

**REGULAR MEETING OF THE BILLINGS CITY COUNCIL**  
**September 22, 2008**

The Billings City Council met in regular session in the Council Chambers located 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. Mayor Tussing gave the invocation.

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

**MINUTES** – September 8, 2008, approved as distributed.

**COURTESIES** – None

**PROCLAMATIONS**

- Family Day – A Day to Eat Dinner with Your Children, Sept. 22, 2008
- American Indian Heritage Day – Sept. 26, 2008

**ADMINISTRATOR REPORTS:**

- Ms. Volek referenced Item H and advised that an existing right-of-way easement would be used, a new right-of-way easement was not necessary, and staff was recommending that the item be removed from the agenda.
- Ms. Volek noted the final staff report and agreement for Item 2 had been distributed in the Friday packets and was available in the ex-parte notebook in the back of the room. She also referenced letters from Amy Webber and Mike Schaer regarding Item 2 and advised copies were available in the ex-parte notebook.
- Ms. Volek advised the Rehbergs were requesting that Item 3 be postponed until October 14, 2008.
- Ms. Volek referenced Item 11b and said a letter from Bill Cole of the Cole Law Firm was received asking for a change in the Planned Development Agreement. She said a copy of the letter had been distributed to Council that evening and was filed in the ex-parte notebook.
- Ms. Volek referenced Item 12 and said updated protest information had been distributed to Council that evening and was filed in the ex-parte notebook.
- Ms. Volek referenced Item 13 and advised the applicant requested that the item be withdrawn.
- Ms. Volek noted a letter from Alan Stageberg regarding Item 17 that had been distributed to Council and was filed in the ex-parte notebook.

**PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: 1, 2, 3, 4, 10(c), 16, 17, and 18 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.)*

The public comment period was opened.

- **Mark Francis, DVM, Hardin, MT** said he currently had the contract to perform the spay/neuter functions at the Billings Animal Shelter. He said he was at a point of being on the outside looking in and saw what happened on both sides of the fence. He said changes were needed at the Animal Shelter; it was not public-user friendly, there was misjudgment of what went on at the shelter, and it needed to be more open and accessible to the public. He advised he did not know how that should be accomplished, but it needed to be addressed. He said he did not think the privatization was the right way to do it; it was just the City Council passing the buck with the problem to another group of people and hoping for the best. He said he thought it would come back and bite the Council in the end and would cost more to get back to the point it was at now.

Councilmember McCall asked Dr. Francis to explain what he meant that the City would be passing the buck and his concerns about a private group. Dr. Francis said his two concerns about privatization were that they were going with two ideas: 1) that money would flow from outside sources, and 2) volunteers would man the shelter. He said volunteerism had been a big problem during the last many years. He noted that people got excited, then realized it meant cleaning up dog and cat feces, cleaning up messes on the floor and after a few weeks, they decided there was something more fun to do or they needed to get a paying job and could not put in the time to volunteer as much as they wanted. He said no one knew if the money was out there and would flow into the shelter to pay to continue the program that was set up, which was to make sure that every animal that left the shelter was spayed or neutered, vaccinated, implanted and tested.

Councilmember Ronquillo asked Dr. Francis if he was in a position to help with changes or if he was on a committee to be able to program some changes. Dr. Francis responded that he was there to do the veterinary portion of the shelter, but would like some input and would be proactive in offering suggestions and being part of the solution.

Councilmember Gaghen asked Dr. Francis if the \$100 adoption fee assessed was exorbitant. Dr. Francis responded that it was a bargain at that price because the services performed prior to adoption were worth \$200-250. He said he felt that fee should be higher, but they had to keep the public interested in adoption from the Shelter.

- **Georgia Peters, 1950 Mary Street** stated she was in total agreement with the previous speaker. She said she was against the privatization of the Animal

Shelter mostly because most of the group lacked experience in rescue work. She said letting animals leave the shelter not spayed or neutered would set them back years in trying to get the numbers down. She said they were heavily relying on volunteers that were not there; and were not there consistently.

- **Mary Ann Wegner, 2113 Walter Road**, stated she was not in favor of the contract with the Yellowstone Valley Animal Shelter. She said the City of Billings had specific job descriptions and requirements for every position for which it hired or contracted, yet no prior experience in shelter management was required to take over the Billings Animal Shelter. She said the contract being considered offered far less in services than was currently provided to the public for a \$500 savings. She said it was ludicrous that it was even being considered.
- **Nicole Thompson, 428 Tumbleweed Drive** said she supported the privatization of the Animal Shelter. She said she believed in a public-private partnership and an enormous amount of creativity and results were produced when private sector principles were applied to solve a public problem. She stated she was interested in volunteering and would be one of the strange few that did not mind picking up poop. She said she had an animal science background and wanted to be able to make the shelter something that was more welcoming to the public. She said adoption was a big decision and an animal became a big part of a person's life. She suggested more public involvement in the Shelter because it was part of the public even if it was run by private sector. She said she thought it needed to be more welcoming to the public.
- **Michelle Cormier Lee, 220 N. Broadway**, spoke in favor of the project with the Babcock Theater. She said her former business was involved with getting club boxing in town and as a sponsor, she saw the Babcock after it had been fallow for a long time and what was needed to get it to where it was now. She said it was a beautiful building with great potential and in a gorgeous part of downtown Billings. She said she felt the development project would do wonders for downtown, not only in restoring the theater, but getting empty commercial space occupied. She said she was excited there was money available to help jump-start the project and felt it would be fantastic if the Council approved the agreement and work could start on what she believed was a treasure in downtown Billings.
- **Pat Cormier, 220 N. Broadway** said he was in favor of the Babcock project. He said he spent many Saturdays there as a kid. He said the building was central to the downtown area and would be classified with the Moss Mansion and original Library history. He added it was a treasure that needed to remain and he hoped the Council supported the project.
- **Catherine Schaeffer, 2113 Walter Road**, said she was against approval of the privatization contract for the Billings Animal Shelter because the contract provided fewer services than currently provided -- no micro chipping, no feline leukemia or parvo testing, and no return policy. She said it allowed 5% of the adopted animals to leave the shelter unaltered which was unbelievable. She said the American Veterinary Medical Association's public policy on dog and cat population was to prohibit the sale or adoption of attack dogs and cats by mate

organizations and animal control agencies. She said the American Veterinary Medical Association approved a policy in 1994 of early-age spay/neuter of dogs and cats starting at eight weeks of age, yet the YVAS contract allowed the doctors to wait until an animal was six months of age. She said 50% of the cats would be pregnant by then.

Councilmember Ruegamer said he was going to ask a question then that he would not ask of everyone who talked against it, but suggested that if people who spoke against the privatization had an alternative, they should state it and if they did not, he would assume they did not have one. He asked Ms. Schaeffer what her alternative was. Ms. Schaeffer stated that the Shelter just started working closely with the rescue groups in February and had not been given enough of an opportunity and she wanted to see that continue. She said she wanted to see the City work more closely with rescue groups on spay and neuter. She added that more or bigger shelters were not needed if animals were spayed and neutered because population control was the only way to lower the numbers. She said 50 shelters could be built and filled inside of a week. She said spay and neuter was the answer.

Councilmember Ulledalen asked which organization Ms. Schaeffer was involved with. Ms. Schaeffer responded she was the Executive Director of the Last Chance Cat Sanctuary and they did five major spay/neuter clinics at Metrapark and kept statistics on every one of them; along with two spay/neuter clinics at the Sanctuary for 3-1/2 years. She said that after every large clinic, every member of the City Council was mailed statistics on those spay/neuter clinics in preparation of asking the City to help fund more spay/neuter clinics of that nature.

- **Angie Cook, Help for Homeless Pets, 2910 Hannon Road** said she was concerned about the contract due to the fact that it would set things back about 10 years in regard to spay and neuter. She stated that the Shelter helped in the community through its spay/neuter program and also with her group's program. She said working together made a big difference in the community and she hated to see the efforts go down the drain to save \$500 a year or \$41 per month. She stated her second point was that she did not feel that would be worth all the heartache for the current employees or the morale of them. She said she felt they tried harder to work with the rescue groups in implementing things. She suggested that the current operation be kept and monitored closer.
- **Patty Nordlund, Big Sky EDA, 222 N. 32<sup>nd</sup> Street**, said she wanted to speak on Item 17, Babcock LLC project. She said Big Sky EDA concurred with the staff recommendation for approval of the proposed development agreement because it was a great opportunity to accomplish one of the Legacy projects for downtown Billings. She added that Big Sky EDA also concurred with staff's recommendation for Item 18 to approve the expansion of the N. 27<sup>th</sup> Street TIF District.
- **David Wagner, 5220 Midland Road** stated he opposed privatization of the Animal Shelter. He said he believed the people for the project were doing so for the right reasons and believed it would help and was totally necessary. He said low-kill, no-kill shelters would not work. He said there were too many situations

in too many cities where they had it, and as long as there was an animal surplus and a surplus of irresponsible people, it would not work. He noted that foster homes and volunteers were there today but would not be there tomorrow because it was too difficult, as mentioned before, and not what people looked forward to.

- **Susan Grasso, 1005 Moon Valley**, stated that the Yellowstone Valley Animal Shelter Board was asking to be entrusted with a \$235,000 contract, yet no board member ever attended a City Council meeting before that evening to address concerns raised by area rescue groups. She said the board members had zero experience in operating an animal shelter and in addition, the proposal stated that no experience in sheltering was required for their executive director or senior staff positions. She added that the board's inability to see the critical necessity for an experienced director was incredible. She said if awarded that contract, they would be experimenting with taxpayer dollars in their venture. She said any private group that was given tax dollars should have an established history and proven track record in the area they were attempting to privatize. She stated that in that situation, the contractor, such as YVAS, should have successfully operated a private shelter for a minimum of two years before acquiring taxpayer funding.
- **Mike Mathew, 115 N. Broadway**, said he was one of the partners in Babcock, LLC., and wanted to tell the Council that as property owners and architects that were involved in numerous downtown renovation projects, they were very confident they could turn that quarter block into a beautiful and vital commercial and entertainment area for the City of Billings. He said they would be available and more than happy to answer questions that might come up when the agenda item was considered.

Councilmember Ulledalen stated that after reviewing the proposal, he would be more comfortable if there was more equity going into the front end of the deal. He asked if Mr. Mathew attempted to bring in other partners on the front end of that project. Mr. Mathew said the partnership was slightly larger to start, but one partner withdrew because he felt that parts of the long-term development agreement were a little risky for him as he had a young family. He noted that the other partners came up with the same amount of the 25% of initial start-up equity that they were originally using; that amount was not reduced. He said there were indications from other individuals that they may be interested in joining a partnership. He noted that time was of the essence at present and they were not trying to make those changes now, but that was an option.

Councilmember Ronquillo stated he felt it would be a nice project if it was ever started and he had a couple of concerns. He said he was concerned whether there was asbestos in the building, and a second concern was the roof. He asked if financing would be available if roof problems were discovered. Mr. Mathew explained that the roof over the theater was a barrel roof and had leaked through a drain, not the roof. He said the barrel was fairly efficient and the theater had no leaks. He said the group was experienced with older buildings and knew of problems that could arise and even without owning the

building and being able to tear things apart, they were pretty confident that enough due diligence was done that they could proceed with the project and get it into the condition needed.

- **David Bovee, 424 Lewis Avenue**, said he saw from Items 17 and 18 that the self-profiting clique intended to expand and perpetuate the downtown Billings soviet socialist republic by spreading it out to bring in more of the same people, the Council's associates and little buddies, who were apparently fiscally incompetent and unable to stand on their own hind legs and support themselves. He said that on top of that, someone wanted \$2 million in welfare for what was to be called the Babcock (inaudible phrase). He said that was wrong and they should support themselves for once. He said it has been 32 years and they were all over the place, and it was always the same tight group of people. He said they should go get on market like the other 103,000 non-benefitted, non-subsidized and essentially non-represented residents of Billings.

Councilmember Gaghen stated she wanted to refute some of what he said. She said she knew that many in the audience took his testimony as humor, yet she knew he felt strongly that way. She said she took offense at the fact that he termed the group of entrepreneurial, new-thinkers in the way that he did and that he smeared the Council and the whole of the City with that because they did not just gift without having full responsibility as much as possible. She said she knew it was meant as light-hearted repartee or whatever he termed it, but she thought it approached something other than appropriate.

Mayor Tussing said that was not a question but he would allow Mr. Bovee to respond. Mr. Bovee said for over 32 years, nobody in those seats had signed their name to any account, any audit or financial report from any of the tax increment finance districts and opened it to the public. He said nobody had put their own reputation on the line to say where the tax money had been spent, lost, wasted or stolen. He said he did not want to hear about Downtown Billings Partnership because they did not get to vote for them. He said none of them would answer the public and sign their names to an accounting of where 32 years of tax increment finance money had gone because they knew that would make them complicit.

Councilmember Ruegamer asked Mr. Bovee if he had talked with Greg Krueger. Mr. Bovee responded that he had many times.

- **Martin O'Neil, Yellowstone Valley Animal Shelter, 5216 Rocky Mountain Boulevard**, said he wanted to point out several facts. He said the Yellowstone Valley Animal Shelter Board had over 150 years of business and professional experience among them. He said a doctor of veterinary medicine was on the board; they knew how to finance, operate, staff, manage and communicate, and proved that in their lives. He said they were not there to point out problems, but to offer a positive alternative to the City. He stated they put their own money up to get that thing going and were not manning it with volunteers and had one more paid staff member than was currently on staff, going from three to four. He said all animals that went through the door would be spayed and neutered and experienced animal care people would staff it.

Councilmember Ruegamer asked Mr. O'Neil if he had any comment about some of the negative things heard. Councilmember Ruegamer said he heard it would set the city back 10 years but he did not get why. Mr. O'Neil said he did not know why either.

- **Jake Penwell, 1600 58<sup>th</sup> Street West**, stated he supported privatization of the Animal Shelter. He said it seemed like the system was broken and these were some of the few folks presenting a solution.
- **Chad Amestoy, 2531 Mary**, said he was in support of privatization of the Animal Shelter.
- **Ty Vogeles, 4807 Cedar Ridge Circle**, stated he was in support of privatization of the Animal Shelter and wanted to go on record vouching for Mr. O'Neil and his wife and their character and experience as business owners.
- **Megan McBride, 2223 Belknap Avenue**, said previous speakers indicated there would not be enough volunteers for the Animal Shelter. She said she knew there were plenty of people who wanted to volunteer at the Shelter but had not been able to in the last few years due to not getting along with staff, etc. She said the gratification from seeing a dog adopted was worth the time, effort and occasional stinky hands. She said if there was poop in the cage, the dog did not get adopted and when volunteers could help connect people up with the right dogs, the dogs did not go back.
- **Sheryl Schafer, 409 14<sup>th</sup> Street West**, spoke in favor of revitalization of the Babcock Building. She said she worked with a children's theater in the building in recent years and looked forward to another opportunity. She said the building was usable then and would be even more usable in the future for those children.
- **Hans Kostal, 108 N. Broadway** stated he owned In-Step downtown and wanted to see the recommendation of approval for the Babcock Theater project. He said when he moved to downtown four years ago, all the spaces were filled and they were excited to see that, but in the last couple of years there have been empty spaces and customers asked why. He said he would like to see the building rejuvenated and brought back to old glory. He stated that customers have told him it was vibrant and he thought the central location was good and it would be wonderful for the economy for tax purposes.
- **Renee Christensen, Fun Adventure Tours**, said her company helped bring tourists to the Billings area and provided a nice city tour. She said comments received were that it was a clean, beautiful city until the tour got to the block with the empty buildings. She said she hoped the Babcock Theater project would be approved.
- **Debbie Schoeppe, 2909 Gregory Drive**, stated she was in favor of the Council approving the changeover to Yellowstone Valley Animal Shelter. She advised she was a volunteer at the Billings Animal Shelter and received an award for the most hours volunteered in 2003. She said she wanted the opportunity to go back and exceed those volunteer hours. She advised she owned two businesses and volunteered at the animal shelter 3-5 days/week and would be back.

