

## **REGULAR MEETING OF THE BILLINGS CITY COUNCIL**

### **February 25, 2008**

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

**CALL TO ORDER** – Mayor Tussing

**PLEDGE OF ALLEGIANCE** – The Pledge of Allegiance was led by Boy Scout Troop 27.

**INVOCATION** – Councilmember McCall

**ROLL CALL** – Councilmembers present on roll call were: Gaghen, Pitman, Stevens, Veis, Ruegamer, McCall, Ulledalen, Astle, and Clark. Councilmember Ronquillo was excused.

**MINUTES** – February 11, 2008, approved as distributed.

**COURTESIES** – Ron Palmer and Ray Capp, employees of the City of Billings Street and Traffic Division, were recognized by Interim Fire Chief John Staley and Public Works Director David Mumford for their quick response to pull an employee of Total Rental out of the burning business and extinguish his burning clothing and hair.

**PROCLAMATIONS** - None

**ADMINISTRATOR REPORTS** – Tina Volek

- Ms. Volek advised an item for Ironwood Estates, in conjunction with an arbitration settlement between two parties, was included in the Friday packet. She asked that Council consider adding it to the agenda that evening and said it would require a three-quarter vote of the Council.
- Ms. Volek advised over the weekend Council received answers to a series of questions and an amended agreement with the Mustangs for the operation of the new ballpark (Item 2).
- Ms. Volek advised an e-mail correspondence from Ed Kent had been distributed concerning Item 2.
- Ms. Volek advised several e-mails and contacts received by various councilmembers for Items 15a and 15b had been distributed.
- Ms. Volek advised additional information from the Chamber of Commerce and William Cole, the attorney for the applicant, for Items 19a through 19d had been distributed.
- Ms. Volek advised the Agenda Review Meeting for March 10, 2008, would be held the following evening at 5:30 p.m. in the City Hall Conference Room.

Ms. Volek advised all of the additional items were filed in the Ex-Parte Notebook in the back of the room for public view.

Councilmember Veis moved that the Ironwood Estates right-of-way easement be added to the Consent Agenda as Item U, seconded by Councilmember Stevens.

Mayor Tussing asked what the emergency was because the parties had been

fighting about it for a long time, and no one was given any advance notice that it would be discussed that evening.

City Attorney Brent Brooks advised the parties were in a private, civil litigation dispute that had been winding down. He said part of the court order required one of the parties to grant and convey an easement to the City of Billings. Attorney Brooks said the reason Council was being asked to add it to the agenda that evening was because one of the parties had a potential buy-sell offer, and each day of delay was causing that individual a significant amount of money. He said an easement of that nature would typically be a consent agenda item, and they were trying to help both parties end the litigation.

On a voice vote, the motion was unanimously approved.

**PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: 1, 2, 3, 4, 5, 6, 10b, 13, and 20 ONLY. Speaker sign-in required.** (Comments offered here are limited to 1 minute per speaker. Please sign up on the clipboard located at the podium. Comment on items listed as public hearing items will be heard ONLY during the designated public hearing time for each respective item.)

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

The public comment period was opened.

- **Bill Kennedy**, said he wanted to talk about the parking variance for the Salvation Army recreation center. He said he wanted to make sure Council received a copy of the map of the Salvation Army Center and requested the Council's support on the variance for parking. Mr. Kennedy said he understood Council was not voting on the variance that evening, and he just wanted to give Council a little bit of information.
- **Major Bottjen, Salvation Army Executive Director and Pastor**, thanked everyone working behind the scenes for helping to get the program going. He said one of the main concerns brought to his attention with the parking lot variance was that if the Salvation Army was not able to build the project, the variance would stay with the property. Major Bottjen said the Salvation Army was offering to sign a waiver should they decide to sell the property that would allow the City to set the zoning back where it needed to be at that time. He said the variance was extremely important for the project.

Mayor Tussing asked staff if that would be possible. She said neither she nor Ms. Beaudry had heard of it being done before, so they would need to research it.

- **Carol Tasset, 231 Terry Avenue**, distributed a letter to the Council. She said a few months prior she had learned about the Salvation Army's goal to build a youth center in Billings offering activities in the arts, sports, and housing to homeless teens. Ms. Tasset asked Council to grant the variance to the Salvation Army so the project could move forward. She said she had participated in music since her youth and was active in drama and could not possibly overstate the multiple developmental and social benefits of the

creative activities. She said some of Council may be familiar with the motion picture "Music of the Heart" based on the documentary "Small Change" about violin teacher, Roberta Tzavaras, who created string programs for children in East Harlem. She said the lives of many children destined for the criminal justice system were transformed by the programs.

Mayor Tussing asked staff if a public hearing would be held at the time of a variance request. City Administrator Volek advised the current agenda item was a Council-initiated request to transfer the site from the current zoning to the Central Business District. She said the variance was scheduled for the March 10<sup>th</sup> agenda, and a public hearing would be held at that time.

- **Jerry Jones, 2231 Hyacinth Drive**, said he was a supporter of the Salvation Army and the General Manager of ABC 6 and Fox 4. He asked for approval of the variance. He said he and his wife had worked with inner city kids in Huntsville, Alabama, before moving to Billings; and he had seen hopeless situations. He said it was a chance for somebody to do something for the community with all of the supervision and love that came from the Salvation Army.
- **Judy Trinka, Bench Boulevard**, said she had spoken with many of the Councilmembers about the variance and asked them for their support. She said she owned Sunsilks Montana Gift Shop and was a third generation business owner in Billings. She said she had seen a lot of changes in Billings, and she knew how important the project was.
- **Del Christman**, said he had been a member of the Salvation Army Board for a good many years. He said he was the past principal of North Park School; Garfield School; and McKinley School; and he was well aware of the needs of the students and young people in the area. Mr. Christman said the need had been established, and it was a great program for young people. He asked for the Council's support.
- **Judy Lohnbakken, 2032 Yellowstone Avenue**, said she was a member of the Salvation Army Advisory Board. She asked the Council to keep an open mind when looking at the variance and recognize the need to get the youth center going and how valuable it would be to the community.

Mayor Tussing said everyone was testifying on the variance and advised there was no variance on that evening's agenda. He advised they could testify on Item 13, and he was not sure if it was appropriate to hear testimony on an item not on the agenda. Ms. Volek advised there was one councilmember absent who would not benefit from the testimony that evening. Mayor Tussing said it would be appropriate to testify that they would like Council to approve the staff recommendation to withdraw the application for the zone change because they hoped a variance would be forthcoming. He said it was his understanding a variance had not even gone before the Zoning Commission.

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

(Councilmember Stevens left the room at 6:50 p.m.)

## **CONSENT AGENDA:**

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

**(1) New Rotating Assembly for the Alpha Laval DS-401 Centrifuge – Wastewater Plant.** (Opened 2/12/08) Recommend Alpha Laval, Inc, \$210,000.00.

**(2) Scoreboard at Billings New Baseball and Multi-Use Stadium.** (Opened 2/5/08) Delayed from 2/11/08. Recommend Sign Products, Inc., \$189,253.00. **APPROVED.**

**(3) Revolving Door Replacement for Billings Logan International Airport.** (Opened 2/12/08) Recommend General Contractors, Inc., \$526,183.00.

**(4) 2008 Miscellaneous Improvement Projects – Airport.** (Opened 2/12/08). Recommend delay of award until 3/10/08.

**B. Change Order #3,** New Baseball and Multi-Use Stadium at Athletic Park, Langlas & Associates, Inc., decrease of \$21,860.00.

**C. Professional Services Contract** for Mixing Zone/TMDL Study, Wastewater Plant, Great West Engineering, \$182,000.00.

**D. Professional Services Contract** for Water Treatment Facility L-Structure Improvements, HDR Engineering, \$206,743.00.

**E. Contract** for MT Department of Public Health and Human Services funding for a Housing First Project, CDFA 10.561, \$300,000.00.

**F. Utilities Agreement and City/State Storm Drain Agreement** with MT Department of Transportation for W.O. 03-25, Rimrock Road Construction from Shiloh Road to 54<sup>th</sup> Street West, Utilities Agreement - \$49,273.64 cost to the City; Storm Drain Agreement - no cost to the City.

**G. Amendment #1, Airport Restaurant and Lounge Concession Agreement,** Air Host Billings, Inc., extending agreement until 10/31/2014, approximate \$105,000 annual revenue.

**H. Amendment #3, Scheduled Airline Operating Agreement and Terminal Building Lease,** United Airlines, \$10,207.56 annual revenue.

**I. Approval** of west end hangar ground lease with Brian Taylor, Lot 14, 20-year lease, \$1,531.12 first year revenue, subsequent years adjusted by CPI.

**J. Acknowledge receipt of petition to vacate** a portion of alley within Block 261, Billings Original Townsite, generally located between North 19<sup>th</sup> and 20<sup>th</sup>

Streets and 4<sup>th</sup> and 6<sup>th</sup> Avenues North, Turnbull ITC LLC, owner and petitioner; and setting a public hearing for March 24, 2008.

**K. W.O. 05-20, Aronson Avenue Extension Right-of-Way Acquisition:**

- (1) Tract 1B of Amended Tract 1, C/S 2055, Best Development Corporation, Inc., \$0.00.
- (2) Tract 2B of Amended Tract 2, C/S 2592, Harry and Sara Jo Axline, \$11,340.00.
- (3) Lot 5B of Amended Lot 5, Block 16, Hilltop Subdivision, 2<sup>nd</sup> Filing, Richard L. and Patricia M. Nixon, \$0.00.

**L. Street Closure:** St. Vincent's Health Care Foundation "World Water Day – Walk for Water", March 29, 2008, 8:00 a.m. to 12:00 noon, commencing at the Student Union Building at MSU-B, west on Marbara Lane, south on Virginia Lane, west on Highland Park Drive, south on Raymond, west on Poly Drive, north on Upper Highwood Drive, east on Park Lane, south on Virginia Lane, across the MSU-B campus, through the North 27<sup>th</sup> Street Tunnel, around Mountain View Boulevard, through the North 27<sup>th</sup> Street Tunnel, and back to the Student Union Building.

**M. Acceptance and approval of donations:**

- (1) Donation from Mr. Dave Pauli, Regional Director, The Humane Society of the United States, Northern Rockies Region, toward the establishment of a dog park, \$1,000.00.
- (2) In-kind donation from Tell Net Systems for installation of upgraded wiring for voice and data networking infrastructure at the New Baseball and Multi-Use Stadium, \$7,920.00 value.

**N. Approval** of pre-application for U.S. Department of Commerce – Economic Development Administration Grant for Public Works and Economic Development Facilities Program, up to \$350,000.00.

**O. Resolution of Intent #08-18678** to adopt the North Park Neighborhood Plan, setting a public hearing date for March 10, 2008.

**P. Second/final reading Ordinance #08-5454** expanding the boundaries of Ward 1 to include recently-annexed property in Annex #08-02: an approximate 54-acre parcel described as Tract 2-B-1, C/S 1121; King Business Park LLC, Richard Dorn, Samuel Rankin, and Hannah Elletson, owners.

**Q. Preliminary Plat** of Amended Lot 3B, Block 14, Sunnyside Subdivision, 3<sup>rd</sup> Filing, generally located on the northeast corner of the intersection of North 23<sup>rd</sup> Street and 10<sup>th</sup> Avenue North, conditional approval of the plat and adoption of the Findings of Fact.

**R. Final Plat** of Trailshead Subdivision.

**S. Final Plat** of E.D. King Subdivision, 2<sup>nd</sup> Filing.

**T. Bills and Payroll.**

- (1) January 25, 2008
- (2) February 1, 2008
- (3) September 1 – September 30, 2007 (Municipal Court)
- (4) October 1 – October 31, 2007 (Municipal Court)
- (5) November 1 – November 30, 2007 (Municipal Court)
- (6) December 1 – December 31, 2007 (Municipal Court)

**U. Dedication of Right-of-Way Easement** for Ironwood Estates, Subdivision, 2<sup>nd</sup> Filing. (added on that evening)

Councilmember Clark separated Item 1A2; and Councilmember Gaghen separated Item Q.

Councilmember Veis moved for approval of the Consent Agenda with the exception of Items 1A2 and Q, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved 9 to 0. (Councilmember Stevens was out of the room at the time of the vote.)

Councilmember Veis moved for approval of Item 1A2, seconded by Councilmember Ruegamer.

Councilmember Clark made a substitute motion to delay Item 1A2 for two weeks, seconded by Councilmember Gaghen.

(Councilmember Stevens returned to the room at 6:54 p.m.)

Councilmember Clark said the three options had been brought before the Steering Committee with no time allowed to look at them. He said there would be a special meeting the next day so they could take more time looking. Councilmember Clark said he did not feel the recommendation was the right scoreboard.

