

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

## **October 25, 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 Mayor Tooley.

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

**MINUTES – October 12, 2004.** APPROVED as printed.

**COURTESIES** – None

**PROCLAMATIONS – Mayor Tooley.** None

### **BOARD & COMMISSION REPORTS – Downtown Billings Partnership, DPARB**

- Greg Krueger, Director of the Downtown Billings Partnership reported to the Council on various activities that have taken place since the beginning of the year. He introduced the new project manager for the DBP. Mr. Krueger noted that the Cultural Partnership has moved back to their joint office with the DBP. He said the Revolving Loan Fund has funds available and the banks involved with that fund will be meeting the first part of November to formally adopt the interest rate and the loan fund committee for the next loan year. He listed the following accomplishments for the downtown: 12 new or relocated businesses this year; 25 new or renovated housing units; \$4.4 Million TIF funds leveraged to approximately \$37 Million in private development dollars over the last two years. Mr. Krueger also introduced Lisa Woods, the newly appointed executive director of the Downtown Billings Association. Ms. Woods recently attended a conference of the International Downtown Association, where Downtown Billings received an IDA award for the changing face of downtown Billings.

- DPARB: Ed Appedaile, chair of the Development Process Advisory Review Board said DBARB is a 7-member advisory board to the City Administrator. Their responsibilities are: to act as an advisory board to the City Administrator in regard to the entire development process, its related policies, and procedures; to review and evaluate the administration of the development process; to review and evaluate policies which affect the development process; and to serve as an appeals board for development issues which are not addressed by existing procedures, rules, or regulations. Mr. Appedaile said the board originally started as a reactive board to handle a backlog of appeals and has now become proactive. It is looking at the building process review time and has recommended outsourcing the process review.

**ADMINISTRATOR REPORTS – Kristoff Bauer.**

- Mr. Bauer asked the Council to pull Item O for a delay recommendation.
- He reminded the Council that revised staff reports for Agenda Items M, 2 and 11 were sent to them in last week's Friday packet.

**PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Item: #1 ONLY.**  
**Speaker sign-in required.** (Comments offered here are limited to 1 minute per speaker.  
*NOTE: For Items not on this agenda, public comment will be taken at the end of the agenda.)* There were no speakers.

Councilmember Brewster moved to remove from the table Item A4 (previously listed on the Oct 12 agenda) – W.O. 03-06: Federal Aid No. DM 1099(35)/MDT Control No. 4936 for Swords Park Path and postpone consideration of the item to 11/8/04, seconded by Councilmember Gaghan. On a voice vote, the motion was unanimously approved.

Councilmember Brewster moved to change the order of the agenda by switching the positions of Items 6 and 12 on tonight's agenda, seconded by Councilmember Jones. On a voice vote, the motion was unanimously approved.

**CONSENT AGENDA:**

1. A. **Bid Awards:**

(1) **Gasoline and Diesel Fuel.** (Opened 10/5/04). Recommend GM Petroleum for the next 12 months.

(2) **Computer System – IBM E-server I5 9406-520-7459.** (Opened 10/19/04). Recommend delaying award to 11/08/04.

B. **C.O. #1, Airport Terminal Building Fire Alarm Upgrades,** Yellowstone Electric, \$19,404.50.

C. **Amendment #1, Professional Services Contract for W.O. 03-20: West Heights Storm Drainage Master Plan,** Camp Dresser & McKee Inc. (CDM), (\$502.52) and designating Darrel M. Stordahl as project manager for CDM.

D. **Professional Services Contract – SID 1371: Shiloh Road Improvements,** Engineering Inc., \$17,500.00.

E. **Professional Services Contract** with Springsted, for arbitrage services, \$3,100.00/calculation.

F. **Approval of Statement of Work Agreement** with DATARADIO Corporation for installation of GPS receiver kits into existing modems in patrol cars and one AVL reference receiver, \$79,325.06.

G. **W.O. 01-06: Arlene Corridor Right-of-Way Acquisition:**

(1) Portion of Tract B, C/S 1011, Rocky Mountain Community Church, 0.28 acres, \$18,131.00.

(2) Portion of Tract 1, C/S 1990 and Tract 1, C/S 2974, KZ Bar Limited Partnership (Zimmerman Family), 1.32 acres, \$56,343.00.

**H. Approval of HOME funds** of \$5,000 for a deferred loan for a management plan and pre-development costs to IRMA House II, and of reserving \$93,966 in CHDO grants for future construction, subject to Community Development Board and City Council approval of a Development Agreement.

**I. Capital Improvement Program Updates:**

(1) Amend Project ENG20: Lake Elmo Drive Improvements (Main Street to Hansen Lane).

(2) Delete Project ENG24: Poly Drive Improvements (32<sup>nd</sup> Street West to 38<sup>th</sup> Street West).

**J. Acceptance** of Special Operations Equipment valued at \$15,275 from the State of Montana 2003/2004 State Domestic Preparedness Equipment Program.

**K. Resolution of Intention 04-18205 to Create SID 1369:** water, sanitary sewer, street lights and street improvements along Moore Lane between Burlington Northern Railroad and Central Avenue, and setting a public hearing date for 11/22/04.

**L. Resolution 04-18206** designating an ad hoc committee to review the Interlocal Library Agreement and recommend changes/revisions to the City Council.

**M. Resolution 04-18207** amending Res. 04-18065 creating Parks Maintenance District #4024, correcting the list of assessed properties.

**N. Second and final reading ordinance 04-5302,** amending Ordinance #02-5183 by correcting the legal description on recently annexed properties in Ward II. (Annex #01-20).

**O. Amended Plat** of Lots 3-5 of Amended Lot 1, Blue Meadow Acreage Tracts, boundary relocation.

**P. Final Plat** of Greenfield Subdivision – 1 year extension.

**Q. Final Plat** of Ironwood Estates, 2<sup>nd</sup> Filing.

**R. Final Plat** of Parkway Subdivision.

**S. Bills and Payroll.**

(1) September 24, 2004

(2) October 1, 2004

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

Councilmember Brown separated Items A1 and D of the Consent Agenda. Councilmember Clark separated Item H from the Consent Agenda. Mayor Tooley separated Item O of the Consent Agenda. Councilmember McDermott moved for approval of the Consent Agenda with the exception of Items A1, D, H and O, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

Councilmember McDermott moved for approval of Item A1 of the Consent Agenda, seconded by Councilmember Ruegamer. Councilmember Brown expressed concern for the price that the City is paying for lubrication products. City Administrator Kristoff Bauer said the contract for lubrication materials was extended from last year's contract which is separate from the bid for the fuels from a different company. He said the lubrication materials price was a good price and was not sent out for bid. On a voice vote, the motion was unanimously approved.

Councilmember McDermott moved for approval of Item D of the Consent Agenda, seconded by Councilmember Gaghen. Councilmember Brown questioned why an engineer from Engineering, Inc. was being hired when HKM Engineering, Inc. is performing the construction administration of the project. Mr. Bauer said HKM Engineering is responsible for project management and the design services were awarded to Engineering, Inc. This contract would provide for on-call services of an engineer if problems arise that require further design services. If no design services are required the contract is void. On a voice vote, the motion was approved with Councilmember McDermott voting "no".

Councilmember McDermott moved for approval of Item H of the Consent Agenda, seconded by Councilmember Brown. Councilmember Clark asked why the City is involved in this process. Community Development Manager John Walsh said \$5,000 is requested for Irma House, a small non-profit organization, to help them prepare a management plan to address issues involving a large federal grant to build a second facility. There are uncommitted CHDO funds currently available to accommodate this request. He said it is not unusual for the City to give assistance to an organization that provides affordable housing. On a voice vote, the motion was unanimously approved.

Councilmember McDermott moved to delay Item O to 11/22/04, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.

## **REGULAR AGENDA:**

### **2. Resolution 04-18216 Awarding the Sale of \$5,200,000.00 General Obligation Bonds, Series 2004A. (Opened 10/25/04). Staff Recommendation to be made at meeting recommends Legg Mason Wood Walker at 3.7958% (Action: approval or disapproval of Staff recommendation.)**

City Administrator Kristoff Bauer introduced Dave McGilvery of Springsted who reported on the results of today's bid. Mr. McGilvery said the City received eight bids and the low bidder was Legg Mason at 3.7958%. The one Montana bidder was \$65,000 higher than the lowest bid. He said the City went through the credit rating process with Moody's Investor Services of New York receiving an A1 rating, making Billings the highest rated municipality in Montana. This rating aided the City in obtaining several bids and a low interest rate for the bonds. Councilmember Brewster moved for approval of the Staff

recommendation, seconded by Councilmember Boyer. On a voice vote, the motion was unanimously approved.

