

## **REGULAR MEETING OF THE BILLINGS CITY COUNCIL May 29, 2007**

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

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

**MINUTES** – May 14, 2007, approved as presented.

**COURTESIES - None**

**PROCLAMATIONS – None**

### **ADMINISTRATOR REPORTS – Tina Volek**

- Ms. Volek requested that Agenda ITEMS 1A(4) and 1A(5) be removed from the Agenda. She stated the bid openings for both items had been postponed until June 5, 2007, and bid award was scheduled for the June 11, 2007, meeting.
- Ms. Volek referenced a staff memo included in the Friday packet for Agenda ITEM N2, the Perfect Pitch application for street closures. The application was for street closures every Friday from June 15 to August 24 from 10 a.m. to midnight. She stated the original agenda item contained concerns from City Staff. She said a meeting with the project coordinator was held to clarify the issues, and the project coordinator had signed an agreement addressing all of the issues. She said staff was now in agreement, and a copy of the staff memo had been filed in the Ex-Parte Communication Book.
- Ms. Volek noted that a letter from the developer at 2033 Main Street regarding Agenda ITEM 2 was included in the Friday packet. She said a copy of the letter had been filed in the Ex-Parte Communication Book.
- Ms. Volek referenced three items distributed at the meeting: a letter from the Southwest Corridor Task Force regarding Agenda ITEM 7(a), the annexation of a parcel on King Avenue near South Billings Boulevard; a memo from residents on Avenue B regarding Agenda ITEM 5, opposition to a rear Avenue B access to a business up for Special Review #846; and a letter from Mr. David Bovee regarding weed control in his yard. She said the three items had been filed in the Ex-Parte Communication Book.
- Ms. Volek reminded Council the Agenda Review Meeting and Budget Work Session were scheduled for tomorrow evening at 5:30 p.m. at PD 1 located at the corner of Midland Road and South Billings Boulevard.
- Ms. Volek noted the groundbreaking for the new fire station would be held tomorrow at 2:30 p.m.

**PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda ITEMS: 1 and 2 ONLY. Speaker sign-in required.** (Comments offered here are limited to 1 minute per speaker. Please sign up on the clipboard located at the podium. Comment on items listed as public hearing items will be heard ONLY during the designated public hearing time for each respective ITEM.)

*(NOTE: For items not on this agenda, public comment will be taken at the end of the agenda. Please sign up on the clipboard located at the back of the room.)*

- TIM GOODRIDGE, 2990 LOHOF DRIVE, said he represented Perfect Pitch, Inc. and asked if there were any questions on the Montana Avenue Live request for street closures. Councilmember Ruegamer asked if the merchants in the area had been contacted regarding the street closures. Mr. Goodridge said the chances were they would not do all of the closures listed. He said the first closure on June 15 would launch the whole series, and the other closures would be done on an ad hoc basis. He said the primary businesses on Montana Avenue were the Carlin Hotel and the McCormick Café, and the owner was in support of the closures. Councilmember Boyer asked if Sweet Ginger had been notified. Mr. Goodridge said he had not contacted them to date, but he would.
- MARY WESTWOOD, 2808 MONTANA AVENUE, said she had concerns with Agenda ITEM F, the Developer’s Agreement with Shiloh Crossing Partners, LLC. She said she was not against the development but concerned with the precedent being set by the Agreement. She said there were no public hearings held; it significantly changed the CIP; and the SID impact on the neighbors and the impact on public services were not adequately addressed in the staff memo. She said she also had concerns with provisions in the contract.
- DAVID NEDROW, 2033 MAIN STREET, said he represented Keystone Construction and referenced Agenda ITEM 2. Mr. Nedrow requested reconsideration of the previous decision to keep the property at 2033 in the 2005-2006 Miscellaneous/Developer Related Improvement Program. He stated the additional requirements would be an unnecessary, excessive burden on his company. He said he tried his best to be a responsible corporate citizen and felt the requirements went above and beyond what should reasonably be expected. Councilmember Boyer asked Mr. Nedrow if he was being required to pave the entire 10,000 square feet or just the required 12 slots. Mr. Nedrow said it was a significant portion of the lot that needed either paved or landscaped. Councilmember Boyer asked if the information she received that said the whole lot did not need paved was inaccurate. Mr. Nedrow said he did not have that information. He said the information he received from Public Works said he would have to upgrade the approach and pave the full parking lot or landscape. There were no other speakers. The public hearing was closed.

## **CONSENT AGENDA**

### **1. A. Bid Awards:**

**(1) Crosswalk Lighting Upgrades for the Airport Terminal Building.** (Opened 5/15/07) Recommend Yellowstone Electric, \$51,114.00.

**(2) Airport Improvement Program (AIP) 33 Taxiway A Drainage and Pavement Rehabilitation Project.** (Opened 5/15/07) Recommend Schedule 1: Riverside Sand and Gravel, Inc., \$393,163.70. Schedules II, III and IV: Western Municipal Construction, \$972,698.75.

**(3) New Billings Baseball and Multi-Use Stadium at Athletic Park – West End Excavation.** (Opened 5/15/07) Recommend CMG Construction, Inc., \$71,971.00.

**(4) SID 1375 Claremont Road Improvements.** (Opened 5/29/07) Recommend delay of bid award until 6/11/07.

**(5) SID 1377 Greenbriar Road Improvements.** (Opened 5/29/07) Recommend delay of bid award until 6/11/07.

**(6) Work Order 07-01, 2007 Water and Sewer Replacement Project.** (Opened 5/22/07) Recommend delay of bid award until 6/11/07.

**B. Approval** of new commercial non-aviation ground lease for a communication site with Gold Creek Cellular of Montana Limited Partnership.

**C. Approval** of two west end hangar ground leases with John M. and/or Marcia A. Nash, Lots 10 and 11.

**D. CTEP Agreement** with Montana Department of Transportation for Main Street Underpass project.

**E. CTEP Agreement** with Montana Department of Transportation for Lake Elmo Drive Path project.

**F. Agreement** with Shiloh Crossing Partners, LLC, for design of improvements to King Avenue West from South 31<sup>st</sup> Street West to Shiloh Road..

**G. Turn Key Agreement** for Cobb Field with Billings Mustangs, American Legion Baseball Program, and MSU-B Men's Varsity Baseball Program, \$29,000.00.

**H. Amendment #2, Hazardous Waste Collection Events.** Professional Services Contract, Philip Services, \$40,000.00.

**I. Amendment #2, Paving of Overflow Parking Lots at Billings Logan International Airport.** Morrison-Maierle, Inc. \$78,799.00.

**J. Amendment #3, W.O. 03-25 Rimrock Road.** Professional Services Contract, HKM Engineering, Inc., \$29,023.00.

**K. Amendment #4, Architectural Services for the Airport Terminal Building Roofing Project.** CTA Architects Engineers. \$52,768.12.

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

(1) Parcel 14: Portion of Tract A, Certificate of Survey 280, Vernon E. West and Judy K. West. \$9,050.00.

(2) Parcel 28: Portion of Unit No. 68 of Imperial Park Condominium, Lot 1, Block 1 of Windsor Imperial Subdivision, Sang Soon Almer. \$4,600.00.

(3) Parcel 59: Portion of Tract 2, Certificate of Survey 1113, The Housing Authority of Billings. \$3,050.00.

**M. Briarwood Sanitary Sewer Main Extension Right-of-Way Agreement and Perpetual Right-of-Way Easement** with Atchison, Inc. \$23,182.50.

**N. Street Closures:**

(1) St. Vincent's Health Care Heart and Sole Race, 6:00 a.m. to 12:30 p.m., June 10, 2007.

