

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

June 25, 2007

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

ROLL CALL – Councilmembers present on roll call were: Ronquillo, Gaghen, Stevens, Brewster, Ruegamer, Ulledalen, Boyer, Jones, and Clark. Councilmember Veis was excused.

MINUTES – May 29, 2007 – approved as presented.
June 11, 2007 – pending

COURTESIES

- Eagle Scout Recognition for Nicholas Peter
- Kim Prill, Harlan Krogh, and members of Cub Scout Pack 3 presented a \$10,100 donation to the Big Ditch Trail Project for extension of the trail system.

PROCLAMATIONS

- July 4-7, 2007 - Gold Wing Riders Association/Canadian Appreciation Days

ADMINISTRATOR REPORTS – Tina Volek

- City Administrator, Tina Volek, requested that the Authorization of Mail-in Ballot for the 2007 Council Elections be added to the agenda as Item 18.
- Ms. Volek referenced the following handouts: the Downtown Billings Partnership Agreement; Attachment A - Resolution for Agenda Item 4; Exhibit A for Agenda Item 2; and the recommended appointment of Jean Warner to the Library Board.
- She reminded the Council that the July 2nd Work Session had been cancelled and rescheduled for July 30th.
- Ms. Volek reminded the Council the Agenda Review Meeting would be held tomorrow evening at 5:30 p.m. in the City Hall Conference Room.
- She noted that the City Offices would be closed on July 4th.

Following Ms. Volek's Administrator Reports, Councilmember Ruegamer moved to place the Mail-in Ballot issue on the agenda, seconded by Councilmember Boyer. There was no discussion, and the motion was unanimously approved.

Mayor Tussing advised the presentation from the Cub Scouts included with the Courtesies was in reference to Consent Agenda Item K.

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: 1, 2, 3, 4, 5, 6, 7, 8, and 18 ONLY. Speaker sign-in required. (Comments offered here are limited to 1 minute per speaker. Please sign up on the clipboard located at the podium. Comment on items listed as public hearing items will be heard ONLY during the designated public hearing time for each respective item.)

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

- TOM ZURBUCHEN OF 1747 WICKS LANE SPOKE on Agenda ITEM 2. He said last year it was stated all 60 mills would not need to be collected in the future with the Public Safety Mill Levy. He said with the budget being adopted tonight, all 60 levies would be levied; and the budget would only be balanced to Fiscal Year 2011. He said tonight's budget did not discuss inflation and the energy crisis the entire country was facing.
- KATHY ARAGON OF 645 O'MALLEY DRIVE THANKED the Mayor, City Council, and City Staff for making the sidewalks and crosswalks in the Highland School area a reality. She said the two most important pieces in creating healthy neighborhoods were facilities and education, and she appreciated the efforts of City Staff to improve the health and safety of the community and the quality of their environment.

Councilmember Boyer said she would like to thank the residents in the Highland School neighborhood for taking on all the necessary tasks and working with City Staff to make the project a success.

Mayor Tussing reminded everyone the public comment period was limited to “non-public hearing” agenda items and asked if anyone else would like to comment on agenda ITEMS 1 through 8 and 18. Seeing no one come forward, the public comment period was closed.

CONSENT AGENDA:

1. A. Mayor's Appointments:

	Name	Board/Commission	Term	
			Begins	Ends
1.	Jean Warner	Library Board	06/25/07	12/31/07

1. Unexpired term of Steven Tucker.

B. Bid Awards:

(1) SID 1375, Claremont Road Improvements. (Opened 6/5/07). Recommend H.L. Ostermiller, \$297,665.92.

(2) SID 1377, Greenbriar Road Improvements. (Opened 6/5/07). Recommend H.L. Ostermiller, \$140,188.70.

(3) W.O. 05-02 2005-2006 Miscellaneous/Developer Related Improvements. (Opened 6/12/07). Recommend CMG Construction, Inc. \$429,845.00.

(4) W.O. 05-14 Walter Pump Station Improvements. (Opened 6/12/07). Recommend COP Construction, \$2,798,325.00.

(5) W.O. 06-18 Broadwater Subdivision Improvements, Phase V. (Opened 6/12/07). Recommend JTL Group, Inc., \$594,500.00.

(6) W.O. 07-03 2007 Street Maintenance Contract No. 2. (Opened 6/12/07). Recommend Riverside Sand & Gravel, Inc., \$1,111,111.11.

(7) Airport Terminal Building Roofing Project. (Opened 6/12/07). Recommend Commercial Roofing, \$371,800.00.

(8) Airport Paving of the Overflow Parking Lots. (Opened 6/12/07). Recommend JTL Group, Inc., \$288,178.35.

C. Contract for Professional Services with HDR Engineering, Inc. for Water System Emergency Power Supplies, \$74,639.00.

D. Approval of 3-year lease with Montana GSE, Inc. for lower level commercial airport terminal building space (July 1, 2007 – June 30, 2010).

E. Approval of hourly rate increase with Guardian Security for Library guard service to \$15.70 for the third year of a 3-year contract.

F. Approval of Police Department request to purchase Crime Analysis Reporting Software from Omega Group, \$37,890.00.

G. Agreements for Landfill Use with Bighorn County, Carbon County, Musselshell County, Stillwater County, Treasure County, Town of Columbus, Town of Fromberg, Town of Hysham, Town of Bridger, Town of Joliet, City of Laurel, and City of Red Lodge (7/1/07 – 6/30/08); and **Amendment #1** to the 3-year Landfill Use Agreement with Yellowstone County.

H. Amendment #13, W.O. 05-14 Walter Pump Station Improvements. Professional Services Contract, Morrison-Maierle, Inc. \$359,668.00.

I. W.O. 04-33 Lake Elmo Drive (Hilltop to Wicks Lane) Right-of-Way Acquisition:

(1) Parcel 1: Portion of Tract 2, Certificate of Survey 205, Joe Ann Black. \$9,218.50.

(2) Parcel 6: Portion of Lot 6, Welsh Subdivision, Jack Leonard Welsh & the Heirs and Devisees of Darlene D. Welsh, Deceased; and Quincy & Sarah Clark. \$4,150.00.

(3) Parcel 7: Portion of Lot 7, Welsh Subdivision, Jack Leonard Welsh & the Heirs and Devisees of Darlene D. Welsh, Deceased; and Quincy & Sarah Clark. \$1,800.00.

(4) Parcel 8: Portion of Lot 8, Welsh Subdivision, Quincy & Sarah Clark. \$2,000.00.

J. Street Closure: Gold Wing Road Riders request temporary street closure for parade on Thursday, July 5, 2007, from 3:00 p.m. to 7:00 p.m. originating at Faith Chapel; turning right on Shiloh Road; right on Rimrock Road; right on 38th Street West; left on Poly Drive; right on North 30th Street; ending at 1st Avenue North and North 30th Street.

K. Acceptance of Donation: Approval and acceptance of donation from BikeNet to the Big Ditch Trail Project, \$10,100.00.

L. Acceptance of Donation: Approval and acceptance of donation from St. Vincent's 2006-2007 Heart and Sole Run to the Main Street Underpass Project, \$10,000.00.

M. Resolution #07-18569 adopting the continuance of Resolution #06-18421 adopted by Council on May 22, 2006, for park ball field fence advertising, and extending the one-year time period indefinitely.

N. Second/final reading Ordinance #07-5416 expanding Ward V (Annex #07-08) for Tract 3, Certificate of Survey 2298, containing approximately 4.27 acres located at Grand Avenue and 56th Street West. Hope Evangelical Church, owner.

O. Second/final reading Ordinance #07-5417 expanding Ward I (Annex #07-09) for property described as: NW1/4 of Section 16, and the SW1/4 of Section 9, T1S, R26E and located on the southeast corner of the intersection of King Avenue East and Calhoun Lane. Miller Trois LLC, owner.

P. Preliminary Subsequent Minor Plat of Amended Lot 1, Block 1, Grand Avenue School Subdivision generally located on the south side of Grand Avenue between 13th and 14th Streets West, School District No. 2, owner, approval of the plat and adoption of the Findings of Fact.

Q. Preliminary Major Plat of King Meadows Subdivision generally located on the southeast corner of the intersection of King Avenue West and 48th Street West, conditional approval of the plat, approval of the variances, and adoption of the Findings of Fact.

R. Bills and Payroll

- (1) May 25, 2007
- (2) June 1, 2007

(Action: approval or disapproval of Consent Agenda.)

Mayor Tussing asked for separations from the Consent Agenda. There were no separations.

Councilmember Gaghen moved for approval of the Consent Agenda, seconded by Councilmember Brewster.

Councilmember Ulledalen referenced ITEM K, the Gold Wing Parade. He said the parade would be circling St. John's Nursing Home from Shiloh Road and asked if it would interfere with the first summer concert at St. John's scheduled to begin at 6:00 p.m.

City Administrator Volek said the Gold Wing Parade should be out of the St. John's area by 5:45 p.m. at the very latest. She said the Police Department was aware of the possible conflict, and they would encourage prompt movement of the parade.

Mayor Tussing asked for further discussion on ITEM K. There was no further discussion. On a voice vote, the Consent Agenda was approved.

REGULAR AGENDA:

2. RESOLUTION #07-18570 approving and adopting the FY 2007-2008 Budget. Staff recommends approval. Delayed from 6/11/07. (Action: approval or disapproval of staff recommendation.) Assistant City Administrator Bruce McCandless referenced the Resolution and attached exhibit the Councilmembers received in their Friday packet. He also referenced a list of options for the Council to consider regarding supplemental budget requests and strategic plan implementation. Also included were proposed motions Council could consider in order to adopt the budget.

Mayor Tussing asked Mr. McCandless if the cost of the Police Department enforcing the fireworks ordinance should be included as part of the budget or as a separate resolution. Mr. McCandless said the Council would be asked to add the additional dollars to the Public Safety budget.

Mayor Tussing asked Mr. McCandless to verify the amount being taken from reserves. Mr. McCandless said the amount was approximately \$700,000, which was the amount of expense over revenue in the General Fund, due largely to the transfer to Public Safety.

Councilmember Boyer asked if that amount did not include the supplementals, and Mr. McCandless confirmed that was correct. Mr. McCandless pointed out the expense of the Cost of Services Study was already in the proposed budget and was being covered by the salary, benefits, and operating costs made available from the vacated Deputy City Administrator position.

Councilmember Brewster asked to confirm that the amount did not include settlement of teamsters or the amount for the unfair labor practice with the police if ruled against the City. Mr. McCandless confirmed it did not.

Councilmember Ronquillo moved to approve the budget as presented, seconded by Councilmember Stevens.

Mayor Tussing moved to amend the budget to include \$10,000 of Council Contingency Funds to pay overtime to the Police Department to enforce the fireworks ordinance over the 4th of July holiday, seconded by Councilmember Jones.

