

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

April 24, 2017

The Billings City Council met in regular session in the Council Chambers located on the second floor of the Police Facility, 220 North 27th Street, Billings, Montana. Mayor Hanel called the meeting to order at 6:30 p.m. and served as the meeting's presiding officer. Councilmember Swanson gave the invocation.

ROLL CALL: Councilmembers present on roll call were: Cromley, Yakawich, McFadden, Friedel, Sullivan, Swanson, Clark and Brown. Councilmembers Cimmino and Brewster were excused.

MINUTES: April 10, 2017 – Councilmember Sullivan moved for approval, seconded by Councilmember Friedel. On a voice vote, the motion was unanimously approved.

COURTESIES:

- Mayor Hanel welcomed Girl Scout Troop #2050 and AmeriCorps troop leaders. A photo opportunity occurred with the Girl Scouts, their leaders and the Mayor and City Councilmembers.
- Mayor Hanel welcomed a future Boy Scout Eagle Scout, from Troop #227. A photo opportunity occurred with the Boy Scout, the Mayor and City Councilmembers.

PROCLAMATIONS:

- Mayor Hanel read a proclamation that declared May 4, 2017 as Arbor Day. Mike Whitaker, Parks, Recreation and Public Lands Director, spoke about an event that would be held at Veterans Park in honor of Arbor Day and invited the public to attend.
- Mayor Hanel read a proclamation that declared May 4, 2017 as Yellowstone Valley Gives Day. Jack Nichols spoke on behalf of the Billings Community Foundation and thanked the Mayor for the proclamation.
- Mayor Hanel read a proclamation that declared May 4, 2017 as National Day of Prayer.
- Mayor Hanel read a proclamation that declared the month of May 2017 as Bicycle Month.

ADMINISTRATOR REPORTS - TINA VOLEK

- Ms. Volek advised Council in regard to Regular Agenda Item No. 6, Public Hearing and Special Review #953, that an email had been received from Mr. Ed Peterson, in objection to the placement of an 80-foot monopole and wireless communication facility. A copy of his email had been placed in the ex-parte notebook.

- Ms. Volek also advised Council that concerning Regular Agenda Item No. 6, pictures of the fencing detail and diagrams of the proposed monopole cell tower had been placed in the ex-parte notebook.
- Ms. Volek stated that in regard to Regular Agenda Item No. 11, Dehler Park Agreement, a copy of the final agreement and a replacement Exhibit A forwarded by Mr. Heller had been placed in the ex-parte notebook. Copies of the replacement Exhibit A had been placed on the Council's desks.

PUBLIC COMMENT on "NON-PUBLIC HEARING" Agenda Items: #1 & 11 ONLY.
Speaker sign-in required. (Comments offered here are limited to one (1) minute for one item, or three (3) minutes for multiple items. Please sign in at the cart located at the back of the council chambers or at the podium. Comment on items listed as public hearing items will be heard ONLY during the designated public hearing time for each respective item. For Items not on this agenda, public comment will be taken at the end of the agenda.)

The public comment period was opened.

- **Connie Wardell, P.O. Box 21432, Billings, Montana**, in reference to Item 1B, stated she was in favor of keeping *The Billings Times* as the City's official legal advertising publisher.
- **Travis Dimond, 1550 Poly Drive, Billings, Montana**, in reference to Item 1B, stated his business advertised in *The Billings Times* and stated was a member of the Downtown Billings Association. He stated that *The Billings Times* was the expected legal publication and asked Council to continue its legal advertising business with *The Billings Times*.
- **Jonathan McNiven, Yellowstone County News, 3445 Rock Pillar Road, Billings, Montana**, in reference to Item 1B, introduced himself and his business. He stated the publication had been in business since 1976. He stated the newspaper had special sections of interest in Yellowstone County. He continued that the *Yellowstone County News* had been the winner of the 2016 Statewide Display Ad award. He stated there were approximately 60 distribution locations, most of which were located within the City limits. He stated that most of the newspaper's subscribers received their editions via U.S. mail. He thanked the Mayor and Council for their consideration of the staff's recommendation. Councilmember Yakawich inquired about subscribership for the *Yellowstone County News*. Mr. McNiven responded that each week 2,000 copies were printed. Mr. McNiven stated he wanted to increase their readership and this business relationship would be a win/win situation. He stated he appreciated the opportunity to serve the City's legal advertising publishing needs.

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

1. **CONSENT AGENDA:**

A. **Bid Awards:**

1. **W.O. 17-01, Schedule 1, 6th Avenue North Water and Sewer Replacement Project.** (Opened 4/11/17) Recommend COP Construction, LLC, \$1,893,221.

B. **Agreement** with Yellowstone County News to provide City of Billings legal advertising, 5/1/2017-4/30/2018 with five, one-year renewal options, at a cost of approximately \$21,000 per year.

C. **Agreement and Purchase** of smart card parking meters from CivicSmart; \$59,144.

D. **Approval** of the City-County Special Investigations Unit (CCSIU) agreement with Yellowstone County for calendar year 2017.

E. **Approval of Donation** to Ravalli County from Information Technology Department; DragonWave Hardware.

F. **Bills and Payroll:**

1. March 27, 2017
2. April 3, 2017

Councilmember Cromley separated Item 1B for discussion.

Councilmember Yakawich moved for approval of the Consent Agenda, with the exception of Item 1B, seconded by Councilmember Sullivan. On a voice vote, the motion was unanimously approved.

Councilmember Cromley asked Administration what factors were considered to change a longstanding tradition of *The Billings Times* publishing the City's legal advertisements. Ms. Volek stated the process used to determine the staff recommendation had been through a Request for Proposals scenario and not a bid opening process. Ms. Volek explained that the proposals were practically identical and the determiner had been pricing, per purchasing policy. She noted there had not been a drastic pricing difference, however. She stated the 3 member committee was comprised of the City Engineer, Debi Meling, the City Clerk, Denise Bohlman, and the Purchasing Agent, Liz Kampa-Weatherwax. She continued that it was common practice for City staff committees to review bid openings and proposals without elected officials present and that committee meetings for that purpose were not advertised. Ms. Volek stated that the two proposers met all the minimum requirements per State statute. At that point, Ms. Volek invited Liz Kampa-Weatherwax to provide additional information and address further Council questions. Ms. Volek asked Ms. Kampa-Weatherwax whether

The Billings Times had been advised of the process to protest the committee's recommendation. Ms. Kampa-Weatherwax answered affirmatively. Councilmember Cromley asked what the circulation numbers were for *The Billings Times*. Ms. Kampa-Weatherwax advised that she did not have that information in front of her, but would provide it after break. Councilmember Sullivan asked whether *The Billings Times* was significantly higher. Ms. Kampa-Weatherwax explained that each sample ad had been reviewed by the Deputy City Clerk and City Clerk who determined how many times each ad had been published during the first quarter of 2017. She continued that those numbers were compared to the price matrixes provided by the publishers and an annual projection was made. Ms. Kampa-Weatherwax stated that each publisher provided their pricing differently, one used a "portfolio" or per 100 word pricing and the other used a per line or per word pricing. She explained that the smaller ad in Sample B was published more often than the larger ad in Sample A. She stated that while one publisher provided a lower proposal for Sample A, it was more costly in its proposal for Sample B. Ms. Kampa-Weatherwax stated that when the numbers of each ad were analyzed and projected, it became apparent that more Sample B ads were published, annually, than Sample A ads and the publisher with the higher cost for Sample B would cost the City more money overall. Ms. Kampa-Weatherwax explained that because changing publishers would be an adjustment for everyone, the committee had negotiated a one-year contract with 5 additional one-year extensions by mutual agreement with *Yellowstone County News*. She stated this would allow the City to terminate its contract after one year if it was not satisfied with the publisher. She noted that had been a change from the previous 3-year contracts with 3 additional one-year extensions. Councilmember Sullivan asked whether there was a concern about loss of opportunities and responses from the public should the change occur. Ms. Kampa-Weatherwax stated all of the City's bid openings were placed on the City's website and contractors will be notified through the automated notification system on the website of the change. She continued that a press release would also occur. Councilmember Yakawich asked for an explanation of the protest process. Ms. Kampa-Weatherwax stated that the purchasing policy had a protest option in it. She continued that the City Clerk notified *The Billings Times* of the proper avenue to protest and how to approach Council and when. She reiterated that no protest had been filed with her. Councilmember Yakawich asked whether the committee considered effectiveness of the advertising venue. Ms. Volek stated that all of the task force, ad-hoc committee and Council meeting schedules were posted on the City's website. Ms. Kampa-Weatherwax responded that the committee had not considered this to be a more effective means of advertising, but viewed them as equal. She explained that during an RFP consideration it was not based solely on pricing and in many cases the pricing matrix was not even opened because other factors determine the outcome. She continued that in this case both proposals were reviewed and so similar that there was not enough to differentiate between the two proposers. She stated at that point the pricing matrix was considered to, in essence, break a tie. She explained that the contractors, etc., who typically look in *The Billings Times* for City legal ads may either change their subscription or have both subscriptions. Councilmember Brown asked whether there was any consideration given to the publisher located within the City limits, who pays City taxes, and the other publisher that is not located outside the City limits. Ms. Kampa-Weatherwax stated that

