

**REGULAR MEETING OF THE BILLINGS CITY COUNCIL  
November 24, 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. Councilmember Ronquillo gave the invocation.

**OATH OF OFFICE CEREMONY** – Larry Brewster, Ward II

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

**MINUTES** – November 10, 2008 – approved as distributed  
November 13, 2008, Special Meeting – pending

**COURTESIES** – None

**PROCLAMATIONS** – None

**ADMINISTRATOR REPORTS:**

- Ms. Volek referenced Agenda Item 1A3 and advised that staff was requesting the item be delayed until 12/15/08.
- Ms. Volek referenced a letter included in the Friday packet from the Yellowstone County Board of Planning recommending approval of the expansion of the South Billings Boulevard TIFD. She said a copy of the letter was in the Ex-Parte Notebook in the back of the room for public review.
- Ms. Volek advised that a valid protest had been received for Item 6a. She said a letter from the developer was also included in the Friday packet. She said approximately 40 pieces of correspondence had been received protesting the zone change, as well as a petition with an additional 180 signatures in opposition of the project. She said copies were in the Ex-Parte Notebook in the back of the room for public review.

**PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: 1 and 2 ONLY.**

**Speaker sign-in required.** (Comments offered here are limited to 1 minute per speaker. Please sign up on the clipboard located at the podium. Comment on items listed as public hearing items will be heard ONLY during the designated public hearing time for each respective item.)

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

The public comment period was opened.

- **Joe White, Billings, MT**, spoke on Item 1A1, the bid award for a crime scene investigation vehicle. He said there had been a lot of complaints against the Police Department, and he was opposed to the purchase of the vehicle.

## **CONSENT AGENDA:**

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

**(1) Crime Scene Investigation Vehicle.** (Opened 11/12/08)  
Recommend Emergency Vehicles, Inc., \$298,385.

**(2) W.O. 03-07, Alkali Creek Multi-Use Path-Segment 1B (Main Street Tunnel).** (Opened 9/30/08)(Delayed until 10/27/08)(Delayed until 11/24/08)  
Recommend rejection of all bids received.

**(3) W.O. 04-12, Alkali Creek Road Slope Improvements, Schedule I.** (Opened 10/28/08)(Delayed until 11/24/08). Recommend COP Construction, \$1,762,687.50.

**B. Contract** with Rich & Associates, Inc. for Downtown Billings Parking Study, \$68,500.

**C. Amendment No. 2, W.O. 08-01 2008 Water and Sewer Replacement Project.** Professional Services Contract, Morrison-Maierle, Inc., \$1,108,435.50.

**D. Amendment No. 6, W.O. 03-25 Rimrock Road.** Professional Services Contract, DOWL HKM, \$10,000.

**E. Acknowledging receipt of petition to vacate** Boundary Waters Circle located within Riverfront Pointe Subdivision; Cal Kunkel, owner and petitioner, and setting a public hearing for December 15, 2008.

**F. Approval** of support for Yellowstone County's FEMA PDM Plan update grant application submittal; and **Authorization** for the Mayor to sign letter of support.

**G. Preliminary Plat** of Amended Lots 1-8, Block 2; Lots 1-8, Block 3; and Lots 1-9, Block 4, of Reflections at Copper Ridge Subdivision, located approximately one quarter of a mile northwest of the Molt Road and Rimrock Road intersection; Reflections at Copper Ridge, LLC, owner; Engineering, Inc., agent; conditional approval of the plat and adoption of the Findings of Fact.

**H. Preliminary Plat** of Housing Authority of Billings Subdivision, located on the west side of Lake Elmo Drive north of Uinta Park Drive in Billings Heights; Housing Authority of Billings, owner; Engineering, Inc., agent; conditional approval of the plat and adoption of the Findings of Fact.

### **I. Final Plat Approval**

**(1) Superior Homes Subdivision**

- (2) Shiloh Crossing Subdivision, Amended Lot 5E, Block 1
- (3) Tierra Yellowstone Industrial Park Subdivision, Amended Lot 1, Block 1A

**J. Payment of Claims**

- (1) October 24, 2008
- (2) October 31, 2008

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

Mayor Tussing separated ITEM 1A3. Councilmember Clark separated ITEM 1A1. Councilmember Ruegamer separated ITEM 1B. Councilmember McCall moved for approval of the Consent Agenda with the exception of ITEMS 1A1, 1A3, AND 1B, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

Councilmember McCall moved for approval of ITEM 1A1, seconded by Councilmember Ruegamer.

Councilmember Clark asked what made the CSI vehicle so expensive that money from two different sources was necessary to pay for it. Police Chief St. John advised it was state of the art equipment and contained everything needed for a major crime investigation. He said it was also a support vehicle for the eastern portion of the state. Chief St. John said the major part of the grant was from their Federal delegation, and the balance would come from their Drug Forfeiture Fund. Chief St. John advised they had received only one bid.

Councilmember McCall asked if the vehicle was brand new or used. Chief St. John advised the vehicle would be built from scratch. He said the bid included three trips to the manufacturer to make sure the vehicle was put together properly and in the way they wanted.

Councilmember Gaghen asked if the technology grant was specifically for a CSI vehicle. Chief St. John said the CSI vehicle was one of two specific projects they had identified when applying for the grant.

City Administrator Volek asked Chief St. John to explain the CSI vehicle currently being used. Chief St. John advised the current Ford Econoline Van was of 1980's vintage, and they had stocked all of the investigations equipment from their own inventory. He said the vehicle was worn out and no longer dependable. He said it would not be very impressionable to have a crime scene investigation vehicle show up at a crime scene on the back of a wrecker. Chief St. John advised the Federal Government wanted drug forfeiture money used to supplement police operations and said it was a great expenditure that would benefit the community for years to come.

On a voice vote, the motion was unanimously approved.

Councilmember McCall moved to postpone ITEM 1A3 until December 15, 2008, seconded by Councilmember Pitman.

Councilmember Pitman asked Public Works Director Dave Mumford for an update on the project. Mr. Mumford said Alkali Creek Road made an 'S' curve near Morningside, and the road base in that area failed during the summer of 2006 causing the guardrail to fall off. He said temporary concrete barriers were used to hold the side

slopes, and two geotechnical firms were hired to review the roadway to determine the cause of the failure. Mr. Mumford advised both firms reported the road was in failure to various degrees in various areas. He said when they looked at both geotechnical reports, the solution was under \$500,000 a fix, so they put it in the CIP as an outside cost. He said when they bid the project based on the design to fix eight failing sections, the price came in at over \$5 million. Mr. Mumford said staff was asking for a delay until December 15<sup>th</sup> so they could evaluate every other option available. He said there were current issues with the temporary barriers starting to slide. He advised staff asked the Corps of Engineers if the creek could be moved back to the north where its original channels were, but they were not feeling very positive about their request. He said the current design would be to drill back in, run cabling in and attach to the rock walls to the south, and place sheer walls of treated timbers with a concrete face to eliminate erosion. Mr. Mumford said the design included a future bike trail or multi-use trail.

Councilmember Brewster asked Mr. Mumford about a flyer currently circulating in the Heights that said there was no plan or money to ever finish widening the road and completing the walking/bike path. Councilmember Brewster asked if staff could come back on December 15<sup>th</sup> with a tentative plan on how the whole project could be completed.

Mr. Mumford advised that the lady who sent out the flyer talked with the City Engineer, who recommended that she and her neighbors attend the CIP meetings. He said in 2006 Public Works presented six different trail options to the Council. He said when Morningside was annexed into the City, they were required to donate property for a trail but it had not been enforced. Mr. Mumford said it would be several months before they knew what they would be doing with the road itself; and at that point they would have a better idea of what they could do with the trail.

Councilmember Brewster asked if any CTEP money from the Main Street Underpass project would be available to build an alternate trail. Mr. Mumford advised that CTEP funds were available, and Council would be working with the Planning Department to determine where the funds would go.

Mayor Tussing asked why the opinion from the first geotechnical firm did not catch the failure. Mr. Mumford said the first firm told them there was a problem and in order to get a better understanding, they requested a second opinion to verify why they were losing the road.

