project did not happen, just about anything could go into the area.

Councilmember Gaghen concurred with the need for the youth center and asked how soon decisions needed to be made. Mr. Kennedy said decisions needed to be made within the next couple of months. Councilmember Gaghen asked how long the project had been in the process. She said Council needed visuals and ideas of how many people would be served and how many employees would need parking in order to make decisions that would impact the immediate and long-range plans. Mr. Kennedy said he had only been involved for the past month and a half, so he could not answer her question. He said the plan to proceed with the youth center when the money was received had been planned for some time.

- **Carmen Gonzalez, 213 Orchard Lane**, said she was attending as a parent. She said she had patiently listened to everyone, and she was very impressed and proud of the Billings Community. She said when the Mayor made the homeless issue a priority, she was even more proud. Ms. Gonzales said her father told her when she was called a “minority” she was not to take it personally because “minority” and “majority” related to numbers and not to the color of your skin, what school you attended, or where you were raised. Ms. Gonzales said she had never seen such a concern and investment of energy on numbers. She said she understood and respected the City’s job and the concern and importance for planning, programming,

and numbers. She said she was a single parent and had there been a youth center, maybe her children would not have been where they were. She said it was important to have places like the “Solid Rock” the Salvation Army wanted to build. Ms. Gonzales asked the Council to look at the potential now to support the Center. She said that evening she heard certain words like “consideration”, and that was all the kids wanted. She said she heard the word “decision”, and that was our job. She said she heard the word “planning”, and it was the community’s planning to make the investment. She said she heard the word “conformity”, and that was why she was there because she could not get her own kids to conform, not to everyone else’s standards, but to their own. She said we would always have setbacks if Billings did not start supporting its youth. Ms. Gonzales said Billings had come back up time after time after being knocked down, and if the project did not work, Billings would find a way to fix it.

- **Larry Brewster, 1216 Babcock**, said the initiative was his when he was a councilmember. He explained the Salvation Army had visited with him about how they could get the obstacles out of the way before they started the project. Mr. Brewster said he had visited with Ms. Beaudry and other Staff, who suggested the zoning for the operation based on its location and said the only way to accomplish the re-zoning was through a Council initiative. He said it looked to him like the 12 criteria had been met, and denial was based on a future plan that was not currently there. Mr. Brewster said the zone change could not be based on that. He said the more “ifs” there were, the more difficult it was to raise money. Mr. Brewster said he was confident the money would be raised, and the zone change would eliminate a lot of the “ifs”.

Councilmember Veis asked Mr. Brewster if he remembered what the drawbacks were on the variance versus the zone change when he spoke with the Planning staff. Mr. Brewster said the Board of Adjustment would not be able to allow the setbacks needed.

Councilmember Stevens asked if a Board of Adjustment’s denial could be appealed to the City Council. Mr. Brewster said the denial would have to be appealed in District Court.

- **Raymond Nelson, 4 Lewis Avenue**, said he was a former foster child, and the center would be very beneficial to the community. He said had the program been in play when he was younger, he would not have had such a hard time getting on his feet and being prepared for society. Mr. Nelson said when he was released from the State’s custody, he was not prepared for anything and lived on the streets for two years. He said he just recently moved into his home. Mr. Nelson asked Council to support the center.
- **Gordon Tryan, 2361 Crimson Lane**, said he was a member of the Billings Industrial Revitalization District (BIRD), a non-profit organization of landowners that belonged in the East End TIF District. He said the BIRD played the role of an advisory board to help make sure the process was done right and the funds incurred with the TIF District were properly spent. Mr. Tryan said he knew a master plan was a long time to wait, but there had

been other projects in the TIF district that had been denied zone changes, and there would be more projects that would be denied zone changes. He said the purpose of the master plan would be to write a plan with a thought process. Mr. Tryan said the area needed to be held together as a district and not piecemealed into phases. Mr. Tryan said the BIRD supported a variance but could not support a zone change.

