

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

September 27, 2004

The Billings City Council met in regular session in the Council Chambers located on the second floor of the Police Facility, 220 North 27th Street, Billings, Montana. Mayor Charles F. Tooley called the meeting to order and served as the meeting's presiding officer. The Pledge of Allegiance was led by the Mayor, followed by the Invocation, which was given by Councilmember Dave Brown.

ROLL CALL – Councilmembers present on roll call were: McDermott, Gaghen, Brown, Brewster, Iverson, Ruegamer, Boyer, Poppler, Clark and Jones. Councilmember Poppler was excused at 7:55 p.m.

MINUTES – September 13, 2004. APPROVED as printed.

COURTESIES -- None

PROCLAMATIONS – Mayor Tooley.

- October 3-9: Fire Prevention Week: Test Your Smoke Alarms
- Proclamation for the American Dream: National League of Cities
- September 24: American Indian Heritage Day and November 2004: National American Indian Heritage Month

BOARD & COMMISSION REPORTS – None

ADMINISTRATOR REPORTS – Kristoff Bauer.

- Mr. Bauer noted Item 1 of the Consent Agenda has a faxed request from the petitioner to withdraw the petition for annexation.
- Mr. Bauer noted it was discovered today that according to an obscure statute of state law, inadequate notice of the public hearing on Item 9 was given. The recommendation is to delay this item to the October 25th meeting to allow adequate time to re-advertise the public hearing with the appropriate advance notice.

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Item: #1, #9, and #10 ONLY. Speaker sign-in required. (Comments offered here are limited to 1 minute per speaker.)

There were no speakers.

CONSENT AGENDA:

1. A. Mayor's Appointments:

| | Name | Board/Commission | Term | |
|--|------|------------------|--------|------|
| | | | Begins | Ends |
| | | | | |

| | | | | |
|----|------------------------------|---|----------|------------|
| 1. | *Delayed to January 2005 | Human Relations Commission | 10/01/04 | 12/31/2007 |
| 2. | ** Delayed to January 2005 | Human Relations Commission | 10/01/04 | 12/31/2005 |
| 3. | *** Delayed to January 2005 | County Water District of Billings Heights | 10/01/04 | 12/31/2009 |
| 4. | **** Delayed to January 2005 | Downtown Parking Advisory Board | 10/01/04 | 12/31/2005 |

- * Filling Unexpired term of Andy Rio
- ** Filling Unexpired term of Michele Gasek
- *** Filling Unexpired term of Ryan Walker
- **** Filling Unexpired term of Kenneth Olsen

B. Bid Awards:

(1) Interactive Computer Based Training System. (Opened 9/14/04). Recommend American Association of Airport Executives, \$232,636.00.

(2) Water Treatment Plant Electrical Improvements, Phase II. (Opened 9/14/04). Recommend Ace Electric, Inc., \$226,730.00, and approval of a 10% contingency of \$22,673.00.

(3) SID 1371 – W.O. #95-08: Shiloh Road Improvements from Poly Drive to Rimrock Road. (Opened 9/14/04). Recommend JTL Group, Inc. for Schedules I, II, III, IVB, \$1,825,030.40.

C. C.O. #3, W.O. 02-14, Washington School Walks, Rock Pile, Inc., \$43,513.65.

D. Contract Amendment with US Bank for banking services, 2-year extension to 2/28/07.

E. Professional Services Contract with HKM Engineering Inc. for SID 1371: Shiloh Road – Poly Drive to and including Rimrock Road, \$255,000.00.

F. Acceptance of Amended Declaration of Easement from Gerald and Eileen Kriskovich and Al and Elizabeth Pipinich (Owners) for Lots 28A-1 and 27, Block 13, Briarwood Subdivision, 2nd filing to relocate an existing drainage easement.

G. Acceptance of Warranty Deed and Right-of-Way Agreement from Lutheran Retirement Home, Inc. for right-of-way acquisition along Shiloh Road, on Lots 2-5, Amended Lot 1, Blue Meadow Acreage Tracts and Tracts A, A-1 and A-2 of C/S 369 Amended, (Note: ROW improvements are being exchanged for the property acquisition.) (Delayed from 9/13/04).

