

**REGULAR MEETING OF THE BILLINGS CITY COUNCIL**  
**October 27, 2008**

The Billings City Council met in regular session in the Council Chambers located on the second floor of the Police Facility, 220 North 27<sup>th</sup> Street, Billings, Montana. Mayor 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: Gaghen, Pitman, Veis, Ruegamer, McCall, Ulledalen, Astle, and Clark. Councilmember Ronquillo was excused.

**APPOINTMENT OF WARD II COUNCILMEMBER** – Mayor Tussing moved to add the appointment of the Ward II Councilmember to the agenda, seconded by Councilmember Pitman. On a voice vote, the motion was unanimously approved.

**MINUTES** – October 14, 2008, approved as printed.

**COURTESIES** – None

**PROCLAMATIONS**

- National Adoption Month – November 2008
- Billings Adoption Day, November 1, 2008

Councilmember Pitman advised his family would be finalizing the adoption of their 4-year-old foster daughter, Emily, on Saturday.

**ADMINISTRATOR REPORTS**

- Ms. Volek referenced the revised CTEP information included in the 10/24/08 Friday Packets, which was Agenda Item 5 on the evening's agenda. She said it reflected the discussion at the 10/20/08 Work Session and two options for Council to carry forward to the Policy Coordinating Committee. She said one option was to fund the Swords Park Trail, Phase II, and the Shiloh Road landscaping; and the second option was to provide funding for 2007 CTEP project overages.
- Ms. Volek advised Council had received a copy of the PowerPoint presentation on their desks that evening for Agenda Item 2, the MET Transit Route and Schedule Changes and Fare Increases.
- Ms. Volek advised that staff was recommending a delay of Item 1Q1, the Romero Subdivision final plat, until the meeting of 11/10/08. She said the additional time was needed to check on necessary paperwork.

**PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: 1 and 5 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.)*

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

Councilmember Pitman announced that his father was in the hospital, so he had his phone on and might receive text messages during the meeting updating him on his father's condition.

### **CONFIRMATION OF WARD II COUNCILMEMBER**

Mayor Tussing moved for the approval of Angela Cimmino to fill the vacancy in Ward II, seconded by Councilmember Pitman. Mayor Tussing explained that after Councilmember Stevens announced her resignation, the vacancy was advertised; and a committee was formed consisting of Councilmembers Clark, Gaghen, Pitman, and Ruegamer to review all applications. Mayor Tussing said five applications were received, and he reviewed them, as well. He said the committee interviewed the applicants and gave him two names to consider. He said he interviewed both individuals and made a selection. Mayor Tussing said he felt Ms. Cimmino had a strong desire to serve the community as a councilmember and read a list of organizations, boards, and commissions she had been involved in. He stated she also received a Community Service Award from her employer. Mayor Tussing encouraged the approval of Ms. Cimmino.

City Administrator Volek advised that legal counsel recommended opening a brief public comment period now that the Mayor's recommendation of Ms. Cimmino had been made public.

Mayor Tussing asked if anyone would like to comment.

- **Tom Zurbuchen, 1747 Wicks Lane** said, although Angela Cimmino was well qualified, he felt Larry Brewster was even more qualified. He said Angela Cimmino had not attended any meetings of the Heights Task Force since she was president several years ago. He said Mr. Brewster attended all public meetings and community meetings when he was councilmember and was an active member of the Heights Alternate Routes Committee. He said anytime anyone needed something, Larry was there. He said neither Joy Stevens nor Dave Brown ever attended the meetings. Mr. Zurbuchen said it would be wrong to bypass a proven representative for one who was not proven to represent all of the Heights.

There were no other speakers.

Councilmember Ruegamer said there had been some controversy over the appointment, and a suggestion had been made that the names of the two leading candidates be presented to give the Council the opportunity to vote on who they wanted. He said that was the consent of the Council, and the majority ruled. Councilmember Ruegamer asked Mayor Tussing to amend his motion and present the names of the two leading candidates to give Council the opportunity to vote for either one.

City Attorney Brent Brooks advised that, in the past, the City Council had consistently replaced a councilmember who had vacated his/her office by the Mayor nominating one person and the Council discussing the nomination and voting. He urged Council to be consistent with the past practice, as written in Section 3.09 C. of the City Charter, indicating that the nominations proceed with one person being nominated at a time.

Councilmember Gaghen asked Attorney Brooks if the Mayor had the choice, if necessary, to present another nominee. She said she felt it would be less than wise to have a mail-in ballot after the beginning of the year. Attorney Brooks advised the Council had 30 days from the date of the official vacancy to replace the seat with another person. He said if an appointment did not occur within the 30 days, the City Charter required a special election.

On a roll call vote, the motion to appoint Angela Cimmino failed 5 to 4. Councilmembers Veis, Ruegamer, Ulledalen, Astle, and Clark voted against appointing Ms. Cimmino. Councilmembers Gaghen, Pitman, McCall, and Mayor Tussing voted in favor of appointing Ms. Cimmino.

Councilmember Ulledalen requested that the Mayor submit Larry Brewster for consideration. Mayor Tussing said he would have considered the request had the Council contacted him prior to his selection and before he called both candidates. He said he might have considered the request had there been discussion that evening by the Council as to why they felt the selection he had made was not appropriate. Mayor Tussing denied Councilmember Ulledalen's request. He said "he had never sought membership in the Good Old Boys Club, and he was not ready to seek it tonight." Councilmember Clark told Mayor Tussing he had contacted him on more than one occasion and expressed how he felt Larry was the better choice. Mayor Tussing confirmed that he had.