Councilmember Stevens said she agreed with what Mr. Tryan was saying, and she shared the same concerns; but the Council's action had to be based on the 12 criteria, and they would have to find one item in the 12 criteria in which to deny the zone change. Councilmember Stevens asked Mr. Tryan if he had reviewed the 12 criteria. Mr. Tryan said he was not aware of the process. Mr. Tryan said the disappointment was that City Council asked the members of the BIRD to invest their time to manage the district, and no one bothered to notify them of the proposed expansion of the Central Business District. He said the BIRD found out through a landowner who called asking what it meant. Mr. Tryan said if they could have been a part of the process from the beginning, they could have saved a lot of time.

Councilmember Veis asked Mr. Tryan if he could see major differences with what was proposed with the zone change and what may be proposed later. Mr. Tryan said his biggest concern was the statement made that the youth center could be "stuck next to a metal fabrication plant." He said to think they would try to improve a district by driving the biggest part of the neighborhood out because they were no longer good enough to be in the neighborhood was the wrong approach to take. Mr. Tryan said he was also concerned about locating the new federal office project in the East End TIF District. He said the office project would require about 450 parking spaces and asked how easy it would be to have another variance within the Central Business District to build the project. Mr. Tryan said the developers of the federal office building were not against being in a mixed-use environment. He said he had spoken with two of the developers that were looking at the district, and neither one of them was against having a light industrial application next to a professional office building.

City Administrator Volek advised there were some provisions with conflicts in regard to the 12 criteria, and asked Ms. Beaudry to explain. Ms. Beaudry said Ms. Volek was referring to the fact that some of the Councilmembers mentioned that the application had met all of the 12 criteria. Ms. Beaudry said the Zoning Commission determined the zone change did not conform to the Growth Policy. She said the Growth Policy was a policy document that did not lay out specific preferences for land use. She said it recommended that either a neighborhood plan or an urban renewal plan be prepared to identify what the land uses should be. Ms. Beaudry said the neighborhood went forward with an urban renewal plan that deferred a master plan because of the limitation in resources. She said the BIRD had moved forward and was just several thousand dollars away from funding a master plan. Ms. Beaudry advised that state law specifically stated that zoning would be made in accordance with a master plan or the

Growth Policy. She said the Growth Policy did not identify land use recommendations, which was why a master plan would be preferred in the area and why the Zoning Commission felt the zone change did not meet all of the 12 criteria.

Councilmember Veis asked where the Zoning Commission fell down on the 12 criteria and if they used it for their rationale for denial. Ms. Beaudry said the Zoning Commission fell on the side of recommending denial because there was a master plan in the works. She said they articulated that what staff had done in supporting their recommendation was to do more research into the requirements of law and what the Growth Policy was recommending.

City Administrator Volek referenced Page 4 of the staff report and read the following inconsistencies the proposed zone change had with the goals of the Growth Policy.

- *Contiguous development focused in and around existing population centers separated by open space. (Land Use Element Goal, page 6)*

The proposed zoning will focus development in and around existing population centers but CBD zoning does not require landscaping or building setbacks from property lines so it does not encourage open space.

- *Attractive and accessible communities. (Economic Development Goal, page 7)*

While the proposed zoning does “Encourage new businesses to locate in Billings” and “Convey a business-friendly attitude”, there are no requirements for building setbacks or landscaping which may not increase the visual appeal of the neighborhood.

- *Visually appealing communities (Aesthetics Goal, page 7)*

The proposed zoning may limit the visual appeal of the neighborhood because there are no requirements for building setbacks from property lines or landscaping to soften the edges of the lot or the hard surfaces of a building façade. On a principle arterial street with a speed limit of 35 it may be less appealing to walk on a sidewalk between a building front and higher speed traffic. With no landscape to soften building lots or street frontage it is not visually appealing or inviting.

City Administrator Volek asked that, if Council chose to deny the zone change request, they cite the items Ms. Beaudry mentioned and the three inconsistencies with the goals of the Growth Policy.

Councilmember Ulledalen said he felt the youth center was a great project, and the City Council was being asked to make a decision about a good project but given a very difficult set of circumstances in which to make the decision.

Councilmember Ulledalen said there was some frustration with the 12 criteria because the questions and responses could be written and interpreted in any way and asked staff to comment. Ms. Beaudry said she agreed that the interpretation was very difficult. She said in this particular case there was a conflict between what staff recommended initially to the Zoning Commission, which was approval of the zone change, and the Zoning Commission recommending denial based on not entirely “flushed out findings.” Ms. Beaudry said staff did its best to reinterpret the Zoning Commission recommendation. She said the Friday Packet contained several revisions of the findings and changed the interpretation that may be more supportive.