(2) Perfect Pitch, Inc. Montana Avenue Live, 10:00 a.m. to 12:00 a.m. every Friday, June 15 to August 24, N. 25<sup>th</sup> Street from Montana Avenue to 1<sup>st</sup> Avenue North.

**O. Resolution #07-18554** appointing primary and alternate representatives to the Downtown Billings Partnership, Inc. Board of Directors.

**P. Resolution of Intent #07-18555** to create SID 1378, Clevenger Avenue Improvements (street, sidewalk, storm drain, drive approach, curb/gutter), and set a public hearing date for June 25, 2007.

**Q. Resolution of Intent #07-18553** to construct sidewalks and related improvements as part of W.O. 05-17 Highland School Sidewalk Improvements-Billings, Federal Aid No. STPE 1099(48), and set a public hearing date of June 25, 2007.

**R. Second/Final reading Ordinance #07-5411 expanding Ward IV (Annexation #07-06)** for 42.26 acres for the future Cottonwood Park site: located at the northwest corner of Colton Boulevard and 54<sup>th</sup> Street West. City of Billings, owner.

**S. Second/Final reading Ordinance #07-5412 expanding Ward III (Annexation #07-07)** for an approximate 150-acre parcel legally described as: Lots 1-5, Block 1, Western Sky Subdivision. Cal Kunkel and Gerald Krieg, owners.

**T. Recommendation** for change in number of units, Sage Tower Building, Menola Land, Sage Tower, LLC, owners.

**U. Recommendation** for re-allocation of Affordable Housing Funds to complete Phase III infrastructure in King's Green Subdivision.

**V. Preliminary Subsequent Minor Plat** of Lake Hills Sub., 17<sup>th</sup> Filing, Lots 5 and 6, Block 11.

**W. Final Plat Approval**

- (1) Caleb Park Sub.
- (2) Amended Plat of Broso Valley Park Sub., Lots 12 & 13.

**X. Bills and Payroll**

- (1) April 27, 2007
- (2) May 4, 2007
- (3) April 1, 2007 – April 30, 2007 (Municipal Court)

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

Mayor Tussing asked for separations of the Consent Agenda.

Councilmember Veis separated ITEMS 1A(4), 1A(5), and F. Councilmember Stevens separated ITEM 1D. Councilmember Clark separated ITEM N2. Mayor Tussing separated ITEMS 1E, 1J, 1L, 1M, 1N(1), 1P, 1Q, 1R, 1S, 1U, 1V, and 1X.

Councilmember Stevens moved for approval of the Consent Agenda with the exceptions of 1A(4), 1A(5), 1D, 1E, 1F, 1J, 1L, 1M, 1N(1), 1N(2), 1P, 1Q, 1R, 1S, 1U, 1V, and 1X, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

Councilmember Stevens moved to delay ITEMS 1A(4) and 1A(5) until June 11, 2007, seconded by Councilmember Gaghen. Councilmember Veis asked if the bid awards or the items were being delayed. City Administrator Volek stated the items were being delayed.

Mayor Tussing asked City Attorney Brooks if he could generically give the reason he was recusing himself from all of the separated items or if he needed to give the reason for each item. Attorney Brooks recommended grouping or summarizing all of the items if the facts were similar. Mayor Tussing stated the Ethics Commission had recommended he recuse himself from any item involving his wife, which would be items not limited to trails projects. He said she participated in every subdivision review; SID review; she could comment on every liquor license request; CTEP Agreement; the Shiloh Crossing Partners LLC Agreement; and Item N(1) who donated proceeds from the Heart and Sole Run to the City for construction of trails.

Councilmember Gaghen asked Planning Director Candi Beaudry and Public Works Director Dave Mumford if they perceived the same perspective as the Mayor concerning the broadness of the Ethics Commission recommendations. Ms. Beaudry said the perspective was very broad with the exception of the association with liquor licenses. Ms. Beaudry said when Mayor Tussing's wife was in the office she had the opportunity to comment, but she was not involved in any of the recommendations. Ms. Beaudry offered to provide the Mayor a list prior to the agenda coming to Council identifying the items that his wife had involvement in. Mayor Tussing said that would be fine with him, but he was not sure how it would be with the Ethics Commission. He said he provided the Commission with a list of the agenda outlining items he thought he

would have to recuse himself from and since then, he had found additional items. Mayor Tussing said it would take considerable research to determine if his wife had commented on specific items; and until the ordinance was changed, it was tested in court, or a declaratory judgment came from a judge, he would abide by the Ethics Commission's recommendation. Ms. Beaudry told Mayor Tussing she would do her part to monitor his wife's involvement and be able to tell him more accurately what items she had been involved in.

Mayor Tussing asked for further discussion on ITEMS 1A(4) and 1A(5). There was no further discussion, and the motion passed 9-0.

Councilmember Stevens moved for approval of ITEM 1D, seconded by Councilmember Brewster. Councilmember Stevens asked Planning Director Beaudry what was being done to move people from the Heights to downtown safely via a trail. Ms. Beaudry stated in the past years they had looked at options along the railroad coming from Metra and had put in a bike lane along South 25<sup>th</sup> Street. Ms. Beaudry said there were no convenient connections for the Heights residents, and the design of the 6<sup>th</sup> Avenue/Bench Connection would not include bike or pedestrian connections. She said they were always looking for opportunities but so far have had no success.

Councilmember Ulledalen asked Ms. Beaudry if there would be an opportunity with the completion of Airport Road. Ms. Beaudry said there would be an underpass connecting from Alkali Creek to Main Street, so the residents of west portion of the Heights would be able to use the underpass to follow along the trail to the Metra.

Councilmember Stevens said the lack of a trail from the Heights was a big concern. Ms. Beaudry said there were very few options. She said they explored a connection south of the Conoco Phillips Refinery, but they were unsuccessful. She said they looked at the railroad bridge crossing to bring people downtown. Ms. Beaudry said there could be a connection between Airport Road and 6<sup>th</sup> Avenue North, but it would be on-street coming to downtown. She said the connection would start at Swords Park, to the underpass at Airport Road, to the bypass, and then onto 6<sup>th</sup> Avenue North. Councilmember Stevens asked if there would be room to put a striped bike lane on the street. Public Works Director Dave Mumford said not without moving a traffic lane. Ms. Beaudry said there currently was nothing straight forward and convenient from the Heights.

Mayor Tussing asked for further discussion on ITEM 1D. The motion passed 9-0.

Councilmember Stevens moved for approval of ITEM 1F, seconded by Councilmember Brewster.

Councilmember Veis asked about Paragraph 9 – Right to Terminate. He said one of the sentences read that *the City may terminate this Agreement by giving written notice to Developer within 15 calendar days*. Councilmember Veis asked if the word "City" meant Administration or the City Council and if 15 days would be enough time. City Attorney Brent Brooks stated that "City" meant the City Council because the Council would have approved the contract. Public Works Director Dave Mumford said 15 days would be adequate, allowing enough time to get on the next Council agenda if needed. Councilmember Veis said he did not think the Agreement should state that in the event the Agreement was terminated, the City must reimburse the Developer for any costs incurred up to the termination date. He said the Agreement stated the road would be designed by 2007, and the City must reimburse by July 2012. He said if the design

standards changed between the time the road was designed and purchased, the City would have to pay for the design of the road twice. Councilmember Veis said there needed to be language in the Agreement that allowed for discretion for the City to purchase the design in 2012.

Councilmember Veis moved to amend the Agreement to include language that stated "the City Council shall choose to purchase the design of the road if the contract was terminated," seconded by Councilmember Gaghen.