Councilmember Boyer commented she hoped the expense was in the budget for next year because she did not want it to come from Council Contingency again.

Mayor Tussing asked for further discussion on the amendment to include \$10,000 of Council Contingency Funds for Police Department overtime over the 4th of July holiday. There was no further discussion, and the motion was approved.

Mayor Tussing moved to amend the budget to include the Fire Department paramedic service authorizing the Fire Department to spend up to \$37,800 the first year to implement, train, pay, and purchase any equipment not donated, seconded by Councilmember Stevens. Mayor Tussing said he appreciated all the work Staff and Council had done reviewing the budget and felt the paramedic service would be a very important benefit to the community.

Councilmember Ulledalen referenced the ordinance requiring the ambulance service to provide paramedics in the community and said he felt it would be a duplication of services. Mayor Tussing said he felt there were not enough paramedics and ambulance attendants on duty to serve the entire community. Councilmember Stevens asked for Chief Jochems comments on the need for additional paramedics.

Fire Chief Marv Jochems stated that 74% of the time the Fire Department arrived 3-1/2 minutes before the ambulance paramedics. He said since the Fire Department was at the scene first, it made sense to have a paramedic there if the patient was not breathing or was having heart problems. He also said in case of more than one injury, there would be more than one paramedic on the scene.

Councilmember Ruegamer asked City Administrator Volek if spending the money this year would mean spending more next year and more the following year. Ms. Volek said the current recommendation was for three paramedics. She said if enough paramedics were added to have one at every station, the cost would be approximately \$65,000 per year beyond the first year. Chief Jochems stated they did not intend to staff seven fire stations with paramedics.

Councilmember Clark asked how it would be decided what areas of town the three paramedics would serve. Chief Jochems said they would conduct a study. He said at first they would place them geographically within the City; one on the east side, one on the west side, and one in the middle.

Councilmember Clark asked if there would be three paramedics on duty every day. Chief Jochems said that would not be possible until the total of paramedics reached 25.

Councilmember Ulledalen asked if the Fire Department paramedic treating the patient on the scene would be obligated to ride with the patient in the ambulance to the hospital. Chief Jochems said once the paramedic from the ambulance service arrived, he/she would be in charge and would do the transporting unless additional help was needed.

Councilmember Boyer confirmed that a paramedic would arrive on the fire truck before the ambulance arrived with a paramedic, and the City would pay for it. Chief Jochems said the paramedic on the ambulance would be paid for by the patient.

Councilmember Clark asked if the \$37,800 would pay for the additional training or just cover the necessary equipment. Chief Jochems said five people were just put through the 2-year full paramedic program with scholarships, so if they were able to hire, the training cost would have already been taken care of.

Councilmember Gaghen asked if it would be five years before having the full 25 paramedics on staff. Chief Jochems said they would like to have full staff within the next couple of years.

Councilmember Ulledalen said he would not be supporting the program. He said the City needed to take a hard look at the ordinance and redesign the system first. He said the ordinance currently required the ambulance service to provide a paramedic on every truck. He said implementing paramedic service as part of the fire service would be a duplication of requirements. He said without taking a hard look at the '94 ordinance and redesigning the system, a level of responsibility would be added to the City. He said if the City did not take over the paramedic service completely, he saw no point in the City trying to staff a piecemeal of services.

Councilmember Stevens asked Chief Jochems what the 3-1/2 minute arrival timeframe meant to a critical patient; because it did not sound like a long period of time. She also asked what the difference of service was between an EMT and a paramedic and what service the paramedic could provide to the patient within the 3-1/2 minutes that they would not receive from the EMT. Chief Jochems said the paramedic could start heart treatment and provide appropriate drugs. He said every minute of treatment counted for stroke victims.

Councilmember Ruegamer said it bothered him that the Fire Department was going into the medical services business. He asked if the City would have to take over if the ambulance service went out of business. He said the City would lose money if that happened.

Chief Jochems responded that American Medical Response (AMR) was in full support of the paramedic program. He said AMR's money was in the transport portion, and any Fire Chief in his right mind would never suggest the City get into the transport business.

Councilmember Gaghen said it was very difficult to place a value on human life and every minute, so she would be supporting the program.

Councilmember Clark asked Chief Jochems if the 25 paramedics would replace staff the City would be losing. Chief Jochems said he was trying to hire seven paramedics. He said he currently had four vacancies, and July 1 he would have the authority to hire three more on the levy.

City Administrator Volek said she was not opposed to the paramedic service program; but as had been noted earlier, the City continued to dip into the General Fund reserves. She said one of the items in front of Council that evening was a proposed Cost of Services Study to be funded through the deletion of a previously existing staff position. She said the Cost of Services Study would

examine what services the City currently provided and attach costs to those services. She said the time was coming when the City would need to make decisions about what services would be funded and how those services would be funded. Ms. Volek said her recommendation would be not to fund the program this year and complete the Cost of Services Study so the decision would be part of an overall conscious effort to determine exactly what services the citizens of the City were willing to support and what services they demanded.

Mayor Tussing said if there were not already trained paramedics capable of going to work July 1 and possibly saving someone's life, he would agree the City could wait. He referenced the three years the City had taken on the pay and benefit study and said he would not be willing to wait that long.

Councilmember Jones commented the City would only have three paramedics the first year who would have to come from longer distances and who would probably not make it within the 3-1/2 minutes anyway. He said he felt a decision should not be made until after the Cost of Services Study was completed.

Councilmember Boyer said she could not agree more and appreciated Ms. Volek's comments. She said the decision needed to be made after the Cost of Services Study determined what particular services were costing.

Councilmember Ulledalen added he was not opposed to having paramedics on the scene. He pointed out in a study done there was a disagreement in medical literature about the impact of having a paramedic on the scene with any incident and said the point was to get the person to the hospital as soon as possible. He said if we followed the emotional side of the argument being presented that night, we should follow the example of France and put an ER doctor on every ambulance. Councilmember Ulledalen said he felt the paramedic program was a piecemeal solution to something that needed a lot more study.

Councilmember Brewster said he agreed with Councilmember Ulledalen and said if better service and faster response times were needed by AMR, those were issues that needed addressed in AMR's contract renewal.

Councilmember Stevens said she agreed 3-1/2 minutes could be absolutely critical and the difference between life and death for some patients; but she was concerned about the budget. She said even though she was 100% behind the paramedic program, she would vote no and wait for the results of the Cost of Services Study.

Mayor Tussing asked for further discussion on the amendment.

Councilmember Gaghen asked Mayor Tussing to clarify the amendment. Mayor Tussing said the amendment would allow the Fire Department to spend up to \$37,800 to implement the paramedic program providing for salary, training, and equipment.

There was no further discussion. The amendment to allow the Fire Department to spend up to \$37,800 to implement the paramedic program failed. Councilmembers Ronquillo, Stevens, Brewster, Ruegamer, Ulledalen, Boyer, Jones, and Clark voted "no".

Councilmember Boyer moved to amend the motion to include \$110,000 for the Cost of Services Study, seconded by Councilmember Stevens.

Mayor Tussing asked if the \$110,000 would be an addition to the existing budget. City Administrator Volek said it would be a reallocation of funds. She said \$123,366 currently in the City Administrator's budget for salary and operational costs for a position that no longer existed would be moved to the Non-Departmental Budget to fund the Cost of Services Study. Mayor Tussing clarified with Councilmember Boyer that that was the intention of her motion. Councilmember Boyer said that was correct.

Mayor Tussing asked for further discussion on the amendment. There was no further discussion. On a voice vote, the amendment was approved.

Councilmember Stevens moved to amend the motion to include \$35,000 for website redesign, seconded by Councilmember Boyer. Councilmember Stevens said she participated in the RFP process to look for a consultant to work on the City website, and there would be a possibility for an extreme website makeover through a company who specialized in municipal websites. She said the City website was in need of an update. She said the scope of services prepared by Staff exceeded her expectations. She felt the update would be very worthwhile for the citizens of Billings and staff.

Mayor Tussing asked where the \$35,000 would come from, and Ms. Volek said it would come from reserves. She said it was one of the strategic plan items adopted by Council as part of its effort to communicate better with the citizens. Mayor Tussing commented when he weighed the website design against the paramedic program, it did not even come close; so he would not be supporting the amendment.

Mayor Tussing asked for further discussion on the amendment. There was no further discussion. On a roll call vote, the amendment to include \$35,000 for website redesign failed. Mayor Tussing and Councilmembers Gaghen, Brewster, Jones, and Clark voted "no".

Councilmember Jones moved to amend the motion to approve the Drug Court local match of \$50,000, seconded by Councilmember Boyer. Councilmember Jones said he recently attended the graduation of three people from Drug Court, and it was very enlightening to watch. He said drugs in this community were a major problem, and the Drug Court seemed to be working.

Councilmember Clark clarified it would not be a match. He said the money would be an addition to a grant.

Councilmember Boyer said she also attended several of the graduations, and it was quite a model program that the community could be very proud of. She said the program needed to be continued.

Councilmember Brewster said he had in mind not to support any additions to the budget because of the City's shortfall; but he attended Drug Court to get a value for the program and felt it was very worthwhile. Councilmember Brewster said he would support the amendment.

Councilmember Clark said he supported the Drug Court. He said he just wanted it known that Council did not have to approve the money in order for the program to exist. He said the grant money was already there. He said the judge

said the program would continue even without the \$50,000, but not in its current capacity.

Councilmember Stevens said the judge previously stated the reason she was asking for the \$50,000 was in case she did not receive as much grant money as she wanted; and the Council had encouraged her to request more money through the grant program. Councilmember Stevens said she agreed it was a fantastic program, but she said she would not support the amendment because she felt the judge was asking Council for supplemental funding just because she did not want to request more grant money.

Mayor Tussing said he felt the same philosophy of waiting for the Cost of Services Study for the paramedic program also applied to the current amendment, so he would not be supporting it.

Councilmember Ulledalen asked to back up to the paramedic issue. He said there were a number of issues with the '94 ordinance that needed to be re-addressed, and the paramedic issue was a prime example. He said the existing ordinance required that an ambulance provider have a paramedic on every ambulance. He said if the City wanted to go back and improve the service, it would be realistic to re-examine the entire ordinance first. He said the amendment would "layer on" an existing requirement; and that is why he did not support it.

Mayor Tussing asked for further discussion on the amendment to add \$50,000 to the Municipal Drug Court. There was no further discussion. The motion failed. Mayor Tussing and Councilmembers Ronquillo, Gaghen, Stevens, Ruegamer, and Clark voted "no".

Councilmember Stevens moved to amend the motion to add the Municipal Court Diversion Software to the budget, seconded by Councilmember Boyer.