## **CONSENT AGENDA:**

### **1. A. Bid Awards:**

**(1) W.O. 05-09, Wastewater Treatment Plant Generator Installation.** (Opened 10/14/08) Recommend Colstrip Electric; \$423,599.

**B. Change Order #12,** SID 1379 – King Avenue West reconstruction from S. 31<sup>st</sup> Street West to Shiloh Road; Knife River Corporation, \$139,645.68.

**C. Professional Services Contract** for W.O. 08-21, Lake Elmo Drive Improvements from Main Street to Wicks Lane; HKM Engineering, Division of DOWL, LLC, \$211,941.

**D. Amendment #6, Airport Engineering Services**, Morrison-Maierle, Inc. for land acquisition services, including an environmental assessment and appraisal work; \$108,975.

**E. Amendment #7, Architectural and Engineering Services**, CTA Architects Engineers for emergency electrical generator replacement at Billings Airport Terminal Building; \$56,680.36.

**F. Right-of-Way Easement Request** from NorthWestern Energy to relocate electric power lines in Sahara Sands Park for Aronson Avenue Road Project; with no financial impact to the City.

**G. Approval** of extension of Recreational Trails Program Grant with MT Fish, Wildlife and Parks to 10/15/09 for trail development along the Bannister Drain from 29<sup>th</sup> Street West to the east edge of the BBWA canal south of King Avenue West.

**H. Approval and Acceptance** of Homeland Security Grant to the Police Department Bomb Squad; \$298,200.

**I. Approval and Acceptance** of Bureau of Justice Assistance Grant for establishment of an Adult Misdemeanor Mental Health Treatment Court, \$249,415 over three years; city match – approximately \$60,000 per year.

**J. Approval and acceptance** of donation from Faith Chapel for labor and materials for installation of concrete ramps and pads up to and around existing picnic tables and benches along Heritage Trail on the west end of Swords Park; \$7,000 in materials and labor.

**K. Approval** of sale of Fire Department surplus property - 8 LifePac® 300 defibrillators and miscellaneous Survivair™ self-contained breathing apparatus equipment.

**L. Second/Final Reading Ordinance #08-5481** expanding the boundaries of Ward V to include recently annexed property in Annex #08-08: 55.45 acres described as Tracts 7-A and 6-A-1, Certificate of Survey 2314 and Tract 1-A-1, Certificate of Survey 2702, generally located on the south side of Grand Avenue between 30<sup>th</sup> Street West to west of Zimmerman Trail. Yegen Grand Avenue Farms, Inc., owner and petitioner.

**M. Exempt Plat** of Amended Lot 7, Lyons Subdivision, a portion of the Leavens Reservoir site located at Rimrock Road and Normal Avenue north of MSU-B campus; relocation of lot line for 10,000-foot parcel of city land approved for sale to Karen Cabell on 5/27/08.

**N. Preliminary Subsequent Minor Plat** of E.D. King Subdivision, 3<sup>rd</sup> Filing, described as three lots on a 2.10-acre parcel of land generally located on the southeast corner of the intersection of Avenue E and Zimmerman Trail; Speculators, Inc., owner; Engineering, Inc., agent; conditional approval of the plat and adoption of the findings of fact.

**O. Preliminary Subsequent Minor Plat** of Amended Lots 5 & 6, Block 1, Bellville Subdivision, generally located north of Wicks Lane and just west of Hawthorne Lane in Billings Heights; Ray & Dave LLC, owners; Blueline Engineering, LLC, agent; conditional approval and adoption of the findings of fact.

**P. Preliminary Major Plat** of High Sierra Subdivision, 5<sup>th</sup> Filing, generally located on the north side of Matador Avenue between Cortez Avenue and Vesca Way in Billings Heights; Dover Ranch, owner; Engineering, Inc., agent; conditional approval and adoption of the findings of fact.

**Q. Final Plat Approval**

- (1) Romero Subdivision
- (2) Marisela Subdivision

**R. Bills and Payroll**

- (1) September 26, 2008
- (2) October 3, 2008
- (3) April 1, 2008 – September 30, 2008 (Municipal Court)

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

Mayor Tussing separated Items G and Q1. Councilmember Astle moved for approval of the Consent Agenda with the exceptions of Items G and Q1, seconded by Councilmember Veis.

Councilmember McCall referenced Item I, the development of the Adult Mental Health Court through a Bureau of Justice Assistance Grant. She said she felt it was great that the Municipal Court was moving forward with it and appreciated staff's work on it. Councilmember McCall referenced Item J, and said she would like to publicly acknowledge and thank Faith Chapel for the ramps and pads for Swords Park.

On a voice vote, the motion was unanimously approved.

Councilmember Astle moved for approval of Item G, seconded by Councilmember Veis. Mayor Tussing said he would recuse himself because of his wife's involvement. On a voice vote, the motion was approved 8 to 0.

Councilmember Astle moved to delay Item Q1 until November 10, 2008, seconded by Councilmember Veis. On a voice vote, the motion was unanimously approved.