Councilmember Ruegamer asked to hear from the Developer and from the Public Works Department staff. Steve Corning, the Developer, introduced himself and his Attorney, Doug James, of the Moulton Law Firm. Mr. Corning stated he did not feel the language change would be unreasonable. He said after talking with Dave Mumford and Engineering, Inc., he sensed the road would be built substantially as King Avenue had been developed up to 31<sup>st</sup> Street West, and the chances of it being radically different would be minimal. Mr. Corning said he believed the project would get done, and he was amicable to anything that was fair. He said it would cost less to design the road today. Councilmember Veis said he agreed; he just did not want to get into the situation to have to pay for the design twice if something changed during that time.

Public Works Director Dave Mumford stated the majority would not change, but there would be the possibility the site distance could be changed by the Federal Highway Administration. He said the basic configuration of 12-foot lanes, the number of lanes, sidewalks and such should not change.

Councilmember Boyer stated she understood Councilmember Veis's concern, but she felt the project was a great public/private partnership. She said the City would be saving money, and the City would be partnering with a private developer; so if it meant word snipping a couple sentences, that needed to be done. She said she did not want to get bogged down with it.

Attorney James said a provision could be added to the Agreement that said the repayment amount would be subject to a negotiated reduction for any portion of the road that had to be redesigned. Councilmember Ulledalen asked Mr. Mumford how the percentage of the cost reduction would be decided. Mr. Mumford said if ADA standards were to change, the City would know what the construction costs would be, and the design would be proportional from that.

Councilmember Clark said the project would be designed in 2007 and constructed by the end of 2008, so 2012 and 2013 had nothing to do with the contract. Mr. Mumford said it did in that the contract stated the City would reimburse in 2012.

Councilmember Ulledalen asked Attorney Brooks if the Agreement were to be amended right now, would it need to come back to Council for review; and would it cause a delay with negotiations, publication, notification, etc. Attorney Brooks stated he felt he could work with Mr. Corning and Attorney James to come up with appropriate language that would allow the Council to make an amendment from the floor. He said if a two-week delay would not be an earth-shattering issue, that would be what he would recommend; or he and Attorney James could wordsmith language during a break to be included in the amendment. Mayor Tussing confirmed with the Developer and Mr. Mumford that a two-week delay would be significant.

Councilmember Clark asked if a motion could be made to continue the discussion after Agenda ITEM 7 so the attorneys could work on it in the meantime. Attorney Brooks said that would be the next best solution.

Councilmember Brewster suggested they confirm that the amendment passed before moving the discussion to the end of the agenda. Councilmember Veis stated Attorney James satisfied his concern, and the amendment would be easy with the language Attorney James suggested. The amendment passed 7-2. Councilmembers Ulledalen and Boyer voted no.

Attorney James suggested adding the following language at the end of Paragraph 9: "The repayment amount shall be subject to a negotiated reduction for any portion of the design that has to be redesigned between 2007 and 2012."

Councilmember Ruegamer moved to approve the language to be added to the end of Paragraph 9 as presented by Attorney James, seconded by Councilmember Boyer. There was no further discussion. The motion passed 9-0.

Councilmember Stevens moved for approval of ITEMS 1N(1) and 1N(2), seconded by Councilmember Ruegamer.

Councilmember Clark stated he was concerned with closing the streets in downtown Billings for that many Fridays. Mayor Tussing said he initially thought the same thing, but it appeared as though no one in the area had any objections. Councilmember Stevens said she was concerned that some of the merchants had not been notified.

Councilmember Brewster said Mr. Goodrich had been a good citizen and had responded when the neighbors had issues. He said he has always heard how functions are needed to bring people downtown. Councilmember Ruegamer said he had not heard any outcry from the neighbors, and this type of event would draw people to downtown. He said the negative impact would be outweighed by all the people who would go downtown to enjoy the music and eat.

Councilmember Boyer stated that Mr. Goodrich had done a good job, but she would like to encourage him to contact the downtown neighbors. Councilmember Ulledalen stated the events kept with the character of what was trying to be accomplished downtown, and he would be supporting them. Councilmember Gaghen suggested that an assessment be done after the first event so Mr. Goodrich could share with Council how well it went. She said the assessment would help determine if all of the remaining closures were necessary.

City Administrator Volek stated the Greyhound Bus Terminal participated in the discussion with staff and was agreeable to the events. Ms. Volek asked Legal Counsel if approval could be rescinded once it had been given. She requested an initiative to reschedule the discussion at a work session for review after the first event. Councilmember Brewster stated he did not feel a work session was necessary, and Mr. Goodrich could e-mail Councilmembers with an update after the first event.

Councilmember Stevens said she did not receive the draft conditions in her Friday packet. She asked if she could amend her motion to include the draft conditions. Attorney Brooks said she could. Councilmember Stevens amended her motion to include the draft conditions outlined in the memorandum of May 24, 2007, seconded by Councilmember Ruegamer. Mayor Tussing asked for discussion on the amendment to



include the conditions distributed in the Friday packet. There was no further discussion. The amended motion passed 10-0.

Councilmember Stevens moved for approval of ITEMS 1E; 1J; 1L; 1M; 1N(2); 1P; 1Q; 1R; 1S; 1U; 1V; 1X, seconded by Councilmember Veis.

Councilmember Ronquillo stated his daughter-in-law worked for the City and if her employment had something to do with Bills & Payroll, he would need to recuse himself from voting. Councilmember Boyer stated she had the code in front of her, and she could not imagine why Mayor Tussing would rescind himself from Bills & Payroll. Mayor Tussing answered because it would involve his wife's paycheck. He said it could involve payment to contractors who have built trails or reimbursement to his wife for mileage or meals at a conference. He said he would not go through it with a fine-toothed comb to determine what contractor had been paid and why they had been paid. Councilmember Boyer quoted the code as "other than the duly authorized salary or compensation for goods or for services" and said she did not feel it was applicable. Mayor Tussing asked Attorney Brooks for a ruling. Attorney Brooks stated that the Ethics Board met last week and issued recommendations. He said the only correct and true way would be to go through the records and identify the conflicts. Attorney Brooks stated it was a personal decision to recuse from voting. He said if a councilmember felt it would be a close call or a gray area, he or she could make the decision to recuse from voting. Councilmember Boyer said the code says "personal interest," and she felt Mayor Tussing was switching it to "financial." Mayor Tussing said he was referring to wording in an e-mail from Mr. Fagg, approved by the other members of the Commission, that said "any involvement".

Councilmember Ruegamer referenced his short patience span and noted a lot of time had been spent on the subject. He said the subject should be addressed in a council initiative at the end of the meeting. He said the situation always happened when people were hired from the same family in any kind of business. He said Council needed to approve the hiring of anyone within a certain family. City Administrator Volek stated that would be a violation of the Charter. Councilmember Ruegamer said he was tired of it, and the issue needed to be resolved.

Councilmember Veis suggested Council have an initiative to review the Ethics statutes. Mayor Tussing stated to Councilmember Ruegamer that his wife was hired six years before he was elected, and if he disagreed with the voters, the time to speak would have been in 2005 before the election. Councilmember Ruegamer said the voters may not have known Mayor Tussing's wife worked for the City.

Councilmember Clark consulted with Attorney Brooks concerning Councilmember Ronquillo's request to recuse himself. Attorney Brooks said if Councilmember Ronquillo believed any relative of his would financially benefit from his approval of the Bill & Payroll item, he would need to recuse himself. Attorney Brooks stated if something had already been earned by a relative, the Council would be approving the disbursements as opposed to negotiating them. Mayor Tussing said he did not feel there would be a conflict with Councilmember Ronquillo voting on Agenda ITEM X. Councilmember Ronquillo decided he would vote. On a voice vote, the motion was approved 9-0.

