

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

January 24, 2011

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 Thomas Hanel called the meeting to order at 6:30 p.m. and served as the meeting's presiding officer. Councilmember McFadden gave the invocation.

ROLL CALL: Councilmembers present on roll call were: Ronquillo, Gaghen, Pitman, Cimmino, McFadden, Ruegamer, McCall, Ulledalen, Astle, and Clark.

MINUTES: January 10, 2011 – Councilmember Cimmino moved for approval, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.

COURTESIES:

- Presentation of a \$5,941.80 check to the City of Billings from Rick Reid of MDU Resources for the Landfill Methane Project.
- Councilmember Gaghen asked everyone to wish Mayor Hanel a happy birthday.
- Councilmember McFadden reminded everyone the Girl Scouts were selling cookies and they could be purchased locally, at www.gsmw.org, or at 800-736-5243.

PROCLAMATIONS: None

ADMINISTRATOR REPORTS - TINA VOLEK

- City Administrator Volek reminded Council of the Strategic Planning Session scheduled for the following day from 3 p.m. to 5 p.m. at the PD1 complex next to the BOC on Midland Road.
- City Administrator Volek advised the first of three CIP meetings would be held the following evening at 5:30 at Castlerock Junior High School. She said the other two meetings were scheduled for January 27 at the Moose Lodge and February 2 at Will James Junior High. She said a copy of the CIP was on line and hard copies were at the Library reference desk and in the City Clerk's Office.
- City Administrator Volek referenced copies of House Bill #'s 231, 301, and 307 that were on the Councilmembers' desk. She advised Lobbyist Ed Bartlett was asking for guidance and asked Council to review them and provide her with feedback, and she would send out a survey the following day. She said HB #231 would be heard that week on Thursday so there was not a lot of time. She noted copies of the House Bills were filed in the ex-parte notebook in the back of the room.

Councilmember McCall asked if Mr. Bartlett would be putting together a preference list for the current session. Assistant City Administrator Bruce McCandless advised that Mr. Bartlett had set up a preference list. He said it was not complete, but he would send it to Council the following morning.

Councilmember Clark asked if they would receive a recommendation from the Fire Department for HB 231. Ms. Volek advised she would provide one.

Councilmember Pitman asked where the payments from MDU would be posted so they could see them. Ms. Volek advised they would be posted monthly and said the information could be made a part of the quarterly reports for the first year or so.

Councilmember Pitman asked if any right-of-way had been secured for the Inner Belt Loop. Ms. Volek said they were still in negotiations and none had been acquired to date, but they were working with all parties involved.

PUBLIC COMMENT on "NON-PUBLIC HEARING" Agenda Items: #1 and 2b ONLY.

Speaker sign-in required. (Comments offered here are limited to one (1) minute. 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. For items not on this agenda, public comment will be taken at the end of the agenda.)

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

1. CONSENT AGENDA

- A. Approval** of lease with McKinstry Montana, LLC, for 10 vehicle parking spaces at the Downtown Transit Transfer Center; 10-month lease (2/1/11-10/30/11) with month-to-month option for additional 12 months; \$500 monthly revenue.
- B. Amendment #14, Airport Engineering Services Contract for 2011 AIP Projects;** Morrison Maierle, Inc.; \$464, 370.
- C. Resolution of Intent #11-19018 To Construct W.O. 09-11, Rimrock Road from 17th Street West to Forsythia Boulevard;** street widening, installation of curb/gutter, sidewalk, drive approaches, and street lights; and set a public hearing date for February 14, 2011.
- D. Acceptance of Bequest** to Parmly Billings Library from the will of Mr. Lilburn F. "Wally" Wallace; \$5,000.
- E. Acceptance of Donation** from St. Vincent Healthcare on behalf of the Billings Area Resource Network; \$1,000.
- F. Approval** of application for an AmeriCorps*VISTA Project authorizing City staff to negotiate and finalize project if awarded; approximately \$15,000 to \$20,000.
- G. Resolution #11-19019 authorizing application submittal and finalization** with Montana Department of Transportation for paratransit operations assistance; TransADE-\$50,000, 5317 New Freedom-\$65,000, and 5316 JARC-\$150,000.
- H. Acceptance** of 2011 AIP grant from Federal Aviation Administration (FAA), \$3,400,000, including City match of \$171,515.15.
- I. Authorization** allowing Judge Mary Jane Knisely to retain her municipal court judicial robe as a gift for her years of service to the City of Billings.
- J. Resolution #11-19020** recognizing the incorporation of the South Billings Urban Renewal Association and the initial members of its Board of Directors.

K. Preliminary Plat One-Year Extension for McCracken Subdivision, 2nd Filing, Amended Lot 1-A, Block 1, generally located west of the intersection of Lake Elmo Drive and Wicks Lane; extending preliminary plat approval to 1/14/2012.