was not considered, but how the City spent taxpayer dollars was considered and the committee chose the least expensive publisher. Councilmember Clark inquired why there had been a brief time in which *The Billings Times* had not been the legal advertising publisher for the City. Ms. Kampa-Weatherwax stated she did not have personal knowledge as to why that had occurred as it was many years ago, but explained she had been on the committee 6 years ago and a similar process and situation arose then. Mayor Hanel asked whether there had been any problems with missed ads and deadlines, distribution or notifications with *The Billings Times*. Ms. Kampa-Weatherwax stated the City Clerk had provided her with examples of issues, but that they had been worked through to the satisfaction of the City Clerk. Mayor Hanel asked whether the committee had met with the provider and discussed the issues. Ms. Kampa-Weatherwax stated the committee had not met with the provider because the City Clerk and Deputy City Clerk communicated weekly with the provider and corrective action was taken immediately. Mayor Hanel asked whether both publications were available online. Ms. Kampa-Weatherwax responded affirmatively.

Councilmember Friedel moved for approval of Item 1B, the motion died for lack of a second.

REGULAR AGENDA:

2. PUBLIC HEARING and approval of the FY17-18 Annual Action Plan and the allocation of Community Development Block Grant (CDBG) and HOME Investment Partnerships (HOME) program funding. Staff and the Community Development Board recommends approval. (Action: approval or disapproval of staff recommendation.)

Brenda Beckett, Community Development Manager, gave a brief presentation. She stated the Community Development Block Grant had been awarded to the City of Billings since the 1970s and she estimated \$580,000 would be allocated in FY 2017-2018. She continued that \$295,000 would be allocated in the HOME investment partnerships programs during FY 2017-2018 and that the City had been receiving those monies since the 1990s. She explained that all the monies were used to support low income households and the total household annual income for a family of 4 was just under \$54,000. She identified priority needs and key findings. She explained the homebuyer and home repair programs. Ms. Beckett stated that during FY 2015-2016 the programs leveraged \$7.2 million in the Billings area. Ms. Beckett gave an overview of the AmeriCorps VISTA program and stated she would begin the recruitment process for 22 new positions in the near future. She stated the total project value was at \$7 million.

Ms. Beckett provided the Community Development Board's recommendation for funding to allocate \$200,000 to housing rehab; \$100,000 for foreclosure; \$60,000 for the AmeriCorps VISTA program and the remaining funds to CDBG homebuyer program. She stated that about \$44,000 allocation was required for a community housing development organization and NeighborWorks of Montana had requested \$75,000 and

that would include that figure and the remaining HOME funds would be allocated to the HOME homebuyer program. She concluded with information about the relativity of core programs to the City's priority-based budgeting.

Councilmember Swanson asked if the Federal grants were the largest source of funding and when were the monies received. Ms. Beckett stated it was the largest source and the monies would have already been received.

Councilmember Yakawich asked about the term "blight" and whether Community Development interfaced with the task forces as blight was a concern for them as well. Ms. Beckett responded that the Planning Director attended task forces meetings and stated that blight was a qualifiers for leveraging funds for TIF districts and Community Development Block Grant funds. She stated she had been working with Tim Goodridge in the East Billings Urban Renewal District on an AmeriCorps VISTA project to develop housing and economic development issues there.

Councilmember Sullivan asked what would happen to the Community Development program should the Federal government discontinue grants. Ms. Beckett stated she had provided a contingency plan to Council. She stated that the City had retained \$325,000 of CDBG and HOME program income annually and in the event funding was discontinued the Community Development Board would develop a contingency plan and determine which programs to save. She continued that the Board's contingency plan would be provided to the Council at that time for advice.

Mayor Hanel stated there was no question that the programs had helped numerous Billings' citizens and the programs were very valuable.

The public hearing was opened.

- **Connie Wardell, P.O. Box 21432, Billings, Montana**, stated the City was extremely blessed to have Brenda Beckett and praised her for her leadership.

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

Councilmember Yakawich moved for approval of Item 2, seconded by Councilmember Swanson. Councilmember Clark asked Ms. Volek what would happen if Federal funding discontinued. Ms. Volek responded there were some reserves that could be utilized on a temporary basis. On a voice vote, the motion was unanimously approved.

3. **PUBLIC HEARING AND RESOLUTION NO. 17-10616 approving and adopting FY17 3rd quarter budget amendments. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

Tina Volek, City Administrator, stated staff did not have a presentation, but was available for questions. She stated this was the first time Council was provided a breakdown of expenses by department.

Councilmember Brown asked about the EBURD legal fees and whether those fees had been taken from the TIF fund. Ms. Volek stated that was the settlement amount and it had been paid from the City's funds.

Councilmember Clark asked about a \$15 charge and whether that was correct. Andy Zoeller, Interim Finance Director, responded that all amendments must be disclosed and addressed per State law, even if was a small amount.

Councilmember Yakawich asked about the landfill construction and would the construction planned alleviate some of the problems experienced in the area. Dave Mumford, Public Works Director, responded that this would affect the design of the transfer center. He continued that dump trucks would no longer dump loads in the landfill, but rather in an enclosed building which would reduce the amounts of blowing trash and improve safety. Councilmember Yakawich asked if that would occur this year. Mr. Mumford responded it would be constructed during FY 17-18.

Councilmember Brown asked about the construction and operation of the building. Mr. Mumford stated the building would be a very large 3-sided structure with concrete flooring. He continued that the various types of debris would be separated, dumped onto a concrete area and pushed into a trough with grinders in it. He stated the grinders would grind the debris and that would be pushed into a large landfill truck which would dump the processed debris into the landfill. Mr. Mumford stated the finer ground pieces and the moisture contained in the debris would greatly reduce the amount of blowing debris. He stated the largest blowing problem were the plastic shopping bags which could sail for miles when caught by the wind. Mr. Mumford stated the project had been accelerated from the original timeline. Councilmember Brown asked if the new building would also store landfill vehicles. Mr. Mumford stated it would not.

Councilmember Friedel asked about the environmental effects from ground debris. Mr. Mumford stated there would be more moisture in the debris itself, which would allow for better compaction. He stated the ground debris would be spread and then fill dirt would be placed on top of the ground debris and compacted. He estimated that compaction would be improved 10% to 15% and there would not be any significantly different environmental impacts.

