

# **REGULAR MEETING OF THE BILLINGS CITY COUNCIL**

## **July 26, 2004**

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 Charles F. Tooley called the meeting to order and served as the meeting's presiding officer. The Pledge of Allegiance was led by the Mayor, followed by the Invocation, which was given by Councilmember Dave Brown.

**ROLL CALL** – Councilmembers present on roll call were: Gaghen, McDermott, Brown, Ruegamer, Iverson, Boyer, Clark and Jones. Councilmembers Poppler and Brewster were excused.

**MINUTES – July 12, 2004.** Approved as printed.

**COURTESIES** – None

**PROCLAMATIONS – Mayor Tooley.** None

**BOARD & COMMISSION REPORTS – Traffic Control Board.** None

**ADMINISTRATOR REPORTS – Kristoff Bauer.**

- City Administrator Kristoff Bauer reminded the Council that to follow up on their last work session discussion on the text amendments and the Shiloh Corridor Overlay, the Council needed to bring the Shiloh Corridor Overlay and Zoning Text amendments back for reconsideration this evening, separate the items and vote on them separately. He explained that it was the Council's intent to separate action on the zoning text amendments from the Shiloh Corridor Overlay District actions. The text amendments could be brought back on the August 9<sup>th</sup> council meeting and the Shiloh Corridor Overlay would be delayed to the August 23<sup>rd</sup> council meeting.
- Mr. Bauer noted the Council received revised staff reports on Items I, K and O in their Friday packet.

**PUBLIC COMMENT** on “NON-PUBLIC HEARING” Agenda Item: #1 ONLY. Speaker sign-in required.

There were no speakers.

**RECONSIDERATION:**

**Reconsideration of Items 1V(1) and 1V(2) from the July 12<sup>th</sup> agenda:**

V. **Ordinances on Unified Zoning Code Regulation Text Amendments and Shiloh Corridor Overlay District:**

(1) **Second/final reading ordinance** amending the Unified Zoning Code Regulations as modified, including removal of the County Zoning Permit Form and that portion of the Shiloh Corridor Overlay District south of Hesper Road.

**(2) Delaying public hearing and first reading ordinance** for development standard alternatives for that portion of Shiloh Corridor Overlay District located south of Hesper Road to 8/23/04.

Councilmember Boyer moved to reconsider Item 1V1 - Ordinance on Unified Zoning Code Regulations Text Amendments, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.

**(1) SECOND/FINAL READING ORDINANCE 04-5292** amending the Unified Zoning Code Regulations as modified, including removal of the County Zoning Permit Form and that portion of the Shiloh Corridor Overlay District south of Hesper Road.

**(2) DELAYING PUBLIC HEARING AND FIRST READING ORDINANCE** for development standard alternatives for that portion of Shiloh Corridor Overlay District located south of Hesper Road to 8/23/04.

Councilmember Clark moved to approve Item 1V1 – text amendments only as modified, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.

Councilmember Clark moved to delay Item 1V2 - the entire Shiloh Corridor Overlay District to August 23<sup>rd</sup>, seconded by Councilmember Boyer. On a voice vote, the motion was unanimously approved.

**CONSENT AGENDA:**

**1. A. Mayor’s Appointments:**

	Name	Board/Commission	Term	
			Begins	Ends
1.	<del>Recommendation to be made at meeting*</del> Recommend Ian R. Elliot	Human Relations Commission	08/01/2004	12/31/2007
*Filling Unexpired term of Roy Dalrymple				

**B. Bid Awards:**

**(1) W.O. 01-06 Arlene Corridor Improvements, Phase 1.** (Opened 7/20/04). Recommend delaying award to 8/9/04.

**(2) W.O. 01-07 Rimrock Road – Zimmerman Trail Intersection Improvements.** (Opened 7/20/04). Recommend delaying award to 8/9/04.

**(3) AIP 28, Schedule I: Airport Rescue and Fire Fighting Facility Addition.** (Opened 6/29/04). Recommend delaying bid award to 8/9/04.

**C. Contract Extension** with Montana Department of Public Health and Human Services – Developmental Disabilities Division for specialized transportation for developmentally disabled individuals, term: 7/1/2004 – 6/30/2005, \$161, 039.00.