## **REGULAR AGENDA:**

### **2. PUBLIC HEARING AND RESOLUTION #08-18765 for MET Transit Route and Schedule Changes and Fare Increases. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

Tom Binford, Director of Aviation and Transit, advised staff had presented the preliminary and final recommendations for changes to the MET route schedules and fares to Council at two separate work sessions. He said they had also held six community meetings to present the planned changes to the public. Mr. Binford said, in an effort not to be redundant, they would focus on the final recommendations that evening. Mr. Binford said the changes they were recommending would be made without adding equipment to their fleet or without increasing the budget, which was accomplished by taking areas of the system where they had low ridership and using those resources to enhance services in other parts of the system. Mr. Binford said if Council approved their recommendations that evening, they planned to have the changes in place by February 1, 2009. He said they needed approximately three months to print and distribute the new guidebooks and system maps and to advertise and market the changes prior to implementation.

Councilmember Ulledalen said it was not known how the new Downtown Transfer Center would affect ridership and asked Mr. Binford if there was any room to "tweek" the plan, if necessary. Mr. Binford said they could always look at it; but said the changes balanced the system. He said as they entered the budget year, they projected an approximate \$260,000 deficit and then got hit with the high fuel prices. He said they were beginning to recover in their system ridership as compared to last year after the changes were made for the employee break issue. He said ridership had been increasing significantly, and he felt they would continue to increase with the Downtown Transfer Center because it would be more convenient to ride. Mr. Binford said any changes beyond what they were recommending that evening were not too feasible unless they received new revenue sources.

Councilmember Astle asked Mr. Binford how long it had been since the last rate increase. Mr. Binford said the last increase was in 1991.

A.T. Stoddard of LSC Transportation Consultants, Inc. said he had been working with MET Transit on the route and schedule analysis. Mr. Stoddard began his PowerPoint presentation showing maps of the proposed route realignments for Route 2P Rimrock, Route 6P Lewis, and Route 10D Southside. Mr. Stoddard also explained the schedule changes for Route 2P Rimrock, Route 4P Parkhill, Route 7D Broadwater, Route 9D Central, Route 12D Overland, Route 13D Southwest, Route 14P Alkali, and Route 18M - the morning commuter to the Heights. Mr. Stoddard explained many of the changes were in response to the comments received from the public through the public meetings and a public survey. Mr. Stoddard said they had received a lot more comment and publicity on the proposed fare structure. He said the last increase was in 1991, and some of the fares for past programs had actually decreased since then. Mr. Stoddard said costs were obviously increasing. He said they looked at other cities with

comparably-sized transit systems and found that Billings was significantly below them in several categories and at the low end or below in every fare category. Mr. Stoddard reviewed the table of current fares, three fare options, and the proposed fares. He said most of the people they heard from recognized that costs had increased, that it had been a long time since there had been a fare increase, and that reasonable increases were appropriate.

Councilmember Veis said when the City had the driver changes due to the settlement, one of the complaints he received most was that the service was dropped to many of the schools. He asked Mr. Stoddard what the City was doing to increase service to the schools. Mr. Stoddard said they had really not done a lot to increase service to the schools but tried to match up and make sure schools were covered as much as possible. He said more of what they were doing was looking at how they could also service commuters. Mr. Stoddard said past schedule changes were made to help get students to and from schools, and the changes hurt people who were commuting. Councilmember Veis asked if there was more service or less service to schools since the last change. Mr. Stoddard said, as a result of the last change, there was a decrease in service overall; and it affected everything, not just schools. He said it dropped a full hour of service per day across the board as a result of the drivers' breaks that were worked in.

Ron Wenger, Transit Manager, said he did not feel there was less service to the schools but an adjustment in the times; and it took time for people to adjust to the change. He said the school ridership had increased, and he felt it was due to the change and the students getting used to it. He said they had adjusted the tripper times somewhat. He said the proposed change maintained the current level of school service and may even improve it.

Councilmember Ulledalen asked Mr. Wenger if routes could be eliminated to help save money if they found out later they were not very well used. Mr. Wenger said they would always be looking at what was working and what was not working and be prepared to make both budgetary and ridership changes, as necessary. He said he felt the current school service was excellent, ridership in the schools was up across the board, and the new recommendation would not affect those routes.

Councilmember Pitman asked if the route that was out in the Heights for the morning was in conjunction with the Park and Ride being set up at Castlerock Park. Mr. Wenger said all of the Heights routes would access that area.

Councilmember Astle asked if there was a plan to add a second route at Senior High School. Mr. Wenger said they already had a tripper route in the afternoon that supplemented the regular bus from Senior High School, so they were able to meet the demand.

Councilmember Veis said it did not appear that any significant changes were being made and asked what the consultant had done that staff could not have done on their own. Mr. Wenger said Mr. Stoddard had the ability to provide a fresh look at the routes and schedules, which was a benefit; and he had a lot of resources to analyze the data staff had provided. Mr. Wenger said Mr. Stoddard had helped staff identify the route costs for providing service by the hour, day,

and type of route, and he was able to formulate the true costs to provide the service.

Councilmember McCall asked Mr. Wenger if he knew what it was costing the City, based on rider volume, to provide the service. Mr. Wenger said it depended on the class of ride. He said they were heavily subsidized; and the revenues received through the fare boxes and marketing covered about 8% of the total operating budget.

Councilmember Veis asked if staff had the numbers for what each rider cost per route. Mr. Wenger said he could not say off the top of his head; but he could provide Council with the information. Mr. Stoddard advised they had put together a profile of each route identifying the number of passengers per year by specific route, category of passenger, total cost to operate the route per year, and cost per passenger.

Councilmember Ulledalen asked if the average cost per ride was above \$10. Mr. Stoddard said the fixed route would be less. He said it might be above \$10 if the special transit service was included. He said the fixed route and the special transit service were looked at separately because the special transit service was very expensive per passenger.