Mayor Hanel stated that the improved method would likely reduce fire hazards, too. He inquired whether a meeting between City officials, County Commissioners and residents in the area of the landfill would occur. Mr. Mumford responded affirmatively. Mr. Mumford stated that approximately \$30,000 in trees would be planted to create a wind break and obscure the vision of the landfill. Mr. Mumford stated that 11 other communities utilized the landfill. Ms. Volek clarified that the road leading to the landfill

was a county road and was the reason County Commissioners were involved in the meeting with the residents. She stated that safety and efficiency would be much improved.

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

Councilmember Sullivan moved for approval of Item 3, seconded by Councilmember Brown. On a voice vote, the motion was unanimously approved.

4. PUBLIC HEARING AND SITE DEVELOPMENT ORDINANCE FOR VARIANCE #OP-17-01: a variance from BMCC Section 6-1203 - Off-Street Parking Requirements, requiring zero (0) off-street parking spaces for an office building conversion to micro-housing located at 1333 North 27th Street, 24th Street, LLC, owner. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Dave Mumford, Public Works Director, gave a brief presentation and stated the request for a parking variance was very unique and rare. He stated that the subject building was once a commercial office building and had been vacant for more than 10 years. He continued that there was no parking and it never has had parking. He stated that the building was located in an area where housing was needed. He continued that the petitioner proposed micro-housing for MSU-B students and medical personnel, and explained that MSU-B students could park their vehicles in the MSU-B parking lots, and personnel working in the medical corridor had parking lots available to them. He stated that no parking for the building would not be an issue. He stated that Public Works had struggled with the request and normally their answer would have been "no", but the petitioner had demonstrated a viable option for the property. Mr. Mumford stated there would be less impact on the neighborhood by developing the property as a micro-housing project.

Mayor Hanel stated the creative concept was a viable option for the unused property and would return it onto the tax rolls.

Councilmember Friedel asked about future zoning. Mr. Mumford responded that as long as it was a continued use to its zoning, the City would have no additional control over the property. Councilmember Friedel asked whether a contingency could be attached. Nicole Cromwell, Zoning Coordinator, responded that as long as the building was used for office space, no parking variance would be needed. Mr. Mumford stated that if the micro-housing project occupied the building and someone later wanted to turn it back into office space or another use, the matter would be returned to the City for consideration. Councilmember Friedel asked about the building's zoning. Mr. Mumford responded it was Community Commercial.

Councilmember Sullivan voiced concern about safety and possible jaywalking across North 27th Street to and from the micro-housing property. He asked whether

there would be room in the right-of-way to place a barrier prohibiting jaywalking. Mr. Mumford stated discussions about that could occur with the developer.

Councilmember Brown asked if there were residents that needed parking and were not MSU-B students or medical employees, how would their parking needs be addressed. Mr. Mumford stated that the units are very small and are geared toward college student living.

Councilmember Yakawich stated that neighbors on North 25th and North 26th Streets were already concerned about students parking in front of their homes. Mr. Mumford responded he had no concerns about the impact on the MSU-B and medical employees' parking lots, but there would be impact concerns for the neighborhood. He continued that there would be parking issues in the neighborhood if a commercial business was in the building instead, possibly more so.

The public hearing was opened.

- **Shaun Shahan, Bozeman, Montana**, introduced himself as the owner / developer of the building and stated he had grown up in Billings and attended Billings' schools as a child. He described his vision for the micro-housing project for the subject property. He stated the units would be roughly 225 to 350 square foot units. He stated there would be storage and laundry facilities in the basement. He explained that students and medical resident students were currently living in the rental district and living in single-family homes with multiple roommates. He stated by developing this unused building, it would eliminate a current eyesore and place the building back into the tax rolls. He continued that it would also remove some of the student residents from the single-family houses, making those homes available again for families to remodel. He stated the micro-housing development would be affordable and safe and would take pressure off the nearby neighborhood. He stated that lease agreements could contain a restriction that banned residents from parking in the nearby neighborhood. He stated that property management would have conversations with potential residents about their parking options, i.e., MSU-B parking lot or medical employee parking lots, and if that was not acceptable to the potential resident, then perhaps this housing facility would not be a good fit for that resident.

Mayor Hanel complimented Mr. Shahan on the proposal and thanked him for returning to the Billings community to offer such a housing development.

Councilmember Sullivan stated he was concerned that multiple people would be living in very small spaces and that the units may attract unwanted criminal activity. Mr. Shahan stated the leases would be for 1 tenant per unit. He stated that if knowledge were gained that someone was "crashing" with another tenant, it would be terms to terminate the lease and evict the tenant. He stated the whole purpose of the housing development was to provide a private, safe, affordable environment for students/tenants wishing to conduct their studies, have a place to sleep and eat a meal. He stated that

the concept may not work, but what other options were there for the building. He continued that the worst case scenario was that he would go bankrupt on the development and it would become vacant again. He stated the best case scenario was that it would become a viable piece of property again, provide relief to the neighborhood and provide clean, safe, affordable housing to college students and medical employees.

Councilmember Yakawich spoke in favor of the concept and his appreciation of the potential. He asked how many units were proposed for the building. Mr. Shahan responded there would be between 21 and 23 units. Councilmember Yakawich asked where residents' visitors would park. Mr. Shahan stated this would be addressed in the lease agreement and there would be a professional property manager for the property. Councilmember Yakawich asked that Mr. Shahan introduce himself around the nearby neighborhood and make neighbors aware of the development and his vision.

Councilmember Brown spoke in favor of the development and asked if Mr. Shahan had been in contact with the colleges and medical community about the project. Mr. Shahan stated he had communicated with MSU-B and the medical community and provided information to them.

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

Councilmember Yakawich moved for approval of Item 4, seconded by Councilmember Friedel. Councilmember Friedel spoke in favor of the motion. Councilmember Brown spoke in favor of the motion. On a voice vote, the motion was unanimously approved.

5. PUBLIC HEARING AND RESOLUTION NO. 17-10617 ordering improvements identified in W.O. 17-02, Miscellaneous Improvements Program. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Tina Volek, City Administrator, stated there was no staff presentation, but staff was available for questions.

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

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

6. PUBLIC HEARING AND SPECIAL REVIEW #953: a special review to allow an 80-foot monopole and wireless communication facility in a Residential 9,600 zone on a church property generally located at 4135 Grand Avenue. King of Glory Lutheran Church, owner; Kevin Howell, Digital Skylines, agent. On a 2-2 vote, Zoning Commission forwards no recommendation. (Action: approval or disapproval of Special Review #953.)

Nicole Cromwell, Zoning Coordinator, gave a brief presentation showing the lay of the land and diagrams of the monopole. She stated that Digital Skylines was the agent for Verizon Wireless. She explained that the properties located along Grand Avenue held large power poles already. She stated that the applicant was agreeable to raising an 8 foot fence instead of a 6 foot fence if that would make the cabinetry less visible and acceptable to the neighbors. She continued that the Zoning Commission did not have a majority vote as one member had to recuse himself from the application and the vote was split 2-2. She stated staff recommended approval of the 6 conditions that were recommended to the Zoning Commission. Ms. Cromwell explained that a whisper quiet generator was one of the conditions to reduce the disturbance to the neighbors.

Councilmember Brown confirmed the residential locations in proximity to the proposed cell tower. Ms. Cromwell stated that the main concern was the zoning possibilities for vacant properties in the future.

Councilmember Cromley asked what triggered the special review. Ms. Cromwell stated that per City Code, if the site had been a school, government or government utility site and the monopole was 50' or less, a special review would not have been required. She continued that because it was not that and was in a residential zone, it had to be reviewed before the Board of Adjustment or the City Council through the special review process. She stated the applicant could make the choice and chose to go through the City Council.

The public hearing was opened.