Mayor Tussing asked Ms. Schoeppe why she left the shelter. Ms. Schoeppe said she was terminated by Penny Reed and was told it was because she moved to a different home. Ms. Schoeppe said the new home was actually closer to the shelter. She said she was aware of the problems at the shelter, but people who loved animals would be there to volunteer and support the group.

Councilmember Ulledalen asked if she felt there were more volunteers out there that would be interested in helping. Ms. Schoeppe answered 'absolutely.' She said the community was full of people who loved animals and wanted to support the group and they would volunteer.

- **Maxine Allman, Billings** stated she was a downtown property owner and thought the Babcock Building was an eyesore. She asked that it be taken care of that evening with the approval of the project.
- **Dale Sikora, PO Box 31011, Billings and 63 Windsong Lane, Lavina** said he wanted to express his support of privatization of the Billings Animal Shelter. He said it seemed that what was in question was the best interest of the animals. He said that from what he knew of the board that put the proposal together, it had a history of altruism in regard to animals. He said he had an experience with the Billings Animal Shelter when he adopted a dog a couple of weeks earlier. He advised it appeared to him that the people who worked there felt it was just a job. He said the dog he got was covered in urine and feces and had a terrible ear infection after being seen by the Veterinarian. He said he had to take the dog to his own Veterinarian to get it cleared up. He stated he was not impressed at all. He said he knew that other cities in Montana had private, low-kill shelters and volunteers worked there.
- **Michael Mansfield, 1125 Siesta Avenue**, stated that he was against the privatization because there were some things that were not known until the person was right there. He said the individuals who wanted the Animal Shelter contract did not know what they would be facing and it would fail and the City would have to pick up the pieces.
- **Diana Bachman, 2213 2<sup>nd</sup> Avenue North**, stated she was on the Animal Control Board but was speaking as a private citizen. She said she was in favor of the privatization of the Billings Animal Shelter. She advised the City had an excellent opportunity with very fine people with a Veterinarian, volunteers and excellent business people who were very intelligent, objective and wanted to work with people. He said it would allow the Animal Control officers to be out more to enforce the control policies instead of having to worry about the adoption and care of the animals. She stated she hoped the opportunity would not be passed up.
- **Doug Rubke, 110 S. 31<sup>st</sup> Street**, said he recently had assistance by an Animal Control Officer and was impressed by his actions. He said his concern was if a private organization took over the Animal Control and if it spilled over to their training because they were already short-staffed. He said he would be willing to increase his dog license fee to help fund more staff for the Animal Control operation.



Councilmember Ulledalen clarified that the consideration was not about privatization of the animal control part of the operation. Mr. Rubke said he was concerned with a spillover for privatization of an operation in connection with the animal control function. Councilmember Ulledalen asked about Mr. Rubke's hands from his previous dog attack. Mr. Rubke responded they were permanently damaged.

- **Joe White, Billings, MT**, said he said he read in the newspaper that there was \$2-4 million to give away for downtown buildings. He said \$2 million to one project was asking too much when there were 400 businesses downtown that could each get \$10,000 for internal or external remodeling. He said some standards and requirements should be set for the money to allow downtown people to apply for it and hearings could be held to try to portion it out differently. He said he had never been in the Babcock and thought he would support those who supported its renovation and approved that, but thought the burden should be private.

Mayor Tussing pointed out that the funds Mr. White referred to totaled \$1.9 million and the problem was that there was not time to find 400 or even 200 businesses to distribute the money to because it had to be allocated rather quickly or had to go back to the taxing entities. He said that would not be a bad thing as far as taxpayers of Billings were concerned, but most of it would go to the State.

- **Sandra Wulff, 2942 Old Hardin Road**, stated she was against the approval of the contract for the YVAS. She explained that she spoke with City Administrator Tina Volek the previous Friday at approximately 11:30 a.m. and Ms. Volek told her the recommendation from the board that would make a recommendation to the Council was to not approve it at that point. She said Ms. Volek called her about 5:30 p.m. that same day to tell her that in the interim, the YVAS had lowered their budget by \$63,000. Ms. Wulff said that change came in at the bewitching hour, and actually only fell \$500 below the actual current Billings Animal Shelter contract which was not much of a savings.

Councilmember McCall asked if it was appropriate for Ms. Volek to clarify that now or during the discussion of the item. Ms. Volek said it was part of her presentation for that item but she could provide the information at that time if Council preferred. Councilmember McCall said it could be done during the item's presentation. Ms. Wulff stated she hoped it was carefully considered outside of what was heard from all of them.

- **Lisa Harmon, 2815 2<sup>nd</sup> Avenue North**, stated she was Executive Director of the Downtown Billings Association and the Business Improvement District. She reiterated that the DBP and BID supported the funding and incentives for revitalization of distressed and disinvested properties and supported the Babcock project as an economic generator and community anchor. She said one of her Association members could not attend that evening and she read an email of support from Barb Shenkle of Barjon's Books at 29<sup>th</sup> and 3<sup>rd</sup> Avenue N.
- **Diana Bachman, 2213 2<sup>nd</sup> Avenue North**, stated she was in favor of revitalization of the Babcock Theater and had a personal interest in it because she lived downtown. She said it would be a shame to not renovate it and it

could present excellent shows there. Ms. Bachman stated that as she came up to speak, a lady in the audience asked if it was possible for the Council to ask for a show of hands of people regarding the animal shelter issue.

Mayor Tussing said people could just raise their hands in support or opposition but were also allowed to testify if they wanted. He said a show of hands would be requested after everyone who wanted to testify had done so.

- **Heather Cunning, PO Box 273, Billings**, stated she lived in Lockwood but worked within the City limits. She stated she supported the privatization and did not know why anyone would not want people with money management experience handling a non-profit operation. She said current animal rescues did not have money management experience. She said the taxpayer money could go further with experienced people handling it. She advised that books would be open to public discretion and did not know why that would not be wanted in the area.
- **Kevin Nelson, 4235 Bruce**, said he wanted a minute each for Items 2, 17, and 18. He said for Item 2, he had never been for or against the animal shelter, but was against the process due to the ethics of the President and the process she took to request the financial information long before anyone else was aware that the animal shelter could be privatized. He added that using inside information for her advantage was extremely difficult and if Council went along with it, would be even more difficult for him to understand.

Mr. Nelson spoke about Item 17. He noted that the item would be presented by City Administrator Volek, Downtown Billings Partnership, and Babcock LLC regarding Tax Increment Financing. He noted that Babcock LLC consisted of Mike Mathew, Kay Foster, Kimberly and Donald Olsen. He said that according to the Downtown Billings Board of Directors, Don Olsen was Vice President; Tina Volek, Kay Foster, and Kim Olsen were listed under Board of Directors; and Ward I City Council was Peggie Gaghen and Jim Ronquillo.

Mr. Nelson referenced Item 18. He said the City was stepping into dangerous territory because if anyone had attended the Interim Committee meeting in Helena, they would have found there was great displeasure in the tax increment districts and in order to use any in the future, they would find themselves in a difficult situation. He said he believed the Legislature would come down very hard on the process because everyone firmly believed the tax increment districts were being grossly abused. He said Council should consider Statute 7-15-4239, Conflict of Interest, with tax increment dollars and might also consider official misconduct of knowingly performing an act in an official capacity when it was known that those people were forbidden to be connected with the tax increment district because they sat on the board and had urban renewal project powers. He strongly suggested they did not give them based on the fact that the Council would be in violation.

Councilmember Ruegamer asked where the tax increment district financing had been specifically abused. Mr. Nelson said to check with the urban renewal project as defined in Statute 7-15-4206. He said the prevailing party in Fallon County vs. State of Montana would set a precedent in the state and several of the urban renewal districts would not be certified because they could

not meet the statutory requirements. Councilmember Ruegamer stated that Fallon County was the only tax increment district that was refused and it was abused. He noted that Missoula and many towns in Montana had several tax increment districts that were legal, above board and okayed by the Department of Revenue, as the Billings Southside Tax Increment district was. He said Mr. Nelson could argue all he wanted, but he was wrong because Fallon County was the only one to be found abusive. Mr. Nelson asked what was being redeveloped and rehabilitated in the South Billings Boulevard area. Councilmember Ruegamer said that was not his question. Mr. Nelson said he asked the question. Councilmember Ruegamer responded that he was expounding about other things. Mr. Nelson asked why he could not rebut his comments. Councilmember Ruegamer said he asked who abused it; the Department of Revenue found Fallon County guilty of abusing the tax increment district. Mr. Nelson responded that it was still in court. Mayor Tussing halted the discussion and said if there were questions they could be asked but if they were going to pontificate, he had to give Mr. Nelson the opportunity to respond. Mr. Nelson asked if Councilmembers Gaghen and Ronquillo would recuse themselves from the matter since they were on the Downtown Billings Partnership Board.

City Administrator Volek clarified that Mr. and Mrs. Olsen, Mr. Mathews and Ms. Foster were present to answer questions and then removed themselves physically from the meeting at which the issue was discussed. She added that she did not have a vote that evening but would simply report the decision to the Council. She said the Council had made a decision in the past that Councilmembers Ruegamer, Gaghen and Ronquillo were not voting members of the Downtown Billings Partnership Board so there was not a conflict with the Council in terms of voting on the items. She noted she was the voting representative of the Council on the Downtown Billings Partnership Board and the Councilmembers attended as their time and interest dictated but they did not vote.

Councilmember Gaghen reiterated that they were ex-officio and did not vote on matters but wanted to be informed so that they could refute or enhance what was said. She said it was not part of their job to recuse themselves when they thought of the best benefit for the entire community.

Councilmember Ulledalen read a portion of a letter from Dan Bucks, the Director of Montana Department of Revenue regarding the South Billings Boulevard Urban Renewal District that stated that the tax increment district was created in compliance with Montana law. Councilmember Ulledalen asked if Mr. Bucks was part of the conspiracy too. Mr. Nelson said he did not say he was part of the conspiracy but suggested Council consider review of the Interim Committee meeting tape because there was a large amount of testimony. He said there was the possibility that the Council may not get to use some of the tactics they planned to use. He said Mr. Bucks expressed concern that one government entity could not be made whole without all of the other taxing bodies being proportionately refunded of taxes; if tax revenue increment dollars

were taken from the district and given to one government entity, all the government entities had to receive proportionate amounts.

- **Norman Miller, 4507 Palisades Park Drive**, said he was a downtown property owner and also sat on the Business Improvement District Board. He expressed his support of Item 17 and stated he thought it was important for the revitalization of downtown. He said BID's mission was Clean and Safe and empty buildings were not clean and safe, so it would help their job quite a bit to approve that item.
- **Cynthia Jurosek, 821 N. 27<sup>th</sup> Street**, objected to the Babcock project. She said if the buyers could not finance the \$4 million from their own fund, they had no business buying the property. She explained she was a trained grant writer. She said for projects on a federal level, financial sustainability was an absolute requirement for the funds being released. She said the group did not have financial sustainability of any kind; they should do whatever necessary to come up with the \$4 million to finance the project themselves, and then return for the tax increment funds. She suggested letting the money return to the state rather than doing something financially irresponsible that would eventually turn into a can of worms if they did not have the financial sustainability.
- **Liz Honaker, 208 N. 29<sup>th</sup> Street**, stated she was an officer of the Yellowstone Valley Animal Shelter and wanted to respond to misinformation offered that evening. She said the spay/neuter policy was exactly the same as the current policy at the Shelter and it was based on both State law and the City of Billings Code. She said spay or neuter would be performed unless not medically advised by a veterinarian. She said there was no intention of taking the animal care back 10 years, but instead they intended to take it into the future. She noted that with regard to staffing, there would be four full-time staff which was more than what was in place currently and the shelter would not be staffed with volunteers, but would have the volunteers to do extra work such as exercising the animals.

Councilmember Gaghen asked Ms. Honaker what the hours of operation would be. Ms. Honaker said the current shelter was open 27 hours each week and YVAS intended to be open 42 hours per week. She said they intended to be open more than that, but the City wanted the Shelter closed on Wednesdays.

- **Bill Honaker, 1334 Briarwood Blvd.** said he was a Downtown Billings Partnership Board member, and was speaking about the animal shelter privatization issue. He said the previous commenter was obviously related to him and they had hosted the group on numerous occasions. He said he did not know the group well but knew his sister well and if she said something would get done, it would get done. He said he was there to support his family.
- **Steve Bruggeman, 1824 Forest Park**, said he was the property manager for the Valley Credit Union building downtown on North Broadway and he supported the Babcock LLC project. He said that building was currently blighted, unclean and unsafe. He explained his building was similar to the Babcock Building with commercial and retail businesses. He said the Babcock Building was a deterrent to business in downtown Billings as it currently sat and

that he could speak firsthand at that. He noted that if the City wanted more businesses from outside Billings to locate in the downtown area or for expansion of existing businesses, it would not happen largely due to that building's location right under Skypoint. He urged support of the project.

- **Jeremiah Young, 3114 12<sup>th</sup> Avenue North**, said he and his wife owned Marcasa Clothing and Rocke Gear. He said their building was in the Stapleton Building and benefitted from similar help from the City. He said before he purchased the building in January, they tried to reach Ms. Moss and her attorneys to lease space in the Babcock Building but were not able to do so. He said that dovetailed what the previous speaker said; that it was a deterrent. He said he strongly urged the Council to provide whatever help they could to people who were willing to take on a project that took courage.

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

## **CONSENT AGENDA:**

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

**(1) Non-Commercial Aviation Building and Ground Lease** (5-year) for city-owned hangar located at 2431 Overlook Drive. (Opened 8/26/08) Delayed from 9/8/08. Recommend Aero Interiors; \$20,580 first year revenue; subsequent years adjusted annually by CPI-U.

**(2) W.O. 08-18, Airport Road Water Line Relocations** to accommodate upcoming MDT Airport Road Construction Project. (Opened 9/9/08) Recommend COP Construction; \$395,179.40.

**(3) 2009 4-Wheel Mechanical Broom High Dump Sweeper** (Opened 9/16/08) Staff recommends delay of award until 10/14/08.

**B. Memorandum of Agreement** with Montana State University-Billings (MSU-B) for architectural and building consultant services for the future Joint Community Library on the MSU-B College of Technology campus. \$75,000 City contribution; \$75,000 MSU-B contribution.

**C. Maintenance Agreement** between the City of Billings and Yellowstone County for the traffic signal at the Johnson Lane/Old Hardin Road intersection; City to be reimbursed actual costs for parts, materials, and services.

**D. Amendment #1** to Professional Services Contract with Interstate Engineering for W.O. 01-05, Lake Hills Storm Drain Project; \$67,685.