L. Preliminary Subsequent Minor Plat of Amended Lot 3, Block 4, Burlington Northern Subdivision, 14th Filing, described as two lots on approximately 1.25 acres of land for commercial and industrial development generally located on the east side of Barnard Street, south of Monad Road. Herbert and Geraldine Mangis, owners; Blueline Engineering, LLC, agent; approval of variance request, conditional approval of plat, and adoption of the Findings of Fact.

M. Bills and Payroll:

1. December 23, 2010
2. December 30, 2010

Councilmember Cimmino separated Consent Agenda Items C and M1. Councilmember Pitman separated Consent Agenda Item I. Councilmember McCall moved for approval of the Consent Agenda excluding Items C, I, and M1, seconded by Councilmember Astle. Councilmember Clark referenced Item D and asked where the donation would be applied. Mr. McCandless advised the donation was specifically to the library and would be used to purchase non-fiction books. On a voice vote, the motion was unanimously approved.

Councilmember Pitman referenced Item I and said he was not opposed to donating the robe but asked if the donation could be delayed because Judge Kolar was using the robe until her new robe arrived. Councilmember Pitman moved to delay action, seconded by Councilmember Gaghen. Councilmember Clark made a substitute motion to donate the robe but not until the new judge received her own robe, seconded by Councilmember Ruegamer. On a voice vote, the substitute motion was unanimously approved.

Councilmember Cimmino referenced Item C and asked staff to provide the rationale for using the different funding and the amounts of the funding. Public Works Director Dave Mumford advised that when they began creating a project they looked at what all would be needed. He said there could be water, sewer, assessments against properties for sidewalk, curb, and gutter, and Gas Tax, and they tried to put together the project as best they could by assembling the funding based on what the project needs were and what the law said the funding could be used for. Councilmember Cimmino commented that staff was recommending the use of \$2.4 million of arterial funds and asked if there was a balance on the arterial funding. Mr. Mumford advised he did not know what it was right then but could provide it. He said they balanced the entire arterial fund at the end of the year based on the CIP, so there was some funding that may be moving forward for next year. Councilmember Pitman said he was concerned that the project was part of the CIP they would be starting to review the following evening and asked if they were getting ahead of themselves. Mr. Mumford advised the next phase was in the proposed CIP. He said the current project had already been approved. He said design was done last year and construction would be done this year.

Councilmember McCall moved for approval of Item C, seconded by Councilmember Astle. On a voice vote, the motion was approved 10 to 1. Councilmember Pitman voted 'no'.

Councilmember Cimmino advised she needed to abstain from voting on Item M1, which included an invoice submitted from her employer.

Councilmember McCall moved for approval of Item M1, seconded by Councilmember Pitman. On a voice vote, the motion was approved 10 to 0.

REGULAR AGENDA:

2. St. Vincent Healthcare Subdivision

a. PUBLIC HEARING AND RESOLUTION #11-19021 vacating street rights-of-way within The Village Subdivision. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) City Administrator Tina Volek advised there was no staff presentation, but staff was available for questions.

The public hearing was opened.

- **Rick Leuthold, Sanderson Stewart**, said they represented St. Vincent's Healthcare. He advised they were amending the plat, as indicated in 2b, and there were adjustments that needed to be made with regard to rights-of-way that overlapped so the property lines would align and rights-of-way would calculate out. Mr. Leuthold said he was available to answer any questions.

Councilmember Clark asked if they had a good turnout at the neighborhood meeting. Mr. Leuthold advised there were 10 to 12 people in attendance, and everyone was supportive of the project.

Councilmember Astle asked if Monad lined up with the roundabout. Mr. Leuthold said it did.

- **Doug James, Moulton, Bellingham Law Firm**, said he represented St. Vincent Healthcare Foundation. Mr. James advised he had worked on projects all around Montana, and working on that particular project had been truly unique. He said what made it unique was the professionalism, degree of communication, and cooperation received from city staff. He said it was a very positive process and thanked all of the city staff for their help and cooperation. Mr. James said they had planned to be where they currently were about a year earlier, but they had received such substantive and meaningful comments back from city staff that caused them to rethink some of what they were doing and to change it and come back with a better proposal. Mr. James said he was available to answer any questions.

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

Councilmember Clark moved for approval of Item 2a, seconded by Councilmember Astle. On a voice vote, the motion was unanimously approved.

b. PRELIMINARY MAJOR PLAT of St. Vincent Healthcare Subdivision, generally located on the west side of Shiloh Road between Monad Road and King Avenue West. Sisters of Charity of Leavenworth Health System, Inc., owner; St. Vincent Healthcare Foundation, Inc., sub-divider. Approval of variance request, conditional approval of preliminary plat, and adoption of the Findings of Fact. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) City Administrator Tina Volek advised there was no staff presentation, but staff was available for questions.