- **Kevin Howell, 11340 N. 105th Place, Scottsdale, Arizona**, stated he was the applicant and agent for Verizon Wireless. He gave the particulars for identifying the site and the community's need for more and better wireless coverage. He mentioned that less than 50% of households had landline phones and had switched their prior phone service to cellular service. He stated the site was near large power poles owned by Northwestern Energy and the monopole would add to what was already in place. Councilmember McFadden mentioned that eventually large cellular towers would eliminate the need for old telephone poles and those could be removed. Councilmember Sullivan stated that the telephone poles were a third or one-half the size of the propose monopole. He questioned the site location and why not Fire Station 7. Mr. Howell stated that more capacity was needed, not because of phone calls, but due to increased data usage overall. He stated another location on the rims was needed, too. He explained that Verizon Wireless was considering smaller cells to be placed on poles but their radius was 800 feet to 1,000 feet, while the proposed larger cell tower would serve only a 1 mile radius. Councilmember Yakawich asked about outreach to the neighbors. Mr. Howell responded that door-to-door outreach was not typical practice. He continued that the neighborhood was accustomed to poles and other industrial hardware. He stated recently a neighborhood meeting was held in the Terry Park area as a cell site was considered there. Councilmember Yakawich

stated door-to-door communication was a good strategy for building community. Councilmember Yakawich asked whether Verizon considered camouflaging the pole as a tree or something else to disguise its unsightly appearance. Mr. Howell stated that the area had various metal poles in it and an 80' faux tree could be considered, but questioned whether it would not look as out of place as the pole itself. Councilmember Yakawich asked whether Verizon would plant trees around the pole if the residents preferred. Mr. Howell stated that could be done. Mr. Howell stated the Church had not offered an alternative location on its property for the cellular monopole. Councilmember Brown inquired whether the pole had to be 80 foot or could it be 60 foot. Mr. Howell stated 80 foot was the minimum height that would allow clearance from other poles for its signals.

- **Connie Wardell, P.O. Box 21432, Billings, Montana**, stated she resides at 64th Street West, and King of Glory was her church. She stated she was surprised there were 6 neighbors that objected to the placement of the cell tower as there were very few homes near the cell tower site. She stated she cannot get adequate signal coverage at her home and supported the installation of a cell tower.
- **Thresa Goodman, 1643 41st Street West, Billings, Montana**, stated she protested the placement of the cell monopole and gave a historical accounting of developments that had occurred in the Goodman Subdivision. She suggested King of Glory lease property for the cell monopole on the opposite corner, away from her property. Councilmember Brown stated progress had to happen, and understood her concerns. Councilmember Yakawich asked if Mrs. Goodman would agree to some landscaping around the cell tower. Mrs. Goodman remained firm that she would like the cell tower located on the opposite corner of the King of Glory property. Councilmember Sullivan asked whether anyone from King of Glory Church had contacted property owners about the proposal. Mrs. Goodman stated there had been absolutely no contact from the Church.
- **Carl Anderson, 1708 43rd Street West, Billings, Montana**, stated he and his wife had resided there for over 25 years and protested the placement of the cell monopole, describing it as an eyesore. He continued that the cell tower should not be located in a residential area, but rather an industrial or commercial area. He stated the proposed location should be reconsidered 400 feet to the east closer to commercial property.
- **Mike Hefner, 4209 Hefner Lane, Billings, Montana**, stated he opposed the placement of the cell monopole and that it was not appropriate in a R-96 zone. He continued that should the cell tower be allowed in a R-96 zone, that would set a precedent for future cell tower placement in R-96 neighborhoods. He stated he and his wife had resided there for 36 years and noted that size of the trees in the area could not grow tall enough nor quickly enough to obstruct the view of the existing tall poles. Councilmember Brown asked Mr. Hefner if the cell tower's location was moved to the east as suggested, would Mr. Hefner find that acceptable. Mr. Hefner stated that would be acceptable. Councilmember Yakawich asked if Mr. Hefner had anything else to add. Mr. Hefner stated he had concerns about the microwave emitter and associated potential health risks. Councilmember Clark inquired about the letter and photos Mr. Hefner had

forwarded to Ms. Cromwell. Ms. Cromwell she had a copy and provided it to Council for review.

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

Councilmember Yakawich moved to approve Item 6, with consideration that the cell monopole location be on the southeast corner of the property, rather than its proposed location, seconded by Councilmember Friedel. Mayor Hanel asked Brent Brooks, City Attorney, whether the item would need to be returned to the Zoning Commission due to the condition and then brought back to City Council for approval. Mr. Brooks responded that the application would not be materially changed and explained the procedure for additional conditions. Councilmember Yakawich moved to withdraw his motion, and Councilmember Friedel withdrew his second. Councilmember Yakawich then moved to approve Item 6, with the requirement that the cell monopole location be on the southeast corner of the property, rather than its proposed location, seconded by Councilmember Brown. Councilmember Cromley asked Mr. Brooks if the requirement could be made since Verizon had a lease for the location in the application. He stated the other ground was not leased by Verizon. Ms. Cromwell stated that if Verizon had signed a lease prior to the special review, then that was potentially at risk. She continued that King of Glory Church was actually the applicant and Digital Skylines was acting as the agent for Verizon. She stated the legal description was the same lot, the condition could state the relocation from the southwest corner of the lot to the southeast corner of the lot. Mr. Brooks stated would need to include all of the conditions outlined in the staff memo, along with any additional conditions, but the basis for the additional conditions should be articulated from information given at the hearing. Mayor Hanel asked Councilmember Yakawich if his motion included all the conditions presented, plus the condition to relocate the cell tower's placement. Councilmember Yakawich responded affirmatively. Councilmember Friedel asked whether the motion should also contain conditions for an 8 foot wall, rather than a 6 foot wall and landscaping. Councilmember Yakawich moved to withdraw his motion and Councilmember Brown withdrew his second. Councilmember Yakawich then moved to approve Item 6, with the conditions that the cell monopole location be moved to the southeast corner of the property, rather than its proposed location; that an 8 foot wall be installed around it; and it must be landscaped around it, seconded by Councilmember Friedel. Councilmember Sullivan opposed the motion and acknowledged that Verizon absolutely needed to provide better service in the area, but could Verizon research other areas where smaller towers could be placed rather than add to the "soup" of powerlines and poles in the area. Councilmember Friedel voiced his support for the motion and its conditions. Councilmember McFadden stated he was personally affected by a similar cell tower in his neighborhood, but acknowledged that better service benefited everyone in his neighborhood and spoke in favor of the motion and its conditions. Councilmember Brown supported the motion with its conditions. Councilmember Clark supported the motion and its conditions. Councilmember Swanson also voiced his support of the motion and its conditions. Councilmember Yakawich stated he was pleased that the neighbors attended the public hearing and

provided their opinions to help Council with its decision. On a voice vote, the motion was approved 8-1, with Councilmember Sullivan voting in opposition.

7. PUBLIC HEARING AND SPECIAL REVIEW #954: a special review to locate an all-beverage liquor license (gaming restricted) in a Controlled Industrial (CI) zone on a 1.17 acre parcel of land generally located at 3042 King Avenue West (former Johnny Carino's). Billings Properties, LLC, owner; Bob Pulley, agent. Zoning Commission recommends conditional approval and adoption of the findings of the 3 criteria. (Action: approval or disapproval of Zoning Commission recommendation.)

Dave Green, Planner, gave a presentation and an explanation of the necessity to bring forth a special review due to liquor licensing requirements. He stated the special review was tied to the land so future owners of the property could benefit from this special review. He reminded Council that conditions could be applied to special reviews. He stated the property previously had a beer and wine license when Johnny Carino's was in operation. He continued that the new business would be a Mexican restaurant. He reviewed the conditions as set forth by the Zoning Commission.

The public hearing was opened.

- **Bob Pulley, 321 Glee Place, Billings, Montana**, stated he was the agent for the special review and was available for questions.

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

Councilmember Clark moved for approval of Item 7 as presented, seconded by Councilmember Swanson. On a voice vote, the motion was unanimously approved.