Councilmember Veis asked staff if the item could be delayed for two weeks and still be within the bid rules. Parks Director Mike Whitaker advised he had a concern from a timing perspective. He said they were on a very tight time schedule, and he did not know for sure if the scoreboard could be put in place on time unless it was acted on that evening. Mr. Whitaker advised Paul Cox from Sign Products was available to answer questions. Mr. Whitaker asked Mr. Cox if the scoreboard would be in place if Council delayed for two weeks. Mr. Cox advised most of the scoreboard components were electronics, and they had asked the manufacturers to give them timelines for the parts. He said the portion being manufactured in Billings would be no problem, but he did not want to put the electronic components behind schedule. He said he was also concerned about the \$500 a day penalty if the scoreboard was not installed by the required date.

Councilmember Clark asked Mr. Cox if two weeks would be enough to put them behind and into the penalty phase. Mr. Cox said it would.

Councilmember Ulledalen asked Councilmember Clark if they could still work on it the next day if Council approved it that evening. Councilmember Clark said it

would change the amount of the bid by a slight amount if they went to a different sign. Councilmember Clark said it was the cheapest one and did not have the video capabilities. He said it was his personal opinion they had promised the citizens it would have one. Councilmember Clark said it had been brought up at their Tuesday meeting, and they were asked to approve one of the three bids after a short, five or six minute discussion. He said the cheapest bid was picked, and he did not think it was the right one.

Mayor Tussing asked Councilmember Clark if video capability could be added later. Councilmember Clark said it could be added in the future at a higher cost.

Councilmember Gaghen asked if it would be similar to the price of the \$500 a day penalty. Mr. Cox advised when the manufacturers made the product it would take the same amount of time for all three bids. He said as far as the cost of going back at a later date, the unit would need to be completely removed and a new one installed.

City Administrator Volek advised a video component would require a video crew on-site shooting segments to go up on the board. She said currently the sign could use photographs but not live videos. She said neither the City nor the Mustangs were prepared to add staff to work the video portion.

Councilmember Astle asked if the three bids were for the same specifications. Councilmember Clark advised the bids were for three different scoreboards. He said there was a cheaper board, a medium-priced board, and a higher-priced board. Councilmember Astle asked Mr. Cox if they bid on all three. Mr. Cox said there was a base bid with three alternates.

Councilmember Ruegamer echoed City Administrator Volek's comment about additional staffing concerns.

Councilmember Veis asked staff if the liquidated damages clause could be delayed if action was delayed for two weeks. Attorney Brooks said the City could waive the liquidated damages for a certain delineated period of time.

City Administrator Volek pointed out there had been other occasions with the project where the City had been asked to waive liquidated damages in consideration of cost cuts, and Council had chosen not to do so. She said she was a little concerned about the precedent it would set.

Councilmember Pitman asked for the cost difference and asked Councilmember Clark which alternate he preferred. Councilmember Clark said he preferred at least Alternate #2.

Councilmember Ruegamer asked Mr. Cox if the scoreboard could be up and running by July 1<sup>st</sup> if the item was delayed two weeks. Mr. Cox said a two-week delay could delay the installation.

Councilmember Stevens asked if the recommendation was for Alternate #2. Mr. Whitaker advised the recommendation was for Alternate #1. Councilmember Stevens commented there was almost \$150,000 difference between the two bidders, and asked why they were wanting to delay it.

Councilmember Clark said each bidder had three alternate bids, and the lowest bid was taken because they were told it could be upgraded in the future. Councilmember Clark said it was his opinion the future upgrade would cost more

money because all of the electronics already paid for would need to be replaced with new electronics.

City Administrator Volek clarified that Sign Products Inc. was the low bidder on the base bid and all three alternates, so there would not be a change of companies, just an upgrade to another alternate.

Mr. Whitaker advised the recommendation was for Alternate #1. He said the only difference between the base bid and Alternate #1 was a small reader board at the very bottom that would be operated by the Parks Department to promote other events at the stadium. Mr. Whitaker said the main difference of Alternate #2 would be rotating side panels on both sides that the Mustangs could use for advertising, and the main difference of Alternate #3 would be the live stream video that could be projected onto the scoreboard.

Councilmember Stevens asked who would receive the revenue from the advertising. City Administrator Volek said the Mustangs would receive the revenue. Councilmember Stevens asked if the City would pay an additional \$40,000 so the Mustangs could receive the revenue from the advertising. Ms. Volek said that was her understanding. Ms. Volek advised staff recommendation was for Alternate #1 without the panels. She said Mr. Whitaker had just informed her that the advertising revenue was not part of the Mustangs Agreement, so the City would receive the revenue. She said the Mustangs Agreement was also on the agenda that evening so revisions could be addressed at that time.

Councilmember Ulledalen asked if the side panels could be added at a later date. Mr. Cox said they could. He said new wires would need to be run from the scoreboard to the press box. He said there would be savings if it was all done at the same time.

Councilmember Astle confirmed that Alternate #3 was the streaming video. Mr. Whitaker said it was the streaming video but did not include the side advertising. Councilmember Astle asked if the advertising could be added later. Mr. Whitaker said it could.

Councilmember Veis asked Mr. Whitaker for the original budgeted amount for the scoreboard. Councilmember Clark advised the scoreboard was an add-on item and not in the original bid.

Mr. Whitaker showed the original budget. He said when considering the federal earmark, they would be in the black \$278,000. He said there were some possible future expenses. He said if \$189,000 was spent for Alternate #1, they would have a total fund balance of approximately \$6,000.

Councilmember Veis asked if the project would be under funded if they chose Alternate #3. Mr. Whitaker said that was correct. He said he budgeted the worst case scenario with some of the figures, and some of the expenses could be less. He said the sidewalks could be done for less in the spring.

Councilmember Ruegamer asked Mr. Cox if Alternate #3 came with videos. Mr. Cox advised it had the capabilities of video. Councilmember Ruegamer asked if cameras had to be purchased and people needed to be hired to run the cameras if the video was used. Mr. Cox said that was correct. Councilmember Ruegamer asked if it was like the University of Montana's scoreboard where commercials and ads could be shown. Mr. Cox said that was correct.

City Administrator Volek said she would like to point out to the Council that the agreements made with the two primary sponsors of the board, Wendy's and First Interstate, said they would be the predominant advertising in recognition of each of their half million dollar donations, and anything else would remain smaller.

Councilmember Gaghen asked if the sponsorship ads on Alternate #2 would be smaller, and asked Mr. Roller, who represented the Mustangs, if there was a projection as to how much income would be generated. Mr. Roller advised they survived off of advertising. He said revenue projections had not been set at that point, and they would not be selling advertising until they knew the scoreboard was in place.

Councilmember Stevens asked Mr. Roller if they were expecting to receive the revenue. Mr. Roller said they did not expect anything at that point.

On a voice vote, the substitute motion failed. Councilmembers Pitman, Stevens, Veis, Ruegamer, McCall, Ulledalen, Astle, and Mayor Tussing voted 'no'.

On a voice vote, the original motion was approved. Councilmembers Gaghen and Clark voted 'no'.

Councilmember Veis moved for approval of Item 1Q, seconded by Councilmember Gaghen. Councilmember Gaghen said she had a brief change to one of the words. She said although it was North 23<sup>rd</sup> Street, 10<sup>th</sup> Avenue South was indicated throughout the documents; and it needed to be modified to show 10<sup>th</sup> Avenue North.

Mayor Tussing asked Attorney Brooks if an amendment needed to be made or if Councilmember Gaghen was just pointing it out. Attorney Brooks advised pointing it out was sufficient to correct it, but it could be included in the motion.

Councilmember Veis said he would move to include in his motion the updates Councilmember Gaghen recommended, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.

## **REGULAR AGENDA:**

**2. BALLPARK AGREEMENT WITH BILLINGS MUSTANGS, Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** City Administrator Volek advised the item was a 10-year agreement with the Billings Mustangs for the operation of the new ballpark. She said the dollar amount to be contributed by the Mustangs was not through negotiation but was set by federal Internal Revenue Service laws limiting the amount of money that could be donated by business to the stadium and still retain the tax advantages of the bonds. She said if the City were to demand a larger amount of money, the \$30,000 proposed on an annual basis as revenue over the 10-year life of the contract could put the tax status of the bonds in jeopardy. Ms. Volek advised the amount was the recommendation of the City's bond counsel. She said the contract was a bit different from what was originally anticipated in that it called for the ballpark to operate the stadium during the period of time in which games were being played by the Mustangs, the American Legion, and MSU-B. She said the remainder of the time, and 15 dates during the season, the City would be

responsible for the management and maintenance of the ballpark. Ms. Volek advised a copy of the agreement was in front of Council, and she was prepared to answer any questions.

Councilmember Veis referenced Section 1. Facility. of the Agreement and asked if the Ballclub would have any right or interest in the name of the facility. Ms. Volek advised the naming right of the ballpark would go to support the bonds that were issued separately and being paid for by the donor. Ms. Volek said the agreement should read “shall not have any right or other interest in the name of the Facility” and said she did not realize there was a typo. Councilmember Veis asked if the Ballclub had the ability to assign names to different parts of the facility. Ms. Volek said that had not been discussed, but she believed they did. Councilmember Veis asked if that revenue would go to the City or to the Mustangs. Ms. Volek said the revenue would go to the Mustangs. Ms. Volek referenced Section 5.2, (1) of the agreement and said the Ballclub could name parts of the facility but not the facility itself. Councilmember Veis asked about the City’s compelling interest in entering into a 10-year agreement. Ms. Volek advised the 10-year period contemplated the fact that bonds had been sold for a 20-year period. She said two, 10-year periods made it more likely they would continue to have an occupant in the stadium while the bonds were being sold. She said there had been some discussion of a 2-year or 5-year period, and the 2-year period would be a terrible burden on a very limited staff in Parks, Administration, and the Legal Department. She said if the agreement was negotiated every two years, it would take up an enormous amount of staff time. Ms. Volek said the minimum period would be five years, but the City preferred ten years. She said it was her understanding the Professional Baseball Association preferred ten years. Councilmember Veis asked how the City would insure they would continue to have an occupant in the facility. Ms. Volek said there was language included to that affect, and she recognized it was not as strong as the Council would like. She said the Ballclub agreed to occupy and not leave without prior notice to the City during the life of the contract.

Councilmember Gaghen said Section 9.5 indicated either party could request an accommodation to discuss issues. City Administrator Volek referenced Section 8.2, Covenant not to relocate, which said the Ballclub agreed to schedule and play its home games at the Facility during the entire term of the agreement, and provided the Facility continued to meet or exceed all applicable standards of professional baseball, covenanted not to relocate the playing site of its home games without the prior written consent of the City.

Councilmember Ruegamer said the Mustangs had no other place to play in Billings; so as long as they were in Billings, they would want to be in the new stadium. He said if they went out of business, the agreement would be no good.

Councilmember Stevens asked how “Facility” was being defined. She asked if it was just the building or the whole block. She said the reason she was asking was because in Section 1.1, it stated the name of the Facility should be “blank”. She said there were a number of conversations in the community trying to keep the Cobb Field name. City Administrator Volek advised she had discussions with Mr. Dehler earlier that day. She said his preference would be that the ballpark portion be called Dehler Park, but he was agreeable to add an additional piece at the end

such as Athletic Field or Cobb Field. Ms. Volek said it was her understanding it would be discussed at a special meeting of the Steering Committee the next day. Ms. Volek said she anticipated processing the request for the naming rights on the March 24<sup>th</sup> agenda.

Councilmember Clark advised that originally the contract was going to be for the whole block but it was sidetracked along the way. He said the contract was for inside the fence and the actual ballpark portion, not the landscaping and the sidewalks outside of the fence.

Councilmember Veis asked Ms. Volek how the revenue for skyboxes would be controlled and who would receive it. Ms. Volek said the skyboxes had been discussed on several occasions, as well as the community room. She said at that point, there were no plans for a set of skyboxes; although the footings were constructed as part of the original facility work. Ms. Volek said she believed whoever arranged for the financing of the skyboxes would obtain the revenue, but she cautioned that the revenue from the first few years the skyboxes were in operation would most likely go to paying off the skybox construction. Councilmember Veis asked how much more revenue could be generated from the skyboxes if the City had already reached the maximum amount allowed. Ms. Volek said she would need to double check with bond counsel, and asked Attorney Brooks for his comments.

Attorney Brooks said he was not an IRS lawyer and would be happy to talk to the City's bond counsel if it was a critical issue for the Council.

Councilmember Veis said there was no framework in the agreement for how it would be handled, so the agreement would need to be mutually amended.