Councilmember Clark asked what the software was for. City Administrator Volek said it was to enable tracking of clients going into diversion and would reduce the high level of overtime.

Councilmember Stevens asked if the funding would come from the reserves. Ms. Volek said it would be funded through reserves.

Mayor Tussing asked for further discussion on the amendment to add \$22,763 to the Municipal Court.

Councilmember Stevens asked what amount was being paid in overtime. Ms. Volek said the estimate from the Finance staff was \$25,000 to \$30,000 per year.

Councilmember Stevens asked if making a one-time payment would actually save money in the long run. Ms. Volek said it would on this issue.

Mayor Tussing asked if it would completely eliminate the overtime. Ms. Volek said she could not guarantee it.

Assistant City Administrator McCandless stated the figure of \$25,000 to \$30,000 was for all overtime of court workers and not just directly related to diversion. He said some of the overtime costs could be eliminated with the acquisition of the software.

Councilmember Stevens asked if there were maintenance charges for the software. Mr. McCandless said there would be a maintenance charge of typically 10% of the initial cost.

Councilmember Ruegamer said he did not know anything about the software and had not seen anything that told him the software was worth it. He commented the computer people have them in a position where they could tell them anything, so he did not know how to vote.

Councilmember Boyer said as much as she supported the Drug Court, she felt it would be wise to wait for the Cost of Services Study and would not support the amendment.

Councilmember Stevens asked for a definition of what diversion software did and what diversion actually meant.

Assistant City Administrator McCandless said in order to answer those questions, he would need to go downstairs and get all of the supplemental budget requests. He said he could provide the information in approximately ten minutes.

City Administrator Volek stated a budget amendment could be brought back in the future to provide more detailed information on the item.

Mayor Tussing asked for further discussion on the amendment to add \$22,763 for Municipal Court diversion software. There was no further discussion. On a voice vote, the motion failed.

Mayor Tussing asked for further discussion or amendments on ITEM 2. There was no further discussion. Mayor Tussing stated the vote would be on ITEM 2 as amended twice to include \$10,000 from the Council Contingency Fund to cover overtime pay for the Police Department for fireworks enforcement and \$110,000 to be transferred from the City Administrator's budget to the Non-Departmental Budget for the Cost of Services Study.

Councilmember Clark asked if the \$210,000 for the move of the Engineering Division was included in the budget. Ms. Volek stated it was a recommended supplemental budget request in the presentation made to Council earlier and was included in the budget.

Councilmember Brewster stated he planned to vote against ITEM 2 for a couple of reasons. He said he did not want to continue spending reserves because it would lead to higher taxes; and the City would be spending money raised by imposing higher fees and rates on utilities.

Councilmember Boyer said one of the amendments would come from Council Contingency and the other amendment would come from funds already in the budget that were being transferred.

Councilmember Brewster stated that Staff indicated in the budget presentations that the budget was based on revenues from several increases in specific funds that would occur after the budget was approved. He said Council would be approving the spending of money that would be raised later through water rates, sewer fund increases, etc. City Administrator Volek said that was currently under study, and there had been no specific recommendations. Councilmember Brewster asked Ms. Volek if Council was basing approval of the

budget with rate increases being part of the revenue stream. Ms. Volek said that was correct.

Finance Manager Pat Weber advised that 2008 was the third year for increases in the water and wastewater rates that were approved four years ago. He said this year increases would be 7% for street maintenance fees and 7% for storm sewer fees. Councilmember Brewster confirmed with Mr. Weber that the budget would allow spending based on those revenues.

Councilmember Gaghen asked Mr. Weber if the budget had been based on the 7% rate the last couple of years. Mr. Weber said street maintenance had not had an increase since FY03, and storm sewer had not had an increase since FY05. He said this would be the third year for rate increases in the water and wastewater fees that were approved by Council. He said there would be a study done after FY08, and a cost report would be brought before Council for projects that needed to be done.

Councilmember Clark asked when the 7% increases would come before Council. Mr. Weber stated the resolution for the wastewater and street maintenance fee increases was approved at the last meeting.

City Administrator Volek pointed out the water and sewer rate studies were being prepared looking at the needs for expansion of the services. She said the vast majority of the rate increase would be for maintenance and replacement of existing lines and expansion of the system to meet City growth needs.

Councilmember Brewster stated his intent was not to debate Staff and simply to let staff know he planned to vote no. He said he felt "the cart was before the horse." He said if we were going to use the revenues, the rate increases should have been approved before the budget. He also said some of the rate increase plans were very well done with good information and well justified, which he had supported; and some were not, which he had not supported.

Councilmember Boyer said she understood what Councilmember Brewster said, but that they have had a lot of time to discuss it, and it seemed "late down the road" to be bringing up the concern.

Councilmember Brewster said it was the first chance he has had to discuss the overall approval of the budget. He said the other issue was the reserves. He said he was entitled to his opinion and could bring it up at any time.

Councilmember Jones said he was nervous about the comment that it was too late in the process to speak. He said it was still part of the process. He said he would also be voting against the budget because of the reserves.

Mayor Tussing asked for further discussion and once again confirmed the voting would be on ITEM 2, the budget as presented by Staff, as amended to include \$10,000 for Police Department overtime from the Council Contingency for fireworks enforcement and \$110,000 for the Cost of Services Study to be transferred from existing funds already in the Administrative budget.

On a voice vote, the motion was approved. Councilmembers Brewster, Clark, and Jones voted "no".

3. RESOLUTION #07-18571 setting FY 2008 mill levy rates for the General Fund, Transit Operating Fund, Library Operating Fund, and Public Safety I Fund. Staff recommends approval. Delayed from 6/11/07. (Action: approval or disapproval of staff recommendation.) City Administrator Tina Volek said there would be no Staff presentation, but Staff was available to answer any questions.

Councilmember Clark moved for approval of the resolution setting the mill levy rates, seconded by Councilmember Brewster.

Councilmember Stevens indicated that Councilmember Veis had an issue about the library mill levies but she could not recall what the issue was. Mayor Tussing stated Mr. McCandless had addressed the issue in a Friday packet two or three weeks ago and asked Mr. McCandless to summarize the information. Mr. McCandless said Councilmember Veis's concern was that the Charter called for the levying of 74 all purpose mills. His objection was for the way the budget had been structured for the past 30 years by identifying 69-1/2 mills for the General Fund and 4-1/2 mills for the Library Fund. Mr. McCandless said the 4-1/2 mills were in addition to the 5 mills approved by the voters in 1994. Mr. Veis was concerned with the practice of segregating the 4-1/2 mills for the library when the Charter did not specifically call for that.

City Administrator Volek indicated Library Director Bill Cochran was in the audience if there were questions.

Councilmember Brewster said he thought the issue was whether or not the City was in compliance with the language in the Charter by not levying all 74 mills to the General Fund first and then allocating the revenue of the 4-1/2 mills to the library. Councilmember Brewster said after reading Mr. McCandless's memo, he felt either process was fine but that the process closer in language to the Charter would be the process that should be followed.

Councilmember Brewster suggested that next year when the levies were being approved in the budget, they should be expressed in compliance with the Charter.

There was no further discussion. On a voice vote, the motion was approved.

4. RESOLUTION #07-18572 relating to \$10,700,000 General Obligation Bonds, Series 2007A and \$1,800,000 General Obligation Bonds, Series 2007B; determining the form and details and authorizing the execution and delivery of the bonds. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) City Administrator Tina Volek said there would be no Staff presentation, but Staff was available to answer any questions.

Mayor Tussing noted the resolution from bond counsel was included in the packet.

Councilmember Jones moved for approval of ITEM 4, seconded by Councilmember Clark.

There was no further discussion. On a voice vote, the motion was approved.

5. APPROVAL OF PURCHASE of 13 patrol cars by June 28, 2007, at 2006-2007 State bid prices currently pending Council approval in the FY08 Equipment Replacement Plan. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

City Administrator Tina Volek stated the item was before Council asking for authority to purchase the vehicles in order to obtain pricing from 2006-2007 contract prices. She said the contract prices would only be held until the end of that week. She said the item was funded in the Equipment Replacement Plan and had been paid out over a period of years to allow purchase of the vehicles at that time. Ms. Volek said there was no Staff presentation, but Staff was available to answer any questions.

Councilmember Ulledalen asked Ms. Volek to clarify that it would not be a lump sum payment this year for the 13 vehicles. Ms. Volek said it would be a lump sum payment, but it was a number that had been saved over several years by advance payments of the Police Department. Ms. Volek said replacement of these vehicles and larger vehicles such as fire trucks was budgeted several years in advance. She said the money would not come out of reserves.

Ms. Volek said the vehicles would be paid for from the FY08 budget but by ordering them now, the cost would reflect the 2006-2007 contract prices.

Councilmember Boyer moved for approval to purchase the 13 police patrol vehicles from Bison Motor Company for \$284,804, seconded by Councilmember Gaghen.

There was no further discussion. On a voice vote, the motion was approved.

6. APPROVAL OF PURCHASE of Lots 1-6, Block 1, Rolle Subdivision; Tract 1A, C/S 1434; and Tract 1B-1 of Amended Tract 1B of C/S 1434 (less 1B-1A and Black Otter Subdivision) for the purpose of maintaining the property as undeveloped. Brian Kurth and Black Otter Ventures, LLC, sellers. \$631,806.00. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Public Works Director Dave Mumford advised that the Department of Transportation had requested that all necessary water and sewer extensions in the area be completed prior to or during the Airport Road improvement project. Mr. Mumford said there was one property that would require water and sewer extension for future use at a cost to the City of \$1.1 to \$1.2 million. He said Staff was asking Council to approve purchase of the property to add to the City's property near the park, Black Otter Trail, and other trails. He said the purchase would also provide an existing building that Public Works could use to stage operations for winter maintenance in the Heights and storage of other equipment for maintenance operations. Mr. Mumford said the property would add to the City park and provide a contiguous area between the Airport, Public Works, and Parks to keep the rims as they looked today. Mr. Mumford said the purchase would save the City between \$500,000 and \$600,000 over what it would cost to extend the water and sewer.

Mayor Tussing asked Mr. Mumford if the purchase would make all of the property along the existing park area and highway public property. Mr. Mumford

said it would. He said the Black Otter Trail road actually crossed the property, and purchasing the property would bring it all into the City. Mayor Tussing said it would also allow the City to apply for federal funds based on state law and policy to improve the area. Mr. Mumford said that was his understanding.

Councilmember Stevens commented there was a Montana Power Substation in the area.

Councilmember Clark asked if ownership would allow the City to clean up the property. Mr. Mumford said it would.

Councilmember Ulledalen moved for approval of ITEM 6, seconded by Councilmember Ruegamer.

Mayor Tussing asked for further discussion.