On a voice vote, the motion to delay until December 15<sup>th</sup> was unanimously approved.

Councilmember McCall moved for approval of ITEM 1B, seconded by Councilmember Gaghen.

Councilmember Ruegamer asked what Rich & Company could specifically tell the City. Assistant City Administrator Bruce McCandless advised that the intent of the study was to identify parking resources presently available, to work with the stakeholder groups to determine where the greatest demand was likely to be, and to compare the two and give staff ideas about where additional parking structures or other parking resources might be developed by the City in the downtown area. Councilmember Ruegamer said he would not support the contract. He said he thought the City had a very good Parking Board, and they should devise their own study. He asked if the City had equipment that electronically gave utilization rates of meters. Mr. McCandless said

the City did, but it was only for on-street parking meters. Councilmember Ruegamer said he thought the City should start its own study.

Councilmember Gaghen said she was on the committee that assessed the various applicants for the study. She said the group was comprised of the chair of the Parking Advisory Board, the Parking Supervisor, and others who had the ability to assess the need for the study. She said she felt the study would be a worthy expenditure, and she would be supporting it.

Councilmember Ruegamer said he had asked the Parking Division questions on various occasions and had never gotten answers that made any sense. He said they were talking about cutting the budget; yet spending \$68,000 for a study that he did not feel was needed. Councilmember Ruegamer said he wanted to send a message to all Department Heads and the whole administration that he would be looking at all the consultants and studies, and they better be justified clearly and strongly or he would be against them.

Mayor Tussing asked for the number of employees in the Parking Division. Ms. Volek advised there was a director and a support staff position, with the rest of the employees working in the garages or working on the meters. Mayor Tussing said he agreed with Councilmember Gaghen. He said he did not feel there was staff available to do the study, and it was too much to ask of the volunteer citizens on the Parking Board.

Councilmember Gaghen asked if the item could be postponed so additional information could be provided.

Councilmember Astle said he agreed with Councilmember Ruegamer and would not support the motion.

Councilmember Brewster asked if the information provided by the study would save the City money in the long run. He said he somewhat agreed with Councilmember Ruegamer because the City already knew where the demand was, what garages were full, and what street spots were full.

Councilmember Veis asked Mr. McCandless what the City would learn from the study that it did not already know. Mr. McCandless said the last parking study he was aware of was prepared in 1995 and updated in 1997. He said, in the past, the Parking Advisory Board had consistently used the study to guide them with the downtown parking system. Mr. McCandless said the waiting lists for parking garages was one indicator for usage but did not tell the whole story. He said Rich and Associates was prepared to pull all of the parking information together and identify and evaluate a number of different sites for parking locations and make recommendations on the highest priorities.

Councilmember Ronquillo asked if the company that looked into the possibility of selling Park 4 provided a footprint of what else could be done downtown. Mr. McCandless said the extent of their work was specific to identifying a potential market for Park 4 if the City decided to sell it and the sale price.

Mayor Tussing asked if the money could legally be spent somewhere else other than the study. Mr. McCandless advised the funds were from the Parking fund and were traditionally spent on parking.

Councilmember Ruegamer asked how much time was needed to bring it to a work session. City Administrator Volek advised the last work session of the year was December 1<sup>st</sup>, and it had an extremely lengthy agenda. She recommended delaying

until December 8<sup>th</sup> until they could get an answer from Rich and Associates to assure they would keep the contract with the City.

Councilmember Ruegamer moved to delay action until December 8<sup>th</sup>, seconded by Councilmember McCall.

Mayor Tussing asked if the study idea came from the Parking Advisory Board or from the Parking Division. Mr. McCandless said it was a strategic plan objective that the Parking Advisory Board set about a year ago.

On a voice vote, the motion to delay until December 8<sup>th</sup> passed 8 to 3. Councilmembers Ulledalen and Gaghen and Mayor Tussing voted 'no'.

## **REGULAR AGENDA:**

**2. SETTLEMENT AGREEMENT with Police Officers Hagen, Leonard, and Gauthier. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** City Administrator Volek advised there was no staff presentation, but she had additional copies of the agreement for distribution, if necessary. She said a copy of the agreement was located in the Ex-Parte Notebook for public review, and a news release would be issued the following morning. She said the agreement was a public document and had been distributed to the news media when requested.

Councilmember Ruegamer moved for approval, seconded by Councilmember Astle.

Councilmember Ronquillo asked Police Chief St. John if efforts were being made to prevent another lawsuit of the same kind. Chief St. John said significant changes had been made since 2005, and since then there had been no complaints. He said changes included revamping their hiring process, promotion and transfer process, and evaluation process. Mayor Tussing asked how many female officers were on the force. Chief St. John said they currently had 12 female officers. City Administrator Volek advised that the Police Chief and the rest of City Staff were welcome to the opportunity of having an outside agency look at the processes and make recommendations for improvement.

On a voice vote, the motion was unanimously approved.

**3. PUBLIC HEARING approving the Mayor's Committee on Homelessness' recommendation to provide a \$465,000 zero interest, deferred payment loan to Interfaith Hospitality Network for purchase and rehabilitation of two duplex housing units located at 1427 Avenue C. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** City Administrator Volek advised there was no staff presentation, but Ms. Beckett was available to answer any questions.

Councilmember Ronquillo asked Ms. Beckett if the basement in the back unit would be brought up to code. Ms. Beckett advised the \$465,000 included funding specifically for rehabilitation and acquisition, so the unit would be brought up to code with egress windows and ADA accessibility.

Councilmember Clark asked if both buildings were worth \$465,000. Ms. Beckett said an appraisal had been ordered, and they were hoping they appraised for that amount. Councilmember Clark said if the property was not worth that much, the secured loan would not be worth anything. Ms. Beckett said the asking price for both duplex units was \$320,000, so they were negotiating backwards with the value of the

improvements needing to be made. She said her guess would be that siding, roofing, landscaping, etc. would increase the value.

The public hearing was opened.

- **Adela Awner, 1123 17<sup>th</sup> Street West**, said she was the Director of Interfaith Hospitality Network. She said their network included 20 religious congregations in Billings, and they served homeless families with children. She said their goal had never been to feed and shelter as many people as possible, but to make a difference in the lives of those who came into their network. Ms. Awner said the average stay in the network was two months. She said the congregations provided sleeping rooms in their churches and all the meals, which meant the families were moving every week from one church to another. She said a case manager worked with the families and there were a lot of expectations, such as employment and a savings for their first month's rent and deposit.

Councilmember Astle asked how many families would live in each building. Ms. Awner said there were two duplexes, for a total of four living units.

- **Jeff Kanning, 1943 Mariposa**, said he was with Collaborative Design Architects and a Board Member of Interfaith Hospitality Network. He said the price of the project was \$320,000. He said currently the four units were two-bedroom, and they would be adding a third bedroom to the two apartments in the front duplex. Mr. Kanning said the front duplex was approximately 35 years old, and the back duplex was built in the 1940's; so there was substantial work that needed to be done, as well as some mold issues that needed addressed. He said with the grant money and the purchase price for the improvements, they could get into the units practically debt free and base the rent amount on what the families would be able to pay.

Councilmember Clark asked where they were planning to add bedrooms based on the size of the lot. Mr. Kanning said the west side of the front unit had an attached garage/carport that would be removed to make room for the additional bedrooms. He said the upper unit in the back duplex would be converted to be fully ADA accessible, and the lower unit in the back would get egress windows.

Councilmember Gaghen asked Mr. Kanning if the plan was to bridge the families into their own dwellings at a later time after having lived in the duplexes and asked if there was a limited time period the families could stay in the duplexes. Mr. Kanning advised the maximum stay was one year.

Councilmember McCall asked Ms. Beckett to review the funding provided by the Department of Public Health and Human Services and the federal appropriation. Ms. Beckett said they had received \$300,000 from a food stamp bonus fund from the Office of Public Assistance. She said it was a pilot project in Billings with a 10-year plan to help end homelessness in Billings. She said a portion was broken off for administrative costs for the development of the 10-year plan, and \$255,000 was allocated to a Housing First project. Ms. Beckett said they had also requested a federal appropriation of approximately \$400,000 to supplement the food stamp funding, and it came through in the amount of \$262,000.