City Administrator Volek asked what the overall budget for Transit was for the current year. Mr. Binford said the operating revenues were approximately \$4.2 million, and operating expenses were approximately \$4.5 million; so there was an approximate \$280,000 operating deficit. He said they were using reserves they had built up to make capital purchases to balance it out. Mr. Binford said the current cost per trip on a fixed route was about \$4.87 per passenger; some routes were higher and some routes were lower. He said the cost of the special transit service was about \$5.11 per mile. Mr. Binford said they receive about 80% of their revenues from the 10 mill transit levy and federal funds.

Councilmember Ruegamer asked if the proposed changes would reduce the cost per trip. Mr. Binford said they could if the ridership increased; but the fare increases and the changes would never allow them to break even.

The public hearing was opened.

- **Joe White, Billings, MT**, said when prices went up, the cost came back to public agencies. He said public agencies should do all they could to be the last to raise prices and avoid inflation itself. He said all agencies should be told to ask for more subsidies, especially gasoline. He said people should be encouraged to ride the buses back and forth to work.

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

Councilmember Ulledalen moved for approval of Item 2, seconded by Councilmember Clark. Mayor Tussing pointed out there had been a lengthy presentation at a Work Session where Council was able to review the proposal. Councilmember Gaghen commended the public process that was used.

On a voice vote, the motion was unanimously approved.

**3. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #850: A text amendment to the Unified Zoning Regulations, regulating the location of Sexually-Oriented Businesses within the City of Billings; amending Section 27-201, Section 27-405(q), and Section 27-611 BMCC. Zoning Commission recommends approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

Nicole Cromwell, Planner II and Zoning Coordinator, said the zone change text amendment would further regulate sexually-oriented businesses under the Zoning Regulations. She advised that in June 2008 the Council took emergency action and implemented an interim zoning ordinance to define adult cabarets where live, nude entertainment was offered as a sexually-oriented business. She said interim ordinances could only be in place for six months, and the Planning Division had worked with the Legal Department to propose and present the permanent change to the ordinance, regulating adult cabarets as sexually-oriented businesses. She said they were proposing that sexually-oriented businesses not be allowed as uses in the Central Business District Zone or the Highway Commercial Zone where they were currently allowed. She said they were also proposing an amortization period of four years for those businesses currently located in both zoning districts requiring them to relocate. Ms. Cromwell advised the existing code allowed sexually-oriented businesses within the City in the Central Business District, Highway Commercial, Controlled Industrial, and Heavy Industrial. She said both the Central Business District and the Highway Commercial zone also allowed residential uses and several other retail-type businesses that may not be compatible with sexually-oriented businesses. Ms. Cromwell said the proposed change would add adult cabaret as a defined use so that type of business would have to meet the location and separation requirements applied to any other adult entertainment business. She said it would remove sexually-oriented businesses from the Central Business District and Highway Commercial zone and add separation of sexually-oriented businesses from a Planned Development zone, Agricultural Open Space zone, cemeteries, trails, and group homes. Ms. Cromwell said established businesses in the Central Business District or Highway Commercial zone would have four years to comply with the new regulations. She said, through zoning, locations of sexually-oriented businesses could be regulated due to negative secondary effects of the businesses, primarily crime related or property value related. Ms. Cromwell showed a map of all the existing Heavy Industrial and Controlled Industrial zoning districts within the City of Billings; a map of the five known, existing sexually-oriented businesses within the City; a map of the Controlled Industrial and Heavy Industrial zones; and existing locations that could be used for new or relocated sexually-oriented businesses given all of the separation distances and zoning districts required. Ms. Cromwell advised the Zoning Commission conducted a public hearing and was forwarding a recommendation of approval. She said the amendment would regulate all sexually-oriented businesses equally and close the loophole in regulation; update the separation

requirements to sensitive land uses; eliminate sexually-oriented businesses in the Downtown Business District and Highway Commercial zones; and allow the existing businesses to relocate within four years.

Councilmember Veis asked if an established sexually-oriented business would have to move if a park went in nearby. Ms. Cromwell said if the sensitive land use occurred after their existence at a certain location, they would not have to relocate; however, if they were eliminated as a use in a particular zoning district, that would trigger the 4-year amortization.

Councilmember Pitman asked what classified a business as a sexually-oriented business. Ms. Cromwell said they had to meet one of the definitions in that section of the Zoning Regulations. She said there had been no definition for an adult cabaret where nude or semi-nude live entertainment was offered, so it was added. She said the principle use of a property determined if it was a sexually-oriented business. She said if a business had 50% or more of its floor area devoted for specific uses, it would meet the definition and fall under the regulations. Councilmember Pitman asked if any of the current businesses could reduce their square footage by 50% and come into compliance. Ms. Cromwell said it would have to be determined that it would fall below being the principle use of the property.

Councilmember Clark asked how the principle use would be determined. Ms. Cromwell said if they received a complaint and investigated, they would look at a variety of factors to make the determination.

Councilmember Gaghen said there was some concern that periodic events at the Alberta Bair Theater may contain some nudity, and asked Ms. Cromwell to confirm that they would not be threatened. Ms. Cromwell said the definition, as proposed, included the three words "which regularly features" persons who appeared nude or semi-nude; so if it was infrequent, such as once a year, it would not be a regular feature.

The public hearing was opened.

