

REGULAR MEETING OF THE BILLINGS CITY COUNCIL
April 25, 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 Pitman gave the invocation.

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

MINUTES:

- April 11, 2011 - Regular Meeting – Councilmember Cimmino moved for approval, seconded by Councilmember Astle. On a voice vote, the motion was unanimously approved.
- April 18, 2011 - Special Business Session – Councilmember Gaghen moved for approval, seconded by Councilmember Pitman. On a voice vote, the motion was unanimously approved.

COURTESIES:

- Councilmember Gaghen recognized Billings Gazette reporter, Matt Hagengruber, who would be moving to a new job as a Foreign Service Officer on May 23. She acknowledged Matt's mother-in-law from the Ukraine and his wife and new baby who were in attendance.
- Mayor Hanel acknowledged members of Boy Scout Troop 394 sponsored by the Elks Club, who were in attendance. Members of the troop and their leaders came forward and introduced themselves.

PROCLAMATIONS:

- National Day of Prayer, May 5, 2011

ADMINISTRATOR REPORTS - TINA VOLEK

- Consent Agenda Item D, MOU with Little League Baseball Association – MOU was sent in April 22 Friday Packet and filed in ex-parte notebook.
- Consent Agenda Items K3 and K4: Street Closure requests for Ryan's Run and Community Run. Copies of insurance certificates were sent in April 22 Friday Packet and filed in ex-parte notebook.
- Regular Agenda Item 2, Vacation of right-of-way in Grand Peaks Sub. Resolution exhibit showing location that was sent in the agenda packet was incorrect. Copy of correct exhibit on Council desks and filed in ex-parte notebook.
- Regular Agenda Item 4, Budget Allocations and Consolidated Plans, Allocations of CDBG and HOME Funding, and FY2011-2012 Action Plan. Copy of presentation on Council desks and filed in ex-parte notebook.
- Regular Agenda Item 5, Yellowstone Family Park Creation of SID 1392, Park Maintenance District 4040, and approval of contract with Land Design. (1) Copy of Contract with Land Design was sent in April 22 Friday packet and filed in ex-

parte notebook. (2) Memo from Attorney Brooks with "Frequently Asked Questions on the proposed SID/PMD" on Council desks and filed in ex-parte notebook.

- Regular Agenda Item 7, Zone Change #875: Copy of letter from John W. Bennion, dated 4/13/11, was sent in April 22 Friday packet and filed in ex-parte notebook.

Legislative Review with Lobbyist Ed Bartlett

Mr. Bartlett advised the legislature had been in recess for the Easter break, as well as to allow the leadership in the Legislature and the Governor to reach an agreement on HB2.

- HB2: Optimistic that the Governor and the President of the Senate and Speaker of the House had reached agreement. Federal monies were put back into the bill and a proposal to appropriate \$10-12 million more dollars to the university system. He said progress was being made on the pay plan for state employees and school funding for K-12.
- SB423: Will be heard in both chambers on the floor on second reading on Tuesday. It was the one remaining bill to resolve what the Legislature intended to do with the issue of medical marijuana.
- HB43: Relating to medical marijuana and employer testing. Passed the Legislature.
- Governor had fully vetoed a total of 30 bills and increased the number of amendatory vetoes.
- HB307: Single Family Residential Sprinkler Bill. Passed by the Legislature but vetoed by the Governor on April 18.
- HB198: Eminent Domain. Passed the Legislature and on its way to the Governor.
- HB495: Entitlement Program. Will be passed by the Legislature and delivered to the Governor in the near future.

Councilmember Pitman asked Mr. Bartlett if he felt the Governor was willing to sign SB423. Mr. Bartlett said the Governor had indicated that he may have one or two amendatory line item vetoes, but everyone's impression was that generally SB423 was acceptable to the Governor. Mr. Bartlett advised the dollars in HB2 would support the administration of SB423; and it was the opinion of the Legislators that if the Governor had some concerns, they were relatively minor.

Councilmember Ruegamer said there was talk about annual sessions and asked for an update. Mr. Bartlett said the bill with annual sessions was tabled.

Councilmember McCall asked about SB91 on incorporation and HB426. She asked if there was a large contingent in support. Mr. Bartlett said there was a general consensus among local governments that would be involved and both bills passed.

Mayor Hanel commended Mr. Bartlett for his fine work in keeping administration and the Council informed.

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: #1 and #9 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. Mayor Hanel recommends that Council confirm the following appointments:

	Name	Board/Commission	Term	
			Begins	Ends
1	No Applications	Board of Adjustments	04/25/11	12/31/13
2	No Applications	Board of Adjustments	04/25/11	12/31/13
3	No Applications	Board of Appeals - Architect	04/25/11	12/31/14
4	No Applications	Board of Appeals - Electrical	04/25/11	12/31/14
5	No Applications	Board of Appeals	04/25/11	12/31/14
6	No Applications	Board of Appeals - At Large	04/25/11	12/31/14
7	Matthew McMullen	Board of Ethics	04/25/11	12/31/14
8	No Applications	Community Development -Low Mod	04/25/11	12/31/14
9	Thomas Grimm	Community Development - At Large	04/25/11	12/31/12
10	Michael Glancy	EMS Board	04/25/11	12/31/13
11	No Applications	Housing Authority Resident Comm	04/25/11	12/31/13
12	Kelli Bartholomew	Human Relations Commission	04/25/11	12/31/14
13	Jeanne Astle	Mayor's Committee on Homelessness - Lending Industry	04/25/11	12/31/14
14	Robert Carr	Parking Advisory Board	04/25/11	12/31/14
15	William Gilbert	Parking Advisory Board	04/25/11	12/31/14
16	No Applications	City/County Planning - Ward V	04/25/11	12/31/12