Councilmember Veis asked about the contingency for funding based on the ability to complete a zoning lot size variance. Ms. Beckett advised Council would not be committing to the variance that evening. She said the duplexes were in an area with other rental units and other nonconforming properties, and they would be going before the City Board of Adjustment first.

- **Judy Johnson, 212 Emerald Hills Drive**, said she was the president of Interfaith Hospitality Network. She said the program was very successful at helping people become successful, working citizens. She said they screened people very carefully before bringing them into the program. Ms. Johnson said half of the population they helped were children six years old and under, and it was very rewarding to see the children move into their own bedroom in their own home after living in cars, on the street, or with other family members.

Councilmember Clark asked for the percentage of families in the program that actually ended up in their own housing. Ms. Johnson said the program started five years ago. She said 85% of the adults were employed when they left the program, and 73% had moved into their own homes. She said a caseworker worked half time with the families while they were in the Network, and half time with the families once they left the Network.

Councilmember Clark said it appeared the money was a grant and not a loan because it did not have to be paid back. Ms. Beckett advised that it would be considered a deferred interest, zero payment loan and if Interfaith Hospitality Network ever sold the property, they would need to pay back the \$465,000.

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

Councilmember Veis moved for approval, seconded by Councilmember Brewster.

Councilmember Clark said he had asked for information that they were not able to provide before that evening. Councilmember Clark made a substitute motion to postpone the item until December 8, 2008, seconded by Councilmember Gaghen.

Councilmember Veis asked Councilmember Clark what kind of additional information he had requested. Councilmember Clark said he had asked for more financial information to determine how financially stable they were.

On a voice vote, the substitute motion failed 10 to 1. Councilmember Clark voted in favor of postponing action until December 8, 2008. Councilmembers Ronquillo, Gaghen, Pitman, Brewster, Veis, Ruegamer, McCall, Ulledalen, and Astle, and Mayor Tussing voted against postponing action until December 8, 2008.

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

**4. PUBLIC HEARING AND FIRST READING ORDINANCE expanding the North 27<sup>th</sup> Street Urban Renewal Area – 2008. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** Assistant City Administrator, Bruce McCandless, advised the City has had a Downtown Tax Increment District since 1976, which expired in March of 2008. He said in 2005 the City created a North 27<sup>th</sup> Street District for a single-purpose project located in the 200 block of North 27<sup>th</sup> Street, but the project did not proceed. He said in 2006 the City expanded the boundaries of



the district. He said the current proposal was to modify the plan that was created in 2005 and amend the 2006 plan by further expanding the district boundaries. Mr. McCandless said it was important to complete the process soon because the Department of Revenue had established rules during this calendar year that required submittal of the application and all of the material to the Department of Revenue no later than February 1, 2009, if 2008 was going to be the base year for tax increment purposes. He said the important thing to remember about the expiration of the old district and the creation of the new district was that the new district boundaries sat over the top of some of the old tax increment district boundaries. He said when the 1976 district expired, all of the taxable values rose to the 2007 levels, so all the taxing jurisdictions were getting the benefit of the higher valuations. Mr. McCandless reviewed a PowerPoint map showing the 2005 and 2006 boundaries and the proposed 2008 boundaries.

Councilmember Brewster asked Mr. McCandless to identify the blighted areas on the map. Mr. McCandless said he could not identify them specifically but said there were a number of vacant or partially vacant buildings within the area, many surface parking lots that were prime for redevelopment, and a number of sites that were cleared in the 1976 district and never rebuilt or redeveloped. Mr. McCandless said there were property owners along Montana Avenue and Minnesota Avenue that currently had redevelopment plans for their properties. Mr. McCandless said there was also a need for public facilities, such as parking in the downtown area.

The public hearing was opened.

- **Greg Krueger, 2815 2<sup>nd</sup> Avenue North**, said he was the Development Director for the Downtown Billings Partnership and was in support of the expansion of the North 27<sup>th</sup> Street Urban Renewal Area. He said there was considerable blight in the area that detracted from the surrounding properties. He said blight currently existed in the Lincoln Hotel, most of Minnesota Avenue, the Northern Hotel, several surface area parking lots, and certain spots on Montana Avenue.
- **Kevin Nelson, 4235 Bruce Avenue**, read from the American Planning Association policy guidelines for public redevelopment. He said it was the body the Planning Board members belonged to as a certification group. He read from the policies adopted on April 25, 2004, referencing blight, erosion of local government redevelopment authority, and abuse of power. He said he felt it was fraud because the whole idea behind tax increment districts was to bring areas back onto the government rolls as taxes and then capture the increased revenue and pass it back to the community. He said the City was just going to gather up all the new property again, put it in a tax increment district, and use it for a little personal scheme. He said the City kept redirecting tax dollars away from the entities; the base continued to shrink; and everyone had to pick up the tab through higher rates and fees.
- **Dave Bovee, 424 Lewis Avenue**, said tax increment districts were a failure and that was why they had been changed to only benefit a tiny little group and not the 103,000 people of Billings. He said former councils and the current council had “illegitimately, irresponsibly, unethically, and annually illegally” refused to tell the people of Billings where the money had gone. He said there was profiting going

on that was not intended by the law and could be identified as theft. He said the only beneficiary was the tiny group of property owners rather than businesses. He said the council had missed the opportunity to abide by ethical responsibility to the 103,000 people of Billings by not telling them in complete detail where all the money went. He said it was corrupt.

- **Randy Hafer, 2910 Morledge Street**, said he wanted to encourage Council to pass the creation of the expanded district. He said if Mr. Bovee really wanted to know where the money was spent, he could find out very easily. Mr. Hafer said the TIFD laws in the state were one of the few mechanisms to assist with redevelopment of existing urban areas. He said they had been very successful in downtown the past ten years, and he was sure the success would continue. Mr. Hafer said people who had property on Minnesota Avenue were in an area that was underdeveloped and that had older properties that needed a substantial amount of work. He said the only mechanism they had on the public side to get assistance was through TIFD financing. Mr. Hafer said he was really anxious to see the district expand. He said downtown was critical and without a vibrant downtown there would be serious problems funding anything else in the city. He said there were many exciting projects being contemplated, and the expansion of the district would ensure that downtown Billings continued to thrive.

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

Councilmember Brewster moved for approval, seconded by Councilmember Ruegamer.

Councilmember Ruegamer assured everyone that the two speakers who spoke against the tax increment district had received reams and reams of information. Councilmember Ruegamer said he and Greg Krueger met an entire afternoon with Kevin Nelson talking about tax increment districts and answering every question Mr. Nelson had; but the next week Mr. Nelson was back saying the same things as though he had never heard a word they said. Councilmember Ruegamer said Mr. Krueger could provide information as to where the money had gone; it was all clear; all public knowledge; and very easily accessible.

On a voice vote, the motion was unanimously approved.

**5. PUBLIC HEARING ON MODIFIED URBAN RENEWAL PLAN AND FIRST READING ORDINANCE for the Modified South Billings Boulevard Urban Renewal District. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

Lora Mattox, Neighborhood Planner, explained there were two items involved; the first was modifications to the Urban Renewal Plan, and the second was expansion of the district. She said expansion of the district would include 4 acres of county island that had been annexed into the city earlier in the year, 54 acres contiguous to the existing district and an approximate 40,000 square-foot parcel of land requested by the owners to be included in the district. She said the modifications included added language to address relocation of residential dwellings if federal funds were used, such as HUD funds, HOME funds, or federal transportation dollars; and a section on how to modify the Urban Renewal Plan in the future. She said if a minor

modification was being done to the boundary, it would only require notification of the existing property owner; and if a major modification where projects or significant procedures were being addressed, it would require notification of everyone in the district. Ms. Mattox advised they had also updated the project list to conform to the current City CIP project list.