H. Approve purchase of one Three-Wheel Parking Enforcement Scooter from White Bear West, Inc., \$21,447.00.

I. Acknowledging receipt of petition #04-09 to annex Tract 3, C/S 90 (Gauger Acres), Lamar Outdoor Advertising Montana, petitioner and setting a public hearing date for 10/12/04.

J. Resolution 04-18196 correcting the legal description in Res. 03-17938 regarding Annex #01-20.

K. Resolution 04-18197 relating to \$5,200,000.00 General Obligation Bonds, Series 2004A; authorizing the issuance and calling for a public sale thereof.

L. Bills and Payroll.

- (1) August 27, 2004
- (2) September 3, 2004

(Action: approval or disapproval of Consent Agenda.)

Councilmember Brewster separated Item I from the Consent Agenda. Councilmember Clark separated Item E from the Consent Agenda. Councilmember McDermott separated Item B3 from the Consent Agenda. Councilmember Ruegamer moved for approval of the Consent Agenda with the exception of Items B3, E and I, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

Councilmember Ruegamer moved to postpone Item I of the Consent Agenda indefinitely, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

Councilmember Ruegamer moved for approval of Item B3 of the Consent Agenda, seconded by Councilmember Brewster. On a voice vote, the motion was approved with Councilmembers McDermott and Clark voting "no".

Councilmember Ruegamer moved for approval of Item E of the Consent Agenda, seconded by Councilmember Brewster. On a voice vote, the motion was approved with Councilmembers McDermott and Clark voting "no".

REGULAR AGENDA:

2. PUBLIC HEARING ON THE FY 2003 COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM (CDBG) AND HOME INVESTMENT PARTNERSHIP PROGRAM (HOME) Comprehensive Annual Performance Evaluation Report. The public hearing is for public input only; no council action is required.

Community Development Manager John Walsh said the City of Billings is required to report the results of its federally funded CDBG and HOME programs, submitting a report to HUD within 90 days of the end of the program year. Part of the report process is a public hearing on performance during this period.

The public hearing was opened. There were no speakers. The public hearing was closed. Note: Public Hearing only; no Council action required.

3. PUBLIC HEARING AND RESOLUTIONS RESPREADING ASSESSMENTS:

(A) Res 04-18198 FOR SID 1341: Circle 50 Park Improvements (combine tax codes)

(B) Res 04-18199 FOR SID 1349: Water, Sanitary Sewer, Storm Drain and Street Improvements in Lake Hills Sub., 9th, 10th, 13th and 25th filings (post construction final costs)

(C) Res 04-18200 FOR SID 1354: Water, Sanitary Sewer, Curb & Gutter, Sidewalks, Street Widening, Streetlights, Median Placement and Traffic Signal Improvements to King Avenue East and Simpson. (post construction costs)

(D) Res 04-18201 FOR SID 1356: King Avenue Improvements (combine tax codes)

(E) Res 04-18202 FOR SID 1360: Broso Valley Park Subdivision (split tax codes)

Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

City Administrator Kristoff Bauer said these SIDs have already been adopted and are at different stages of construction. Each SID has a small change that relates to the process involved in the tax code or post final construction costs.

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

Councilmember Iverson moved for approval of SID 1341, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

Councilmember Iverson moved for approval of SID 1349, seconded by Councilmember Boyer. On a voice vote, the motion was unanimously approved.

Councilmember Iverson moved for approval of SID 1354, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

Councilmember Iverson moved for approval of SID 1356, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

Councilmember Iverson moved for approval of SID 1360, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

4. PUBLIC HEARING AND RESOLUTION 04-18203 relating to a project on behalf of Rose Park Plaza Partners Ltd. and the Issuance of Revenue Bonds or Notes to Finance the Costs thereof, approving the project and authorizing the issuance of bonds. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

City Administrator Kristoff Bauer said the City is a conduit for the issuance of the Industrial Revenue Bonds for the Rose Park Plaza Partners. This project concerns renovation of a Section 8 affordable housing complex (112 units). As the conduit, the City is charging the standard fee for administrative costs.

The public hearing was opened. CHRIS DOWNS, NO ADDRESS GIVEN, said he is one of the partners financing the project and was available for questions from the Council. There were no questions.