Councilmember Clark said it had been talked about and purposely left out because there would have to be a separate contract for the skyboxes if they were built. Councilmember Clark said the Ballclub could not put in skyboxes and start renting them out because it was City property.

Councilmember Veis referenced Section 3.4. He said the agreement indicated the Mustangs controlled the facility, and they worked with MSU-B and the Legion to use the facility. He asked what ability MSU-B and the Legion had to come to the City if they did not feel they were being treated well by the Mustangs organization.

City Administrator Volek advised Section 3.9 City Approval of other Use Agreement/Contract Forms, indicated all the forms and rates applicable to users of the Facility for baseball and baseball-related events were subject to prior recommended approval by the Park and Recreation Advisory Board and final approval by the Mayor and City Council. Ms. Volek said she had an earlier discussion that day with Mr. Roller with regard to Section 5.5 Pricing, which indicated the Ballclub had the exclusive right and authority to determine and set reasonable prices and lease and rental rates for admission, concessions, advertising, sponsorships, etc. She said it appeared to her and Mr. Roller that the two provisions were somewhat in conflict. She said Mr. Roller's team's attorney was out of town, and it would be an issue that would need to be clarified.

Councilmember Veis asked if Sections 3.4 and 5.5 were in conflict with each other. Ms. Volek said it could be interpreted as a conflict. She said she believed it

was the intent of the negotiating committee on the City's behalf that there would be a review of rates and the agreements between the Ballclub, MSU-B, and the American Legion. She said it would be a review only and after that, it would be a working arrangement between the two clubs in which the City would not be a participant. Councilmember Veis asked if there would be an opportunity to work out the differences in the Sections if they agreed to the agreement that evening. Ms. Volek advised they could hold another meeting and bring an amendment back to the Council.

Councilmember Veis said Section 3.6 indicated the Mustangs would give the City the ability to use the stadium after they had used it. He said it was the City's facility and asked if it should not be the other way around. Ms. Volek said a study was conducted nationally that revealed when the Ballpark set the scheduling, the Ballpark controlled the dates; and when the City set the scheduling, the City controlled the dates. She said there was a modified arrangement in which the City controlled the non-baseball events, and the Ballclub controlled the baseball-related events. Ms. Volek advised the Baseball Club had agreed to give the City 15 days during the baseball season, which generally ran from March to September. She said there were three clubs scheduling events not only on their own schedule but to meet the playing arrangements with other clubs. Ms. Volek said she felt it would be very difficult for the City to do all of the Ballclub scheduling. Councilmember Veis asked if the City was guaranteed any weekend dates and asked if a certain amount of Saturdays or Sundays could be added into the contract. Ms. Volek advised the number given the City included some Saturdays and Sundays. She said an amendment could be made to include weekend dates, but it would be difficult to predict a guaranteed number.

Councilmember Veis asked for further comment on bond counsel's strict adherence to the \$30,000 fee the City could generate. Ms. Volek advised the amount represented 10 percent of the total value of the bonds, which was \$12.5 million over the 20-year life of the bonds. She said the City could not take donations that totaled more than \$1.25 million over the lifetime. She said the City had to be very cautious, and had come pretty close to that number with current donations. Ms. Volek said bond counsel was asked to review the number, and it was her indication it would be an acceptable number and still keep the bonds tax-exempt. She said the bonds had been sold on a tax-exempt basis and if they were no longer tax-exempt under IRS rules, the City would have some very seriously upset bond holders who would probably take legal action.

Councilmember Clark advised the committee had spoken with bond counsel on several occasions; and every time they talked to her, she came up with the same answer. Councilmember Veis said as long as the City had bond counsel, there was no reason to bring it to anyone else.

Councilmember Veis asked why fireworks were being allowed when they were not allowed in the rest of the City except at Stewart Park. City Administrator Volek said the fireworks were allowed only under the rules of the City. She said there might be an occasion where they could convince the Fire Department otherwise.

Councilmember Stevens moved for approval of the Operation and Use Agreement with the Mustangs, seconded by Councilmember Ruegamer.

Councilmember Veis moved to amend the agreement to make it a 5-year agreement, seconded by Councilmember Pitman. Councilmember Veis said ten years was too long because there were several items in the agreement that needed addressed and in ten years there would not be a lot of remedies, especially since it would have to be mutually agreed upon to re-open it.

Councilmember Ulledalen said he could not support the amendment. Councilmember Clark asked what Councilmember Veis thought about changing the section so at the 2-year point either group could ask for reconsideration. Councilmember Veis said he was sure the Mustangs wanted to stay and play, but it did not mean they would not be gone in two years.

Councilmember Ruegamer said putting a 2-year or 5-year negotiation period would not make it last any longer. He said the City knew it was "plowing new ground" and the Mustangs would have things they wanted changed, as well. He said it would not be a one-way street. Councilmember Ruegamer said he would like to see either side open it up the first two years so the contract could be amended to fit both sides and everyone would be happy.

Attorney Brooks said it could be done that way through negotiation. He said staff could go back to the Mustangs to see if they would be agreeable to an amendment providing a shorter-term mutual, or unilateral, request to review the contract after two years or seasons.

Councilmember Ruegamer asked Mr. Roller to address any problems he thought it might cause. Mr. Roller advised they relied on 160 other minor league baseball teams throughout the country and minor league baseball itself to guide them. He said it was an animal they did not have their arms around either, and Ms. Volek and her staff had been very, very good in the negotiation. He said what they were hearing from both Pioneer League and Minor League Baseball was that they preferred at least a 10-year contract. He said it would be faith on their side that they were not going anywhere. He said they wanted to sign a 20-year contract to establish the faith that they were committed to Billings. Councilmember Ruegamer asked Mr. Roller if it would be acceptable to them to be able to re-open the 10-year contract within the first two years so either side could iron out any problems. Mr. Roller said they went to minor league baseball legal counsel, who told them they would basically have a 2-year contract. Mr. Roller said he had told Ms. Volek and staff they had no problem opening up the contract at any time the City wanted to open it. He said at some point somebody had to be trusted.

Councilmember Gaghen asked Mr. Roller how long the City of Billings and the Ballclub had been together. Mr. Roller said the Ballclub had been in Billings since 1948. Councilmember Gaghen said that length of time said something about the commitment of the organization to the City.

Councilmember Veis said it "gave him great pause" to hear Mr. Roller say he did not have his arms around the agreement.

On a voice vote, the amendment to make the contract a 5-year agreement failed. Councilmembers Gaghen, Ruegamer, McCall, Ulledalen, Astle, Clark, and Mayor Tussing voted 'no'.

Councilmember Veis moved to amend the agreement to eliminate the ability to have fireworks in the ballpark, seconded by Councilmember Stevens. Councilmember Veis said fireworks were not allowed elsewhere, it was close to a residential neighborhood, and he felt it would be better if there were no fireworks.

Mayor Tussing asked Attorney Brooks if the same permit process that Stewart Park and Harvest Church followed would be required. Attorney Brooks said that was correct.

On a voice vote, the amendment to eliminate the use of fireworks failed. Councilmembers Gaghen, Pitman, Stevens, Ruegamer, McCall, Ulledalen, Astle, Clark, and Mayor Tussing voted 'no'.

On a voice vote, the original motion was approved. Councilmembers Veis and Pitman voted 'no'.

**3. MAINTENANCE AND TRANSFER OF RIGHT-OF-WAY AGREEMENT for the Shiloh Road Corridor between Montana Department of Transportation and City of Billings. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** Public Works Director David Mumford said the Montana Department of Transportation (MDT) had requested an agreement with the City to take over ownership, which would allow the City to maintain Shiloh Road. He said currently Shiloh Road from Grand Avenue to south of Zoo Drive was owned by the State of Montana. He said there was a very old agreement with Yellowstone County for maintenance; but for the past ten years, the City of Billings had done the safety maintenance, such as striping and plowing in the winter. Mr. Mumford advised in order for the State to be able to move forward with the Shiloh Road project, the Federal Highway Administration required that someone take responsibility for maintenance of the project. He said because MDT had not been funded in the past to maintain it, they were not in a position to take over the maintenance after the road was build. Mr. Mumford advised the City of Billings brought a bill forward at the last legislative session that would allow cities to take ownership of a state road, and the bill was passed. Mr. Mumford advised they were recommending approval, but wanted the Council to understand it would cost more money to maintain the road than revenue received. He said the City received approximately \$40,000 a year in street maintenance fees for the property along Shiloh Road that was inside the City, and the road would cost considerably more. He said the City would also have a long-term obligation to overlay the entire road every 15 years that would not be funded and could cost close to \$3 million. Mr. Mumford said the road would be five-lane with landscaping and roundabouts that would be expensive to maintain. He said if the roundabouts were not built in concrete, they would need to be repaired on a much more frequent basis. Mr. Mumford said no other City had done it, so Billings would be breaking ground for other cities, and other cities would be watching to see how it worked.

Councilmember Stevens said the City would be doing it as a pre-requisite of getting the road built by the State. Mr. Mumford said that was correct. Councilmember Stevens said there would be no assurances that the roundabouts would be asphalt versus concrete so the cost was unknown. Mr. Mumford advised asphalt roundabouts were in the plans at that point. He said if money became

available, they would be built in concrete. Councilmember Stevens asked what assurances the City had that Shiloh Road would even be built. Mr. Mumford said they had the assurance that there was funding for part of it. He said the City of Billings and Yellowstone County had requested additional Federal Highway Funds to complete the road, but there was no assurance that the road would be fully funded. He said the agreement basically stated that the City would only take over ownership and maintenance of the portions that were constructed. Councilmember Stevens asked if the maintenance was taken over upon construction or immediately. Mr. Mumford said it would be taken over upon construction. He said they were presenting it early because until there was understanding of who would own the road, it would be hard to talk to the property owners about landscaping and a streetlight maintenance district.

Councilmember Ulledalen said he thought asphalt roundabouts would be a maintenance liability and asked if the City had any say about whether they were asphalt or concrete. Mr. Mumford said it was a budgetary issue. He said the State knew the City wanted them to be concrete, but it would depend on the budget. He said \$17 million additional funds had been requested above the \$28 million they already had. He said the cost of building the 4.5 mile project was well over \$40 million. Councilmember Ulledalen said there was a one-year warranty when the City did a road project, and the State did not require a one-year warranty on their projects. He said, in addition, the State was asking the City to absolve them of any liability after the project was completed. Mr. Mumford said under the State's construction program, they did not have a warranty period, so after the road was constructed and the surface chipsealed, the City would have ownership and the contractor would be absolved. He said the State asked that the City absolve them of any liability for design and construction, and the City legal staff advised that would not be in the City's best interest. He said the City Legal Department worked several weeks with the State, and the State agreed to remove it from the contract.

Councilmember Astle asked what would keep the City from pulling the roundabouts out if the State would not use concrete. Mr. Mumford said the right-away acquisition and the complete design included roundabouts. He said to go back and rebuild it would be very costly. He said converting a roundabout to a signalized intersection would cost approximately \$400,000 per intersection.

Councilmember Clark asked if more property would be required using straight-through intersections. Mr. Mumford said it would in some cases.

Councilmember McCall asked for the cost difference between asphalt and concrete. Mr. Mumford said it was several million dollars difference between the two processes.

Mayor Tussing asked if the State would build the road if Council did not approve the agreement. Mr. Mumford said the Federal Highway Administration required someone to take over maintenance responsibilities. He said the State owned the road but never funded the maintenance of it. Mayor Tussing asked why the City of Billings was the first entering into that type of agreement. Mr. Mumford said it appeared to be somewhat of a new State policy. He said because the State had never maintained the road, even though they owned it, they did not want to absorb the costs; which was why they were looking to local governments. Mr.

Mumford said no one had ever maintained Shiloh Road, which was why it looked like it did.

Councilmember Veis said, in a perfect world, MDT would step up to the plate and perform maintenance on the road. He said in order to keep the Shiloh Road project moving forward, the agreement was needed. He said if the City did not agree to the maintenance, the State would say they did not have the money in their maintenance budget, and the FHWA would not approve the project. Councilmember Veis said the agreement was a concession the City needed to make on Shiloh Road if they wanted to see it move forward. He said the other option would be to ask the legislature for funding for maintenance, which may or may not be successful.

Councilmember Stevens asked how the City would fund the maintenance. Mr. Mumford said it would be an issue. He said, even with the all property along Shiloh developed in the future, the City would still be short. He added part of the maintenance money would also be needed for maintenance of the internal roads of the subdivisions that were built. Mr. Mumford said the majority of maintenance costs were spent on commercial roads. He said Shiloh would have a fair amount of residential and commercial, so residential would help pay for some of the commercial road maintenance.

Mr. Mumford advised the long-term issue was that the City was falling behind in maintenance. He said the PAVER Program was approximately \$600,000 that year, and it should be at approximately \$1 million. He said costs were going up, and they were sliding backwards.