Councilmember Veis asked if there were any plans to use the residential relocation plan in the future. Ms. Mattox said only if a federal grant or federal appropriations were received to do work within the district, and the work required relocating private residences. She said they did not anticipate that happening at this time. Councilmember Veis said when the plan was taken to the residents that lived in the area, they were told there would be no eminent domain and asked if that was still correct. Ms. Mattox said they would not use eminent domain for private or economic development. She said in cases where right-of-way was needed or dedication for public utilities or public roads, eminent domain would be allowed. Councilmember Veis asked if during the public meetings the residents were told there would be no eminent domain. Ms. Mattox said staff had always stated at the public meetings that eminent domain would be used only in cases where public right-of-way or public dedication for public utilities or public roads were needed, and that it would not be used for economic development purposes. Councilmember Veis asked why a relocation plan was needed if eminent domain would not be used. Ms. Mattox said they wanted to make sure they had a procedure included because of a previous situation with three trailer homes at the corner of South Billings Boulevard and King Avenue that were in the right-of-way. She said during the South Billings Boulevard project, the three trailers were suppose to be moved through MDT, and the owner was paid to relocate them, but never did. She said when the King Avenue improvements were started, the trailers were still in the right-of-way, so they had to work again with the owner to get them moved. Ms. Mattox said they wanted to make sure that in the future if federal funds were used, they would have a relocation plan in place.

The public hearing was opened.

- **Kevin Nelson, 4235 Bruce Avenue**, said they were referencing the Kenney vs Billings condemnation hearing that was currently in court. Mr. Nelson asked everyone to raise their hand if they had current pictures of the properties being brought into the district. Since no one raised his/her hand, Mr. Nelson showed pictures he had taken. Mr. Nelson reminded Councilmember Ruegamer that the district had to be withdrawn because it did not comply with the statutory requirements of the state, and the city had to start over. Mr. Nelson said the 54 acres of Controlled Industrial zoning would be stolen and given to Cabela's so they could pay Wal-Mart's and Cabela's SID costs. Mr. Nelson said he knew his way to Helena, and he was going to follow the City around at the next legislature and he was taking his information with him. He said if the City thought they were going to Helena to get something, he was going to be right behind Bruce and right behind Council and right behind the City lobbyist explaining how the business was done in Billings and how Billings liked to redirect the dollars inappropriately. He said those were the types of things they would have to confront at the next legislature, because he did not think they would get anything.

- **Dave Bovee, 424 Lewis Avenue**, said he would like anyone watching to remember that anytime there was a raise through mill levies, bonds, and the school; the money did not go to those entities. He said the money went back into “the clique – your special little friends.” Mr. Bovee said it had been going on for a long time and some people downtown had already enjoyed 46 years of unbroken TIFD benefits, even though you could not tell walking down the street. He said everyone else pays a little more. Mr. Bovee advised if people wanted to look at the “special little friends” who had no position in our government as some sort of authority as to where our money had gone, that was their choice. Mr. Bovee told council they were the elected representatives and just a small portion of the population of Billings. He said the people were entitled to get honest reports from their elected representatives.

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

Councilmember Pitman moved for approval, seconded by Councilmember Ronquillo.

Councilmember Ronquillo addressed Mr. Nelson and Mr. Bovee and commented that Mr. Nelson had attended a lot of the meetings on it. He said the reason for the expansion was because Cabela’s was not able to get in with the lower bonds. He said they talked with Planning and determined that if the district could be expanded, they could use some of the tax increment money to upgrade a lot of south side locations. Councilmember Ronquillo said the areas they wanted to clean up were not necessarily blighted but areas where there were still septic tanks and no curb and gutters on the streets. He said with the tax increment money coming in and the new businesses they had hopes and plans for, they hoped to use the money to put it right back in the area where it was needed without an SID. Mr. Ronquillo referenced the trailer court and said they had it all worked out until one individual talked with the trailer court owner and told him the City “had deep pockets” and should be able to give him more money. Mr. Ronquillo said he drove the area, and the City had done a beautiful job.

On a voice vote, the motion was approved 10 to 1. Councilmember Veis voted ‘no’.

Mayor Tussing called for a brief recess at 8:14 p.m. Mayor Tussing called the meeting back to order at 8:22 p.m.

**6. (a) PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #851: A zone change from Residential 9600 to Community Commercial, Residential Multi-Family, Residential Multi-Family Restricted, Residential 6000, Residential 7000, Residential 7000 Restricted, and Public on a 63.89-acre parcel of land legally described as Tracts 1 and 2, Certificate of Survey 2054, generally located on the southeast corner of the intersection of Rimrock Road and 54<sup>th</sup> Street West and known as the Mont Vista Subdivision. Krutzfeldt Ranch, LLC, owner; Tom Llewellyn, agent. Zoning Commission recommends approval, with the exclusion of Community Commercial and Public zoning, and adoption of the determinations of the 12 criteria. (Action: approval or disapproval of Zoning**

**Commission recommendation.**) Aura Lindstrand, Planner II, advised there would be a concurrent special review with the zone change that evening and a public hearing before the Planning Board the following evening on a 140-lot subdivision. She said the subdivision would then come before Council at their meeting on December 15, 2008. Ms. Lindstrand began her PowerPoint presentation showing the subject property and describing the zoning of adjacent properties. Ms. Lindstrand also showed a map of the subject property and began describing each of the proposed zoning areas. She showed an area proposed for Community Commercial and said staff and the Zoning Commission were asking that it be excluded from the zoning request, as the Northwest Shiloh Plan and the West Billings Plan did not call for a Community Commercial node on the corner of 54<sup>th</sup> Street West and Rimrock Road but rather a Neighborhood Commercial node. She mentioned there was already a Community Commercial node located at 54<sup>th</sup> Street West and Grand Avenue. Ms. Lindstrand pointed out the ditch that ran along the north and said the proposal was to zone it Public. She said during the review, as well as the subdivision review, staff found it would not be a good use of a public park and had not accepted ditches in the past as part of a parkland dedication because they were not maintained for that purpose. She said they were actually maintained for ditch maintenance. Ms. Lindstrand said staff had requested that it be excluded from the zone change. She said the zoning of Public would not actually affect the subdivision. She said if they were approved with a park, it could remain R9600.

Councilmember Veis asked if the City Planning Department would have to accept it as parkland dedication if it was zoned Public. Ms. Lindstrand said not necessarily. Councilmember Veis asked if there would be any reason to have it zoned Public if it was not going to be accepted as parkland dedication. Ms. Lindstrand said there would be no reason. She said, even if it was zoned R9600, it could be accepted or not accepted.

Ms. Lindstrand continued to point out the remaining proposed zoning areas.

Councilmember Veis asked if Cynthia Park was a county-owned park in the City or a city-owned park in the County. Ms. Lindstrand said it was a county-owned park in the City. She said when it was annexed, the ownership apparently never changed, and the Parks Department was currently working on getting it into their ownership.

Councilmember Ulledalen pointed out on the map that the coding for RMF-R was opposite of what Ms. Lindstrand had said when she did her presentation. Ms. Lindstrand said it was a change from the Zoning Commission, and the applicant had actually pointed it out to her. She said the only real difference was that Residential Multi Family (RMF) allowed for 55 feet in height, and Residential Multi-Family Restricted (RMF-R) allowed for 42 feet in height.

Councilmember Veis asked if they could have two curb cuts along 54<sup>th</sup> Street West where there was RMF-R or if any curb cuts would be allowed onto 54<sup>th</sup> Street West. Ms. Lindstrand said, by city code, each lot was only allowed two driveways; so they would only be allowed the two curb cuts per lot. Councilmember Veis asked for the amount of total curb cuts they could have abutting 54<sup>th</sup> Street West in the area of the map that was colored dark purple. Ms. Lindstrand said they could have four curb cuts along 54<sup>th</sup> Street West and then some on Mont Vista Drive, as well.

Councilmember McCall asked how many stories would be with the 55 foot height. Ms. Lindstrand said typically 55 feet was about 4 to 4-1/2 stories.

Ms. Lindstrand showed pictures of the view looking south along 54<sup>th</sup> Street West, southeast across the subject property, the ditch located on the north portion of the property, and the farmland looking across from the corner of Rimrock Road and 54<sup>th</sup> Street West.