There were no other speakers. The public hearing was closed. Councilmember Boyer moved for approval of the Staff recommendation, seconded by Councilmember Ruegamer. Councilmember Brown asked if the City can issue revenue bonds for anyone.

Mr. Bauer said it was his understanding that it is limited to tax exempt entities, such as the previous request from Rocky Mountain College. Mr. Downs noted this project satisfies the requirements though the affordable housing status of the Internal Revenue Service tax code. Mr. Bauer said the debt is not guaranteed by the City. On a voice vote, the motion was approved with Councilmember Brown voting "no".

5. PUBLIC HEARING FOR SPECIAL REVIEW #769: a special review to allow the location of a beer and wine license with gaming in a Controlled Industrial zone on Lot 6, Block 1, Cenex Park Subdivision, located at 2701 Gabel Road. BarSi LLC, owner; Roger Tuhy, agent. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)

Planning Staff Member Juliet Spaulding said this application would allow the location of a beer and wine license with gaming in a Controlled Industrial zone at 2701 Gabel Road. The size of the lot is 3.4 acres and the casino would be located in the southeastern corner of an existing building on the lot. There are no uses within 600 feet that require a waiver of separation as the other uses are all light industrial or vacant land.

Ms. Spaulding said the Zoning Commission recommended conditional approval with the following conditions:

1. The special review approval shall be limited to Lot 6, Block 1 of Cenex Park Subdivision as shown on the site plans submitted with this application. The beer & wine license with gaming shall be limited to no more than 3200 square feet in floor area.
2. The site shall be landscaped according to the proposed plan provided with the Special Review application.
3. Changes in floor plans or interior remodeling may occur. Increases of floor area beyond 3200 square feet or the addition of an outdoor patio will require another Special Review application {BMCC 27-613}.
4. Trash enclosures shall be constructed of wood, vinyl, brick, stone or concrete block or other building materials and provide a closing gate on one side. No chain link or wire material is allowed for this enclosure.

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

6. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #724: a Planned Development zone change amending the Master Plan of Rehberg Ranch Estates Subdivision and the Planned Unit Development Agreement pertaining to Tracts 1-5, C/S 3091 and Rehberg Ranch Estates, First Filing. Rehberg Ranch LLC and Rehberg Ranch Marketing, Inc., owners; Jan Rehberg, agent. Zoning Commission recommends denial. (Action: approval or disapproval of Zoning Commission recommendation.)

Planning Manager Candi Beaudry said this zone change would amend both the Preliminary Master Plan and the Planned Unit Development Agreement of the Rehberg Ranch Estates. It is necessary because Rehberg Ranch Estates is continually filing new subdivision filings that require new lot lines be aligned with the Planned Unit Development

Agreement. The Preliminary Plat of Rehberg Ranch Estates Subdivision, 2nd filing was approved and is now being developed. The request to change the Master Plan is for a change from single-family to multi-family for five lots. Ms. Beaudry said the main change in the Planned Unit Development is the addition of a new "townhome" designation – Townhome II.

Ms. Beaudry said the Zoning Commission is recommending denial of the application. The applicants have requested the City view the request as two separate items, a zone change (amendments altering the Master Plan) and a text amendment (amending the Planned Unit Development Agreement). She said if the Council does separate the items, the applicant is requesting the action on approving the Master Plan (changes to the zoning of the five lots) be delayed and proceeding with action on the text changes for the Planned Unit Development Agreement. She noted the proposed motions have been provided to the Councilmembers on the different actions and are on their desks this evening.

The changes for the Master Plan include aligning the lot lines of the 2nd filing with the Master Plan and rezoning the five lots on Rifle Creek Trail from single-family to the Townhome II designation. The changes for the Planned Development Agreement would be the new designation of Townhome II (restricts the density on a townhome lot) and several other changes that would allow for measurement ease when the Planning Staff is reviewing building permits, as well as some minor wording changes such as addition or clarification of uses in some zoning districts. Ms. Beaudry said there was no opposition to the changes in the Planned Development Agreement. The primary opposition comes from the zone changes on the townhome lots because of the increased traffic, a possible decrease in property values and a change in the character of the neighborhood. Councilmember Clark asked if the Council is being asked to send this back to the Zoning Commission and to hold two different public hearings. Ms. Beaudry said the choices of action tonight are approve, deny or delay for 30 days on any or all requests. She noted the Zoning Commission was not asked to delay either portion of the application and they acted on the request as a whole. The issues are the same as what the Zoning Commission heard and took action.

