

## City of Billings Zoning Commission Meeting October 6, 2009

**The City of Billings Zoning Commission met on Tuesday, October 6, 2009 in the City Council Chambers at 210 N. 27<sup>th</sup> Street, 2<sup>nd</sup> Floor.**

Chairman Leonard Dailey, Jr. called the meeting to order at 4:35 p.m. Chairman Dailey said the recommendations of the Zoning Commission on the items heard tonight will be forwarded to the City Council to be heard at their meeting during a public hearing scheduled for **Monday, October 26, 2009** at 6:30 p.m.

<b>Commission and Staff</b>		<b>01/06/2009</b>	<b>02/03/2009</b>	<b>03/03/2009</b>	<b>04/07/2009</b>	<b>05/05/2009</b>	<b>06/02/2009</b>	<b>07/07/2009</b>	<b>08/04/2009</b>	<b>09/01/2009</b>	<b>10/06/2009</b>	<b>11/03/2009</b>	<b>12/01/2009</b>
Barbara Hawkins	Commissioner	1	1	A	-	A	1	-	1	1	E		
Michael Larson	Vice-Chair	1	1	A	-	1	1	-	1	1	E		
Edward Workman	Commissioner	1	1	1	-	A	1	-	-	1	1		
Chairman Dailey, Jr.	Chairman	1	1	1	-	1	1	-	1	1	1		
Commissioner Krivonen	Commissioner								A	A	1		
Candi Beaudry	Director	-	-	-	-	-	-	-	-	-	-		
Nicole Cromwell	Planner II, Zoning Coordinator	1	1	1	-	1	1	-	1	1	1		
Tammy Deines	Planning Clerk	-	-	-	-	1	1	-	-	1	1		
Wyeth Friday	Planning Division Manager	-	-	-	-	-		-	-	-	-		
Juliet Spalding	Planner II	-	-	-	-	-		-	-	-	-		
Lora Mattox	Planner II	1	-	-	-	1		-	-	-	-		

Total Number of 2009 Applications	01/06/2009	02/03/2009	03/03/2009	04/07/2009	05/05/2009	06/02/2009	07/07/2009	08/04/2009	09/01/2009	10/06/2009	11/03/2009	12/01/2009	01/06/2009
Zone Change	0	0	0	0	0	2	0	1	1	3			
Special Review	3	1	1	0	2	0	0	1	0	1			

Chairperson Dailey introduced the Planning Department Staff and Commission:  
 Nicole Cromwell, Planner II/Zoning Coordinator  
 Tammy Deines, Planning Clerk  
 Terry Smith, City Engineering Division

**Public Comments:**

Chairman Dailey called for public comments at 4:37 p.m. There were none. Chairman Dailey closed the public comment portion of the meeting.

**Approval of Minutes: September 1, 2009**

*On a motion by Commissioner Workman, seconded by Commissioner Dailey and approved with a 3-0 voice vote the minutes of September 1, 2009 were approved with a request for a correction on page 5-5 to correct the motion count to 4-0.*

**Public Hearings:**

At 4:41 p.m. Chairman Dailey reviewed the rules and the procedures by which the City Zoning Commission public hearings are conducted.

- 1) **Item #1: Return Item – City Zone Change #850 - Text Amendment – Sections 27-201, and 27-611 – Sexually Oriented Businesses (SOB)** – An amendment to 27-201 and 27-611 to update the regulations to include a definition of “Adult Cabaret”, and regulate where an “Adult Cabaret” may be located.

Ms. Cromwell read the legal description, presented a brief power point presentation, and gave the staff recommendation. The Planning Division is recommending approval of this zone change. She stated that Staff has not received any comments from the business owners on the proposed amendment language. She reviewed the current City Code Section 27-611 and noted the proposed additional separated uses with this text amendment and the definition for “adult cabaret”. She stated that the amendment does not create any non-conforming sexually oriented businesses within the city.