Councilmember Clark moved for approval of Item 2b, seconded by Councilmember Astle. On a voice vote, the motion was unanimously approved.

c. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #870: a zone change to allow a mixture of commercial, cultural, medical, clinical and residential uses in a Planned Development on a 111.91 acre parcel of land described as Blocks 1 through 5, The Village Subdivision; Sisters of Charity of Leavenworth Health Systems, owner; Will Ralph, Sanderson Stewart and Doug James, Moulton Bellingham PC, representatives. Zoning Commission recommends approval and adoption of the 12 criteria. (Action: approval or disapproval of Zoning Commission recommendation.)

Nicole Cromwell, Planner II and Zoning Coordinator, began her PowerPoint presentation showing the existing plat and zoning master plan, the proposed master plan, the location of the subject property and surrounding properties, and photographs of the site. She advised the Zoning Commission held a public hearing on January 4, 2011. She said prior to the public hearing a preliminary review meeting with the surrounding property owners and city staff was held in December 2010, and a pre-application meeting was held by the developer and the agent in July 2010. Ms. Cromwell advised the City had approved the original Planned Development for The Village Subdivision in 2004 just prior to the adoption of the Shiloh Road Overlay District Standards for building design, landscaping, and signage. She said the overlay district did not change the underlying zoning of property but it applied the different standards. Ms. Cromwell advised that afterwards it was discovered in the large Planned Development document for The Village Subdivision there were several conflicting standards for building design, landscaping, and signage. She said in the interim St. Vincent's worked to make both documents work together, and the proposed Planned Development zone change eliminated 60 pages of text from the existing Planned Development document, adopted and applied the entire Shiloh Overlay District to all of the property within the subdivision, and eliminated any residential properties within the subdivision. She said residential uses would still be allowed but only by special permission of St. Vincent Healthcare. Ms. Cromwell advised the Planned Development document adopted the Entryway Light Industrial zoning as an underlying zoning for the district, but there were several uses in the district that were not allowed in the new Planned Development, such as most manufacturing uses, alcohol not associated with a restaurant, and many others included in the draft document Council was considering that evening. She advised pedestrian access would be allowed along all property lines, so there would be a lot of people moving around within the subdivision without the use of cars.

Ms. Cromwell advised the Zoning Commission was recommending approval based on the following 12 criteria.

1. Is the new zoning designed in accordance with the Growth Policy?

The proposed zone change is consistent with the following goals of the Growth Policy:

- Predictable land use decisions that are consistent with neighborhood character and land use patterns. (Land Use Element Goal, page 6)

The proposed zoning would permit the Planned Development to be consistent with surrounding new developments and increase compatibility with new and existing residential development.

- Contiguous development focused in and around existing population centers. (Land Use Element Goal, page 6)

The proposed zoning would allow the development of the property in an area with existing

services – promoting efficient use of city resources and providing services to the growing population of West Billings.

2. Is the new zoning designed to lessen congestion in the streets?

There should be no effect on traffic congestion. The recent improvements to King Ave West and Shiloh Road were designed for the predicted traffic generation from this existing Planned Development zone. The 2010 Transportation Plan predicts existing road capacity would not begin to experience congestion until 2035 or later. If a new use generates 500 or more new trips per day a traffic accessibility study or traffic impact analysis may be required prior to development of a particular lot within the subdivision. The subdivision has completed a traffic impact study that may require review when each parcel is developed.

3. Will the new zoning secure safety from fire, panic and other dangers?

The subject property is currently serviced by City Fire and Police. Any development would change the type of service needed at the property. There should be no effect on public safety given the proximity to 2 fire stations and existing services provided to the adjacent commercial businesses in Montana Sapphire Subdivision and Shiloh Crossing.

4. Will the new zoning promote health and general welfare?

The proposed zoning would permit new medical services and ancillary uses within the new subdivision. Other service businesses, professional offices, limited retail and residential uses may be allowed. The surrounding property values should not be affected by the development.

5. Will the new zoning provide adequate light and air?

The proposed zoning provides for sufficient setbacks to allow for adequate separation between structures and adequate light and air.

6. Will the new zoning prevent overcrowding of land?

The proposed zoning, like all zoning districts, contains limitations on the maximum percentage of the lot area that can be covered with structures. The proposed lot coverage is 60% of the total lot area and minimum lot area in the agreement is 1 acre. This could allow a structure with a foot print of about 26,000 square feet. This should prevent overcrowding of property.