**E. Amendment #1** to Limited Commercial Aviation Building and Ground Lease with Alpine Aviation, Inc., dba Alpine Air, adding 1,047 square feet to leasehold for construction of additional office space; \$1,738.08 increase in revenue first year, for total first year revenue of \$19,007.04.

**F. Assignment and Transfer** of West End Hangar Ground Lease from John M. and/or Marcia A. Nash to Coal Black Cattle Company, L.L.C.; with no financial impact to the City.

**G. Right-of-Way Easement Request** from NorthWestern Energy to relocate electric power lines for upcoming MDT Airport Road Construction Project; with no financial impact to the City.

**H. Right-of-Way Easement Request** from Yellowstone Pipe Line to relocate 10-inch pipeline for upcoming MDT Airport Road Construction Project; with no financial impact to the City.

**I. Declaring surplus property** and authorizing a public auction of surplus City equipment and police recovered property on September 27, 2008.

**J. Acceptance of donations** from various donors to the Ballpark Construction Fund for \$57,308 and the Ballpark Maintenance Fund for \$13,400.

**K. Acceptance of donation** from Kenneth Hollar for \$15,030 for picnic shelter at Francis's Park in Lake Hills Subdivision.

**L. Resolution of Intent #08-18754** creating SILMD 305, King Avenue West from South 31<sup>st</sup> Street West to Shiloh Road; repealing SILMD 303; and setting a public hearing date of October 14, 2008.

**M. Transfer** of three RSIDs from Yellowstone County to the City of Billings.

**N. Approval** of City Administrator Evaluation: Date and Evaluation criteria.

**O. Second/Final Reading Ordinance #08-5476** for Street Maintenance Fee Ordinance Amendment clarifying the maximum assessment rate for vacant parcels.

**P. Second/Final Reading Ordinance #08-5477** for Storm Sewer clarifying purposes of the City's organizational structure or recent past practices within the Public Works Department.

**Q. Second/Final Reading Ordinance #08-5478** for Arterial Construction Fee Ordinance Amendment clarifying that rates are set annually by resolution, and allowing Residential Manufactured Home-zoned property owners to petition for a reduction of arterial construction fee assessments.

**R. Preliminary Subsequent Minor Plat** of Amended Lot 1, Block 1, Burlington Northern Subdivision, 17<sup>th</sup> Filing, generally located on the southeast corner of the intersection of Daniels Street and Industrial Avenue and addressed as

227 Daniels Street; Monad Daniels LLC, Dennis Witmore, and Roland Grunstead, owners; Engineering, Inc., agent; conditional approval of the plat and adoption of the Findings of Fact.

**S. Bills and Payroll**

- (1) August 22, 2008
- (2) August 29, 2008

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

City Administrator Volek reminded Councilmembers that she asked to have Item 1H removed from the agenda because it was not necessary. Mayor Tussing asked Mr. Brooks if a vote was needed. City Attorney Brooks responded it would be more appropriate to formally vote to remove it as unnecessary. He said he did not feel there was any public participation violation since the public comment period was held and comments were allowed for Item 1. Mayor Tussing separated item 1H. Councilmember Gaghen separated Items J and K. Councilmember Veis advised if a Councilmember wanted to make a comment regarding a specific Consent Agenda item, it could be done after the motion for Item 1 without separating it. Councilmember Gaghen stated she would await the action and would not separate those items at that point.

Councilmember Ronquillo moved for approval of the Consent Agenda with the exception of the removal of Item 1H, seconded by Councilmember Gaghen. Councilmember Gaghen pointed out the value of the public-private efforts on behalf of Items J and K because in each case, there were contributions that benefitted the City of Billings and the entire community that should be recognized. She stated the first and very encouraging donations were of various sizes from various service clubs to contribute to the Dehler Park construction fund and to the maintenance fund. She noted those donations would assure ongoing maintenance for that project which was a real community enhancement. Councilmember Gaghen referenced Item K and the picnic shelter donated at Francis's Park in Lake Hills Subdivision which was an enhancement and better use for the public. She said she felt those items should be recognized because many positive things went on in the community and she wanted to encourage continued support in such a way by community members.

Councilmember McCall stated she wanted to make a public statement regarding Item 1N, the format for the City Administrator evaluation. Councilmember McCall explained that the written evaluation would be completed by Councilmembers and Department Heads. She added that Ms. Volek would also complete a self-evaluation and those would be completed and returned to City offices by September 30. Councilmember McCall advised that residents of Billings were invited to make comment regarding Ms. Volek's performance by contacting their Ward Councilmember by September 30. She added that could be done by phone, email or letter. She advised that Ms. Volek's evaluation interview was scheduled for October 20 at a City Council Work Session. She noted that Ms. Volek had a right to a closed evaluation process and she exercised the right to do so. Councilmember McCall

stated that was deemed legal by Montana Supreme Court case law and the City's Attorney Mr. Brooks had information pertaining to that.

Councilmember Clark referenced Item 1C regarding a maintenance agreement for the traffic signal on Johnson Lane. He asked if the City's reimbursement for actual costs included the cost of employees, such as the City's portion of health insurance, retirement, etc. for the employees that went out there. Public Works Director Dave Mumford explained that was an ongoing contract that contained an actual bill-out rate to cover the City's overhead, along with administrative costs, so it recovered the costs as best as possible.

On a voice vote, the motion was unanimously approved.

Councilmember Ronquillo moved for removal of Item IH from the Consent Agenda, seconded by Councilmember McCall. On a voice vote, the motion was unanimously approved.

Councilmember Ruegamer stated that Mr. Nelson commented on a conflict regarding Item 17 but after Item 2, there would be a mass exodus from Council Chambers and he did not want anyone to leave with questions about the conflict. He said he did not know that Councilmembers Gaghen and Ronquillo were on that Downtown Billings Partnership Board because he attended the meetings and was ex-officio and did not vote. He asked City Attorney Brooks if there was a conflict because the item was not a DBP request, but two or three members of it forming their own company and requesting it from the DBP. Mr. Brooks responded that he would need to know more facts about the Councilmembers' attendance as ex-officio members at the meetings. He suggested taking some time to gather that information during a break prior to action on that item. He said he knew time was of the essence, but it was something that had to be carefully examined.

## **REGULAR AGENDA:**

**2. AGREEMENT with Yellowstone Valley Animal Shelter, Inc. for a 2-year contract for private operation of the Billings Animal Shelter. (Delayed from 5/27/08, 6/23/08 and 8/25/08) Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** City Administrator Volek advised a contract for privatization of the Billings Animal Shelter with Yellowstone Valley Animal Shelter, Inc. was before Council that evening. She said YVAS was the only respondent to an RFP that was advertised per the City's requirements in *The Billings Times*, with copies of the RFP sent to all veterinarians in the area in hopes they would be acquainted with the shelter groups, as well as to the ASPCA offices in California. She presented a PowerPoint of the history of the project and pointed out it was a Council Initiative from 2005.

Ms. Volek stated she had the utmost confidence in the current Animal Shelter staff that did a very difficult job in very trying circumstances. She explained that due to the shortage of funds, the City followed the philosophy that most cities did, which was that we were a public health and safety function. She said animals were taken off the street or from people who brought them in, held for the requisite amount of time, adoption attempts were made and if not successful, the shelter tried to work



with rescue groups to see if they could assist with adoption, and in the end, if necessary, they were euthanized. Ms. Volek explained the opposite approach that was being considered in some communities was the concept of a low-kill shelter. She said she thought the City was moving toward that with the current animal shelter but did not have the staff to provide the associated functions that helped reduce those numbers which included animal fairs and foster situations.

Ms. Volek advised that her main concern with the contract was whether privatization would provide equal or better service at an equal or lower cost. She said the initial response was that it was more expensive to privatize, however, on Friday afternoon when she informed Mr. O'Neil that was the circumstance and that under those conditions she could not recommend the contract, the group reduced the amount of money originally requested by \$63,000. She referenced the figures provided Council that showed that continuing with the City's own animal control enforcement operation, the YVAS contract, accounting for unemployment for the approximately two employees that would have to be laid off if other positions were not found within the organization, and operation and maintenance, the first year of the contract was approximately \$500 less than the current function. She noted that in the second year of the contract, YVAS would receive \$240,000 but the unemployment costs would not exist which meant there would be a net benefit to the City. She added that the RFP was for a two-year contract with three one-year renewals. She noted that the proposed contract reflected that but the one-year renewals would be negotiated as they occurred.

Ms. Volek reviewed the highlights of the contract. She said the organization agreed it would start up within 180 days if given the contract. She said they were required to provide proof of staffing and that they had one-quarter of their annual expenses in hand 30 days prior to start-up. She said an ongoing requirement was also that the group provided a performance letter of credit for an escrow fund equal to one-year's payment from the City. Ms. Volek said the original request was for a \$500,000 performance bond, but the State Purchasing Office felt it was more prudent to talk about an annual fee equivalent to the cost of the project. She noted that the group could not obtain a performance bond because it was new, but the performance letter of credit was a non-revocable letter that would be on file and would provide the City with financial back-up should the group decide not to continue with the project.

Ms. Volek advised that facilities, utilities and the computer base would be shared with the YVAS. She said the City would make payments in 12-month periods and the group would have to provide a 120-day notice to withdraw from the contract.

Ms. Volek outlined the alternatives that evening as: 1) approve the contract as presented; 2) modify it; 3) re-issue the RFP or 4) continue the current Animal Shelter operation. She advised that if the Council decided to continue the current Animal Shelter Operation, the Police Chief volunteered to attempt to bring in a volunteer coordinator to recruit additional volunteers. She noted that the coordinator would be in an unpaid capacity, at least initially, and would be someone outside the existing shelter framework.

Ms. Volek advised that the recommendation was to approve the contract as presented. She added that the City was in the process of a cost-of-services study and a limited set of resources existed and it was likely that privatization or

discontinuance of some services could be a future issue. She said the City of Billings had a long history of providing animal shelter services and would continue to provide the animal control services, but it was something that the City was not mandated by law to provide.

Mayor Tussing stated it made him uneasy that a bidder was allowed to reduce the bid after being informed that the contract would not be approved because the bid was too high. Ms. Volek explained an RFP differed from a bid in that it was a negotiation. She said the City's purchasing staff assured her that was legal.

Councilmember Ulledalen stated that one of the biggest complaints about the current shelter was the hours open to the public. He asked if there was any way the hours could be increased during the next two years with the current budget situation. Ms. Volek responded that she was unaware of a way unless the Animal Control Officers worked less in the field and more in the shelter. She advised that one Animal Control Officer and the related equipment would be added during the current year as part of the final year of public safety levy funding. She noted that without the addition of volunteers and the utilization of the Animal Control Officers, it would be difficult to expand the hours. She said the proposed contract from YVAS included Sunday service, which was not offered at the present time. She added that, as indicated earlier by Ms. Honaker, the group originally proposed to be open on Wednesdays, but it was agreed that it was advisable to be closed one day to perform routine maintenance chores and heavy-duty cleaning that could not be done when people were in the shelter looking at animals.

Mayor Tussing asked about the escrow account in lieu of a performance bond. Ms. Volek explained that the YVAS would provide a letter of credit and the City could draw upon that if necessary to return the shelter to the City's operations. She added that the group's board members were backing that with personal financial resources and it had to be in place before the shelter would be turned over to them. Mayor Tussing asked if the funds were on the account or if they were pledging resources. Ms. Volek reviewed the provision that indicated it was an irrevocable letter of credit issued by a bank or other financial institution to be renewed annually or an escrow fund in the amount of the annual payment made to YVAS by the City, with the City being the beneficiary to the letter of credit or escrow fund in the event of default of YVAS. She said the City would review that document again before the group assumed operation of the shelter.

Councilmember McCall asked for an explanation of the relationship and the coordination between the animal control operation and the shelter operation if it was privatized. Ms. Volek explained that it was originally anticipated that the animal control operation would leave the shelter but it was no longer necessary with the revised leadership of the group, so the Animal Control Officers would remain at the shelter. She said a meeting would be held with the group and the shelter space would be divided if the contract was approved. She added that Animal Control Officers would work in the field as intended and animals picked up along with animals brought in by the City would be accepted in the shelter which was a different practice than some private shelters in the State. She said Animal Control Officers would be on-site and would continue to perform the euthanizations which required a license and training, and would also handle the rabies certifications to the State of Montana.

She said she believed their presence in the building would help ensure cooperation and communication between the two groups.

Councilmember Clark asked if there was a current contract with the County. Ms. Volek responded that the City had a contract with the City of Laurel to accept animals, but the contract with the County had not been in existence for about four years. Councilmember Clark asked if the new group would accept animals from other places. Ms. Volek stated the agreement was that they would accept animals from other groups only if there was a contract with those organizations and they were on their own to negotiate those contracts.

Councilmember Pitman asked what the \$240,000 to YVAS paid for. Ms. Volek explained that it provide the day-to-day operations of the shelter part of the facility. She said that included feeding, cleaning, intake, inoculations, spay/neuter, micro-chipping, and all the services presently provided. She noted that the attachment to the contract listed the specific services to be provided.

Councilmember Veis asked if there were other aspects of the contract that gave Ms. Volek pause to recommend approval or if it was just the financial aspect. Ms. Volek responded that the potential of laying off employees certainly gave her pause. She said she visited with those employees and informed them that attempts would be made to find other places for them within the organization. She stated that she looked very closely at operations across the country and believed there had to be successful public-private partnerships that people did not hear about. She added that she had seen issues in other communities where a contract was never reached, which was not an issue in the current situation. She said the group was extremely accommodating in attempting to reach a contract and she found that very refreshing. She said her other concern was the fact that the group was not an existing animal group, but they attempted to address that by the constraints and safety clauses included in the contract.

Councilmember Gaghen said it was indicated there would be quite a bit of fallout if the group was not successful. She asked how long it would take to heal and return the function to an efficient operation if the change was not successful. Ms. Volek advised it was discussed among the members of the advisory committee and they determined it would take 4-6 months to return the shelter to full function should the City be required to take it over again. Ms. Volek said she believed there would be concerns and they would have to work through them since it was a new experience in many ways. She noted there were successful examples in some other operational relationships, such as Par 3 and the ballpark.

Councilmember Pitman asked how much was paid to the Mustangs to play in Dehler Park. Ms. Volek answered that both the Mustangs and Par 3 paid the City. She said the Mustangs paid the City about \$30,000 per year. Ms. Volek explained that the City was prohibited by the bonds sold for the ballpark to accept more than that from the Mustangs, so in return, they provided day-to-day maintenance at the facility, which was a financial benefit to the City.

Councilmember Veis asked if the City had the ability to inspect what was being done at the animal shelter and how situations would be rectified if services were not provided as required. Ms. Volek advised the contract contained a clause (Item E, page 9) that allowed for an annual inspection of the shelter by the Director of the

Humane Society or a local veterinarian to be accompanied by the City's Facilities Manager or the City Building Inspector to insure the operation was handled properly. She added that quarterly reports regarding actual operating costs, revenues and a description of the way animals were being handled would also be submitted, and an annual review would be conducted as well.

Councilmember Veis asked about the City's ability to look into what was going on at the Animal Shelter. Ms. Volek responded that the group indicated it would be open longer hours and there would be people on the grounds that would notify City staff if there was a problem. Councilmember Veis asked if that discussion was held with the group. Ms. Volek said it was. She pointed to Item 11 regarding termination of the agreement if either party defaulted.