Councilmember Ulledalen asked if the costs would go down should the project not be completed as it was originally conceived. Mr. Mumford said that was correct. He said the City would continue to re-stripe and plow. He said he hoped the State would build the entire road, because he could not believe the residents would understand why it was built from Rimrock Road to Poly and Zoo Drive to Central, but the section in between was still two-lane and falling apart. Councilmember Ulledalen said it was an interesting Catch 22, and they needed to look at it as they went forward with future annexations.

Councilmember Ruegamer asked if there would be any way to create a road maintenance district like park maintenance districts to help pay for it. Mr. Mumford said the City Administrator had asked him the same question. He said his concern would be that Shiloh would be no different than Grand Avenue or King Avenue. He referenced the Knife River section south of King Avenue; and said it would be another 15 to 20 years before the gravel pits were annexed into the City. He said there were other segments of Shiloh Road that would not come into the City for a long time.

Councilmember Pitman moved for approval of the Maintenance and Transfer of Right-of-Way Agreement for Shiloh Road between the Montana Department of Transportation and the City of Billings, seconded by Councilmember Astle.

Councilmember Veis said it was not the perfect solution, but it was the solution to get them moving forward on Shiloh Road. He said they asked the

legislature for the ability to do it, so they needed to do it. He said he was not happy the way it came down, but it was the deal needed to keep moving forward.

Councilmember Ruegamer said he agreed with Councilmember Veis. He said he was really reluctant to support it, and it was just the State "holding our feet to the fire promising absolutely nothing but more costs." Councilmember Ruegamer said they really needed to lean on their legislatures next year to make sure it was done as well and quickly as possible.

Councilmember Stevens said she agreed, but the City was taking on an unfunded liability. She said she could not support it because it was not the right solution; and she did not like being held hostage. She said it would cost the citizens more money.

City Administrator Volek said she and Mr. Mumford had been discussing the possibility of persuading the MDT to include a warranty since the project had not been bid. She said they may have to enlist support of the delegation to encourage them to do so.

Councilmember Astle asked if the maintenance costs for plowing and striping was figured into the amount provided and asked how much was currently being spent. Mr. Mumford said less than \$40,000 was being assessed to the properties. He said it was a minimal effort at that point.

Councilmember Ulledalen said he felt the problem was not just with Shiloh but with other roadways. He said the City needed to look at how it maintained its other arterials, as well. Mr. Mumford said the section from Poly north had been rebuilt, and it was taking more effort to keep it up.

Councilmember McCall said she recalled, when they took it to the legislature, they acknowledged they would be taking over maintenance with the transfer. She said she felt it was not a good situation, but the State did do the transfer; and they needed to hold true to it. She said she agreed with Councilmember Ulledalen that they needed to come up with another plan, and she would support it.

Councilmember Ruegamer suggested having the delegation request concrete roundabouts when they requested the warranty. He said those two items would help ease the burden.

Councilmember Veis said the City ran into a similar situation on Zimmerman Trail when it was annexed into the city. He said it would be a problem the City would continue to run into, and he did not know if there was a great solution available.

Councilmember Ulledalen said another thing they needed to do was lean on MDT to make sure the roundabouts were concrete. He said it was critical.

On a voice vote, the motion was approved. Councilmember Stevens voted 'no'.

Mayor Tussing called a recess at 8:08 p.m. The meeting was called back to order at 8:19 p.m.

**4. RESOLUTION #08-18679 approving up to \$2,000 of council contingency funds for Branding Billings. Staff recommends approval.** (Action: approval or disapproval of staff recommendation.) City Administrator

Volek advised the County Commissioners had approved a like amount of money, which would be part of the overall effort to publicize the Branding effort. She said John Brewer from the Chamber of Commerce was in attendance and would be happy to answer any questions.

Mayor Tussing said he asked Attorney Brooks if he needed to recuse himself because he was on the committee. He said they came to the conclusion that unless someone had an objection, he had no personal interest in it.

Councilmember Gaghen moved for approval of the expenditure of up to \$2,000 of council contingency for the Branding Billings Program, seconded by Councilmember McCall.

Councilmember Ulledalen commented they talked about re-doing the City logo in their strategic planning process. He asked if there would be some design elements they could share or use as a result of the Branding Billings Program, and said he thought it was something they should ask for in the process.

On a voice vote, the motion was unanimously approved.

**5. RESOLUTION #08-18680 amending Resolution #07-18636 and amendment to the City of Billings/Downtown Billings Partnership Development Agreement allocating remaining funds in the 1976 downtown Tax Increment District. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** Assistant City Administrator Bruce McCandless told Council they had dealt with the issue in November of 2007. He said State law allowed the City to keep and use funds remaining in the tax increment district account for downtown development purposes at the sunset of the district if the funds were committed through a loan commitment, contract, or development agreement. Mr. McCandless advised the City entered into a development agreement with the Downtown Billings Partnership in November 2007 and adopted a resolution that named specific projects. He said, at that time, they had estimated \$2.5 million would be available for the projects. Mr. McCandless advised there had been some changes since November, and additional funds had become available. He said when the City last refunded tax increment bonds in 2000 or 2001, there was a bond reserve fund, and the fund was eliminated. He advised the former finance director failed to tell anyone that he had transferred a significant amount of money into the debt service fund. Mr. McCandless said when the district sunsetted, they would have one more tax collection in May, and they did not know at that time if the City would be able to keep the tax collections because they would come in after the sunset. Mr. McCandless advised it was determined the City would be able to keep the money, so the money sitting in the debt service account was now available for expenditure if the funds were obligated. Mr. McCandless advised another change was that the projects had become better defined, and that \$1.9 million would not be spent on the GSA project. Mr. McCandless said the original estimate was \$2.5 million. He said the bond reserve account of \$1.3 million and reduced costs in projects had increased the balance to \$4.9 million. He advised the Downtown Billings Partnership Board had recommended additional projects for Council's consideration. He said the Railroad Quiet Zone and the GSA Land Assemblage were included in the development

agreement approved in November. He said the dollar amount for the GSA project was different in that the amount was up to \$800,000.

Mr. McCandless advised the Partnership was asking the Council to consider the addition of projects in descending order starting with the Downtown Light District. He said the light district was on the agenda that evening with a recommendation to postpone or table for final action until the March 10<sup>th</sup> meeting. He said the City was proposing to create a downtown light district to replace present District 97, which would require a significant amount of capital construction to remove the NorthWestern Energy facilities and install city-owned facilities. He said after the capital costs were retired, the only ongoing costs for the property owners would be the maintenance and power costs. Mr. McCandless said the total project estimate was \$4.7 million, and the \$900,000 was being recommended by the Partnership Board to go toward some of the property owner costs.

Mr. McCandless said the second project was the ArtSpace Market Study. He said he could not tell Council a lot about it, but there were Partnership members in the audience that evening that could answer any questions.

Mr. McCandless said the Large Project Gap Funding Project was a program the Partnership had in place for several years. He said there were three large legacy projects identified several years back, and the Partnership was recommending the funds be reserved for one or more of those projects. He said if none of the three projects proceeded by the end of the current calendar year, the Partnership recommended that a 3-year Cooperative Security Program at \$252,000 be funded, and anything left over would go back into the light maintenance district. He said the resolution in front of them that evening continued the sunset for the tax increment district, specified the projects, and described the descending order. He said the development agreement with the Partnership reflected what he had just explained.

Councilmember Veis asked if the Street Conversion Project was no longer a priority for the Partnership. Mr. McCandless advised that staff had concerns about committing a large amount of money for a project that was currently poorly defined. He said they did not know at this time which streets would be converted, how much the costs would be, and how much the streets would be affected by the possible creation of the light maintenance district. He said the Partnership Board understood which was why they came back with alternate recommendations. Councilmember Veis asked to verify that if the Large Project Gap Funding at \$1.7 million did not have a development agreement by the end of the year, \$252,000 would be taken out of it for a Cooperative Security Program, and the balance would go toward paying for a portion of the street lighting district. Mr. McCandless said that was correct.

Mr. McCandless advised that Council had a couple of additional alternatives to consider besides the recommendation from the Partnership Board. He said the first alternative would be not to allocate or reserve the funds for tax increment district purposes and allow anything left in the account at sunset to go back to all of the taxing jurisdictions. He said that would mean \$650,000 to \$700,000 would go back to the City and be put in the different tax support funds, such as the general fund, public safety, library, etc.

Mr. McCandless said another alternative would be to use the entire remaining balance for the downtown light maintenance district. He said the project would cost \$4.7 million; with \$2 million of it being the City's portion of the cost. He said an advantage of the project versus what the Partnership was recommending, providing the Council approved the district, was that the funds would be committed quickly to the project. He said the City received indication from Bond Counsel that it would be difficult or impossible to sell bonds if it was backed solely by the street maintenance district assessments, which was the only known source of funding at that time. He said other funding would be helpful in getting the district created and paying the City's portion of the cost. Mr. McCandless said, in the street maintenance district and in the tax increment district, the payers were all the downtown property owners. He said in the tax increment district they were paying property taxes and in the light maintenance district they were paying assessments. He said either way, the assessments for the City portion of the costs would come from the source of property taxes or from the source of street maintenance district assessments if the bonding could be accomplished in that way. Mr. McCandless advised the only way to get the light maintenance district built that year would be to issue bonds for the entire amount. He said if additional dollars became available for the light maintenance district; the bonds could be called and paid off early. He said structuring bonds so they could be called within a year or two years of issuance could be problematic because bond purchasers liked to make long term investments.

Councilmember Veis asked if the \$4.7 million was currently in the CIP. Public Works Director David Mumford advised it was not. He said there was no funding currently available for the project, and they would have to bond for it unless funding was available through the TIFD remaining funds to help offset some of the costs.

Councilmember Clark asked how quickly the TIFD money would be available. Mr. McCandless advised bonding would only be required if the tax increment district funds were not used for the project. Mr. McCandless said they believed the \$4.9 million would be in the account at the end of the fiscal year. He said some of it had already been committed to other projects.

Mr. Mumford advised there would still be an SID on the property owners for a portion of the project. He said the costs would be very similar; including the cost of construction, operations, and maintenance, as to what was currently being paid to NorthWestern Energy for just the operation of the current system. Mr. Mumford advised the traffic signals in the downtown area were very old and needed replaced. He said instead of having all the poles where they were currently located, they would put decorative pedestrian scale lighting mid-block and move the large overhead lights to the signals to light up the intersections. He said the City would be absorbing more long term costs of operations and maintenance, and the cost to the property owners would be lowered.

Councilmember Veis asked Mr. McCandless if they would be making a commitment to move forward with the district if they went forward with the \$900,000 allocation. Mr. McCandless said he did not believe so. He said the tax

increment funds were intended to go for downtown improvements, and he believed as long as they were committed in March, they would be alright.

City Administrator Volek advised that Council still had the creation on the agenda that evening and if postponed, and it was possible that an adverse vote from the property owners would mean the district would not be created. She said they had worked very closely with the downtown property owners, and they were well aware of the scenario involving the \$900,000 and appreciative of it.

Councilmember Veis asked if the \$900,000 would be un-allocated and reverted back to the original jurisdictions if Council chose not to do the light maintenance district. Mr. McCandless said it would unless the Council reserved it for another eligible use through an amendment to the development agreement.

Councilmember Stevens asked if there was a new TIF District forming downtown that would include the Northern and the Babcock Building. Mr. McCandless said the proposal the Partnership was currently working on would include those properties in the expanded North 27<sup>th</sup> Street district. Councilmember Stevens asked if they could take the money now and apply it towards the lighting district. Mr. McCandless said if funding were to be used on one of the legacy projects, it would need to be done before the new North 27<sup>th</sup> Street district boundaries were expanded to include the other properties because money from one district could not be used to pay another district.

Councilmember Gaghen asked to hear more about the lighting district from either Steve Wahrlick or Greg Krueger because the balloting to the property owners and the explanations of why it was beneficial, not only for the downtown property owners but the entire community, was interesting to hear. Councilmember Gaghen said it would give a lot of clarity as to why the expenditure was worthwhile.

Mr. Wahrlick said he was the president of the Downtown Partnership and past president of the property owners. He said the costs to NorthWestern continued to increase even though the equipment had been paid for many times over, which was why they brought up the concept of creating a lighting district. He said in talking with Mr. Mumford, he was told the City needed to be protected because if they went through with the lighting district and if the costs went over, the City would be responsible. Mr. Wahrlick advised one of the concerns the property owners had was that all the other streetlights at City intersections were paid by the City. He said in the downtown district, the property owners paid for them. Mr. Wahrlick said they were looking to mitigate some of the costs, so they went to the Partnership and looked at TIF district funds to offset a portion of the downtown property owner's costs.