7. Will the new zoning avoid undue concentration of population?

The new zoning does avoid undue concentration of population. The changes in the development agreement would restrict residential uses by requiring special permission from the owner prior to development. St Vincent Healthcare anticipates very few proposals for residential development given the proximity to available residential zoning to the west, east and north. There is no set dwelling density or configuration requirements within the development agreement.

8. Will the new zoning facilitate the adequate provisions of transportation, water, sewerage,

schools, parks, fire, police, and other public requirements?

Transportation: The proposed zoning should not impact the surrounding streets.

Water and Sewer: The City will provide water and sewer to the property through existing lines.

Schools and Parks: There should be no impact to schools from the proposed zone change.

Fire and Police: The subject property is currently served by the City of Billings fire and police departments.

9. Does the new zoning give reasonable consideration to the character of the district?

The proposed zoning will allow re-development of the property for medical uses, commercial uses and limited residential uses in a unified development pattern. There are existing commercial uses to the south and southeast. There are higher density residences to the west in the new Lenhardt Square development. Across Shiloh Road is a planned neighborhood development consisting of single family dwellings and multi-family dwellings. The character of the area is a community commercial node at the intersection of two principal arterial streets. The changes to the existing planned development zone would allow the future development to better fit in with the planned and existing character of the area.

10. Does the new zoning give consideration to peculiar suitability of the property for particular uses?

The subject property is suitable for the requested zoning district. The location is a larger parcel of vacant land on a corner lot of a rapidly developing area of West Billings. The property is suitable for the allowed uses within the planned development zone of Entryway Light Industrial.

11. Was the new zoning adopted with a view to conserving the value of buildings?

Surrounding residential property to the east should not be affected by the proposed zoning. There are no existing buildings on the subject property.

12. Will the new zoning encourage the most appropriate use of land throughout such county or municipal area?

The proposed zoning will permit the compatible development of this parcel and the changes to the planned development zone are appropriate for this location.

Councilmember Astle asked if the entrances shown to Shiloh Road on the east side of the property were vehicle accesses. Ms. Cromwell advised they were. Councilmember Astle asked if any alterations would need to be made to Shiloh Road. Ms. Cromwell advised the improvements for the openings had already been installed. Ms. Cromwell advised there was an existing bike trail on the west side of Shiloh along the drain to allow pedestrians and bicyclists full access to the subdivision at many points along Shiloh. She advised there was also a multi-use trail on the north side of King Avenue, and there would be many multi-use trails within the subdivision.

Mayor Hanel asked Ms. Cromwell if the Emmanuel Baptist Church would benefit from the proposal as far as access. Ms. Cromwell advised there was a right-of-way deeded to the property line along the drain that would remain open. She said if in the future the church

wanted to create a second access to their property, they could build a bridge and connect to the right-of-way.

The public hearing was opened.

- **Rick Leuthold, Sanderson Stewart**, advised there would be public open spaces and a public park in the center of the subdivision that would remain controlled by St. Vincent Healthcare. He said all of the improvements were in place and constructed by St. Vincent's through a private contract while the Shiloh Road improvements were being made. He said there was a right-in, right-out access, a three-quarter turn move access allowing everything but a left-turn out, and full movement accesses at both roundabouts. Mr. Leuthold said pedestrian access was also very important in the development of the subdivision, and the proposed development had more of a campus feel to it.

Councilmember Gaghen commented that at the pre-application meeting in July there was quite a bit of skepticism from some of the surrounding neighbors; and St. Vincent Healthcare, Rick Leuthold, Doug James, and staff had done a great job of answering the questions and paying heed to some of the challenges that were of concern to the neighbors.

- **Doug James, Moulton Bellingham Law Firm**, said it had truly been a privilege to work on the project and hoped Council would agree it would make a spectacular entrance to Billings as people drove along Shiloh Road from the interstate. He emphasized that the size of the subdivision was about 6 blocks long by about 3 to 3-1/2 blocks wide and instead of blocks with lots, it was more of a campus development with a pedestrian-friendly atmosphere. He said as a part of the pedestrian feel, bike paths were located along King Avenue and Shiloh Road and once developed, they would be along Monad Road and throughout the subdivision. He said potentially it would have more multi-use pedestrian paths than any other subdivision in the State of Montana.
- **Ed Hudson, 4119 Palisades Park Drive**, said he attended Emmanuel Baptist Church. He said it had been a lengthy but good planning process working with the engineers, the Planning Department and Sanderson Stewart. He said he was in the real estate business and had worked with churches in Wyoming, North Dakota, South Dakota, and Montana. He said typically churches did not get involved in community activities and planning, which was something they were trying to change. He said it was interesting to him that the developers and their agents were interested in what the church wanted to do and what their long range plans were. He said he was the go-to-guy for Emmanuel Baptist Church and the Engineering Division, the Planning Department, and St. Vincent Healthcare were great to work with to get answers to questions. Mr. Hudson said he highly recommended the approval of 2c.
- **Joe White, Billings, MT**, said he felt it was a bad location for a hospital. He said it was a cold, frozen, and wind-swept place and not compatible to a hospital. He said they needed to go through every possible legal agency for advice, recommendation, approval or clearance regarding the amount of space it would require. (The rest of Mr. White's testimony was inaudible.)