## **REQUEST**

Section 27-611 of the Unified Zoning Regulations regulates where Sexually Oriented Businesses (SOBs) may locate within the City of Billings. The existing regulations are intended to diminish the negative secondary effects of SOBs throughout the city. In June 2008, a deficiency in the existing regulations allowed an SOB to locate in the Central Business District zone at 222 North Broadway. This location is within 1,000 feet of a school, a park, three churches and the Parmly Billings Public Library. In June, 2008, Section 27-611 did not regulate commercial establishments that offer or provide live adult nude or semi-nude performances on a regular basis. The City does prohibit this activity only where alcoholic beverages are served (Section 3-304 BMCC). Staff is recommending approval of this zone change.

## **BACKGROUND**

On June 23, 2008, the City Council adopted an interim ordinance to eliminate this deficiency until a permanent ordinance could be drafted and submitted to the Zoning Commission and City Council for review and public hearings. Montana state law allows cities to adopt interim zoning as a matter of urgency without the review of the City Zoning Commission or the publication of several legal ads in advance of the City Council public hearing. Interim zoning regulations may only be in effect for six (6) months from the date of enactment unless extended by the City Council.

The City Zoning Commission conducted a public hearing on Zone Change #850, on October 7, 2008, and recommended approval of the adoption of amendments to the regulations. Subsequently, the City Council held a hearing on October 27, 2008, on the first reading of the ordinance. Testimony provided at the first reading indicated that two existing adult book stores would be negatively affected by the proposed changes. On November 10, 2008, the City Council voted to indefinitely postpone the 2<sup>nd</sup> reading of the ordinance and remanded the ordinance for further revisions to the Planning Division. On December 8, 2008, the City Council extended the interim zoning ordinance for 1 year and this interim ordinance will expire on December 23, 2009.

## **Discussion:**

Chairman Dailey asked the members of the Commission for questions and discussion. Commissioner Workman asked if the current sexually oriented businesses' locations are permissible under this ordinance. Ms. Cromwell stated that these businesses will fall under the proposed regulations. In response to a question by Commissioner Dailey, Ms. Cromwell gave clarification on the nonconforming location status for "Broadway Adult Books & Video". She pointed out that another such business located at the Mossmain interchange is outside any zoning district and that "Planet Lockwood" is located in the County, and falls under separate County-adopted regulations that apply only within the county.

## **Proponents:**

At 4:51 p.m. Chairman Dailey called for proponents for City Zone Change #850.

**Greg Kruger, Development Director, Downtown Billings Partnership, (no address given)**

Mr. Kruger stated that he strongly supports this amendment. He stated that downtown properties pay \$5.00 per square foot in taxes and he voiced concern with the ability to maximize the available space.

**Opponents**

Chairman Dailey called for proponents for City Zone Change #850. There were none. Chairman Dailey closed the public hearing.

**Motion**

*On a motion by Commissioner Workman, seconded by Commissioner Krivonen and approved with a 3-0 voice vote a recommendation to approve the text amendment to Sections 27-201 and 27-611 of the City Zoning Code to update the regulations to include a definition of “Adult Cabaret”, and regulate where an “Adult Cabaret” may be located as presented by Staff.*

**Discussion**

Chairman Daily called for discussion on the motion. He commented that he feels that this is “a move in the right direction”.

**Item #2:** City Zone Change #853 – Text Amendment to Sections 27-615 & 27-618 – Clear Vision Areas

**REQUEST**

This is a zone change that will amend several sections of the Billings, Montana City Code (BMCC) including section 27-604 related to fences, 27-615 related to clear vision areas, 27-618 illustrations of clear vision areas, and delete sections 22-441 through 22-448 a redundant section related to clear vision areas in the chapter on streets and sidewalks. The City Engineering Division and the Planning Division requested the City Zoning Commission initiate this amendment and on December 2, 2008, the Zoning Commission granted the request. On September 1, 2009, the Zoning Commission held a public hearing and received testimony on the zone change. The Zoning Commission voted to continue the public hearing until October 6, 2009, so revisions to the ordinance could be drafted that specifically apply to the Central Business District (CBD) zone.