Mayor Hanel called a recess at 9:17 PM.

Mayor Hanel called the meeting back to order at 9:36 PM.

8. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #954: a zone change from Residential 7,000 (R-70) to Community Commercial (CC) on a 15,000 square foot parcel of land generally located at the northwest corner of the intersection off Marshall Drive and Laurel Road. C-Store Properties, LLC, owner; Bryan Alexander, agent. The Zoning Commission recommends approval and adoption of the findings of the 10 criteria. (Action: approval or disapproval of Zoning Commission recommendation.)

Dave Green, Planner, gave a presentation and an overview of the Zone Change and 10 criteria. He explained that zone changes were not conditioned. He gave description of the property's history as a truck stop and the proposed configuration of a C-store. He stated the property in recent years, due to its vacancy, had caused some

code enforcement issues. Mr. Green stated the business would be compatible with the neighborhood. Councilmember Yakawich asked whether a condition could be made for a "Welcome to Billings" sign on the property. Mr. Green reminded Council that conditions could not be made to a zone change application. Councilmember McFadden asked about removing the driveway from the parking lot onto Marshall Drive. Mr. Green responded that the exit would be removed. Councilmember Friedel made inquiries about landscaping on the property and employee parking. Councilmember Clark inquired where the fencing would be located. Mr. Green stated the fencing would be along the south side of the shared property.

The public hearing was opened.

- **Bryan Alexander, Sanderson Stewart, Billings, Montana**, introduced himself as the agent for C-Store Properties and stated the owner would place an abundant amount of landscaping to the property and beautify the area. Councilmember Yakawich asked if the owner would be willing to place a "Welcome to Billings" sign at this location as was at the South 27th Street location. Mr. Alexander stated he would mention it to the owner. Councilmember Friedel requested the agent to work with the neighbors concerning landscaping options.

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

Councilmember Friedel moved for approval of Item 8, seconded by Councilmember McFadden. Councilmember Friedel stated he was very pleased about development on this property. On a voice vote, the motion was unanimously approved.

9. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #955: a zone change from Residential 7,000 (R-70) to Residential 6,000 (R-60) on a 1.36 acre parcel of land generally located at 301 - 317 Covert Lane and 1739 - 1747 Cody Drive. McDonald Land Holdings, LLC, owner; Bryan Alexander, agent. The Zoning Commission recommends approval and adoption of the findings of the 10 criteria. (Action: approval or disapproval of Zoning Commission recommendation.)

Nicole Cromwell, Zoning Coordinator, gave a presentation and explanation of challenges the property had with the present zoning. She stated the property consisted of three 4-plex apartments that were approximately 60 years old and were built long before zoning. She continued that the zoning code was adopted in 1972. She continued that when it was zoned, it was zoned as Residential 7,000 (R-70). Ms. Cromwell stated R-70 zoning would not allow for multi-family developments. She stated the owners of the property were experiencing difficulties acquiring insurance and financing for improvements to the properties and desired a zone change that was more in keeping with the property. Ms. Cromwell stated the surrounding property owners had submitted a valid protest. She stated that due to there being a valid protest, in order for Council to approve the zone change a two-thirds vote was required. She continued that there were

21 lots within 150 feet of the subject property, but notification was given to property owners beyond the 150 foot radius. She explained that 6 lots would have constituted a valid protest. Ms. Cromwell identified nearby properties that were zoned Residential 6,000 (R-60).

Councilmember Sullivan clarified that if the zone change was approved, the subject property would be brought into the property zoning and Ms. Cromwell agreed. Ms. Cromwell explained the development limits for any additional multi-family structures on the subject property should the zone change be approved. She stated approval by the City Council on a special review would have to occur. She explained that after the zone change was approved, the developer could add single-family or two-family dwellings without additional approval of the City Council. Ms. Cromwell stated that anything that had additional housing units over two-family dwellings, would have required Council approval. Ms. Cromwell noted that there was very little off-street parking for the existing units and residents parked on the street. She identified undeveloped City park land located near the subject property and described a berm developed to control overland flooding. She stated the subject property sat at the lowest point in the subdivision so all of the drainage from the alley and adjacent properties flowed toward the subject property. She stated the groundwater table was very high in the neighborhood. She stated the newest housing in the area was already 10 years old. Ms. Cromwell mentioned that the Zoning Commission had recommended approval based on their findings of the 10 criteria. She continued that it had been a split vote (3-2) to recommend approval. She stated it was consistent with the 2016 Growth Policy, etc. Ms. Cromwell reminded Council that the owners of the subject property would be withdrawing their application for a special review.

Councilmember Clark asked what would happen in the unfortunate event the existing buildings were destroyed by fire or natural disaster. Ms. Cromwell responded that the current zoning required that the property be rebuilt to nothing more than three 4-plexes. She stated that the property could not be financed should there be a buyer for the subject property. She stated the purchaser would have to pay cash or buy outright without any financing.

Councilmember Brown clarified that should the owners choose to demolish the existing three 4-plex apartment buildings, three 4-plex apartment buildings could be reconstructed in their place. Ms. Cromwell agreed, but noted an additional 3 or 4-plex housing unit could not be added. Councilmember Brown stated it would be proper to re-zone the property to match its current use. Ms. Cromwell agreed that it was good zoning to have zoning match the use.

Councilmember Yakawich asked Ms. Cromwell to provide a recap of the neighbors' concerns with the zone change. Ms. Cromwell stated the primary concern appeared to be that the owners of the subject property had not been good neighbors. She stated the property did not have adequate parking, good maintenance had not been demonstrated and there appeared to be a poor vesting practice of new tenants. She continued that the neighbors were concerned about additional traffic to the area

and the increased density that the special review would have allowed, i.e. three 10-plex apartment buildings. She stated that by building three 10-plex apartment buildings in that area, it would have nearly tripled the number of units on the property. Councilmember Yakawich clarified that the property owners would have to come before Council with a special review in order to build anything larger than a 4-plex on the subject property. Ms. Cromwell agreed and added it was possible to add single-family and two-family dwellings in addition to the three 4-plexes, if the zone change passed.

Councilmember Sullivan clarified that if the zone change to R-60 was approved, three 4-plex buildings could be rebuilt and single-family and two-family dwellings could be built after the three 4-plexes were built.

The public hearing was opened.

- **Bryan Alexander, Sanderson Stewart, 1300 Transtech Way, Billings, Montana**, stated he represented the owners of the subject property. He stated the objections to the special review by the neighbors was due to density concerns. He stated the special review request would be withdrawn. He stated the property currently was nonconforming to the R-70 zoning and that created problems with obtaining financing and insurance for the property. He stated a lender would not take the risk so that limited reinvestment into the property for improvements, etc. Councilmember Yakawich asked if there was anything that could be done to address the concerns of the neighbors. Mr. Alexander stated his clients' had a project in mind at the time they applied for a special review. He stated there had been so much opposition that the clients decided not to pursue. He stated his clients would like to do some substantial improvements, but the zone change would need to occur.
- **Jason Lillie, 234 Sharron Lane, Billings, Montana**, asked for clarification on the zone change and whether 20 total units could inhabit the property. Ms. Cromwell responded that was correct and stated there were 3 lots to the subject property. She stated there could be three 4-plex buildings, equaling 12 units, and 8 additional units as either single-family patio homes or 4 duplexes or some combination. Mr. Lillie reiterated that once the zone change occurred, there were no options to place conditions upon it. He stated that all the neighbors in the area were opposed to the zone change and over 100 signatures had been acquired on the protest petition. He stated the existing 12 units could be replaced with another 12 units without a zone change. He continued by addressing concerns with the 10 criteria at which point he mentioned that the City had adopted the Meadowlark Park Master Plan on April 12, 2004. He stated the primary focus of that area was habitat enhancement and wildlife conservation. He continued that the zone change was in direct conflict with the park's master plan. He stated increased density would increase fire risks and would have a negative impact on public safety, traffic, and the natural habitat. Mr. Lillie stated that the 4 drains that service the neighborhood did not handle the amount of water runoff presently and placing more asphalt and concrete into the area would make flooding in the area worse. He continued that the proposed development for the land was not