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

Councilmember Astle moved for approval of Zone Change #870, seconded by Councilmember Clark. On a voice vote, the motion was unanimously approved.

Councilmember Ronquillo said he would like to take the time to introduce the Board of Directors for the South Billings Urban Renewal Association. He said he meant to do it during the Consent Agenda but missed the opportunity and said he would like to have Shawn Hanser, the President of the Board, introduce the others. Mr. Hanser, owner of Hanser Automotive and Wrecker, said he was a business owner representative. He introduced Mr. Floyd Martin and Mr. Richard Deis as residential owner representatives; Mr. Dave Duke, General Manager of Cabela's, as a business owner representative; and Tom Ruschkewicz, Chairman of the Southwest Corridor Task Force, as a task force representative.

3. PUBLIC HEARING AND RESOLUTION #11-19022 FOR ANNEXATION #11-01: a 1.5 acre parcel located on the northwest corner of King Avenue East and Calhoun Lane, legally described as a portion of the south 310 feet of Lot 24, Sugar Subdivision; Almon R. Blain Jr., owner and petitioner. Staff recommends acceptance of quitclaim deed from Yellowstone County for its interest in a portion of Calhoun Lane right-of-way, annexation of right-of-way, and approval of the Resolution. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) City Administrator Tina Volek advised there was no staff presentation, but staff was available for questions.

The public hearing was opened.

- **Al Blain, no address given**, said he was AJ's father. He said AJ could not be at the meeting and asked him to convey his appreciation for Council's consideration. Mr. Blain said he was available to answer any questions.

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

Councilmember Ronquillo moved for approval of Annexation #11-01, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.

4. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #871: a zone change from Residential 9,600 to Entryway General Commercial on a 1.554-acre parcel of land described as the south 310 feet of Lot 24, Sugar Subdivision, less 4,194 square feet for King Avenue East right-of-way, and located at 766 Calhoun Lane. Almon Blain, Jr., owner. Zoning Commission recommends approval and adoption of the 12 criteria. (Action: approval or disapproval of Zoning Commission recommendation.)

Nicole Cromwell, Planner II and Zoning Coordinator, said the newly-annexed parcel was located on the northwest corner of the fully traffic-controlled intersection at Calhoun Lane and King Avenue East, which also served as the large entrance for Cabela's and the Sam's Club properties. Ms. Cromwell began her PowerPoint presentation showing the zoning map of the subject property and the surrounding properties. She showed an aerial view of the property and photographs of the subject property and surrounding properties. She pointed out the three lanes of traffic in front of the subject property and the five lanes of traffic along King Avenue East and said the property was no longer suitable for residential use. Ms. Cromwell advised the Zoning Commission conducted a public hearing on January 4, 2011, and the applicant conducted a pre-application meeting in November of 2010. She said the Entryway zoning choice was suitable because there were very strict buffering and setback standards when

adjacent to residential property. She said no immediate change was planned for the property, but it would give the current owner the opportunity to market it for commercial uses.

Ms. Cromwell advised the Zoning Commission was recommending approval based on the following 12 criteria.

1. Is the new zoning designed in accordance with the Growth Policy?

The proposed zone change is consistent with the following goals of the Growth Policy:

- Predictable land use decisions that are consistent with neighborhood character and land use patterns. (Land Use Element Goal, page 6)

The proposed zoning would permit the existing residential use to continue and would allow the property to be developed for commercial uses with increased site design standards in the entryway zoning district. Entryway zoning to the south, west and east is compatible with the proposed zoning.

- More housing and business choices with each neighborhood. (Land Use Element Goal, page 6)

The proposed zoning will permit commercial development along the north side of King Avenue East across the street from commercial development, which will provide more business choices within the surrounding neighborhood. Mixed use development with residential uses is also allowed in the EGC zone with special review approval.

- Coordinated economic development efforts that target business recruitment, retention, and expansion. (Economic Development Goal, page 6)

The proposed zoning will encourage new businesses along the north side of King Avenue East across the street from another commercial development, which will expand the commercial development along King Avenue East.