**RECOMMENDATION**

The Planning Division is recommending further discussion by the members of the Commission on the amended language for the Central Business District.

At 4:53 p.m., Ms. Cromwell read the legal description and presented a brief PowerPoint presentation. She stated that since the last Zoning Commission meeting, these amendments have been reviewed and revised by City Engineer Terry Smith and Citizen Randy Hafer; and they have inserted a separate section specifically addressing the Central Business Zone along with two additional tables to depict how these different areas will be measured. She continued with an explanation of the proposed height restrictions for fences and hedges and for clear vision zones.

She stated that since she received the new language for the CBD from City Engineering today, she is recommending that further discussion be held by the members of this Commission. She asked for input from City Engineer Terry Smith.

**Discussion:**

Chairman Dailey asked the members of the Commission for questions and discussion. In response to a question by Chairman Dailey, Nicole Cromwell stated that although she is unable to forward a staff recommendation, staff will be ready for the Zoning Commission's recommendation this evening. Terry Smith explained that they felt that the streets would not be physically widened in the Central Business District (CBD), and that is why the measurements are taken from curb line instead of from the property line. He commented that this will place the driver's eye equal with the property line. He stated that the impact is the ability to build on the private property and that they do not wish to have wider streets with faster moving traffic. Regarding the driveways in the CBD, he said that they reverted back to the 10 X 20 pedestrian areas. He said that based on personal experience, hedges in the parking lots may also be obtrusive. He noted an error in Table 4 and asked that it be changed to "1B" rather than "2E".

He asked the members of the Commission for questions. Commissioner Krivonen asked if on-street parking spaces comply. Terry Smith explained that this is different than a building but they have pulled parking back in some cases. He said that this is controlled through different mechanisms and is based out of AASHTO. Terry Smith responded to a question by Commissioner Dailey who asked if there is a way to allow build-out of a building up to the sidewalk. Ms. Cromwell said that this would involve a zoning variance application and gave the example of Grand Bagel at 4<sup>th</sup> Ave and North 30<sup>th</sup> Street. Commissioner Dailey asked if the new amendment would affect this. Terry Smith said that rather than the existing 25X25 area; it would at the most be 1-foot back from 4<sup>th</sup> Avenue. He said that judgment would have to be applied to some of these situations. Commissioner Workman asked if all of a building's stories have to provide clear vision. Terry Smith gave clarification from the existing code and said that they are not proposing an exemption for the code for signs and trees; which has been used for buildings in past years.

**Proponents:**

At 5:24 p.m. Chairman Dailey called for proponents for City Zone Change #853.

**Randy Hafer, 641 North 26<sup>th</sup> Street, Billings, Montana**

Mr. Hafer stated that he wished to thank Terry Smith for his work to address this issue. He said that he did not want to lose the opportunity to build buildings out to the property line. He urged the Commission to make two small changes, one being that in certain situations where there is a small triangle that is an overlap, to amend the proposed language to state that if the overlap is 2 feet or less it can be reviewed by the City engineer without having to go through the variance process. Mr. Hafer commented regarding the CBD Driveway & Alley Clear Vision Zones and stated that accidents between a pedestrian and a vehicle at an alleyway are rare. He requested that at the alleys the setback is not required in the CBD under these circumstances. Mr. Hafer stated that he is in agreement with Mr. Smith's amendments.