1. Unexpired term of LaVern Bass
2. Unexpired term of Terry Madtson
9. Unexpired term of Sandy Weiss
10. Unexpired term of Skip Godfrey

B. Bid Awards:

1. **W.O. 05-13, Jackson Street Sidewalks, Phase II;** (Opened 4/12/11)
Recommend H.L. Ostermiller; \$335,279.30 pending CTEP approval.
2. **W.O. 11-02 Miscellaneous/Developer-Related Improvements.** (Opened 4/12/11) Recommend J & J Concrete; \$519,275.
3. **W.O. 10-12, Water Treatment Facility Low Service Pump Station #1 Upgrade;** (Opened 4/12/11); Recommend COP Construction; \$1,760,610.
4. **Taxiway G Relocation and Runway Overlay Project;** (Opened 3/29/11)
(Postponed from 4/11/2011); Recommend Riverside Sand and Gravel; \$2,269,873.
5. **Pre-Demolition Abatement of Old Naval Reserve Center.** (Opened 4/12/2011)
Recommend Pacific Technologies, Inc.; \$44,375.
6. **Demolition of Old Naval Reserve Center.** (Opened 4/12/2011) Recommend LM
Excavating; \$133,163.
7. **Park II Structural Improvements.** (Opened 4/5/2011) Recommend Langlas &
Associates; \$86,900.

C. Agreement with The Billings Times to provide City of Billings legal advertising, 5/1/2011-4/30/14 with three, 1-year renewal options, at a cost of approximately \$30,000 per year.

D. Memorandum of Understanding between the City of Billings and the Little League Baseball Association for construction of a scoreboard and advertising sign at Centennial Park.

E. Approval of modifications to homeWORD's Development Agreement to ensure project compliance

F. Reallocation of available infrastructure funds from the Kings Green Project, Phase III, to the Kings Green Project, Phase IV; \$39,043.

G. Approval of Modification #P00005 to the Law Enforcement Officer (LEO) Reimbursement Agreement with TSA, and subsequent reimbursement modifications for LEO services provided for the TSA; reimbursement amount - up to \$68,036.00 for 10/1/2010-2/28/2011.

H. Approval of the Billings Industrial Revitalization District's (BIRD) request to allocate East Billings TIFD funds towards development of the Exposition Gateway Master Plan; \$25,000.

I. Acceptance of Donation to Parks and Recreation Department to purchase trees; The Sons of Norway; \$500.

J. Resolution #11-19048 authorizing purchase of proposed Lot 5A, Block 1 of Amended Lot 5, Block 1, Long Subdivision from Yellowstone County for design of storm water treatment area west of Shiloh Road and South of King Avenue; \$512,797.50.

K. Street Closures:

1. **Walk MS Billings**; April 30, 2011, 7:00 a.m. to 1:00 p.m.; South side of Wicks Lane starting at the LDS Church (1000 Wicks Lane) heading east to the bike path; continuing on the bike path, and finishing at the LDS Church.
2. **Montana Women's Run**; May 7, 2011, from 6:00 a.m. to noon; 2nd and 3rd Avenues North from North 10th to Division, Clark and Yellowstone Avenues from Division to 7th Street West, 2nd Avenue North from North 27th to North 29th, and Broadway from 1st Avenue North to 3rd Avenue North.
3. **Ryan's Run for SIDS**; May 15, 2011, 7:00 a.m. to 10:00 a.m.; starting at Rimrock West Park, east on a multi-use trail to 38th Street West using the pedestrian underpass/trail, continuing north on 38th Street West to Rimrock Road, west to Shiloh, south to Poly Drive, west to 46th Street West, and south back to Rimrock West Park.
4. **Community Fun Run**; May 21, 2011, 8:30 a.m. to 10:30 a.m.; May 22, 2010, 8:30 a.m. to 10:30 a.m., commencing at 120 Lexington Drive, proceeding west on Eldorado Drive, south on Pueblo Drive, east on Alamo Drive, north on Lexington Drive, east on Eldorado Drive, north on S. Santa Fe Drive, east on Concord Drive, south on Birchwood Drive, west on Beloit Drive, northwest on Fair Park Drive, southeast on S. Santa Fe Drive, south on Berthoud Drive, west on Pueblo Drive, north on Pueblo Drive, east on Beloit Drive, northwest on Lexington Drive, west on Dallas Drive, north on Pueblo Drive, east on Eldorado Drive, and south on Lexington Drive.

L. Bills and Payroll:

1. March 25, 2011
2. April 1, 2011

Councilmember Astle separated Item 1A and said he would be abstaining from the vote due to a conflict of interest. Councilmember Ruegamer separated Items 1B5 and 1B6. Councilmember Cimmino separated Items 1B3 and 1L1.

Councilmember Gaghen moved for approval of the Consent Agenda with the exception of Items 1A, 1B3, 1B5, 1B6, and 1L1, seconded by Councilmember Pitman. On a voice vote, the motion was unanimously approved.

Councilmember Clark moved for approval of Item 1A, seconded by Councilmember Ruegamer. On a voice vote, the motion was approved 10 to 0.

Councilmember Ruegamer referenced Items 1B5 and 1B6 and said there had been comments made if it had been worth the City's time to go to Washington DC. He said Items 1B5 and 1B6 were a direct result of their trip to Washington DC where the situation with the vacant Naval Reserve building was brought up to Senator Jon Tester. He said Senator Tester found the money to pay for the demolition so the City would not have to. Councilmember Pitman moved for approval of Items 1B5 and 1B6, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

Councilmember Cimmino said she would be abstaining from Item 1B3 due to her employment with the consulting firm involved in the actual bid process. Councilmember McCall moved for approval of Item 1B3, seconded by Councilmember Ruegamer. On a voice vote, the motion was approved 10 to 0.