2. Is the new zoning designed to lessen congestion in the streets?

There should be no immediate effect on traffic congestion. The existing dwelling likely generates between 10 and 15 vehicle trips per day and the owner is not proposing any change in the near future. Any future development for commercial purposes will require a traffic impact analysis. The fully traffic controlled intersection will need to be considered in the analysis. Improvements to Calhoun Lane will be likely if commercial development occurs.

3. Will the new zoning secure safety from fire, panic and other dangers?

The subject property is currently serviced by the Billings Urban Fire Service Area (BUFSA) and the County Sheriff. However, the property is wholly surrounded by city and when annexed city services will be provided. There should be no effect on these services.

4. Will the new zoning promote health and general welfare?

The proposed zoning would permit the dwelling to continue and would allow the owner to market the property for commercial development. Increased residential use of the property is not likely given the surrounding commercial development and its frontage on an arterial street.

5. Will the new zoning provide adequate light and air?

The proposed zoning provides for sufficient setbacks to allow for adequate separation between structures and adequate light and air.

6. Will the new zoning prevent overcrowding of land?

The proposed zoning, like all zoning districts, contains limitations on the maximum percentage of the lot area that can be covered with structures. The proposed EGC zone allows 50% lot coverage and the current R-96 zone allows up to 30% lot coverage. The proposed EGC zone setback requirements greater in general than other commercial or residential zones. For example, the setback for a building in the EGC zone that is adjacent to residentially zoned property is 25 feet. The setback between the EGC zone and other commercial zones is 10 feet.

7. Will the new zoning avoid undue concentration of population?

The new zoning does avoid undue concentration of population. The existing zoning, R-96, allows single family dwellings on lots of at least 9,600 square feet. This lot could accommodate up to 7 single family homes. The proposed zoning of EGC also allows by special review residential uses that are part of a mixed use development. If the residential use in the mixed use development is single family, then it must comply with the R-96 regulations. If the residential use is for multifamily, then it must comply with the RMF-R standards for lot area, building height and setbacks. The new zoning should avoid undue concentration of population.

8. Will the new zoning facilitate the adequate provisions of transportation, water, sewerage, schools, parks, fire, police, and other public requirements?

Transportation: The proposed zoning may have some impact on the surrounding streets, and a traffic impact study will be required depending on the commercial development that is built on the property in the future

Water and Sewer: The City will be able to provide water and sewer to the property through existing lines in King Avenue East and Calhoun Lane.

Schools and Parks: There should be no impact to schools from the proposed zone change.

Fire and Police: The subject property is currently served by the BUFSA and County Sheriff. After the property is annexed, it will be served by the City of Billings fire and police departments.

9. Does the new zoning give reasonable consideration to the character of the district?

The proposed zoning will allow the existing single-family dwelling to remain on the property until it is redeveloped for commercial uses. The adjacent lots to the east, west, and south across King Avenue East are already zoned EGC, so the proposed zoning is in character with the area.

10. Does the new zoning give consideration to peculiar suitability of the property for particular uses?

The subject property is suitable for the requested zoning district. The location is on a corner lot adjacent to EGC zoning. The new zoning allows the existing residential use to continue.

11. Was the new zoning adopted with a view to conserving the value of buildings?

Surrounding residential property to the north and west exhibits higher taxable land value. The existing dwelling although rated in fair condition will likely need future investment to maintain the quality of the structure. The new zoning will allow the owner to consider future redevelopment of the property.

12. Will the new zoning encourage the most appropriate use of land throughout such county or municipal area?

The proposed zoning will permit the current development to continue and could allow future development for commercial uses. This is the most appropriate use of the lot.

The public hearing was opened.

- **Kevin Nelson, 4235 Bruce Avenue**, said when Entryway Commercial backed up against a residential neighborhood, it permitted uses for just about anything without Council approval, which had been a concern of former Councilmember Veis. Mr. Nelson suggested that Council deny the zoning request until clearer minds prevailed. He said Council was in a rush to get it done for the Cabela's site, and he thought Council would eventually re-think it and not allow all of the permitted uses up against the residential homes. Mr. Nelson said he also had a concern that the residential house was non-conforming and not a permitted use in the zoning. He said only under a special review under a mixed use development could the home be there and asked why they were setting a precedent allowing a residential home in Entryway General Commercial zoning. Mr. Nelson said it would not be developed for a long time. He said it could not be developed because two entrances could not be put in on Calhoun according to the requirements. He said the whole property would have to be annexed as one and developed as one property so entrances could be off of Newman and possibly Calhoun to meet the criteria for two entrances into commercial property. He asked Council to deny the zone change because it would not hurt the applicant and to re-think all of the properties on the north side of King Avenue. He said clearer minds would eventually prevail and Council would see what they had done in the past was not particularly thoughtful.