Councilmember Brewster thanked Mr. Mumford for working with Mr. Kurth on the purchase. Councilmember Stevens said she appreciated all the work that was done putting the deal together.

There was no further discussion. On a voice vote, the motion was approved.

7. APPROVAL of the Downtown Billings Partnership Annual Work Plan and Contract with the City. (Action: approval or disapproval of staff recommendation.) City Administrator Volek noted Council was given the Agreement earlier that evening. She said there was no Staff presentation and Staff and Mr. Krueger were available to answer any questions.

Councilmember Ronquillo asked Mr. Krueger if a presentation was ever made to the Downtown Association. He said he had attended some of the meetings and did not remember seeing a presentation.

Mr. Krueger asked Mr. Ronquillo if he was referencing the work plan. Councilmember Ronquillo confirmed he was referencing the work plan. Mr. Krueger said it had been presented to the Downtown Billings Association and the Partnership. Mr. Krueger said it had been approved by the Partnership two months ago.

Mayor Tussing asked for further discussion.

Councilmember Ruegamer moved for approval of ITEM 7, seconded by Councilmember Brewster.

Councilmember Jones asked about the Agreement between the City and the Downtown Partnership that Council received in their packets. Mr. Krueger stated it was a modification of the Agreement that had been ongoing between the Partnership and the City addressing the North 27th Tax Increment District and the east Downtown Tax Increment District. He said it also terminated the Agreement as of June 30, 2008. Mr. Krueger said the original Agreement was ongoing with a 30-day notice; but he said since the 1976 tax increment district sunsets in 2008, it was appropriate that the Agreement also sunset in 2008. Mr. Krueger said the Agreement that the Council received that evening was a copy of the Agreement the Partnership had with the Billings Industrial Revitalization District. Councilmember Jones asked if Council was also voting on that Agreement. City Administrator Volek said it was only informational.

Councilmember Boyer commented she and Ms. Volek were serving on the Downtown Billings Partnership Board, and she encouraged every Councilmember to attend the Board meetings on the fourth Fridays.

Councilmember Ruegamer said he agreed with Councilmember Boyer and asked Mr. Krueger to e-mail him a meeting reminder. Mr. Krueger said he would include the entire Council in his e-mail. Councilmember Boyer asked if care needed to be taken on how many councilmembers attended the meetings. Councilmember Brewster stated as long as they did not discuss City business or advocate for any issues, it would not matter how many attended.

Mayor Tussing asked Deputy City Attorney Bonnie Sutherland for her opinion; and she said she would look into it.

Councilmember Jones referenced #7 of the Agreement, *Project Administration*. He said it appeared it had changed from the previous Agreement, which concerned him. He said he thought the previous Agreement said the City Administrator had to approve anything with continual maintenance costs, and the current Agreement said it would involve the appropriate City departments beginning at the planning phase through completion. Mr. Krueger said programs exceeding \$49,000 must be brought forward for Council approval. Mr. Krueger agreed with Councilmember Jones that any projects under \$49,000 could be brought forward and commented whenever possible they work through City Departments and with City Staff. He said encumbered contracts, especially those in this last fiscal year that go beyond March 1, 2008, when the district sunsets, must be between the City of Billings and the vendor. Councilmember Jones referenced the Sky Point project and said there would be significant maintenance costs in the future the City would have to pay. He said he was not sure the City took those maintenance costs into consideration when the project was approved, and the City needed to watch closer as it moved forward with new TIFD Districts. Mr. Krueger said that was the reason the clauses were implemented into the Agreement that City Departments needed to be involved. Mr. Krueger said he felt the safeguards were in place.

Councilmember Stevens said there appeared to be a problem in the last sentence in Paragraph 7. She said it read "subject to the monetary limits in Paragraph 6", but Paragraph 6 was about Political Activity. City Administrator Volek said it should reference Paragraph 5.

There was no further discussion. On a voice vote, the motion was approved.

8. APPROVAL of contract for City Hall Chiller System Rooftop HVAC Upgrade (Opened 6/19/07). Recommendation to be made at meeting.

Assistant City Administrator Bruce McCandless presented the bid results and asked the Council to approval the bid and award the contract to Accent Air and Mechanical in the amount of \$79,359. He said the funding was from FY07 so it was important the contract be awarded that evening to utilize the FY07 funds. Mr. McCandless said there was \$85,000 budgeted for the project, so the bid was under the budgeted amount.

Councilmember Brewster moved for approval of ITEM 8, seconded by Councilmember Stevens.

There was no further discussion. On a voice vote, the motion was approved.

9. PUBLIC HEARING AND RESOLUTION #07-18573 to file for the annual Federal Transit Administration Section 5307 Grant for federal transportation planning, capital, training, demonstration, and/or operating assistance. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) City Administrator Tina Volek advised the dollar amount represented in the grant was \$1,230,011; which represented approximately 30% of MET's operating revenue. She said it was proposed in the budget just adopted. She said there was no Staff presentation, but Mr. Binford was available for questions.

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

Councilmember Stevens moved for approval of ITEM 8, seconded by Councilmember Ruegamer.

There was no further discussion. On a voice vote, the motion was approved.

10. PUBLIC HEARING AND RESOLUTION #07-18574 ORDERING IMPROVEMENTS for W.O. 05-17 Highland School Sidewalks-Billings, Federal Aid No. STPE 1099(48), constructing sidewalks and associated public improvements along 11th Street West, O'Malley Drive, and Azalea Lane between Poly Drive and Delphinium Drive; a permanent crossing at 11th Street West and Poly Drive; and sidewalks along Beverly Hill Boulevard funded through a Safe Routes to School grant. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) City Administrator Volek said Staff had no presentation but was available for questions.

Councilmember Ulledalen asked about the timing of construction. Staff Engineer Nick Bailey said advertisement was expected within the next month with construction during August. Councilmember Ulledalen asked if construction would be completed by the time school started. Mr. Bailey said he did not expect the project to be done before the start of school, but traffic control would take into account that pedestrians needed to walk in the area.

The public hearing was opened. RITA PUMPHREY, 1017 O'MALLEY DRIVE, said she received a letter from the Public Works Department, Engineering Division, with a description of the work that would take place, and she had a question with regard to the scope of work. She said the scope of work did not address the landscaping, and she was concerned about the property owners' sprinkler systems. She said two retaining walls were listed at \$1,000 a piece, and she was concerned with having a retaining wall on her property. Public Works Director Dave Mumford said the sprinkler systems were an incidental and would be relocated as part of the project. He said because of the

sloping front yards, a low retaining wall was necessary to provide a flat surface for the sidewalk. Ms. Pumphrey asked if the property owners would have an opportunity to address the work as it progressed if they did not agree with what was being done. Mayor Tussing told Ms. Pumphrey the property owners would be able to work with City Staff throughout the project. Councilmember Boyer told Ms. Pumphrey that she and Councilmember Ulledalen were her council representatives, and she could contact them with any questions.

JANET CRESTLINE, 2211 AZALEA LANE, said she was an architect and planner and always an advocate for healthy and safe communities. She said she questioned if all options were considered with the project. She said children were encouraged to walk and bike to school in the neighborhood; and she felt a dedicated bike and walking lane with parking along one side would have been a better option. She said she also encouraged consideration of speed bumps. Councilmember Ulledalen stated there were a series of public meetings held with the neighbors; and many options were considered, including location of the sidewalks. He said the primary issue was safety of the children walking from Rimrock to Highland School. He said the speed hump issue was also discussed and presented to the neighbors; six were in opposition and five were in favor because the speed humps needed to be assessed as an SID along Azalea. Councilmember Ulledalen said a stop sign had been installed at 11th Street, which would help slow traffic. He said many different options were discussed; and they felt at that point in time sidewalks would be the best option. Ms. Crestline said she still felt sidewalks were invasive to the properties, and there were other options besides ripping up front lawns and inserting sidewalks. Councilmember Boyer asked Ms. Crestline if she had attended the meetings; and Ms. Crestline said she was out of town and unable to attend the last meeting. Councilmember Boyer said there were many meetings held, and Council wanted input such as hers at those meetings. Public Works Director Dave Mumford stated there were numerous meetings over a year; and they felt sidewalks were the safest way to keep the children from walking in the streets. He said the work was being done in City right-of-way, and the City was not purchasing any property. He said the City would work with the property owners to make sure landscaping was taken into account. Councilmember Gaghen stated the Council began addressing the project at least two years ago and encouraged Ms. Crestline to work with the Engineering Division during the course of the project. Councilmember Clark asked Mr. Mumford if any of the landscaping was on City property. Mr. Mumford said property owners have mowed and taken care of the right-of-way areas up to the back of the roadway. He said the City was not purchasing any property because it was all city-owned.

Councilmember Gaghen moved for approval of ITEM 10, seconded by Councilmember Boyer.

There was no further discussion. On a voice vote, the motion was approved.

**11. PUBLIC HEARING AND RESOLUTION #07-18575 CREATING
SID 1378, CLEVENCER AVENUE IMPROVEMENTS. Staff recommends
approval. (Action: approval or disapproval of staff recommendation.)** City
Administrator Tina Volek said Staff had no presentation but was available for any
questions.

The public hearing was opened.

MATT INGOLD, 4216 CLEVENCER, stated he was against the SID for numerous reasons. He asked why curb, gutter, pavement, etc. needed to be done to the total of \$13,000. He felt there were alternatives and asked why Clevenger could not be the same as Bruce Street. He said Bruce Street was not paved except for the corner. He said the cost for Clevenger was almost triple what it cost to improve Vaughn five years ago. He asked what would happen to the trees and if his water well would be effected. Mr. Ingold said the property owner of the double lot on the corner addressed on Hallowell did not have to pay for the improvements, and the cost would be put back on the property owners on Clevenger. He said this SID would be the second SID for his street in less than eight years.

FRED RODDA, 4212 CLEVENCER, stated he was the property owner who obtained the signatures for the SID. He said he was a neighbor to Mr. Ingold and his intention was not to upset his neighbors. He said the sewer SID referenced by Mr. Ingold was done six years ago in conjunction with Bruce. At that time the Clevenger residents tried to include the street improvements with the sewer SID, but it failed because of the property owners on the other street. Mr. Rodda said people he talked to were in favor of the street improvements, and he obtained eleven signatures, which was 75% of the property owners. He said he saw the SID as a great improvement.