Mayor Tussing asked what would happen if the group wrecked the animal shelter facility. Ms. Volek advised the group would purchase an agreed-upon list of the fixed assets which included equipment. She noted that would be an item that would be addressed by the non-performance clause and the contract could be revoked if necessary.

Mayor Tussing said it seemed as if the City was admitting failure. He asked if Ms. Volek was saying that the City could not have as viable a volunteer program as that group would have and if so, why. Ms. Volek explained that she believed there were two philosophies at hand. She said the City had followed the health and public safety option, the time-honored option and one that was used by many communities. She said she believed the shelter employees cared about the animals and that significant steps were made over the past few months, sufficient enough that she felt she could work with them to make the shelter operation a better one. She said the fact was that volunteers were tried and it was not an extremely successful effort and she hoped a private group could recruit that volunteer force. She said if they could not prove in six months that they could bring that volunteer group together, they were probably realistic enough as business people that they would not go forward with the project.

Councilmember McCall said she had the same question. She asked Ms. Volek if she believed the current staff could step up to the plate in all areas if given the opportunity. Ms. Volek responded that she thought they could. She added that the Police Chief indicated he would take additional steps beyond what had been done. She lauded the staff for the Save a Life Program which was initiated late last year to try to place animals. She said it was a matter of time and capacity to deal with other issues and it was still short-staffed as many departments were. Councilmember McCall asked if Ms. Volek would be the direct contact person with the group. Ms. Volek advised she would likely delegate that to the Police Chief but would work closely with him.

Councilmember Ulledalen stated that the City's budget would continue to be under pressure the next few years and the City could be in a circumstance where further cuts in services at the Animal Shelter were necessary.

Ms. Volek referenced existing donations. She explained that an early draft of the contract stated that the group would take over the donations to the shelter. She assured the Council that she was well aware of the fiduciary responsibility for those donations given to the City. She noted that she and the Chief agreed to recommend

that the City converted those donations that were generally to specific areas to a grant program and that grants would be accepted from that group as well as others in the community to use those funds for specific projects. She said that would be administered through the Chief and decisions would be made about those donations based on applications and the applicability to the original intent of the donors. Mayor Tussing asked how much they were talking about. Ms. Volek said it was \$60-90,000 in four different funds.

Councilmember Gaghen asked if the group indicated any interest in expanding services to the County. Ms. Volek stated that the County had its own operation and, to her knowledge, was satisfied with it.

Mayor Tussing asked who would be in charge of the facility. Ms. Volek explained that the group had rightly pointed out that it was difficult to hire a staff until a contract was in place to do so. She said fundraising and staffing would begin after the contract was approved. Mayor Tussing asked who was in charge of the facility itself. Ms. Volek said equipment and space configurations would be developed in the interim period before the group took over. She said that would deal with a majority of any issues that could arise regarding the facility. She added that she and the Police Chief would meet with the YVAS Board regarding any conflicts. She noted that the Board would be just that; they may be present in the shelter but their staff would operate it.

Mayor Tussing asked that all audience members in favor of approval of the contract to raise their hands or stand. He asked all audience members who opposed approval of the contract to stand or raise their hands.

Councilmember Clark moved for approval of the contract for privatization of the Animal Shelter, seconded by Councilmember Ruegamer. Councilmember Ronquillo stated it was a tough one for him. He advised that his dad worked there for a number of years. He said after review of the contract, it seemed like a win for the City. He asked if the City would still get the donations to use with the grant process if they were secured by the group. Ms. Volek said those donations would go to that entity unless they were intended for the City, but she expected they would be kept at the shelter and used with the grant program. She noted the group would do its own fundraising. She explained that any funds raised by that group through donations or fundraising activities would remain with that group. Councilmember Ronquillo said that meant that group had more ability to do fundraising than the City had. Ms. Volek said she was aware there were also grant programs oriented toward private groups rather than City groups and they would be eligible for those as well as whatever contacts they had in the community.

Councilmember Clark commented that group would be more or less leasing space from the City and operating as a private company with a private, non-profit organization.

Councilmember Ruegamer said it ended up being a question of what the risk was to the taxpayers and the residents of Billings and whether it was worth the risk. He said it was a new venture and as pointed out, they did not have experience in it, but that could be said of a lot of very successful small businesses. He said his own feeling was that the RFP Committee and YVAS did a good job of mitigating the risk and even though there was a small financial risk to the City, it could turn out to be a

huge advantage to people in Billings to get some issues corrected and improved at the Animal Shelter.

Councilmember Gaghen stated that as Councilmember Ulledalen mentioned, the City was faced with a budget crunch, but she felt the project had potential to provide greater service and could even enlarge that ability in the future. She said the risk, which did not seem huge, was worth it in her mind. She said she was willing to go along with that venture with the positive hope that it worked out as a benefit to the entire community.

Councilmember Pitman said that was an area where he wanted the City to do better and expected it to do better. He added that he felt the entire Council was on the same wavelength. He said he felt progress was being made at the Shelter. He stated that he struggled with the fact that there was a group before them that had never actually done the deed and he did not understand why they could not work with the current shelter staff to prove what they could do and what they could provide to the community and it became a win-win. He said he was not sure if it was a deal killer if the Council said 'no' that night but instead told the groups to get together to start working it out to show how it could be a better thing for the animals instead of a contest of who was right or wrong or who could do it better. He said if they worked together as a team and proved to the Council and the community that it was effective and worked, then the exact same contract could be considered in a year when it seemed they were all on the same track and it would or would not work.

Councilmember Ulledalen said he would support it. He stated he did not think the City had a lot to lose and the current system needed a lot of improvement. He said the people put together a good proposal and it should be supported. He added that as the cost-of-services study was conducted, similar options might have to be considered and that was a good model to start discussing that. He said other cooperative ventures may have to be considered in the future.

Mayor Tussing commented that the process left a bad taste in his mouth from the beginning. He stated that he thought things had improved since then but he was not willing to take the risk because it did not seem like an efficient way to do business. He said it seemed like the City should not throw in the towel so easily. He said there were vocal people who he was sure were concerned about the animals, but as Councilmember Ruegamer said, the bottom line was what the risk was to the taxpayers. He said there was talk of possible budget cuts but that budget could not be cut if a contract existed and funding had to continue at the contract level. He said that did not seem like a good reason to vote for it because future budgets may have to be cut and he felt that left out an option.

Councilmember Clark asked if a cut was possible. Ms. Volek said it could be and there could also be an increase, which had happened in some places.

Councilmember McCall stated she had mixed feelings about it. She said she was not ready to give up on the City staff and this was a chance for collaboration and to be supportive of both efforts. She said would like to see something in place with the current structure with performance requirements, evaluations and constant monitoring to raise the bar. She stated she was concerned about having two different leagues where there could be confusion. She advised she would not vote for the proposal.

Councilmember Veis stated it was an emotional issue for many people and he came with mixed feelings as well. He said something like that had been looked at since 2005 and they could continue to do what was always done or choose to make a change. He said he was ready to make a change to improve the service. He said if it worked, everyone would be happy but if it did not, people would question why the decision was made. He said it was a difficult decision, but they had been trying to improve the process there for a long time and that was a step that was needed.

On a voice vote, the motion was approved 6-3. Councilmembers McCall, Pitman and Mayor Tussing voted 'No'.

*A brief recess was taken 8:35 p.m. to 8:45 p.m.*

**3. TRANSFER of Rehberg Ranch sanitary sewer lift station, force main, treatment lagoons, and effluent storage ponds and dispersal system to the City of Billings. Delayed from 9/8/08. Staff recommends approval. (Action: approval or disapproval of staff recommendation).** City Administrator Volek advised that staff did not have a presentation but was available to answer questions.

Councilmember Ulledalen moved to delay action on Item 2 until October 14, 2008, seconded by Councilmember Clark. On a voice vote, the motion was unanimously approved.

**4. RESOLUTION relating to Special Improvement District Bonds 1385; awarding the sale and approving the form and detail of the bonds. Staff recommends delaying action until 10/14/08. (Action: approval or disapproval of staff recommendation.)** City Administrator Volek advised that staff did not have a presentation but was available to answer questions.

Councilmember McCall moved to delay action on Item 4 until October 14, 2008, seconded by *inaudible*. On a voice vote, the motion was approved 8-1. Councilmember Veis voted 'No'.

**5. PUBLIC HEARING AND RESOLUTION #08-18756 approving the original spread of Special Improvement District 1378. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** City Administrator Volek advised that staff did not have a presentation but was available to answer questions.

Councilmember Ruegamer moved for approval of Item 5, seconded by Councilmember Veis. On a voice vote, the motion was unanimously approved.

Councilmember Veis moved to reconsider Item 5, seconded by Councilmember Clark. On a voice vote, the motion was unanimously approved.

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

Councilmember Veis moved to approve Item 5, seconded by Councilmember McCall. On a voice vote, the motion was unanimously approved.

**6. PUBLIC HEARING AND RESOLUTION #08-18757 approving the original spread of Special Improvement District 1379. Staff recommends approval.**

**(Action: approval or disapproval of staff recommendation.)** City Administrator Volek advised that staff did not have a presentation but was available to answer questions.

Councilmember Veis moved to approve Item 6, seconded by Councilmember Pitman. On a voice vote, the motion was unanimously approved.

Councilmember Veis moved to reconsider Item 6, seconded by Councilmember Pitman. On a voice vote, the motion was unanimously approved.

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

Councilmember Veis moved to approve Item 6, seconded by Councilmember Pitman. On a voice vote, the motion was unanimously approved.

**7. PUBLIC HEARING AND RESOLUTION approving the original spread of Special Improvement District 1380. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** City Administrator Volek advised that staff did not have a presentation but was available to answer questions.

The public hearing was opened.

- **Michael Bütz, 349 Future Circle** stated he appreciated the improvements for Terra West but he and a number of his neighbors were concerned about the cost of the project. He stated that he was the person who proposed the improvements and it was awkward when he found out it was an \$80,000 or more project. He said as part of that project, stop signs at Daystar and Energy and speed bumps were discussed but those were not part of the \$80,000; it was trees, grass, sprinklers and sidewalks. He said he needed to understand why the cost increased \$50,000 and why \$20,000 of engineering fees were in the project. He said he felt they were unfairly saddled with the cost of the improvement.
- **Julie Lortz, 3114 Daystar** said she was also surprised at the cost because at the meeting she attended in July, 2006, her home was to be assessed \$404, so the amount of \$1,025.64 was almost triple that. She said she had several conversations with Mr. Blackwell and he assured her as late as this past December that they would be informed of any and all costs associated and work that would be done well in advance of when it was done, but that was not the case. She stated they did not know the work was being done until it was started and she called the City three times before she was able to reach someone who told her what the cost was. She said she was told it was urgent and had to be done by September 1. She said the notice was received the previous week so they were given only two weeks to pay the \$1025.64 and if not paid by September 30, it would be added to their taxes with almost 6% interest. She said she felt that was an unethical way to do business. She added that the parks in the subdivision were not well cared for; they were overgrown with weeds which caused weed problems for the yards. She said she lived across the street from one park and had consistent problems with weeds because the City did not do anything about the ones in the parks they



already had. She asked for consideration to take care of the parks already there before adding more.

- **Pat Kilwein, 379 Delta Circle** stated that she distributed pictures of the boulevard. She said it was an improvement but she found it hard to believe that she had to pay for 16 trees at \$420 each. She said she also had to pay for a well that cost almost \$25,000. She asked why they could not hook it to City water when the boulevard next to hers was on City water and asked why the well was needed, and why a fence was around it. She said that fence did not protect the well because there was access to it. She said it looked nice but there were so many bushes around it that would someday be over six feet tall and would hang over the sidewalk. She said to take them out; she did not want the ugly flowers, bushes, fence, or the trees because they cost too much. Ms. Kilwein stated it looked nice but was a ridiculous price and that was what she was against. She said she was all for the project when it was the original price, but the City was stiffing them. She said that was the fifth tax increase in the five years since she lived in that home. She said that was a tax increase every year and she was done with it.
- **Ron Kapalka, 343 Delta Circle** stated that he attended most of the early meetings with Michael Bütz. He said at those meetings, they were told \$33-35,000 and he was given a plan for the project that was put together by Peaks to Plains Designers. He said the plan's estimate was \$35,000 and bids were received from A-1 Landscaping for \$33,000 and Sylvan for \$40,200. He said the bid was apparently awarded to Sylvan and they doubled the price. He stated there were a lot of angry people in the subdivision. He said another point that had not been made yet was that they were also given a breakdown of the costs and who was involved. He referenced a sheet provided by the City that included all the homes in Terra West, which was one subdivision, regardless of the filings. He said for some reason when it was put together, all the homes were assessed, but then one section opted out, even though they were told nobody could opt out. He said his cost went from \$282 to over \$1000 partly because of the increase and partly because the other part of the subdivision opted out. He said he wanted to know how they were able to do that.

City Administrator Volek advised she had information that could provide some answers. She stated that in December, 2007, she forwarded an email from Gene Blackwell to Dr. Bütz and Councilmembers in that district. She read the email from Mr. Blackwell which explained the Terra West project, the estimated costs and which filings of the subdivision would be assessed, and why the first and second filings of the subdivision could not be assessed for the improvements. Ms. Volek said that email was also sent to Parks Director Mike Whitaker at the same time. She advised she would ask Financial Services Manager Pat Weber to discuss the cost spread on that item.

Mr. Weber said he had received phone calls about the issue so he obtained a copy of the original engineer's estimate from the resolution of intent to create. He said the amount listed on that resolution was \$80,500 with the contingency and the fees to sell an SID. He said the final pay estimates were

in process and he did not have a final number right now but it would likely not be as high as \$80,000. He said anyone paid the SID by September 30 would receive a refund of any overpayment when the final figures were known. He advised that residents who decided to have the amount assessed to their taxes would have that amount adjusted next year for the extra payment that would be made during the current year. He said there was only a certain amount of time to get it on the taxes so there were two choices: to base it on the engineer's estimate until final payments were made and refund as necessary and fix assessments the next year; or wait to assess it after the figures were finalized, which meant that all the people on the SID would have a year of accrued interest. Mayor Tussing asked if the residents were told that it went up to \$80,000. Mr. Weber said he was not involved in that part of the project; that was the Parks Department and Terra West; he was only there to explain how it was spread. Mayor Tussing asked when the resolution of intent to create was passed. Mr. Weber said he did not have the exact date. He explained that resolutions to create the district and then to spend the money were approved by Council. He stated that another option would be to spend General Fund money to pay for it.

Mayor Tussing said it seemed that the time to protest would have been when the original amount was approved by the Council, and this step in the process was just dividing up who would pay what.

Ms. Volek advised she had some documentation from Dr. Bütz and believed the SID was approved in December, 2007. Councilmember Ulledalen said it appeared that the costs of the project came in about \$10,000 above what was estimated and it looked like the City left off the engineering and SID costs. Mr. Weber said that was the only thing he could think of from his conversations with people who had contacted him.