The public hearing was opened. JOE GERBASE, 3305 HARLOW, said he is an attorney representing the Rehbergs. He addressed the issue of bifurcation and what caused it. He said the primary protest was against the zone change amending the Master Plan. There was concern over the number of units to be developed. He said Ms. Rehberg attempted to meet with the property owners (13 out of 113 lot owners) protesting the zone change. Only two property owners came to the meeting. He said those attending the meeting were informed that a restrictive covenant would be developed to be enforced by the affected property owners, restricting the number of units. Mr. Gerbase said the owners were somewhat receptive to this proposal. There has not been an opportunity to interact with the other concerned property owners. He noted the subdivision, being a Planned Unit Development, is a "work in progress", requiring cooperation between the property owners and the developers. He requested a delay to October 21st to allow for further communication with the property owners.

JOHN WEISNER, 5633 SWEETGRASS CREEK DRIVE, said he is a builder that has constructed homes in the Rehberg Ranch Subdivision. He said there are many areas where lots are very difficult on which to build. He said 90% of the building issues (re:

setbacks) would be resolved with the proposed changes in the Planned Unit Development Agreement. Mr. Weisner said this is a unique subdivision and as a builder, he would like to see these minor problems resolved. He urged the Council to allow the text amendment changes to be approved.

JAN REHBERG, REHBERG RANCH MARKETING INC., reiterated the main reason for the Planned Unit Development Agreement amendments is because a number of issues concerning difficulties with building were encountered in the 2nd filing. She said City Staff suggested some of the changes to assist the development of the subdivision during the review stages. These changes were done on a collaborative basis with City Staff. She said the concept is to allow for the development of a community at Rehberg Ranch Estates. If there is discord, it hampers that desire. Ms. Rehberg said the zone change portion of the request needs more time for further discussion with the concerned property owners. This would allow the opportunity to hear their concerns and also allow the builders to proceed with their concepts for some of the more difficult building lots. She asked that the text amendments be approved now and the zone change portion of the application be delayed. Ms. Rehberg added that the notices for the changes were mailed to affected property owners.

NANCEE ILLE, 4048 RIFLE CREEK TRAIL, said she is astounded to hear that few people spoke against the zone change as many people signed petitions against the zone change and were presented at the Zoning Commission meeting. She said the parking and traffic problems are a concern. There are also problems with water pressure and adding more units will decrease pressure even more. There is an incredible fire danger in the area. She said she was told that the lots around her property in Rehberg Ranch Estates were zoned single-family. If she had known they would be changed, she would not have purchased in this subdivision. She said there have been so many changes in the proposed amenities. Ms. Ille asked why the builders are not developing in the existing multi-family area. She said it seems more like a segregated rather than an integrated community that Ms. Rehberg spoke about.

SUSIE STEFFANICH, 4179 BLACKPOOL TRAIL, asked if there was another large multi-family zone change request in Phase II or 2nd filing. She said the zone change application she received from the City includes the addition of one townhome lot filing – a huge lot. She noted the residents do not get notices of the changes. Ms. Beaudry said the initial concept of Phase II was not well defined and there were no lots created. She said the zone change request that Ms. Steffanich is referring to is part of tonight's action. Ms. Steffanich said she was not aware that Phase II had been approved. Councilmember Brown said there seems to be confusion with this development and he suggested a delay would help clear up the confusion. Councilmember Clark asked if Ms. Steffanich was concerned about the text amendments also. She said there are several property owners that have concerns about them. Ms. Steffanich said a vote is needed at tonight's meeting to end this. She noted that there are more than just two property owners out of 112 that are against these changes, and that she is afraid everyone is being "led astray".