**3. PUBLIC HEARING AND RESOLUTIONS respreading assessments:**

**(A) Res 04-18208 -- SID 1316: combining two parcels into one at the request of the property owner.**

**(B) Res 04-18209 -- SID 1340: splitting one parcel into five parcels at the request of the property owner.**

**(C) Res 04-18210 -- SID 9495: combining two parcels into one at the request of the property owner.**

**(D) Res 04-18211 -- SID 9809: combining two parcels into one at the request of the property owner.**

**Staff recommends approval. (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 Brown moved for approval of Item 3A (SID 1316), seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

Councilmember Brown moved for approval of Item 3B (SID 1340), seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

Councilmember Brown moved for approval of Item 3C (SID 9495), seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

Councilmember Brown moved for approval of Item 3D (SID 9809), seconded by Councilmember Boyer. On a voice vote, the motion was unanimously approved.

**4. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #724: a Planned Development zone change amending the Rehberg Ranch Estates Preliminary Master Plan and Planned Unit Development Agreement on Tracts 1-5, C/S 3091 and Rehberg Ranch Estates Subdivision, 1<sup>st</sup> filing. Zoning Commission recommends denial. (Action: approval or disapproval of Zoning Commission recommendation.)**

Planning Manager Candi Beaudry said this zone change amends the preliminary master plan and the Planned Unit Development Agreement and includes the entire 815 acres west of the Airport, north of Highway 3 and Rod and Gun Club Road. She said the proposed zoning would affect the underlying zonings of PUD, Resort, Equestrian Complex, Community Commercial, Public, Residential 15,000, Residential 9,600, Residential 7,200, Residential 6,000, Residential Multi-Family and the Townhome designations.

The Zoning Commission held a public hearing on this zone change and recommended denial on a 2-1 vote based on the 12 criteria. She said the Council delayed action to tonight, advising the applicant to meet with the residents to resolve any outstanding issues. As a result of the meetings, the applicant is requesting withdrawal of three items from the application: 1) the zone change from single-family to Townhome II designation for 5 lots in the first filing, 2) inclusion of helipad in approved uses, and 3) inclusion of group home in approved uses. Ms. Beaudry said the Council may approve or deny the application as submitted or approve the application as amended.

Ms. Beaudry said the requested zone changes include: 1) aligning the Master Plan zoning designations with lot lines created with the 2<sup>nd</sup> filing, 2) changing five lots on Rifle Creek Trail from single-family to Townhome (TH-2) – this item requested for withdrawal, and 3) adding one Townhome lot in the 2<sup>nd</sup> filing on Morgan Trail. The requested changes in the Planned Development Agreement – text amendments are: 1) limit the number of units allowed on the Townhome II designation allowing 12 more than allowed under Residential 9,600 zoning, 2) minor word changes, 3) addition of allowed uses in the Resort, Equestrian Complex, Public, and Community Commercial zoning – but excluding the helipad and the group home uses, 4) reduce the front yard setbacks from 25 feet to 20 feet in Residential 9,600, Residential 7,200 and Residential 6,000 zones, 5) increase the lot coverage from 30% to 35%, 6) allow rear yard setbacks to be reduced by 5 feet if the lot has a slope of 10% instead of 15%, 7) revision of the method to measure the height of structures, 8) inclusion of language providing for the development of common areas, 9) reference to internal documents of the Rehberg Ranch that may establish additional rules, and 10) clarify the existence of continued ranching operations within the unimproved tracts of Rehberg Ranch.

Councilmember Brewster said the residents at the meetings voiced strong concerns about the language regarding development of the common areas, allowing the costs of the common areas to be borne by the residents without recourse on their part. There was also concern about moving property in and out of the common areas at the discretion of the developer. Ms. Beaudry said the Planned Development Agreement does not address either of those issues. She noted the cost of common area development is covered in another document. She added that the configuration of the common areas could change with future filings.

Councilmember McDermott asked for background on the denied variances that appear to be like one of the requests to allow the lot coverage to increase. Ms. Beaudry said this had to do with certain lots where the topography prohibits the ability to construct certain structures and to accommodate the market demand for larger houses. The zone change is trying to accommodate the market trends for these larger homes and the oddly configured lots. Councilmember Gaghen asked about the request for the revision of the method to measure the height of structures to accommodate the townhomes. Ms. Beaudry said this pertains to single-family homes built on steeply sloping lots, where a modest two-story home is at a disadvantage.

Councilmember Jones asked about the request pertaining to ranching operations. Ms. Beaudry said this is a clarification stating that this use is permitted and would probably be allowed to continue because the use was in existence prior to the development. Councilmember Jones asked if there is an agreement that objections about airport noise are not allowed. Ms. Beaudry said this is stated in the Subdivision Improvements Agreement and further documented in the Development Agreement.

The public hearing was opened. JOE GERBASE, 3305 HARLOU DRIVE, said he is an attorney practicing in Billings. He said the community meeting to discuss issues was held on the 13<sup>th</sup> with 32 homeowners attending. Another meeting was held the following week with 10 homeowners attending. A written notice noting the plan to withdraw the zoning for TH2 and other considerations of the text pertaining to the Planned Unit Development Agreement was sent prior to the second meeting. He said comments from the first meeting were discussed at the second meeting. The homeowners unanimously

agreed that the provision for the helipad should be deleted, which was done. Mr. Gerbase explained the deletion of the group home designations. The concern of the residents was to avoid a "half-way house for juvenile delinquents in their neighborhood". He said there is a state law which allows all kinds of group homes that are state sponsored in any residential zone. He noted this language is withdrawn but it does not change mandated state law.

JERRY REPLOGLE, 4378 STOUTCREEK TRAIL, said he owns J & J Builders and is the builder of the proposed project. He said he has no objections to the changes and hopes to move toward constructing Phase II.

NANCY ILLE, REHBERG RANCH TOWNHOMES, said there are a greater number of people objecting to the zone change as is evidenced by the many petitions. She said she has met privately with Jan Rehberg and determined that she was not willing to compromise on the issues and showed no empathy or concerns for the homeowners. Ms. Ille said the reason so few people came to the meeting was because of lack of trust. She noted that she left the second community meeting because Mr. Gerbase was rude and caustic to the residents.

ANNE BEAUDRY, REHBERG RANCH, said she thinks there are many reasons that this zone change should be denied in its entirety. Statistical and safety reasons are one reason for denial. She said the raw sewage smell continues to be overwhelming on Ironhorse Trail. There is also a safety hazard with the roads that need to be widened and will be a concern this winter. Ms. Beaudry said she is also concerned about increasing the setbacks to allow a larger home on a smaller lot. This does not fit with the rural ranch style that was originally envisioned. She said the zone change denial will allow the developer to learn more about how PUD's operate in tandem with the growing needs of the community, allow better communication to the residents, and marketing the development with what is actually going to be offered to future residents.

ROBERT ECKERT, 4239 BLACKPOOL TRAIL, said some of the problems have been overstated noting there have been problems with communication. He said it appears that the number of people purported to object to the zone change seem to exceed the number of residents. Mr. Eckert said he thinks most of the residents are reasonably satisfied with the "way things are going". There is a good chance to have an active homeowners association with the residents having a reasonable expectation that their property values will be maintained by having the development continue. He urged the Council to consider the true feelings of the majority and approve the zone change.

BLADE LAUGHLIN, 2530 WHITTIER, said he owns a lot in Rehberg Ranch Estates and concurs with Mr. Eckert's comments. He said he does not think there has been any deception in his experience with the Rehbergs. They have demonstrated a willingness to clarify some of the issues. He encouraged the Council to consider the majority sentiment. Mr. Laughlin said zone changes can become an emotional issue and as an owner and developer he understands the enormity of the task the Rehbergs have undertaken. He said he believes the developer is motivated to do the right thing and work toward what they have always envisioned for Rehberg Ranch Estates. He urged the Council to approve the zone change.

CAROL BARNES, 4433 IRONHORSE TRAIL, said most of the people she has talked with agree with Mr. Eckert. Since the meeting with the homeowners, she said she has not seen any of the animosity, strife and antagonism that was prevalent before. Her

neighborhood has become a peaceful place and everything that the residents have asked for has been considered with efforts to accomplish those tasks.