- **Joe White, Billings, MT**, said sexually-oriented businesses should be located away from the highway, and customers should have to make an effort to find them. Mr. White said he felt the City should have a special attorney to review the definitions because it was a very wide-spread topic in the United States. He said definitions were very, very vague. (The rest of Mr. White's testimony was inaudible.)
- **Barb Peterson, Broadway Books and Video**, said her main concern was that they had gone through the same thing ten years ago when they were booted out of downtown. She asked how much longer they would have to keep moving from one area to the next because it cost a lot of money to move. She asked when it would all end. Ms. Peterson said there was no sex going on at Broadway Books and Video, and she did not allow it. She said they did not allow two people in a booth or people to hang around the store. She said the customers come in, get what they want, and leave. Ms. Peterson said in 14 years she had called the cops only

three times, so no one could tell her the store was causing a big crime problem.

- **Angela Cimmino, 1745 Sylvan Lane**, said she had first-hand knowledge of the amount of work that went into the text amendment working with the Zoning Commission. She said, as a private resident, she highly requested Council provide a favorable recommendation on the text amendment regulating the sexually-oriented businesses in the Central Business District and Highway Commercial zoning district.
- **Ben Huber, Ball Adult Books and Video**, said he had owned the store for nine to ten years. He said all of his taxes were paid. He said he had been guaranteed he was grandfathered and asked for the definition of grandfathered. He said he was told the nude issue did not affect him and when it came out in the Billings Gazette, he did not believe it. Mr. Huber said, to his knowledge, the strip joint closed as of Friday because the owners got into a disagreement. Mr. Huber said he thought it was a form of discrimination and asked why Albertsons, Conoco, or Hardy's were not being rezoned. He said they did not bother anybody. He said the skate park was across from him, and they watched the skate park because it was the right thing to do. Mr. Huber said they did not allow anyone in under 18; they never called the police; and they tried to handle most of their problems by themselves. He said the business had been in the same location for 30 years, and he was guaranteed he was grandfathered. Mr. Huber said his store had no crime, and he did not allow any hanky-panky, prostitution, or two in a booth.

Councilmember Pitman asked Ms. Cromwell for a definition of grandfathered. Ms. Cromwell advised the Ball Book Store was in the Central Business District zone and when the Council adopted the changes back in 1992 and 1994, they allowed sexually-oriented businesses in the Central Business District zone as long as the separation requirements were met. She said the skate park was constructed well after the time the Ball Book Store was located on South 26<sup>th</sup> Street, so it was grandfathered from the separation requirements in the Central Business District zone. Ms. Cromwell said if the changes were adopted that evening the store would be eliminated as an allowed use in that zoning district; and it would not be grandfathered any longer.

Councilmember Ruegamer asked Ms. Cromwell to comment on any problems that had occurred at any of the five book stores. Ms. Cromwell said the police chief was not present that evening, but he had commented last June when the interim ordinance was adopted that there was no site specific information research available. She said Chief St. John had commented that criminologists did not look at specific locations for the number of 911 or police calls to determine whether or not there was a greater incidence of crime in an area around a sexually-oriented business. She said they looked at a wider variety of statistics; and time after time, sexually-oriented businesses in cities increased the incidents of crime such as drug dealing, prostitution, robberies, and assaults by two to

three times. She said the combination of books and arcades increased those types of crime. She said they did not have site specific research in the City of Billings, but they did have research that the ordinance was based on from similar cities throughout the country.

Councilmember Veis asked if the interim ordinance included the changes to the Agricultural Open Space, PUD's, Central Business District, or Highway Commercial zone. Ms. Cromwell said it did not; but it was added to the permanent ordinance based on concerns of existing and previous councilmembers about locations of sexually-oriented businesses in the downtown area; comments from the Downtown Partnership, and comments from Big Sky EDA working in the East Billings TIF area.

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

Councilmember McCall moved for approval of Item 3, seconded by Councilmember Ruegamer.

Councilmember Pitman asked if the businesses would have to move now, would they then be grandfathered in, or would they have to continue moving. Ms. Cromwell said it would be up to the City Council to decide based on the zoning regulations in place and what they thought were the effects of those businesses at that time. She advised Council had the opportunity to make amendments to the first reading ordinance if they did not believe the uses should be eliminated in the Central Business District or Highway Commercial zones.

Councilmember Clark asked Ms. Cromwell if sexually-oriented businesses could be completely banned from inside the City. Ms. Cromwell said prohibition was not allowed.

On a voice vote, the motion was unanimously approved.

**4. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #849: A text amendment to the Unified Zoning Regulations, regulating the review and approval of condominium and multi-unit developments within the Unified Zoning Jurisdiction; amending Section 27-201, Section 27-310(b), and Section 27-622 BMCC. (Action: approval or disapproval of Zoning Commission recommendation.)** Wyeth Friday, Planning Division Manager, said the amendment was to implement a Master Site Plan Review Process for certain condominium and multi-unit developments within the City. He said the proposed text amendment was coming to Council as a result of the International Code Council's (ICC) audit of the Building Division a year or so ago. He said the ICC had made recommendations on how certain processes were being handled within the Building Division and the various department reviews that occurred throughout the review of a building permit. Mr. Friday said a second reason for the amendment followed a portion of the Planning Division's FY2009 budget, which included a Master Site Plan Review Process; and a third reason was to improve the review process and ensure code compliance for certain development projects, including addressing issues of public health and safety. Mr. Friday said the amendment specifically identified

types of projects subject to review, such as multi-unit developments including condominiums or commercial development with common private facilities shared by buildings or lots, and residential developments with more than two dwelling units with common private facilities shared by buildings or lots. Mr. Friday said examples of common private facilities would be drive approaches, roads, parking and loading areas, and utilities and utility easements. He said the amendment would ensure there was a fully-comprehensive review of a master plan of a development in the very beginning and specify submittal requirements subject to the Master Site Plan Review process. Mr. Wyeth showed photos of project examples that would or would not be reviewed under the new proposal.