the best use of the land and would negatively affect property values to its neighbors. Councilmember Sullivan addressed the insurance and financing issues stating that due to the property being out of compliance with the current zoning code, the property would not be eligible for any financing and insurance carriers were unlikely to insure the property. Mr. Lillie responded that there were still options for the property under the R-70 zoning. Councilmember Sullivan asked what was asked of the neighbors when the area was canvassed for the protest petition. Mr. Lillie responded that he asked if they were familiar with the zone change and would they support it. He stated the neighborhood does not want the zone change. Councilmember Yakawich asked for clarification on the number of units the property could contain. Mr. Lillie responded that there could be up to 20 units on the property. Councilmember Yakawich asked whether the neighbors would like to see the existing units improved. Mr. Lillie stated they probably would, however, the property owners had not been good neighbors in the past and left the units in very bad condition. He continued that the neighbors were skeptical that should the 20 units be built, the property owners would likely allow those fall into disrepair as well. He stated there have been numerous flooding issues in the past and units probably had structural problems currently. Mr. Lillie stated that one does not need a zone change to maintain one's property. Councilmember McFadden stated that the same developer had built units in the 1600 block of Avenues E and F and the neighbors had been opposed to that development. He asked if the neighbors in this situation were concerned because of what had happened at the 1600 block of Avenues E and F. Mr. Lillie replied that the 2 scenarios were quite different.

- **Dennis Ulvestad, 3040 Central Avenue A102, Billings, Montana,** acknowledged he was a member of the Zoning Commission, but clarified he was not speaking on behalf of the Zoning Commission. He stated he was speaking as a concerned citizen. He reiterated that the area where Plaza Apartments was located and the subject property are very different. He stated that should the zoning be changed to R-60, there could be up to 20 families on the subject property that consisted of 1.36 acres of land. He voiced opposition to the zone change.
- **Bruce Buss, 1738 Broadview Dr., Billings, Montana,** stated there were only 2 exits from the neighborhood. He provided 3 exhibits that indicated the condition of the subject property. He revealed that 4 1/3 lots were underwater due to the high water table and stated the area was considered a pond according to the dewatering study. Mr. Buss stated he had lived in the neighborhood for 38 years and that was before there was any zoning in the area at all. He stated he was skeptical that the property owners of the subject property would do anything differently for upkeep on the property whether the zone change was granted or not. Councilmember Clark stated the property was managed by the same property management company, however, the owners had changed and a new generation sought to improve the property. Mr. Buss voiced opposition to the zone change and stated that placing 20 to 30 units on 1.36 acre plot of land was undesirable.

- **Stephon Mentzer, 330 Laurie Lane, Billings, Montana,** stated that changing the zoning could open a Pandora's box for the neighborhood. He stated the zone change was in conflict with the neighborhood. He stated the Meadowlark Park was valued by the neighborhood and the wildlife had enhanced the quality of life there. He opposed the zone change and stated 12 units in the neighborhood was enough. Councilmember McFadden asked if the standing water was a pond or swamp and concluded it was a swamp.
- **Jane Kukes Penney, 1739 Grand Avenue, Billings, Montana,** stated she had worked for the McDonald family for over 20 years. She stated Sam McDonald had been the owner of Wendy's and his business interests had been in selling burgers. She stated that since Mr. McDonald's passing, his children desired to upgrade properties that had fallen into disrepair and Plaza Pool was the first property to be improved. She continued that the subject apartment complexes were the second project the family chose to improve. She stated that over \$250,000 in improvements had been made to the property recently. She acknowledged that flooding in the area was a problem and that the berm had been placed there to remedy some of the flooding. Ms. Kukes-Penney stated the McDonalds would like to pursue the zone change, but had withdrawn their interest in the special review. She continued that the zone change was necessary to bring the property into compliance with current zoning, allow for financing to make improvements, and reduce the risk of losing its property insurance. Councilmember Sullivan asked if the \$250,000 in improvements were out of-pocket and not financed. Ms. Kukes-Penney responded affirmatively and added that the McDonalds risked not having their property insurance renewed without a zone change. Councilmember Brown asked whether insurance had been continuously maintained. Ms. Kukes-Penney responded affirmatively, but reiterated that fewer and fewer insurance companies were willing to insure the property. Councilmember Yakawich stated he understood the neighborhood's disappointment and distrust with the possible revitalization of the property. Ms. Kukes-Penney stated the berm had been installed in 2004-2005 to reduce the flooding risk. She stated that Mr. McDonald would not spend a lot of money, but the new generation was interested in improving the property and it would require a lot of money to do it. Councilmember Brown confirmed that the special review application to build 30 units would be withdrawn. Ms. Kukes-Penney stated that after consideration was given to the opposition, the McDonalds decided it was not feasible to move forward with the special review.
- **Eugene Baker, 312 Laurie Lane, Billings, Montana,** stated he was opposed to the zone change because it constituted spot zoning.
- **Craig Favero, 309 Stillwater Lane, Billings, Montana,** stated he was opposed to the zone change and was concerned that it would open the door to more special reviews in the future. He stated that this zone change was a good example of spot zoning in that one lot would receive preferential treatment to the detriment of all others in the neighborhood. He stated that the current apartment complex did not allow space for the children to play and quite often apartment complexes brought families with children to reside within. He expressed his concern that additional apartment buildings would increase the amount of

children in the neighborhood in a space that already did not adequately provide safe playing space for them. He stated he was concerned with increased traffic and uncontrolled intersections. He identified his property and compared the subject property, noting the size of the subject property was equal to 3 single family lots in the neighborhood. He stated it would not make sense to congest up to 30 families into a space meant for 3 families. Mr. Favero stated that \$200,000 in improvements for 12 units was not something to brag about. He continued that all homeowners made periodic repairs to their properties over time. He stated the subject property had gone so long without any repairs that the recent improvements were just lipstick. Mr. Favero clarified that 6 votes of the Councilmembers were required to pass the zone change.

Councilmember Cromley leaves the Chambers at 10:50 pm and returns at 10:53 pm.

- **Joseph Soueidi, Attorney with Moulton, Bellingham Law Firm, 27 N. 27th Street, Suite 1900, Billings, Montana**, stated he represented the McDonald family. He addressed the question whether the zone change was a strategy to receive approval of the special review. He stated it was not and the withdrawal of the special review was a reaction to the strong neighborhood opposition. He said initially the zone change was necessary to the special review, however, now that the special review was withdrawn, the zone change was still needed as a maintenance measure to obtain financing. He continued that there would be no further consideration of a 30-unit development and there were no current plans for development going forward.
- **Debra Tonkovich, 1819 Cody Drive, Billings, Montana**, stated she lived directly across from the Meadowlark Park and opposed the zoning change. She stated she moved to her property because of the Park and referred to the Park's Master Plan.
- **Connie Wardell, P.O. Box 21432, Billings, Montana**, stated she had been a property manager and understood the feelings of the neighbors. She stated she was aware of the groundwater problems in the area of the proposed zone change. She continued that if insurance was nearly impossible to acquire or the property could not be sold, it would not make sense to continually put money into the property. She stated the special review was a mistake and the property owners realized that. She stated the newest generation of McDonald family members wished to improve the properties Sam McDonald had owned, but if financing could not be secured, only a fool would continue to invest in the property. Ms. Wardell supported the zone change so the subject property could secure financing to improve them.
- **Clara Baker, 312 Laurie Lane, Billings, Montana**, stated she was very much opposed to the zone change and stated she did not want her front window to face the apartments' garages. She reiterated that 1.36 acres was not enough space to have 30 units. She mentioned that when she and her husband purchased their home in 1991, there was an old sewer field located behind her

home. She stated prior to that time, nearly one-half of the subject property was comprised of a sewer field.