Councilmember Cimmino said she would be abstaining from Item 1L1, Invoice #742897, due to her employment with the consulting firm. Councilmember Pitman moved for approval of Item 1L1, seconded by Councilmember Ronquillo. On a voice vote, the motion was approved 10 to 0.

REGULAR AGENDA:

2. PUBLIC HEARING AND RESOLUTION #11-19049 vacating portions of street right-of-way in Grand Peaks Subdivision; J & S Development Company, owner. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) City Administrator Tina Volek advised staff had no presentation but was available to answer questions.

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

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

3. PUBLIC HEARING FOR VARIANCE #OP-11-01: A variance from the Site Development Ordinance, Section 6-1203, regarding off-street parking requirements for property located at 3212 1st Avenue South. Yellowstone Boys and Girls Ranch, owner. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) Public Works Director Dave Mumford advised staff struggled with the variance on a technical basis because there was no real justification to allow parking on city streets when it was required to be on the property. He said staff felt it was a very good use for a building not being used and after looking at the width of the streets and the angle parking being proposed, staff believed if the Yellowstone Boys and Girls Ranch used the building as they specified, the streets could accommodate the parking during that time of day. He said staff supported the Yellowstone Boys and Girls Ranch's use of Garfield School and use of the right-of-way for their required parking if the use remained as they specified. He asked Council to require the use as specified by the Yellowstone Boys and Girls Ranch if they approved the variance request.

Mayor Hanel asked for the reasoning behind the reverse angle. Mr. Mumford said it was for safety when backing.

Councilmember McCall advised she was an employee of Yellowstone Boys and Girls Ranch and would abstain from the discussion and the vote.

Councilmember Ronquillo advised the Garfield School was currently being used by MSU-B and the Yellowstone Boys and Girls Ranch. He said they would like to close off the current entrance and make a bigger park for the kids. He said there were 60 kids from Building Block there every day and their safety was a concern.

City Administrator Tina Volek noted the staff report indicated that Public Works would work with the Yellowstone Boys and Girls Ranch to develop deed restrictions to be filed with the property. She said Attorney Brooks recommended that authorization for staff to negotiate the deed restrictions be a part of the motion if a motion were made. Attorney Brooks advised the deed restriction should indicate that as long as the property was owned by the Yellowstone Boys and Girls Ranch and used for its current purposes,

the variance would apply; but once the property was sold, the variance would disappear with the sale.

The public hearing was opened.

- **Andrea Kenny, 2237 South 45th Street West, Billings, MT**, said she was an employee of Yellowstone Boys and Girls Ranch and worked at the Garfield site. She distributed a list of the current tenants in the building and other regular users of the gymnasium and conference rooms. She said the primary concern was for the safety of the children in the programs and access to the playground area.

- **Randy Hafer, 631 N. 26th Street, Billings, MT**, said he was from Great Plains Architects, and they were working with the Yellowstone Boys and Girls Ranch to remodel the Garfield School. He said there was a very haphazard parking situation that did not conform to the site development ordinance. He said they wanted to remove the parking from the site to the streets and allow the site to become a more park-like setting that would provide greater safety for the kids.

Councilmember Ronquillo addressed Mr. Hafer and said he had attended several meetings and there was suppose to have been an open house held, which had not been done. He said questionnaires were also sent out asking for ideas of what people wanted to see happen to Garfield. Councilmember Ronquillo said he was told several times there would be an open house before it was presented to Council. Mr. Hafer said the neighborhood was canvassed, and neighbors were provided flyers with information about the changes.

Ms. Kenny said approximately 500 surveys were sent out to the immediate neighbors and businesses in the area, and they were still receiving responses. She said the question was asked if they would like to attend an open meeting or visit directly with Yellowstone Boys and Girls Ranch employees about concerns in the neighborhood. She said they were waiting for all of the responses. Councilmember Ronquillo said in the meetings they talked about having an open house before they sprung it on the neighborhood, and that did not happen. Ms. Kenny said one of the reasons it had not happened was because they were currently remodeling one of the rooms they wanted to show the people as they came in so they would have a better understanding of what would happen within the building. She said the room should be completed within the next four to six weeks. Councilmember Ronquillo said he took it to the task force, and they did not know what was happening. He said they wanted to come and get an idea before the remodel to know what was going to be done about the parking.

Councilmember Gaghen said she felt it would be worthwhile to postpone because she would have preferred to get a heads-up prior to getting the information in the agenda packet.

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

Councilmember Ronquillo moved to postpone action until May 23, 2011, seconded by Councilmember Gaghen. Councilmember Pitman asked how the open house connected with the parking variance issue. Councilmember Ronquillo said they

were supposed to involve everyone in the neighborhood before anything was changed, and that had not happened. He said he wanted to make sure the neighborhood was informed beforehand and not after the fact. On a voice vote, the motion to postpone until May 23 was approved 10 to 0.