Councilmember Veis asked Mr. Wahrlick how he would see the \$1.5 million being allocated if the Large Gap Project did not go through. Mr. Wahrlick said it could go the City or it could go to the property owners. He said, as a downtown property owner, he would recommend splitting it. He said that way it would offset some of the City's costs and further reduce the property owner's costs. Mr. Wahrlick said, with the \$900,000, the cost for his specific property would go up about 15 percent. He said over a period of time with NorthWestern's costs increasing each year from 5% to 7%, it would balance out. He said he felt a split would be equitable.

Councilmember Gaghen asked Mr. Wahrlick for an estimated timeframe for responses from the property owners. Mr. Wahrlick said, given the fact that the resolution may be tabled until March 10<sup>th</sup>, they would not be known until mid April. He said there were approximately 350 property owners in the lighting district, and the property owners they had talked to about it were in favor of it. Mr. Wahrlick advised the vote that ultimately occurred with the property owners was a silent vote, and no response would be counted as a 'yes'. He said he was very optimistic it would pass, especially with the \$900,000.

Mayor Tussing asked staff if they would be "plowing" the same ground in the public hearing for Item 9. Mr. McCandless said it was possible they would be talking about the same issues.

Councilmember Veis asked if it was the last chance Council had to move it forward and if it could only be amended from that date forward. Mr. McCandless said the funds needed to be committed no later than March, and there were two meetings in March to work on it. Councilmember Veis asked if they could come back to the agreement and amend it in June. Mr. McCandless advised the district sunsetted in March, so further amendments after March would be questionable. Councilmember Veis asked if any money they did not allocate within the agreement would end up reverting back to the jurisdictions. Mr. McCandless said anything that remained in the account at the end of the fiscal year would go back to the taxing jurisdictions.

Councilmember Clark moved for approval of the resolution amending Resolution #07-18636, seconded by Councilmember McCall. On a voice vote, the motion was unanimously approved.

**6. 2008 ANNUAL BUDGET for Exchange City Golf Corporation. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** City Administrator Volek advised the item had been reviewed by City Council at the November 5, 2007, Work Session; and reviewed by the Park, Recreation and Cemetery Advisory Board on November 15, 2007. She said the PRC Board recommended the budget be adopted as presented. Ms. Volek advised staff was available for questions.

Councilmember Astle moved for approval of the Exchange City Golf Corporation 2008 Annual Budget, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

**7. PUBLIC HEARING AND RESOLUTION #08-18681 approving the FY09-FY13 Capital Improvement Plan (CIP); Equipment Replacement Plan (ERP); and Technology Replacement Plan (TRP) Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** City Administrator Volek advised the item had been reviewed by the City Council at a previous Work Session. She said staff was available to answer questions.

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

Councilmember Ulledalen moved for approval of Item 7, seconded by Councilmember Ruegamer.

Councilmember Ulledalen referenced the Equipment Replacement Plan and the Technology Replacement Plan. He said some of it was in Enterprise Funds, which was not an issue, and some of it was in the General Fund. He said they were committing a pretty substantial amount of spending and then diving into the budget process. He said if it followed what they had seen in prior budget cycles, they would get to the end of the budget process and have a deficit. He said they currently did not have reserves to fund the deficit. He asked if staff had the ability to go back and make adjustments if the budgets were approved.

City Administrator Volek advised the CIP Plan traditionally included two types of documents; one for items that were within the Enterprise Funds that were generally pre-voucherized and ready to be funded. She said they usually had CIP items that were approved as part of the CIP but were subsequently unable to be funded. She said they were simply recommendations. She said the funding in the Equipment Replacement Fund was set aside for several years in advance, so the money was available for the purchase of equipment. She said the funding was in place and very carefully scrutinized by staff to ensure a piece of equipment was not replaced until it was absolutely necessary. She said one department had already indicated they would not exercise its equipment replacement plan on several pieces of equipment because of budget constraints. Ms. Volek advised the TRP was a recommendation, and some items may not be followed up on. She said the budgets represented the ideal for spending, and individual departments may waive all or part of their funding to meet other commitments.

On a voice vote, the motion was unanimously approved.

**8. PUBLIC HEARING AND RESOLUTION #08-18682 amending FY08 Budget for Airport Capital Projects. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** City Administrator Volek advised Airport staff was available to make a presentation if the Council desired and was available for questions.

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

Councilmember McCall moved for approval of the resolution amending FY08 budget for Airport Capital Projects, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

**9. PUBLIC HEARING AND RESOLUTION creating SILMD 304 – Downtown Area. Staff recommends continuing the public hearing and delaying action until March 10, 2008. (Action: approval or disapproval of staff recommendation.)** City Administrator Volek advised there was no presentation. She said, because it was an advertised public hearing, the Council would need to open the public hearing and continue both the hearing and the item until the next agenda.

The public hearing was opened. There were no speakers.

Councilmember Gaghen moved to continue the public hearing and the agenda item until March 10<sup>th</sup>, seconded by Councilmember Ruegamer.

Councilmember Clark asked why they were postponing. City Administrator Volek advised they were not able to provide the property owners with the exact dollar amount until the Council acted that evening on the \$900,000 allocation. She said there would be a new notification sent to the property owners as a result.

On a voice vote, the motion was unanimously approved.

**10. (a) PUBLIC HEARING AND RESOLUTION #08-18683 creating SID 1383, Cherry Hills Road Improvements. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** City Administrator 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 Ruegamer moved for approval of the creation of Special Improvement District 1383, seconded by Councilmember Stevens. On a voice vote, the motion was unanimously approved.

**(b) PROFESSIONAL SERVICES CONTRACT for SID 1383, Cherry Hills Road - water, sanitary sewer, storm drain, curb and gutter, and street improvements, Engineering, Inc., \$119,562.41. (Action: approval or disapproval of staff recommendation.)** Councilmember Ruegamer moved for approval of the professional services contract for SID 1383, seconded by Councilmember Astle. On a voice vote, the motion was unanimously approved.

**11. PUBLIC HEARING AND RESOLUTION #08-18684 vacating portions of S. 24<sup>th</sup> Street, 4<sup>th</sup>, 5<sup>th</sup>, and 6<sup>th</sup> Avenues South, and alleys within Blocks 173 and 179 of Billings Old Town for a value of \$121,123.70; ConocoPhillips, petitioner. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** City Administrator 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 Veis moved for approval to vacate portions of S. 24<sup>th</sup> Street; 4<sup>th</sup>, 5<sup>th</sup>, and 6<sup>th</sup> Avenues South, and alleys within Blocks 173 and 179 of Billings Old Town, seconded by Councilmember Gaghen.

Councilmember Clark asked where the funds would go. City Administrator Volek advised they would go back into the Gas Tax Funds for other projects.

On a voice vote, the motion was unanimously approved.

**12. PUBLIC HEARING AND FIRST READING ORDINANCE expanding the boundaries of Ward II to include recently annexed property in Annex #08-05: property described as Lot 1, Sylvia Subdivision, 1094 Lincoln Lane, generally located on the west side of Lincoln Lane, north of the Target Shopping Center in Billings Heights, First Citizens Bank, owner and petitioner. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** City Administrator Volek advised there had been a presentation on the item at the last meeting, and staff was available for questions.

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

Councilmember Stevens moved for approval of Agenda Item #12, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

**13. FIRST READING ORDINANCE FOR ZONE CHANGE #831: A zone change from Controlled Industrial to Central Business District in an area with general boundaries from the east side of North 25<sup>th</sup> Street to North 20<sup>th</sup> Street, and the south side of 6<sup>th</sup> Avenue North generally south to the railroad right-of-way. Public Hearing was held on January 28, 2008; action delayed until February 25, 2008. Staff recommends withdrawing the application and allowing the Salvation Army to pursue the variance request. (Action: approval or disapproval of Staff recommendation.)** Planner I Dave Green explained the item was a council-initiated zone change to extend the Central Business District. He said after the January 28<sup>th</sup> Council meeting, the Salvation Army applied for a zoning variance, which was required for setbacks. He said they had also applied for a site development variance. Mr. Green advised the zoning application would go before the Board of Adjustment on March 6<sup>th</sup>. He said the site development included the parking variance. He said the parking requirements, as the building was presented, would be 163 parking stalls. Mr. Green advised they were able to provide 14 parking stalls. He said the parking lot of the existing Salvation Army building accommodated 53 vehicles. He said the current building had a requirement of 50 parking stalls, so there would be three available stalls that could be transferred. Mr. Green advised the Engineering Division would be forwarding a recommendation to the City Council on March 10<sup>th</sup> for denial of the site development variance.

Councilmember Clark asked how much time it would take to re-initiate if the variances did not pass. Planning Director Candi Beaudry advised there would be no penalty if it were withdrawn. She said the Salvation Army or the Council would have to wait four months after the date of withdrawal to resubmit, and there would be another two months for processing, for a total of six months.

Mayor Tussing asked if a different applicant could submit earlier. Ms. Beaudry said it did not matter because the application ran with the property.

Mr. Green pointed out the Engineering Division was recommending denial, but the City Council still had the option to approve it.

Councilmember Veis asked Mr. Green why the Engineering Division was recommending denial of the variance. Mr. Green said he was told because there was such an extreme difference between the number of parking stalls available versus the number of parking stalls required.

Public Works Director David Mumford added it was also self-imposed, because the Salvation Army had not looked at how they could change the location or what else they could do. Mr. Mumford advised staff had to be consistent.

Councilmember Stevens asked Attorney Brooks if it would be considered spot zoning since the zone change was only benefiting one landowner and not being done in conformance with a master plan. Attorney Brooks said it might be.

He said there were three elements required for spot zoning. Councilmember Stevens asked for the three elements, and Attorney Brooks said he would look for them. Councilmember Stevens said she had heard a rumor the Salvation Army had owned property in the area but sold it; and the property could have been used to build parking. She said she heard they sold the property to help finance the youth center construction.

City Administrator Volek said it was her understanding that there was land adjacent to the property that was sold by the Salvation Army for a carwash.

Mayor Tussing asked Major Bottjen to comment.

Major Bottjen advised there were 12 lots being discussed, eight of which they owned. He said they had previously owned the four lots the carwash was currently on. He said he had been in negotiations and had a verbal agreement with the seller to buy the four lots next to the Salvation Army. He said that night the carwash owner put a deposit down on those four lots, and the seller called him the next day and told him the four lots had been sold. Major Bottjen said he then negotiated with the purchaser and traded the four lots at the other end with him for the four next to the Salvation Army because he did not want a carwash in between the Salvation Army and the Youth Center. He advised Mr. Musgrave was kind enough to trade the lots with the Salvation Army. He said there was no cash involved, and it was a straight-across exchange so the Salvation Army would have contiguous lots.

Mayor Tussing asked Major Bottjen if he had the same amount of land. Major Bottjen said they had exactly the same amount of land. He said there was no room to put a building on the site with the required parking the current zoning was asking for. He said it was his original understanding there would not be excessive parking requirements.

Attorney Brooks advised the Montana Supreme Court stated that the three elements "usually" required for spot zoning were (1) whether or not the requested use was significantly different from the prevailing use in the area; (2) whether the area in which the requested use or zone change was to apply was a small, although not solely in physical size, type of area; and (3) whether or not the requested change was more the nature of special legislation designed to benefit one or a few landowners at the expense of the surrounding landowners or at the expense of the general public.

Councilmember Astle asked Mr. Mumford what would happen if the Council approved the parking variance and the Salvation Army sold the building to someone else. Mr. Mumford said the new owner would have to park on the street or in the neighborhood because there would be no parking onsite. Mr. Mumford advised the parking requirement was based on square footage and use of the building and defined by what was needed for a business to operate efficiently without being detrimental to the neighborhood and other areas.

Councilmember McCall asked to verify with Major Bottjen that \$2 million had been set aside for the project. Major Bottjen said the amount was \$2,150,250.

Councilmember Stevens asked who would be responsible to provide parking if the Central Business District zoning went through. Mr. Mumford advised

businesses were not required to provide parking in the Central Business District. He said the City normally would provide the parking.

Councilmember Clark asked Mr. Mumford if the Central Business District zoning would not only benefit the Salvation Army but anybody between the downtown from the east side of North 25<sup>th</sup> to North 20<sup>th</sup> and along 6<sup>th</sup> Avenue. Mr. Mumford said that was correct.

Councilmember Veis said former Councilmember Brewster had indicated to Council when he brought the initiative forward that he had visited with the Planning Department about the particular problem, and that the Planning Department had advocated the change to the Central Business District zoning versus the variance. He asked Ms. Beaudry if that was her recollection.