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

Mayor Hanel asked City Attorney, Brent Brooks, if the zone change was not approved were there were any legal ramifications in which to be concerned. Mr. Brooks stated that the Zoning Commission had provided their recommendation for approval of the zone change. He continued that should the Council vote to not approve the Zoning Commission's recommendation, the Council would have to articulate the factual basis using the same criteria as the Zoning Commission.

Councilmember Sullivan inquired of Mr. Brooks the "spot" zoning comments. Mr. Brooks responded that the term was used quite broadly and not very accurately. He explained that if an island was zoned differently than the surrounding properties, that would not necessarily constitute "spot" zoning and not all "spot" zoning was illegal. He provided the 3 criteria that the Supreme Court considers.

Councilmember Yakawich asked Mr. Brooks that if he voted in opposition to the zone change, would referral to criteria number 3, promoting public health, safety and general welfare, be correct. He continued that the property does not appear to promote any of those items. He expressed concern about the Zoning Commission's recommendation. Mr. Brooks reiterated that the Council would have to apply the criteria to the facts and could accept or reject the Zoning Commission's findings in whole or in part. He stated that all of the criteria must be considered, not just one or two of the criteria as set forth in the statutes. He advised the Council that according to the City's ordinances, Council had the option to delay a decision for up to 30 days should they need more information. He offered to forward information on "spot" zoning to aid the Council with their decision.

Councilmember Clark asked what the vote needed to be to either approve or disapprove the zone change. Mr. Brooks responded that 2/3rds of the 8 Councilmembers present was 5.3 and that number would be rounded to 6.

Mayor Hanel asked Ms. Volek about the absent Councilmembers' schedules and when they were expected to return. Ms. Volek explained that one of the absent Councilmembers was expected to return by the following regular business meeting. She continued that due to serious health concerns of a family member, the other Councilmember's attendance was uncertain.

Councilmember Friedel asked for clarity on property use within the R-70 zoning. Nicole Cromwell, Zoning Coordinator, responded that under R-70 zoning, the maximum amount of units on the subject property was 12 units and she gave examples of the combinations of which the 12 units could consist or additional subdividing of the 1.36 acre lot. Ms. Volek asked whether there could be anything more than a duplex built in an R-70 zone. Ms. Cromwell stated that nothing larger than a duplex could be built, no

tri-plexes or 4-plexes and so on. Councilmember Friedel then stated it was possible to have 6 duplexes built in the area. Ms. Cromwell responded affirmatively.

Councilmember Brown questioned insurance coverages should the existing units burn down. Ms. Cromwell stated she was not certain what the insurance coverages were, but according to the current zoning should the units burn down, the property owners could rebuild 6 duplexes or 12 units, but not three 4-plexes. Councilmember Brown stated that at that point financing could be possible.

Ms. Volek asked for a review of the options before Council considered action. She stated the Council could approve the zone change and adopt the findings of the 10 criteria; deny the zone change and adopt different findings of the 10 criteria; allow the applicant to withdraw; or delay action for up to 30 days.

Councilmember McFadden moved to deny the zone change. Ms. Volek and Ms. Cromwell reiterated that in order to deny the zone change, the motion must have included some findings of the 10 criteria that differed from that of the Zoning Commission's findings. Councilmember McFadden added that the qualified protests were legitimate to support the denial of the zone change. The motion died for lack of a second.

Councilmember Clark moved to delay action for up to 30 days, May 22nd, seconded by Councilmember Sullivan. Councilmember Brown asked why the delay, was there more information needed. Councilmember Clark stated he wanted the absent Councilmembers from that Ward to be present for the vote. Councilmember Sullivan stated he was ready to vote on the item, but given there was a valid protest in Ward 2 and both Councilmembers from that Ward were absent, it was also proper to delay action so those Councilmembers had an opportunity to participate in the vote. Councilmember Yakawich asked for clarification on procedure. Mayor Hanel asked Councilmember Clark if the intention of the motion was to continue the matter because the public hearing was closed. Councilmember Clark responded affirmatively. Mayor Hanel explained there would be no public hearing at the May 22nd meeting and that staff would bring any additional information and the Councilmembers that were absent at this meeting would have an opportunity to participate with the remainder of the Council. Councilmember Yakawich stated he was also prepared to vote, but would support the motion to delay action. Councilmember Friedel clarified the motion to delay was to allow the absent Councilmembers an opportunity to vote. Councilmember Sullivan stated in his opinion, the vote would be close and it would be proper for the peoples' Ward representatives to vote as well. Mayor Hanel requested that minutes to the meeting be expedited to give ample reviewing time to the public and Council. Ms. Volek stated that it may be this portion of the minutes would be given priority, but the rest of the minutes to the meeting may need to be forwarded as time allowed. Councilmember Friedel conceded that the zone change was difficult and he understood the neighbors' protests. On a voice vote, the motion was approved 7-1, with Councilmember McFadden opposing and Councilmember Cromley abstaining.

10. **PUBLIC HEARING AND SPECIAL REVIEW #955: a special review to demolish three, 4-plex apartments and construct three, 10-unit apartment buildings in a proposed R-60 zone on a 1.36 acre parcel of land generally located at 301 - 317 Covert Lane and 1739 - 1747 Cody Drive. McDonald Land Holdings, LLC, owner; Bryan Alexander, agent. Zoning Commission recommends denial and adoption of the findings of the 3 criteria. (Action: approval or disapproval of Zoning Commission recommendation.)**

Nicole Cromwell, Zoning Coordinator, stated the applicant wished to withdraw its application and staff could provide a presentation if Council desired, but most of the information had been given during the previous Zone Change presentation in Item 9.

The public hearing was opened.

- **Eugene Baker, 312 Laurie Lane, Billings, Montana**, stated he supported the Zoning Commission's recommendation to deny the special review request and the applicant's wish to withdraw its application. He continued that he was concerned with the density 30 units in the area would create and onsite water control for that many units. He stated the water table was at about 8 feet below the surface. He stated he was opposed to the addition of more units.
- **Clara Baker, 312 Laurie Lane, Billings, Montana**, stated she was concerned that should 30 units be placed on the 1.36 acre parcel, there would be no room for off-street parking and there would be no green space for the children to safely play.
- **Debra Tonkovich, 1819 Cody Drive, Billings, Montana**, stated there was no signage on the streets in the area and there were only partial sidewalks. She continued that the pond area was not a safe area for children to play and a playground would be a good idea. She stated the storm drains were not effective during storms and the area flooded often. She stated that increased population in the area would have adverse effects on the wildlife in the Meadowlark Park. She invited the Council to visit the area prior to the May 22nd Council meeting.

There were no further speakers, the public hearing was closed.

Councilmember Clark moved for approval to accept the applicant's withdrawal for special review, seconded by Councilmember Sullivan. On a voice vote, the motion was approved 8-0, with Councilmember Cromley abstaining.