## **REGULAR AGENDA:**

**2. W.O. 05-02: 2005 - 2006 Miscellaneous/Developer-Related Improvements. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.) (Delayed from 4/23/07)** Public Works Director Dave Mumford told Council the 2005-2006 Miscellaneous/Developer-Related Improvements Program involved 197 properties, and the property located at 2033 Main Street was the only property being reviewed. Mr. Mumford advised Council the only item being voting on at the meeting was whether or not replacement of the damaged curb approach at 2033 Main Street would be removed from the Miscellaneous/Developer-Related Improvements program. Mr. Mumford said the damaged curb approach needed replaced because a new building had been built on the site triggering the Site Development Ordinance. He said the new approach would need to be built to ADA standards in compliance with the Justice Department Agreement signed by the City Council two years ago. Mr. Mumford said the developer of the property had brought forward additional issues, such as paving and landscaping, that had nothing to do with the agenda item at hand. He said the paving issue was part of the Site Development Ordinance and not part of the miscellaneous program.

Mr. Mumford stated that the developer was only required under the Site Development Ordinance to pave a 26-foot wide access onto the property as a driveway and 12 new parking areas for his site. Mr. Mumford said it was his understanding from Staff that when the developer originally came to the City with the site plan, the site plan had nothing delineated where the developer planned to pave. He said Staff asked the developer to come back with a plan showing the area he planned to pave. When the developer came back, his revised plan showed the entire area would be paved. Mr. Mumford stated the developer was not required to pave the entire area, and the City was not asking him to. He said based on the information the property owner provided to the Council and Staff about other properties, Staff found there had been no variances approved to remove the paving requirement of a parking lot in the City within the past ten years. He said the only approved variance Staff found was for Northern Plains Resources who changed their parking lot from asphalt to glass.

Councilmember Brewster stated a couple of years ago a chroming business had a special review, and staff recommended paving, resurfacing, etc. Mr. Mumford stated that was a zoning issue for a Special Review and did not deal with the Site Development Ordinance.

Councilmember Ronquillo asked Mr. Mumford how the curb cut would match up for drainage. Mr. Mumford stated the developer would need to deal with storm drainage on-site, which would be part of his site development. Councilmember Ronquillo referenced a curb cut to the left of the property and asked if the developer owned that portion. Mr. Mumford stated he did not.

Councilmember Stevens asked Mr. Mumford about the current damage to the approach and asked if photos were available. Mr. Mumford said the back side of the approach was cracked, and there was a photo in the packet.

Councilmember Ulledalen asked Mr. Mumford or Ms. Beaudry to review the level of alterations to an existing facility triggered by site development. Mr. Mumford said it

would be a brand new structure on the site or 25% change in the existing floor plan, an addition, or a change in use.

Councilmember Stevens asked what was triggering the requirement for paving. Mr. Mumford said it was the Site Development Ordinance. Councilmember Stevens asked if the Site Development Ordinance was requiring the paving or the ADA compliance. Mr. Mumford said it was the paving. Mr. Mumford told Council the only issue being voted on that evening was replacement of the curb approach and not how much paving the developer would be required to do through site development. Ms. Stevens asked if ADA required paving. Mr. Mumford said paving was an ordinance issue requiring that all parking lots be paved to keep gravel and dust down and had nothing to do with ADA.

Councilmember Veis asked Mr. Mumford what specific paving the City required versus what the developer was proposing to do. Mr. Mumford said the revised plan the developer brought to Staff included paving the entire site. He said the only paving the developer was required to do was a 26-foot wide access onto his property and 12 parking stalls required for his new building. Councilmember Veis asked if the developer could bring in another plan showing only the required paving. Mr. Mumford said he could, and Staff would review it.

Councilmember Stevens said she found the photo showing the existing approach and asked how the new approach would differ. Mr. Mumford said it would be ADA compliant with a seven foot width and a 2% cross slope. Mr. Mumford said the existing approach was five feet and had more than a 2% cross slope. Councilmember Stevens commented that there were other approaches in the area that did not meet ADA requirements. Mr. Mumford said as each property developed, the other approaches would be required to be built to meet ADA standards.

Councilmember Ruegamer left the Council Chambers at 7:40 p.m.

Councilmember Brewster said the developer would need to change the grade behind the approach because of the slope. Mr. Mumford said he would have to do that in order to match the rest of the improvements, which were required of every property developed in the City. Councilmember Brewster said the requirements were forcing businesses to move out into the County. Mr. Mumford stated the developer could have requested a variance for Council approval but did not.

City Administrator Volek stated the applicant had an opportunity to request a variance; and by not doing so, agreed to the requirements placed on the property. Mr. Mumford said Staff would be willing to review the parking lot pavement requirements with the developer; but reminded the Council that the curb approach was the only issue they would be voting on that evening.

Councilmember Veis asked if the developer would have a chance to get a variance on the approach if Council acted on the issue that night. Mr. Mumford said if the property were taken out of the program that night, the developer would never have to make the improvements to the approach and would not have a reason to request a variance. Councilmember Ulledalen stated they were talking about two issues; the ADA issue and the site development issue. He said if Council voted to remove the property from the program, the developer would still go forward paving his parking lot and would have an approach that was not ADA compliant.

Councilmember Veis asked if the property could be exempt for one year and required to be a part of the next miscellaneous/developer process. Attorney Brooks said he was not aware of any legal authority to do so; and it would just create inconsistency issues. Attorney Brooks said one solution would be a request for a variance.

Councilmember Stevens stated the variance runs with the land and asked if something could be done to postpone the issue until the whole sidewalk had been redone. She said the requirements were forcing businesses to move to the County.

Councilmember Veis asked if Council were to exempt the property that evening, would the developer have to follow the standards at the time Main Street was reconstructed. Mr. Mumford said he would.

City Administrator Volek stated that Council had already given its approval of the program, and staff had been moving forward in good faith to complete the improvements during the 2007 summer construction season. She asked Council to be very specific when reconsidering the item, so the remainder of the program involving 190+ properties could move forward as previously bid.

Councilmember Gaghen moved that Council approve Work Order 05-02, the 2005-2006 Miscellaneous/Developer Related Project so the work could commence, seconded by Councilmember Clark.

Councilmember Brewster said he thought Council had already approved the project. Attorney Brooks said Council would now be approving the entire program to include 2033 Main Street.

Councilmember Ruegamer returned to the Council Chambers at 7:45 p.m.

Councilmember Brewster moved to exempt 2033 Main from the Miscellaneous/Developer Related Improvements, seconded by Councilmember Stevens.

Mayor Tussing asked for discussion on the amendment. Councilmember Brewster said he hoped Council would remove the property from the program and allow the developer to go back to Staff and ask them to reconsider the site development process. Councilmember Brewster said it drove him nuts when the City bent over backwards when big businesses came to town; but when a small business needed to expand and wanted to build a \$24,000 building, it ended up costing \$70,000. Mr. Brewster asked how the City could say they were pro-business. He said maybe the City was just pro big business and not for the little guy. He said eventually someone would come in and redevelop the property, which would be the time to make the improvements. Councilmember Brewster said he hoped the Council would support exempting the property from the program.

Councilmember Stevens said she echoed Councilmember Brewster's thoughts. She said she wished the Heights were like the west end and that all development was on virgin land. She said many of the lots in the Heights had been there for 40 or 50 years with businesses on them. She said applying west end standards to the Heights did not make sense. Councilmember Stevens urged Council to vote for the amendment.

Councilmember Ulledalen said anyone coming in for a building permit would be subject to the same criteria; the same site development. He said there may be a church in the central part of town with a gravel parking lot; and if they would come in for a building permit, they would be subject to the same criteria. He said Council needed to be fair to everyone; and if Council started making exceptions, where would it all stop.