Ms. Beaudry said their recommendation for the zone change was for the benefit of the zone change itself, and they did not consider the variance. She said at that time they did not know about the variance and the parking requirements. She said they looked at the properties involved in the expansion and thought most of them would be brought into conformance with the zone change.

Councilmember Veis verified with Ms. Beaudry that they looked at it from a zone change matter only and not as a possible variance. Ms. Beaudry said that was correct.

Attorney Brooks advised there was a possibility that they could have a deed restriction that would allow approval of the variance only as long as the property was used for a particular purpose. He said the City had never done it before, but staff could look into it.

Councilmember Gaghen said she would recommend looking into it. She said it could make it far more practical with respect to the future.

Councilmember Veis verified that it would not be completely out of the ordinary for Council to delay action for another 30 days. Attorney Brooks said that was correct. He said it was a situation where the code stated that one of the options Council had for a zone change, or a special review, was to deny the application for a period not to exceed 30 days. Attorney Brooks said, in the past, Council had allowed the decision to go beyond 30 days with the agreement of, or at the request of, the zone change applicant. Attorney Brooks reminded Council they were the applicant.

Councilmember Clark asked how the deed restriction would work if the building was already built. Attorney Brooks advised the variance requirement, or the lack of one, would dictate the deed restriction and not the construction. Councilmember Clark asked how it would be enforced if the Salvation Army built a 3-story building and then sold the building. Attorney Brooks advised it would be up to the future landowner. He said if the future landowner planned to make use of the property that required additional parking spaces, they would have to come back and apply for a parking variance or modify the property to comply with the parking requirements. Attorney Brooks said staff would need to research it because the City had not done anything like it before.

Councilmember Astle said he recommended withdrawing the application and allowing the Salvation Army to pursue the variance.

Mayor Tussing said, if they postponed the item for another 30 days, it would be debatable if it would set a precedent, especially since they were the applicant. He said if the Salvation Army came back on March 10<sup>th</sup> and did not get the variance, they could come back in 30 days and ask for the zone change again. He said if it was withdrawn, it would take a minimum of four months to come back for a zone change.

City Administrator Volek advised if Council extended the Salvation Army 30 days and the variance was granted, the item would be declared moot. She said if it was carried forward for 30 days and the variance was denied on March 10th, the item could come back on March 24<sup>th</sup> for full consideration.

Councilmember Stevens asked Major Bottjen if they had considered the possibility of underground parking. Mr. Bottjen said they had not.

Councilmember Veis moved to delay Item 13 until the March 24, 2008, meeting, seconded by Councilmember Clark.

Councilmember Veis said he felt it was the best option.

Councilmember McCall said she would like to make the public aware that she took part in the January 29<sup>th</sup> meeting at the request of Yellowstone County Commissioner Bill Kennedy. She said several stakeholders were at the meeting, and she discussed the project. She said she provided a very detailed e-mail to staff and councilmembers about the meeting. Councilmember McCall said she was very much in support of the project but was not advocating in any way for the project outside of her discussions at the council meeting. She said it had been questioned if she could vote and asked for Attorney Brooks' opinion. Attorney Brooks said as long as she had shared the information that was provided to her with the Council and the public, she could vote. He said if she had advocated for it and made previous assurances that she would lend her support, he recommended she recuse herself from the vote and discussion.

Mayor Tussing asked Attorney Brooks if he was confident that a delay would not set a precedent because the Council was the applicant for the zone change. Attorney Brooks said he could not recall the specific zone changes, but Council had, from time to time, granted more than a 30-day delay or more than a 30-day continuance for a variety of reasons. He said he did not believe Council would be setting a precedent from which they could not retreat. Attorney Brooks said he would be advocating in the future that the two ordinances be amended to give Council more flexibility.

Councilmember Ulledalen said he planned to vote 'no' because he did not think the zone change made any sense.

Councilmember Stevens said she felt the same way, and would not support it. She said she felt there was a possibility of creating underground parking to solve the problem, and it was being completely ignored. She said she felt they were "jumping through a whole lot of hoops to make the project work" when the underground parking had not even been considered. She said she felt they were painting themselves into a corner with the property because whatever they decided may end up running with the land. Councilmember Stevens advised she would probably vote against the variance, as well.

Mayor Tussing commented it was extremely unlikely he would support the zone change on March 24<sup>th</sup>; but since Attorney Brooks indicated they would not be setting a precedent, he would be willing to give it the extra 30 days.

On a voice vote, the motion to extend the item until March 24<sup>th</sup> was approved. Councilmembers Stevens and Ulledalen voted 'no'.

**14. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #832: A zone change from Residential 9600 to Residential 7000, and located on the southeast corner of the intersection of Hilltop Road and Agate Avenue in Billings Heights; Steve Zimmerer, owner and applicant. Zoning Commission recommends approval and adoption of the determinations of the 12 criteria. (Action: approval or disapproval of Zoning Commission recommendation.)** Planner I Dave Green began his PowerPoint showing the location of the subject property and explaining the zoning of the surrounding properties. He said the zone change would bring the subject property into compliance with zoning. Mr. Green advised the property currently met the requirements for setbacks and square footage for R7000 zoning. He advised there were two neighborhood meetings held. He said the first meeting was held at 928 Broadwater Avenue on December 20, 2007, and no property owners attended; and a second meeting was held at Fuddruckers in the Heights on February 19, 2008, and no property owners attended. Mr. Green advised no property owners attended the Zoning Commission public hearing on February 5, 2008. Mr. Green said the Zoning Commission was forwarding recommendation for the zone change on a 5 to 0 vote based on the following 12 criteria.

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

The proposed zoning is generally 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 5)*

The existing duplex on this property is consistent with the duplexes located to the northeast and west of the subject property. The proposed use will also be in conformance with the Heights Neighborhood Plan.

- *New developments that are sensitive to and compatible with the character of adjacent City Neighborhoods and County Townsites. (Land Use Element Goal, page 6)*

The proposed zoning will be compatible with the surrounding single-family residential uses and duplexes.

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

The proposed zoning is not expected to generate additional traffic in this area, as the duplex has been in existence since the 1970's.

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

The lot has public street frontage and is served by the City Fire Department. The duplex has been in existence since the 1970's and the proposed zoning will not affect the emergency services to this property.

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

The proposed zoning would allow for the existing duplex to remain on the lot and should not have an effect on the general health and welfare of surrounding properties.

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, as well as all zoning districts, contain limitations on the maximum percentage of the lot area that can be covered with structures. This requirement will help prevent overcrowding of land.

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

The proposed uses should not cause an undue concentration of population, as there is surrounding residentially developed properties.

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 will not increase traffic.

*Water and Sewer:* The City has adequate facilities to serve this property.

*Schools and Parks:* This proposed re-zone should have no substantial effect on schools or parks.

*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 be similar in character with the adjacent residential uses.

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.

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

The new zoning should not have significant effect on the value of residential buildings in the area.

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

The proposed zoning will permit single-family residences and duplexes as an outright use. The Heights Neighborhood plan also identifies this area for development as single-family and duplexes.

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

Councilmember Veis moved for approval of Zone Change 832, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

**15. (a) PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #833: A zone change from Residential 7000 to Residential 6000 on the southern half of Tract 2, C/S 3303, located at 927 Bench Boulevard; Gene and Joy Culver, owners; Engineering, Inc., agent. Zoning Commission recommends approval and adoption of the determinations of the 12 criteria. (Action: approval or disapproval of Zoning Commission recommendation.)**

Zoning Coordinator and Planner II Nicole Cromwell advised the item was a dual application for a zone change concurrent with a special review. She said the Zoning Commission had recommended approval of the zone change from R7000 to R6000 and conditional approval of Special Review #855. Ms. Cromwell began her PowerPoint presentation showing the location of the subject property. She explained the property had split zoning, with R6000 on the northern half and the R7000 on the southern half. She said there were two access points onto Bench Boulevard, and the surrounding properties included trailer courts, manufactured housing, the Billings Heights Park, and Gainan's. Ms. Cromwell said most of the other neighborhood property to the south was Residential 7000 with a varying degree of development densities. She said the property to the north was the South Heights Subdivision Plan Development with an underlying zoning of Residential Manufactured Home or R6000, which included two four-plex units.

Councilmember Stevens asked if the property north of the park was Residential Manufactured Home zoning. Ms. Cromwell said it was. Councilmember Stevens asked if the homes were trailers. Ms. Cromwell said they were manufactured homes and some were modular or stick built. Councilmember Stevens asked if 'manufactured' meant the traditional trailer or brought in halves and put together. Ms. Cromwell said 'manufactured' meant being built to a HUD code standard, as opposed to an International Building Code standard. She said a manufactured home had a slightly lower building standard than a modular home. Ms. Cromwell showed the proposed site plan for the special review showing 10 four-plex dwelling units and two full access points. She advised the applicant conducted a pre-application meeting at the offices of Engineering, Inc. on December 4, 2007, with a subsequent meeting at Bitterroot Elementary School that past Tuesday evening that was well attended.

Councilmember Pitman commented that neither he nor Councilmember Stevens were notified of the meetings. Ms. Cromwell said she e-mailed the notice of the second meeting as soon as she received it. City Administrator Volek said there may have been several meetings noticed at the same time, and staff would check on it.

Ms. Cromwell showed an aerial of the area indicating varied densities in the neighborhood. She said many of the properties were subdivided and built in the county. Ms. Cromwell advised the Zoning Commission felt the zoning was compatible with the existing zoning and the surrounding neighborhood and recommended 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 could permit up to 22 multi-family units per acre, but the applicant is proposing through a concurrent special review application to limit the density to 10 units per acre. This density and housing type is consistent with the mixture of surrounding land uses and densities.
- *New developments that are sensitive to and compatible with the character of adjacent City Neighborhoods and County Townsites. (Land Use Element Goal, page 6)*  
The proposed zoning is consistent with the surrounding character of the neighborhood.
- *Billings Heights Neighborhood Plan – Encourage high density multi-family development along arterials and maintain similar housing in established neighborhoods. (Land Use Element Goal, page 19)*  
The proposed zoning would allow only a slight increase in density from the current zoning and is consistent with the established neighborhood.

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

The additional traffic that could be produced by the proposed increase in density is approximately 400 additional vehicle trips per day on Bench Boulevard. This estimate is based on the proposed ten 4-plex structures. Bench Boulevard will be re-constructed to arterial standards in the near future and this volume of traffic can be accommodated by the existing street.

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

The subject property is currently serviced by City Fire and Police. Staff is unable to determine the impacts of the proposed density on those services. Any development will require a minimum width for access roads and provision of water for fire protection.

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

The proposed zoning would permit a slight density increase from the current allowed maximum of 9 units per acre in the R-70 zoning district. This would not cause traffic conflicts within the area. However, the Unified Zoning Regulations do specify minimum setbacks and lot coverage requirements for the proposed zoning district in order to promote health and safety.

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, as well as all zoning districts, contain limitations on the maximum percentage of the lot area that can be covered with structures. The R-70 zone allows 30% lot coverage and the R-60 zone allows 40% lot coverage. The proposed density of 10 units an acre for the 10 four-plex structures does allow for adequate open area and should not overcrowd the property.

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

The proposed zoning will allow the introduction of multifamily residential uses in an area that has a mixture of housing densities. Many properties along Bench Boulevard have older homes with acreage that can be used for in-fill projects. This would not unduly concentrate population on a small area.

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 impact the surrounding streets, as the only way in and out of the development is Bench Boulevard. Traffic access and construction will be addressed through a future development agreement.
Water and Sewer:	The City will provide water and sewer to the property through existing lines on Bench Boulevard.
Schools and Parks:	Skyview High School, Castle Rock Middle School, and Bitterroot Elementary School will provide education to students within the development.
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 permit multifamily uses through special review. The concurrent special review limits the density to 10 dwellings per acre which is similar to the surrounding 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. A portion of the property that has frontage on Bench Boulevard will provide the access to the acreage to the east.

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

Staff cannot determine whether the proposed zoning would appreciably alter the value of structures within the area. The road access from Bench Boulevard may have some affect on the adjacent homes. The existing single family home at 927 Bench Boulevard will be removed to provide road access to the east.

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

The proposed zoning will permit a greater variety of housing choices in this neighborhood. The property has direct access to Bench Boulevard, a principle arterial street. The Heights Neighborhood Plan depicts this area of the city as mixed uses and medium density residential (R-70 & R-60, Neighborhood Services).

Councilmember Veis said the site plan showed R6000 and R7000, and asked Ms. Cromwell if the request was to change the south half from R7000 to R6000. Ms. Cromwell said that was correct.