Councilmember Veis asked if that land was on City water or a well. Ms. Volek responded there was a well. Councilmember Veis asked for the cost of the well because it was not on the estimate. Ms. Volek explained that by having the well, the only cost the property owners would incur in future years was the electrical cost for the pump and maintenance of the well; they would not pay for City water to irrigate that property. She said the savings would be longer term with the well, but the up-front costs were higher. She added that without the well, an existing water line had to be accessed and she was not sure how close one was. Councilmember Veis asked if there would have been water lines from the subdivision that could have been accessed. Ms. Volek responded that she did not know how close they came to it. Councilmember Veis asked why there was an automatic irrigation system and a 2" water service and if an analysis was done to determine what the City water would have cost over the course of 20 years. Ms. Volek said she was sure an analysis was done but she did not have that documentation, and could provide it if the item was postponed.

Mr. Weber said it came down to assessing it now or getting a year's worth of accrued interest because the tax bill had to be sent to the County by

the first part of October. He said it could be postponed and if the County could not get it on manually, they would face a year's worth of accrued interest.

Councilmember Ulledalen asked why the system development fee was charged if the well was drilled. Mr. Weber said he thought there was some confusion and until he could get all the documents, he would not know everything that was done.

Councilmember Ronquillo said he did not understand how the other people opted out of it. Ms. Volek explained that the other residents had already paid for another portion of the frontage and to bill them for that addition was considered to be inequitable. Ms. Volek advised that the first and second filings had already paid for the development of the 32<sup>nd</sup> Street West Street frontage and were paying for the ongoing maintenance. Those residents would have been double billed by adding that to their cost.

Councilmember Clark stated he attended almost all of those meetings from the beginning and the estimate was \$33,000 by Mr. Blackwell. He noted that engineering fees or a \$25,000 fee for a well were never mentioned at any of the meetings he attended. He said he and former Councilmember Don Jones met with Ms. Volek, Mr. Blackwell and Dr. Bütz to discuss the project and the cost was still \$33,000 at that time.

Mr. Weber advised that upon passage of a resolution of intent to create an SID, State statute required a letter sent to all property owners to inform them of their opportunity to protest the creation of the SID. He said all property owners would have received that letter with updated costs. Councilmember Gaghen asked if the initial letter would have included the engineer's costs. Mr. Weber responded that the letter would have included all of the costs. Councilmember Gaghen asked if that was the usual procedure. Mr. Weber said the costs were in the resolution of intent to create and additional costs could not be added after that resolution was passed.

Mayor Tussing said he hoped the item would be postponed so documentation from both the property owners and the City could be reviewed to determine what the final figures would be and discrepancies of what property owners were told.

Councilmember Veis pointed out that the public hearing was still open and individuals who had not testified could do so if they wished.

- **Susan Jurovich, 3032 Solar Blvd.** said she and her husband moved to their home a year ago and had no documentation regarding the SID because they did not receive anything prior to the notice of the SID assessment which came about two weeks ago. She said they did not have an opportunity to testify against the SID and had not received documentation about the costs or increased costs. She said they were surprised to receive the bill for over \$1000 when they had no prior documentation.

Mayor Tussing noted that the notice of the SID should have been part of the disclosure when Ms. Jurovich purchased the property.

- **Sara Reintsma, 325 Delta Circle** asked if an extension would be granted for payment of the SID assessment if the item was continued that evening.

Councilmember Gaghen asked Mr. Weber for an estimate of the interest that would accrue if the item were continued. He estimated it was approximately \$4,000. Councilmember Gaghen said she was uncomfortable with how it evolved and that the people did not have a full understanding of it. She said she thought it needed to be postponed to reconsider.

Mayor Tussing said there was one more SID on the agenda and nobody testified on the two previous ones. He asked if there was anyone present to testify for Item 8, the spread for SID 1383. He said that told him there were a lot of people confused about this particular SID and not about the others so there had to be a problem with SID 1380.

Councilmember Veis asked Mr. Weber if the City had the option to pay the extra interest charge if the spread was not done now and the Council determined it was not happy with the process that took place. Mr. Weber said it could be paid from the General Fund. Mr. Weber said the documentation would have to be reviewed. Councilmember Veis stated that Billings residents were getting the wrong message if an SID was created for \$80,000 for a project that was estimated at \$30,000, and then the whole \$80,000 was assessed.

Ms. Volek pointed out that the other two SIDs considered that evening were for street improvements and sanitary storm and street improvements. She said those items primarily involved developers who were familiar with the process and were not going to challenge it because they participated in it.

Ms. Volek read a letter sent to her and Councilmember Clark by Dr. Bütz regarding the SID assessment notice he received in mid-September. The letter referred to the increased cost of the project and asked Ms. Volek or Councilmember Clark to check into that because he was called out of town and unable to attend the meeting when the resolution to create the district was passed. Ms. Volek stated her recollection was that she was surprised that no one was present to speak against the creation of the SID at that meeting in December, 2007. Ms. Volek advised she would check meeting minutes.

- **Nancy Kapalka, 343 Delta Circle** stated that she was at that meeting and did not think there was an opportunity to say anything; that it just passed.

Mayor Tussing asked Mr. Brooks if that item would have been scheduled for a public hearing. Mr. Brooks said it would and he felt the thing to do was to gather all the documents from the beginning to see what the letters and creation documents said. He noted that SID documents included an amount and quite often, the final assessment was less, but State statute did not allow it to be more than what the documents said. He suggested a timeline summary to determine if there was incorrect information or documentation.

Ms. Kapalka said they expected it to be \$30,000, not \$80,000.

Councilmember Ulledalen asked if that should have been included in the original subdivision development agreement. Ms. Volek said it was not, even though it was more common to do so now. She noted that development dated back prior to when the frontage was done as part of the development.

Mayor Tussing stated he would not close the public hearing because of the possibility that it would be continued. Councilmember Clark moved to continue the public hearing and action until October 14, 2008, to allow review of the documentation, seconded by Councilmember Ruegamer. Councilmember Ulledalen stated that if the spread took an additional year, the additional cost was about \$50 per property.

Councilmember Ulledalen asked if it was possible to find out how many residents intended to pay the SID up front versus having it added to their taxes because that could make a difference in the SID costs.

On a voice vote, the motion was unanimously approved

**8. PUBLIC HEARING AND RESOLUTION #08-18758 approving the original spread of Special Improvement District 1383. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** City Administrator Volek advised that staff did not have a presentation but was available to answer questions.

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

Councilmember Pitman moved for approval of the resolution approving the original spread of SID 1383, seconded by Councilmember Ronquillo. On a voice vote, the motion was unanimously approved.

**9. PUBLIC HEARING AND RESOLUTION #08-18759 approving a reduction in the Arterial Construction Fee assessments for five (5) Commercially-zoned parcels and one (1) Residential Manufactured Home-zoned parcel used solely as owner-occupied, single family residences. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** City Administrator Volek advised that staff did not have a presentation but was available to answer questions.

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

Councilmember Gaghen moved for approval of the arterial construction fee assessments for the properties indicated, seconded by Councilmember Ronquillo. Councilmember Gaghen said she knew a Ward I constituent was one for whom the reduction was denied and she hoped they were informed of that. Public Works Director Dave Mumford stated that they were informed. Mr. Mumford explained that the property denied was already assessed at the lowest rate. Councilmember Gaghen clarified that the property was not a manufactured home.

Councilmember Pitman asked why it was assessed on an annual basis. Mr. Mumford said something on the property could change in a year. He explained that if property was zoned commercial but used as a single family home, the assessment was for the single family home, but that use could change in a year and the City had no way of knowing unless it was reviewed each year.

On a voice vote, the motion was unanimously approved.

**10. PUBLIC HEARING for the FY2007-2008 Draft Comprehensive Annual Performance Evaluation Report (CAPER) Community Development Block Grant (CDBG) and HOME Programs.**

Community Development Manager Brenda Beckett said the Community Development Division had a successful year with the 2007-2008 CDBG and HOME Programs. She explained that federal regulations required a public hearing that included a presentation that represented the last year's activities. She added that public comment was to be accepted for a period that ended that evening and the CAPER was due to HUD at the end of September.

Ms. Beckett presented a PowerPoint display. She reviewed the strategies, Community Development Board membership changes and budget allocations for the various housing programs. She explained that they primarily funded new affordable housing opportunities and existing affordable housing in the housing rehab and repair programs.

Ms. Beckett advised that \$1.6 million was allocated by the City which leveraged \$8.4 million for CDBG and HOME funds. She said that was extraordinary for a City the size of Billings.

Ms. Beckett introduced Barbara Marsh from The Hub, a facility that worked with mentally ill individuals. Ms. Beckett said she was one of the owner-occupied individuals who received assistance from the rehabilitation program.

Ms. Beckett reviewed the activities supported through CDBG and HOME funds. She advised that the CAPER was posted on the City's website.

Ms. Beckett reviewed the partnerships for the activities and projects completed during the year. She pointed out that the Milton Road storm drain project was partially funded with CDBG funds. She mentioned another notable project was the Central Park playground. Ms. Volek advised that staff was installing the playground equipment; CDBG allowed the City to purchase the equipment and staff installed it on an as-available basis to save costs. She said the rubberized surface would be installed within a couple of weeks. Ms. Beckett said that was a long-awaited project.

Ms. Beckett reported that 59 homes were funded through the first-time homebuyers programs.

Councilmember Gaghen said she felt it would be worthwhile to indicate the amount injected by the first-time homebuyer's funds. Ms. Beckett explained that applicants for the program were eligible for graduated amounts up to \$15,000, depending on their income. She noted that Billings CDBG funds had a very low foreclosure rate.

Ms. Beckett reported that 24 homes were built to date in the King's Green Subdivision, a public-private partnership with Real Estate Dynamics. She said 14 homes were expected to be built in early 2009.

Ms. Beckett reviewed upcoming projects for 2009. She noted that partnerships continued to grow and 16,000 newsletters were sent to about 1,000 people last year.

Ms. Beckett referenced information provided to Councilmembers in their recent Friday packet regarding the next year's allocations. She noted the Board was interested in input for the social services components of the funding.

Ms. Volek pointed out that no action was necessary after the public hearing. The public hearing was opened.

- **Trent Godfrey, 737 South Billings Boulevard** stated that some homes qualified for the CDBG funds and some homes did not. He wondered what the difference was in the allocation of the funds for the homes that did not. He said he wondered if HUD code was being followed for the CDBG funds.

Ms. Beckett explained that each CDBG program was developed with the task forces and there were specific parameters to follow. She stated that CDBG funds were primarily designed to assist with low to moderate income folks. She advised that each of the programs was designed differently and she would be happy to visit with Mr. Godfrey regarding the program he questioned. She noted that a dozen programs were run with CDBG funds, and they were all different.

Councilmember Gaghen asked if the programs conformed to general HUD standards. Ms. Beckett responded that they conformed to HUD standards exactly and close monitoring was in place.

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

**11. (a) PUBLIC HEARING AND RESOLUTION #08-18760 FOR ANNEXATION #08-08: 55.45 acres described as Tracts 7-A and 6-A-1, Certificate of Survey 2314 and Tract 1-A-1, Certificate of Survey 2702, generally located on the south side of Grand Avenue between 30<sup>th</sup> Street West to west of Zimmerman Trail. Yegen Grand Avenue Farms, Inc., owner and petitioner. Staff recommends conditional approval. (Action: approval or disapproval of staff recommendation.)**

City Administrator Volek advised that staff did not have a presentation but was available to answer questions.

Councilmember Clark asked about the property location. Ms. Volek pointed out that it was on Grand Avenue between 30<sup>th</sup> Street West and just west of Zimmerman Trail. Councilmember Veis asked Planner Nicole Cromwell if she could display a copy of the annexation map. Ms. Cromwell displayed a copy of the zoning map and pointed out the location of the property on it. Councilmember Veis stated it was very much within the five year limits of annexation area. She said it had City limits on the east and north boundaries.

The public hearing was opened.

- **Joe White, Billings, MT** said it was the same old story, same old tune as before. He said he opposed annexation and rezoning until there were very detailed master planning studies. He said he had asked it before and the situation was getting worse and the agriculture land continued to be eaten up. He said with expansion, disease continued to get worse, bridges were shaking and crumbling. *The remainder of his testimony was inaudible.*
- **Rick Leuthold, Engineering, Inc.** said he represented the Yegens on that parcel. He said the family spent an inordinate amount of time considering the development of the property. He said it no longer functioned as agricultural property. He stated they had a wonderful master plan for the property all the way to Shiloh and just beyond. He added that this was the first step of that

development process. He noted that there was great discussion with the neighbors to the north on Golden Boulevard and the school district regarding access and joint parking. He said they felt they had developed a good set of criteria to bring the property forward and asked for approval of the annexation.

- **Charlie Yegen, 211 N. 30<sup>th</sup>** expressed appreciation for the competent Planning Department staff that had dealt with their project. He said the department heads were forthright with the questions asked and he felt answers were provided to those questions. He said it was not a decision reached easily, but the right thing to do as it related to the development of the west end of Billings.

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

Councilmember Ronquillo moved for approval of the resolution for annexation of Tracts 7-A and 6-A-1, Certificate of Survey 2314 and Tract 1-A-1, Certificate of Survey 2702, subject to the conditions for approval, seconded by Councilmember Gaghen. Councilmember Clark stated that fit into the infill because the land was totally surrounded by the City. Councilmember Gaghen commented that the family had deep roots and cared about the community and she was sure that the development would enhance the area.

On a voice vote, the motion was unanimously approved.

**(b) PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #848: A zone change from Agriculture-Open Space, a county zoning district, to Planned Development with two underlying districts – Community Commercial and Residential Multi-Family on property described as Tracts 6-A and 7-A, Certificate of Survey 2314 and Tract 1-A, Certificate of Survey 2702, generally located on the south side of Grand Avenue between 30<sup>th</sup> Street West to west of Zimmerman Trail. Yegen Grand Avenue Farms, Inc., owner and petitioner. Zoning Commission recommends approval and adoption of the 12 Zoning Commission Determinations. (Action: approval or disapproval of Zoning Commission recommendation.)**

Planner Nicole Cromwell reported that Planned Development zoning was a self-contained zoning district that had underlying zoning districts designated within it. She explained that each planned development had to address any of the specific zoning criteria for setbacks, height, usage, signage, landscaping and any special treatment they wanted in that zone. She pointed out that earlier in the meeting, Ms. Volek referenced a letter she received that suggested a minor change to the building height limitations contained in the planned development agreement already reviewed by the Zoning Commission. She said when the height limit was set for projections above the enclosed space of a building at six feet, they were not familiar with the potential height with some of the mechanical equipment installed on some commercial buildings. She explained that after the Zoning Commission meeting, it was determined they should have permitted projections for the mechanical equipment up to 10 feet, not the six feet that was reviewed by the Zoning Commission. She noted that if that was allowed, it would have to be specific in the motion regarding the zone change.

Ms. Cromwell displayed a PowerPoint presentation of the map of the parcel. She said the default zoning was R9600 but the plan was for the Planned



Development zoning. She pointed out that certain uses would be restricted in the PD commercial zone. She said that meant that every restaurant had to go through special review approval regardless of whether it served alcohol or not. She said further restrictions would address the design and development of businesses in that commercial zone. Ms. Cromwell pointed out that some areas could have offices or multi-family and another was zoned multi-family. She said there was a mixture of uses and restrictions of uses and limitations throughout the Planned Development zone.