DENISE BAUM, 3987 RIFLE CREEK TRAIL, said she is shocked about how this is proceeding. She said constant changes in midstream in this subdivision are frustrating everyone in the community. She said the brochures about the Rehberg Ranch Estates promised many great amenities, minimal traffic due to many cul-de-sacs and most importantly, single-family lots. After moving there in November of 2003 it has been a

constant struggle and frustration with the promised amenities such as access to State land that has never existed. She said the changes to the five lots on Rifle Creek Trail from single-family to multi-family units will adversely affect the surrounding homeowners and their property values. She and many other concerned property owners have taken much of their time to attend the meetings and voice their concerns. There are 50 signatures on a petition protesting the changes. Ms. Baum said one of the signatures is a builder that opposes the changes realizing that building multi-family units will diminish property values and affect the sale of lots on which he is building. She also spoke about the water pressure and fire danger concerns. She encouraged the Council to deny the requests. The Councilmembers noted that they did not have a petition in their packets. Ms. Baum said she was greatly dismayed that the petition was not forwarded to the Councilmembers.

PAM CAPP, 4134 BLACKPOOL TRAIL, said she has submitted a letter of opposition to the City concerning zone change. She asked that any non-public hearing speakers raise their hands if they are opposed to the zone change.

JEFF TUTT, 1355 CLOVERLEAF PLACE, said he is a property owner in the Rehberg Ranch Subdivision and a builder. He encouraged the Council to separate the two items and allow more time for the zone change request. He said it is clear that the opposing sides are not listening to each other.

JEFF ROBERTSON, NO ADDRESS GIVEN, HOMESTAKE DESIGNERS, said Ms. Rehberg commissioned him to make a proposal regarding the five lots to enhance the subdivision. He said the theme of Rehberg Ranch Estates is not a “city” subdivision but a “country” one. Mr. Robertson said Ms. Rehberg has tried very hard to develop this subdivision properly. He said there is great value in what has been provided in this subdivision to date.

JERRY REPLOGLE, NO ADDRESS GIVEN, said he is a builder and noted that the proposal is for twin homes not multi-family structures with 20-48 units. Some of the other issues heard tonight are not relevant to the zone change issue, he added. The units that are being proposed would sell for \$180,000 to \$190,000 each making each building worth about \$400,000. There are no single-family units that could compete with the value of these units, so he does not see how the property values would be adversely affected. Mr. Replogle said separating the items is probably the best way to handle these two issues.

RICK KOUBA, 3827 AUDUBON WAY, said he recently bought three lots in Rehberg Ranch Estates. He said separating the items would be the best idea. He said he likes the twin home proposal and plans to build homes for himself and for his son and daughter and their spouses. He said it appears the Council does not have all the information they need to make a decision on the zone change and recommends the items be separated and the zone change delayed to give both sides the opportunity to communicate their plans and concerns.

JOE GERBASE RETURNED and suggested that he and the developer clarify to the Council the zone change portion of the request if the two issues are not going to be separated and the zone change delayed.

CAROL BARNES, 4433 IRON HORSE TRAIL, said she was against the multi-family homes until she talked with Ms. Rehberg. After their conversation, she decided it was not really such a terrible plan for Phase II because the actual proposed homes were not what were alluded to in the petition. She noted the park land has been increased and the percentage of homes has decreased. Ms. Barnes said she would like to see more

space and fewer homes in the 2nd filing. She said she does not like to see the animosity in their community and thinks that time should be allowed for the opposing parties to "iron out" their problems.

ANN BEAUDRY, 4260 BLACKPOOL TRAIL, said most of the property owners here would agree that Mr. Repogle's drawings are beautiful and Ms. Rehberg's vision is very special. Her biggest concern is Lot 14 that is 110,000 square feet and is not on the maps. She wonders how many homes would be put there. Ms. Beaudry said her greatest concerns are safety, fire danger (and the number of exits), water pressure problems, and sewer odors from the streets. These issues must be resolved before the density is increased. She said Phase II should stay as it is. The homeowners are tired of the indecision and would like a vote this evening.

STEVE LACHMAN, NO ADDRESS GIVEN, said he works in the office for Jan Rehberg. He said many of the people protesting this evening are good friends of his. He asked the Council to separate the two items and give the property owners more time to research their concerns and reach a comfort level with the final decision. He noted the water pressure issues are being worked on with the City. The sewer smell is being worked on with COP Construction and the City. He understands the frustration, but reiterated that the problems are being worked on. Mr. Lachman said the office is open and informational materials are available to the property owners at all times.