4. PUBLIC HEARING to gather public input on Budget Allocations and the drafted Consolidated Plans; approval of the allocation of CDBG and HOME Funding for FY2011-2012 as recommended by the Community Development Board; and approval of the drafted FY2011-2012 Action Plan. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) Community Development Manager Brenda Beckett began her PowerPoint presentation talking about Community Development staff, the Community Development Board, and the CDBG and HOME Programs. She said they completed two major studies; a 5-year consolidated plan with action plans each year and the Comprehensive Annual Performance Evaluation Report. Ms. Beckett advised the current year's funding would be \$340,826 less than last year and talked about the discontinued or reduced programs that were a result of the reduced funding. Ms. Beckett advised the major funding allocations for the current year were for New Affordable Housing-49%, Existing Housing-25%, Special Needs Support-5%, Preservation of Neighborhoods-7%, and Partnerships-14%. She said their internally managed programs were Community Development Block Grant, HOME Investment Partnerships Program, Neighborhood Stabilization Program, and CDBG-R Weatherization Program; and their outsourced programs to internal management were Fair Housing Initiative Program, CDBG Sub-Recipient Monitoring, and AmeriCorps*VISTA.

Councilmember McCall said the VISTA program had been so successful and asked how much money was in the budget before and how she would potentially add four more members. Ms. Beckett advised Learn and Serve was the only program zeroed out, and they were not in the Learn and Serve category. She said they were waiting for their final figures. She said her estimate was a 4% decrease for AmeriCorps*VISTA. Ms. Beckett recognized Jim Hartung, the chair of the CDBG Board in the audience. She said there were several sub-recipients in the audience, as well.

The public hearing was opened.

- **Delores Terpstra, 5335 Hillcrest Road, Billings, MT**, said thank you for the money they were about to receive for the kitchen upgrade at the South Park Senior Center. She said they would be having a fundraiser with burgers, brats and bingo on May 14th beginning at 11:00 a.m.

- **Mary Hernandez, 19 Burlington, Billings, MT**, said she was serving as the interim director of Tumbleweed. She said the monies would be geared to the Street Outreach Program.

- **Mary Lou Afflech, 241 Annandale Road, Billings, MT**, said she was Vice President and Board Member of Rebuilding Together Yellowstone County, which was a non-profit, volunteer organization. She said annually they served 12 to 15 homeowners

who were in need of help with preserving affordable housing, preserving homes in need of weatherization, and removing safety hazards.

- **Katy Petersen, 626 S. 38th Street, Billings, MT**, said she worked with the Street Outreach Program and provided statistics on the services they provided and the number of youth they served.

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

Councilmember Astle moved for approval of Item 4, seconded by Councilmember McCall. On a voice vote, the motion was unanimously approved.

Mayor Hanel called for a recess at 7:43 p.m. The meeting was called back to order at 7:55 p.m.

5. PUBLIC HEARING AND RESOLUTION #11-19050 CREATING SID 1392, RESOLUTION #11-19051 CREATING PMD 4040, AND APPROVAL OF PROFESSIONAL SERVICES CONTRACT WITH LAND DESIGN for development of Yellowstone Family Park to include landscaping, trees, shrubs, turfgrass, native vegetation, trails, sidewalks, irrigation system, playground and equipment. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) Park Planner Mark Jarvis began a PowerPoint presentation giving a brief history of the proposed SID.

- May 2010 Parks Department was contacted by Homeowners Association of Yellowstone Club Estates regarding development of a park at 54th Street West and Bobby Jones.
- August 2010 An RFP to develop a park master plan was issued and Land Design, Inc. was selected.
- Dec. 21, 2010 Public Meetings were held at the Yellowstone Country Club.
& Jan. 4, 2011 Notices of each meeting were mailed to every property owner in the benefit district.
- Jan. 12, 2011 Presentation was made to the Park, Recreation and Cemetery Board, who unanimously approved the proposal.
- Feb. 7, 2011 Presentation was made at City Council Work Session
- Feb. 14, 2011 City Council approved park master plan
- Mar. 14, 2011 City Council approved Resolutions of Intent to Create SID 1392 and PMD 4040
- Apr. 1-15, 2011 Protest Period

Mr. Jarvis advised there were 386 property owners in the benefit district. He said there was a total of 161 protests received, six of which were from outside the benefit district and 19 of which were where waivers of protest were in place; for a total of 136 valid protests or 35.2%.

Mr. Jarvis said the total cost of the SID was \$1,260,000, which could not be exceeded by state law. He said the property owner assessment would be \$3,264.25,

and the financing over 15 years, with an estimated 8% interest rate, would be \$386 per year. He said the interest rate would be confirmed at the time the bonds were sold. Mr. Jarvis advised the first year's assessment for the Park Maintenance District was estimated at \$66.39. He said after the project was completed, the cost would be re-assessed and any remaining funds would be credited to the property owners in the benefit district reducing their assessment. He said property owners who paid off their assessment after the first year would be refunded their proportionate share.

Mr. Jarvis said they would begin the design and construction documents in May and anticipated the start of construction in August. He said they would begin again as soon as possible in the spring of 2012 with full completion in June.

Councilmember McCall said they had discussed the previous week that it may not be possible to pay the assessment upfront and that it had to be spread over the 15 years, and asked for clarification. Ms. Volek advised that was her understanding but she would attempt to contact Mr. Weber, Financial Services Manager, to confirm it.

Councilmember Gaghen asked if the assessment would begin in 2011 or 2012. Mr. Jarvis said it was his understanding it would be spread on the November 2011 taxes.

The public hearing was opened.

The following people spoke in favor.

- Stacey Robinson, Land Design, Park Planners for the Project
- Lisa Williams, 3308 Lloyd Mangrim
- Hope Williams, 3308 Lloyd Mangrim
- David Daines, 5420 Billy Casper
- Jason Hertz, 3472 Stone Mountain Circle
- Pat Curry, 5412 Gene Sarazen
- Taylor Graham, 5046 Walter Hagen Drive
- Joan Hansen Jacobson, 3304 Ben Hogan
- Cindy Sanders, 3803 Ben Hogan
- Dave Ballard, 5425 Billy Casper
- Cheryle Pittack, 5711 Bobby Jones
- Ed Jones, 3134 Lloyd Mangrim
- Charlie Hoefle, 3604 Ben Hogan
- Roger McCalla, 3126 Lloyd Mangrim
- Sterling Starr, 3713 Tommy Armour
- Wayne Fincher, 5915 Sam Snead
- Bill Cole, 3733 Tommy Armour
- Cari Piatkowski, 5541 Billy Casper

The following people spoke in opposition.