Councilmember Gaghen asked Mr. Nelson if he had attended the Zoning Commission meeting. Mr. Nelson said he was not able to attend either of the two meetings.

- **Joe White, Billings, MT**, said he supported Mr. Nelson (the remainder of Mr. White's testimony was inaudible).

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

Councilmember Gaghen moved for approval of Zone Change #871, seconded by Councilmember Ronquillo.

Councilmember Ronquillo commented the reason they were working on a master plan in the area was to make sure they did not have future problems. He said they hoped to hold public meetings soon to gather ideas from the citizens in the area.

Councilmember McFadden commented that since the residential value of the property had been taken away by the surrounding commercial development, he was in favor of granting the property owner the zone change.

On a voice vote, the motion was unanimously approved.

PUBLIC COMMENT on Non-Agenda Items -- Speaker Sign-in required. (*Restricted to ONLY items not on this printed agenda; comments limited to three (3) minutes per speaker. Please sign on the clipboard located at the podium.*)

- **Kevin Nelson, 4235 Bruce Avenue,** said at the 12/14/09 regular city council meeting one of the items was the Sam's Real Estate preliminary minor plat of Miller Crossing. He said presented in the packet that evening was the Findings of Fact and on page 4 it referenced the South Billings Boulevard Master Plan that was adopted in 1990 and revised in 2002. Mr. Nelson asked why they were going to spend another \$300,000 on a master plan when they already had one. Mr. Nelson also said the open meeting laws had been violated when BSEDA, the City of Billings, and the Urban Institute met at BSEDA's headquarters. He said the meeting should have been noticed and open to the public.

Councilmember Cimmino asked Planning Staff to respond to Mr. Nelson's first comment on the master plan.

Planning Director Candi Beaudry said there was an existing master plan for the interchange area only that was put in place shortly after the interchange was constructed with the idea of creating an entryway area. She said it was confined to a small area around the interchange. Ms. Beaudry advised the proposed master plan covered the entire urban renewal district and would take into consideration the existing master plan and modify it if necessary according to people's preferences.

Councilmember Gaghen commented that one of the major differences would be the funding sources available to plan in the new direction. Ms. Beaudry said that was correct, and the scope of the proposed master plan would include projects that needed funding. She said the previous master plan was really a guide for re-zoning, and the current re-zoning was consistent with the existing master plan.

Councilmember Ronquillo asked Ms. Beaudry to describe the specific area of the South Billings Urban Renewal District (SBURD). Ms. Beaudry advised the SBURD was over 1,600 acres and one of the largest in the state. She said the north boundary was the Laurel Road and State Avenue; the east boundary was Washington; the south boundary was the city limits, which did not go all the way to the river; and the west boundary was Muldowney.

Councilmember Ruegamer pointed out that they were fortunate Candi was present and could respond to Mr. Nelson's comment. He said if she had not been present, they would have been where they normally were with Mr. Nelson's comments. He said Mr. Nelson always came to them with a lot of information, and they did not have a clue what he was talking about. Councilmember Ruegamer said he did not know if Mr. Nelson wanted answers or if he was just trying to trip them up. He said if Mr. Nelson was trying to trip them up it was a good way to do it because there was no way they had access to the information during the meetings. He told Mr. Nelson if he really wanted

answers, he needed to bring the information to the Council ahead of time so they could look into the matter before the meetings. Councilmember Ruegamer also addressed Mr. Nelson's comment about delaying Item 4 so clearer minds could prevail. He said there would not be any clearer minds. He said the staff, the Zoning Commission, and the Council recommended the zone change, so that was as clear as they were going to get.

Councilmember Ronquillo commented that Mr. Nelson had attended the meetings of the Southwest Corridor Task Force with the previous mayor, fire chief, and others where the plan for South Billings Boulevard was discussed. He said Mr. Nelson knew the original master plan only covered a small area.

Councilmember Cimmino said she wanted to echo the positive feedback received from staff. She said at the December 14, 2009, meeting that Mr. Nelson referenced, the Planning Director, Zoning Coordinator, and Planning Manager were present. She thanked them for staying for this portion of the council meeting and providing clarification on a citizen's inquiry.

Mayor Hanel asked City Administrator Volek if the meeting at BSEDA that had to do with the report of the TIFD study was public information. Ms. Volek advised it was a draft report and noted that BSEDA was the organization that hosted the meeting. She said it was her understanding the County Commissioners were invited, which made it publicly noticed. She said city staff was not the organizing agent. Mayor Hanel asked if the draft report was available. Ms. Volek advised she did not have a copy of the draft report but it could be obtained by contacting the Urban Institute at the college.

Councilmember Clark said there was a public hearing scheduled for January 31 at MSU-B where a presentation would be made.