Mr. Wyeth advised the Zoning Commission conducted a public hearing on the item and was recommending approval of the amendment because it would meet the ICC Building Division Operations Appraisal recommendation, it implemented the FY2009 Planning Division Budget; it would help expedite development review with City-approved master plan in advance of building permit submittal and/or approval; and it should minimize issues that arise as developers go from one City department to another trying to bring projects into compliance. Mr. Wyeth added that staff also presented the proposal at the Homebuilder Association's monthly meetings and to DPARB and received mostly favorable comments on the proposed review process. Mr. Wyeth advised there would be a fee associated with it, but the fee was not part of the approval that evening and would be done by resolution at the second council meeting in November.

City Administrator Volek pointed out that the fee Mr. Friday mentioned was built into the Planning Department budget this year as part of their revenue.

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

Councilmember Ruegamer moved for approval of Item 4, seconded by Councilmember Astle.

Councilmember Clark said he would like the public to know that Council had the opportunity to review the proposal and ask questions at a previous Work Session. Mayor Tussing said that was also true of Items 2, 3, 4, and 5.

On a voice vote, the motion was unanimously approved.

**5. 2008 CTEP PROJECT APPLICATIONS funding construction of various community pedestrian and/or bicycle facilities. Staff recommends Council formulate a recommendation for presentation at the Policy Coordinating Committee meeting. (Action: approval or disapproval of staff recommendation.)** Scott Walker, Planner II, Transportation Planner, referred Council to the information they received in their Friday packet with the updated information. He said, as they had discussed at the Work Session, the Technical Advisory Committee (TAC) made a recommendation to fund two of the five 2008 projects – the Shiloh Road Project and the Swords Park Project. Mr. Walker said it was later found that three projects approved in subsequent years had all extensively exceeded their budgets, so TAC formulated another recommendation to go back and fund what was already on the table. Mr. Walker said the

recommendation would go to the Policy Coordinating Committee (PCC) on November 6, 2008.

Councilmember Veis asked Mr. Walker if TAC had initially recommended the Swords Park and Shiloh Road projects and if TAC had changed their recommendation since receiving the subsequent information. Mr. Walker said he made a phone poll to TAC to discuss the item with every member he could reach between last Thursday and that day. He said the majority were in favor of funding the three projects that were in arrears.

Councilmember Clark asked if those who were not in favor of the three projects had a different solution. Mr. Walker said they did not have a solution but felt the Main Street Underpass project was a very expensive project.

Councilmember Veis told Mr. Walker that Council had received a schedule that had Main Street, Schedule II, pulled out; but it looked like it was back in as Main Street, Schedules I and II, with an updated estimate of \$1.7 million from the previous estimate of \$1 million. Mr. Walker said it was for CTEP dollars and when they looked at the project, the feeling was that they did not want to build the tunnel without any way to get to it. He said if Schedule II was put back in at \$107,000, the \$107,000 plus the extra match, equaled the \$1.7 million. Councilmember Veis asked if it would cost the same if they did Schedule I or Schedules I and II. Mr. Walker said the way it was figured, that would be true. Councilmember Veis asked how Schedule I lost \$107,000. Mr. Walker said it was just how it was presented because the full CTEP estimate was listed before as an option and just as an option, they backed out the \$107,000 to show it would reduce the entire cost of the project. Councilmember Veis asked if what they were given at the Work Session should have been less the \$107,000. Mr. Walker said that was correct; it should have been taken out.

Candi Beaudry, Planning Director, said based on the Council's questions at the Work Session, staff reviewed the numbers again; and it looked like they had included Schedule II in the estimate initially, so they had to back it out. She said there had been an error because they had calculated Schedule II twice.

Councilmember Veis asked what kind of an impact there would be on the Shiloh Road project if they chose not to fund the landscaping this year.

City Administrator Volek advised that Shiloh Road would be developed in phases, and the first phase would begin in the north. She said she would try to reach Mr. Mumford by phone to find out what the northern portion, scheduled to be bid in February 2009, would need.

Councilmember Ulledalen asked if part of the reason they were addressing it now was because the State had backed away from the landscaping plans they had initially presented, so the City had to come up with other funding to maintain the same level of landscaping that was agreed to at the stakeholders' meetings. City Administrator Volek said when they had the stakeholders' meetings there was an urban standard agreed upon. She said as funding became tighter for the project, the State moved to landscaping similar to that along highways of natural grass with no other features. Councilmember Ulledalen said that was essentially why they needed to shift CTEP money to meet the need that the State originally agreed to provide. Ms. Volek said that was correct. She

said as funding became short, the State preferred to use the money for other pieces.

Mr. Walker advised the total amount of landscaping for Shiloh Road was in the neighborhood of \$2 million.

Councilmember Veis said one of the State's criteria for letting Shiloh Road was that it had to be fully funded. He asked if they would be missing a piece if they chose not to pay for landscaping; thus, it would not be a fully-funded project and they would not be able to move forward. He said Council needed to know what the impact of not funding the landscaping on Shiloh Road would be to the project before making a decision. He said if the landscaping was a critical piece, they needed to do it.