Mayor Tussing stated his spouse had no involvement in the property and asked Attorney Brooks if he could vote on the amendment and not the motion. Attorney Brooks said he could.

Councilmember Ruegamer stated he was concerned about the economic development issue, but he said consistency was needed. He said the City had ordinances, and certain things had to be done. He said he just had a church in his ward with a similar situation, and they had to replace their approach. He said he felt bad for them; but staff explained to the pastor what needed to be done, and they were very understanding. He said the church was a lot poorer than any business and yet they agreed to do it once they understood the reason. Councilmember Ruegamer said Public Works did a good job of explaining the issues.

Councilmember Gaghen pointed out that Gateway Triangle was a case in point as far as small business owners who had been in place for many years and who were hampered because of the ordinance. She said there were quite a few reasons to be consistent.

Councilmember Veis asked Mr. Mumford to confirm that all that would be required would be an approach two feet wider with no more than a 2% cross grade. Mr. Mumford said that was correct. Councilmember Veis confirmed the developer had a site plan when he came in for a building permit, and the site plan showed he would pave the entire lot. Mr. Mumford said that was correct. Councilmember Veis asked if adding two feet to the approach would significantly impact the grade and require pavement in that area. Mr. Mumford said the developer would not have to have pavement all the way across. He said the developer only needed to have 26 feet paved down to his parking area. Councilmember Veis verified with Mr. Mumford that the only way for the developer to reduce the cost on the project would be to come back and ask for a variance on his site development. Mr. Mumford said as far as paving went, the developer would not have to have a variance. He could just revise what he proposed to do. Mr. Mumford said the developer showed more paving on his plan than was required by code.

Councilmember Stevens asked Attorney Brooks about the ordinance requirements and what would happen if Council voted to exempt the property. Attorney Brooks said Council would be ignoring the Site Development Ordinance and the requirements of an application, public hearing, etc. Councilmember Stevens said she was talking about the approach, which would not be a site development issue.

Councilmember Veis asked if the developer could come in and ask for a variance to eliminate having to do any paving on the site. Mr. Mumford said he could, and Council would choose to grant or not grant the variance.

Mayor Tussing asked for further discussion. The amendment to exempt 2033 Main Street from the program failed 8 to 2.

Councilmember Veis stated he would be willing to listen to a variance request to the site development ordinance on the property.

The motion passed 8 to 1.

Mayor Tussing called for a brief recess at 8:00 p.m.

The meeting was called back to order at 8:13 p.m.

### **3. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #804: A zone change from Residential Professional (RP) to Residential Multi-**

**Family Restricted (RMF-R) on Lot 1A, Certificate of Survey 2991, and located on the southeast corner of the intersection of Central Avenue and Brookshire Boulevard addressed as 2810 Central Avenue. CBE Properties, LLC, owners. Zoning Commission recommends approval and adoption of the determination of the 12 criteria. (Action: approval or disapproval of Zoning Commission recommendation.)** Wyeth Friday explained the location of the approximate 3.93 acres of property involved in the zone change request. He said the applicants, in conjunction with the zone change, had submitted for a two-lot subsequent minor subdivision on the property and were proposing a multi-family condo-style development. Mayor Tussing asked Mr. Friday to verify that the walkway shown in the presentation slide was a sidewalk and not a trail. Mr. Friday confirmed the walkway was sidewalk. He said the Zoning Commission held their public hearing on May 1, 2007, and forwarded their approval recommendation at a 5 to 0 vote.

Councilmember Boyer stated the new development could further impact the overcrowding at West High and asked Mr. Friday if the School District had voiced any concerns. Mr. Friday said they had received no comments from the School District.

The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Ronquillo moved for approval of the Zoning Commission's recommendation, seconded by Councilmember Gaghen. Mayor Tussing stated he would not be voting. On a voice vote, the motion was unanimously approved.

**4. PUBLIC HEARING AND SPECIAL REVIEW #845: A special review to allow an all beverage liquor license with gaming on property described as Lot 20, Block 4, Sunset Subdivision, 1<sup>st</sup> Filing, in a Community Commercial zoning district and located at 1102 Grand Avenue. X1S Entertainment, owner. Aquilino Diaz, agent. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)** Planner Lora Mattox explained the location of the subject property at 11<sup>th</sup> Street West and Grand Avenue. She stated the building formerly housed the Texas BBQ Restaurant. She said the owner of the property also owned the Lucky Lady Casino located to the west of the building and a barber shop located to the south. She referenced the parking lot adjoining the Lucky Lady Casino and the former Texas BBQ Restaurant building, and stated there would be a reciprocal parking agreement to provide parking for both entities. Ms. Mattox said the Zoning Commission held their public hearing on May 1, 2007, and recommended conditional approval on a 5-0 vote.

Ms. Mattox reviewed the conditions of approval, as follows:

1. The special review approval shall be limited to Lot 20, Block 2, Sunset Subdivision, 1<sup>st</sup> Filing, located at 1102 Grand Avenue.
2. The special review approval is for an all beverage liquor license with gaming and no other use or expansion of this use is approved or implied with this authorization.
3. The addition of an outdoor patio lounge will require another special review as required by Section 27-613 of the Unified Regulations.

4. There shall be no outdoor public address system or outside announcement system of any kind.
5. All exterior lighting with the exception of sign lighting shall have cut-off shields so light is directed to the ground and not onto adjacent property.
6. Landscaping shall be provided as required by Section 27-1100 of the Unified Zoning Regulations.
7. A reciprocal parking agreement shall be made with the Lucky Lady Casino to ensure adequate parking. A copy of this agreement shall be submitted to the City of Billings, Public Works Department, Engineering Division.
8. All new signage must meet requirements as stated in BMC 27-705(c).
9. These conditions of special review application shall run with the land described in this authorization and shall apply to all current and subsequent owners, operators, managers, lease holders, heirs, and assigns.
10. The proposed development shall comply with all other limitations of Section 27-613 of the Unified Zoning Regulations concerning special review uses and all other City of Billings regulations and ordinances that apply.

Councilmember Gaghen asked how many gaming machines would be in the building. Ms. Mattox stated the amount would be governed by the State.

Councilmember Stevens asked if they could build a restaurant with liquor and not have any gaming machines. Ms. Mattox stated they could.

The public hearing was opened. DARREL KREITZBERG, 38<sup>TH</sup> AND GRAND, offered to answer any questions.

Councilmember Ruegamer asked if there were plans to expand the size of the building. Mr. Kreitzberg stated they would start out with fewer machines and possibly expand in the future. He said right now they wanted to get the license in place.

Councilmember Clark asked how they planned to get around the state regulations of close proximity to another casino. Mr. Kreitzburg stated he recently handled a similar situation at Broadwater and 16<sup>th</sup> Street West, and he thought there would be no problem.

Councilmember Boyer asked about an earlier plan to cluster casinos and asked if there had been any progress made. Ms. Mattox introduced their summer intern, Alicia, and said she was currently working on mapping out the locations of casinos and gathering other relevant facts of the gaming industry. She said they hoped to bring a report to Council in the near future.

Councilmember Stevens asked Ms. Mattox to introduce the intern and provide background information on her. Mr. Friday introduced Alicia Bankston, who would be working with the Planning Department for about a month. He said Alicia was specifically working on the casino overlay project and helping with the southwest corridor TIFD project. He said Alicia was pursuing a career in Planning. Ms. Bankston added she had a BA in Political Science and Sociology from the University of Massachusetts.

There were no other speakers. The public hearing was closed. Councilmember Clark passed on placing the motion on the floor. Councilmember Boyer moved for conditional approval of Special Review #845, seconded by Councilmember Ruegamer. On a voice vote, the motion was approved 7 to 3. Councilmembers Brewster, Boyer, and Clark voted no.