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

COUNCIL INITIATIVES

- **MCFADDEN: MOVED** to direct staff to investigate and return to the council with recommendations that would modify the city bid award process to create an advantage for local businesses and contractors, seconded by Councilmember Pitman.

CM Ulledalen asked for the definition of a local business. CM McFadden said he felt they should go with the division called Yellowstone County. CM Ulledalen asked if he was talking about a small business that was domiciled in Billings, a national or international company that would have a Billings office, or where a company was headquartered. CM McFadden said if a business had a permanent Yellowstone County office it could be considered a local business. He said his intent was to prevent the local businesses and contractors from being edged out on a deal because an out-of-area, out-of-state contractor out bid them for a few dollars less. He said his reasons were because he believed the city was being penny wise but dollar foolish. He said if tax dollars were kept in the area, they would re-circulate several times and most likely end up back in the city or county coffers.

CM Ruegamer said he felt it was a good idea but cautioned everyone to remember when the locals were given the advantage, they were leaving money on the table. He said they needed to be careful. He said Billings was not Broadus, MT or Choteau, MT where they could make changes just for the sake of it, and Billings needed to follow its policies. He said he knew they were talking about the Airport Gift Shop and said he was all for giving local businesses an advantage, but not a huge one because they would be leaving taxpayer dollars on the table.

CM Cimmino said she agreed with CM Ruegamer; however, if they were speaking about the Airport Gift Shop, the past 16 years the business had contributed \$1.6 million, which was a lot of money.

CM Gaghen said she did not see the parallel and said there was much more into the whole procedure. She said the term 'modify' concerned her from a legal standpoint.

Attorney Brooks said they would do some research and said there may be several Federal grants that would restrict a local preference. He said it opened up a significant amount of questions, and they would report back to the Council with their findings.

CM Ruegamer said Wyoming gave a 5% cushion to their local businesses, and he did not know how they determined who was local.

CM Pitman said it was important to get the answers one way or another and define what was considered a local business.

CM Astle said in response to CM Ruegamer, they were probably dealing partially with a different constitution from Wyoming and other states. He said he was not against the 5% but until and unless they had it and it was legal in the State of Montana, he did not know if they could change the way it was being done.

CM McCall said she thought it was worth looking into, and she would support the motion.

CM Ulledalen said defining a local business would be very difficult.

CM McFadden said they could even put in the provision that if a local office was going to be opened, it had to be opened for X number of months or years so people would not try to slip past the ordinance by throwing up a shingle for a month. He said as far as local, he said Yellowstone County and several local businesses may have their offices outside the City limits. He said he would also like it to be a very distinct possibility for the county to follow suit. He said he spoke with Bill Kennedy about it, who said not to quote him without the consensus of the other Commissioners, but gave him permission to mention the fact that the County Commissioners were doing everything possible to use local labor and talent in rebuilding the Metra. He said he also spoke with Bruce McIntyre, who said he would be very supportive because every time they kept a local dollar local, it circulated around several times. CM McFadden said Yellowstone County was the best boundary to start with.

Mayor Hanel said in his opinion, he did not think anyone would disagree or argue the fact that they preferred to use local business any time there was the opportunity and it fit. He said every situation depended on the merits of the situation financially. He said they needed to make smart decisions and if the financial picture was better for the community and taxpayers, local business or not, as difficult as the decisions might be, it would be to do what was best for the community. He said he would support the motion.

CM McFadden said Bill Kennedy advised to make sure it did not become a loop hole for any local business that had a lack of competition to put the City over a barrel because of its own rule. He said he would like to give the local businesses some small advantage so the taxpayers could keep their money local when possible and practical.

On a voice vote, the motion was approved 9 to 2. CM Gaghen and CM Ulledalen voted 'no'.

Councilmember Clark said he wanted to clarify that the motion was just to study the recommendation and not implement it. He said it would have to come back to the Council again.

There were no other initiatives.

Councilmember Cimmino said she had a 4-page summary of what was in the CIP and noted there were nine road projects proposed to be funded by the Arterial Fee Fund. She said the Inner Belt Loop was changed to be funded by General Obligation Bonds and asked how that change was implemented. City Administrator Volek advised they were recommendations by staff and would be up for discussion at the public meetings. She said the City Council would ultimately approve the CIP. CM Cimmino said in September 2009, the City Council adopted a resolution indicating that the Inner Belt Loop would be funded by the Arterial Fee Fund, and said she was puzzled why staff would be making that recommendation. She said her guess was that the same question would be asked at the meetings, and she was hoping staff would be prepared to discuss it.

There was no further business, and the meeting adjourned at 8:05 p.m.



CITY OF BILLINGS

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

ATTEST:

BY: Cari Martin
Cari Martin, City Clerk