**Greg Kruger, 2813 2<sup>nd</sup> Ave. North, Billings, Montana**

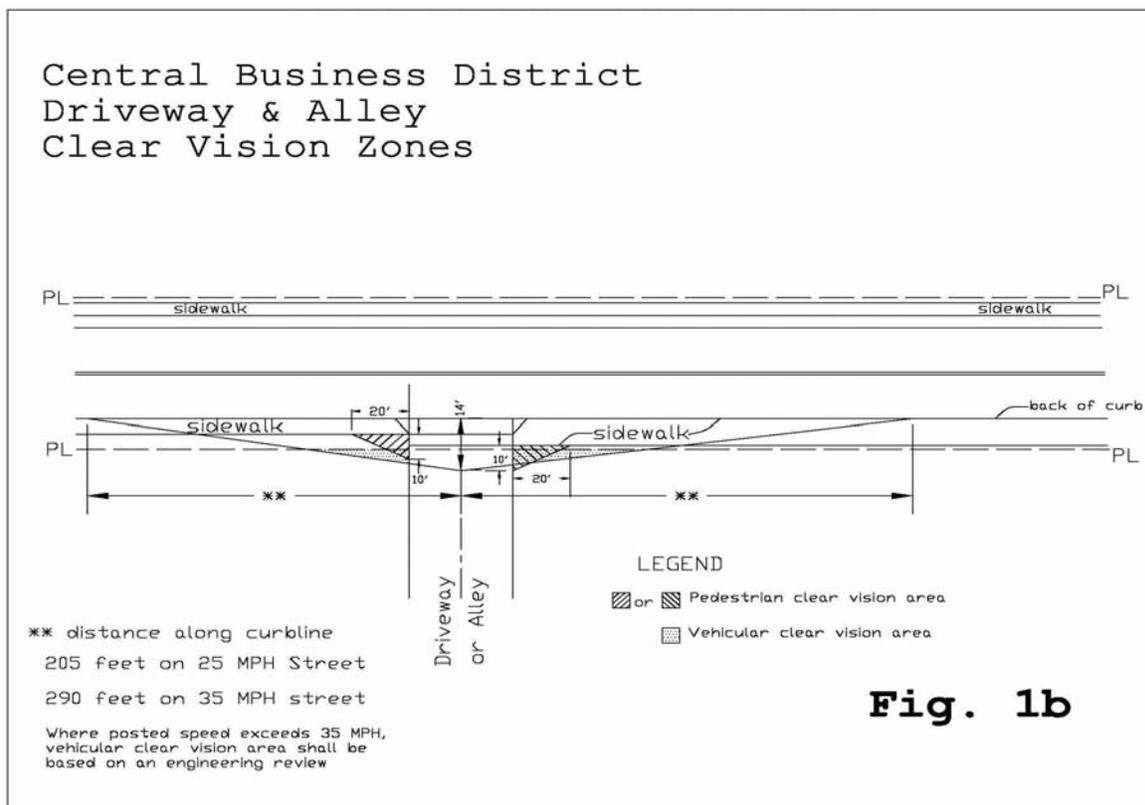
Mr. Kruger said that he supports the amendments as presented. He pointed out the Downtown footprint costs of multi-story buildings. He stated that he would like make use of the property at 100% and that downtown should have some special consideration. Mr. Kruger thanked the traffic division for their cooperation.