Councilmember Pitman said he had a concern about #8 of the criteria that stated there would be no impact on surrounding streets. Councilmember Pitman said the development would lead right onto Shawnee Drive, which was an undeveloped dirt road, and to think people would not use Shawnee Drive was unrealistic. Ms. Cromwell advised the 12 criteria looked generally at where the project entered and exited the project and did not take into account streets that were opposite the project and meant to be residential. She said Bench Boulevard would collect most of the traffic. She said she understood there was concern in the neighborhood that existing traffic on Bench currently used Shawnee as a cut-through, and there was nothing that would prevent it. She said the City Engineering Division could probably assist with remedying the problem on Shawnee Drive. Councilmember Veis said he was guilty of using Shawnee Drive as a cut-through himself.

Public Works Director David Mumford advised there was no answer to stop people from using Shawnee Drive because it was a public street. He said it would take an SID to upgrade the street. Councilmember Veis asked if there was a way to mitigate the dust. Mr. Mumford advised the City controlled dust on the gravel streets through dust mitigation and grade.

Councilmember Stevens asked if the road lining up perpendicular to Shawnee would cause a problem. Mr. Mumford said it would be best if it lined up because of turning movements. Councilmember Stevens asked what the comments were from the people who attended the second meeting. Ms. Cromwell said she had not seen the comments. Councilmember Stevens asked why the Planning Department initially wanted to deny the application. Ms. Cromwell said the Planning staff's initial recommendation was based on the opinion that it was not compatible with the neighborhood. She said the primary zoning on the east side of Bench Boulevard was R7000, and there were only a few very small pieces of property that were R6000. She said the Billings Heights Neighborhood Plan wanted to have the higher density along the street frontages and not set back where it would impose on a certain density or housing style in existing neighborhoods to the north and to the south.

Ms. Cromwell advised the Zoning Commission, based on testimony from the applicant and the agent and their own review of the application, determined that it was compatible with the surrounding neighborhood based on the densities of the manufactured home park in the area, the housing style and densities in South Heights Subdivision, and some of the other subdivisions on the west side of Bench.

The public hearing was opened.

- **Rick Leuthold, Engineering, Inc.**, said there was an aerial map associated with the special review that showed a much larger area. Mr. Leuthold said he represented Mr. Culver and the development of the property. He said they felt the property was an infill development project and not unlike 32<sup>nd</sup> Street West near Boulder School where there was a mixture of single-family homes, very dense apartments, and patio homes all within a walking area to a park, grocery store, or hardware store. Mr. Leuthold said Bench was a

principle arterial that would undergo major construction in the future. He said the densities were relatively the same as what were currently in the area. Mr. Leuthold said a couple of the neighbors attended the first meeting, and there was a question with regard to second story heights next to the South Heights properties to the north. He said the units along the north side had been moved twice as far from the setback to mitigate the concern. He said the questions that came up at the second meeting were predominantly with regard to Shawnee Drive. He said there was one question about fencing, and they were required to put fencing on the south side lot line and around any of the other areas not currently fenced. He said they would not put fencing along the large berm of the existing ditch. Mr. Leuthold said the design did not line up specifically to Shawnee Drive because a house sat in the way. He said there would be a site review of the project. He said they have had discussions with the fire department, and they might designate the north access as an emergency access only and install an emergency access gate.

Councilmember Ruegamer asked where the neighborhood meeting was held. Mr. Leuthold said the first meeting was at Engineering Inc.'s office, and there was nothing in the regulations that specifically indicated where the meeting needed to be held. He said the second meeting was held in the neighborhood, and they had a better turnout. Councilmember Ruegamer stressed that the meetings needed to be held in the neighborhoods that the projects were being done in.

- **Tammy Luhman** said the developer would be building in her back yard, and it was an emotional situation for her. She said the developer wanted to build 10 four-plexes and she felt it was an influx in the community. She said the developer also wanted to build them high. She said they were in the middle of Montana and she grew up "in the sticks", and they wanted to build them 30 feet high. Ms. Luhman said she existed there first.

Councilmember Pitman asked Ms. Luhman to show them where her house was located on the screen. Ms. Luhman said everything else there was one-story.

Councilmember Stevens asked Ms. Luhman how she would feel if they built two-story single-family homes. Ms. Luhman said it would cut down on the number of people moving in. Councilmember Stevens advised when a person lived next to vacant land but did not own it; he could not control what was built there.

- **Susan (last name inaudible. Did not sign in.)** said she lived towards the end of South Heights Lane. She said her main concern was the height of the proposed buildings. She said she had a letter from the principal of Bitterroot, and his main concern was that Bench had very little sidewalk, and the route to school would be unsafe.

Councilmember Stevens asked for the average height of a single-story house. Ms. Cromwell estimated 20' to 24'. Councilmember Stevens asked for the average height of a two-story house. Ms. Cromwell said 30' to 34' depending on the interior ceiling height.

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

Councilmember Gaghen moved for approval of the zone change request, seconded by Councilmember McCall. On a voice vote, the motion was unanimously approved.

**(b) PUBLIC HEARING AND SPECIAL REVIEW #855: A special review to allow 10 four-plex, multi-family dwellings on a 3.978 acre parcel in a proposed Residential 6000 zone and an existing R60 zone on Tract 2 of C/S 3303, located at 927 Bench Boulevard; Gene and Joy Culver, owners; Engineering, Inc., agent. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

Zoning Coordinator and Planner II Nicole Cromwell said the Zoning Commission was recommending conditional approval based on the three criteria for special reviews. (1) Does it comply with the zoning regulations? Ms. Cromwell said it did; (2) Does it meet the intent and purposes of the zoning and any growth policy or neighborhood plan in effect? Ms. Cromwell said the Zoning Commission found that it did; and (3) What conditions could be imposed that would mitigate any potential negative impacts on the surrounding properties? Ms. Cromwell said that was where the conditions came in. She said the Zoning Commission recommended ten conditions of approval, and the City Attorney suggested adding an eleventh condition to assure the special review approval would not go into effect until the zone change approval went into effect. She said there would be a second reading on March 10<sup>th</sup> and the zoning would go into effect on April 10<sup>th</sup>. Ms. Cromwell advised the ten conditions were as follows:

1. The developer will submit a Certificate of Survey to reflect a provision of public right-of-way on Bench Boulevard to the City of Billings.

Councilmember Stevens asked if it included what would be needed to do the future widening of Bench. Ms. Cromwell said there may be additional right-of-way needed, but they were currently only asking for a 30-foot right-of-way donation. Councilmember Stevens asked why the City would not ask for the additional right-of-way instead of paying for it later. Ms. Cromwell said she did not think the actual width had been determined for the Bench widening. She said the Zoning Commission did not feel it was important to ask for the full right-of-way at that time.

2. This special review approval is for the construction of 10 four-plex multifamily dwellings and no other use or expansion of this use is approved or implied with this conditional approval.

3. Development of the site shall be in substantial conformance with the site plan dated December 18, 2007, unless specifically modified by these

conditions. Deviations from the approved site plan that change the location of buildings or increase the number of dwelling units will require additional special review approval

4. This approval shall be limited to 40 dwelling units in 10 structures as shown on the site plan dated December 18, 2007.

5. Any expansion of the gross floor area of the building(s) or number of parking stalls greater than 10 percent will require an additional special review approval as required by Section 27-613(c) of the Unified Zoning Regulations.

6. Access roads, including construction widths that enter off of Bench Blvd will be approved by City Engineering and the City Fire Department.

7. Landscaping shall be provided as shown on the site plan dated December 18, 2007, and as required by Section 27-1100, of the Unified Zoning Regulations.

8. A 6' high site obscuring fence shall be constructed, where one does not already exist, along all property lines with the exception of the east property line and excluding clear vision zones. The fence shall be constructed of standard fencing materials. No chain link or wire fencing will be used for a sight-obscuring fence.

9. These conditions of special review approval shall run with the land described in this special review approval and shall apply to all current and subsequent owners, operators, managers, lease holders, heirs and assigns.

10. 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 regulations that apply

11. The effective date of this approval is concurrent with the effective date of Zone Change #833.

Councilmember Astle asked who owned the property between the two roads. Ms. Cromwell said there were two different owners between the two roads and another owner to the north of the northern access. She said there was some discussion of the Zoning Commission that it might be reverse spot zoning because there would be properties zoned R7000 and everything around them would be R6000.

Councilmember Stevens asked why the property did not extend to the centerline of Bench Boulevard at the northern road. Ms. Cromwell said the northern part of the property had been a different certificate of survey in the past and when it was split into Tract 1 and what was Tract 2, they donated a road tract. She said Tract 2 was then merged with another certificate of survey. She said the north half and south half were actually separate parcels in the past. Councilmember Stevens asked why the discussion of the reverse spot zoning was not included in their packets. Ms. Cromwell said it was not criteria, and it was a concern that the property owners would be more impacted by the zone change.

Councilmember Veis asked Mr. Mumford if Bench Boulevard would be constructed by the Montana Department of Transportation. Mr. Mumford said it would.

Mayor Tussing asked Ms. Cromwell what else could be placed in R6000 zoning besides the 10 four-plexes. Ms. Cromwell said single-family could go on 6,000 square foot lots and duplexes on 7,000 square foot lots. She said her calculations showed that, given the combined nature of R6000 on the north and R7000 on the south, 12 units per acre could be built under the existing zoning. She said the current proposal was for 10 units per acre.

The public hearing was opened.

- **Rick Leuthold, Engineering, Inc.**, said he represented the Culvers. He said they had reviewed the 11 conditions and did not have a problem with any of them. He said they would be perfectly happy to modify the wording on the first condition to reflect it would be per approval of the Public Works Department based on the right-of-way requirements. He said they recognized it was probably the appropriate time to do so and suggested obtaining additional right-of-way from the small throat to the north, as well. Mr. Leuthold said the landscaped areas would be turfed and irrigated with the appropriate number of trees planted. He said there would be no open areas left in a natural state.

Councilmember Stevens asked if there was any way to connect with the bike path from the subdivision. Mr. Leuthold said there was no way to do so because of the manufactured home development to the east and a substantial banked-up ditch that ran along the property. He said it could be bridged but then there would be a property land lock on each side.

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

Councilmember Clark moved for approval with the addition of the eleventh condition, seconded by Councilmember Ruegamer.

Councilmember Stevens amended the motion to look at condition one with respect to obtaining enough public right-a-way necessary for the Bench Boulevard widening, seconded by Councilmember Ruegamer.

Ms. Cromwell said she felt the condition was open-ended. Councilmember Stevens said she was leery to specify an exact amount of right-of-way without having Engineering's input.

Councilmember Stevens amended her motion to reflect that the amount of right-of-way needed would be subject to approval of the City Engineer's Office. Councilmember Ruegamer agreed.

On a voice vote, the amendment was unanimously approved.

Councilmember Veis asked when the Bench project was scheduled. Mr. Mumford advised the Montana Department of Transportation was still finalizing the preliminary design for the connection to Main Street. He said they had not awarded a contract or even decided if they would design Bench Boulevard north of Hilltop themselves. He said the State had not determined when they would start the project.

Councilmember Pitman said he had a concern with the children walking to Bitterroot. He said it put them on an undeveloped, uncontrolled street.

On a voice vote, the amended motion was unanimously approved.

Mayor Tussing called a recess at 10:23 p.m. Mayor Tussing called the meeting back to order at 10:30 p.m.

**16. (a) PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #834: A zone change from Residential 7000 to Residential 6000 on Tract 1, C/S 1531, located at 1442 Bench Boulevard. Gene and Joy Culver, owners; Engineering, Inc. agent. Zoning Commission recommends approval and adoption of the determinations of the 12 criteria. (Action: approval or disapproval of Zoning Commission recommendation.)** Zoning Coordinator and Planner II Nicole Cromwell said the subject property was on the west side of Bench closer to the intersection of Wicks Lane and Bench Boulevard. She began her PowerPoint presentation showing the location of the subject parcel and describing the surrounding properties. She said the subsequent special review included the parcel to the south, Certificate of Survey 193. She said the zone change request was for only the northern parcel. 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 up to 22 multi-family units per acre, which is consistent with the surrounding multifamily and commercial uses.
- *New developments that are sensitive to and compatible with the character of adjacent City Neighborhoods and County Townsites. (Land Use Element Goal, page 6)*  
The proposed zoning is consistent with the surrounding character of the neighborhood, which is multifamily and commercial uses.
- *Billings Heights Neighborhood Plan – Encourage high density multi-family development along arterials and maintain similar housing in established neighborhoods. (Land Use Element Goal, page 19)*  
The proposed zoning would allow similar density multifamily development within an established neighborhood. All of the property is along the arterial street and would be similar to the existing multifamily elderly housing to the west.

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

The additional traffic that could be produced by the proposed increase in density is approximately 280 additional vehicle trips per day on Bench

Boulevard. This estimate is based on the proposed 7 four-plex structures. The existing traffic on Bench Boulevard is approximately 3,900 vehicle trips per day.