MARTY ALVERSON, 4308 SMOKE, said he echoes what Mr. Eckert and Mr. Laughlin have said. He said he is very pleased to live in Rehberg Ranch Estates and appreciates the efforts of the developer. He said he supports the Rehbergs wholeheartedly, noting that he attended the community meetings.

MIKE WARRENS, 4433 IRONHORSE TRAIL, said he was one of the original purchasers in Rehberg Ranch Estates. He said he thinks the developers have been doing "what is right for the development". There have been problems, including lack of communication, but those issues are being worked out. He said any communications with Ms. Rehberg have been fruitful and helpful. Mr. Warrens asked the Council to approve the zone change.

SUZI STEFFANICH, 4139 BLACKPOOL TRAIL, said she attended as many meetings as she could. She said she agrees with the comments of Mr. Eckert, Mr. Laughlin and Ms. Barnes. These meetings were helpful and everyone appears to be trying to come together to form a good community. Ms. Steffanich said it appears the zone change application is an avenue for more affordable housing and wonders why the increase in the lot coverage is needed. She stated the emails, the petitions and the letters reflect the concerns of many residents. Ms. Steffanich said the zone change affects the residents and she wants what was marketed and proposed to them as prospective buyers to be protected.

PAM CAPP, 4134 BLACKPOOL TRAIL, said she bought her lot in 2002 and moved there in 2003, prior to any charter or association formation. She said she and her husband oppose the zone change and the changes in the PUD. She asked the Council to deny the zone change request. Ms. Capp noted there were several people in the audience tonight that did not wish to speak but were against the zone change.

BRIAN JOHNSON, 121 MINERS DRIVE, said he recently purchased property in the Rehberg Ranch Estates. He said his architectural firm was hired to develop some of the amenities of the Ranch. Because he felt so strongly about the development, he made a personal investment there. He said this area is an incredible place to live with nothing like it anywhere in Billings. Mr. Johnson said it is filling a niche for those people who are seeking affordable housing in the rural setting. As an architect who has developed plans for some residents in the area, he said there is a need to revise the building height calculation methods for lot coverage, as well as setback requirements. Requirements in Rehberg Ranch are much more stringent than in other areas of Billings. He noted the topography makes designing very difficult without the requests in the zone change. He encouraged the Council to approve the zone change. This development is an important economic development for the City of Billings, he added.

RHONDA SMITH, 2412 WOODY DRIVE, said she has a "real issue going against" a zone change that has been denied by the Zoning Commission. As a taxpayer, she asked the Council to listen to the Zoning Commission and deny the zone change.

KIM BEAUDRY, 4260 BLACKPOOL TRAIL, said the Council should follow the advice of the Zoning Commission.

ROD WILSON, 422 SHAMROCK LANE, said he has been a real estate developer for the last 45 years. He said he volunteered to moderate the meetings with residents of Rehberg Ranch Estates. The Planned Unit Development was the focus of the discussion

because the elements are different from a normal subdivision. The nature of a PUD is that it is dynamic and constantly growing and changing. He said Mr. Gerbase has worked with other PUDs and provided his expertise in the Rehberg Ranch Estates working on zoning issues. Mr. Wilson noted the meetings were noticed by registered mail (86 packets were sent, 77 cards were returned) to insure that all residents were aware of the meetings. The meetings were a question and answer format, with the conclusions sent to the developers. He said the developer was very interested in what the residents said and subsequently suggested the current proposal.

STEVE LACHMAN, EMPLOYEE OF REHBERG RANCH ESTATES, said he has worked for the Rehbergs for two years. He said he spends a lot of time with the residents, builders and contractors. He said he received "nothing but compliments for the way the subdivision is being done". It is true that the majority of the residents feel very fortunate to be living there. He asked the Council to approve the zone change.

RICK LEUTHOLD, PRESIDENT OF ENGINEERING, INC., 1260 SOUTH 32<sup>ND</sup> STREET, said his expertise is in the "process" and that is the key in this zone change. A subdivision of this size by nature develops over a period of time, but the important thing is that it is allowed to develop. He said we are now seeing that happen. A Planned Unit Development is not "fixed zoning" and it continually changes. He noted that Ms. (Candi) Beaudry said every time a new subdivision plat is processed an adjustment occurs that takes into account specific platting areas. These 800 plus acres were brought into the City as a PUD so that the Council and the constituents had an idea of what was being contemplated and developed. The current zone change request concerns the 2<sup>nd</sup> filing which is in process and none of the lots have been sold. He said the developer must "make up in some areas what is given up in other areas". Mr. Leuthold said this is what is before the Council this evening. He noted the Zoning Commission did not have the benefit of hearing the communication at the community meetings. This is a land use process that is appropriate for the aspects of the subdivision as it moves forward. The issue concerning the height measurement for structures on a sloping lot and the intent is to take the measurement point back to street grade to obtain the appropriate height and garage and pedestrian accesses to the house. The back side of the home may have an additional height to it, but not at the street side. He said this accommodates the diverse terrain that is unique to Billings and keeps the homes in context with the neighborhood. Mr. Leuthold said the development is laid out so this measure issue should not be a concern to neighbors.

There were no other speakers. The public hearing was closed. Councilmember Ruegamer moved to deny Zone Change #724, seconded by Councilmember McDermott. Councilmember Brown said it appears that the majority of the residents are in favor of the zone change and he said he would support the zone change. Councilmember Brewster made a substitute motion to approve the PUD changes with three items withdrawn: 1) remove the TH2 zone change on Lots 12, 13, 15, 16 and 17, Block 3, 2) remove the helicopter landing area agreement and 3) remove the clause as defined by state law on line one, item fifty-three of page five of the agreement, seconded by Councilmember Boyer. Councilmember Brewster said he attended the first meeting where there was strong objection to the zone change in the first filing. He said it appeared the residents bought into a particular type of development and wanted it to stay that way. Other language objections, some pertaining to the common areas, were not addressed by the

recommended motion and he feels that most of them are reasonable. Councilmember Brewster said the majority of the residents were happy with the development and with the direction, with the exception of the former zone change.

Councilmember Boyer said much of the feedback she has received says the residents are in favor of the changes that have been made. She said the nature of the PUD development is different from standard developments and the Council should not discourage that kind of development. She said she supports the zone change.

Councilmember Brewster asked "what is going on" with the sewer and water in the development. Public Works Director Dave Mumford said the City has placed gaskets in the manholes to eliminate the odor as the problem stems from not enough volume to work properly with the capacity, slowing the movement of effluent. More homes in the development will eventually solve the problem. The water pressure has been adjusted and should be functioning more efficiently. Elevation changes make the pressure situation challenging.

Councilmember Jones asked what the intention is of the rule in Section 15 of the General Requirements. Mr. Bauer said it was to allow the internal documents and self-governing bodies to operate as they are designed. On a roll call vote, the substitute motion was approved 6-3 with Councilmembers Brewster, Brown, Boyer, Clark, Jones and Mayor Tooley voting "yes" and Councilmembers Gaghen, McDermott and Ruegamer voting "no".

Mayor Tooley called for a recess at 8:20 P.M.  
Mayor Tooley reconvened the Council Meeting at 8:25 P.M.

**5. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #740: a zone change from the underlying Residential 9600 to Residential 6000 and Mixed Use (Residential Multi Family and Community Commercial) on the remainder of Tract 1, Certificate of Survey No. 2481, the remainder of Tract 2A-1 of Amended Tracts 1B and 2A of Amended Tracts 1 and 2, Certificate of Survey No. 2185, and Tract 2A-3 Certificate of Survey No. 2185 Amended, Tracts 1 and 2, C/S 3202 and Tract 2A-3 of C/S 2185 Amended, Parkland West Planned Unit Development generally located at between 34<sup>th</sup> and 36<sup>th</sup> Streets West and Central & Banff Avenues. Jay Lyndes, owner, Engineering, Inc., agent. Zoning Commission recommends denial. (Action: approval or disapproval of Zoning Commission recommendation.)**

Planning Manager Candi Beaudry noted the Planning Staff has received a valid protest on this zone change. The petition was received on Friday, October 21<sup>st</sup>. The zone change is for the Parkland West Planned Unit Development located on Central Avenue between 34<sup>th</sup> and 36<sup>th</sup> Streets West. It encompasses twenty-three acres that would be rezoned for single-family and twelve acres for mixed use that includes Residential Multi-Family and Community Commercial. Properties to the south and east are proposed to be zoned Residential 6,000, allowing single-family residences only on 6,000 square foot lots.