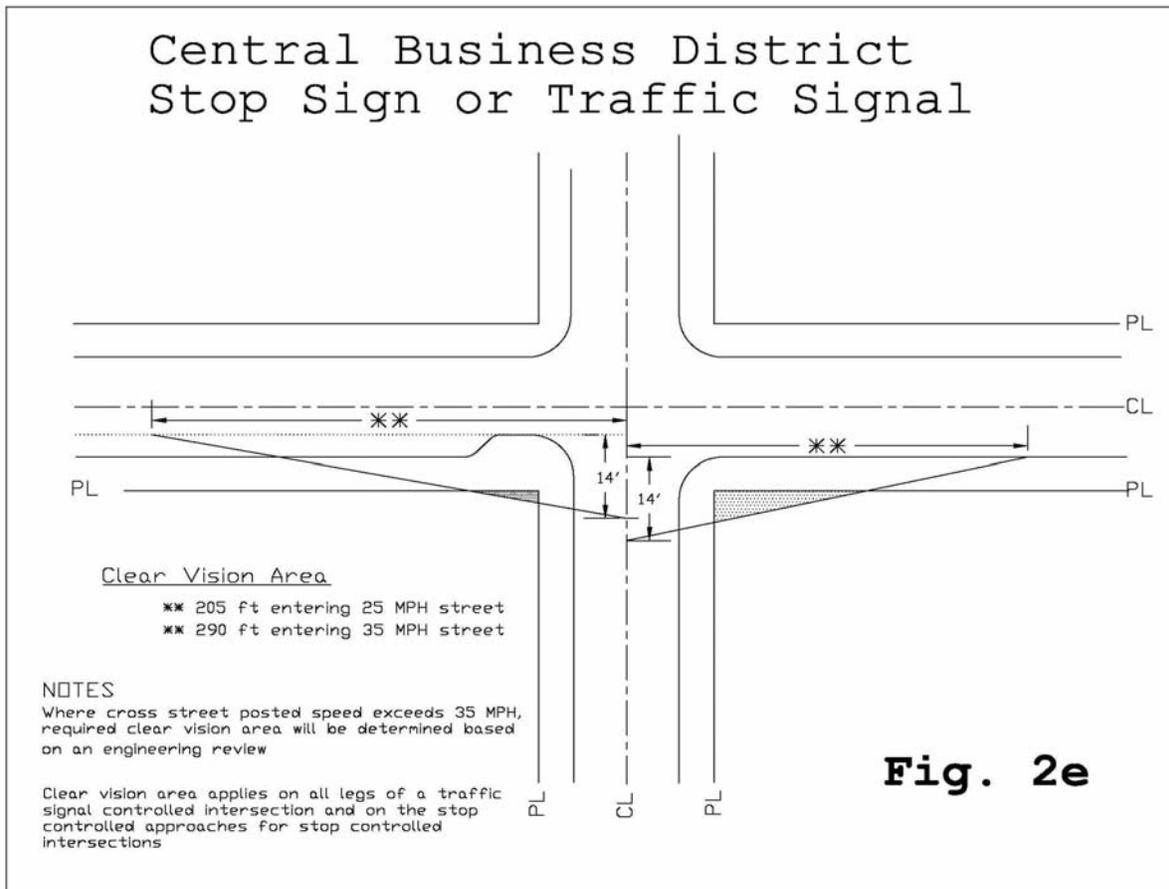
**Motion:**

*On a motion by Commissioner Workman, seconded by Commissioner Krivonen and approved Zone Change #853 with a 3-0 voice vote, a recommendation to amend several sections of the Billings, Montana City Code (BMCC) including section 27-604 related to fences, 27-615 related to clear vision areas, 27-618 illustrations of clear vision areas, and delete sections 22-441 through 22-448 a redundant section related to clear vision areas in the chapter on streets and sidewalks with the two amendments proposed by Citizen Randy Hafer. Those two amendments are:*

*1) That if the clear vision area for intersections (Figure 2e) within the CBD is 2 feet or less on private property, the City Engineer is authorized to review and may waive the clear vision area.*

*2) That buildings and any pertinent part thereof are exempt from the clear vision areas at alleys and driveways in the CBD. This includes both the pedestrian and vehicle clear vision area at alleys and driveways as shown in Figure 1b. This does not exempt fences, walls or hedges from the clear vision area for pedestrians and vehicles.*





**Discussion:**

Chairman Dailey called for discussion on the motion. Commissioner Krivonen stated that he is leery of the language on the alleyway approaches. Commissioner Workman commented on the need to maximize the taxable value of downtown properties. Commissioner Dailey stated that he feels that they have addressed the language on intersections reasonably.

**Item #3: City Zone Change #858**

Ms. Cromwell read the legal description, presented a brief PowerPoint presentation, and gave the staff recommendation. She said that a pre-application meeting was held on August 20, 2009 and noted the minutes that were included in the packets.