City Administrator Volek advised that on previous occasions she had seen courts send items back to advisory bodies for additional clarification of intent. City Attorney Brooks advised the Council could ask the Zoning Commission to clarify their position.

- **Judy Trinka, 902 Bench Boulevard**, said she was chairperson of the Advisory Board. She said it was so important to get the project off the ground and asked the Council to pass the zone change request or at least table it to give them time so the project would not die.

- **Jim Gallup, 3240 Lloyd Mangrum**, said he was with the BIRD. He said the BIRD came to the City Council and asked for support over a year ago. He said the BIRD was put forward with the idea of being an industrial area, and that was how they saw it progressing. Mr. Gallup said when they went out to raise money for the plan they told people it was for an industrial area. He said the Salvation Army was a great organization, and the youth center sounded like an incredible facility and a great thing for the community. He said he would hate to see the Central Business District expanded to the area. He said there were railroad tracks that went right through the middle of it, which was industrial. Mr. Gallup told the Council he appreciated the support given to them in the past, and asked them to give the Salvation Army a variance for their parking if the zone change request was denied.

Councilmember Veis asked Mr. Gallup when the next BIRD meeting was scheduled. Mr. Gallup said they did not have scheduled meetings but could have a meeting anytime. He said a meeting could be arranged within a week or two.

Councilmember Gaghen said BIRD stood for Billings Industrial Revitalization District, and it had been the effort of many business owners to raise the money for the study. She asked Mr. Gallup if anyone interested could attend the meetings. Mr. Gallup said the BIRD meetings were open to the public.

- **Dave Bovee, 424 Lewis Avenue**, said he felt the youth center was a great project, and he hoped the Salvation Army could get it up and running. Mr. Bovee said zoning was separate from the function of the entity. He said it seemed to him that some people had concluded they could have done it without a large zone change. He said some people said the zone change would be beneficial to other businesses, but there were already functioning businesses in the area. Mr. Bovee asked why the other businesses should have to change for one entity. Mr. Bovee said in order to be fair to everybody, Council should find some way to encourage and help the Salvation Army go through the other process to get the project up and running.

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

Councilmember McCall said she felt it was a critically important issue for the City of Billings. She said they were talking about children, Billings needed to take care of them, and Billings needed to do everything in its power to get it figured out.

Councilmember McCall moved to table Item 6 for 30 days so Staff, the Salvation Army, the BIRD, and everyone else who needed to work on it could come together and come up with a plan that worked, seconded by Councilmember Ruegamer.

Councilmember Stevens said she agreed with the motion, but she felt the item should be tabled until May to allow the Salvation Army time to submit for a variance and get through the Board of Adjustment. She said she was trying to figure out the quickest way to get the Salvation Army where they needed to be but to allow time to address the other issues that had been raised, as well.

Councilmember McCall said she was open to it, but she wanted to find ways to resolve the issues so the project could go forward. She said if it made sense to have a longer time period, she would be open to it.

Mayor Tussing asked Attorney Brooks if Council tabled the item for 30 days, could they come back, based on Councilmember McCall's motion, and say they had met but still needed more time. Attorney Brooks advised, under ordinance, Council could delay the application for a period not to exceed 30 days. He said in the past, with the applicant's consent or at the applicant's request, Council had delayed longer. Mayor Tussing advised he would support the motion as stated.

Councilmember Veis said he felt they only had 30 days, and 30 days were longer than the Salvation Army wanted to wait. He said his hopes were that, within the 30 days, there would be a meeting with the BIRD and the Salvation Army; a meeting with Planning and the Salvation Army; and the issues were worked out. Councilmember Veis said they needed to remember the issue was driven by what needed to be done at the Salvation Army but the reality was what they were doing was changing the zoning of the Central Business District for the whole area.

Councilmember Astle said everyone wanted the project to go, but the Central Business District zoning was not the way to go. He encouraged the Salvation Army to move forward with a variance because, even though the footprint might not be exactly what they wanted, the parking issue could be solved.