**5. PUBLIC HEARING AND SPECIAL REVIEW #846: A special review to allow a parking lot on existing vacant land zoned Residential-6000 (R-60) described as the west 79 feet of Lot 2, Block 1, Alego Subdivision, and located at 818 Avenue B. Michael D. Stock, owner. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

Planner Lora Mattox explained the location of the property located at 818 Avenue B and the properties surrounding the subject area. She stated the properties located to the west and south were zoned Community Commercial, and the properties to the north and east were zoned Residential 6000. She said public parking lots were allowed in residentially zoned areas under a special review process. Ms. Mattox showed the proposed site plan of the lot and said the applicant was proposing an office or retail development with a parking lot located in the back towards Avenue B. She said the applicant was showing an access drive approach onto Avenue B from the parking lot, and the parking lot would accommodate 26 parking spaces. She said the Zoning Commission held a public hearing on May 1, 2007, and voted 5-0 to recommend conditional approval. Ms. Mattox stated the special review was only for a parking lot on the residentially zoned parcel; the front portion on Grand Avenue was already zoned Community Commercial. Ms. Mattox referenced a petition included in Council's packet submitted prior to the Zoning Commission meeting regarding the development on the subject property and said the applicant would address the petition and review conversations he has had with adjoining property owners.

Ms. Mattox reviewed the conditions of approval, as follows:

1. The special review approval shall be limited to the west 79 feet, Lot 2, Block 1, Alego Subdivision located at 818 Avenue B.
2. This special review approval is to allow a parking lot on an existing residential lot and no other use or expansion of this use is approved or implied in this authorization.
3. All exterior lighting with the exception of sign lighting shall have full cut-off shields so light is directed to the ground and not onto adjacent property.
4. At no time shall a dumpster or waste receptacle be located on the residentially zoned lot.
5. A 3-foot stone wall shall be constructed along the Avenue B side of the development to shield neighborhood properties from vehicle headlights per Section 27-604 of the Unified Zoning Regulations.
6. A 6-foot site obscuring fence shall be constructed along the east side of the residentially zoned lot per Section 27-604 of the Unified Zoning Regulations.
7. Landscaping shall be provided as required by Section 27-1100 of the Unified Zoning Regulations.
8. The proposed development shall comply with all other limitations of Section 27-613 of the Unified Zoning Regulations concerning special review uses and all other City of Billings regulations and ordinances that apply.

Councilmember Ulledalen asked if the property to the west had access onto Avenue B. Ms. Mattox said it did, and their dumpster was located on the Avenue B side in



the corner of the parking lot. Councilmember Boyer asked what the business was, and Ms. Mattox said it was the Grand Liquor Store.

Councilmember Ruegamer asked what type of retail building would be built. Ms. Mattox said she did not have any specifics, but the applicant was present and could answer the question.

Councilmember Stevens asked if a casino could be put in that location without a liquor license and not have to go through any reviews. Ms. Mattox said the property would need to go through special reviews to place a casino on the property. Councilmember Brewster stated a business had to have a liquor license in order to have gaming, whether they sold liquor or not.

Councilmember Clark asked how far back from Avenue B the stone fence would be located. Ms. Mattox said if the fence were less than three feet high, it could be located at the property line as long as it would not encroach into the clear vision site.

Councilmember Stevens asked what businesses were located around the property. Ms. Mattox referenced the Holiday Service Station on 8<sup>th</sup> Street West and Grand and the Subway Restaurant on Grand. Councilmember Ruegamer asked what was located exactly to the left of the empty lot on Grand. Ms. Mattox said it was the Grand Liquor Store and Casino.

Councilmember Gaghen asked where the entry would be located on Grand Avenue. Councilmember Stevens asked if there were any requirements to have an approach on Avenue B. Ms. Mattox said it was her understanding the lot was only 79 feet wide and to try to fit a commercial building on the lot with an access entrance at only one location would cause traffic problems.

Councilmember Boyer addressed a comment in the supporting documents that referenced the Highland Neighborhood Plan. She said there was real concern about maintaining the Grand Avenue corridor and not allowing it to encroach further into the neighborhood. Councilmember Ruegamer asked if the project complied with the Highland Neighborhood Plan. Ms. Mattox said the Highland Neighborhood Plan showed an imaginary alley on Avenue B; but the area in particular did not have an alley. Ms. Mattox stated the project did not comply with the Highland Neighborhood Plan.

Councilmember Boyer stated the new Dairy Queen was not allowed to go out onto Avenue B.

Councilmember Stevens said at noon when Senior High let out, the back streets were really busy. She said she was concerned about the exit onto Avenue B and what it would do to the neighborhood. Councilmember Veis said he was sure the neighbors would prefer to have a signed posted stating no Senior High Students could drive on Avenue B, but that would not be possible. He said he felt allowing access onto Avenue B would greatly increase the traffic on Avenue B.

Councilmember Ulledalen asked if there had been discussion about placing the building further back to allow cars access on the front of the building. Ms. Mattox said the commercially zoned portion was only 70 feet deep.

Councilmember Clark asked if a variance could be requested to change the zoning on the back part of the lot. Ms. Mattox said it could be requested but because of the Highland Neighborhood Plan, a zone change would probably not be supported.

The public hearing was opened. MR. MICHAEL STOCK, 1135 BLUE GRASS DRIVE EAST, introduced himself as the developer. He pointed out it was not a zone

change request and said there was no plan at all to place a casino on the property. He said he had spent a lot of time on the adjacent lot, the Nickels Casino, and he had not witnessed any cars darting through the parking lots. He said heavier traffic was currently traveling down Avenue B because of the construction on Grand Avenue. Mr. Stock said he definitely had a coffee shop planned and had interest shown from an insurance agency. He said the lot was very narrow and difficult to develop. He said the access onto Avenue B was very crucial to the development. He said he tried to get a reciprocal parking agreement with the neighbors, and they were not interested. Mr. Stock said he had a letter from the neighbors directly across the street, and he would like to discuss the petition from the neighbors.

Councilmember Veis asked Mr. Stock to explain why the lot would not function without an access onto Avenue B. Mr. Stock said a bottleneck would be created on the lot, and he would need to eliminate two of the parking spots to alleviate the congestion. Councilmember Veis commented he felt the lot would still function.

Councilmember Boyer asked Mr. Stock to explain the petition. Mr. Stock said the petition was presented to people stating there would be a casino built on the lot, so many of the people signed the petition with that understanding. Mr. Stock said he had two letters from the neighbors directly across the street in favor of the development. Councilmember Boyer asked if all 16 people who signed the petition were misled. Mr. Stock said he did not know about all 16 of them, but the neighbors across the street were misled, and he assumed all the others were, too.

There were no other speakers. The public hearing was closed.

Councilmember Clark moved for approval of the request for the parking lot without access to Avenue B, seconded by Councilmember Stevens. Mayor Tussing stated he would not be voting or discussing the item because it was part of the Growth Policy, in which his wife had involvement.

Councilmember Veis asked Attorney Brooks if it would be beneficial to move for approval of this item and then amend sections of the conditions. Attorney Brooks said it would be beneficial; as Condition #5 may have to be modified if access was prohibited from the Avenue B side. He said it could be accomplished either way as long as the conditions were clear.

Councilmember Clark stated he did not feel Condition #5 needed changed because the fence should be constructed all the way across the side. Attorney Brooks said the condition was not clear if the stone wall should go all the way across or if there was access to the Avenue B side. He said based on the presentation, it was obvious access from Avenue B was being contemplated.