**D. Contract for Professional Services** with Entranco, Inc. for Landfill Master Plan Update, \$40,000.00.

**E. C.O.s #7 & #8 for 2003 Schedule I Water and Sewer Line Replacement** with Chief Construction, \$102,514.92. (C.O. #7: \$31,862.85; C.O. #8: \$70,652.07)

**F. Amendment #2, W.O. 01-07: Rimrock Road and Zimmerman Trail Traffic Signal Improvements**, Professional Services Contract for the Rimrock Road – Zimmerman Trail Traffic Signal, Marvin & Associates, \$47,933.00.

**G. Acceptance of Easement** on a portion of Lot 10, Block 4, Central Avenue Addition for replacement of the traffic signal at 6<sup>th</sup> Street West and Central Avenue, Greg and Becky Pekovich, \$428.72.

**H. Approval of Right-of-Way Dedication** for Iron Horse Trail in Lots 28-29, Block 5 and Lots 10-12, Block 10, Rehberg Ranch Estates, 1<sup>st</sup> Filing, \$0.

**I. Declaring items as surplus property** and authorizing staff to sell items at a public auction on 8/7/04 at 302 Edward St.

**J. Street Closure** for the Billings Association of Realtors 2 & 5 Mile Run, August 28, 2004 from 6:00 a.m. to 11:30 a.m.

**K. Resolution 04-18164** adopting the Yellowstone County Pre-Disaster Mitigation Plan 2004.

**L. Intent to create districts in Rimrock West Park:**

**(1) Resolution of Intent 04-18165 to create SID 1366:** Rimrock West Park: grading, landscaping, irrigation, parking, playground equipment, storm drain and multi-use paths, and setting a public hearing date for 8/23/04.

**(2) Resolution of Intent 04-18166 to create PMD 4023:** Rimrock West Park maintenance, and setting a public hearing date for 8/23/04.

**M. Intent to Create SILMDs:**

~~**(1) Resolution of Intent to create SILMD 280: Gabel Road** and setting a public hearing date for 8/23/04.~~

~~**(2) Resolution of Intent to create SILMD 281: Grand Avenue** and setting a public hearing date for 8/23/04.~~

~~**(3) Resolution of Intent to create SILMD 283: King Avenue East** and setting a public hearing date for 8/23/04.~~

~~**(4) Resolution of Intent to create SILMD 287: Midland Road** and setting a public hearing date for 8/23/04.~~

**N. Resolution of Intent 04-18167 to Create SID 1370: Interlachen Drive,** and setting a public hearing date for 8/23/04.

**O. Resolution of Intent 04-18168** to construct the improvements in W. O. 04-02, #1, 2004 Miscellaneous/Developer Related Improvements, and setting a public hearing date for 8/23/04.

**P. Second/Final Reading Ordinance 04-5291** providing that the BMCC be amended by revising Section 2-214, formalizing opportunities for public comment at city council meetings.

**Q. Preliminary Plat of Midland Subdivision, 4<sup>th</sup> Filing, Amended Lot 1A-1-A, Block 2**, generally located at 2950 King Avenue West.

**R. Bills and Payroll.**

(1) June 25, 2004

(2) June 30, 2004

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

Councilmember Clark separated Item P from the Consent Agenda. Mayor Tooley separated Item A from the Consent Agenda. Councilmember Clark separated Item F from the Consent Agenda.

Councilmember Jones moved for approval of the Consent Agenda with the exceptions of Items A, F and P, seconded by Councilmember Boyer. On a voice vote, the motion was unanimously approved.

Councilmember Jones moved for approval of Item A of the Consent Agenda including appointment of Ian Elliot as the Human Relations Commission Board Member, seconded by Councilmember Boyer. Mayor Tooley noted that Mr. Elliot was a former Human Relations Commission Board Member who resigned due to a job change requiring a move from Billings. Mr. Elliot has reapplied to fill a current vacancy on the board. On a voice vote, the motion was unanimously approved.

Councilmember Jones moved for approval of Item F of the Consent Agenda, seconded by Councilmember Gaghan. Councilmember Brown asked why Marvin and Associates seems to be the only company that does work on the traffic signals. City Engineer Vern Heisler said signal work is very unique and specialized and Marvin and Associates is one of a few firms that perform this type of work. They are also very familiar with the City's systems. Councilmember Clark asked why the cost was so high. Mr. Heisler said the contract included safety issues that were dealt with along with actual signal installation. The original design contract was \$43,000 and the actual construction costs of \$47,933 are included in amendment #2 which is before the council this evening. Councilmember Boyer noted that contract management is part of the amendment due to management of traffic flow required during installation. On a voice vote, the motion was approved with Councilmember Brown voting "no".