There were no other speakers. The public hearing was closed. Councilmember Clark moved to delay the entire item (as one unit) to 10/25/04, seconded by Councilmember Brown. Councilmember McDermott said if the item is delayed she would like to see some documentation that the developers and homeowners have attempted to reach an agreement. Councilmember Brewster said there is a lot of confusion and misunderstanding on both issues. It would be a positive step for the developer to explain the changes in Phase II and what is relevant to the zone change. Councilmember Gaghen noted the trust issue must be restored by the developer. Councilmember Boyer urged the developer to be sure all information is communicated to the homeowners. Mr. Bauer noted that the Council must clarify their desire for a second public hearing to allow for appropriate legal advertising, including this desire in the motion. Councilmember Clark amended the motion to include a second public hearing on 10/25/04, seconded by Councilmember Brown. On a voice vote, the motion as amended was unanimously approved.

Mayor Tooley called a recess at 7:55 P.M. Councilmember Poppler was excused. Mayor Tooley reconvened the meeting at 8:05 P.M.

7. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #742: a zone change from Residential 9600 to Residential Professional on Lots 1-2, Block 20, Kober Subdivision, 4th filing, located at 1702 Colton Boulevard. Sea Enterprises LLC, owners; Ron Scariano and Michael Burke, agents. Zoning Commission recommends approval of the zone change and adoption of the determinations based on the 12 zone change criteria. (Action: approval or disapproval of Zoning Commission recommendation.)

Planning Staff Member Juliet Spaulding said this zone change is located at 1702 Colton Boulevard at the corner of 17th Street West and Colton Boulevard. The lot size is

just under 17,000 square feet and is currently zoned Residential 9,600. The zone change request is for Residential Professional to allow a financial planning office to be located on the property. Residential 6,000 zoning is to the east, Residential Professional is to the southeast and Residential 9,600 is to the south, west and north. West Park Plaza is further to the south. The BBWA ditch is to the south of the property. She said there is currently a building on the property that was permitted in 1969 as a church office and is currently being used as a real estate office and massage therapy office. Ms. Spaulding said 17th Street West is a minor arterial and Colton Boulevard is a collector street. The applicant is proposing generous landscaping to the site and improvements to the existing structure.

Ms. Spaulding said the Zoning Commission voted 3-0 to recommend approval of the zone change based on its location, meeting several goals of the Growth Policy and because of the legal existing non-conforming use currently on the site. Two petitions in opposition and one petition in favor of the zone change were received. The reasons for opposition were increased traffic, impact on the neighborhood and setting a precedent for future zone changes along Colton Blvd. Ms. Spaulding said there is no valid protest at this time as there were only 3 signers of the protest petition that were within the 150 feet. The signers in support of the zone change were concerned with the improvements and maintenance of the existing structure and property. It has been an office and appears suitable to remain an office. It was noted that those signers (three within the 150 feet) do not support any other zone changes in that area.

She said in 1969 a use permit was authorized for the church office, a zone change application to Residential Professional in January of 2000 was denied, and a special review to change the non-conforming use from one use to another (a dental office) was withdrawn in 1998. A special review to change the non-conforming use to another non-conforming use (an accounting office) was denied in 1997. She said the current use is being allowed because it is run as a home occupation, which allows a resident to have a home business in their house. Councilmember Gaghen asked for verification that the Zoning Commission approved each of the prior requests, but the Council was the deciding factor, because that was the information that she said she was given. Ms. Spaulding could not confirm this. Councilmember Boyer asked if there were valid protests in the prior applications. Ms. Spaulding could not confirm this either.

The public hearing was opened. JOHN LUNNEY, 1726 COLTON BLVD., said he has lived there for forty years and remembers when Colton Boulevard became a collector street. He said he is opposed to the zone change because of the precedent that would be set. He said the church office was acceptable because the church was just across the street and the neighbors knew it would not be used for anything else. With a change to Residential Professional, who knows what that means. Mr. Lunney said once a change happens on the west side of Colton, in time it would be just like Grand Avenue. He also expressed concern for the increase in traffic.