- Jim Boslough, 3411 Stone Mountain Circle
- Steve Hovis, 5430 Rocky Mountain Boulevard
- Ken Gunn, 3316 Horton Smith

- Gary Richard, 5909 Sam Snead
- Jeannie Boslough, 3411 Stone Mountain Circle
- Joe Templet, 3303 Jack Burke Lane
- Lee Holmes, 6122 Sam Snead Trail
- Cal Stacey, 3615 Quimet Circle
- Tony Typanski, 5906 Sam Snead
- Ed Davis, 3329 Jack Burke Lane

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

City Administrator Volek advised she had spoken with Mr. Weber and had an answer to Councilmember McCall's question regarding early payoff of the assessment. Ms. Volek said staff did not recommend allowing property owners to pay off their SID upfront until after the first year when the exact costs of construction were known. She said it would prevent the City from having to write refund checks.

Councilmember Pitman asked if the Yellowstone Ridge Subdivision property owners could be assessed for two different parks. Attorney Brooks said he did not know if it had ever occurred. He said Council had control over it, and if there were a future initiative for Yellowstone Ridge, Council could determine if it would be appropriate. Councilmember Ulledalen asked if the plan for part of the park above Yellowstone Ridge was to remain undeveloped. Parks Director Mike Whitaker said that was correct. He said they did not encourage development right next to the rims, and he did not see a neighborhood park developing there. Mr. Whitaker advised it was possible for property owners to be assessed for two parks, but they would not encourage the development of two neighborhood parks within the same area.

Mayor Hanel said the question had been asked during the public hearing if another park had ever been developed in the same manner with an SID and asked staff to respond. Mr. Jarvis advised Rimrock West Park and Circle 50 Park were both created the same way within the past 15 years.

Councilmember McCall asked Attorney Brooks to address the issue of protests. Attorney Brooks advised MCA 7-12-4113 stated that if owners of more than 50% of the area of the property to be assessed for the SID/PMD had valid protest it would halt the creation of the SID for a period of at least six months.

Councilmember Ulledalen moved for approval of Item 5, seconded by Councilmember McCall.

Councilmember Astle said he would be voting in favor. Councilmember Pitman asked if Parks could confirm if there was a valid Waiver of Protest. Mr. Whitaker said staff had seen the waiver and it was their understanding it was valid. Councilmember Ruegamer said he had been asked to delay for two weeks, but he saw no reason to do so, and he would support the motion. Councilmember McCall said she would support the motion but felt there were many people who had great concern about the expense of the park and the process. She said part of the process would have to be changed legislatively, which was out of their hands at that point. She asked Mr. Fincher of the Homeowner's Association to make a strong commitment from the association to work with all of the people who believed the park was too rich and too expensive. She said they needed to look at the cost and try to come together on it. Councilmember Gaghen

said she had faith in Stacey at Land Design to work in good faith and do the best job for the least money. She said she would support the motion. Councilmember Pitman said he would support it but he had a very big reserve for the people who lived in Yellowstone Ridge who might be looking at this and another park assessment. He said he wanted it on the record that he would not support assessing them to help pay on another park. Councilmember Ulledalen said he was confident they would look for compromise and make sure it was done right. Councilmember Cimmino said she jotted down 27 individuals who spoke and the majority indicated while they would support a concept of a park, the cost was rather expensive. She said since everyone was thinking it had been 50 years they had waited for the park, two weeks postponement would not be a tremendous sacrifice.

Councilmember Cimmino made a substitute motion to delay for two weeks. The motion died due to lack of a second.

Mayor Hanel said he felt the safety of the children was number one. He said the park would add value to the properties and revitalize the subdivision. Mayor Hanel said he would support the motion.

On a voice vote, the motion was approved 10 to 1. Councilmember Cimmino voted 'no'.

Mayor Hanel called for a recess at 9:40 p.m. The meeting was called back to order at 9:45 p.m.

6. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #874: A zone change request from Community Commercial (CC) to Highway Commercial (HC) on two parcels of land described as Lots 1 through 17, Block 14 of Suburban Subdivision located at 327 Cook Avenue and 3919 Montana Avenue. Mike Dimich, property owner of 327 Cook Avenue. Gene and April Staudiner, property owners, and Mike Dimich, contract purchaser, of 3919 Montana Avenue. Zoning Commission recommends approval of the zone change and adoption of the determinations of the 12 criteria. (Action: approval or disapproval of Zoning Commission recommendation.) Zoning Coordinator Nicole Cromwell began her PowerPoint presentation showing a zoning map and photographs of the subject property and surrounding properties. Ms. Cromwell advised the Zoning Commission conducted a public hearing and 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 Pepsi warehouse to continue and would allow the property at 3919 Montana Avenue to be re-developed compatible with the proposed zoning.

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

The proposed zoning will permit the retention of an existing business along a major arterial street near downtown Billings.

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

The proposed zoning will encourage the retention of an existing employer near existing population centers.

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

There should be no effect on traffic congestion. The existing property is primarily used by Pepsi for warehouse activity and traffic generation should not increase with the proposed zoning. The new zoning is intended to make the existing uses conform to zoning.