Ms. Beaudry said the Zoning Commission is recommending denial of the zone change on a 4-0 vote. This Planned Development has gone through a history of changes with six amendments since 1982. The latest amendment in 1996 allowed all single-family in the proposed area of this zone change. There was an indication at the time of

application that five acres of the twelve were to be used for a sports field, but that is not firm at this time. She said other changes are to rezone the lots that are currently Residential 9,600 to Residential 6,000, a difference of 500 square foot minimum lot size. The current application requests no change in zoning south of Banff Avenue or the central area parkland configuration. She noted the significant change is for the mixed use. The proposal for the Multi-Family zone is for 258 units including a daycare. She noted the units could be used for student housing for the College of Technology.

The public hearing was opened. DENNIS RANDALL, ENGINEERING, INC., 1260 SOUTH 32<sup>ND</sup> STREET WEST, said the density change in the area of the proposed residential single-family would be about six lots allowing more affordable housing. The primary change is with the twelve acres to multi-family. He said the primary protest comes from the existing homes in the area that are currently Residential 6,000. The main reason for denial from the Zoning Commission was that it didn't fit the character of the neighborhood. He said there is commercial zoning and multi-family to the west and north, noting that the proposed zone change is in keeping with the character of the community with commercial development on three sides of the property. Mr. Randall said the existing homes to the south are buffered by the proposed Residential 6,000.

STEVE WOLF, 3648 GLANTZ DRIVE, said he lives within 400 feet of the proposed zone change and urged the Council to deny it. He said there are enough apartments in the Central Avenue/32<sup>nd</sup> Street West area.

DANETTE CERISE, 223 CHACO CANYON WAY, said she is opposed to the zone change. She is concerned about property values, lot sizes and zone change from single-family to commercial and multi-family uses. In the 1996 plan the minimum lot sizes were 6,500 square feet. She said the major concern is for the 258-unit apartment complex that would block their view of the Rims. The schools in the area are already overcrowded and children are bused out of the area. Additional traffic congestion will result from the added density and fire and police response times will be equally affected. She noted the Zoning Commission's denial of the zone change and said she would appreciate the Council's support for the current residents in the area. She said zoning consideration must be made with reasonable considerations to the character of the district and conserving the value of the existing buildings. She said the apartment complex will not increase the property values. The changes are not in the best interests of the current homeowners, only for the developer, the apartment owner and the land owner. She urged the Council to do the right thing for the property owners and the zoning laws by denying the zone change. She requested a show of hands for other persons opposed to the zone change.

KELLY GALLINGER, 3645 HARPER DRIVE, said this zone change request has united the community against the proposed development. She said the apartment complex will add 258 families to the community within a one block square area. The traffic from that many families will create tremendous congestion, with a significant impact to the children who play on the sidewalks and ride bikes, scooters and roller skates in the streets. Only a turn lane is being proposed to accommodate the traffic. She noted the six changes in the master plan, but was unaware that this type of development can change frequently. Ms. Gallinger called this opportunistic planning and she strongly requests the Council deny the zone change application.

SHAWN HARRINGTON, 250 WIND CAVE CIRCLE, spoke in opposition of the zone change. In the beginning the housing was "pitched" as student housing for the

adjacent college. He said he has an email from Dean Cech of the College of Technology who said there is no formal or financial relationship, agreement, or guarantee between the university system and the developer or builder. He noted the Chancellor of the College supports the development, but has not requested the complex to be built. This misunderstanding was furthered in an effort to obtain community backing. He stated the multi-use field is not a consideration of the zone change because the developers and the university system cannot agree on ownership and care or maintenance of the field. Mr. Harrington said the zone request was changed to alter the number of valid petitioners able to protest. There are enough signatures to mandate a super majority vote for this zone change. He said there are 238 signatures of homeowners from 32<sup>nd</sup> to 38<sup>th</sup> Streets West that are opposed to this zone change. He said he works for the school system and noted the impact to the schools in the area would be tremendous. Any new students that result from residency in the apartment complex would be bused out of the area.

DENNIS HOLMES, 3610 BANFF AVENUE, said he is the Associate Principal of Billings Senior High. Currently a number of students in the subdivision and surrounding subdivisions are bused to Central Heights and Meadowlark Schools. Students east of 32<sup>nd</sup> will also have to be bused as the area is extremely overcrowded. He urged the Council to deny the zone change request. He said the area residents have been misled. He said he is very offended that the developers would suggest that his investment in his home is a small price to pay in lieu of 258 units of housing. Mr. Holmes expressed concern for the traffic congestion that will result. The only positive result of this zone change request has been to band the community together in opposition to it. He said the proposed ballfield was "nixed right off the bat" when the reality of partnering with any university or school system for public lands was found not to be feasible. He asked the Council to deny the zone change.

SONYA O'CONNELL, 3605 BANFF AVENUE, said her home would be directly affected by the proposed apartment complex. She said she investigated the area before buying her home and found only single-family residences. She asked the Council to deny the zone change.

PAT GREER, NO ADDRESS GIVEN, said she has consulted with both Dean Cech and Chancellor Sexton about the need for student housing in the area of the College of Technology. She said the proposal has never been for multi-family housing, but rather for student housing. This particular development has been totally designed to accommodate and be only available to the students from the College of Technology. Most of these students would be single so the complex has been designed to support them. She noted this development is bringing \$20 Million into the community using local builders and managers. The development was planned around an on-line student survey to poll what the student needs were. She said the result of the survey was the driving force behind the proposed development and the number and types of units. This development is directly tied to the college's growth. She also noted that street improvements would be part of the proposal that would ultimately reduce the traffic problems.

EKKO BARFIELD, FACILITIES MANAGER FOR MSU-B, noted the letter of support from Chancellor Sexton for the proposed housing development. It states the college's "support and appreciation for J.T. Lunsford Company's proposal to complete a housing project to accommodate the diverse housing needs of the students, faculty and staff". He noted the City Staff recommended approval initially, but the Zoning Commission

has recommended denial, stating “the new zoning would not facilitate the adequate provisions of schools, fire and police and is inconsistent with the character of the district”. The Commission also stated there would be a negative impact on the school system due to over capacity of schools serving this area. Mr. Barfield noted the proposed housing is designed to primarily support traditional students without children leaving minimal impact on the local school system. He said the issue regarding fire and police has been a long standing issue that will come before the voters this next Tuesday. This development is consistent with the City’s West End Growth Policy. He noted the date of the email from John Cech supersedes any of the agreements. The proposal for the parkland was eliminated because the Parks Department would not approve anything but the originally proposed development in the master plan.

GINA HARDY, 3614 BANFF DRIVE, said 36<sup>th</sup> Street West is going to be severely impacted with traffic if the entrance to this facility is placed there because the residents will still need to go shopping. She noted there are many other apartment complexes that are being built that are not being fully utilized, some offering a free month’s rent to entice future residents. Ms. Hardy said there are many children in this neighborhood and she is concerned for their safety with the new development. She asked the Council to listen to the opposition speakers who want their homes and investments to be protected and deny the zone change.

NICOLE BROWN, 91 WHITE SANDS, said she echoes all the concerns that have been brought to the Council this evening. She researched this area before purchasing her home because it was a family-oriented area. Student housing raises many concerns for her family and the neighborhood. She urged the Council to deny the zone change.

MATT GALLINGER, 3645 HARPER, said he has a few concerns about the proposed development. He said this area is “quite populated”. The student housing development was not what they tried to represent. He said he is concerned that this complex would be filled with tenants other than students, noting that the \$600 a month rent is usually out of range for students. Mr. Gallinger said there would be an impact on traffic with the addition of 258 units. He asked the Council to deny the zone change.

DAN CARTER, DIRECTOR OF GOVERNMENT RELATIONS FOR MSU-B, said Billings is a growing community and MSU-B’s enrollment is a part of that growth. Those students need a place to live. Many of the students agreed that this type of complex would be of interest to them. He submitted a petition in support of the student facility asking the Council to approve the zone change. These students are an important part of the community.

GAIL SLOTSVE, 263 CHACO CANYON WAY, said they bought their home in 1996. This lot was chosen because it was across from the park and single-family housing would be part of the development. There are 238 signatures on the petition to deny the zone change, she noted. Her home is her greatest investment and she wants it to be a place where her children can grow up and be safe. She expressed concern for the effects of additional traffic on her neighborhood.