PEGGY JANE WILSON, 2218 REMINGTON SQUARE, said her home was completed four years ago. In those four years the traffic has increased greatly because of the additional dorms at Rocky Mountain College and the professional buildings on Poly Drive. She said she does not consider 17th Street West a minor arterial, it is a busy street with a 3-5 car back up at the light at Colton. The access to the subject property is very

difficult with cars turning left into traffic and the site. She said this situation should be reviewed as traffic will only increase.

MICHAEL BURKE, AGENT FOR MR. SCARIANO, NO ADDRESS GIVEN, said protests submitted on previous requests were valid, so he thinks progress is being made. He said Mr. Scariano has made an attempt to communicate his proposal to the surrounding neighbors. The concern about parking would actually decrease or remain the same as for the church if they can find the space to support it. He added that the proposal does not include increasing the square footage of the site. Mr. Burke said the subject property is unlikely to turn into a residential lot with the way 17th Street West is constructed and with businesses both north and south of the property. Mr. Scariano's proposal would change the existing building to look more residential in nature, reduce the number of parking spaces and allow a business that does not create a lot of foot traffic. He asked the Council to support the zone change.

CECELIA EMERICK, 1736 COLTON BLVD., said this is the fourth time she has been before the Council regarding a zone change or special review on this lot. She said the proposed zoning is not appropriate for this location and is concerned about the impacts on the neighborhood. The zone change may set a precedent for future zone changes further west on Colton Blvd. She noted a zone change has been denied on three separate occasions. The issue is not what business would be at this location, but that the neighbors do not want a business there at all. Ms. Emerick said the development on the east side of 17th Street West and Parkhill Drive is not conducive to single-family dwellings. She asked the Council to prevent that from happening on Colton Blvd.

MAXINE HANSON, 2222 REMINGTON SQUARE, said she lives directly across from the subject property. She said she agrees with all that Ms. Emerick has said.

TERRY LEE, 3228 TURNBERRY CIRCLE, said he favors the zone change. As a banker that has handled loans on the property, he said it has always been viewed as a commercial property. It lends itself well to that category and does not fit into the residential classification very well. He supports approval of the zone change, adding the property value would increase with the zone change due to the suitability to commercial/professional businesses there.

SCOTT EMERICK, 1736 COLTON BLVD., said he opposes the zone change. He said the zone change would detract from the value of his property. He said that Mr. Scariano's intentions are good, but he is concerned about the unknown intentions of the next owner. This is an investment opportunity for Mr. Scariano and if he could make a profit tomorrow he wouldn't hesitate to sell. He asked the Council to deny the zone change. Mr. Emerick noted the current home business does not affect his property values.

RON SCARIANO, 2404 SOUTHRIDGE DRIVE, said he wanted to be up front with the neighborhood about the business that he proposes for this site. He said he spoke with some of the neighbors about his proposal. He is an investment broker for Edward Jones in Billings and may have no more than two clients a week that come to his office. Most of his work is done over the phone. He said his office is a one broker office and will always remain so. Mr. Scariano said his plans include improvements to the building and additional landscaping that would ultimately enhance the neighborhood. He asked the Council to support the zone change.

ALICE METCALF, NO ADDRESS GIVEN, said her residence is next to the subject property. She said she would like to keep the neighborhood as it is now.

There were no other speakers. The public hearing was closed. Councilmember Jones moved to deny the zone change, seconded by Councilmember Brown. Councilmember McDermott said this type of zone change has happened in her neighborhood and it hasn't been an enhancement for the surrounding residents, therefore she would not support the zone change. Councilmember Brewster noted that it is already being used as a business and he doesn't see how it could be developed as residential property. The zone change makes sense and he will not support the motion.

Mr. Bauer reminded the Council that state law requires that their decision be based on the 12 zone change criteria. He said the Council must articulate one or more of the criteria that this request does not satisfy in order to deny the zone change. Councilmember Clark said he did not think it met the second item, that the new zoning would lessen congestion in the streets. Councilmember Boyer said she is uncomfortable with what would happen if Mr. Scariano moved on. Councilmember McDermott said she would like the Planning Department to review this request again for meeting the 12 criteria. Councilmember Ruegamer expressed his concern for the future maintenance of the building due to the limited use that is available under the current zoning.