Councilmember Stevens said the developer indicated he would have to remove a couple of parking spots if the only entrance was off of Grand and asked Ms. Mattox if doing so would require a variance. Ms. Mattox said it would require a variance from the Site Development Code on parking standards, which would require a public hearing.

Councilmember Veis made a motion to amend Condition #5 to say "a sight-obscuring fence will be constructed along Avenue B with no access onto Avenue B." The motion was seconded by Councilmember Clark. Mayor Tussing advised the original motion had not been acted upon. Attorney Brooks said the amendment of Councilmember Veis would be voted on and then depending on whether it was approved, Council would go back to the original motion. He said it sounded like the motion from

Councilmember Veis would take care of the intent of Councilmember Clark's original motion.

Mayor Tussing asked for further discussion on the amendment. On a voice vote, the amendment to eliminate access off of Avenue B passed 5 to 4. Councilmembers Boyer, Brewster, Gaghen, and Ronquillo voted no.

Councilmember Veis asked to clarify that his amendment to Condition #5 included that the 3-foot stone wall would be changed to a 6-foot sight obscuring fence with no access on Avenue B. Because there appeared to be confusion with the wording of Councilmember Veis's amendment, Mayor Tussing asked Councilmember Veis to restate his amendment to include a 6-foot sight obscuring fence. Attorney Brooks recommended Councilmember Veis restate his amendment. Councilmember Veis repeated his motion to amend Condition #5 to include changing the 3-foot stone fence to a 6-foot sight obscuring fence, seconded by Councilmember Ruegamer.

Councilmember Brewster stated he felt a 6-foot fence adjacent to a sidewalk was counterproductive. He said it would be difficult for kids to ride their bikes on the sidewalk. He said he would not support the amendment. Councilmember Veis said a 3-foot stone fence would be fairly expensive; and if the developer could not have access on Avenue B, Council should not require a stone fence.

Councilmember Boyer asked if a 3-foot fence would protect headlights coming onto Avenue B. Ms. Mattox stated that was the idea.

Councilmember Ruegamer made an amended motion that no fence would be required, and access would be denied onto Avenue B. He said if the developer wanted to put up a fence, he could. Mayor Tussing said that issue had already been discussed and that the current amendment was to change the fencing requirements. Mayor Tussing asked for further discussion on the amendment to change the 3-foot stone fence to a 6-foot sight obscuring fence. There was no further discussion, and the motion failed 8 to 1. Councilmembers Ronquillo, Gaghen, Stevens, Brewster, Ruegamer, Ulledalen, Boyer, and Clark voted no.

Mayor Tussing asked for further discussion on the original motion, as amended, to eliminate access onto Avenue B. Councilmember Ruegamer made a motion to remove the condition requiring any type of fence and just deny access onto Avenue B. The motion failed for lack of a second.

Mayor Tussing asked for further discussion on the original motion, as amended. The motion passed on a 6 to 3 vote. Councilmembers Ruegamer, Ronquillo, and Brewster voted no.

**6. PUBLIC HEARING AND RESOLUTION #07-18556 FOR ANNEXATION #07-08: Property described as Tract 3, Certificate of Survey 2298, located in Section 4, T.1S, R.25E on the southwest corner of the intersection of Grand Avenue and 56<sup>th</sup> Street West. Hope Evangelical Church, owner and petitioner. Benjamin Gonzales, representative. Staff recommends conditional 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 Ulledalen moved for approval of the Staff recommendation, seconded by Councilmember Ronquillo. Mayor Tussing stated he would be recusing himself because Page 8 of the supporting documents made reference to bicycle and pedestrian facilities.

Councilmember Brewster clarified that the motion was for conditional approval. Councilmember Ulledalen stated it was. On a voice vote, the motion was unanimously approved.

**7. (a) PUBLIC HEARING AND RESOLUTION #07-18557 FOR ANNEXATION #07-09: Property described as the NW1/4 of Section 16, and the SW1/4 of Section 9, T.1S, R.26E, located on the southeast corner of the intersection of King Avenue East and Calhoun Lane. Staff recommends conditional approval. (Action: approval or disapproval of staff recommendation.)** City Administrator Volek stated there would be no Staff presentation on this portion of Item 7 but there would be a Staff presentation on the zone change portion that followed. The public hearing was opened.

RICK LEUTHOLD, ENGINEERING, INC. said he represented Four Square Properties and the Millers on the development of the parcel and offered to answer any questions.

Councilmember Clark asked if the property abutted to property already in the city on the west side. Mr. Leuthold said it abutted to city property on both sides.

There were no other speakers. The public hearing was closed. Councilmember Ruegamer moved for approval of Staff recommendation, seconded by Councilmember Boyer. Mayor Tussing stated that he would reclude himself from this item because of the reference to bicycle trails. On a voice vote, the motion passed 9-0.

**(b) PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #806: A zone change from Residential 15000 (R-150) and Residential Manufactured Home (RMH) to Entryway General Commercial (EGC) generally located on the southwest corner of King Avenue East and Orchard Lane and described as: the E1/2, NE1/4, NW1/4, less Certificate of Survey 3153 and the W1/2, NE1/4, NW1/4, less highway and less Miller Crossing Subdivision, Section 16, T.1S, R.26E, and Certificate of Survey 3153. Zoning Commission recommends approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

Planner Dave Green explained the location of the subject property. He stated Entryway General Commercial was very specific on the types of business allowed on the property. He said retail food stores, general merchandising, hardware stores, paint stores, pharmacies, automotive sales or rentals are allowed. Mr. Green said there were also very restrictive landscape requirements, and all frontages, including I90, would be required to have buffering yards. He said buildings could be no more than 40 feet tall, and the Zoning Commission voted 5-0 to recommend approval.

Councilmember Ulledalen asked if the developers had mentioned to Staff how our Entryway General Commercial requirements compared to those of other cities. Planning Director Candi Beaudry said the developers have not run into any obstacles that they feel are too strict so far. She said the City had not received anything official on the submittal as far as site plan for a building permit. The public hearing was opened.

RICK LEUTHOLD, ENGINEERING, INC. said he represented Four Square Properties and the Millers on the development. He said he has had some excellent discussions on land use with the neighbors and the Southwest Task Force supporting the annexation and the commercial use as proposed. Mr. Leuthold explained the location of the two parcels that would be included in the first phase. He said improvements would

include a signal at Calhoun, signal modifications at South Billings Boulevard, and improvements to King Avenue East. Mr. Leuthold said, in answer to Councilmember Ulledalen's question, all of the improvements that have been requested of the developer are typical in other areas with commercial developments. He pointed out Phase II would include commercial activity on King Avenue East and accesses part way down on Orchard Lane. Mr. Leuthold said the developer had mitigation measures in place, landscaping, etc. in order to satisfy the requests of the neighbors. He said they would continue to work with the neighbors through the site development and platting processes. He said the developer was looking forward to working in the area.

Councilmember Ulledalen asked where the main access points would be located. Mr. Leuthold said the main access would be signalized intersection and an access that currently went into the Burger King. He pointed out the location of the City/County Drain, and said there had been a traffic accessibility study completed for the first phase that was currently being reviewed by City Staff and by the Department of Transportation. He said none of the improvements go beyond the on-ramps, so the Department of Transportation would only be making comments. He said Phase II would be signalized at Orchard Lane, and an access would be parallel to Brockton Avenue. He said anything along Orchard Lane would require reconstruction.

Councilmember Clark asked if the accesses were the only places culverts would be placed over the City/County Drain. Mr. Leuthold said the question was raised at the Southwest Task Force Meeting if the entire City/County Drain would be covered. He said covering the entire drain would be quite costly. He said the City/County Drain was one of the major storm water conveyances in the area; and current storm water trends indicate much better treatment without as much sediment if a drain was left in a natural state. He said they intend to lay the slope back on the sides and landscape along the bike/pedestrian trail that would be located along the south side of the drain.