Councilmember Jones moved for approval of Item P of the Consent Agenda, seconded by Councilmember Iverson. Councilmember Clark asked for confirmation that this was a formal adoption of procedures already in place. Mayor Tooley replied "yes". On a voice vote, the motion was unanimously approved.

**REGULAR AGENDA:**

**2. PUBLIC HEARING AND RESOLUTION 04-18169 ANNEXING Tract 4B-2 of Amended Tract 4B, C/S 1876 Amended, a 2.045 acre parcel located on the east side of 43<sup>rd</sup> Street West, between Grand Avenue and Avenue D, (Annex #04-08). Staff recommends approval of the public services report and the resolution annexing. (Action: approval or disapproval of Staff recommendation.)**

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

**3. PUBLIC HEARING AND SPECIAL REVIEW #759: a special review to allow a car wash in a Community Commercial zone on property described as Lot 1A, Block 1, Lake Hills Subdivision, 1<sup>st</sup> filing and located at 605 Wicks Lane. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

There was no staff report. The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember McDermott moved for approval of the Zoning Commission recommendation, seconded by Councilmember Iverson. On a voice vote, the motion was approved with Councilmember Brown voting “no”.

**4. PUBLIC HEARING AND SPECIAL REVIEW #761: a special review to allow the location of an all beverage liquor license and an outdoor patio in a Community Commercial zone on property described as Lot 1E, Block 29, Descro Subdivision, 7<sup>th</sup> filing and located at 2455 Central Avenue (formerly Elmer’s Pancake House). Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

There was no staff report. The public hearing was opened. RICHARD NELSON, 2520 RAYMOND PLACE, said he represents CJ’s Restaurant. They hope to move into this location, vacating their current location across from the former Elmer’s Pancake House. He said he agrees with the Zoning Commission’s conditions. There were no other speakers. The public hearing was closed.

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

**5. PUBLIC HEARING AND SPECIAL REVIEW #762: a special review to allow the location of an auto wrecking facility in a Controlled Industrial zone on property described as the north 126 feet of the south 192 feet of Lot 4 of Section 9, T1S, R26E and located at 43 Orchard Lane. George S. Allen, owner, Daniel J. Allen, agent. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

Planning Staff Manager Candi Beaudry said this special review allows an auto wrecking facility in a Controlled Industrial zone. The facility would provide the total process of dismantling, crushing and disposal of junk vehicles. She said the crushed

vehicles would be stored on site and eventually removed to a shredding facility. The surrounding zoning to the north is Controlled Industrial, to the south one parcel is Residential 9,600 but not directly adjacent to the property. Community Commercial zoning and Residential 7,000 are across the street. She noted Bob's Pickup and Delivery Service is located near the site and that firm engages in fairly intensive land uses. Vacant land to the south is owned by the applicant for this special review.

Ms. Beaudry said the Zoning Commission recommendation of conditional approval was on a 4-0 vote. The six conditions are:

1. An 8-foot-high site obscuring fence shall be erected on the north, south and east sides of the property. This fence shall also comply with any requirements of the State of Montana for the licensing of an auto-wrecking yard.
2. The hours of operation for any outdoor facilities, including a vehicle-crushing machine, vehicle loader and haul trucks, shall be limited to between 8 a.m. and 6 p.m. Monday through Friday.
3. The owner/operator of the facility shall be responsible for dust suppression on any portions of the property that are not paved. Suppression shall include preventing dust and dirt from blowing beyond the fence around the property onto neighboring properties on all sides.
4. Any exterior lighting on the south and east sides of the property shall be directed away from adjacent properties and toward the subject property.
5. All wrecked or junk vehicles on the property shall be stored inside the site-obscuring fence and shall not be visible from any public right-of-way.
6. Access to the property for the operations of the auto wrecking business shall be limited to Orchard Lane.

Councilmember McDermott noted there are a lot of county islands in this area that include a lot of incompatible uses with the proposed special review.

The public hearing was opened. DANIEL ALLEN, 2102 17<sup>TH</sup> STREET WEST, said the state has stringent regulations regarding wrecking facilities. He said the license is reviewed annually. He said he plans to remove junk and abandoned vehicles, remove fluids and parts and crush the remnants. The goal is to get the vehicles dismantled, crushed and trucked to a facility where they can be shredded and recycled. He said this operation is a much more efficient operation than those in the past. He added that he agrees with the conditions placed by the Zoning Commission.