Ms. Lindstrand advised that the Zoning Commission recommended approval of the zone change application with the exclusions. She noted that a valid protest petition was submitted and put in the Friday packet; therefore, a two-thirds vote was necessary by the Council in order to pass the zoning request. Ms. Lindstrand also advised a letter was submitted by the applicant that stated that the Community Commercial would have protective covenants. She told the City Council they must analyze the 12 criteria and approve the zoning without the covenants, keeping the covenants in mind, because they could not condition the zoning according to state law.

Councilmember Ulledalen referenced the two exclusions and what they wanted to do with the R6000. He asked if it would create another potential mess in the future and asked if they had tried to get them re-zoned. Councilmember Ulledalen asked if it would be better to try to redo the whole thing in a more appropriate fashion. Ms. Lindstrand advised that would be up to the Council to determine and suggested that the applicant expand more on it. Ms. Lindstrand advised that the applicant had stated they would come back in for Neighborhood Commercial on the Community Commercial corner if everything else passed that evening. She said in the beginning, based on the Northwest Shiloh Plan and the West Billings Plan, staff recommended Neighborhood Commercial on that corner, which had been maintained throughout.

Councilmember Astle asked for a couple of examples of what Neighborhood Commercial would allow. Ms. Lindstrand said Neighborhood Commercial would allow for a restaurant without beer and wine, a convenience store, and a gas station by special review; but would not allow casinos, car sales, or mini storage. She said Neighborhood Commercial was a lot less intense than Community Commercial, which allowed a very wide range of commercial uses.

City Administrator Volek asked Ms. Lindstrand if the Council decided it preferred Neighborhood Commercial in the area, could they make that change that evening. Ms. Lindstrand said it had not been legally advertised as such, and asked Attorney Brooks for his opinion. Attorney Brooks said the short answer was 'no'.

The public hearing was opened.

- **Tom Llewellyn, 5819 Rimrock Road**, said he represented the Krutzfeldt Ranch, LLC. He said they had made a mistake asking for the Community Commercial. He said it was done because there were a couple of preferred uses. He said they were looking at a couple little bakeries that had been done around town, and bakeries were excluded from Neighborhood Commercial but allowed under Community Commercial. Mr. Llewellyn said they made the offer to do it through restrictions in his letter and to spell out the items that would be allowed under Neighborhood Commercial only. He referenced Ms. Lindstrand's comments about the legality of the Council being able to make a condition of the approval and said they were willing to accept both of the exclusions and to have zoning passed as presented by the Zoning Commission and recommended by staff. Mr. Llewellyn said there were a couple of things said that disturbed him. He said the

reason for the RMF and RMF-R was so that they could build patio homes and have a little higher density. He said the demographics in the City were changing; our lifestyles were changing; and it was so they could have that change. Mr. Llewellyn said they could not have any more driveways out into 54<sup>th</sup> Street West off of the two, and they had to come in internally. He said they had the one-foot no access all the way along 54<sup>th</sup>, as well as Rimrock Road, and they came back for 100 feet from 54<sup>th</sup> and from Rimrock to stipulate that there could be no more accesses onto the main arterial or collector streets. Mr. Llewellyn said the RMF allowed 55 feet, but that was not the way they had it designed for restricted. He said he was assuming most of them would be single story, but there were a few that could be two-story. He said from the corner of Rimrock Road and 54<sup>th</sup> Street West to the southeast corner of the property, there was a drop of 28 feet, so from Rimrock you would not see any heights down below. He said at the southeast corner there was a hill right about where Yerger Drive comes in, which shielded it also from a height distance, from visibility on Rimrock and from areas north. Mr. Llewellyn said from the Country Club they were all outside the 150 feet and from the inside they were all in the county. He said it was infill and all services were available.

Councilmember Ulledalen referenced Residential Multi-Family and asked Mr. Llewellyn if he could have asked for something less liberal to build patio homes. He said his concern was if they approved it and in three or four years things were not working the way they were supposed to and the owner decided to sell, the zoning went with it, and the City would lose control over what was intended to be there. Mr. Llewellyn said with a deed restriction, it would become pretty difficult to change; and that was the stipulation they had put in it. He said it would be controlled with the covenants, and it could only be changed through a proper zone change. He said the use could not change, and that was how they planned on restricting it all to the uses they had planned for.

Councilmember McCall asked how many years they were projecting for build-out and at what population. Mr. Llewellyn said they were at a density factor of 5.6 units per acre, which fell well within the guidelines of the higher density to provide the tax base and within the guidelines of the West End Plan and the Northwest Shiloh Plan. He said the timeline depended on the economy; but Billings appeared to still be very healthy. He said they expected their timeline to build it all the way out to be somewhere between five and eight years.

- **William Krutzfeldt, Miles City, MT**, said in observing his first-time council meeting that evening, he was very thankful that people would even serve. He said he thought it was valuable for everyone to look at the goals and policies that govern the plan. He said as a newcomer to the business, they tried their best to fit what they thought was the stated, written goals and policies of the community. Mr. Krutzfeldt referenced Page 13 of the West Billings Plan, the first page of the Goals, and read, *Is the primary objective of this plan to guide the long period of growth by achieving planned growth? Planned growth will mean conserving land of natural resources by limiting sprawl and achieving more compact development.* He said what that meant was that the days of two, three, or four, or one-acre lots was not part of that policy. He continued to read, *Making full use of*

*public services with more cost-effective neighborhoods and infrastructure.* He said what that meant was when you had more people in a smaller area on the lots, you had more density and more taxes and the City had more revenue on the square foot area. He said he assumed that was why the City put the policy in place to start with. He continued to read, *Having mixed land use to allow shorter automobile trips, more walking, and less automobile reliance.* He said those of us who just got through the expensive automobile thing with gas know that it would be pretty nice to have a little store very close by to walk to or bicycle to; so that was what they were trying to do with the corner commercial. He read, *A reduction of automobile use by the location of commercial nodes, meaning less traffic and less need for more roads and wider roadways.* He said it was just common sense to have some of the services out there because there must be an estimated 2,000 to 3,000 people with some living as high as five miles away from any services.

Councilmember Veis asked why the 9600 lots were not put on the outside of the development instead of the higher density units. Mr. Krutzfeldt said they could be flip-flopped but that was not what their engineer had done.

Councilmember Astle asked about bicycle and walking trails, and said he did not see anything pedestrian friendly. Mr. Krutzfeldt said they had proposed a park area with a walking trail. He referenced the school-owned property and pointed out where there would be sidewalks. He said the Heritage Trail was just north on Rimrock. He said they had proposed a natural walkway on the Yerger Ditch area, but it was excluded.

- **Jeanie Kalotay, 2704 Beartooth Drive**, said she was the daughter of the owner and hoped to build a home in the Mont Vista Subdivision someday. She said she had spoken with several people who would love to have some type of commercial on the corner. Ms. Kalotay said they heard and understood the concerns of the people living in the area and would like to move forward with Neighborhood Commercial or some type of Commercial with restrictions and covenants that would make the area very safe for families and nicely architecturally designed.
- **Dan Mazel, 2811 Helen Lane**, asked how many people present at the meeting that evening wanted Community Commercial, Neighborhood Commercial, or R9600 through the whole community. He said an overlay was done and from his house and his neighbor's house, there would be eight or nine new houses right across the ditch. He said he did not feel it fit the north side where he lived. Mr. Mazel showed photographs of trees and natural habitat taken from his backyard that would be removed to build the subdivision. He said part of the 12 criteria listed saving the habitat. He said he felt there needed to be a better plan.
- **Hugo Christiansen, 3044 Lloyd Mangrum**, said he lived less than two blocks from the intersection of 54<sup>th</sup> and Rimrock Road. He said Yellowstone Country Club Estates had approximately 350 homes and approximately 750 residents. He said they had two exits and two entrances, and to access one of them a person had to drive toward Molt quite a distance. Mr. Christiansen said 54<sup>th</sup> and Rimrock had to handle the rest of the traffic. He said about 70 people attended a meeting, and he walked the neighborhood gathering signatures on a petition. He said only



one person did not sign because he wanted to talk it over with his wife first. Mr. Christiansen said his concern was the traffic for exiting and entering, and he was glad they gave up the idea of Community Commercial and would be just as glad if they gave up Neighborhood Commercial.