Councilmember Ulledalen asked staff what the merit would be of withdrawing the request to allow the Salvation Army to create a Plan B at the meetings. Attorney Brooks said it could be done. He said another option would be to allow the meetings that were subject to the motion to take place and consider the application for a variance so the both the zone change and variance could proceed simultaneously.

Mayor Tussing asked if Councilmember McCall's motion would preclude the Salvation Army from taking another alternative, such as a variance. Attorney Brooks said it would not prevent them from applying for a variance.

On a voice vote, the motion to table Item 6 for 30 days to allow the parties involved to meet and attempt to work out a plan was unanimously approved.

7. MEMORANDUM OF UNDERSTANDING with Beartooth RC&D Economic Development District, \$8,380 annual. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.) City Administrator Volek advised there was no staff presentation, and that there were representatives present from the Beartooth RC&D.

Karla Lawrence introduced herself as the new coordinator for the Beartooth Resource Conservation and Development Area, Inc. (RC&D) and Economic Development District located at 604 West Front Street in Joliet, MT. She said she was looking forward to working with the counties within the Beartooth RC&D. Ms. Lawrence introduced Jillann Knutson and said she would be providing details of the Memorandum of Understanding.

Ms. Knutson said she was the Revolving Loan Fund Manager and the Bookkeeper for Beartooth RC&D. She referenced the annual Memorandum of Understanding and said it was between the Yellowstone County Commissioners, the City of Laurel, City of Billings, and Big Sky EDA. Ms. Knutson also referenced the Beartooth RC&D invoice in the amount of \$8,418 and said it was based upon a general base assessment rate and the population of Yellowstone County. She indicated the amount had not changed for the past five to six years. Ms. Knutson referenced the list of 2007 projects they had done within the City of Billings, as follows.

- ✓ Grains of Montana Bakery and Deli
- ✓ Eminkay Trusses
- ✓ Granite Health and Fitness
- ✓ Link Communications
- ✓ Majestic Cove Trailer Park
- ✓ Fuels Reduction
- ✓ Billings BEAR Program
- ✓ Regional Mass Transit

Ms. Knutson referenced the Comprehensive Economic Development Strategy and said it was their 5-year plan. She said it was a required document and necessary in order to receive Economic Development Administration funding.

Mayor Tussing advised Ms. Knutson that the document Council received had an amount of \$8,380 and not \$8,418, as she had indicated. Mayor Tussing said the motion would need to be amended to account for the discrepancy in the dollar amount. Ms. Knutson said there had been an error in the amount on their part, and the correct amount was \$8,380.00.

Ms. Knutson advised they were fully-staffed with five full-time and two part-time employees who worked out of the office in Joliet. She said they covered Yellowstone, Carbon, Big Horn, Sweet Grass, and Stillwater Counties.

Councilmember Gaghen moved for approval of the Beartooth RC&D Economic Development District Memorandum of Understanding, seconded by Councilmember Ronquillo.

Councilmember Veis said he was on the Board of the Beartooth RC&D and recused himself from the vote. On a voice vote, the motion was approved 9 to 0.

8. **PUBLIC COMMENT on Non-Agenda Items -- Speaker sign-in required.**
(Restricted to ONLY items not on this printed agenda; comments limited to 3 minutes per speaker. Please sign up on the clipboard located at the back of the Council Chambers.) **There were no speakers.**

Council Initiatives

- **Ulledalen:** Said because attendance at the Tuesday Agenda Review Meetings was sporadic, he would like Council to think about the possibility of discontinuing the Tuesday Agenda Review Meetings and incorporating them into the regular council meetings.

Councilmember Veis said the Agenda Review Meetings were started when the regular council meetings ran very late. He said he would like to see the Agenda Review Meetings discontinued, due to lack of attendance by councilmembers and lack of interest by the public.

Councilmember Ulledalen **MOVED** to add a public hearing to a regular council agenda to discuss discontinuing the Tuesday night Agenda Review Meetings, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.

ADJOURN: The meeting adjourned at 8:30 p.m.