TABITHA TRENARY, 3657 BANFF AVENUE, said she wrote letters to the Councilmembers concerning the traffic in her neighborhood. She said she is also concerned for pedestrian traffic on Central Avenue. She is opposed to the zone change.

CINDY RAWLINGS, 3649 BANFF AVENUE, said she is opposed to the zone change for many of the reasons previously stated. She said her neighbors are horrified at the broken promises of their development.

JOANN CALLAHAN, 291 WIND CAVE CIRCLE, said she bought the property with the understanding that there would be no one behind her and the view of the park would be unobstructed. The view from her deck is now nothing but apartments. She also questioned how many of the student signers of the petition will live in Billings and become registered voters. She was also concerned about the decrease in her property values when this student facility is built.

LISA HATLESTAD, 3603 CRATER LAKE AVENUE, said she emailed the Councilmembers this morning with her concerns. Her major concern is the 258-unit apartment which she would see from her deck. This facility will generate additional traffic and does not fit the character of the neighborhood. She said the property values will decrease. She noted the nine valid protests do not speak for everyone that is eligible to protest the development and zone change. Many other people will be affected, neighbors with small children who plan to stay in the area. These people have investments at risk, not the students who will rent the facilities. She asked the Council to deny the zone change and keep this family oriented neighborhood intact.

JOE WHITE, 926 NORTH 36<sup>TH</sup> STREET, said he does not live in the neighborhood. He said there will be a steady turnover of students in the 258 units. He also expressed concern for the lack of air quality and the impact this housing development will have on it.

DANA BOOTH, 352 ZION CIRCLE, said she doesn't understand the need for this 258-unit complex when only 68 students are interested.

JOE SCHEFFLEMAN, 3611 BANFF AVENUE, said he attended the Zoning Commission meeting for this request. Their neighborhood is comprised of many children and the character of the neighborhood is single-family residences. The proposed complex doesn't fit into that type of neighborhood. He urged the Council to deny the zone change.

SEAN WYMAN, 8535 CUT THROAT DRIVE, said his children are his biggest investment in his life. He said the City needs to support children and make life easier for them.

CLAYTON JORDAN, 57 38<sup>TH</sup> STREET WEST, said he supports the denial of the zone change request. He said high density will create traffic problems. He said the school should have been proactive about housing long before this.

KEVIN SWEENEY, NO ADDRESS GIVEN, said he in an attorney that has worked with Pat Greer and Jerry Lunsford but was not involved in the "front end" of this issue, but is presently involved. He agreed that the College of Technology should have thought about student housing years ago, but it didn't. This twelve acre tract was selected because it is within walking distance of the campus and can accommodate this kind of density. Mr. Sweeney said this project fits within the Growth Policy and West End Plan of the City and would be constructed on a major arterial and abuts a collector street with commercial property proposed for three sides. A curb cut in the middle of this tract would allow traffic egress and ingress onto Central Avenue that would decrease traffic on 36<sup>th</sup> Street West. He said this project seems similar to the apartment project allowed at 17<sup>th</sup> Street West and Poly Drive close to Rocky Mountain College. Mr. Sweeney said there have not been any adverse affects toward property values for residents in that area. He

noted that this type of housing may not involve as many children as regular single-family housing. It is also his understanding that the cost of this housing would be comparable to the costs for Rocky Mountain College students in their new dorm. This is significantly less than other apartments in the area.

ALAN HARTKE, 280 WIND CAVE CIRCLE, said he agrees with the previous speakers who expressed concern for how this zone change would affect their neighborhoods. He said the Council should deny the zone change. When he bought his home, which is bounded on one side by 36<sup>th</sup> Street West, he was assured that this street would not become a thoroughfare. He expressed concern for the safety of the children in his neighborhood if 36<sup>th</sup> is "opened up" and used by the students in the housing facility. He asked the Council to deny the zone change for this reason alone.

MITCH KING, 279 WATERTON WAY, said multi-family housing and not single-family homes are the best housing to place on Central Avenue. There are numerous apartment complexes in his area that are not full. He noted another 12-acre tract is available toward Shiloh Road. He asked the Council to deny the zone change.

There were no other speakers. The public hearing was closed. Councilmember Boyer moved for denial of Zone Change #740, seconded by Councilmember Ruegamer. Councilmember McDermott said she lives below MSU-B and these same traffic and parking problems due to high density are what happened to her neighborhood. Councilmember Boyer says she lives across from MSU-B and her neighbors share the same concerns of encroachment by the college into their areas. Councilmember Ruegamer said this is a busy area and he predicts more commercial would be "coming into this area". Councilmember Jones noted that he and Councilmember Ruegamer both attended a meeting of the homeowners in the area and met with the engineer of the project. Councilmember Jones expressed his concern about the project's changing complexity and the effect on the neighbors. Councilmember Clark noted that he received a tremendous amount of communication from his constituents in opposition to the zone change. On a voice vote, the motion was unanimously approved. The zone change was denied.

~~6. **PUBLIC HEARING AND RESOLUTION 04** approving a tax exempt bond financing to be issued by the Arizona Health Facilities Authority to benefit Blood Systems Inc, through construction of various facilities including United Blood Services building in Billings. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)~~

**6. PUBLIC HEARING AND FIRST READING ORDINANCE amending BMCC by adding Section 27-1400: establishing a zoning overlay district to extend 1,000 feet from the center line of Shiloh Road from King Avenue West north to Rimrock Road; regulating development standards, landscaping standards, building design standards and other site development standards; and regulating sign standards for commercial, industrial and multifamily developments. (Delayed from 9/27/04). Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

Planning Manager Candi Beaudry said this item was before the Council in August. She gave an update of the procedural history:

- o 1) Zoning Commission approval with the exception of Zoo Drive on 5/10/04.

- 2) City Council and County Commissioner's joint public hearing and first reading of the ordinance north of Hesper Road approved – district separated at request of City Council after appeal of landowners on 6/14/04.
- 3) Second reading of ordinance north of Hesper Road and first reading, ordinance south of Hesper Road delayed in order to consider County Commissioner's discussion meetings with the impacted parties on 7/12/04.
- 4) County Commissioner's meetings from 7/14/04 to 8/9/04.
- 5) Second reading of ordinance north of Hesper Road delayed pending finalization of County Commissioner's changes on 8/23/04.
- 6) Updated first reading of ordinance for entire district withdrawn for incorrect legal notice on 9/27/04.
- 7) Public hearing and approval of the updated first reading of the ordinance north of King Avenue scheduled on 10/25/04 – district separated at request of 100% of the landowners south of King Avenue.

Ms. Beaudry said the Staff recommendation for this evening is to approve on first reading, the Shiloh Corridor Overlay District as defined by the area 1,000 feet from centerline of Shiloh Road, from King Avenue north to Rimrock Road, consistent with the West End Plan. She said the Legal Staff advised that this be separated and to reach an agreement with the landowners south of King Avenue. The landowners south of King Avenue said their property was unique, serving the Interstate and should have different standards that apply to their commercial developments. She said the previous changes made to accommodate the Interstate landowners were removed from the proposed northern district regulations. Additional changes have been incorporated to address other public comments made during the County Commissioner's input process.

Ms. Beaudry said the incorporated changes included:

- 1) direct appeal to the Planning Director to seek approval on development applications.
- 2) vague language omitted.
- 3) simplified light emission standards.
- 4) reduced number of relative points required to accommodate smaller businesses.
- 5) replaced imprecise design elements with quantifiable standards – a development can't vary more than 10% in mass or height from the adjacent developments.
- 6) allowed electronically changeable message signs.
- 7) included a provision to reexamine regulations after one year to determine effectiveness.

Ms. Beaudry said the changes discussed with the landowners south of King Avenue have yet to be resolved. These changes include

- 1) allow the City Council to act as appeal board.
- 2) reduce width from 1,000 to 500 feet.
- 3) reduce the number of required trees and shrubs.
- 4) increase lighting and sign heights.
- 5) further reduce the number of relative points required.
- 6) permit a greater light illumination budget.
- 7) allow video boards.

- o 8) allow clustering of landscape trees and shrubs.
- o 9) exempt automobile and RV sales area from lighting and landscape standards.

She said the recommended procedure for the Council would be to proceed with adoption of the district north of King Avenue only. The staff would bring proposed regulations for the district south of King Avenue for Council action on December 13<sup>th</sup>. The landowners say they would prepare a draft based on the existing Shiloh Overlay District that would be consistent with the City's enhanced design objectives. If that draft would not meet the objectives, the Staff would work toward compromise to develop a set of regulations that do meet those objectives of an aesthetically enhanced entryway.