Mayor Tussing asked those people in attendance that were in opposition but did not care to testify to stand up. He said he did not want to count anyone who planned to get up and testify. Fifteen people stood up in opposition. Mayor Tussing asked anyone in attendance that was in favor of the zone change to stand. No one stood.

- **Karen Michaud, 3036 Lloyd Mangrum**, said she was four or five houses from the corner of 54<sup>th</sup> and Rimrock. She said she had concerns over the density and the traffic congestion. Ms. Michaud said she could live with the commercial property already addressed at the corner of 54<sup>th</sup> and Grand and asked why they were starting with commercial at 54<sup>th</sup> and Rimrock when it was already at Grand.
- **Jim Wilson, 3330 54<sup>th</sup> Street West**, referenced the 5-acre red area and said the Northwest Plan talked about small community commercial zones and 5 acres was not very small, and 55 feet in height was not very short. He asked people driving down 54<sup>th</sup> Street to imagine a 45-foot building on one side and a 55-foot building on the other side in an area predominately agriculture and rural, which was why people moved out there. Mr. Wilson said R9600 was what the land was annexed into the city for and that was where it should stay.
- **Steve Hovus, 5340 Rocky Mountain Boulevard**, said he was aware that the Northwest Shiloh Area Plan called for encouragement of higher density residential development near schools and parks; and Cottonwood Park was directly across 54<sup>th</sup> from the area. He said the plan also had goals that were to encourage development that was compatible with existing neighborhoods and to locate medium high density residential developments near commercial centers. He said the area generally west of Shiloh and north of Colton was characterized by single-family residential neighborhoods with larger square footage lots, and the zoning request would be a significant departure from it and out of character with the existing development. He said the large commercial areas being developed at Shiloh and Grand, 54<sup>th</sup> Street West and Grand, and 62<sup>nd</sup> Street West and Rimrock seemed more than adequate to provide for the needs of the Northwest Shiloh area. Mr. Wilson said with respect to the higher density zoning requests, in the three square miles bordered by Shiloh, Grand, 62<sup>nd</sup> Street, and Rimrock, there already existed medium and high density developments; so he felt the higher density residential goals outlined in the Northwest Shiloh Area Plan had been substantially satisfied. He said he felt the proposed development would be along the lines of multi-story apartments, duplexes, and smaller lot neighborhoods on the northeast corner of Shiloh and Grand and felt that type of development was totally out of character and not complimentary with existing neighborhoods west of Shiloh and north of Colton. Mr. Hovus said he strongly disagreed with the applicant's assertion that the proposed development had given reasonable consideration to the character of the district.

- **Exel Wedul, 3412 Ben Hogan**, said she bought her house 25 years ago because it was peaceful and quiet and there were large lots. She said to put a commercial business on the corner would encourage crime, and all the extra homes would create more noise. Ms. Wedul said she was a runner and people were not allowed to run along ditches, so she was worried about a park along the ditches. She said to put a lot of houses on top of each other in a district spread out to begin with was not her idea of an ideal situation.
- **Leo Montoya, 5230 Rimrock Road**, said he had concerns about the Mont Vista Subdivision and the increased traffic on Rimrock Road. Mr. Montoya said traffic was overwhelming in the morning and evening hours. He said the school bus stopped in front of his house on Rimrock and there had been an incident where a driver drove into the ditch and back up into his driveway right where his children stand waiting to get on the bus. He said people hit deer along Rimrock, and he has had to pull deer out of the road. Mr. Montoya said the increased traffic along Rimrock would contribute to more litter along the roadway. He asked Council to take into consideration his concerns.
- **Cari Patkowski, 5514 Billy Casper**, said all of the people present had been together a few weekends trying to figure it out. She said they all realized that something had to be done, and it could not just stay like it was. She said they all chose to live out there because of the rural setting, and Billings did not have to be all commercial, all high density. She said she felt there should be parts of town where you could go and still be in town but still have the rural feel. Ms. Patkowski said she wondered if there was a way that the people who lived outside the 150-foot range could get together with the developers, take a look at it, and give their input. She said cooperation would be a good idea.
- **Lana Wilson, 5427 Sweetgrass Creek Drive**, said she had stood up earlier in opposition, so she needed to be subtracted from the 15 who also stood up but did not want to testify. She said she lived three lots in from 54<sup>th</sup> west of the development, and they moved there because of the large lots and the quiet. Ms. Wilson said her main concern with the development was the high-density homes and lots, especially the five-plexes and ten-plexes; the R6000. She said she was not against patio homes, but it seemed like there should be another type zoning for patio homes than Multi-Family Restricted. She said she had young children and was concerned about the increase in traffic.
- **Bill Moody, 5206 Rimrock Road**, thanked the council for listening to all of the concerns. Mr. Moody said he did not believe the proposed subdivision met the needs of the community around it. He said he lived in Belgrade, and a lot of high-density housing subdivisions were put in around his home. He said his commute to the main highway went from six minutes to 45 minutes mainly because the people doing the subdividing did not want to pay for the infrastructure involved. He said his concerns were especially with the commercial property and the potential for high rise multi-family, and that they would end up in the same situation as Belgrade. Mr. Moody said Council had heard repeatedly about the traffic concerns. He said he also had an issue where the entries to the subdivision had been placed because they were so close to the corners. He said they did the same thing in Belgrade, and their roads were overrun and became

very dangerous for the children. Mr. Moody said one of the reasons he chose to move to Billings and to the neighborhood was to get away from that situation, and now he was faced with it again. Mr. Moody asked Council to take his concerns into consideration.

- **Marcia Anderson, 5415 Sweetgrass Creek Drive**, said she was within the 150-foot area that was directly west of the proposed commercial zoning. She said they had lived there for over 33 years and over that amount of time, the intersection had a terrible traffic accident record. She said if the section along 54<sup>th</sup> Street was to become three or four story apartment buildings, they would have to look at them from their home. She said they would have no shield from them. Ms. Anderson said her concerns were the traffic and what was proposed on the 63-64 acre area.

Councilmember Astle asked Ms. Anderson how much land they had when they moved in 33 years ago. Ms. Anderson said they were in Yellowstone Meadows and not on a full acre. She said her backyard was Rimrock Road, and there was one lot between them and 54<sup>th</sup>. She said the homes on Sweetgrass were R9600.

- **Mark Sorlie, 3443 Stone Mountain Circle**, said he lived just north of the subdivision. He said he very much believed in free enterprise and the opportunity to buy property and make a profit; but he felt there was another way to do it. Mr. Sorlie said they had recently moved there and started the process of downsizing. He said they looked at patio homes but found them to be too dense because they were too close to each other. He suggested if patio homes were less dense, there might be a market for it. Mr. Sorlie said the reason he moved out there was for more space.
- **Carol Green, 5617 Walter Hagen**, said she formerly served on the County Zoning Commission and chaired it for a couple of years. She said she knew those types of decisions were really tough, and the people who made them had to weigh a lot of issues from both sides. Ms. Green said she felt it was very clear cut. She said a petition in opposition of commercial and multi-family buildings had been signed by 200 people from the immediate neighborhood, a second petition was received in opposition from abutting property owners, and there was a room full of people in attendance that evening in opposition, so the request needed to be denied. Ms. Green said there was already a lot of multi-family building in the Shiloh, Grand, and Broadwater area; and a lot of commercial close by. She asked the Council to listen to the people who had spoken and deny the request.
- **Sterling Star, 3713 Tommy Armour Circle**, said he once served on the County Zoning Board and knew the decision was tough. Mr. Sterling said if you applied the zone change evaluation criteria to what was shown in the Shiloh Area Plan versus what was shown there, they would find that Zone Change Criterion 2 was violated in that the proposed change was not designed to lessen street congestion; and in fact, created it. He said Zone Change Criterion 6 was violated in that the change was not designed to prevent overcrowding of the area; and in fact, overcrowded the area. He said Criterion 7 was violated in that it did not avoid undue concentration of population in the single-family residential neighborhood; and in fact, created undue concentration; and higher-density

housing was available in other areas. He said it just did not fit there. Mr. Star said Criterion 9 was violated in that it did not give reasonable consideration to the character of the neighborhood in the surrounding single-family residential area. He said Criterion 10 was violated because it did not give consideration to the suitability of the property for the particular use as a single-family residential neighborhood. He said the high-rises mentioned would cut off some beautiful views. He said Criterion 11 was violated in that the plan did not conserve the value of single-family residential buildings; and in fact, could possibly depreciate it. He said Criterion 12 was violated in that putting high-density housing in the middle of a single-family residential area on land suited for single-family residential would encourage inappropriate use of prime land elsewhere.