Councilmember Ruegamer asked if the speaker was related to the property owner. Mr. Allen replied "yes". Councilmember Brown asked if this facility would be able to function on the marginal revenue generated from the county or state for abandoned vehicles. Mr. Allen said his primary revenue would be from the salvage and recycle income of the vehicles. In answer to Councilmember McDermott's question about additional noise, he said the only noise would be from a diesel engine that runs the crusher (one or two days a week) and would not be louder than the current noise generated by the neighboring trucking company.

Councilmember Gaghen asked if there would be a retail outlet for the parts that are removed from the vehicles. Mr. Allen replied "yes". Councilmember Gaghen asked how many cars would be stored on site at one time. Mr. Allen said three stacks of six cars fit on a truck load. He said he would not want to keep more than two truck loads on site

because he needs the space for other equipment. Councilmember Clark asked if the towing portion of the facility would be operating within the conditioned hours. City Administrator Kristoff Bauer said the limitation regarding hours only applies to the conditioned activity and not to the rest of the business that is currently permitted at the facility.

There were no other speakers. The public hearing was closed. Councilmember Ruegamer moved for approval of the Zoning Commission recommendation with conditions, seconded by Councilmember Iverson. On a voice vote, the motion was approved with Councilmembers McDermott and Gaghen voting “no”.

**6. PUBLIC HEARING AND SPECIAL REVIEW #763: a special review to allow the location of a beer and wine license without gaming in the Central Business District zone on property described as Lots 5-8, Block 113, O.T. and located at 2317 Montana Avenue (currently the Venture Theater). Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

There was no staff report. The public hearing was opened. TROY BOYER, 1100 ALKALI CREEK ROAD, said he represents the Board of Directors for the Venture Theater, noting that he is the president of the board. He said the Venture Theatre casts both youth and adult productions. He said he was available for any questions. There were no questions.

There were no other speakers. The public hearing was closed. Councilmember Iverson moved for approval of the Zoning Commission recommendation with conditions, seconded by Councilmember Ruegamer. On a voice vote, the motion was approved with Councilmembers Brown and Clark voting “no”.

**7. PUBLIC HEARING AND SPECIAL REVIEW #764: a special review to allow two (2) 12-bed skilled nursing care homes in a Residential 9,600 zone on property described as a portion of Tract A, C/S 369 Amended and located at 3940 Rimrock Road (St. John’s Lutheran Home). Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

There was no staff report. The public hearing was opened. CORY JOHNSON, 342 TRAVOIS TRAIL, said he is representing CTA Architects and St. John’s Lutheran Ministries. He said this is a pioneer project for Montana as Billings does not have this level of nursing care. This achieves the objectives of the Growth Policy by: 1) creating a residential type character with lots of green space and garden areas surrounding the facility, 2) becoming a bridging element between the institutional facility and the surrounding residential community, 3) improving the quality of life for aged residents of the community, and 4) developing a self-contained neighborhood that would include wellness and fitness facilities and a community center and chapel. In answer to Councilmember Brown’s question, the facility would be located to the east of Shiloh Road.

JOE WHITE, 926 NORTH 30<sup>TH</sup> STREET, said he has no objections in principle to the skilled nursing home. He said an air quality review of the area for the protection of the adjacent residents for all seasons of the year should be performed.

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

**8. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #733: a zone change from Residential 6,000 to Residential Manufactured Home on property described as Tract A, C/S 504 and located at 130 Prickett Lane. Zoning Commission recommends denial. (Action: approval or disapproval of Zoning Commission recommendation.)**

Planning Staff Manager Candi Beaudry said the current zoning is Residential 6,000 and the proposed zoning is Residential Manufactured Home to allow a single-family manufactured home to be moved onto the property. The property is 21,035 square feet and a single-family home currently exists there. The surrounding zoning is primarily residential with some Community Commercial to the south and east, and Controlled Industrial to the north and west.

Ms. Beaudry said the Zoning Commission is recommending denial of this zone change on a 4-0 vote based on the 12 zone change criteria. These criteria consider the compatibility of the proposed zone change with the existing neighborhood. She noted there is a manufactured home park across the street that is a legally non-conforming use (a use existing prior to the implementation of the zoning regulations). Ms. Beaudry noted there is an access problem to the lot where the home would be placed due to the long and narrow nature of the parcel. Councilmember McDermott asked how many manufactured homes could be placed on this 21,000 square foot lot. Ms. Beaudry said one home per 6,000 square feet is allowed on the parcel. Councilmember Brown asked if there were any protests. Ms. Beaudry said "no".