(NOTE: Additional information on any of these items is available in the City Clerk's Office)

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<http://ci.billings.mt.us>**

CALENDAR

(Council AND Boards & Commissions)

FEBRUARY:

2/04/2008	Council WORK SESSION	5:30 p.m.	Community Center 360 N. 23 rd Street
2/05/2008	Community Development Board Aviation & Transit Commission Zoning Commission	3:00 p.m. 5:30 p.m. 4:30 p.m.	4 th Floor Library Airport Terminal Council Chambers
2/06/2008	Board of Adjustment	6:00 p.m.	Council Chambers
2/07/2008	Human Relations Commission	12:15 p.m.	CH Conference Room
2/11/2008	Energy & Conservation Commission Council REGULAR MEETING	3:00 p.m. 6:30 p.m.	Billings Operations Ctr. 4848 Midland Road Council Chambers
2/12/2008	Parking Advisory Board Council Agenda Setting Meeting Planning Board	4:00 p.m. 5:30 p.m. 6:00 p.m.	CH Conference Room CH Conference Room 4 th Floor Library
2/13/2008	Parks/Recreation/Cemetery Board	11:30 a.m.	Community Center 360 N. 23 rd Street
2/14/2008	EMS Commission Library Board Committee on Homelessness	7:00 a.m. NOON 2:00 p.m.	Main Fire Station 3 rd Floor Library 3 rd Floor Library
2/18/2008	PRESIDENT'S DAY – CITY OFFICES CLOSED		
2/19/2008	Yellowstone Historic Preservation Bd Council WORK SESSION	8:00 a.m. 5:30 p.m.	4 th Floor Library Community Center 360 N. 23 rd Street
2/21/2008	Tourism Business Improvement District Board Public Utilities Board	8:30 a.m. 6:30 p.m.	Chamber of Commerce 815 S. 27 th Street Public Works-Belknap 2251 Belknap Avenue
2/25/2008	Council REGULAR MEETING	6:30 p.m.	Council Chambers
2/26/2008	Traffic Control Board Council Agenda Setting Meeting Planning Board	NOON 5:30 p.m. 6:00 p.m.	4 th Floor Library CH Conference Room 4 th Floor Library

2/27/2008	Development Process Advisory Brd	1:00 p.m.	CH Conference Room
<u>MARCH:</u>			
3/03/2008	Council WORK SESSION	5:30 p.m.	Community Center 360 N. 23 rd Street
3/04/2008	Community Development Board Zoning Commission Aviation & Transit Commission	3:00 p.m. 4:30 p.m. 5:30 p.m.	4 th Floor Library Council Chambers Airport Terminal
3/05/2008	Board of Adjustment	6:00 p.m.	Council Chambers
3/06/2008	EMS Commission Tourism Business Improvement District Board Human Relations Commission	7:00 a.m. 8:30 a.m. 12:15 p.m.	Main Fire Station Chamber of Commerce 815 S. 27 th Street CH Conference Room
3/10/2008	Energy & Conservation Commission Council REGULAR MEETING	3:00 p.m. 6:30 p.m.	Billings Operations Ctr. 4848 Midland Road Council Chambers
3/11/2008	Parking Advisory Board Council Agenda Setting Meeting Planning Board	4:00 p.m. 5:30 p.m. 6:00 p.m.	CH Conference Room CH Conference Room 4 th Floor Library
3/12/2008	Parks/Recreation/Cemetery Board	11:30 a.m.	Community Center 360 N. 23 rd Street
3/13/2008	Library Board Committee on Homelessness	NOON 2:00 p.m.	3 rd Floor Library 3 rd Floor Library
3/17/2008	Council WORK SESSION	5:30 p.m.	Community Center 360 N. 23 rd Street
3/18/2008	Yellowstone Historic Preservation Bd	8:00 a.m.	4 th Floor Library
3/20/2008	Tourism Business Improvement District Board	8:30 a.m.	Chamber of Commerce 815 S. 27 th Street
3/24/2008	Council REGULAR MEETING	6:30 p.m.	Council Chambers
3/25/2008	Traffic Control Board Council Agenda Setting Meeting Planning Board	NOON 5:30 p.m. 6:00 p.m.	4 th Floor Library CH Conference Room 4 th Floor Library
3/26/2008	Development Process Advisory Brd	1:00 p.m.	CH Conference Room