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

The subject property is currently serviced by all city services including police and fire. There should be no effect on these services.

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

The proposed zoning would permit the existing use to continue and expand. The vacant machine shop at 3919 Montana could be re-purposed and the property cleaned up. This will promote the health and general welfare of the neighborhood.

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 HC zone allows 75% lot coverage and the current CC zone allows up to 50% lot coverage. The proposed HC zone requires a separation between structures on the same lot, a minimum 20 foot front setback and a 10 foot side setback for any adjacent street. The HC and CC zones do not require a rear setback unless adjacent to a residential zone.

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

The new zoning does avoid undue concentration of population. The existing zoning, CC, allows the same number of dwelling units as the proposed HC zoning. Both zoning districts allow single family, two family and multi-family dwellings and lot area requirements are based on the Residential Multi-family-Restricted zoning regulations. It is not likely the new zoning will result in any residential use of the property. 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 should not have any impact on the surrounding streets.

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

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

Fire and Police: The subject property is currently served by city fire and police. There should be no impact to these services from the new zoning.

9. Does the new zoning give reasonable consideration to the character of the district? The proposed zoning will allow the existing development to continue as a conforming use in the proposed HC zoning district. Montana Avenue is a principal arterial street and the zoning to the north, south, east and west is compatible. The proposed zoning gives reasonable consideration to the district and neighborhood.

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 an arterial street that has sufficient capacity for the intended and existing uses. The new zoning allows the existing development to continue.

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

The existing building value will be conserved with the new zoning in place. Currently, the CC zone does not allow a beverage bottling, warehouse or distribution center. 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.

- **Jamie Wells, 490 N. 31st Street, Billings, MT**, said she was with the Crowley Fleck Law Firm, who was the record agent for Mr. Dimich. She said the zone change was a contingency in the buy-sale and would bring operations up to compliance. She said the plan included razing all of the dilapidated buildings on the Staudiner property and replacing them with one building that matched Pepsi's current building structures. Ms. Wells said the zone change would allow Pepsi to expand and better utilize its current property, as well as allow Pepsi to remain in its current location. Ms. Wells asked the Council to approve the Zoning Commission's recommendation of approval.
- **Bill Dimich, 2917 Lohof Drive, Billings, MT**, said he was president and owner of the Pepsi Cola Company. He encouraged the Council to approve the zone change to Highway Commercial. Mr. Dimich said they had been in their current location since 1954.

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

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

7. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #875: A zone change from Community Commercial (CC), Public (P), Residential 6,000 (R-60) and Residential Multi-Family (RMF) to Residential 9,600 (R-96) and Residential 6,000 Restricted (R-60-R) on Lots 10 through 12, Block 16; Lot 15, Block 17; Lots 1 through 4, Block 18; Lots 1 through 4 and 7 & 8, Block 19; Lots 25 through 27, Block 45; Lots 12A, 12B, 13A and 14 through 17, Block 46; Lots 8 through 13, Block 47, Lake Hills Subdivision; and proposed new Lots A through G to be created from golf course land, for a total of 12.651 acres. All lots are currently vacant. Ron Hill, owner; Marshall Phil of Blueline Engineering, representative. Zoning Commission recommends approval with the exception of proposed Lots B, C and G, and adoption of the determinations of the 12 criteria. (Action: approval or disapproval of Zoning Commission recommendation.)

Zoning Coordinator Nicole Cromwell began her PowerPoint presentation reviewing a zoning map of the existing lots, as well as proposed Lots A through G. She said the owners within 150 feet of proposed Lots B and C had filed a valid protest against the re-zoning of those two lots. She said at the Zoning Commission public hearing the applicant made a recommendation to the Zoning Commission to exclude Lot G from its recommendation because he had reconsidered and felt Lot G would be too far into the active play area of the golf course. Ms. Cromwell also showed photographs of the property and an aerial view of the area. She said the Zoning Commission was recommending approval of the zone change with the exception of proposed Lots B, C, and G 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 allow single family development in a neighborhood that primarily consists of single family dwellings. Two proposed lots, B and C, may be inconsistent with the ,and use patterns in subdivision in so far that every lot platted with golf course frontage has access. Proposed lots B and C would eliminate golf course access to 2 existing lots.

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

The proposed zoning will assist in the complete development of the Lake Hills Subdivision, first platted in 1957.

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

There should be no effect on traffic congestion. The existing property is vacant and adjacent streets including Gleneagles Boulevard are constructed to handle subdivision traffic. The proposed zoning will likely reduce the potential for traffic generation.

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

The subject property is currently serviced by all city services including police and fire. There should be no effect on these services.

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

The proposed zoning in most areas proposed will benefit the existing neighborhood. The exceptions are the 2 proposed lots B and C that eliminate the existing golf course access from 2 existing lots.

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. Each lot will need to provide minimum lot area and required setbacks to property lines.

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 R-96 and R-60-R allows 30% lot coverage and 40% lot coverage respectively. The current CC zone allows up to 50% lot coverage, the R-60 zone allows 40% lot coverage and the RMF zone allows up to 55% lot coverage. The Public zone allows up to 50% lot coverage but does not allow any residential uses. The new zoning will ensure prevention of overcrowding of land.

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

The new zoning does avoid undue concentration of population. The existing zoning, CC, allows the same number of dwelling units as the RMF-R zone (26 units per acre) and the RMF zone allows up to 76 units per acre. The R-60 zone can allow up to 20 units per acre by special review approval. The public zone does not allow residential uses. The proposed zoning of R-96 can allow up to 4 units per acre and the R-60-R can allow up to 7 units per acre. No multi-family uses are allowed in these zoning districts. 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 should not have any impact on the surrounding streets.