## **REQUEST**

This is a zone change request from Residential 6,000 (R-60) and Residential 9,600 (R-96) to Controlled Industrial (CI) on C/S 473 (R-96) and the South 132 feet of Lot 4 in the SW1/4 of Section 9, 1 South, 26 East (R-60) located at 415 and 431 South Billings Boulevard. The property is vacant and has been recently cleared and graded. The applicant is Hanser Properties, LP and represented by Ralph Hanser.

## **RECOMMENDATION**

The Planning Division is recommending approval.

## **Discussion:**

Chairman Dailey asked the members of the Commission for questions and discussion.

## **Proponents:**

At 5:46 p.m. Chairman Dailey called for proponents for City Zone Change #858. Commissioner Workman asked about the property that was recently purchased by the Hansers and Ms. Cromwell pointed out the location on the posted map. Commissioner Dailey stated that there is a collector pipe for the storm drainage in the area.

## **Applicant**

### **Ralph Hanser, (no address given)**

Mr. Hanser stated that he is one of the principal owners of Hanser's properties. He said that they would like to expand their existing salvage yard as the demographics for salvaging has changed. He pointed out that they have installed an attractive fence along with grass. He said that the neighbors have signed off stating that this proposal would be good for the community. Mr. Hanser stated that he attended the South Side Task Force meeting and has obtained a letter of approval from them. He asked for questions from the members of the Commission. He said that they have a buy-sell on the adjacent property. Commissioner Dailey noted that there is a 9-foot fence around the salvage yard. Mr. Hanser said that shipping parts brings money into the community.

### **Scott Hanser, (no address given)**

Mr. Hanser stated that they wish to expand as the industry of salvage has changed with the oncoming of the internet. He said that more inventory is needed in order to create the same amount of business. He commented that with the changing economy an inventory of 14 years and back is needed to supply the public "pick a part" yard. Mr. Hanser stressed that cleanliness has always been a priority for their business. He asked the members of the Commission for support of their business growth. Commissioner Dailey asked Mr. Hanser if this is one of the larger salvage businesses in the area. Mr. Hanser explained that they operate a regional wrecking yard in Billings, Wyoming and Montana. He said that the stormwater easement will always be an aisle and will remain open. Commissioner Workman commented on Mr. Hanser's elusion to the changing nature of their business. Mr. Hanser said that the demand for recyclable parts has affected business and

that they sell all of the parts off of the car. He said that the smaller area demands that the vehicles move more quickly.

**Tom Ruschkewicz, 4125 Vaughn Lane, Billings, Montana**

Mr. Ruschkewicz stated that he is the chairman of the Southwest Task Force. He said that the task force members are in favor of this zone change as that they consider the Hansers to be “good neighbors”.

**Rebuttal**

Chairman Dailey called for rebuttal.

**Opponents:**

Chairman Dailey called for opponents for City Zone Change #858. There were none.

**Motion:**

*On a motion by Commissioner Workman, seconded by Commissioner Krivonen and approved with a 3-0 voice vote a recommendation to approve City Zone Change #858 for a zone change from Residential 6,000 (R-60) and Residential 9,600 (R-96) to Controlled Industrial (CI) on C/S 473 (R-96) and the South 132 feet of Lot 4 in the SW1/4 of Section 9, 1 South, 26 East (R-60) located at 415 and 431 South Billings Boulevard. as submitted by Staff.*

**Discussion**

Chairman Dailey called for discussion on the motion. There was none.

**Item #4: City Special Review #879**

Ms. Cromwell read the legal description, presented a brief power point presentation, and gave the staff recommendation.

**REQUEST**

This is a special review request to allow a vehicle wrecking facility at 415 and 431 South Billings Boulevard in a proposed Controlled Industrial (CI) zone. The parcel is approximately 4.87 acres and known as C/S 473 and the south 132 feet of Lot 4 in the NW1/4 SW1/4 of Section 9, 1 South, 26 East. The property owner is Hanser Properties, LP and Ralph Hanser is the agent.