Councilmember Brewster said the site is not desirable for residential and the building will decay if the zoning is not changed. Councilmember Clark asked what type of office could exist in a Residential Professional zoning. Planning Director Ramona Mattix said any office use associated with a commercial venture is allowed. Mr. Bauer noted that criteria #9 & #10 appear to be the ones the Council is concerned about with regard to denial of the zone change. On a roll call vote, the motion to deny was approved with Councilmembers Gaghen, McDermott, Brown, Boyer, Clark and Jones, voting "yes" and Councilmembers Brewster, Ruegamer, Iverson and Mayor Tooley voting "no". The zone change was denied.

8. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE
#743: a zone change from Residential 9600 to Residential 6000-Restricted on a 4.11 acre parcel described as Tract C, C/S 1011, generally located at the southeast corner of the intersection of 34th Street West and Avenue E. Robert and Cynthia Cover, owners; Ronald Elkin, agent. Zoning Commission recommends approval of the zone change and adoption of the determinations based on the 12 zone change criteria. (Action: approval or disapproval of Zoning Commission recommendation.)

Planning Staff Member Wyeth Friday said this is a zone change request from Residential 9,600 to Residential 6,000-Restricted (a new zoning designation). This property was recently annexed into the City in July of 2004 and is a 4-acre parcel located at the southeast corner of 34th Street West and Avenue E. Residential 8,000 zoning is to the north and east of the subject property, Residential Multi-Family to the southeast, Residential Professional on the corner of Grand Avenue. In the Residential 8,000 there is a mixture of single-family and duplex development. He said the owners have met with the surrounding neighbors to explain what the proposal includes. The main concern at the meeting was what type of use would be allowed. It was explained that it would allow and be used for single-family development on 6,000 square foot lots.

Mr. Friday said the Zoning Commission is recommending approval based on the 12 criteria. The Staff agrees that the zoning is appropriate in this area, providing an opportunity for more single-family residential development. Councilmember McDermott

noted 6,000 square foot lots are small and asked what size of homes would be allowed. Mr. Friday said 40% lot coverage in this zoning is allowed, which would be a 2,400 square lot coverage including garages and sheds.

The public hearing was opened. BOB COVER, NO ADDRESS said the whole neighborhood is based on 6,000 square foot lots and most of the houses there are 1,200 to 1,500 square feet in size. Most of the neighborhood is comprised of retirees. Councilmember McDermott asked if Mr. Cover had a plan for symmetry, as she has seen other 6,000 square foot lot developments that look "pushed together". Mr. Cover said the development around Arlene Street Corridor is going to happen and he is trying to find a middle ground that appeals to the surrounding residents.

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

9. PUBLIC HEARING AND FIRST READING ORDINANCE amending BMCC by adding Section 27-1400: establishing a zoning overlay district to extend 1,000 feet from the center line of Shiloh Road and Zoo Drive, regulating development standards, landscaping standards, building design standards and other site development standards, and sign standards for commercial, industrial and multifamily developments. (PH held 6/14/04; Delayed from 8/23/04). Staff recommends approval of the ordinance as amended from first reading. (Action: approval or disapproval of Staff recommendation.)

Mayor Tooley noted that because of a technicality announced at the beginning of the meeting, the Council would not be able to vote on this issue this evening. The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember McDermott moved to delay Item 9 to 10/25/04, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved. A new public hearing will be advertised and held on 10/25/04.

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

THERE WERE NO SPEAKERS.

Council Initiatives

- COUNCILMEMBER CLARK: Councilmember Clark moved to direct staff to come back to the Council to discuss new sites for the bus transfer center, seconded by Councilmember Jones. On a voice vote, the motion was approved.

ADJOURN —With all business complete, the Mayor adjourned the meeting at 9:30 P.M.

MINUTES: 09/27/04

THE CITY OF BILLINGS:

By: _____
Charles F. Tooley MAYOR

ATTEST:

BY: _____
Marita Herold, CMC/AAE, City Clerk