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

Schools and Parks: There may be impact to schools from the proposed zone change.

Fire and Police: The subject property is currently served by city fire and police. There should be no impact to these services from the new zoning.

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

The proposed zoning will allow the existing neighborhood to continue development as primarily a single family area. The proposed lots B and C will have a direct impact to existing lots and would not give reasonable consideration to these lots. The Planning staff is recommending approval of the zone change with the exception of these 2

proposed lots.

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 with the exception of proposed lots B and C.

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

The existing building value on 2107 Clubhouse Way and the vacant lot to the south will likely see a reduction in marketability due to loss of direct golf course access and golf course views from the creation and re-zoning of proposed Lots B and C. The remainder of the lots in the zone change request will conserve the value of surrounding buildings and land.

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

The proposed zoning, with the exceptions noted above, will encourage the most appropriate use of land throughout the neighborhood.

The public hearing was opened.

- **Marshall Phil, 2110 Overland, Billings, MT**, said he was with Blueline Engineering. He explained that proposed Lots B and C were to be re-zoned to R9600 and would front Greenbriar Road. He said the owners of Lots 1 and 11 protested the shape of the proposed lots because they would block their access to the golf course and their view of the golf course. Mr. Phil said there was a master plan in the Planning Office for the whole area to the north and west of Lake Hills Subdivision that showed the entire network of roads that were planned. He said after re-considering Lot G at the end of Burning Tree, they felt it was not an ideal lot to re-zone so they were complying with the neighbors' requests not to re-zone it.
- **Roger Dallner, 4546 Laredo Place, Billings, MT**, said he owned the property at 2107 Clubhouse Way. He said everyone had already described the reasons for the protest, primarily the blocking of the access to the golf course. Mr. Dallner said he represented four other property owners who also signed the protest. He asked Council to vote according to the Zoning Commission's recommendation. He said the property owners were able to come to an agreement with the Zoning Commission and Ron Hill.
- **Ron Hill, 2242 West Skokie, Billings, MT**, said they had accommodated the property owner protests and asked Council to approve the Zoning Commission's recommendation.

Attorney Brooks asked Mr. Hill to state for the record that he was withdrawing Lots B, C and G.

Mr. Hill stated he would like to withdraw Lots B, C and G from the application.

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

Councilmember Pitman moved for approval of Zone Change #875 with the removal of Lots B, C, and G, and adoption of the determinations of the 12 criteria, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

8. PUBLIC HEARING AND SPECIAL REVIEW #889: A special review to allow the modification of a previously approved site plan for Special Review #885 to allow the addition of a 2-story office building to accommodate the assisted living management and administrative offices and the re-orientation of the parking and one of the assisted living structures on the Shiloh Road frontage on property at 4040 Parkhill Drive generally located on the southwest corner of the intersection of Shiloh Road and Parkhill Drive. Randy Swenson, RK Development, applicant; Quentin Eggart, agent. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)

Zoning Coordinator Nicole Cromwell advised Council approved Special Review #885 last fall and since that time, the owner and agent had re-considered the site plan and were back for another special review. Ms. Cromwell showed the previously-approved site plan from Special Review #885 and the newly-proposed site plan explaining the differences. She showed pictures of two older homes that would be demolished and the drive approaches that would be abandoned and reconstructed with the multi-use trail and curb and gutter. She showed drawings of the proposed office buildings, one with a clock tower, that would be used for administration only; areas for storm water retention; and an emergency turn-around area. Ms. Cromwell showed an aerial view of the property and photographs of the property and surrounding properties. Ms. Cromwell reviewed the following 17 conditions that were recommended for approval.

1. The special review approval shall be limited to Tract 2, Rush Acreage Tracts and Lots 5 and 6, Block 6, Rush Subdivision, 2nd Filing generally located at 4040 Parkhill Drive.
2. Any expansion of the proposed building, building occupancy or parking lot greater than 10 percent of what is shown on the submitted site plan will require an additional special review approval.
3. The development of the property shall be in substantial conformance with the submitted site plan.
4. All site lighting on the buildings, in parking areas and under the covered porches shall have full cut-off shields so lighting is projected to the ground or onto the building façade and not on to adjacent properties.
5. The proposed use of the Phase 1 Office Building will be for administration and management of the Tender Nest Assisted Living facilities. The building and the underlying property will not be sold, leased or otherwise granted to a party for conducting business not directly ancillary to the assisted living facility.

6. All outdoor mechanical equipment shall be screened including but not limited to air-conditioning units.
7. The signs shown on the Phase 1 Office Building will not be internally illuminated. A separate sign permit is required for the installation of these signs or other signs not shown on the site plan.
8. The clock shown on the Phase 1 Office Building will not be internally illuminated.
9. No portion of the gooseneck lighting fixtures shown on the Phase 1 Office Building will have lenses or light bulbs that project below the fixture shielding.
10. The applicant or agent(s) shall secure a demolition permit from the Building Division prior to starting demolition of the existing dwellings at 2004 and 2010 Shiloh Road.
11. Construction or demolition activities shall not start prior to 8 am or continue after 8 pm.
12. The vinyl fencing proposed along the Shiloh Road frontage and along the south property line of Lot 6 shall have a non-reflective surface finish (matte or satin).
13. Pedestrian crossing signs shall be posted at the drive approach entrance on Parkhill Drive. These signs will alert drivers entering and existing to watch for pedestrians on the public sidewalks.
14. The applicant will comply with all absolute criteria and achieve the minimum number of points for relative criteria in the Shiloh Corridor Overlay District as outlined in Section 27-1401 through 27-1423 of the Unified Zoning Regulations.
15. The applicant will apply for a Master Site Plan Approval as required by Section 27-622 of the Unified Zoning Regulations.
16. 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.
17. 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 Astle asked if there was a height restriction on the proposed clock tower. Ms. Cromwell advised it was considered unoccupied space and would not be included in the height of the building.