Councilmember Brewster asked if a parcel is subdivided, would the entire parcel be subject to the regulations, or just the portion directly adjacent. Ms. Beaudry said if any part of an existing parcel falls within the 1000 feet, that parcel would be subject to these regulations. Mr. Bauer said if the parcel is subdivided only the portion that touches the boundary would be subject to the regulations of the overlay. Councilmember Brewster asked if the Council should initiate the zone change that was mentioned in the staff report. Ms. Beaudry said the staff envisions the text amendments would be approved, but if Council feels that sufficient public notification was offered, the Staff could proceed with a zone change. This could be decided at the second reading. Councilmember Clark asked if the district could conceivably be larger than the 1000 feet due to parcels that have only a portion of the land touching the boundary. Ms. Beaudry said that was possible but she did not know the potential depth. Councilmember Clark asked what kind of zone change could encompass what the overlay district does. Ms. Beaudry said the zone change would be such that it would allow the overlay district to go into effect on the property. The procedures that are being followed now are in line with a text amendment and are sufficient to apply to a property. She said it has been suggested that this does not include enough landowner notification and going forward with the zone change procedure would afford greater notification and opportunity for comment. This would place it on the official zoning map because the overlay would not be as it is submitted. Ms. Beaudry said the landowners know their property is already zoned and the overlay district would place additional requirements upon them. Mr. Bauer noted that a zone change following the conclusion of first and second readings of this action would still allow the Council to change something that has been brought to their attention due to that process or to place this on the official zoning map. Ms. Beaudry noted that the process the Council is considering this evening does comply with state law as well as local regulations for text amendments. After some discussion of the Board of Adjustment, Ms. Beaudry noted that the function of that board is to work on issues such as an appeal that must go beyond the Planning Director for resolution involving these regulations. Mr. Bauer noted that the appeal to the Planning Director is an additional "free" step before paying \$300 to go before the Board of Adjustment. He said the Council's jurisdiction is only to follow the ordinance in place or amend the ordinance as needed.

The public hearing was opened. GLEN OPPEL, GOVERNMENT AFFAIRS DIRECTOR WITH THE BILLINGS ASSOCIATION OF REALTORS, said the Council has covered many of the issues raised in their letter to the Council last week. He said the association has been very supportive of the concept of the proposal and have committed time and resources from a legal standpoint. He noted the lack of consistency when the

City did not extend the required notification for protest to the affected landowners as late as September of 2004. The association has gotten involved because of the desire to make the proposal better. He said the text amendment procedure with the notification and right to protest is a step in the right direction insulating the proposal from legal challenge. Mr. Oppel said the zone change would definitely hold up against any legal challenges. The property owners are in the center of this debate and should be given due process to the fullest extent available under the law. He encouraged the Council to look at the merits of a zone change.

ED HUDSON, 4119 PALISADES PARK DRIVE, said the reason for the overlay is to impose heighten design standards on new commercial development. He said the 1000 foot requirement is more stringent than it needs to be. It seems unfair to impose those standards on developments that are not visible from the corridor. He said the Billings Association of Realtors recommends that the width be reduced to 500 feet with the stipulation that if a portion of a lot falls within the overlay then the full extent of the lot is subject to the overlay. This would maintain the purpose of the overlay district to promote a more aesthetically pleasing district and ensure that extra costs associated with heightened design standards would only apply to new commercial developments visible from Shiloh Road.

AL LITTLER, 4704 BURLINGTON, said the overlay district is in "his backyard". He said he is tired of Shiloh Road being a mess and fully supports this corridor. He said he appreciates the inclusion of an appeals process. He said the Council has the ability to deal with an appeals process by state statute. The Board of Appeals usually handles a different type of appeal such as errors and unnecessary hardships than what concerns the landowners in the overlay district. He asked the Council to take this into consideration.

DOUG JAMES, ATTORNEY WITH MOULTON, BELLINGHAM LAW FIRM, said he represents St. Vincent Healthcare who supports the Shiloh Overlay Corridor via their Planned Unit Development - The Village on the northwest corner of King Avenue and Shiloh Road. The overlay was adopted and incorporated into their Planned Unit Development spreading the requirements over 2000 feet from Shiloh Road. He asked the Council to move forward and adopt the overlay regulations. It is an important step and direction for the City to take.

JOE WHITE, 926 NORTH 30<sup>TH</sup> STREET, said he supports splitting the district, keeping open areas and agricultural areas on the west side of Shiloh Road. He urged the Council to consider the will of the people on this matter.

JACK JOHNSON, NO ADDRESS GIVEN, said he represents the Yellowstone Citizens Council. He said he is appreciative of the work that has been done to put this "shield" into place, but is disappointed that the "shield" does not go to the Interstate. He said many of the things that are being discussed could be resolved if the proposal was looked at as a total picture.

ED ULICH, 3015 10<sup>TH</sup> AVENUE NORTH, said he is the chair of the Livable Communities Action Committee of the Yellowstone Valley Citizens Council. This council advocates an inviting and sustainable community and has dedicated time and energy insuring that a corridor into Billings would be implemented. He said the Shiloh Overlay District as presented by the Planning Department should be implemented so that the entrance to Billings will be something that everyone is proud of. It is important that Zoo Drive be included and that it meets the "spirit of these standards". He said he hopes the

electronic message signs will be prohibited because it diverts the attention of drivers, creating safety issues. He urged the Council to adopt the Shiloh Corridor Overlay District with the aforementioned change.

BILL COLE, 3733 TOMMY ARMOUR CIRCLE, said he appreciates all the hard work that has gone into this project. This concept was first approved with the adoption of the West End Billings Plan in 2001. He quoted the goal as "to ensure that the reconstruction of Shiloh Road and development neighboring Shiloh Road is designed to a special standard reflecting it's function as an entryway into West Billings and the entire Billings community". He said the public has made it clear that this area should be developed to a high aesthetic standard and in a pleasing way. They reflect a higher level of development that is already occurring on Shiloh Road and will establish a minimum standard to protect or enhance property values which is why a majority of the landowners support these standards. Mr. Cole said a 500 foot width off the centerline may not achieve the desired goals. It is likely that 200 feet of right-of-way would be "eaten up" before there is a chance to apply the standards. He recommended a one year moratorium on the message boards to allow the Staff time to review the issue.

OSCAR HEINRICH, 4210 WELLS PLACE, said he agrees with the comments of Mr. Cole. He urged the Council to approve the text amendments and consider the moratorium on the message boards.

HOWARD EGGBRECHT, OWNER SHILOH VILLAGE PARK, said the overlay would interfere with the addition he would like to make to his trailer park. He said most of the requirements would take effect on land that is not developed and is located between Central Avenue and Monad Roads.

There were no other speakers. The public hearing was closed. Councilmember Clark moved for approval of the Staff recommendation, seconded by Councilmember Ruegamer. Councilmember Brewster amended the motion re: Section 27-1402 of the ordinance regarding the district boundaries to change the depth of the district from 1000 feet from the centerline of Shiloh Road to 500 feet from centerline from King Avenue north to Rimrock Road, seconded by Councilmember Brown. Councilmember Boyer asked if a parking lot would prevent a development adhering to the regulations if it was the only portion that fell within the 500 foot designation. Mr. Bauer said the regulations could be avoided with a lot line adjustment that would have to be approved by the Council. However, whatever portion of the 500 feet remains would be subject to the regulations. Councilmember Brown asked if a zone change would ensure protection against a lawsuit. City Attorney Brent Brooks said the City can't guarantee it will always be insulated against litigation. He said the City has required more than what the City's Unified Zoning Code requires and adopted some provision that are not in the code to place the City in a safer position. He noted the Legal Department has suggested that the Council be open to allowing the protest provision of the zone change statutes that are active in the state code to minimize the ability to challenge. On a voice vote, the amendment was approved with Councilmembers Boyer, Gaghen and Mayor Tooley voting "no".