MR. MINCHEW, 4241 CLEVENCER, asked why the property owners addressed on Clevenger were being assessed, and the property owner addressed on Hallowell was not. Public Works Director Dave Mumford said the SID policy adopted by the City Council stated property owners were only required to pay for the portion of road their property was addressed on. Mr. Minchew said he was told the Clevenger property owners were being assessed for the side of the double lot where the storm sewer would go. Mr. Mumford said the storm water improvements were assessed to everyone, including the property facing Hallowell, but the section of road improvements was assessed only to the property owners fronting Clevenger. Councilmember Stevens asked if the property on Hallowell was one lot twice as big as the others or two lots being used as one. Mr. Mumford said it was a corner lot that was larger than the other lots. Councilmember Ronquillo asked if curb, gutter and sidewalk would be put in along the Clevenger side of the property that was addressed on Hallowell, and if the property owner would be assessed for it. Mr. Mumford said curb, gutter and sidewalk would be installed and according to the SID policy, the City would pay for it because the corner lot property was addressed on Hallowell and not on Clevenger. Councilmember Boyer confirmed with Mr. Mumford that the property owners on Clevenger would not be paying for curb, gutter, and sidewalk for the Hallowell address. Councilmember Boyer asked how much the storm water cost

would be. Mr. Mumford said the entire storm water line was \$50,000. He said Staff had told the property owners they were reviewing the storm water funding in hopes the City could pick up all or a portion of the storm water expense. He said to date that had not been determined. City Administrator Volek reminded the Council the change in policy occurred after an SID on Shiloh Road failed because properties that backed up to Shiloh Road were being assessed. Councilmember Gaghen clarified with Mr. Mumford that the improvements for the Hallowell property were not being assessed to the Clevenger property owners. Mr. Mumford said that was correct. Councilmember Stevens asked Mr. Mumford how the properties were assessed. Mr. Mumford said the storm water was assessed per lot, and the road improvements were assessed on the lineal footage of each lot. Mr. Mumford reminded the Council the SID was brought forward by the property owners on Clevenger and not by the City.

GERTRUDE STEPHENS, 4220 CLEVENCER, referenced Mr. Mumford's statement about possible funding for the storm sewer. Ms. Stephens said if the City would take into consideration how often and how much it spent to pump out the lake that collected at the end of the street, to grade it, and to spray it and put that money toward helping with the cost of the storm sewer, it would give the residents on Clevenger a break. She said even though she was in favor of having a better street, \$13,000 was a lot of money.

Councilmember Boyer commented how the cost of concrete and asphalt had doubled, and the City was dealing with price increases on every project.

Councilmember Ronquillo moved to approve ITEM 11, seconded by Councilmember Brewster.

There was no further discussion. On a voice vote, the motion was approved.

**12. PUBLIC HEARING AND FIRST READING ORDINANCE FOR
ZONE CHANGE #807: A zone change from Residential 6,000 Restricted to
Community Commercial and Residential Professional (RP), and located on
the southeast corner of Zimmerman Trail and Avenue E. Zoning Commission
recommends approval and adoption of the determinations of the 12 criteria.
(Action: approval or disapproval of Zoning Commission recommendation.)**

Planner Dave Green began his PowerPoint presentation describing the location for the zone change at Zimmerman Trail and Avenue E and the surrounding areas. He pointed out the location of the Walgreens Store currently being constructed on the corner of Grand Avenue and Zimmerman Trail. Mr. Green stated the current owner of Lot 1, Skip King, was proposing to build an Ace Hardware. He said if the zone change was approved, Mr. King may purchase the property north of Lot 1 to build the hardware store and sell Lot 1 for construction of another business. Mr. Green said Residential Professional allowed for office spaces with a 34-foot maximum height. He said if the zone change was approved, Mr. King would build a 6-foot high block wall separating the E.D. King Subdivision from residential, continuing the wall north and partially down Avenue E. He said Mr. King would also require a 20-foot landscaped setback between the wall and the back of the commercial buildings to provide additional separation from the residential area. Mr.

Green said an informational meeting was held with the surrounding property owners on April 18, 2007, and at the Zoning Commission meeting property owners voiced their approval of the development. He said they received one letter of opposition.

Councilmember Brewster asked if the irrigation ditch up Zimmerman would be eliminated. Mr. Green said it would. Councilmember Brewster asked if the plans were to fill in the ditch or leave it open along the fence. City Administrator Volek said she would need to get an answer to that question.

Councilmember Stevens asked if the trees would be removed. Mr. Green said the design would maintain as many of the trees as possible.

Councilmember Ulledalen said the irrigation ditch ran between the bike trail and the fence almost to Poly Drive. He said the neighbors would like to have the ditch filled in because it collected garbage and was hard to maintain. Mr. Green said the property owner on the project would deal with his portion of the ditch, but he did not know what would happen to the other portion. City Administrator Volek said the other property was City right-of-way, so the City would be responsible for filling it in.

Councilmember Stevens referenced a letter from Ms. Ottman in the Friday packet regarding a rental car business nearby using on-street parking for employees. Mr. Green said there was a rental car business in the subdivision to the southeast whose employees park on Golden Boulevard. Councilmember Stevens asked about the code requiring sufficient employee parking. Mr. Green said business owners were supposed to provide enough parking for their employees, but he did not know the specific situation.

Councilmember Stevens asked about parking the rental cars on the street. Zoning Coordinator Nicole Cromwell said Golden Boulevard was not a restricted parking zone, so someone parking a personal vehicle on the street could not be ticketed. She said the street could not be used for storage of the rental vehicles. Councilmember Stevens asked if not having enough open spaces on the business lot for employee parking would be an issue. Ms. Cromwell said she would need to pull the site plan approval to see if the business was using the site according to the approved plan.

Councilmember Boyer asked Ms. Cromwell if no parking signs could be installed. Ms. Cromwell said there were options available under the City's Parking Ordinance, including restricting parking on one side of the street.

Councilmember Ulledalen said there had been concerns about the office building (residential professional) across the street because the same issue was happening there. He said the concerns were addressed with Ms. Volek, and the neighbors needed to agree to no parking on one side of the street. Ms. Cromwell said restricting parking to one side of the street would make the on-street parking spaces even more of a premium.

Councilmember Jones asked what the process would be to make a change in allowable parking. Ms. Cromwell said the Engineering Division would need to do an analysis of the on-street parking to determine if it could be closed on one or both sides. The analysis would be brought to the Parking Advisory Board for recommendation followed by a staff report to Council.

Councilmember Boyer said there was a similar situation on Virginia Lane. She said they were told to turn in a petition signed by all the people along the street, and no parking signs would be posted. She said it was not a very complex process. City Administrator Volek said she would provide Council additional information on the matter.

The public hearing was opened.

RICK LEUTHOLD, ENGINEERING, INC. said he had excellent meetings with the neighbors to the east and to the north of the subject property. He said the original design had an access onto Avenue E, which caused concerns for the homeowners, so the access was removed. He said he revisited the homeowners and received a majority of support for the new layout. Mr. Leuthold said there was one property that maintained ditch rights but would no longer need to utilize the water once the property was developed. He said they intended to disable and remove the headgate structure of the ditch and would look to the City to fill in the portion of the ditch located in the right-of-way. Mr. Leuthold said they would try to maintain as many of the mature trees as possible. City Administrator Volek asked Mr. Leuthold if removal of the headgate was part of the current agreement with the City. Mr. Leuthold said it was not specific to a current agreement with the City. He said the discussions in the agreement dealt with the buffering. Mr. Leuthold said the headgate was off-site and a voluntary inclusion at that point.

BLAINE POPPLER, 5403 KING AVENUE WEST, said he represented the owners of the property on Golden Boulevard. He apologized for the parking problems on Golden Boulevard and said the property being approved that evening was on Zimmerman Trail. He said the parking on Golden Boulevard was not part of the current zoning request. Mr. Poppler referenced the letter in the Council packet and said there was "unfortunate language" on the second page about the sellers of the property to the north. He said Bob Cover was raised in the house and even though he lived in Bozeman, he was not an investment speculator. He said he was a family man with two sons who were Air Force Academy graduates.

The public hearing was closed.

Councilmember Clark moved for approval of ITEM 12, seconded by Councilmember Ronquillo.

There was no further discussion. On a voice vote, the motion was approved.

Mayor Tussing called for a brief recess at 8:40 p.m.

The meeting was called back to order at 8:50 p.m.

**13. PUBLIC HEARING AND FIRST READING ORDINANCE FOR
ZONE CHANGE #808: A zone change from Residential Multifamily to
Planned Development, and located on North 26th Street bordered by 7th
Avenue North, North 25th Street, and North 26th Street. Thomas Towe and
Court E. Ball Partnership, owner. Zoning Commission recommends approval
and adoption of the determinations of the 12 criteria. (Action: approval or
disapproval of Zoning Commission recommendation.)** Zoning Coordinator
Nicole Cromwell began her PowerPoint Presentation describing the zone change
request from existing Residential Multifamily to Planned Development with

underlying zoning of Residential Multifamily to do special zoning regulations and restrictions for the property directly east of Albertsons at 6th Avenue North and North 27th Street. She said the property was the subject of two previous zoning applications; the first application was for a variance in front of the Board of Adjustment for a portion of Lots 10, 11, 12, and 13 to allow those units to have employees that were not residents of the units for home occupation purposes. She said that variance was denied. The second application was for a zone change from Residential Multifamily to Neighborhood Commercial, allowing businesses with outside employees. Ms. Cromwell said the second application was brought before Council in February 2007 with recommendation of approval; Council approved the application on first reading; but the applicant withdrew the application before the second reading was completed because the applicant felt a Planned Development would be more appropriate considering concerns of the Council and the neighborhood. Ms. Cromwell said the applicant had drafted a Planned Development Agreement affirming the underlying zoning and residential uses and setting out specific considerations under the Home Occupation Rules. She referenced a color-coded sheet of existing code for home occupations and explained the specific differences between the existing Home Occupation Rules and the rules proposed for Skyline Court. Ms. Cromwell said text highlighted in yellow was language in the Planned Development Agreement in the existing code; text highlighted in green had been omitted from the Planned Development; text highlighted in pink was material included in the Skyline Court Planned Development Agreement that did not appear in the code but may reflect or be an addition to the existing Home Occupation Rule.

Mayor Tussing referenced the occupations highlighted in green and asked if the occupations would not be allowed even though City code allowed them; or if the occupation would be a condition of Council approval. Ms. Cromwell said the developer could have included it, but chose not to. Mayor Tussing asked if a unit was sold, would the new owners still not be allowed to operate one of the specified occupations. Ms. Cromwell said that was correct. She said the Planned Development Agreement was a contract between the City and all existing and future owners of the property and another zoning amendment to change the Planned Development would be required.

Ms. Cromwell advised the Home Occupation Rules required an occupant of a unit on the property to be employed as the home occupation business. She said it could not be a vacant unit, and the person who resided there must have some responsibility to the Home Occupation Business.