**RECOMMENDATION**

The Planning Division is recommending conditional approval. The conditions are as follows:

1. The special review approval shall be limited to C/S 473 and the South 132 feet of Lot 4 in the NW1/4SW1/4 of Section 9, 1 South, 26 East generally located at 415 and 431 South Billings Boulevard.

2. Development of the site shall be as shown on the submitted site plan and consist of screening fencing, sight-obscuring gates, landscaping and parking area. Modifications to the site that show additional area greater than 10% of the proposed area will require additional special review approval.
3. All outdoor lighting of the salvage yard area shall be equipped with full cut-off shields so that the lighting does not spill onto surrounding properties.
4. All inoperable vehicles shall be stored within the fenced area and shall not be stacked in such a way that they are visible above the fence line.
5. Business hours shall be limited to between 7:00 am and 7:00 pm.
6. A state Motor Vehicle Wrecking License shall be obtained within six months of the approval of this special review. A copy of the license shall be provided to the Planning Department. There will be special restrictions placed on the state licensure during the written document period of the state application process, which can take up to 120 days, specifying that there shall be no crushing of vehicles. They shall be hauled to a licensed wrecking yard when no longer needed.
7. All storm water shall be retained on-site, and not discharged into the City's storm drain line, unless otherwise approved by the City of Billings. Approval of the storm water management plan for the site shall be received by the City and/or MDEQ, whichever is appropriate, prior to City sign-off on the state license.
8. These conditions of special review approval shall run with the land described in this authorization and shall apply to all current and subsequent owners, operators, managers, lease holders, heirs and assigns.
9. The proposed development shall comply with all other limitations of Section 27-613 of the Unified Zoning Regulations concerning special review uses, and all other City of Billings, regulations and ordinances that apply.

**Discussion:**

Chairman Dailey asked the members of the Commission for questions and discussion. Commissioner Dailey asked about the screening and fencing and if the verbiage addresses this. To address a question regarding Condition of Approval #5 and the business hours, Ms. Cromwell stated that this is a seven day a week business and that staff has received no complaints with the early morning or after-hour business hours.

**Proponents:**

Chairman Dailey called for proponents for Special Review #879.

**Scott Hanser, (no address given)**

Mr. Hanser explained that they are looking to expand their business to address the changes in the salvage industry. He said that there are no hazardous fluids in the vehicles and that they take care of all their rainwater. He stated that they keep the yard clean to protect the public. He asked the members of the Commission for approval of this request. Chairman Dailey asked about the elevation of the existing yard. Mr. Hanser said that the property's elevation will be raised by four

feet in compliance with the City's request. He said that they employ several members of the community including high school students during the summer.

**Ralph Hanser, (no address given)**

Mr. Hanser stated that rainwater is captured on the property and is not allowed into the stormwater system.

**Tom Ruschkewicz, 4125 Vaughn Lane, Billings, Montana**

Mr. Ruschkewicz stated that the Southwest Task Force had no objections to this application.

**Opponents:**

Chairman Dailey called for opponents for City Special Review #879. There were none.

**Motion:**

*On a motion by Commissioner Workman, seconded by Commissioner Krivonen and approved with a 3-0 voice vote a recommendation to approve City Special Review #879 to allow a vehicle wrecking facility at 415 and 431 South Billings Boulevard in a proposed Controlled Industrial (CI) zone with the conditions presented by Staff.*

**Discussion**

Chairman Dailey called for discussion on the motion. There was none. Commissioner Dailey commented that the Hansers "run a great business".

**Other Business**

There was none.

**Announcements:**

Nicole Cromwell said that there were no applications received for November and that the November 3, 2009 meeting will be cancelled. She said that the parking overlay district will be presented for the Commission's review in December.

The members of the Commission welcomed Commissioner Krivonen and thanked him for his participation in tonight's meeting.

**Adjournment:**

*The meeting was adjourned at 6:11 p.m.*

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**Chairman Dailey, Chairman**

**ATTEST:**

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**Tamara L. Deines, Planning Clerk**