Ms. Cromwell reported that any building exceeding 40,000 square feet would also be subject to special review approval by the City Council. She reviewed businesses that were prohibited in those zone classifications. She pointed out that the maximum height limit reflected in the staff report should have been 45 feet, not 34 feet.

Ms. Cromwell explained that PD zones were special zoning districts and most were required to provide an amenity not otherwise required in exchange for those special zoning provisions. She said the Yegen family proposed a pedestrian/bicycle underpass under Shiloh Road as an amenity. She said it would be paid for by the Yegen family and when completed, it would be turned over to the City as part of the Heritage Trail and Parks plan. Councilmember Veis asked if the tunnel would be constructed prior to the Shiloh Road project. Ms. Cromwell answered that the construction would probably get underway next spring as part of the Shiloh Road construction. She said coordination for that had already begun. Ms. Cromwell said a master plan that was still a concept plan for the remaining parcels of the Yegen property would tie that particular amenity into a larger parks and trails system for the entire property.

Ms. Cromwell advised that the Zoning Commission conducted a public hearing and recommended approval of the Planned Development zone change based on the following 12 criteria for zoning and the criteria for planned developments:

1. *Is the new zoning designed in accordance with the Growth Policy?*  
The Growth Policy and the West Billings Neighborhood Plan support higher density residential and mixed uses along arterial streets between intersections. The proposed density could be supported at this location. The proposed CC zoning along Grand Avenue with the proposed height limitation of 45 feet, use restrictions, landscaping and sign regulations will fit with the existing uses north of Grand and the neighborhood to the east.
2. *Is the new zoning designed to lessen congestion in the streets?*  
The new zoning is not designed to lessen congestion in the streets but does locate zoning districts that generate the highest number of vehicle trips on arterial streets that are designed to handle the increase in traffic. Traffic impacts are under review for the preliminary plat. Restrictions on access locations will be imposed. If mitigation measures are required by a Traffic Accessibility the developer will implement those measures.

Grand Avenue handles 16,000 vehicle trips per day in this area and the new section of Zimmerman Trail is handling about 7,000 vehicle trips per day. Both

streets are classified as principal arterial streets and can handle the additional traffic generated from this development.

3. *Will the new zoning secure safety from fire, panic and other dangers?*  
The property has public street frontage on Grand Avenue and Zimmerman Trail as well as 30<sup>th</sup> Street West. One access is proposed north of Will James Middle School on 30<sup>th</sup> Street West, 2 accesses on Grand Avenue and 1 access on Zimmerman Trail. Limitations on building height, land uses and maximum lot coverage will secure safety in this development.
4. *Will the new zoning promote health and general welfare?*  
The new zoning contains restrictions on uses allowed. In general this list of allowed uses restricts the development of any type of manufacturing, automobile sales and services as well as uses associated with gaming. This should promote the health and general welfare.
5. *Will the new zoning provide adequate light and air?*  
The new zoning provides for sufficient setbacks in both the CC and RMF zones and lot coverage is 50% and 55% respectively. All buildings are limited to 34 feet in height. These restrictions provide for adequate light and air.
6. *Will the new zoning prevent overcrowding of land?*  
The new zoning, as do all districts, have limits on the maximum percentage of lot that can be covered with structures. In the CC zone the maximum lot coverage is 50% and in the RMF zone the maximum is 55% of the lot area. The CC zone only allows residential uses by special review and the RMF zone comprise only 15% of the total development area. Planning Division staff has estimated the total dwelling density in the RMF zone for the subject property at 22 units per acre or 148 dwelling units.
7. *Will the new zoning avoid undue concentration of population?*  
The RMF zone only allows multi-family dwellings. The lot area requirements per dwelling unit are as required in the Unified Zoning Regulations. If the 6.76 acres were developed as 8-plexes, 148 dwelling units could exist in this RMF zone. This does not unduly concentrate population. Residential uses in the CC zone are only allowed by special review.
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 have an effect on the adjacent streets and traffic patterns. A traffic study will be completed with the preliminary plat.  
*Water and Sewerage:* The City will provide water and sewer service to the property and does have adequate capacity to serve this property.

*Schools and Parks:* There will be an effect on parks and schools from this rezoning. The proposed development plan includes a new pedestrian underpass on Shiloh Road and pedestrian connections from this lot to other on and off street trails in the area. Will James Middle School is directly adjacent and will see a security benefit from the new development. The developers have discussed sharing off street parking for school events. All schools in SD #2 are over crowded with students. No comment was received from SD #2 regarding the zoning application. However, the applicant and SD #2 staff did meet to discuss the subdivision plans for the property and how it would interface with Will James Middle School.

*Fire and Police:* The property is within the Billings Urban Fire Service area. It is currently active agriculture land with one existing dwelling. The Fire Department does not foresee any issues providing service to the new development.

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

The primary zoning in this area is CC and RP to the north with several well established retail stores, banks, professional offices and a residential neighborhood north of these commercial properties. Property to the east is still in the county and used for agriculture and the Peter Yegen Jr. Golf Course. Property to the east is zoned CC along Grand Avenue and R-96 south of Grand Avenue. This is a well developed residential neighborhood with an LDS church and a private elementary school. The proposed CC & RMF zoning is in character with the district and compatible with the surrounding 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 existing single family home on the property will not be an allowed uses within the proposed CC zoning district. This use will be a special review use. The home can remain on the property as a legal nonconforming use, but may not be enlarged or moved to another location on the property without a special review approval. Other buildings in the area will not be negatively affected by the proposed zoning.

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

The new zoning will encourage the most appropriate use of this land in the area for urban development.

Ms. Cromwell reiterated that there was a request for one minor modification to the planned development agreement to clarify the allowance for rooftop equipment.

Councilmember McCall stated that she was very supportive of the development but there was concern about congestion on Grand Avenue. Ms. Cromwell stated that the next piece of Item 11 was the preliminary subdivision approval and most of those traffic concerns were addressed through a traffic accessibility study that would be refined as uses for particular lots came forward for approval.

The public hearing was opened.

- **Rick Leuthold, Engineering, Inc.** stated he represented the Yegen family in the zone change application. He said the planned development was a foundational item beginning near Will James Middle School and would be expanded out to and beyond Shiloh Road. He said a tremendous amount of thought went into the plan. He noted the family was present along with Attorney Bill Cole. He said they asked for favorable consideration, including the minor modification that Ms. Cromwell mentioned. He added that the preliminary plat was not scheduled for a public hearing so he would be happy to address any questions regarding traffic congestion. He said it was handled in the subdivision agreement.

Councilmember Ronquillo asked if there was consideration of extending the road from 30<sup>th</sup> all the way to Broadwater instead of cutting through Vermillion. Mr. Leuthold said there had not been any discussion about that.

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

Councilmember Clark moved for approval of first reading ordinance for zone change #848 including the new height restrictions presented by staff, seconded by Councilmember Veis. On a voice vote, the motion was unanimously approved.

**(c) PRELIMINARY PLAT of Cardwell Ranch Subdivision, 1<sup>st</sup> Filing, generally located on the south side of Grand Avenue between 30<sup>th</sup> Street West to west of Zimmerman Trail. Yegen Grand Avenue Farms, Inc., owner. Planning Board recommends conditional approval and adoption of the Findings of Fact. (Action: approval or disapproval of Planning Board recommendation.)** City Administrator Volek advised that staff did not have a presentation but was available to answer questions.

Councilmember Ulledalen moved for approval of Item 11c, seconded by Councilmember Clark. On a voice vote, the motion was unanimously approved.

**12. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #847: A zone change from Residential 9600 to Residential 6000 Restricted on property described as Tracts 1 & 2 of Certificate of Survey 3139, Tract 1-B of Certificate of Survey 2379, and an unplatted parcel in the NE1/4 of Section 5, Township 1 South, Range 25 East, generally located south of Grand Avenue and west of 56<sup>th</sup> Street West. Dorn-Wilson Development, Douglas and Deborah Frank, and Ronald Frank, owners; Engineering, Inc., agent. Zoning**

**Commission recommends approval and adoption of the 12 Zoning Commission Determinations. (Action: approval or disapproval of Zoning Commission recommendation.)**

Planner Nicole Cromwell advised that copies of a protest petition against the zone change should have been distributed prior to that night's meeting. She noted that the protest was received prior to the first public hearing with the Zoning Commission on August 5. Ms. Cromwell said the protest petition had been modified by two subsequent petitions; the first was submitted September 19, and removed seven names from the original protest petition. She noted that the original protest was from 13 of the 20 lots that surrounded the zone change and after the removal petition, six lots were on the protest. She advised that on Friday afternoon subsequent to the petition to remove names from the protest petition, another petition was received with two lots represented; one signer, Jeanine Smith at 5730 Heron Glenn Drive, was not within 150 feet of the zone change and could not count in the protest. Ms. Cromwell said the Berkrams signed the protest so one lot was added to the protest after the seven were removed making that a protest from seven of the 20 lots. Ms. Cromwell said a valid protest against the zone change still existed and would require a two-thirds majority vote.

Ms. Cromwell reported that the property was first proposed for annexation in 2005 and it was denied. She stated that an updated Urban Planning Study was prepared to expand the annexation boundary for the City. She advised that the Urban Planning Study was accepted and the property was annexed in 2006 and placed in the default zoning district of Residential 9600.

Ms. Cromwell stated that a pre-application meeting was held June 24, and the first public hearing before the Zoning Commission was August 5. She advised that due to receipt of the valid protest petition as well as a recommendation from the Planning Division Staff to deny the zone change, the applicant requested and received a 30-day delay from August 5. Ms. Cromwell advised that the boundary of the zone change application was modified to exclude the 150 feet that bordered 56<sup>th</sup> Street West and excluded the 115 feet that bordered Broadwater Avenue to the south to provide a transition buffer from the agricultural zoning districts and large-lot residential uses to the R9600 and then to the R6000R.

Ms. Cromwell displayed views of the property and the surrounding areas. She pointed out that one certificate of survey was not included although it was annexed. She noted it would remain zoned R9600. She advised that the exclusion boundaries ran north and south on 56<sup>th</sup> Street West and along Broadwater Avenue. She noted that Broadwater Avenue was still in the County and a subdivision was pending and could also be amended and redesigned depending on the zoning decision that evening.

Ms. Cromwell reported that the Zoning Commission voted 4-0 to recommend approval based on the following 12 criteria:

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

The proposed zone change is 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 6)*

The proposed zoning is consistent and of a similar density to nearby city subdivisions including Foxtail Village (4.4 dwellings units/acre), Grand Peaks Subdivision (6 dwelling units/acre) and Cottonwood Grove Subdivision (4.4 dwelling units/acre). The proposed dwelling unit density for the subject property is 3.4 to 4 dwelling units/acre.

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

The proposed zoning is consistent with the surrounding character of the neighborhood. The R-96 zoning will be retained on the south and east boundaries of the property to provide a transition from the lower density rural dwellings to the proposed density on the subject property.

- *Land use within the Rural Transition Area should provide an efficient and orderly transition from agricultural to urban land use. (West Billings Neighborhood Plan, page 32)* The proposed zoning does provide an efficient and orderly transition from the agricultural uses to residential uses. Foxtail Subdivision to the north included a “buffer” area of R-96 zoning along the north and west property lines to transition from agricultural uses to residential uses. The subject property is also proposing a similar buffer area on the south and east boundary lines.
- *Affordable housing for all income levels dispersed throughout the City and County. (Land Use Element Goal, page 6)* The proposed zoning will allow the development of more affordable housing than could otherwise be development on larger lots in the R-96 zoning. The applicant states the homes will range from \$180,000 to \$210,000, depending on the infrastructure construction costs. Homes developed under the current zoning would likely cost \$320,000.
- *A multi-purpose trail network integrated into the community infrastructure that emphasizes safety, environmental preservation, resource conservation and cost effectiveness. (Open Space and Recreation Element, page 9)* The applicant is proposing a multi-use trail along the existing Bierly Drain that borders the west property line. In addition, two or more pedestrian access points are proposed to the School District property to the northeast. The School District property may be developed in the future for a new middle school.

The proposed zone change is not consistent with the following goals of the Growth Policy:

- *Medium and high-density residential development should be located and within walking distance to commercial centers, parks and recreational amenities. (West Billings Neighborhood Plan, page 23)* The proposed medium density development is not within walking distance to any of these facilities and is not proposing a neighborhood park of at least 5 acres as preferred by the Parks, Recreation and Public Lands Department. The closest existing commercial center is 2.25 miles east at Shiloh Road and Grand Avenue. The closest existing park or recreational area is Phipps Park 2.5 miles to the northwest off Molt Road or 2.5 miles to the northeast at Poly Vista Park off Shiloh Road. Cottonwood Park is an undeveloped regional city park

approximately 1 mile north on the west side of 54<sup>th</sup> Street West. The commercial center at 54<sup>th</sup> Street West and Grand Avenue has not been developed.

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

A single family dwelling generates approximately 10 vehicle trips per day including all traffic (deliveries, resident trips etc.) The current zoning could allow up to 260 dwelling units and generate up to 2,600 vehicle trips per day at full build out. This would increase traffic on both adjacent arterial streets and may pose conflicts particularly when traffic exits from the subdivision on to Grand Avenue or 56<sup>th</sup> Street West with higher posted speed limits. The proposed R-60R zoning will increase traffic as does the existing R-96 zoning. The Traffic Accessibility Study prepared for the subdivision will require mitigation of any traffic impacts from the proposed development.

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

The subject property is currently serviced by City Fire and Police but is only developed with two single family homes. Any development will require a minimum width for access roads and provision of water for fire protection. A new city Fire Station has been constructed  $\frac{3}{4}$  of a mile to the east of the property. Response times for fire protection will be acceptable. Police response times will depend on patrol unit proximity to the property at the time of the call and if the Police Department's Satellite Office in the new fire station is regularly staffed.

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

The proposed zoning would permit a minor density increase from the current R-96 zoning, allowing the platting of an additional 33 to 48 lots. The Unified Zoning Regulations do specify minimum setbacks and lot coverage requirements for the proposed zoning district in order to promote health and safety.

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. The R-96 zone allows 30% lot coverage and the R-60R zone allows 40% lot coverage. The lot coverage should limit overcrowding of the land.

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

The new zoning does avoid undue concentration of population. The R-96 zoning only allows single family homes on a minimum lot size of 9,600 square feet. The proposed zoning also only allows single family homes on a minimum lot size of 6,000 square feet. The increase in dwelling density is minor over what is currently allowed in the R-96 zoning district.

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

Transportation: The proposed zoning may impact the surrounding streets. Grand Avenue and 56<sup>th</sup> Street West, both County arterial streets, have much higher speed limits and traffic entering and exiting the subdivision will have to be well controlled.

Water and Sewer: The City will provide water and sewer to the property through existing lines on Grand Avenue. A low pressure sewer system will be required to service this development.

Schools and Parks: School District #2 will provide education to students within the development. There are no School District #2 facilities west of Shiloh Road. An adjacent 40 acre parcel to the east is owned by SD #2 but there are no plans or funding for development of a new school at this time. Students will attend Central Heights Elementary, Will James Middle School and West High School. All of these schools are beyond enrollment capacity.

Fire and Police: The subject property is currently served by the City of Billings fire and police departments. A new fire station has been completed approximately  $\frac{3}{4}$  mile east. Police services will depend on patrol unit location at the time of the call and if the Police Department's Satellite Office in the new fire station is regularly staffed.