Councilmember Ulledalen commented that the State was presenting a road below the standards the City had originally agreed to and if the City wanted to go ahead with a conventional rural-type outline, they would be okay. He said everyone had decided they did not want that type, so they substituted the CTEP money to bring the landscaping standards back up to what was agreed to.

Councilmember Veis asked what problems would be created if the item was delayed past the next PCC meeting so the questions could be answered. Mr. Walker said the Main Street Underpass was put out for contract, and the City received three bids. He said the bids gave the City 60 days, and the 60-day time period would end on November 29, 2008.

Councilmember Clark said City Administrator Volek was currently on the phone with Mr. Mumford and asked if Council could move to the next agenda item in the meantime until Ms. Volek could provide them with Mr. Mumford's comments.

Councilmember Veis moved to delay action on Agenda Item 5 until the end of the agenda, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.

**6. PUBLIC HEARING AND SPECIAL REVIEW #868: A special review to allow an All-Beverage Liquor License with gaming in a Controlled Industrial zone on property described as Lots 4C and 4D1, Studer Acreage Tracts; located at the current Doc & Eddy's West, 1251 S. 32<sup>nd</sup> Street West. George Frank, owner; Design Lab Architects, agent. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)** Dave Green, Planner I, began his PowerPoint presentation showing the location of the subject property and the surrounding area. He said there was currently a beer and wine license at the location, and they wanted to change to an All-Beverage Liquor license. He said the owners planned to lease their building to another operator and increase the floor area of the existing building to add food service. Mr. Green advised the Zoning Commission held a public hearing and was recommending approval based on the following eight conditions.

1. The special review approval shall be limited to Lot 4C and Lot 4D1, Studer Acreage Tracts located at 1251 South 32<sup>nd</sup> Street West.

2. Development of the site shall be in substantial conformance with the site plan submitted with this application and shown in this staff report. Deviations from the approved site plan that show the addition of outdoor patio areas, parking lot access or parking areas will require additional special review approval.
3. No outdoor seating, outdoor music or outdoor public announcement systems will be allowed with this application.
4. Any lighting on the building or within the parking lot shall have full cut-off shields so light is directed to the ground and not onto adjacent property. Lighting of signs shall be as allowed within the City Sign Code (Section 27-701 BMCC).
5. The additional parking shown on the drawing submitted with this application must meet landscaping requirements of Section 27-1100 of the Unified Zoning Regulations.
6. The additional parking shown on the drawing submitted with this application must meet the current storm water management requirements of the City of Billings on their site.
7. These conditions of special review approval shall run with the land described in this authorization and shall apply to all current and subsequent owners, operators, managers, lease holders, heirs and assigns.
8. The proposed development shall comply with all other limitations of Section 27-613 of the Unified Zoning Regulations concerning special review uses, and all other City of Billings, regulations and ordinances that apply.

Councilmember Ulledalen said the plan was to have two casinos on the same property and asked if a third casino could be added on the back of the property. Mr. Green said, due to the separation requirements, they would not be able to build a third casino on the back side of the lot.

The public hearing was opened.

- **Joe White, Billings, MT**, said he was concerned and asked if the property was located in the special district for casinos that was being considered. (The rest of Mr. White's testimony was inaudible.)

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

Councilmember Pitman moved for approval of Item 6, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

**7. PUBLIC HEARING AND SPECIAL REVIEW #869: A special review to allow a Beer and Wine Beverage License with gaming in a Highway Commercial zone on property described as Lot 3, Block 1, Citizens Center**

**Subdivision; located at 414 Lincoln Lane. Kreitzberg Rentals, LLC, owner; Darrell Kreitzberg, agent. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)** Dave Brown, Planner I, began his PowerPoint presentation showing the location of the subject property and the surrounding area. He said the property was proposed to be master planned to have apartment housing on the majority of the property, a 3,039-square foot casino, and an office building. Mr. Green said the affordable housing would rent in the range of \$650 to \$725 per month. Mr. Green advised the Zoning Commission held a public hearing and was recommending approval based on the following eight conditions.

1. The special review approval shall be limited to Lot 3, Block 1, Citizens Center Subdivision, located at 414 Lincoln Lane.
2. Development of the site shall be in substantial conformance with the site plan submitted with this application and shown in this staff report. Deviations from the approved site plan that show additional square footage on the outdoor patio, parking lot access or parking areas will require additional special review approval.
3. As shown on the site plan submitted with the application there shall be no outdoor patio. The addition of an outdoor patio would require an additional special review.
4. The solid waste storage area shall be enclosed on three (3) sides by a sight-obscuring fence or wall and by a sight-obscuring gate on the remaining side. This enclosure shall be constructed of normal fencing materials. Chain link or wire fencing cannot be used for sight-obscuring enclosure.
5. Landscaping shall be provided as required by Section 27-1100 of the Unified Zoning Regulations.
6. All exterior lighting with the exception of sign lighting shall have full cut-off shields so light is directed to the ground and not onto adjacent property.
7. These conditions of special review approval shall run with the land described in this authorization and shall apply to all current and subsequent owners, operators, managers, lease holders, heirs and assigns.
8. The proposed development shall comply with all other limitations of Section 27-613 of the Unified Zoning Regulations concerning special review uses, and all other City of Billings, regulations and ordinances that apply.