Councilmember Boyer asked for the definition of "resides there". Ms. Cromwell said they must have a legal and physical address. Councilmember Boyer asked if the owner must stay there at night. Ms. Cromwell said the unit had to be an occupied unit. She said a unit could not be vacant every night because the employees under the Home Occupation Rules go home to another location. Councilmember Boyer asked how that would be tracked. Ms. Cromwell said it would be tracked on a complaint basis through Code Enforcement. Councilmember Boyer asked who would be the Skyline Homeowners Association. Ms. Cromwell said it would be created by the unit owners of the condominium

association. Councilmember Boyer asked who would be the Skyline Homeowners Association if only one or two units were occupied. Ms. Cromwell said it would be the two owners, Tom Towe, and Court Ball.

Councilmember Stevens asked if the Homeowners Association would have the right to change the Planned Development rules upon a favorable vote. Ms. Cromwell said they would not because it would be a contract between the City and the landowners collectively. She said they could not unilaterally make changes.

Councilmember Gaghen asked Ms. Cromwell to clarify "residents". Ms. Cromwell said it would be an occupant who lived there. She said it could be someone who lived there who opened the doors every day, who was responsible for opening the business for up to three outside employees, or who provided overnight security so it would not be vacant.

Councilmember Stevens said when the subject came before the Council before, they admitted they had another home and would not be sleeping in the unit. She said she was concerned the unit would be claimed as a primary residence, but the owner would have a home elsewhere. She said she felt the requirement would be easy to circumvent; and it would be difficult to ascertain what was going on. Ms. Cromwell said the Home Occupation Rules applied city-wide, and she was sure there were many vacant homes only being used for "home occupations" where no one lived. Ms. Cromwell said the attempt of this plan would be to allow a live/work situation, to place limitations through the Planned Development Agreement with some enforceability, and to protect the underlying character of the development as Residential Multifamily.

Councilmember Ulledalen asked if the enforcement of the document landed jointly between the Homeowners Association and the City; and if the City would be the ultimate enforcement authority for the provisions until the Homeowners Association grew. Ms. Cromwell said that was correct. Councilmember Ulledalen said once the project was fully developed as projected, he assumed the Homeowners Association would be very active monitoring the use of the units. Ms. Cromwell noted the wording at the bottom of the handout under the Home Occupation Rules that stated any uses not listed would be approved by the Zoning Coordinator and the Planning Staff. She said the proposed Planning Development also stated that uses not listed may be allowed with written approval from the Skyline Court Homeowners Association. Ms. Cromwell told Council they may want to have an amendment to the Planned Development stating uses not listed needed City Zoning Coordinator approval in addition to Homeowners Association approval.

Councilmember Jones said he felt it was ironic that beauty shops, barber shops, and shoe repair shops were taken off the list but could still be allowed according to the statement at the bottom.

City Administrator Volek referenced a letter from the North Park Task Force that some councilmembers may have received. She said a copy had been placed in the Ex-Parte Communications Book.

Councilmember Ulledalen referenced a prior proposal for a zone change to Neighborhood Commercial and said once it was approved, the City had no control over what went into the project. Councilmember Ulledalen asked Ms. Cromwell to explain what the Planned Development would do differently in terms of giving the

City additional enforcement ability. Ms. Cromwell said most of the language in the Planned Development had to do with the Home Occupation Rules. She said the Home Occupation Rules and the Planned Development stated that unless an occupation was an allowed use under Residential Professional, it would not be allowed as a home occupation. She said two examples would be auto body repair and commercial catering kitchens; neither were allowed under Residential Professional so they would not be allowed as a home occupation. Ms. Cromwell said the City restricted the types of home occupations allowed under Residential Professional. She said this project was a special zoning district having its own underlying zoning of Residential Multifamily and its own special regulations enforceable only on this property. She said the City would have more enforcement capability under the Planned Development than any other underlying zoning.

Ms. Cromwell reviewed the proposed plan of development. She said only the first five units had been developed on the corner of 7th Avenue North and North 26th Street. Her presentation included the future planned blocks of development for a maximum of 41 units. She said the Planned Development also addressed the site development and set back variances Council previously granted.

Councilmember Boyer asked if the PUD could be for only one block and not the others in the future development. Ms. Cromwell said the language could be changed within the proposed Planned Development, including the legal description of the land. Councilmember Boyer confirmed the commitment would not have to be for all 44 units. Ms. Cromwell said the density would not be changed through the Planned Development.

Councilmember Ronquillo asked if the existing building was in compliance. He said it was the understanding a person had a business there but did not live there. Ms. Cromwell said the City had worked with the owner for two years through various zoning processes to bring it into compliance.

Councilmember Gaghen asked to confirm there were currently two occupant owners. Ms. Cromwell said there were sales pending, but the question would need to be answered by the applicant. Councilmember Gaghen asked about the overall timeframe for completion of the entire project. Ms. Cromwell said she did not know.

Councilmember Ruegamer asked about the difference between Planned Development and Planned Unit Development. Ms. Cromwell said there was no difference. She there had been a language change a few years ago taking out the word "Unit".

Councilmember Ulledalen stated he felt it would be important to keep the zoning consistent to maintain the integrity of the entire project and asked Ms. Cromwell for her thoughts. Ms. Cromwell said generally Planned Developments are larger pieces of property. Councilmember Ulledalen said he felt there would be a problem restricting the first portion when the subsequent portions could have different underlying zoning. He said he felt it would be a huge mistake, and there should be consistency throughout the whole project. Ms. Cromwell said the Zoning Commission's recommendation was to adopt the zoning for all of the lots as described.

Councilmember Stevens said Ms. Cromwell had stated for the past two years, an occupant of a unit had been out of compliance with the zoning. Ms. Cromwell said she did not say that. She stated she had said there was a person who rented a unit for their home occupation but who did not live there. Ms. Cromwell said when it came to their attention, the owner was notified and told what the requirements were for home occupations in residential districts. The owners said they wanted to continue the relationship with the renter and eventually close the sale. The owner was told he would have to get a variance from the requirement saying there would be no outside employees or a zone change that allowed a business use, as well as a multi-family use on the property. Councilmember Stevens asked if Council were to approve the project, would the owner be in compliance with the zoning if the person was not living there. Ms. Cromwell said they would have to prove that an occupant of that unit was involved with the home occupation in that unit.

Councilmember Brewster stated Council needed to base their decision on whether the Planned Unit Development would be appropriate for that location and not on someone who had not been in compliance for two years.

The public hearing was opened.

CURT ZYGMOND, 1695 VUECREST DRIVE, said he would like to ask the City Council to not approve the zone change from Residential Multifamily to Planned Development. He said he felt it should stay Residential Multifamily for the North Park Plan. He said the units had been on the market for two years and not because of the zoning. He said the reason the units were not selling was because of the price. He said any real estate agent would tell you any amount of marketing, advertising, open houses, or zoning would help sell the units. Mr. Zygmond said he was the Chairman of the North Park Task Force. He said some members of the task force have asked if the unit owners would have a legitimate right to vote. He said he would like to have the City address the task force on the voting issue. Councilmember Boyer asked how the Council received the letter from the North Park Task Force. Mr. Zygmond said it was written by the secretary who was in favor of the zone change, and she delivered it to the City. Councilmember Ruegamer asked Mr. Zygmond if the North Park Task Force voted to let this happen. Mr. Zygmond said the North Park Task Force approved the rezoning 14 to 6, which included a proxy vote. Councilmember Boyer asked about the proxy vote, and Mr. Zygmond explained a non-profit sent in a proxy vote and it was questionable if it would be a legal vote under the by-laws. Mayor Tussing asked Mr. Zygmond if a determination had been made if the proxy vote was appropriate. Mr. Zygmond said it was still being worked on.

City Administrator Volek pointed out that Attachment E of the Planned Development Agreement for Skyline Court was in the packet and defined home occupation as an occupation carried on by an occupant rather than by a homeowner. Ms. Volek said, if necessary, Staff could be directed to amend the wording. Councilmember Boyer asked if it meant that anyone could be the occupant, even one of the employees. Ms. Volek said that is how she understood it.

Planning Director Candi Beaudry said their interpretation was that the occupant must reside in the unit on a continuous basis to include staying overnight.

SUSAN LOVELY, 415 LORDWITH, #3, stated she was the agent for Tom Towe of 2739 Gregory Drive. Ms. Lovely said Mr. Towe was out of town so she wanted to read a condensed version of Mr. Towe's remarks, as follows:

"Tom is the co-owner of the Skyline Court Townhome project for which we are requesting a zone change from RMF to PD. After discovering some of the concerns about our initial request to change the zoning to Neighborhood Commercial, it was suggested that an individualized planned development was the most appropriate way to resolve these issues. The intent here is to create a first class residential inbuilt townhome development that will allow homeowners the flexibility to use their property for some commercial and business ventures without damaging the residential flavor of the neighborhood. We limited some of the retail businesses that are currently allowed in the RMF zoning under the home occupation statutes such as was already mentioned; the barbershops, shoe shops, daycares, etc., and we tried to make it more suitable for internet-based business office use. The restrictions still remain about traffic generation, etc. The only significant expansion is to allow up to three employees to come into the home to help conduct business. We do allow a very modest sign in the window so long as the letters are not more than three inches in height. From all exterior appearances, this will look and be very much a residential complex. It is just that some occupants may be running their business from there. We are aware that the occupation must be carried out by an occupant of the dwelling and will make any potential buyers aware of that requirement. We are aware that the occupation must be carried out by an occupant of the dwelling and will make any potential buyers aware of that requirement. We also will make any potential buyers aware that there may be building code requirements that may need to be addressed if there are employees. These condominiums are high tech. Fiber optic cable comes right to the door. In today's world more and more people are doing business in virtual offices from any place in the world. These units may be particularly attractive to those who may need to place their headquarters in Billings for two or three months out of the year or two or three days out of the week. When these folks come to Billings, they may need to bring in office assistants to help them."

Ms. Lovely said they had a current occupant with the option to purchase a unit if the zone change was approved and if he could meet the occupancy requirements. Ms. Lovely asked if the zone change would allow an owner and employees to be in the unit only three times a year.

Councilmember Gaghen asked Ms. Lovely to clarify the SIC# and the description on the color-coded handout. She asked if the intent was only to allow the yellow shaded categories. Ms. Lovely said they tried to eliminate occupations that would generate more traffic.

JOHN WILCOX, ADDRESS NOT GIVEN, said a year ago last week he signed a buy-sell under the condition he could have his business in the unit. He

said he had not been sneaking around and was not a sneak around guy. If Council said he could not have his business there, he would leave. He said he did not spend five nights a week in Billings because he traveled. There was an apartment upstairs, which was the whole point of buying the unit. He said he resented the fact that some of the Council thought he was sneaking around. Councilmember Ruegamer asked what type of business Mr. Wilcox had. Mr. Wilcox said he had a consulting, advertising, marketing firm consisting of him and two part-time employees that worked four hours a day. Mayor Tussing asked if anyone actually lived in the unit. Mr. Wilcox said his son lived there last summer, and he spent some nights there but not every night.