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

The proposed zoning is buffered by retention of the existing R-96 zoning along the south and east boundary lines. The adjacent low density rural development has been given reasonable consideration in the proposed zoning.

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 property has frontage along two arterial streets and is suitable for this type of zoning.

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

There are two single family structures on the entire property and should not be affected by the new zoning. Low density single family homes on the east side of 56<sup>th</sup> Street West and along Broadwater Avenue to the south may be affected by the difference in housing density in the proposed development.

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

The proposed zoning is the most appropriate zoning for this location.



Ms. Cromwell advised that the Planning Staff recommended denial at the second public hearing. She reviewed the primary criteria that were significantly different from the Planning Division's recommendation. She noted that was based on testimony and opinions of the Zoning Commission members at the hearing. She said the Zoning Commission felt that the transition area to remain R9600 would provide the ability to buffer the higher density R6000R to the lower density agricultural zoning.

She said the Zoning Commission felt the project met the goal of allowing additional or more affordable west-end housing by using existing City utility installations and did not believe the increase would burden the area.

Councilmember Ruegamer asked what constituted a valid protest. Ms. Cromwell responded that it had to be 25% of the lots within 150 feet, which was five in this case.

Councilmember Ulledalen asked about the Planning Division's position and why it recommended denial. Ms. Cromwell explained that staff recommended denial based on its opinion and interpretation of the West Billings Neighborhood Plan, as well as the Northwest Area Shiloh Plan and the 2003 Growth Policy, all of which indicated that areas west of 56<sup>th</sup> Street West and south of Grand should be considered rural transition areas, and if annexed to the City, would be better served by large-lot subdivisions. She noted that the West Billings Plan created the rural transition area primarily based on the then-current 2001 Capital Improvement Plan. She noted that the geography in the area below Grand did not allow those areas to be serviced with gravity sewer. She said staff felt that would not be economical and would conflict with ongoing agriculture operations.

Councilmember Veis asked if the buffer was considered by Planning Division staff. Ms. Cromwell responded that it was considered before the second recommendation and staff proposed different ideas to the developers. She said the buffer reduced the number of lots designed for the subdivision but there was no guarantee of that. She said it did not seem adequate.

The public hearing was opened.

- **Rick Leuthold, Engineering Inc.** stated he represented Rick Dorn and Rod Wilson in the development of the property. He said it was a piece that was annexed and zoned R9600, which allowed for 260 units. He said Mr. Dorn and Mr. Wilson had worked on the development for the last three years, even as the economy and the dynamics of the homebuyer they're dealing with had changed. He said they considered a similar-sized home on a smaller lot, which meant an additional 38 units in that 75-acre parcel. He advised there was a protest from some residents and through the course of meetings, consensus was gained of residents along Broadwater who removed their names from the protest. He noted there was concern from residents about the congestion from the additional 38 units. He reviewed a PowerPoint display of the area and the City limits. He said the development was not out of line with the densities of surrounding existing developments. Mr. Leuthold referenced the West Billings Plan land use picture that showed a community center

development. He said it was an ideal location for median density for workforce housing in the \$180-210,000 range. He urged support of the Zoning Commission's recommendation for approval based on the 12 criteria.

Councilmember Ulledalen stated that he was concerned about the future if the documents were not adhered to. Mr. Leuthold responded that Councilmember Ulledalen's question concerned the rural transition question raised by staff. He said urban densities required a change throughout that entire region. He said commercial development was occurring in the area. He said he believed that fit the rural transition nature talked about in the West Billings Plan and extension of the services to that area was exactly what Council intended. He added that it allowed those areas to develop at appropriate rates in a mixed type of use program.

Councilmember Veis asked if a low-pressure sewer was required in the area. Mr. Leuthold responded that based on discussions with Public Works, that area would have E-1 systems. Councilmember Veis asked who was responsible for operation and maintenance of those units. Mr. Leuthold said the units were the responsibility of the homeowner; the lines in the street were the City's responsibility.

- **Rod Wilson, 422 Shamrock Lane**, stated he was more than excited about that subdivision because of his development experience and as a realtor. He said infrastructure cost the same for lots regardless of the zoning and the difference was the number of lots it was spread to. He stated that a R6000R lot would cost approximately \$50,000 per lot. He said costs were closer to \$75-80,000 for R9600 zoning. He said in the appraisal system, the land cost could not be more than 25% of the total project for a single family home, so if the lots were in the \$75-80,000 range, the homes needed to be in the \$300,000 range and there were plenty of those opportunities in the City, which was not what was needed. He said community demographics cried out for affordable single family homes. He said the lots would allow for 1200 to 1500 square foot homes, with full basements and two-car garages. He noted a trail system was included in the development and an average lot was about 6700 square feet.
- **Greg Smith, 909 56<sup>th</sup> Street West** said he opposed the development and agreed with the City staff recommendation. He said he felt the development did not meet the 12 criteria. His reasons were:
  - ✓ It was leap frog development and did not provide an efficient and orderly transition from rural to urban density.
  - ✓ Zoning would not lessen congestion in the streets. He said the Zoning Commission stated there were 10 vehicle trips per day per house and adding 300 houses meant 3000 additional cars traveling on Grand Avenue, in addition to added congestion on 56<sup>th</sup> Street West.
  - ✓ Money did not exist to bus kids to schools because a school did not exist in the area.
  - ✓ The nearest park was Phipps Park, and getting there was unsafe for kids to walk or ride bikes.

- **Cynthia Devitt, 5826 Kit Lane S** said she lived in Foxtail Subdivision and was president of the homeowners association for Fox Den. She said several homeowners attended meetings about the subdivision and were in favor of it. She stated the new subdivision would have walk areas that their subdivision would be able to use and the population would help Grand Avenue in the respect that it would be policed better, and the roads would be better. Ms. Devitt stated that the subdivision would complement the surrounding subdivisions. She said progression in the West End was inevitable and that plan was well developed.
- **Ed Workman, 3247 Flora Avenue** stated he was a Zoning Commission member and felt compelled to discuss the decision to pass it based on the fact that it had been previously denied. He said it was discussed that it did not necessarily meet all the criteria of the 2003 Growth Plan, but what was left out of that statement was that they were now in the third meeting of creating a new growth plan and he was not so sure that when the new growth plan was completed that it would not meet all the criteria. He said the old basic garage logic was used and they talked about the fact that a commercial node was close to the new subdivision and a school would likely be built within walking distance of it. He stated that Billings needed workforce housing that fell into the category of 80-120% of median family income. He said that would help fill that need. He noted that the infrastructure was already in place, a fire station was close by and it seemed like it fit the safety requirements. He said the Zoning Commission passed it using that basic logic and urged the Council to approve the zone change.
- **George Jurovich, 2425 Granite Avenue** stated that he owned from Grand to Broadwater on the west side and had no complaints about switching to R6000R. He said his only concern was the collector access road that would eventually connect to Broadwater. He said he would work with contractors with his property there.
- **Mike Amen, 580 58<sup>th</sup> Street West** said he lived on the south end of that subdivision and his family owned the parcel south of the Jurovich family. He said they signed the protest because they did not know how that would play out and developers met with them several times to address their irrigation ditch and keeping the 30 feet of Broadwater that they owned. He said the developers answered their questions and they removed their names from the protest.

Mayor Tussing asked Mr. Amen for clarification if his name was on the current list of protestors. Mr. Amen responded that it was not.

- **Rick Dorn, 2048 Edgewood Drive** explained that when he and Mr. Wilson started on the project a couple of years ago, they wanted to make sure they accommodated the needs of the community and the neighbors. He said some of the neighbors were in support of the project. He said they met with the school district, the Jurovich family, the friends and neighbors on both 56<sup>th</sup> and Broadwater, and attempted to accommodate each and every need. He pointed out that the property was in close proximity to other developments he completed and fit the plan for the future of the City. He said they tried to work

with the current market and felt there was need and demand and that property fit it. He said the development could not be done without the R6000 zoning because it was not financially feasible. He said the City needed it and they could provide it and would work with the neighbors.

- **Barbara Woolsey, 56<sup>th</sup> Street West** said not one of the 12 criteria could be affirmatively answered. She said there was no school and the ground would not perk. She said she lived across the street and knew exactly what she was talking about. Ms. Woolsey said a small city would be built across the street from her with almost four houses on an acre or less than 75 acres. She said to think of all the air and road pollution with all the cars and the roads could not take it. She said the roads would be widened and expensive stop lights would be installed. She stated that the school bought the property but did not have money to build one and she did not think taxpayers would vote to fund one. Ms. Woolsey said people needed to live closer to the City to enjoy it and have the opportunity to bicycle or walk to work or school. She said Central, Broadwater and Grand were drying up and she hated to see that. She said the small affordable housing belonged closer to the City.
- **Bonnie Bickler, 839 56<sup>th</sup> Street West** stated that her name was on the protest. She said she did not have much more to add other than the fact that she watched as the Growth Plan was developed for the City and the West End and realized the development was inevitable. She said she agreed with the plan that was developed and did not realize that if the right words were used, such as affordable housing, that negated the plan. She said one of two accesses would be emptied into a yard of people who lived in an agricultural area. She stated that it did not make sense that they could not count on the plan and were not protected in some way from the property being devalued and the quality of life being lessened by that kind of development. She stated her other concern was the traffic. She said there had been multiple accidents and close calls on Central and 56<sup>th</sup> and was sure that adding that much traffic would require some sort of plan with associated cost to get on to Grand from 56<sup>th</sup>. She said the words of the developers were all good and the ideas were great, but to take that concept to the middle of the west end rural area did not make sense.
- **Jim Olson, 715 56<sup>th</sup> Street West** said his deceased father's property was on 56<sup>th</sup> Street West. He said he was concerned about property values declining because people moved to farm country to get away from it all and could not do that with all the development. He said he had lived there since 1974 and it was farm country where a person could take walks and enjoy it, but that would not be possible any more. He said the traffic was a concern and he agreed with the other opponents. He noted that his name was on the protest petition.

Mayor Tussing asked Mr. Olson if he realized that the property could be developed now with R9600 zoning. Mr. Olson said he knew that. He stated that the developers wanted more and more and he opposed that.

- **Kathy Aragon, 745 O'Malley Drive**, stated that in reviewing the agenda she knew the recommendation of the Zoning Commission was in direct conflict with the staff recommendation. She said she hoped decisions were made with

great transparency and careful consideration in regard to the City's Growth Policy which was created as a result of many hours of Planning Division staff time and public input. She said if the Zoning Commission based its recommendation on the proximity of land to School District land, it could result in failure to achieve the goals of the Growth Policy. She said the District finances continued to be spread more thinly with the declining K-12 population spread over a greater area of the City and maintenance of the current facilities continued to be a challenge. She advised that infill development was important to responsible growth in the community and she wanted to see all stakeholders present at the same table even though she knew Council was making a great effort to achieve that and hoped solutions could be reached to maximize infill and the use of existing facilities. She stated she was pleased with attempts made with City-County growth planning and joint concerns for responsible future growth. She expressed appreciation for careful consideration and attention to those matters.

Councilmember Ulledalen asked if she meant that the School District did not promise to build a school real soon. Ms. Aragon responded there was no adoption of any plan by the District to build a school.

Councilmember McCall asked Ms. Aragon if she was representing herself or the School District. Ms. Aragon responded that she was representing herself. She explained that she was at a meeting with the developers and did not provide a recommendation from the District but posted a recommendation on the Growth Policy as the City-County liaison from the School District. She said she felt there were solutions that would be beneficial to both developers, the City, and the School District and she would love to work on those solutions collectively.

Councilmember Gaghen stated that she thought staff granted approval after a second review and asked Ms. Cromwell for clarification. Ms. Cromwell clarified that both staff recommendations were for denial.

Mayor Tussing asked if the school district owned land on Grand where a high school could be built and in addition if there was potential for an elementary school near Cottonwood Grove. Ms. Aragon stated the School District owned land throughout the City. She said she could not answer which properties were intended for elementary, middle or high school. Mayor Tussing said there were two potential locations within close proximity. Ms. Volek stated that the sale had not been concluded on the property at Cottonwood Park yet. Ms. Aragon reiterated that she was not present to represent the School District.

- **Lori Smith, 909 56<sup>th</sup> Street West** said she lived across from the proposed development. She said that was the first time she was acquainted with something like that and it was an education. She said she believed there was a lot of self-interest in people's hearts and not necessarily the betterment of growth for the City. She noted that two of four Zoning Commission members had strong ties to the real estate community. She stated she would continue the comments started by her husband regarding the reasons the project did not meet the 12 criteria:

- ✓ The land was designed as rural transitional where residential development was likely within the City limits and the County. The R9600 on the perimeter was not enough.
  - ✓ Undue concentration. Developers used total acreage to figure concentration, yet 30% of the subdivision was roads and walkways, which left only 52.5 acres of development and meant there were 5.7 houses per acre.
  - ✓ Grand and 56<sup>th</sup> Street West had high speed limits so it would be a problem with cars entering and exiting the subdivision. The area was surrounded by working farms and the traffic made it difficult to safely move machinery.
  - ✓ Neighboring properties had concerns about low gravity sewers.
  - ✓ Developers admitted planning for a five-acre park but the School District had no plans to build a school on property it owned in the area. The Zoning Commission's decision could have been based on the fact that there would be a school.
- **Bret Murray, 1011 56<sup>th</sup> Street West** stated he was present to add to the voices of those in opposition to the zone change. He said many excellent points were made. He said the idea of a rural transition zone was the key issue and would not be met by changing the zone in that manner.

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

Councilmember McCall moved for approval of the ordinance for Zone Change #847, seconded by Councilmember Ruegamer. Ms. Volek reminded Council that a valid protest existed and passage required a 2/3 majority by the Council.

Councilmember Veis stated that Councilmembers received letters from Ms. Woolsey and Ms. Smith that were available for public viewing. Ms. Volek advised they were in the Ex-Parte book at the back of the room.

Councilmember Ronquillo stated he served on a committee that looked for affordable housing and he was concerned that all affordable housing would be on the south side. He thanked Mr. Wilson for giving people an opportunity to move west. He said he usually liked to see the infill on the south side but they had a good point there that there was a need for more affordable housing and it did not need to be located in only one part of town. He said he would support the zone change.

On a roll call vote, the motion was approved 6 to 3. Councilmembers Ronquillo, Pitman, Veis, Ruegamer, McCall, and Clark voted in favor. Councilmembers Gaghen, Ulledalen, and Mayor Tussing voted against.

*A brief recess was taken 10:55 p.m. to 11:03 p.m.*

**13. PUBLIC HEARING FOR SPECIAL REVIEW #865: A special review to allow Commercial Recreation for the rental of the existing grounds and building for special events on a 20,620 square foot parcel of land described as Lots 7 and 8, Block 2, Graham Subdivision; addressed as 2323 Azalea Lane; and known as the Fortin Mansion. Jim and Debbie Eliason, owners; Daniel Horman, Don Lohrenz, and Nicholas and Mary Okon, agents. Zoning Commission recommends denial. (Action: approval or disapproval of Zoning Commission recommendation.)** Planner Nicole Cromwell summarized the request for the special

review. She advised that a petition with more than 100 signatures in opposition of project was submitted along with several letters of protest. She said the primary concern of the Zoning Commission and Planning Staff was the lack of on-site parking even with small events. She noted that it was a quiet neighborhood with very little traffic on the local streets and even five or ten shuttles for an event would have significant impact and would even pose a burden on the surrounding property owners that was unnecessary and not justifiable.