The public hearing was opened. LINDA MERRITT, 130 PRICKETT LANE, said she also owns the property at 126 Prickett Lane. She said her neighborhood has been described as a decaying neighborhood with homes built in the 1940's and 1950's. She noted the trailer court across the street has been there since 1951. She said there is access to the back of this property from a long driveway. A house and apartment are located on the front portion of the property with one acre of vacant land in the back. Councilmember Jones asked if the applicant's intent is to place one mobile home on the back lot. Ms. Merritt replied "yes".

There were no other speakers. The public hearing was closed. Councilmember Clark moved for approval of zone change #733, seconded by Councilmember Jones. Councilmember McDermott reminded the Council that this applicant would be able to place two mobile homes on this lot with approval of the zone change. She said she agrees with the Zoning Commission recommendation. Councilmember Boyer said she agrees with Councilmember McDermott that the zone change is not compatible with the Residential 6,000 and the homes within the area. Councilmember Clark asked if there is another way the mobile home can be placed on the lot without a zone change. Ms. Beaudry said there is no other way as manufactured homes are not allowed in any other zoning except Residential Manufactured Home zones. In answer to Councilmember Ruegamer's question, any other similar application must be examined separately as a zone change.



Councilmember Jones noted that manufactured homes exist in an adjacent area. Any other similar application would have to be reviewed and approved by the Council. He said there is enough land to accommodate the proposal and it is reasonable, considering the character of the neighborhood. Councilmember McDermott noted the neighboring mobile home park does not have a permanent manufactured home zoning attached to it. Ms. Beaudry noted that many of the mobile homes in the park are older and can be replaced, however they may not be enlarged or encroach on the setbacks. This makes replacement for some of the older ones difficult, she noted. Councilmember Jones noted this area is already a mixed use area. Councilmember Brown said he does not see what harm can come from approving this zone change. This is giving a property owner the opportunity to use the property in the manner they want to. On a voice vote, the motion to approve the zone change failed with Councilmembers Clark, Jones and Brown voting "yes".

**9. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #735: a zone change from Neighborhood Commercial to Community Commercial on a property described as Lots 1-3, Block 2, Houser Subdivision and located on the northwest corner of 14<sup>th</sup> Street West and Wyoming Avenue. Zoning Commission recommends denial. (Action: approval or disapproval of Zoning Commission recommendation.)**

Planning Staff Member Nicole Cromwell said this zone change request is from Neighborhood Commercial to Community Commercial on the northwest corner of Wyoming Avenue and 14<sup>th</sup> Street West. The zone change request is to allow the applicant to apply for a special review to place a liquor license with gaming on the property. She said the Zoning Commission held a hearing on July 6<sup>th</sup> and several surrounding residents were present and gave testimony. There were two letters of protest received against the zone change. She noted this does not represent a valid protest.

Ms. Cromwell said the Zoning Commission is recommending denial of the zone change on a vote of 3-1 because there are adjacent residential uses to the north and northeast. She said Community Commercial uses may not be appropriate for this site even though screening methods can be employed.

The public hearing was opened. TOM WILLIAMS, 2221 CONSTELLATION, said he is the Operations Manager of CNJ Distributing Corporation in Doc & Eddy's Plaza. He said the site is surrounded by Community Commercial businesses and should be rezoned as requested. He said there are several commercial establishments within walking distance of the site. He noted the residential area is separated from the site by an alley with garages providing a buffer. Directly east is the former Gibson building. Mr. Williams said Doc & Eddy's currently operates three casinos in Doc & Eddy's Plaza. Due to state law, one of the casinos must be moved by October 1, 2005. He said they have chosen to move the Buffalo Palace Casino to the proposed site because it would not further impact the area.