- **Cary Smith, 5522 Billy Casper Drive**, said he moved to Billings 15 years ago and purposely moved to the Yellowstone Country Club because they wanted to be away from areas that were densely populated. He said he had never once had a desire to be able to walk to a convenience store, and he did not mind driving.

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

Councilmember Ulledalen moved for approval as recommended by the Zoning Commission to exclude Community Commercial and Public zoning, seconded by Councilmember Ruegamer.

Councilmember Veis asked why Planned Unit Development (PUD) was not the zoning choice for the particular area. Ms. Linstrand said they had actually applied for a PUD last year but withdrew it because they did not have any special type of zoning or any type of special circumstances that would create a PUD. She said they proposed straight zoning and brought it forward as a Planned Unit Development; so it was recommended they come back for straight zoning.

Councilmember Ulledalen said he was concerned about the residential multi-family because the current intent of the developer was to build patio homes; but once the zoning was approved, the underlying zoning would be there. He asked what kind of “teeth” were in the deed restrictions so they would not have to worry about a new developer buying the land in the future and building large apartment buildings instead of the intended patio homes. He asked if another type of zoning could have been used to meet the criteria for patio homes that would not have been as broad as the RMF. Ms. Lindstrand advised that deed restrictions could not be enforced by the City. She said they were a private entity enforced by a private homeowner’s association or a private entity. She said when the zoning came to them, the mention of patio homes was not made; and they were not aware they were planning patio homes. She said there were different zonings options that would be allowable for patio homes.

Councilmember McCall asked what changes in timelines and process would occur if the zone change was denied that evening and there was a recommendation that the developer go back to the drawing board with the community. Ms. Lindstrand advised they would not be allowed to come back through with a zoning application for one year.

Councilmember Astle said a build-out of five to eight years had been talked about and asked staff what the issuance of building permits had been within the last three to six months, per month. Mr. Wyeth Friday said he did not have the exact numbers with him, but said the trend had been downward and there had been a significant decrease in residential over the past several months. He said the commercial had maintained a little better, but the residential had decreased significantly from last year.

Councilmember Veis asked Mr. Llewellyn why he had not done a Planned Unit Development. Mr. Llewellyn said that was what they had preferred, but the Planning Staff told them they were not making enough changes for one. He said they also had a whole internal trail system worked out, but they hit a stone wall with the staff and were told to go to Bozeman and find out what they were doing there and build big parks in the middle. Mr. Llewellyn said that was not what was going on in the world. He said part of the reason for the economic downturn was housing, and they needed to be realistic about what they were doing. Mr. Llewellyn said the building was down now, it would be back, and Billings was still healthy. He said once the banks kick lose with more money, the builders would be back. He said Billings had a housing need. Councilmember Veis asked if there was other zoning classifications he could live with in the area. Mr. Llewellyn said what he had in mind design-wise internally was similar to what Foxtail did on their patio homes, which was an internal street system, and around 3,500 to 4,000 square feet per site. He said that was what they would have done under a PUD, but they were not allowed.

Councilmember Ulledalen told Mr. Llewellyn that he was concerned with the RMF and what if the zoning was granted and a few years down the road the property was sold to someone else, and the new owner already had the RMF zoning. He asked if they could have applied for something less liberal than RMF, and said he was concerned about not being able to enforce the deed restrictions. Mr. Llewellyn said anyone in the subdivision could enforce the restrictions, and they would become part of the title report. He said the architectural control was pretty tight with Krutzfeldt Ranch and there was a successor who would keep the same pattern going to maintain continuity. Councilmember Ulledalen said his point was that if they sold two or three of the single family lots and then the economy did not take off, the whole thing could be sold, and it would be up to the owners of those two or three lots to go to court to enforce the deed restrictions. Mr. Llewellyn said Krutzfeldt Ranch could do that, too. Mr. Llewellyn said he had had a lot of success with patio homes and townhomes, and it was becoming more of a downsizing situation.

Councilmember Pitman said he had an ex-parte communication with Mr. Mazel, who had stopped by his store. He said Mr. Mazel asked him what he needed to do, and he told him to focus on the 12 criteria. Councilmember Pitman said he would be voting 'no' and said Mr. Sterling Star's testimony listed all the reasons why he would be voting against it.

Councilmember Veis said the original intent along the ditch would be the parkland dedication and asked what options were available to the applicant for parkland dedication if the City chose not to accept the ditch area as parkland. Ms. Lindstrand said they had recommended several options through the subdivision to the applicant. She said the main option they discussed with the Parks Department was to add to Cynthia Park to create more of a neighborhood park, which was about 2-1/2 to 3 acres. She said

they could put in a tot lot and meet the 200-foot requirements for equipment. She said they also offered a 20-foot portion along the south side of the ditch outside of the ditch easement that could be utilized as a trail. She said to keep in mind that the developer was not building a trail, just a walking path that already existed, with the rest cash in lieu. Ms. Lindstrand said the final option offered was to pay the entire portion to cash in lieu, which would ultimately go to Cottonwood Park. Councilmember Veis said the current recommendation on the floor was to exclude the Community Commercial zoning and the Public zoning. He asked if the recommendation passed, would they have to wait a year to put in an application for zonings on that or could they walk in tomorrow to begin the process. Ms. Lindstrand said they would have to wait four months and then come in and do Neighborhood Commercial on the property on the corner.

Mayor Tussing said he would be voting 'no'. He said he was in favor of this type development in certain areas and definitely in favor of infill as opposed to sprawl, but did not feel it was the place for it or compatible with the surrounding area. He said he would be open to an alternative if the developer wished to do that. Mayor Tussing said he would be voting 'no' for many of the same reasons that Councilmember Pitman indicated Mr. Star had mentioned. He said he was sure Mr. Llewellyn and Mr. Krutzfeldt were sincere with their intention, but he had the same apprehension of Councilmember Ulledalen with the City having no way of enforcing it if the property was sold.

Councilmember McCall said she would vote 'no' and would be very interested in looking at an alternative. She said she thought the area would be developed at some point, and she agreed with Mr. Star. She said her concerns were the whole issue of congestion with the streets, transportation, safety factors, and the whole issue around schools. She said the school had not been guaranteed out there. Councilmember McCall said she would like to see the group come together over a period of months and come back with a different plan.

Councilmember Ulledalen referenced the Big Ditch Trail at 46<sup>th</sup> Street, and said there had been a couple of different trail alignments; one was it continued along the Big Ditch Trail and the other one actually moved up to the Cove Ditch. He asked Mr. Friday if he recalled what the latest iteration of it was. Ms. Lindstrand advised there was no trail easement proposed on the south side of the Cove Ditch. Councilmember Ulledalen said his main thought was further east because at one time there was an issue about whether it stayed on the Big Ditch or if it jumped up to the Cove Ditch at 46<sup>th</sup> Street. Ms. Lindstrand said she did not believe it did but she did know it ran along Rimrock Road. Councilmember Ulledalen asked Ms. Lindstrand if she had made any work specific recommendations relative to the Residential Multi-Family zoning or if it was completely that of the proponents. Ms. Lindstrand said typically, and in the North Shiloh Plan and the West Billings Plan, you would see high density residential along arterial streets, which was 54<sup>th</sup> Street West and Rimrock; so it was recommended that they do multi-family along 54<sup>th</sup> Street but necessarily over in the corner, where they had discussed Residential Multi-Family Restricted. Councilmember Ulledalen asked what the staff issues were about why a PUD was not acceptable. Ms. Lindstrand said they had not limited the uses; they did not propose any mixed use. She said they kept citing mixed use but did not propose any mixed use, such as office mixed with residential. She said they actually had straight zoning; they did not propose smaller lots. She said they proposed the plan Council was currently being presented, which could be applied for

under straight zoning; and it made more sense not to do the Planned Development. Ms. Lindstrand said if they were to come in with 3,500 square foot lots and 4,500 square foot lots with restrictions on heights and setbacks, it would have been more in keeping with a PUD.