11. **DEHLER PARK AGREEMENT. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

Tina Volek, City Administrator, gave a brief presentation and noted that the current agreement would expire the end of 2017. She stated presentations were given in November and December of 2016, but the Council had postponed the approval of the agreement for further negotiations. She continued that a subcommittee was created,

met and negotiated the agreement before the Council. She stated the agreement would expire December 31, 2026, if entered into. She stated the agreement included covenants for team relocation; no selling of the ballpark by the City; and had two 5-year renewal options. Ms. Volek explained that the naming rights for Dehler Park would remain until 2032 and the scoreboard naming rights through the end of September 2017 with future rights going to the Team. Councilmember McFadden asked who the received the other 85% on the naming rights. Ms. Volek responded that the original was to go to the Team, but the current proposed agreement does not include any money on future naming rights coming to the City. She stated the naming rights in the future would go to the Team. She continued that the ballpark rental was increased from \$30,000 to \$60,000 annually to a permanent fund for capital repairs. She stated the Team pledges \$5,000, and the City \$30,000 annually for routine repairs. Ms. Volek stated the facility review committee was changed from 3 members to a 5 member ballpark view committee. She stated the committee would be comprised of one member from each team within the City and 3 appointed by mutual agreement. She continued that the committee's duties had been expanded to include adjudication of mid-year disputes and recommendations after annual review for capital and repair fund expenditures to the Council. She stated the agreement included that an annual debt report filed with Minor League Baseball would also be submitted to the Finance department and a copy of the Team's annual financial compilation report would be provided to the City's financial advisor for certification of solvency. Ms. Volek stated that the agreement lacked one item that was mutually agreed upon and had been inadvertently omitted; that the City would pay for the City's financial advisor's review and certification of solvency. She stated the new agreement stated the City had 15 days to schedule City events if the ballpark is available, but the Team and City also had rights to schedule other events. She stated the City would make improvements at the Team's expense and request with the approval of the Ballpark Review Committee and the City Council. She stated the agreement now contained a complaint process that was not in the current agreement. Ms. Volek commented that there had been some additional negotiations since the draft agreement was provided to Council and those were that on Page 18 under Section 25.3 and subsection (c) needed to be added that would mirror Section 25.1(c) Team Responsibilities. Ms. Volek explained the recommended revisions to Exhibits A and B.

Councilmember Swanson asked whether there would be any glassed-in box seats. Ms. Volek stated there were no boxes in the stadium and that the original plans had them, but they had been removed as a cost-savings effort during the construction. Councilmember Swanson continued that should the Team wish to have boxes, what was the City's responsibility. Ms. Volek responded that if the Team requested boxes and after it was reviewed by the Ballpark Review Committee and City Council, it would be the City's responsibility to construct them, Section 8.1, Page 11 of the Agreement.

Councilmember Yakawich asked who was on the subcommittee and approximately how many hours were spent on negotiations. Ms. Volek stated that Councilmembers Clark, Brewster, Friedel and Brown. She stated the subcommittee met 3 times at 3 or 4 hour averages. She continued that she and Mr. Heller had been in daily conversations over the past 2 or 3 weeks negotiating the agreement, but the hours

were countless. She stated that the City Attorney and Parks Director had also spent an extensive amount of time on the agreement. She noted that the agreement before the Council was a much more comprehensive agreement than any past agreements. Councilmember Yakawich thanked Ms. Volek, the subcommittee and staff for their hard work.

Ms. Volek invited David Heller, Main Street Baseball, Davenport, Iowa, to address the Mayor and Council. He thanked the Mayor and Council and stated the City was being served extremely well by Ms. Volek and Brent Brooks. Mr. Heller stated that he had been prepared to sign the agreement prior to his arrival. He stated, however, that when he received Exhibit B later in the day, he was not in agreement to that proposed exhibit. He continued that according to the education requirements set forth in the proposed exhibit, the groundskeeper of 22 years would have to be fired because he did not have the certifications required under the proposed exhibit. Mr. Heller stated that the groundskeeper, Mr. Barta, was very, very good at his job; so much so that the Dehler Park field had been awarded by the Pioneer League, 3 out of 5 years, the best field in the entire league. He stated that Mr. Barta was so good, that Ballpark Digest named Dehler Park the best park of all rookie league ball in all of the country. Mr. Heller stated he was extremely proud of Mr. Barta and his work. Mr. Heller suggested that the proposed exhibit be replaced with same one used in the current agreement, "Minor League Facility Standards and Compliance Inspection Procedures". He stated that under Section 58 of that exhibit it gives a simple list of standards of which the Team is in compliance. He stated the proposed exhibit blindsided him. Councilmember Sullivan referred to Section 2.3 in the agreement which mentions Exhibit B and asked for clarification whether that had been in the agreement during the entire negotiations period. Mr. Heller stated there was an Exhibit B in the current agreement and he understood that Exhibit B would remain the same for the new agreement. He stated the proposed exhibit was completely different. Ms. Volek stated the language had been in the agreement all along. She asked what would happen should Mr. Barta need to be replaced and there were no standards in place for his replacement. Mr. Heller stated that he asked for both Exhibits A and B to be forwarded to him before leaving for his flight to Billings because neither exhibit was attached to the final draft agreement. He continued that it wasn't until 3:00 pm that he received them and the proposed Exhibit B was not what he had expected. Ms. Volek stated the exhibits had been provided to the Club over and over. Mr. Heller stated that the Mustangs Manager, Gary Roller, denied that was true. Councilmember Swanson asked whether Mr. Heller had any objection to the Exhibit B from the current agreement being attached to the new agreement. Mr. Heller responded he was in agreement and had no hesitation to that. Councilmember Brown asked Ms. Volek if she was aware of Section 58, Exhibit B from the current agreement. Ms. Volek responded affirmatively and stated Mr. Quaker and she had had conversations that Section 58 did not have any standards per se. Mr. Heller interjected that Section 58 was entitled as standards. Mayor Hanel thanked Mr. Heller and Mr. Roller for attending the meeting and noted the importance of reaching an agreement.

Councilmember Cromley asked City Attorney, Brent Brooks, to review Section 10.1, Page 12, regarding the extension of the agreement after 2027. He asked what

would happen to the Team's naming rights if an additional 10-year extension was not agreed to after 2027. He noted that the Team could possibly leave Billings, but would still own the naming rights for the ballpark after 2032. Mr. Brooks responded affirmatively that that could happen. Mayor Hanel asked Mr. Heller if he would be willing to condition that that Team must be in Billings at the time ownership of naming rights occurs. Mr. Heller responded that the Mustangs had no intention of ever leaving Billings to play elsewhere and would happily agree to commit to Billings.

Councilmember Clark moved for approval of the Dehler Park Agreement with Exhibit B - "Minor League Facility Standards and Compliance Inspection Procedures" and with the language change to Section 10.1, Page 12, that the Team shall have the exclusive right to name the Ballpark and retain all revenues for the sale of such naming rights so long as the Team continues to play baseball at the Ballpark, seconded by Councilmember Friedel. Mayor Hanel spoke in favor of the motion and the Mustangs and its staff. Councilmember Clark stated it was not just the City that was responsible for the delayed agreement, but Mr. Heller had been involved as well. He continued that there had been a lot of negotiating going back and forth. Councilmember Friedel stated he was pleased with the comprehensive agreement. On a voice vote, the motion was approved 8-1, with Councilmember Cromley opposing.

PUBLIC COMMENT on Non-Agenda Items -- Speaker Sign-in required. (*Restricted to ONLY items not on this printed agenda. Comments here are limited to 3 minutes. Please sign in at the cart located at the back of the council chambers or at the podium.*)

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

COUNCIL INITIATIVES:

- Councilmember Friedel moved to reconsider Item 1B, at the next regular business meeting, May 8th, 2017, seconded by Councilmember Sullivan. Ms. Kampa-Weatherwax provided circulation information concerning *The Billings Times* and noted it was just over 1,100 and suggested a contract extension for 30 days be entered into with *The Billings Times* to allow Council the opportunity to make its final decision on May 8th. Mr. Brooks added that Tina Volek could sign the low cost extension. Councilmember Sullivan stated he wanted circulation information included for consideration. Councilmember McFadden stated he disagreed with considering circulation because those that view legal ads would acquire subscriptions to the publication that printed them. On a voice vote, the motion was unanimously approved.

There was no further business, and the meeting adjourned at 12:21 AM,
Tuesday, April 25, 2017.



CITY OF BILLINGS

BY: Thomas W. Hanel
Thomas W. Hanel, Mayor

ATTEST:

BY: Denise R. Bohlman
Denise R. Bohlman, City Clerk