CHARLES GOLDY, 2127 LYNDALE LANE, said he is the architect for Doc & Eddy's and CNJ Distributing. This "Corner Pocket" business was originally started in 1975. He noted the zoning map is incorrect as there is a 37-foot back-of-curb to back-of-curb setback. The Buffalo Palace Casino would not be a large building (1,500 square feet), holding only 20 machines. There would be beverage and pastry service. The

parking lot is sufficient to handle the traffic and an 8 foot masonry wall would separate the facility from the neighborhood. Mr. Goldy said the intent is to keep the neighborhood nice. Councilmember Ruegamer noted the second set of four-plexes in the area are not "sitting" on a garage, but rather are a garage with four-plexes in front of it with access to the residences on the street in front. Councilmember Boyer asked if everything north of the four-plexes is residential. Mr. Goldy replied "yes".

KURT HATCHER, 3684 STILLWATER, said he is the General Manager for Doc & Eddy's Plaza. He said this is a quiet type of business and offered to solve any problems to the surrounding residents that arise from the proposal. There will be no patio, nor a liquor license – it will be beer and wine service only. There will not be a bar, but rather a "beverage station" where coffee and pastries would be served. There would be no noise or music outside of the facility. He said there would be landscaping to enhance the area. Any noise that is now heard is from the passing motorists. He said the Gazette has voted this establishment the "number one Sports Bar" because it is a classy establishment. Mr. Hatcher said it is their policy to refrain from any activity that would disturb the neighborhood. In answer to Councilmember Gaghen's question, the proposed business must be moved 150 feet from its original site due to the new state law. He said other options are being reviewed to meet the requirements fully.

BETTY STEWART, 1410 YELLOWSTONE AVENUE, said she lives in one of the four-plexes. She said the residential area is not compatible with the proposal. She said there are 11 bedrooms that face the site. This has all the casino lighting coming directly to that area. She said the noise from the traffic is also a concern. She noted the casino is always kept clean and well lighted, but the main problem is the traffic that the casino creates. Ms. Stewart said there is also the criminal activity that sometimes happens around the buildings. She said her renters do not want a casino nearby.

KATHY KORUM, OWNER OF THE COLLEGE OF COIFFURE ART, said she welcomes the casino on this lot. She said Doc & Eddy's has been a good neighbor; a business that is always clean and well kept. She said she does not see the concerns about traffic, parking or noise. Ms. Korum said she supports the zone change.

JOE WHITE, 926 NORTH 30<sup>TH</sup> STREET, said the City has too many casinos. He said he does not support the zone change.

CECELIA JIRGES, 616 GLEN DRIVE, said she opposes zone change #735 as there are already several casinos in the neighborhood and another one is not needed. She said she wants to retain the quiet nature of the neighborhood. She said concerns about the traffic and additional noise could lower the value of their property on Yellowstone Avenue. Ms. Jirges also said she is concerned about what could happen to the business if the current owners sell the proposed casino.

DAWN WILLET, 1740 AVENUE D, said she has been an employee of Doc & Eddy's for over nine years. She said several of the business' best customers live in the four-plexes. She noted the new casino is proposed to be non-smoking. She said she is concerned that people would lose their jobs when the license must move. It is a great place to work, with great benefits. She supports the proposal.

SHAWN HEINZ, HUNTLEY, MT, said she is a part owner with Betty Stewart of the four-plex located at 1410 Yellowstone Avenue. She said this is a family-owned four-plex and she intends to reside there when her children are out of the house. She said she is concerned about the noise level and bar operation that is open until 2 AM. Ms. Heinz

noted the wall buffer would not be a good noise buffer for the residents. She asked the Council to approve the Zoning Commission recommendation.

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

Mayor Tooley called for a five-minute recess at 8:17 P.M.

Mayor Tooley reconvened the meeting at 8:25 P.M.

Councilmember Jones moved for denial of zone change #735, seconded by Councilmember Clark. Councilmember Ruegamer said he lives in this neighborhood and thinks this is compatible with the neighborhood. This is an empty lot that has not been developed. He said twenty machines are not going to cause a lot of congestion and are creating an atmosphere that is smoke-free. He said they are good neighbors and they keep their premises clean. This is not changing the complexion of the neighborhood. Councilmember Brown said he does not think the move would increase the traffic.

Councilmember McDermott noted that the casino can be changed and new owners can change the type of business without Council approval. The decision cannot be based on who the owners are. She said the property now serves as an important buffer for the residential property to the north and heavy commercial district to the south on Broadwater Avenue. She said she is concerned about losing that buffer and will not support this zone change. Councilmember Boyer noted her concern about the property not being suitable for the requested zoning district and said she would not support the zone change. Councilmember Clark agreed that the next owner would have the zone change and could do whatever they wanted. Councilmember Jones said his concern is that when Community Commercial zoning is approved "it opens avenues for all kinds of things to go in there". On a voice vote, the motion to deny the zone change was approved with Councilmembers Brown and Ruegamer voting "no".