Mr. Green advised there was one speaker at the Zoning Commission public hearing whose main concern was about the traffic issue at the intersection of Lake Elmo, Main Street, and Bench Boulevard and not so much about the proposed development.

The public hearing was opened.

- **Vonnie Anderson, 1093 Lincoln Lane**, said she lived directly across the street from the proposed development. She said less than two years ago Lincoln Lane had 14 single-family homes and a small 12-home trailer park. She said in the past Council had approved a development with four plus units and a development of 48 single bedroom units in the same area, which had made the traffic unbearable. She said Council also approved the Randash wrecking yard, which was only suppose to have three vehicles in it but now had 28 vehicles. Ms. Anderson said her biggest concern was with the proposed liquor license. She said they currently had the least amount of crime in their area, but that would change if the additional housing and liquor license were added. She said there were already four casinos in the area, and they did not need another one. Ms. Anderson said she was born in the house she was living in and to see all the changes had been difficult. She said they have a lake on their street that flooded three properties. She said they had made numerous calls and nothing was ever done. She said eight large Cottonwood trees were ripped out of the ditch bank, and the ditch bank compromised the whole road. Ms. Anderson asked if traffic from the proposed casino would enter and exit on Lincoln Lane.

Councilmember Astle asked Ms. Anderson if she owned land in the area. Ms. Anderson said she and her parents both did.

Mr. Green advised that the casino's traffic would not be accessing Lincoln Lane, but the apartment housing tenants would.

- **Joe White, Billings, MT**, (Mr. White's comments were inaudible.)
- **Darrell Kreitzburg, 3737 Grand Avenue**, said they were taking an infill piece of property that was a definite detriment to the entire area as far as looks. He said they planned to put in nicely landscaped apartments and a Dotty's Casino, which was a very low key gaming business. He said the casino would have access from Main Street.

Councilmember Veis asked if the liquor license was currently being used. Mr. Kreitzburg said it was a license from Billings that was not currently being used. Councilmember Veis asked if the license had been used in a casino before. Mr. Kreitzburg said he had not handled the transaction so he did not know.

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

Councilmember Gaghen moved for approval of Item 7, seconded by Councilmember Astle.

Councilmember Pitman said he had serious problems with the project. He said Lincoln Lane was closer to a county road, and Liberty Lane had no sewer or drainage so water built up. He asked how the problem would be addressed before adding more housing and more people.

Councilmember Gaghen said she remembered when Council looked at the previous developments in the area; the road was an issue and drainage was

a problem. She said there had been a recommendation that the problems be mitigated prior to some of the development and asked why it had not occurred.

Mr. Kreitzburg showed that the area proposed for development was on city sewer and said they had their own drainage pond.

City Administrator Volek said Ms. Beaudry advised that when the Randash property was approved, there were drainage requirements as a site requirement; but she was not sure of the status. Councilmember Gaghen said the requirements needed to be in progress or completed and should be checked on.

Mayor Tussing advised that the Council had very little latitude in disapproving new casinos and liquor licenses as long as they met the criteria imposed by the Zoning Commission.

Councilmember Veis said he wanted to point out that the City had been trying to get a casino overlay district, but it was a struggle and not an easy thing to do. He said although he had reservations, he would probably support it.

Councilmember Pitman said he would vote against it because he did not feel the road capacity or the street, especially on the east side, could handle it. He said he thought it was a huge oversight and a mistake to proceed until the issues were addressed.

On a voice vote, the motion was approved 7 to 2. Councilmembers Pitman and Clark voted 'no'.

#### **ITEM 5, CONTINUED:**

City Administrator Volek advised she had spoken with Mr. Mumford, Public Works Director, and he confirmed the State would not cancel the project if there was not funding for the landscaping. She said Mr. Mumford advised that he and the State had been working jointly the last few weeks to address the landscaping issue. Ms. Volek said she understood there would be an opportunity for individual businesses to address the areas along the roadway if they wanted to, but it would not be the uniform urban standard the City had hoped for originally. She said if they went forward with the CTEP project, the City would have some landscaping but it would still be reduced because the original project was around \$2 million.

Councilmember Veis moved to delay action in order to discuss the 2008 CTEP project applications at the December 1<sup>st</sup> Work Session with the County Commissioners, seconded by Councilmember Ruegamer.

Mayor Tussing recused himself from the vote because of his wife's involvement.

Councilmember Veis said the only deadline missed by delaying action would be the deadline in November to accept bids for the Main Street Underpass, which were already significantly more than what the City thought they would be. He said it would give staff the opportunity to go back to the TAC for further discussion and give Council the opportunity to talk with the Commissioners at the December 1<sup>st</sup> Work Session where they were already scheduled to talk about the Bench Connector and changes to the PCC.

Councilmember Ulledalen said, given the resources they had, Shiloh Road and Airport Road were the two projects that made the most sense. He said it would be nice to do the other projects, but with both Airport Road and Shiloh Road being such big deals, he was in favor of hearing back from TAC before making a decision.

City Administrator Volek said Ms. Beaudry reminded her that the last date the Main Street Underpass bids could be acted on was the Council meeting of November 24<sup>th</sup>. She said if they waited until December 1<sup>st</sup>, the Main Street project would need to be re-bid.

On a voice vote, the motion to delay action in order to discuss further at the December 1<sup>st</sup> Work Session was approved 8 to 0. Mayor Tussing had recused himself from the vote.

**8. 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, and the Public Comment period was closed.

### **Council Initiatives - None**

The meeting adjourned at 8:40 p.m.