Councilmember Jones moved to amend the motion to add to the process that property owners have the option to go to the Board of Adjustment or City Council for appeal, seconded by Councilmember McDermott. Councilmember Brewster said he does not see what is to be gained by this motion. Councilmember Jones said by the nature of the position, the Councilmembers answer to the constituents, whereas the Board of

Adjustment members are not elected. Councilmember Boyer said the Board of Adjustment would be more objective because they are not involved in the political process. The other issue is that the Council could become “bogged down” with appeals. Mr. Bauer noted an amendment to Section 27-1505 to change the scope and duties of the Board of Adjustment would be necessary if this amendment is approved. He also cautioned the Council about the additional liability they would be taking on because the adjacent property owners may take issue with what actions the Council takes towards granting a variance. Councilmember McDermott said the issue of reaching a quorum on the Board of Adjustment would go a long way to giving petitioners a feeling of ease that their appeals will be considered in a timely manner. On a voice vote, the amendment failed with Councilmembers Jones, Clark, McDermott and Brown voting “yes”.

Councilmember Brewster asked that the zone change information be included in the second reading. On a voice vote, the motion as amended was unanimously approved.

**7. PUBLIC HEARING AND RESOLUTION 04-18212 vacating the north half of Spalding Avenue adjacent to Lots 1-2, Block 13, Yellowstone Club Estates Subdivision, 5<sup>th</sup> filing, Mary Crippen, etal, petitioners. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

There was no staff report. The public hearing was opened. RICK LEUTHOLD, 1260 32<sup>nd</sup> STREET WEST, said this is a short piece of right-of-way that goes nowhere. It was originally dedicated with Yellowstone Country Club plats many years ago and was not developed and does not access any particular location. Mary Crippen has a home that sits across two lots adjacent to the right-of-way and desires a vacation to incorporate it and her lots into a single parcel. This vacation was begun, but was caught up in the process of the annexation of the Yellowstone Country Club properties. He asked the Council to approve the request as there is no cost basis for this property.

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

**8. PUBLIC HEARING AND SPECIAL REVIEW #770: a special review for on-premise beer consumption in a Community Commercial zone on Lots 14, 15 and 16, Block 1 of Luse Subdivision and Lot 13-A of Amended Plat of Lots 12 and 13, Block 1, Luse Subdivision, located at 1604 Grand Avenue. American Pizza Partners, L.P, owner. 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 Gaghen moved for approval of the Zoning Commission recommendation, seconded by Councilmember McDermott. Councilmember Jones asked what the conditions were. The Zoning Commission is recommending conditional approval with the condition that the special review approval shall be limited to Lots 14, 15 and 16, Block 1 of Luse Subdivision and Lots 13-A of Amended Plat of Lots 12 and 13, Block 1, Luse Subdivision. On a voice vote, the motion was unanimously approved.

**9. PUBLIC HEARING AND SPECIAL REVIEW #771: a special review to allow the location of a beer & wine license with gaming in a Community Commercial zone on the north east portion of Lots 1-6 and 19-24 of Block 1, Houser Subdivision, located at 710 14<sup>th</sup> Street West. CNJ Distributing, George Frank owner; cbg architects, Charles Goldy, agent. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

Zoning Coordinator Nicole Cromwell said the Council denied a zone change in July, 2004 across the street to move this beer and wine license to another location. The applicants reviewed their property and are proposing the special review to move an existing beer and wine license on this property to a different location on the same property that meets the state law requirement to separate the licenses by 150 feet. She said there were objections to the special review at the Zoning Commission meeting, but the Commission believes the objections can be overcome with the conditions.

Ms. Cromwell said the Zoning Commission is recommending conditional approval with the following five conditions:

1. The special review approval shall be limited a beer & wine license with gaming and applies only to Lots 1-6 & 19-24 of Block 1, Houser Subdivision.
2. The proposed building location, parking plan and landscaping shall be as shown on the site plans submitted with this application.
3. The building and additional parking area shall be developed at the same time.
4. The parking lot north of Wyoming Avenue shall allow parking only on the improved section of the lot and no parking shall be allowed on the unimproved area adjacent to the alley.
5. Parking and site lighting shall use full cutoff fixtures and no light shall trespass on adjacent properties.

Councilmember Clark asked what would keep the public from parking in the unimproved dirt lot. Ms. Cromwell said there would be a standard City curb to deny access to the area and signs may need to be placed to warn drivers that it is not an acceptable parking area. Councilmember Boyer asked about the lack of a buffer zone between the parking and the residential areas. Ms. Cromwell said there would not be any buffer, the proposal is to leave the area as it previously was. The alley will not be accessible from any parking lot that will be developed on the site. If the site is paved, they would have to construct a screen along the alley. Complaints about on-street parking are driving the additional parking area.

The public hearing was opened. CHARLES GOLDY, 2127 LYNDALE LANE, said the owners have tried to do what the Mayor and City Council suggested at the zone change hearing, find a piece of property that is zoned properly that fronts on Broadwater or an arterial to place the casino. That is why the location on the corner was chosen. Additional parking is being provided across the street. He said any restrictions for on-street parking would be placed on the west side of the street. He noted that the person most concerned about the vacant lot did not want a fence as a buffer but was more concerned about the grass remaining and being maintained. Large boulders and natural landscaping can be placed on the unimproved lot to deny access for parking. He said the desire is for the area to look nice and work well. Mr. Goldy said the parking lots are only

full when another business uses them during a World Series or Superbowl event. On-street parking is normally used by other businesses.

TOM WILLIAMS, OPERATIONS MANAGER OF CNJ DISTRIBUTING, 2221 CONSTELLATION TRAIL, said the desire is to move the Maverick Casino from Doc & Eddy's Plaza. This action would meet the state law requirements and the City zoning requirements. He added that the parking requirements have been satisfied. The same customers would be using the casino, but it will be a different location for them to go to. He noted that Police records show no complaints against Doc & Eddy's Plaza.

There were no other speakers. The public hearing was closed. Councilmember McDermott moved for approval of the Zoning Commission recommendation, seconded by Councilmember Gaghen. Councilmember Ruegamer noted the strip mall close by is rarely full, having space for 5 businesses and only 3 currently filled. He, therefore, did not think the on-street parking is an issue. There are two garages between the residential area and the parking lot making the buffering concern not an issue. He said it is a good fit and a logical request. On a voice vote, the motion was unanimously approved.

**10. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #745: a zone change from Residential Multi-family to Controlled Industrial on a 4.75 acre parcel described as the N2 of Lot 4 in T1S-R26E-S9:SW4, located at 2069 South Billings Boulevard, on the east side of South Billings Boulevard, north of Newman School. Ralph Hanser, owner; Michael Burke, agent. Zoning Commission recommends approval of the zone change and adoption of the 12 criteria determinations. (Action: approval or disapproval of Zoning Commission recommendation.)**

Zoning Coordinator Nicole Cromwell said the Zoning Commission is recommending approval of the zone change located directly across from Hanser's Automotive. The property has been used as an ad hoc parking lot for several years by the Hansers. They would like to formalize the property as a parking lot for their expanding business. The Southwest Task Force has endorsed the proposal. She noted the owners intend to screen and buffer the site. Councilmember Clark asked if the owners would have to fence in the other area if they start to store wrecked autos there. Ms. Cromwell said they would have to apply for a special review and obtain approval from the City Council to expand their wrecking facility. Councilmember Brown asked if they were doing any crushing at their site. Ms. Cromwell replied "no".

The public hearing was opened. MICHAEL BURKE, 2101 LOCUST, said this proposal has received approval from the Southwest Corridor Task Force and endorsements from 32 signers of a petition in favor of the zone change and opposed to the Residential Multi-Family zoning. That residential zoning does not make sense with the way South Billings Boulevard is developing. Controlled Industrial appears to be the direction both the planning and the street are heading. He said Hanser's has a good relationship with the neighborhood, always conferring with each of the residents on any proposed changes. The parking lot would be completed in phases, with portions paved at different times. The neighborhood supports the zone change and he asked the Council for their support.

DEBBIE BRUN, 2241 ROLLING MEADOWS DRIVE, said she is the Marketing Director of Hanser's Automotive. She spoke on behalf of the residents who signed the

petition in support of the zone change as some of the signers left the Council meeting due to the late hour. Hanser's Automotive made great efforts to ensure the neighbors were considered during the zone change process. She said the neighbors were visited individually to find out their preferences for the proposal.

RALPH HANSER, 1769 ROUTE 2 NORTH, HUNTLEY, MT, said he has been in business in Billings for 40 years at the present location. He said he has waited for the right time to do this zone change both from an economic as well as current development viewpoint. Mr. Hanser said he personally met with each neighbor to discuss the plans for this parking area and received no opposition. The plans include a nine-foot fence to screen the lot and to install the appropriate storm drainage. He said he hopes to build on the property to allow the next generation to operate the business successfully. Mr. Hanser said this business employs 92 people and 60% of the income comes from outside the State of Montana through several different divisions of the operation. He noted the business has received the Governor's Award for Safety and many other awards for their efforts against pollution. He said the business has been a good neighbor to the area and the community and would be honored if the Council approves the zone change.