**10. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #736: a zone change from Residential 9,600 to Residential 7,000 on property described as Tract 3, C/S 2017 Amended and located at the northwest corner of the intersection of Wicks Lane and Picador Place. Zoning Commission recommends approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

There was no staff report. The public hearing was opened. GEORGE JORDAN, 1608 FANTAN STREET, said his home is east of this proposed zone change. He said he is concerned that changing the zoning to Residential 7,000 would have a detrimental effect on the character of the neighborhood. He added that several neighbors agree with his concerns.

TIM PIRTZ, ENGINEERING, INC., said he is representing the developer. He said this would not be a multi-family residential development, but would be duplexes owned by individual families. He said this development would provide affordable housing and the density would not be altered that much. He said it is consistent with the Growth Policy.

DONALD HANSER, 3420 MASTERSON CIRCLE, said there are Residential 9,600 lots that separate the proposed development from the surrounding neighborhood.

There were no other speakers. The public hearing was closed. Councilmember Gaghen asked what the maximum number of duplexes would be allowed on the five-acres.

Mr. Pirtz said 23 is the maximum number allowed, but with the triangular shape it would be hard to accommodate that many duplexes. He said there may possibly be 20 duplexes. He noted there would be room for a green space and a playground area. Councilmember Clark asked if the Residential 9,600 buffer area is already built. Mr. Pirtz said the area is already zoned, but not developed as yet. Councilmember Gaghen moved for approval of the Zoning Commission recommendation, seconded by Councilmember Boyer. On a voice vote, the motion was unanimously approved.

**11. CONTRACT AWARD FOR W.O. 04-07 & 04-20 Storm Drain Project. (Opened 7/20/04). Recommendation to be made at meeting. AME Inc., \$55,580.00**

City Engineer Vern Heisler said the revised staff memo for Item 11 contains the bid information from the July 20<sup>th</sup> bid opening. There were five bids received with the low bidder being AME, Inc. at \$55,580. The staff recommendation is to award the contract to AME, Inc. He noted there is a \$5,580.50 contingency built in, therefore the total bid price is \$61,385.50. Councilmember McDermott moved for approval of the contract award as recommended by staff, seconded by Councilmember Boyer. On a voice vote, the motion was unanimously approved.

**12. PUBLIC COMMENT on Non-Agenda Items -- NONE**

**Council Initiatives**

- **Councilmember Ruegamer:** Councilmember Ruegamer moved to direct staff to bring the information needed (i.e. Resolution) to place reconstruction of Cobb Field, not to exceed \$10 Million on the November 2nd ballot, seconded by Councilmember Boyer. Mr. Bauer said the staff would need to provide a resolution placing the item on the ballot. This resolution would need to be approved by the Council on August 9<sup>th</sup>. Mr. Bauer clarified that the terminology “not to exceed \$10 Million” would give the Council authority to levy up to that amount if the ballot measure was approved by the voters. If the cost of the stadium is less or other funding becomes available, the levy amount could be less. On a voice vote, the motion was approved with Councilmember Brown voting “no”.
- **Councilmember Brown:** Councilmember Brown moved to direct staff to add information on RFPs, RFQs, Job Notices and legal notices on the website, seconded by Councilmember Clark. Councilmember Brown said notices such as offending weed notices are not getting to the property owners and if this information is on the website it would assist that endeavor. Mr. Bauer clarified that all public notices are on the website with the exception of those sent only to individuals, such as the weed abatement notices. Councilmember Gaghen expressed concern for the confidential nature of those types of notices and the appropriateness of them being on the website. Councilmember Boyer expressed her concern for the financial commitment this would involve. Mr. Bauer noted the code enforcement area generates between 200-300 notices a month. Mayor Tooley noted this would require a lot of website maintenance. On a voice vote, the motion failed unanimously.

MINUTES: 07/26/04

**ADJOURN** —With all business complete, the Mayor adjourned the meeting at 9:00 P.M.

THE CITY OF BILLINGS:

By: \_\_\_\_\_  
Charles F. Tooley    MAYOR

ATTEST:

BY: \_\_\_\_\_  
Marita Herold, CMC/AAE, City Clerk