Councilmember Astle said he would vote 'no' because he had never seen a 55-foot high patio home. He said he did not feel it would build out in five years; and someone could come in, buy it out, and build in whatever would fit that would turn them the most money. Councilmember Astle said he would like to warn people that just because they moved out to the country, it did not mean they would always be in the country. He said he grew up on the 500 block of Parkhill Drive, and at that time, there was a horse pasture across the street. He said Rimrock Road would be turned into a four-lane road, so the "being in the country argument really did not hold water."

Councilmember Clark said he would be voting 'no'. He said Councilmember Pitman gave most of the reasons. He said he felt the criteria did not match up.

Councilmember Gaghen said she would also be voting 'no'. She said she felt Mr. Star presented her concerns well. She said the density and the traffic congestion concerned her a great deal.

Councilmember Brewster said for him it was the RMF zoning. He said he had seen subdivisions he had voted to approve his first year on the Council, and they were never developed the way they said they would be.

Councilmember Ulledalen said, even though he made the motion in the affirmative to start the discussion, he would be voting 'no'. He said he felt there were too many loose ends if they started excluding things and then tried to make the pieces fit afterwards. He said some of the issues that were discussed were things that were irrelevant to the specific project because as more development happened out there, the density, whether it be 5.6 or 4.7, it would not make that much difference in terms of traffic. He said in referring to the Northwest Shiloh Study, it was envisioned that an additional 6,300 people would live in the area. He said the comments about not minding the drive back to Shiloh and Grand really were not what the point of it was.

Councilmember Veis asked Mr. Llewellyn how he would feel about a motion to allow withdrawal of the application. Mr. Llewellyn said he would accept it.

Attorney Brooks said it needed to come from the agent for the applicant or the applicant in an affirmative "we move to withdraw the application at this point." He said the Council would have to make a motion, second it, and vote to approve the request to withdraw the zone change.

Councilmember Veis said he felt it would be the better option because if the zone change was denied, the applicant would have to wait a year; and the current dialogue would go dormant for a year. He said the dialogue had already been started and a withdrawal would at least give the applicant the opportunity to try to find an acceptable solution. Councilmember Veis asked if the applicant could be given the opportunity to withdraw the application.

City Attorney Brooks advised the applicant could ask the Council to consider his request to withdraw the application. He said the Council could then consider it through a substitute motion, a second, and a vote.

Councilmember Clark recommended delaying for two weeks. Councilmember Astle pointed out a written alternative was to "allow withdrawal of the application."

City Attorney Brooks advised Council could also move to postpone or continue the matter for two weeks.

Councilmember Veis said if they withdrew, they would still have to find an acceptable configuration. He said they would not have the time and be able to come back in two weeks with something acceptable. He said if they denied it, it would be a dead issue for a year so why not allow the process that was working to work some more.

Councilmember Astle asked Mr. Llewellyn to come forward and be asked if he would like to withdraw his application for the zone change.

City Attorney Brooks pointed out withdrawal was one of the four options on the staff memo.

Councilmember Astle asked Mr. Llewellyn if he would like to withdraw his application for Items 6a and 6b. Mr. Llewellyn said he would like to withdraw.

Councilmember Brewster made a substitute motion to allow withdrawal of the application for Items 6a and 6b, seconded by Councilmember McCall.

Councilmember Ruegamer said he hoped the people that were opposed would also be reasonable. He said traffic was not a viable reason to stop development. He said traffic in Billings was growing because the town was growing. He cautioned the people in opposition to be reasonable and not try to micro manage it into something that could not happen because it might backfire on them.

Mayor Tussing asked Ms. Lindstrand how long it would be before they could come back with something different or the same thing again. Ms. Lindstrand said it would be four months under withdrawal and one year under denial. Mayor Tussing said they could even come back with the same plan.

Councilmember Veis said he felt everyone needed to build on the conversations that have been going on and not “put it under wraps” for a year.

On a voice vote, the substitute motion for withdrawal of Items 6a and 6b was approved 9 to 2. Councilmember Pitman and Mayor Tussing voted ‘no’.

**(b) PUBLIC HEARING FOR SPECIAL REVIEW #870: A special review to allow multi-family residential uses in a Residential 6000 zoning district within the proposed Mont Vista Subdivision on property legally described as proposed Lots 1-4, Block 4; and Lots 2 and 3, Block 5, generally located on the southeast corner of the intersection of Rimrock Road and 54<sup>th</sup> Street West. Krutzfeldt Ranch, LLC, owner; Tom Llewellyn, agent. Zoning Commission recommends denial. (Action: approval or disapproval of Zoning Commission recommendation.)**

**7. PUBLIC HEARING AND RESOLUTION #08-18770 approving a tax incentive for RSP Holdings, LLC, dba Carrie’s Quilts and Iron, 1737 King Avenue West, for building remodel, expansion, or reconstruction. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** City Administrator Volek advised staff had a brief presentation but if Council preferred, staff was available to just answer questions. Mayor Tussing asked for a brief presentation for the purpose of the viewing audience.

Assistant City Administrator, Bruce McCandless, advised that Council adopted three tax exempt programs in 2005. He said they were permitted by state law and were



an incentive for industrial expansion or development, for redevelopment and reconstruction of commercial property, and for redevelopment and reconstruction of abandoned commercial property. He said the application for Items 7 and 8 were both under the remodeling of commercial properties, and the tax incentive would be an exemption for 100% of the additional value of the construction that occurred during the construction period and for four years following that period. He said in the fifth year and subsequent years 100% of the additional value would be taxable.

Mayor Tussing asked if the advantage to the City would be similar to a TIFD except it would not be going into a pot. Mr. McCandless said that was correct and that the abatement was only for the City taxes and for the local school district. He said it did not abate county taxes or state mills for education.

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

Councilmember Ronquillo moved for approval of Item 7, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

**8. PUBLIC HEARING AND RESOLUTION #08-18771 approving a tax incentive for Golini Real Estate, LLC, dba All American Pharmaceutical, 2376 Main Street, for building remodel, expansion, or reconstruction. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** City Administrator Volek advised staff was available to answer any questions.

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

Councilmember Clark moved for approval of Item 8, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

**9. 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.)**

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

### **Council Initiatives** - None

Councilmember Veis asked if the budget work sessions and extra meetings could be held in the council chambers and broadcast now that there were remote control cameras. He said it would be a good way to showcase just how much time was spent on budgets, especially considering entering a very difficult budget year. He said it would be the best they could do to let everyone know what was going on. City Administrator Volek said the constraint she could see was that court trials were held in the same room. She said possibly the council could hold those work sessions at 6:00 pm instead of the usual 5:30 pm to avoid overlap. Ms. Volek said she would check on the feasibility of it. Councilmember Ulledalen said there could be a conflict with the

school board meetings. Councilmember Veis said he thought the only conflict would be on the third Monday of the month.

Councilmember Pitman reminded everyone of the ribbon cutting for Aronson Avenue at 2:00 pm.

Councilmember Astle asked for the status of the city license enforcement issue. Ms. Volek advised staff was working on the issue, and she had found another locale where it was done. She said it would probably be pursued as a budget item because funding would be needed for an additional position.

Councilmember Clark encouraged everyone to tour the new Depot building where Public Works Administration and Engineering had recently moved. He said it turned out really nice.

The meeting adjourned at 10:00 p.m.