RANDY HAFER, 2910 MORLEDGE STREET, pointed out this all started when the variance was applied for and denied. He said the intention of the project was to do a high quality, downtown, high density urban project close to the hospitals, close to the airport, and downtown. He said they were trying to provide a housing unit that would attract professional type homeowners, people who travel, people who have businesses where they move around, and people who have businesses they could run out of their homes. He said the intention was not to generate a lot of traffic, retail, or customers but to allow people to have a home occupation operating out of a high tech environment. He said there was nothing secretive or disruptive about the project, and it should be good for the City by adding a huge tax base to the neighborhood. Mr. Hafer urged the Council to support the project. Councilmember Boyer asked Mr. Hafer what the City would do if someone moved in and did not occupy it. Mr. Hafer said he did not feel it would be a problem. Mr. Hafer referenced many locations in Montana where homes were not occupied year round.

The public hearing was closed.

Councilmember Jones moved to deny ITEM 13 on the basis of #2 and #4 of the 12 criteria. Mr. Jones referenced #2-*Is the new zoning designed to lessen congestion in the streets?* He said it stated there were only two parking spots available on the street, yet the unit could have up to three employees. Mr. Jones referenced #4-*Will the new zoning promote health and general welfare?* He said he did not believe having business in a residential area would promote general welfare where there were kids. Mr. Jones's motion to deny was seconded by Councilmember Stevens.

Councilmember Boyer said she understood the intent and believed in the vitalization of downtown, but she had concerns with businesses moving in. She said she may vote for the project just to see if it could work.

Mayor Tussing said it seemed like a transitional area to him. He said the area was not traditional single family homes, and it did not seem like an unreasonable transition to go from the commercial area of Albertsons to the traditional residential located east and north of the location. He said he was not as concerned as Councilmember Jones about the potential of having an extra employee with no place to park.

Councilmember Gaghen said the types of businesses being suggested were not high in traffic generation. She said the project may have been a little too adventuresome with the price of the units, etc. She said it had been a long, difficult

process for the developers. She said it was a very touchy issue, and she was not sure what her determination would be.

Councilmember Brewster said he had supported the zone change because it only applied to a portion of the property, and he thought it created a buffer. He said he felt the PUD changed the complexion of the whole area, and he was sorry they went that direction.

Councilmember Ulledalen said there would be no perfect answer for the area, and he would be voting against the motion. He said he felt the zoning should be uniform across the entire project. He said as the east end TIFD District developed, there would be a lot of pressure to try to encroach more commercial on the north side of 6th, and transitions needed to be developed. He said they could not expect people to build \$400,000 houses bordering 6th Avenue North and needed to figure out how to grade suitable housing for the area. He said the Planned Development and the Homeowners Association would give the City more control of the area.

Councilmember Stevens said she would be voting in favor of the motion. She said her concern was the term "home occupation." She said she felt a home occupation was in a home where a person lived. She asked what if the development ended up with a lot of businesses with signs in the windows that were just businesses with no one living there.

Councilmember Jones commented further on the parking issue. He said the Agreement indicated three employees, but there could even be one, two or three residents in a unit. He said Council had just discussed the same parking issue on Golden Boulevard, and he did not understand why Council would create the same problem there.

Zoning Coordinator Nicole Cromwell was asked to clarify the Planning and Community Services Department's interpretation and application of the code that applied. She said the principal use of the property in any dwelling unit would be residential. She said if there was no residential occupation of the unit and the principle use of the unit was for business, it would be in violation of the zoning and Planned Development.

Councilmember Ulledalen said he felt the situation was a little different from the situation on Golden Boulevard. He said there would be a Homeowners Association with an agreement and control over what happened.

There was no further discussion. On a roll call vote, the motion to deny the zoning request failed. Councilmembers Gaghen, Ruegamer, Ulledalen, Boyer, and Clark and Mayor Tussing voted "no".

On the advice of Deputy City Attorney Bonnie Sutherland, Councilmember Ruegamer moved to reconsider the motion for approval of ITEM 13, seconded by Councilmember Jones.

Councilmember Clark asked what would happen if the reconsideration did not pass. Ms. Sutherland said the item would die for lack of a motion. Councilmember Jones withdrew his second, and Councilmember Stevens seconded the motion.

There was no further discussion on the motion to reconsider. On a voice vote, the motion to reconsider was approved. Councilmembers Ronquillo, Stevens, Brewster, and Jones voted "no".

Councilmember Ruegamer moved for approval of ITEM 13, seconded by Councilmember Boyer.

Councilmember Jones moved to amend the paragraph of the Planned Development Agreement, Section B(1)(a) - "Uses not listed above...", by replacing *Skyline Court Homeowners Association* with *Zoning Coordinator*. The motion was seconded by Councilmember Ulledalen.

There was no further discussion. On a voice vote, the motion to amend the Planned Development Agreement to add *Zoning Coordinator* was approved.

Mayor Tussing asked for further discussion on the amended motion to approve ITEM 13 as amended to include the text *Zoning Coordinator*. There was no further discussion. On a voice vote, the motion was approved. Councilmembers Ronquillo, Stevens, Brewster, and Jones voted "no".

14. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #809: A zone change from Public to Community Commercial, and located on the southeast corner of 14th Street West and Grand Avenue. School District No. 2, owner. Zoning Commission recommends approval and adoption of the determinations of the 12 criteria. (Action: approval or disapproval of Zoning Commission recommendation.)

Zoning Coordinator Nicole Cromwell began her PowerPoint presentation explaining the zone change proposal from Public to Community Commercial. She stated School District No. 2 planned to sell the former Crossroads Building at the corner of 14th Street West and Grand Avenue for a proposed Walgreens Pharmacy. She said there were no property owners who had testified in favor or in opposition of the zone change.

The public hearing was opened.

RICK LEUTHOLD, ENGINEERING, INC., stated he represented School District No. 2 and asked for the Council's support for the zone change.

The public hearing was closed.

Councilmember Boyer moved for approval of ITEM 14, seconded by Councilmember Clark.

There was no further discussion. On a voice vote, the motion was approved.

15. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #810: A text amendment to Section 27-601, Parking and Storage Regulations, regulating parking and storage in residential zoning districts and commercial or industrial zoning districts. Zoning Commission recommends approval of Zone Change #810, including Section 27-601(a)7 if a permitting system or similar system to control personal recreational vehicles on residential property is developed and denial of Section 27-601(b)7. (Action: approval or disapproval of Zoning Commission recommendation.) Zoning Coordinator Nicole Cromwell stated there had been

discussions at a couple of Work Sessions concerning the changes to the Parking and Storage Regulations. She said the Zoning Commission dealt primarily with the use of recreational vehicles for living or sleeping purposes when parked on residential or commercial property. Ms. Cromwell said Section 27-601(a)7 dealt with residential property; and the Zoning Commission's recommendation was based on possible openings for loopholes and violations of the code. She said a second issue was the allowance of the use of RV's when parked on commercial property for up to five days. The Zoning Commission's recommendation said it was a conflict with the existing city ordinance on parking for camping purposes, which the Council dealt with in the past with Wal-Mart parking. Ms. Cromwell said the Zoning Commission felt they did not want to create any conflicts and recommended that Section 27-601(b)7 not be adopted. Ms. Cromwell said the other changes in the code dealt with creating two separate sections out of one section and placing the definitions only in this section of the zoning code into the main Definition section of the zoning code so they would apply throughout the code and not just to parking and storage. The changes also described what would be allowed and not just what was prohibited to provide better criteria for answering questions.

Councilmember Brewster asked if open storage applied to auto auctions. Ms. Cromwell said it would apply to auto auctions if the vehicles needed repair or were for sale "as is." Councilmember Brewster asked about lumber yards that stored materials outside. Ms. Cromwell said the definition of merchandise would be anything that did not require a title from the state.

Councilmember Boyer verified with Ms. Cromwell that the Zoning Commission did not address RV parking on commercial property in the changes at all so it would not conflict with the standing ordinance. Ms. Cromwell said that was correct. She said the Zoning Commission recommended not adopting Section 601(b)7, which allowed RV's on commercial property.

Councilmember Ronquillo referenced the weight limitation of 8,000 to 12,000 pounds and asked Ms. Cromwell for clarification of an emergency vehicle and if a tow truck would be considered an emergency vehicle. She said the weight limitation only applied to business vehicles that were oversized and intrusive; and in her opinion a tow truck would be oversized and in violation of residential zoning. Ms. Cromwell said she did not have a definition of an emergency vehicle.

Councilmember Stevens asked for the background on the increase from 8,000 to 12,000 pounds. Ms. Cromwell stated it had to do with dual axle rear vehicles that were not tow trucks but carried a tremendous amount of weight.

Councilmember Brewster said MDU allowed their employees to take service vehicles home, which could be a dual axle, one-ton truck. He said MDU allowed it because it would give their employees a quicker response time.

Councilmember Stevens asked to jump ahead to ITEM 17. She said there appeared to be an inconsistency with what was on Page 14 under SIC Code 73-Business Services, listed use of vehicles over 8,000 GVW. Ms. Cromwell said the weight limitation in the text amendment applied to residential properties; whereas ITEM 17 text amendment applied to commercial zoning.

Ms. Cromwell showed photographs of examples of outside storage allowed in a side or rear yard that required screening. Ms. Cromwell showed a photograph of an RV that was not in compliance and noted the County Zoning Commission recommended to the County Commissioners that they adopt the five consecutive day allowance for using an RV in residential zones and not use a tracking system. She said they also wanted the adoption of an allowance for the use in commercial zoning districts as long as it was adopted to apply only outside the city limits of Billings. Ms. Cromwell said the County Zoning Commission felt a weight limitation in agriculture open space and agriculture suburban districts did not make sense.

Councilmember Boyer asked if someone could start an RV Park on one acre of land and just let RV's come in and park. Ms. Cromwell said it would be a violation of the Subdivision Platting Act.

Councilmember Ulledalen said he had received a call asking about a neighbor who had bought a U-Haul truck to transport material for his business; had his business name painted on the side; and who parked the truck in his home driveway. Councilmember Ulledalen asked if that would be allowable. Ms. Cromwell said she would need to check the registration of the vehicle that would include the GVW. She said she thought most U-Haul trucks were rated at 26,000. Councilmember Ulledalen asked if it was allowable under the existing limits. Ms. Cromwell said the old limit was 8,000 GVW and the new would increase the limit to 12,000 GVW. Councilmember Ulledalen asked about a truck driver who parked a semi at home over the weekend. Ms. Cromwell said it would not be allowed unless it was in agricultural open.

Councilmember Brewster asked for verification of the Zoning Commission recommendation to Council to not adopt Section 27-601(a)7 unless a tracking system was created. Ms. Cromwell said that was the City Zoning Commission recommendation. She said the County Zoning Commission recommendation did not concur; they recommend adopting it but eliminating the tracking system.