Ms. Cromwell advised that the Zoning Commission recommended denial on a 4-0 vote and the applicant requested withdrawal of the application on September 3, the day after the Zoning Commission hearing, which was after the public hearing notice had been published for that evening's meeting. Ms. Cromwell stated that regardless of whether the withdrawal was granted or the public hearing was held and then the application denied, a special review application for that property could be submitted at any time because there was no waiting period. Councilmember McCall asked for clarification of the process that had to be followed if the applicant re-applied. Ms. Cromwell responded that every application after that one would be a new application subject to all the public hearings and notices.

The public hearing was opened.

- **Michael Young, 2220 North Place** asked the Council to approve the Zoning Commission's recommendation of denial.
- **Susan Gilbertz, 850 Delphinium Drive** said she wanted to reinforce what had already been said. She stated there were 32 neighbors that spoke against the proposal at the Zoning Commission meeting. She said a number of people in that subdivision were not inclined to change the covenants and there were no sidewalks in the area. She noted the area was highly used by small children and the amount of traffic that would occur on that street would be incompatible with the community.
- **Robert Rightmire, 839 Parkhill** said he supported the Zoning Commission recommendation and the staff recommendation that the special review be denied. He said it was in the center of a solid residential area. He noted there was limited off-street parking. He said there was a lot of discussion about contracts for shuttle parking with churches and schools, but the independent nature of most people would probably have them parking on the streets. Mr. Rightmire said the area streets were extremely narrow with very limited street parking, and any congestion in the area would cause problems with people getting down the streets to their homes. He asked for denial of the special review.

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

Mayor Tussing asked Mr. Brooks if the Council had the option of withdrawing the request or recommending approval or denial. Mr. Brooks suggested the first step was consideration of withdrawal, which would give direction about whether to consider the special review.

Councilmember Ruegamer moved for approval of the request to withdraw Special Review #865, seconded by Councilmember Ronquillo. On a voice vote, the

motion was approved 6 to 3. Councilmembers McCall, Ulledalen, and Clark Voted 'No'.

Councilmember Gaghen moved to reconsider Item #13 regarding the Special Review for the Fortin Mansion, seconded by Councilmember Ruegamer.

Councilmember Ruegamer asked about ramifications of withdrawing the application or denial of the special review. Ms. Cromwell explained that the action provided a degree of information to the applicant. She said allowing the withdrawal conveyed that there was a possibility that if the plan were re-worked, it could be considered; a denial was a clear indication that the plan was not workable. Councilmember Ruegamer asked if there was a timing difference. Ms. Cromwell said there was none at all. Councilmember Ruegamer asked how much it cost to get that far. Ms. Cromwell responded that the application fees were \$900 at the time of the application.

Councilmember McCall said she wanted the vote for reconsideration because she felt the Council needed to send a clear message that it supported the denial. Councilmember Gaghen stated she thought it would be a two-step process; that she wanted it withdrawn, and wanted a firm resounding message from Council regarding the non-probability of changing their minds on the invasive use of a residential property.

On a voice vote, the motion was approved. Councilmembers voting 'No' was inaudible.

Councilmember Clark moved for denial of Special Review #865, seconded by Councilmember Ulledalen. On a voice vote, the motion was approved 8-1. Councilmember Veis voted 'No'.

**14. PUBLIC HEARING FOR SPECIAL REVIEW #866: A special review to add an outdoor patio to a location with an existing all-beverage liquor license with gaming on a 25,650 square-foot parcel of land in a Community Commercial zone described as Lot 3, Block 1; the south 150' of the east 52' and the south 150' of the west 96' of Lot 3, and the south 150' of the west 23' of Lot 4, Block 1, Van Ornum Subdivision, located at the Squire Lounge, 1525 Broadwater Avenue. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)** Planner Dave Green displayed a PowerPoint presentation of the location and the surrounding properties. He advised that the applicant wanted to add an outdoor patio to the northwest corner of the lot. He noted that the applicant purchased the adjacent property to meet parking requirements for the current site and the addition of the patio. Mr. Green said the standard conditions were recommended along with a requirement to meet ADA standards which was also required by building codes. He noted that the Zoning Commission recommended conditional approval.

Councilmember Ruegamer asked for clarification of the patio location. Mr. Green described the location.

Councilmember Veis asked if there was some way to re-work the zoning code so that type of project did not have to go through the special review process. Mr. Green said his understanding was that the ordinance had to be changed. Councilmember Veis asked if it would be difficult to change the ordinance to allow



those patios. Planning Manager Wyeth Friday explained there was a whole process to do that. He said a change was possible.

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

Councilmember Veis moved for approval of Special Review #866, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

**15. PUBLIC HEARING AND SPECIAL REVIEW #867: A special review to locate an all-beverage liquor license with gaming on a 33,036 square foot parcel of land in a Highway Commercial zone described as Lot 9, Block 1, Winemiller Subdivision, located at 1423 Main Street in Billings Heights. HOBBS, a Montana General Partnership, owner; Al Koelzer, agent. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)** Planner Dave Green displayed a PowerPoint presentation that showed the location, surrounding properties, and the project plans. Mr. Green said HOBBS was from Missoula and owned Hudsons on Grand Avenue. He said the alcohol license was purchased as part of a bankruptcy from 4B's which was located on 24<sup>th</sup> and Grand, and it had been inactive. Mr. Green stated that the applicant's plans would improve the location's appearance. He noted that the Zoning Commission forwarded conditional approval and ADA requirements were to be met.

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

Councilmember Pitman moved for approval of Special Review #867, seconded by Councilmember Ronquillo. On a voice vote, the motion was unanimously approved.

**16. 2009 UNIFIED PLANNING WORK PROGRAM (UPWP) for the Billings Metropolitan Planning Organization. Staff recommends approval of the Draft 2009 UPWP and authorizing the Mayor to take this recommendation to the Policy Coordinating Committee (PCC) meeting of September 26, 2008. Staff recommends approval. (Action: approval or disapproval of staff recommendation).** City Administrator Volek advised that the item was the subject of a recent work session and staff did not have a presentation that evening but was available to answer questions.

Councilmember Gaghen moved for approval of the 2009 Unified Planning Work Program, seconded by Councilmember Ronquillo. On a voice vote, the motion was unanimously approved.

**17. DEVELOPMENT AGREEMENT between the City of Billings, Downtown Billings Partnership, Inc., The Babcock, LLC, for the Babcock Building. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** City Administrator Volek stated that Mr. Krueger had a presentation if Council wished to see it, but given the length of the evening's meeting, he volunteered to be available for questions if that was the Council's preference.

Councilmember Gaghen asked if the current financial upheaval of the country would impact the plans.

Mr. Don Olson, a Babcock LLC partner, explained that he visited with First Interstate Bank about the very same thing earlier that day and was assured there was no reason to believe the project would be affected. He said the bank reconfirmed that spaces had to be leased before the next tier of financing could be obtained. He added that the bank preferred to work with local development.

Councilmember Ruegamer asked about asbestos and how much it would cost to remove it. Mr. Olson advised he had an estimate of \$15,000 to test and remove what was considered friable asbestos on the steam pipes in the basement. He noted that much of the asbestos was removed when the heating system was replaced. He added there was asbestos floor tile in the retail portion of the building, but it was not friable and did not have to be removed because carpet could be laid over it.

Councilmember Ruegamer asked about the roof. Mr. Olson said it needed to be replaced and would cost about \$200-250,000. He noted that included dramatic improvement of the insulation as well. Mr. Olson said there was evidence of some leaks in the apartment area and there had been a failed roof drain over the theater.

Councilmember Ruegamer asked about the siding. Mr. Olson advised they would have to live within their budget to repair or replace it and if it was too bad, they may not be able to seek designation as a National Register of Historic Places. He stated the plan would have to be revisited if it was too damaged to repair. He noted the budget had a 12% contingency for some of the unknowns. He said that was the biggest concern of everyone. Councilmember Ruegamer asked if there was a way to check if there was more asbestos there. He said that was his biggest concern because he feared any discovery of too much would result in the buyers walking away and the City getting stuck with it without having the money to abate it. Councilmember Ruegamer asked what protected the City from anything like that. Mr. Olson responded that a Phase I environmental assessment was done and nothing was identified. He noted that he did not see anything else of concern in the building.

City Attorney Brooks stated that the question of conflict of interest was raised earlier in the evening regarding Councilmembers Ronquillo, Gaghen and Ruegamer. He advised that he discussed their involvement with the Downtown Billings Partnership with each of them during the break and it was his understanding that they attended some meetings, but were not board members and did not vote. He added that none of the three had any interest in the transaction. He said each Councilmember informed him that they were not related by blood or marriage to any applicants, not personal friends with the applicants, and had no interest in the property that would be renovated now or in the future and there was no plan in the future to obtain property interest in the development. Mr. Brooks said those were points contained in the Statute noted by Mr. Kevin Nelson earlier in the meeting. Mr. Brooks said that based on that and the Conflict of Interest Statute 07-15-4239 and what he knew from the City's Ethics Board statutes concerning personal and financial conflicts of interest, what he had been told so far did not indicate a violation of the statute or the City's ordinances on ethics.

Mayor Tussing disclosed that he toured the property and had a meeting with the principles in the project. Councilmembers concurred that many had done the same.

Councilmember Ronquillo moved for approval of the development agreement for the Babcock Building, seconded by Councilmember Gaghen.

Councilmember Ruegamer said it was a poor deal from a financial standpoint, but from an aesthetic standpoint, it was an opportunity to get a blighted building renovated and back on the tax roles. He said he would not know how he would vote until the vote was called. He said he did not want to see the City stuck with a huge abatement issue similar to the North Park Reserve Center.

Mayor Tussing stated that it seemed there was a greater risk for someone to try to renovate it without TIF funds, even though that was probably unlikely. He said he felt the City risked losing more money in taxes that had to be returned to the other taxing entities if they were not utilized for that project. He asked if the City would be required to pay those taxes to the other entities if the project failed. Mr. Brooks explained that the leftover TIF funds were being used as the City saw fit and the main responsibility was to make sure the funds were used for a qualifying urban newel renovation project. Mayor Tussing pointed out that the money was already there waiting for appropriate use and he felt it was an appropriate use and would support the project.

Councilmember McCall said she would also support the project even though it seemed to be a risk.

Councilmember Gaghen stated she felt the TIF funds should be used in that way because she found it to have greater potential for the well-being of the City and the tax base.

On a voice vote, the motion was approved 8-1. Councilmember Ulledalen voted 'No.'

**18. NORTH 27<sup>TH</sup> STREET TIFD BOUNDARIES. Staff recommends approval of the proposed expansion of the North 27<sup>th</sup> Street District. (Action: approval or disapproval of staff recommendation.)** City Attorney Brent Brooks said the only action that evening was to give direction to staff and the Downtown Billings Partnership to move forward with preparing the appropriate documents to hold a public hearing concerning the expansion of the existing tax increment financing district boundary.

Councilmember Veis asked Mr. Krueger if he had a PowerPoint of the map. Mr. Krueger said he did not. Councilmember Veis referenced the west side and asked Mr. Krueger if he could talk about the types of projects planned for that area. Mr. Krueger said there were a couple possible development projects that had come forward and asked to be added to the tax increment district; a church and mostly parking lots.

Councilmember Clark moved for approval of Item 18, seconded by Councilmember McCall.

Councilmember Veis said he would like to amend the boundaries to move the south boundary up one block to First Avenue South. He said there had been a project planned earlier for that area but now it was not going to happen. He said he

had spoken with Mr. Krueger about it earlier, and said he was concerned about the size of the district given the constraints of the City's resources. He said if there was a block that did not need to be in the district, then it should not be included.

Councilmember Veis amended the motion to relocate the southern boundary of the proposed TIF district up one block to First Avenue South, seconded by Councilmember Pitman.

Mayor Tussing asked Councilmember Veis to further explain the reason for his motion. Councilmember Veis said he had visited with Mr. Krueger about each of the boundaries. He said the reason for the southern boundary was because they felt there would be a project moving forward, but now it looked as though the project was not going to happen, so the southern boundary could be moved one block north. He said any future growth in that block would then go into the General Fund rather than into the TIF District fund.

Mayor Tussing said that was true but there was also the possibility that there would be no growth in that block. Councilmember Veis commented there would not be added growth through projects in that area.

Councilmember McCall asked Mr. Krueger to respond. Mr. Krueger said the property along the south was actually the Deering Clinic and in that area there had been a potential development that Deering Clinic would have a privately-owned building that they would lease back. He said that opportunity had since dissipated, and it would have been the only potential growth on that end of the block. He said did not have any indications of any further development on the block. Mayor Tussing asked Mr. Krueger if he had any objections to moving the southern boundary up by one block. Mr. Krueger said moving the boundary up by one block would be "just fine." He said the real target area was Minnesota Avenue to First Avenue; and there was a lot of potential development that would not take place without some sort of incentive and assistance.

On a voice vote, the amended motion to move the southern boundary one block to the north was unanimously approved.

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

**19. 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.)*

- **Trent Godfrey, 737 South Billings Boulevard**, said the removal of the trees for expansion of the roadway in the Town Square Development area had eliminated the noise barrier, making it very difficult to sleep at night with all the vehicles traveling down the highway. Mr. Godfrey said he had spoken with city staff and the contractors, and there was no provision for a sound barrier to protect the residents. Mr. Godfrey paraphrased the ordinance that citizens had the right to be free from unnecessary noise. Mr. Godfrey requested that the Mayor and Council and City Staff look into sound retarding devices now that the trees had been removed.

Councilmember Ronquillo commented that the trees that had been

removed were very, very old Dutch Elm trees that were falling down. He said the area looked so much better without the trees, and they should have been taken down a long time ago. He suggested Mr. Godfrey attend a task force meeting to talk about the possibility of planting new trees. Mr. Godfrey said there was no longer a place to plant new trees. He agreed with Councilmember Ronquillo and said he never did like the old trees or the bugs that came with them. Mr. Godfrey said he was “pleased as punch and tickled pink” with the work Knife River was doing. Mr. Godfrey asked again that the City Council think about a noise barrier.

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

### **Council Initiatives**

- **VEIS:** Moved to have staff look into changing the ordinance to eliminate the need for Special Reviews for the addition of smoking patios next to establishments with an existing all-beverage liquor license, seconded by Councilmember Ruegamer. Councilmember Veis said by October 1, 2009, the establishments would all have to have them, and Council could either consider all of them at that time or confront the problem before then.

Councilmember Gaghen said she did not think some existing all-beverage liquor license establishments were conducive to having outdoor patios just “spring up” and said she would not support the motion.

On a voice vote, the motion was approved 5 to 4. Councilmembers Ulledalen, Gaghen, Clark, and Ronquillo voted ‘no’.

- **TUSSING:** Moved to direct staff to look into the pros and cons of annexing Phipps Park and Riverfront Park into the City limits, seconded by Councilmember Clark. On a voice vote, the motion was unanimously approved.

**ADJOURN – The meeting adjourned at 12:03 a.m.**

*Additional information on any of these items is available in the City Clerk's Office.*

*Reasonable accommodations will be made to enable individuals with disabilities to attend this meeting. Please contact Cari Martin, City Clerk, at 657-8210.*

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