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

**11. PUBLIC HEARING AND FIRST READING ORDINANCE amending Section 27-614 BMCC, setting standards for all temporary uses in nonresidential zoning districts, eliminating performance bond requirements for certain temporary uses, extending time periods for groups of temporary uses and setting allowable advertising signs for temporary uses. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

Zoning Coordinator Nicole Cromwell said the Zoning Commission held a public hearing on the proposed changes to the City Code regarding temporary uses on October 5<sup>th</sup>. This was initiated by the Council in April of 2004 to accommodate certain issues concerning seasonal uses of residential and agricultural property as well as seasonal sales on commercial property. The Planning Staff took the opportunity to do some "housecleaning" and standardizing as well as addressing the performance bonding issues that were at the core of the seasonal sales uses. She said the Zoning Commission is recommending approval with revisions eliminating the permitting for seasonal sales in residential or agricultural districts.

The Council desires to retain the permitting for Group 2 & 3 as it currently is in commercial districts and for seasonal sales in residential and agricultural districts. Ms. Cromwell said the County Zoning Commission held a public hearing on October 12<sup>th</sup> on the same revisions and made recommendations to the County Commission who will have their first hearing on these changes tomorrow, October 26<sup>th</sup>. Those recommendations were to retain permitting in the zoning districts where there currently is permitting requirements for Group 2 and Group 3 and residential and agricultural districts for seasonal sales and to eliminate the bonding requirements in total. The City Zoning Commission is recommending retaining the bonding requirements for Group 3 uses – the long term temporary uses.

Ms. Cromwell said she met with the County Commissioners today and it is their intention to retain the bonding requirement for Group 3 uses with a slight modification from the County Zoning Commission recommendation. She noted there is a month to work out any differences between the two bodies. Councilmember Brewster asked if the maximum size limitation concerns regarding landscaping have been reviewed. Ms. Cromwell said she has reviewed the existing code and spoke with other planners working with temporary uses. It is the City's application of the existing code that landscaping is required for Group 3 temporary uses where it is triggered by a landscaping section of the code. This is part of the site development requirements for any commercial use of any property. If any existing development is already on the subject lot, that development usually has landscaping over and above anything that could be triggered by a temporary use location. In answer to a question by Councilmember Jones, both the owner and concession applicant must sign the permit request. Councilmember Jones asked about signage requirements. She said that banner signs, paper or cardboard signs would be prohibited. Free standing signs or wall signs for Group 2 uses cannot exceed 32 square feet.

The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Brown moved for approval of the Staff recommendation, seconded by Councilmember McDermott. Councilmember Jones amended the signage limits to be consistent at 100 square feet for all groups and for all temporary uses in residential areas, seconded by Councilmember Clark. Councilmember Clark asked why 32 square feet was included for certain groups. Ms. Cromwell said Group 1 requirements did not have any particular standards to comply with, Group 2 uses were allowed 32 square feet and Group 3 uses were allowed 100 square feet. To standardize the restrictions, 32 square feet was added to the Group 1 uses, leaving the former restrictions for Groups 2 & 3 as they were. On a voice vote, the amendment was unanimously approved. On a voice vote, the motion as amended was unanimously approved. (See reconsideration under Council Initiatives at end of the agenda.)

~~12. **PUBLIC HEARING AND FIRST READING ORDINANCE** amending BMCC by adding Section 27-1400: establishing a zoning overlay district to extend 1,000 feet from the center line of Shiloh Road from King Avenue West north to Rimrock Road; regulating development standards, landscaping standards, building design standards and other site development standards; and regulating sign standards for commercial, industrial and multifamily developments. (PH held 6/14/04; Delayed from 9/27/04). Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)~~

**12. PUBLIC HEARING AND RESOLUTION 04-18213 approving a tax-exempt bond financing to be issued by the Arizona Health Facilities Authority to benefit Blood Systems Inc, through construction of various facilities including United Blood Services building in Billings. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

There was no staff report. The public hearing was opened to consider the issuance of tax exempt bonds for the purpose of financing the acquisition of land and the eventual construction improvement of capital projects for Blood Systems, Inc., known primarily for its community blood centers as United Blood Services, including a blood center to be

located in Billings, MT. The public hearing for financing is required by federal tax law. There were no speakers. There were no written public comments received by the City Clerk. The public hearing was closed.

Councilmember Ruegamer moved for approval of the Staff recommendation, seconded by Councilmember Gaghen. Councilmember Clark noted the building is already built and must have been financed and asked why the City is asked to approve the tax-exempt bond financing. Mr. Bauer said this was a request from the Arizona Health Facilities to do this. Councilmember Brown asked if due diligence has been done on their financial credibility. Mr. Bauer said the City has relied on the people with the jurisdiction in Arizona to perform that in this case. On a voice vote, the motion was approved with Councilmember Brown voting "no".

**13. PUBLIC HEARING AND RESOLUTION 04-18214 making first quarter budget amendments for FY2004-05 for the General, Fannie Mae Loan, Public Safety, Drug Forfeiture, Property/Liability, 911 Grant and Airport Funds. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

Deputy City Administrator Bruce McCandless said a portion of these amendments result from the increasing costs of liability insurance, and several amendments for the Airport. There are funds available for the Airport's purposes. The 911 amendment concerns funds for the computer.

The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Boyer moved for approval of the Staff recommendation, seconded by Councilmember Ruegamer. Councilmember Clark said when the budget is so tight, where are the funds coming from to fund some of these items. Mr. McCandless said this was an oversight that occurred during the time when all the personnel projections were known. Some of the COLA increases for the firefighters were missed and the \$96,000 is the amount that was underestimated. Because the Fire Department typically comes very close on their estimates it is possible that this will not be needed at the end of the fiscal year. He said this is mostly to make the Council aware of the oversight and to amend the budget in the event that it is required. If it is needed, the Public Safety Fund gets a major part of its funding from the General Fund, in this case it would be General Fund expenditure. Mr. Bauer said it would lower the ending fund balance by spending reserves. On a voice vote, the motion was unanimously approved.

**14. PUBLIC HEARING AND RESOLUTION 04-18215 making a budget amendment to the FY 2003-04 budget for the Park Maintenance District Fund. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

Deputy City Administrator Bruce McCandless said this is for the fiscal 2004 budget that was closed out June 30, 2004. This normally would have been found in May or June of this year, but it was not found until a few weeks ago during financial report preparation prior to the 2004 audit. There were a higher number of Park Maintenance Districts created during the last year than were anticipated when the budget was set. Higher water costs were another reason for the budget amendment.

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

**15. PUBLIC COMMENT on Non-Agenda Items -- Speaker sign-in required. (Restricted to ONLY items not on the printed agenda; comments limited to 3 minutes per speaker.)**

There were no speakers.

**Council Initiatives**

NONE

**RECONSIDERATION:**

Councilmember Brown said his motion to approve Item 11 should have included the elimination of the bond requirements for the long-term temporary uses. Mr. Bauer said the motion must be clear and the ordinance amended to ascertain the will of the Council.

Councilmember Brewster moved to reconsider Item 11, seconded by Councilmember Clark. On a voice vote, the motion was unanimously approved. Councilmember Brewster moved to approve the Staff recommendation on Item 11, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved. Councilmember Brown moved to amend the ordinance to remove the bond requirement from Group 3 temporary uses, seconded by Councilmember Clark. Mr. Bauer said that communication from the owner of Mountain Mudd requested that this bonding requirement be maintained on the Group 3 temporary uses. Councilmember Jones said this is a cost to these businesses that is not warranted. Mr. Bauer said this is a discussion based on a disincentive for the temporary uses that tries to get them to be permanent uses. On a voice vote, the amendment failed with Councilmembers Brewster, Brown, Ruegamer and Jones voting "yes". On a voice vote on the main motion, the motion was approved with Councilmember Brown voting "no". The amendment regarding the signage requirement will be addressed at the second reading.

**ADJOURN** —With all business complete, the Mayor adjourned the meeting at 12:10 A.M.

THE CITY OF BILLINGS:

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

ATTEST:

*MINUTES: 10/25/04*

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