Councilmember Gaghen voiced her concern about Ponderosa Park. She asked Mr. Leuthold if any type of mitigation, such as fencing and landscaping, had been discussed. Mr. Leuthold said they were just now starting to look at a couple of the major pads and site development. He said the Millers have always been very good stewards of the property, and that Norman Miller was in the audience and would be happy to answer any questions.

Councilmember Stevens asked if the little white house on the one acre would go away. Mr. Leuthold confirmed the house would go away. Councilmember Stevens asked what would be done in the future about cleaning the City/County Drain. Mr. Leuthold said they planned to build a 6-inch thick, 10-foot wide concrete trail that would support cleaning equipment. He also said the cleaning could be done from the north curb side, as well. Mr. Leuthold stated the City/County Drain and the agricultural ditches were only cleaned out every several years.

Councilmember Boyer asked if the trail could be asphalt rather than concrete. Mr. Leuthold said typically they use concrete because it was easy to put down and required much less maintenance than asphalt.

MARY WESTWOOD, 2808 MONTANA AVENUE, said she supported the development. She said it was an infill development and exactly what Billings needed. She said the Millers have contributed a lot to the community. She said they opened up their parking lot behind the old Security Bank Building so a 24-hour skate-a-thon could be held.

There were no other speakers. The public hearing was closed. Councilmember Veis moved for the approval of the Staff recommendation, seconded by Councilmember Ronquillo. On a voice vote, the motion was unanimously approved 9-0.

Mayor Tussing noted he did not ask for approval of the minutes of the May 14, 2007, meeting. He asked for any additions or corrections to the minutes. Hearing none, the minutes were approved as presented.

**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.)**

- PATTI WADDELL, 3607 OLYMPIC BLVD., expressed concern about the development costs for the King Avenue West improvements between 32<sup>nd</sup> Street West and Shiloh Road on the south side of King. She said the Cherry Creek II Condo Association she represents would like to see the Shiloh Corridor rules extended to the development of King Avenue, as the residents are concerned with lighting, landscaping, noise, and signs in their residential area. She said the residents would like to keep a sense of neighborhood in the area.

- KATHY MALONE, 3633 OLYMPIC BLVD., expressed concern over the King Avenue West improvements between 32<sup>nd</sup> Street West and Shiloh Road and said she supported Ms. Waddell's request on behalf of the Cherry Creek II Condo Association that the Shiloh Corridor rules extend to the King Avenue improvements. She also wanted to confirm that the property owners in the Cherry Creek II Condo Association would not be assessed the cost of improvements along King Avenue.

Councilmember Ulledalen asked Ms. Malone if the condo association had received any correspondence from the developer. Ms. Malone said there was one letter in response to a letter in the newspaper but nothing public that she was aware of. Councilmember Ulledalen suggested that the property owners make their concerns known to the developer.

Councilmember Veis asked City Administrator Volek to address who would be assessed for the SID. Ms. Volek said her understanding was that two major property owners in the area would be assessed for 90% of the improvements. One property owner was the person who offered to do the work in the agreement approved that evening, and the other was the property owner of the modular home facility located east of the development area. Councilmember Veis said property owners have to be addressed along King Avenue to be assessed in the SID, and the Cherry Creek II Condos were not so they would not be assessed for the SID even if they bordered King Avenue West.

Ms. Volek stated that before Mr. Mumford left the meeting, he indicated that 90 percent of the SID would be the responsibility of the two major property owners and the remainder of the SID would be the responsibility of the three to six property owners to the east.

- MIKE PENFOLD, 3552 PRESTWICK ROAD, stated he read the article in the Billings Gazette regarding the Mayor and the Ethics Committee and said he had read the Code of Ethics carefully. He stated there was a very broad loop in the Code of Ethics, and

the codes could affect any of the Councilmembers. He suggested taking a very hard look at the Code of Ethics.

- MICHELLE JOHNSON, 2705 BLUE CREEK ROAD, clarified for Mike that Section 2-703 Personal Interest, stated *any interest arising from blood or marriage*. She stated she believed no one needs to recuse themselves on everything unless they are married or related. She said it seemed pretty self-explanatory to her.

## **Council Initiatives**

- VEIS: MOVED that the City extend the Shiloh Corridor Overlay down King Avenue to 32<sup>nd</sup> Street,

Councilmember Ulledalen asked if it would conflict with anything already done with the Shiloh Overlay in terms of going further down King Avenue. Ms. Beaudry said she was not sure what issues would be raised. She said the Shiloh Overlay District effected only commercially zoned properties so it would have no effect on the properties to the north, just on the south to 32<sup>nd</sup> Street West. Ms. Beaudry said she was not sure if Golden Meadows was zoned commercial. Councilmember Boyer said it would have a considerable impact on the electronic sign committee in terms of the work they were doing right now. Councilmember Clark asked if the Shiloh Overlay District covered any part of the King Avenue property already. Ms. Beaudry said it extended back 500 feet. Councilmember Veis said the neighbors were concerned about the project and what else might happen on King Avenue. Mr. Veis said if the south side of King Avenue was going to be developed commercially, the rules needed to be put into place now rather than ten years from now.

Mayor Tussing asked Attorney Brooks if he could vote on the motion. Attorney Brooks said the overlay would have nothing to do with bike trails.

Councilmember Brewster asked Ms. Beaudry if most of the issues people were having would be addressed through the Subdivision Improvements Agreement. Ms. Beaudry said they would not.

City Administrator Volek asked to clarify if it was the Council's intent to create a Shiloh Overlay-like District and ask Staff to report back; or was it to initiate a zone change to actually extend the overlay to the new area. Councilmember Veis said it was to initiate the zone change.

Councilmember Ulledalen said he would like to hear back from Staff on what the issues would be. Ms. Beaudry said Staff would bring the issues back to Council in a work session. On a voice vote, the motion passed 10-0.

- TUSSING: MOVED that legal staff research the requirements of the Policy Coordinating Committee (PCC) concerning conflict of interest. He said by statute, the Mayor was the representative, and a determination was needed if the Council could appoint an alternate based on the statutes. Mayor Tussing asked for guidance before the next PCC meeting.

Councilmember Ulledalen stated there were issues with the previous Mayor in terms of whether the Council's views were accurately presented to the PCC Committee. He suggested discussing some of the issues in a joint city/county meeting. He said it had been discussed if it would be better if the Council elected its own PCC representative.

Councilmember Veis said he would be in favor of taking a look at the agreement for our MPO and our representation on the PCC in conjunction with the county. He said maybe Council wanted someone other than the Mayor to represent them. Councilmember Veis said his understanding of the federal law was that it was a fairly broad interpretation. Councilmember Brewster said he felt the largest amount of federal dollars was spent in the City of Billings and that the City was vastly underrepresented.

Attorney Brooks said Council needed to work in conjunction with the Planning Department to complete a comprehensive review of the current interlocal agreement; what the statutes required, what the federal regulations required; and whether or not the Council was free to appoint an alternate to the PCC who may or may not be the Mayor or a member of City Council.

Councilmember Veis asked for the date of the next PCC meeting. Ms. Beaudry stated the PCC meets the first Wednesday of the month once a quarter or as needed. Councilmember Veis asked if Council could expect a report back within 90 days. Ms. Beaudry said they could.

Councilmember Boyer asked if Council received notices of the PCC meetings. Ms. Beaudry said she e-mailed the notices.

On a voice vote, the motion was unanimously approved.

**ADJOURN: The meeting adjourned at 9:50 p.m.**