Councilmember Stevens asked for verification of Section 27-601(b)7. Ms. Cromwell said the City Zoning Commission was recommending not adopting it because it conflicted with City Ordinance 24-411. The County Zoning Commission recommended the County adopt it but add the words *outside the city limits an RV could be used in a commercial zone for up to five consecutive days.*

Councilmember Brewster asked if Council were to approve the item, would they be adopting that recommendation. Ms. Cromwell said Council could make any changes they wanted. Councilmember Brewster said he could not imagine how a tracking system would work.

The public hearing was opened. There were no speakers.

The public hearing was closed.

Councilmember Brewster moved to approve Zone Change 810 with the exception of the changes recommended in Section 27-601(a)7, seconded by Councilmember Ruegamer.

There was no further discussion. On a voice vote, the motion was approved.

**16. PUBLIC HEARING AND FIRST READING ORDINANCE FOR
ZONE CHANGE #811: A text amendment to Section 27-1502(b)
Amendments to Chapter, Applications for map amendments. Zoning
Commission recommends approval. (Action: approval or disapproval of
Zoning Commission recommendation.)** Zoning Coordinator Nicole Cromwell stated the item was a change to Section 27-1502(b) of the Zoning Code regulating applications for map amendments. Ms. Cromwell said the change would require the applicant to conduct a neighborhood meeting of all property owners within 300 feet prior to making a formal application, and it would set up the necessary steps that must be completed. She said a neighborhood meeting needed to be conducted at least seven days in advance of the application, and people must be given at least seven days advance notice before the meeting. Ms. Cromwell said they felt the change would help reduce the testimony time and discourage applications that did not have the support of the surrounding neighborhood. She said it would help reduce neighborhood conflicts at public hearings.

Councilmember Ronquillo asked if the task forces would be included in the meeting notices. Ms. Cromwell said the neighborhood meetings specified the 300 foot surrounding property owners. She said it could be amended to include task forces. Ms. Cromwell said the task forces were always informed once the formal application was received.

Councilmember Boyer said she felt it would give the task forces way too much power. Councilmember Ronquillo stated the task forces wanted to know what was going into their neighborhood. He said a lot of times they had no idea.

Councilmember Ulledalen stated the 300-foot was reasonable and would not create another burden on Staff and the proponent.

The public hearing was opened. There were no speakers.

The public hearing was closed.

Councilmember Ulledalen moved for approval of ITEM 16 as stated, seconded by Councilmember Boyer.

There was no further discussion. The motion was approved. Councilmember Ronquillo voted "no".

**17. PUBLIC HEARING AND FIRST READING ORDINANCE FOR
ZONE CHANGE #812: A text amendment to Special Review Uses, Sections
27-306; 27-601; 27-612; and 27-613, revising commercial and industrial use
regulations. Zoning Commission recommends approval. (Action: approval
or disapproval of Zoning Commission recommendation.)** Zoning Coordinator Nicole Cromwell said the changes were quite extensive. She said they looked at Section 27-306, which described all the uses allowed in commercial and industrial zoning districts, focusing on uses that were required to have special review or where there was some kind of restriction or regulation of the use. She said the first one proposed to be eliminated was a special review for a restaurant that served beer and wine, did not offer gaming, and met the 600-foot separation requirements to schools, parks, playgrounds with children's playing fields or

equipment, and churches. Ms. Cromwell said currently those types of applications went through the full application process, which took about eight weeks. She confirmed it would not apply to any location that offered gaming, even if it was just for beer and wine, if it did not meet the 600-foot separation. She said the State of Montana was preparing to issue 19 to 22 new beer and wine restaurant licenses without gaming in the City of Billings, and it would be a lot of applications. Ms. Cromwell said another change would be to allow contractor storage yards in a highway commercial zone without going through a special review. She said the only condition that had ever been applied was fence and screening, which could just be written into a code as a requirement rather than making it a special review. Ms. Cromwell said they also made revisions to make language consistent and ease regulatory burdens on existing or proposed businesses and created screening requirements for certain types of uses,, which would allow the Council to focus more on special reviews that could negatively impact or affect a neighborhood.

The public hearing was opened. There were no speakers.

The public hearing was closed.

Councilmember Ruegamer moved for approval of ITEM 17, seconded by Councilmember Stevens.

There was no further discussion. On a voice vote, the motion was approved.

18. AUTHORIZATION OF MAIL BALLOT for the 2007 council elections. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) City Administrator stated the item was a subject of the June 18th Work Session with the Yellowstone County Election Commissioner, who recommended that Council consider a mail ballot because it was more cost-effective than polling place ballots; it increased voter participation; reduced problems with polling sites; and handled issues of finding election judges in an economy of nearly full employment. Ms. Volek said Staff was available for questions.

Councilmember Brewster moved for approval of ITEM 18, seconded by Councilmember Ulledalen.

Councilmember Ruegamer said it should be made clear Council's approval was for a trial basis in the upcoming November election; and a public hearing would be held after the election.

Mayor Tussing asked if the motion was just for the next election and not every election. Ms. Volek said that was correct.

There was no further discussion. On a voice vote, the motion was approved.

19. PUBLIC COMMENT on Non-Agenda Items -- Speaker sign-in required. (Restricted to ONLY items not on this printed agenda; comments limited to 3 minutes per speaker. Please sign up on the clipboard located at the back of the Council Chambers.) There were no speakers.

Council Initiatives

- Ronquillo: **MOVED** to direct staff to clean the 6th Street Underpass once a month, seconded by Councilmember Ruegamer. Councilmember Brewster made a substitute motion directing staff to provide a cost estimate prior to cleaning the underpass, seconded by Councilmember Boyer. The substitute motion was approved.
- Ruegamer: **MOVED** to direct staff to bring forth a public hearing and recommendation on the mail ballot issue after the November city election, seconded by Councilmember Boyer. The motion was approved.
- Councilmember Jones asked Zoning Coordinator Nicole Cromwell to verify his earlier motion on the changes to the Skyline Court Plan Development Agreement. Ms. Cromwell said he had amended the Plan Development Agreement to replace the words *Skyline Homeowners Association* with *Zoning Coordinator*. Councilmember Jones said that was exactly what he wanted.
- Councilmember Jones asked Ms. Volek about the status of the demolition of the baseball stadium. Ms. Volek said the bid was let June 15th, and bids would be opened on July 10th. Councilmember Jones asked where the existing lights and seating would go and if the City had first choice. Ms. Volek said the contract was bid with alternates to find out what the cost would be for removing those items. She said the understanding was that part of the payment to the contractor doing the demolition was the salvage. She said she was not certain if the lights were included and would find out. Councilmember Jones asked if the salvage decision would come before Council, and Ms. Volek said it would. Councilmember Jones said he felt the seating and lights should go to local sports facilities. Councilmember Gaghen said she had received comments that at the opening night for the Mustangs, the Cobb Field seats were very soiled. Ms. Volek said the demolition on the corner may have contributed to the situation, but she would find out and report back. Councilmember Ulledalen said there was a need for additional lights at Stewart Park. Councilmember Jones said that was exactly what he was getting at and would address it in a future council initiative. Ms. Volek stated if a contractor would do the demolition and counted on the salvage as part of the cost, it could increase the cost of the project. Councilmember Ronquillo said there was a concern with having only a week to pull the lights. Councilmember Ruegamer said the Legion Baseball League wanted the lights and said they could have the lights out in less than a week.
- Planning Director Candi Beaudry reported on a past Council initiative to extend the Shiloh Road Overlay to King Avenue West between 32nd Street West and Shiloh Road. Ms. Beaudry said a public meeting was held with the neighbors on King Avenue. She said Staff was told they did not expect the overlay district to include the north side of King Avenue because only two existing commercial properties would be affected. She said the owner

of the Dairy Queen said it would be very costly if he needed to change his sign location and bring his entire site into compliance with the overlay district. Ms. Beaudry said it would quadruple the cost if the overlay was included on the north side. She said everyone within 800 feet north of the center line would need to be contacted, as opposed to 300 feet. Councilmember Boyer said she was not aware of the meeting, but she had heard from some of the property owners that they wanted to be involved, and they thought the meeting was tough. She said she felt there was need for further Council involvement, and she was not willing to give up on the extension of the Shiloh Corridor Overlay. Councilmember Clark said the south side was where the new construction would take place, and the north side was already filled with apartments, houses, etc. Councilmember Ulledalen said he agreed with Councilmember Clark, and the people on the north side were concerned. Ms. Beaudry said everyone 300 feet north of the center line would be notified. Ms. Beaudry asked for clarification on the previous initiative in a formal motion. She said they were up against a schedule deadline. She said the submittal date was July 2nd and the notification date was July 13th, and if Council did not act on it that evening, everything would be delayed a month.

- Ullalen: **MOVED** to direct staff to limit the Shiloh Road Overlay District to the south side of King Avenue West, seconded by Councilmember Gaghen. The motion was approved.
- City Administrator Tina Volek reported the Parks Department had asked that Phipps Park be closed July 3-5 because people used it for an alternative site for fireworks. She said it was a city-owned park; but the closure would be enforced by the Sheriff's Department because the Park was not in the BUFSA or in City limits fire protection. She said the Rifle Club nearly lost buildings last year due to a fire, so they were encouraging the closure and were willing to pay for a public notice of the closure. Mayor Tussing asked why the Billings police officers could not provide the enforcement. Ms. Volek said it needed to be enforced through the Sheriff's Office. She said the intention was to shut the park down for the three day period. Councilmember Jones said there was a huge golf course there that was heavily used, and he recommended finding out if a holiday tournament had been scheduled before closing the park. Ms. Volek said the park was a potential source for fire risk, and it was very difficult to enforce a fireworks ban because the location was so remote.
- Jones: **MOVED** to direct staff to leave Phipps Park open July 3-5, 2007, seconded by Councilmember Brewster. Councilmember Jones stated it was city property in the County, and the County allowed fireworks. He said if the County was concerned about it, they should ban fireworks. Councilmember Ruegamer made a substitute motion to close Phipps Park July 3-5, 2007, seconded by Councilmember Stevens. Councilmember Boyer asked if the park could be closed just for July 4th. Councilmember Ronquillo said he felt if the Rifle Club lost their buildings, it would be the City's fault. The substitute motion to close Phipps Park July 3-5 was

approved. Councilmembers Jones and Brewster and Mayor Tussing voted "no". Councilmember Jones asked for the legality of closing the park without a public hearing. Councilmember Brewster said it was within the rights of the City Administrator. He said Ms. Volek asked if Council wanted it closed, and a majority wanted it closed.

There was no further discussion.

ADJOURN – The meeting was adjourned at 11:00 p.m.