Councilmember McCall asked if there had been any concerns received from the stakeholders. Ms. Cromwell said they had not received any concerns regarding the special review last fall or the current special review.

The public hearing was opened.

- **Kevin Lundeen, 1545 Clark Avenue, Billings, MT**, said he was with Eggart Engineering & Construction and represented Tender Nest and the designers. He said the clock tower would be 34 feet in height, which met the current code. Mr. Lundeen said he would be happy to answer any questions.

Mayor Hanel said he had been told by emergency personnel that the ability to identify specific units was complicated, and asked Mr. Lundeen to pass that along.

- **Randy Swenson, 4510 Highline Drive, Billings, MT**, said he was the owner and developer of Tender Nest. He advised they had visited with the adjoining neighbors, and they did not have any opposition.

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

Councilmember McCall moved for approval of Special Review #889 with conditions, seconded by Councilmember Ulledalen. On a voice vote, the motion was unanimously approved.

9. APPROVAL OF AGREEMENTS satisfying conditions of the property purchase agreements with Alley Cat Investments, LLC for Lots 1-7, Block 109, Original Town of Billings. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) City Administrator Tina Volek advised the item had been a subject at a recent work session, and staff had no additional information to present.

Downtown Billings Partnership Director Greg Krueger told Council they would be voting on the option terms for Bill Honaker of Alley Cat Investments LLC to re-purchase parking spaces in the new garage, the potential to purchase retail space in the new garage, and a lease agreement to lease back the parking spaces that would be bought from him. Mr. Krueger advised Mr. Honaker was in the audience and available to answer any questions. He said Mr. Honaker had offered to not exercise the purchase on the parking spaces that allowed him to retain ownership of them until such time as the new garage was built, which would be beneficial to the City. Mr. Krueger said they were slowly acquiring the properties, and the reason the Northern option was not on the agenda that evening was because they were still negotiating.

Councilmember McFadden asked if they were still “under the gun” to get it done because of the people who may have to release their office space and move. Mr. Krueger stated the option on the office building was what they were talking about that evening, and they planned to close on it Friday of that week. He said the piece they were working on finalized the option for Mr. Honaker to buy back the parking spaces. He said it was timely and important.

Councilmember Clark asked if the price of the lots would stay the same. Mr. Krueger said they would remain at the price that had been established. Councilmember Clark asked if the income from the parking garage would pay for the bonds. Mr. Krueger said the bonds would be tax increment bonds and would be dedicated to the project.

Councilmember Pitman said he was concerned that it was like CPR for the Northern. He said if the Northern did not open or changed hands, the increment district would be in jeopardy and the General Fund would be at risk for money to pay the bonds. Mr. Krueger advised there was sufficient bond without a new Northern Hotel. He said the new garage was definitely needed in the area, and the construction of the Northern Hotel was not imperative to the bonds and to the payment of the parking structure. He said it was definitely helpful to the Northern, but not the entire reason they were doing the garage.

Councilmember McCall asked Councilmembers Ronquillo and Gaghen for their assessment of the project. Councilmember Ronquillo said they needed something to bring life back to downtown, and he felt it was a good opportunity to grow. Councilmember Gaghen said she felt there was a need for additional parking with the development of the area, and they were still in hopes there would be a convention center built in the future. She said she thought it would add a real stimulus to downtown.

Councilmember Astle moved for approval of Item 9, seconded by Councilmember Gaghen. 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 here limited to 3 minutes. Please sign up on the clipboard located at the podium.*)

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

COUNCIL INITIATIVES - There were no initiatives.

- Astle: Said he visited with someone at Valley Federal Credit Union on Broadwater and found out when they trimmed their trees and raked leaves, they blew the trimmings and leaves out onto Broadwater Avenue. Councilmember Astle asked if staff could visit with Valley Federal Credit Union and let them know Broadwater Avenue was not the appropriate dumping site.
- Ulledalen: Said he wanted to give the Council a heads-up about the Rush Subdivision Park. He said there were about 15 different subdivisions feeding into it and there were about 32 sets of agreements, many of which made no sense. He said developers left so many loose ends primarily on the west end and in the Heights that were "grenades waiting to go off." He said the meeting that night on the Yellowstone Family Park was busy, but the one coming up was going to be ugly.
- Cimmino: Said she wanted to say she supported the Yellowstone Family Park but she was hoping a two-week delay would have allowed time to iron out some of the wrinkles. Councilmember Ulledalen said they would have taken a civil war and made it worse. He said there had been people knocking on doors and comments being made about businesses being threatened, and delaying it would have made things worse.
- McCall: Acknowledged Accurate Construction and city staff for the fine work they had done getting the rocks off the rims.

- Ronquillo: Said on Avenues B, C D, & F east of Pioneer Park, the leaves had not been picked up from last fall and asked when the leaves would be picked up. City Administrator Volek said staff was looking at ways to provide free bags that would allow people to bag their leaves for city pickup. She said the past early winters made it very difficult.
- Ruegamer: Asked for a report on the status of the green garbage cans. City Administrator Volek said she would check on it.
- Pitman: Said he had not received any information on the labor negotiator. City Administrator Volek advised she had the information and would send it to the Council.

There was no further business, and the meeting adjourned at 10:50 p.m.



CITY OF BILLINGS

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

ATTEST:

BY: Cari Martin
Cari Martin, City Clerk