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

The subject property is currently serviced by City Fire and Police. Staff is unable to determine the impacts of the proposed density on those services. Any development will require a minimum width for access roads, turn around areas, and provision of water for fire protection.

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

The proposed zoning would permit a density increase from the current allowed maximum of 9 units per acre in the R-70 zoning district. This should not cause traffic conflicts within the area. This section of Bench Boulevard has been improved in recent years for the surrounding commercial and multifamily developments. The Unified Zoning Regulations do specify minimum setbacks and lot coverage requirements for the proposed zoning district in order to promote health and safety.

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, as well as all zoning districts, contain limitations on the maximum percentage of the lot area that can be covered with structures. The R-70 zone allows 30% lot coverage and the R-60 zone allows 40% lot coverage. The proposed density of 9 units an acre for the 7 four-plex structures does allow for adequate open area and should not overcrowd the property.

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

The proposed zoning will allow the introduction of multifamily residential uses in an area surrounded by commercial and multifamily uses. This would not unduly concentrate population on a small area.

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 a minor impact on the surrounding streets, as the only way in and out of the development is Bench Boulevard.

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

Schools and Parks: Skyview High School, Castle Rock Middle School, and Bitterroot Elementary School will provide education to students within the development.

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 permit multifamily uses, which are alike in character to the surrounding commercial and multifamily uses.

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. Many properties on the west side of Bench Boulevard have been zoned for multifamily uses and this area is suitable for higher density development.

11. *Was the new zoning adopted with a view to conserving the value of buildings?*  
Staff cannot determine whether the proposed zoning would appreciably alter the value of structures within the area. Higher density multifamily dwellings may negatively affect single-family market prices.

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

The proposed zoning will permit more dense development that is alike in character to the surrounding multifamily uses. The Heights Neighborhood Plan depicts this area of the city as mixed uses and higher density residential (RMF-R or R-60).

The public hearing was opened.

- **Rick Leuthold, Engineering, Inc.**, said he represented the developer, Mr. Culver. He said Ms. Cromwell had covered everything clearly. He said there were no real issues with the particular project. He said they held an initial public meeting, and a second neighborhood meeting was held at the school last week. He said there were three people who attended.

Councilmember Pitman asked what the comments were from the three people attending the neighborhood meeting. Mr. Leuthold advised the main questions were with regard to the fencing around the property. He said two of the people owned homes directly to the south. He said they were comfortable that there would be a six-foot fence installed. Mr. Leuthold said the other person lived to the west on Winemiller across from the Terrace

Apartments and had a concern with the lack of fencing. He said there was no fence requirement between the property and the apartments.

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

Councilmember Astle moved for approval of Zone Change #834, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

**(b) PUBLIC HEARING AND SPECIAL REVIEW #856: A special review to allow seven four-plex, multi-family dwellings on a 3.055 acre parcel in a proposed Residential 6000 zone and an existing R60 zone on Tract 2 of C/S 193 and Tract 1 of C/S 1531; Gene and Joy Culver, owners; Engineering, Inc., agent. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)** Zoning Coordinator and Planner II Nicole Cromwell began her presentation showing the location of the subject properties. She advised the Zoning Commission was recommending conditional approval based on the three criteria for special reviews. She said there were 11 conditions from the Zoning Commission and the added condition recommended by the City Attorney that the special review approval be concurrent with the effective date of Zone Change #834, as follows:

1. The special review approval shall be limited to Tract 2, C/S 193 and Tract 1, C/S 1531 as shown on the site plan dated December 18, 2007.
2. This special review approval is for the construction of 7 four-plex multifamily dwellings and no other use or expansion of this use is approved or implied with this conditional approval.
3. Development of the site shall be in substantial conformance with the site plan dated December 18, 2007, unless specifically modified by these conditions. Deviations from the approved site plan that change the location of buildings or increase the number of dwelling units will require additional special review approval.
4. This approval shall be limited to 28 dwelling units in 7 structures as shown on the site plan dated December 18, 2007.
5. Any expansion of the gross floor area of the building(s) or number of parking stalls greater than 10 percent will require an additional special review approval as required by Section 27-613(c) of the Unified Zoning Regulations.
6. The north access road shall be re-aligned to coincide with Kingston Avenue that enters Bench Boulevard opposite the subject property. Any new alignment will be approved by the City Engineer.
7. The proposed 28-foot wide access road will be widened to 34 feet and be designed and constructed in accordance to city standards for a new residential street. The street design will be approved by the City Engineer and the City Fire Department.

8. Landscaping shall be provided as shown on the site plan dated December 18, 2007, and as required by Section 27-1100, of the Unified Zoning Regulations.
9. A 6-foot high sight-obscuring fence shall be constructed along the entire length of the north and south property lines excluding any required clear vision area. The fence shall be constructed of standard fencing materials. No chain link or wire fencing will be used for a sight-obscuring fence. The fence will shield the development from the commercial development to the north and the single family developments to the south.
10. These conditions of special review approval shall run with the land described in this special review approval and shall apply to all current and subsequent owners, operators, managers, lease holders, heirs and assigns.
11. 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 regulations that apply.

Councilmember Stevens asked if there was any need for right-of-way along Bench in the future at the location. Ms. Cromwell advised there was a subdivision currently being reviewed in the preliminary stages where any additional right-of-way needed would be gained through that process. Councilmember Stevens verified they did not have to do what they had done in the previous special review regarding right-of-way. Ms. Cromwell said she did not believe so.

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

Councilmember Astle moved for approval of Special Review #856, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

**17. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #835: A zone change from Entryway Light Industrial to Controlled Industrial on Tract 1, C/S 2560, located on the southeast corner of King Avenue West and Shiloh Road. Zoning Commission recommends approval and adoption of the determinations of the 12 criteria. (Action: approval or disapproval of Zoning Commission recommendation.)** Planner I Dave Green began his PowerPoint presentation showing the location of the subject property and describing the surrounding properties. He advised the property was being developed as Shiloh Crossing and was within the Shiloh Overlay District. Mr. Green explained the main reason for the zone change was because Entryway Light Industrial zoning required that properties be on separate lots and in separate buildings with a side setback of 10 feet, making the buildings 20 feet apart. He said the developer was proposing a commercial development with businesses sharing a common wall to make the development more “walkable” from business to business. Mr. Green said a neighborhood meeting was held at Faith Evangelical Church at 3145 Sweetwater Drive. He said 12 people attended, and there was no opposition. He said the Zoning Commission held a public hearing on February 5, 2008, and

was forwarding a recommendation of approval based on the following 12 zoning criteria.

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

The proposed zone change is generally 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 5)*

This property is in an area of Billings that is seeing a lot of proposed growth. With the proposed reconstruction of Shiloh Road and the proposed surrounding new subdivisions, this shopping center will provide some new jobs and more shopping choices to Billings. This parcel is identified in the West Billings Plan as a Regional Center.

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

The proposed zoning will permit the development of the proposed commercial center providing more business choices in this area of Billings.

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

The new zoning will increase the traffic on Shiloh Road and King Avenue West. The developer and the city are currently rebuilding King Avenue West from 31<sup>st</sup> Street West to Shiloh Road. Shiloh Road is slated to be rebuilt in the near future. The reconstruction of the two streets will be much better suited to handle increased traffic created by this proposed commercial development.

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

With the proposed zoning, there are requirements that help to insure safety from fire, panic and other dangers. Also when the developer submits a proposed site plan, the Engineering Division, Planning Division and the Fire Department review what the developer is proposing to build and have input to insure that it is designed to meet safety requirements.

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

The proposed zoning will permit Commercial uses. The Unified Zoning Regulations specify minimum setbacks, lot coverage requirements and height restrictions. This site is also in the Shiloh Corridor Overlay District that has landscape requirements to enhance the look of the site and make it a positive addition.

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, as well as all zoning districts, contains limitations on the maximum percentage of the lot area that can be covered with structures. This requirement will help prevent overcrowding of land.

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

The proposed zoning is for Controlled Industrial use which will not cause a 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 city and developer are currently working together to make street improvements on King Avenue West. Shiloh Road will be upgraded in the near future. All accesses into the proposed development have been approved by MDT and the City of Billings.

*Water and Sewer:* The City will provide water and sewer to the entire property through existing lines from King Avenue West and Shiloh Road.

*Schools and Parks:* The proposed zoning will have no effect on the school system.

*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 buildings to be clustered together providing shorter walking distances within each cluster of buildings. The neighborhood to the north has trails for walking and biking, this proposed commercial development is proposed to be more pedestrian friendly.

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. The proposed commercial development will provide the surrounding citizens with a shopping area within their neighborhood.

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

There currently are no buildings on this site. There are a few businesses to the west and residential to the north.

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

The proposed zoning will permit this land to be developed as recommended by the West Billings Plan.

Councilmember Pitman asked about an opposition letter listed on the staff report as Attachment D, and said it was not included in the packet. Mr. Green said that was an error, and there was no opposition letter.

The public hearing was opened.

- **Jeff Kanning, Collaborative Design Architects, 2280 Grant Road**, said he was the agent for Steve Corning, the developer on the project. He said the big issue was the ability to place buildings that shared different ownerships with a shared property line. He said Shiloh Crossing was intended to be an upscale lifestyle center, and they had worked very hard to make the appearance of the shopping center look more like a streetscape with trees and benches for more of a walking environment. He said the new Kohl's Store was underway, and other buildings would follow.
- **Steve Corning**, said he was the developer of the project in partnership with the Long Family. He said the reason for the zone change was to bring the buildings together and have as much pedestrian flow between the buildings as possible. He said it was important to note the 10-foot side setback was the only distinction between the existing zoning and the new zoning.

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

Councilmember Ulledalen moved for approval of Item 17 and the adoption of the 12 criteria, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

**18. PUBLIC HEARING AND SPECIAL REVIEW #854: A special review for an all beverage license for the sale of alcohol beverages with gaming and a restaurant on a 1.92 acre parcel of land in the Controlled Industrial zone on property legally described as Lot 1, Block 1A, Tierra Yellowstone Industrial Subdivision generally located at 3178 Gabel Road. Zoning Commission**

recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.) Planner I Dave Green began his PowerPoint presentation showing the location of the subject property and describing the surrounding properties. He said the applicant, Mr. Kreitzberg, was proposing a new facility on the property with access on Gabel Road. Mr. Green advised the Zoning Commission held a public hearing on February 5, 2008, and recommended approval of the special review with the following eight conditions.

1. The special review approval shall be limited to Lot 1, Block 1A, Tierra Yellowstone Industrial Subdivision located at 3178 Gabel Road.
2. Development of the site shall be in substantial conformance with the site plan submitted with this application and shown in this staff report. Deviations from the approved site plan that change the location of buildings, addition of outdoor patio areas, parking lot access or parking areas will require additional special review approval.
3. There shall be no background music or amplified announcement system outside the building.
4. The solid waste storage area shall be enclosed on three (3) sides by a sight-obscuring fence or wall and by a sight-obscuring gate on the remaining side. This enclosure shall be constructed of normal fencing materials. Chain link or wire fencing cannot be used for sight-obscuring enclosure.
5. All exterior lighting with the exception of sign lighting shall have full cut-off shields so light is directed to the ground and not onto adjacent property.
6. Landscaping shall be provided as required by Section 27-1100 of the Unified Zoning Regulations.
7. These conditions of special review approval shall run with the land described in this authorization and shall apply to all current and subsequent owners, operators, managers, lease holders, heirs and assigns.
8. The proposed development shall comply with all other limitations of Section 27-613 of the Unified Zoning Regulations concerning special review uses, and all other City of Billings, regulations and ordinances that apply.

Councilmember Veis verified that the area would fall within what Council had proposed for the casino overlay district. Ms. Beaudry said that was correct, and it was a large contiguous area that would allow multiple casinos.

The public hearing was opened.

- **Darrell Kreitzberg**, distributed an aerial photo of the proposed site and a drawing of the proposed facility. Mr. Kreitzberg said he was available to answer any questions.

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

Councilmember McCall moved for approval of Special Review #854, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

**19. (a) PUBLIC HEARING AND RESOLUTION #08-18685 accepting the Lenhardt Square Property Urban Planning Study and maintaining the boundaries of the Billings Urban Planning area to include a 114-acre property legally described as Tracts 1-5, C/S 2063; Lenhardt Property, LP, Lenhardt Farm, LLC, and Lenhardt Enterprises, LLC, property owners. Yellowstone County Board of Planning recommends acceptance of the Lenhardt Square Property Urban Planning Study, approval of the Urban Planning Area boundary to include the subject property, and approval to include the subject property within the Red Limits of the Annexation Map. (Action: approval or disapproval of Yellowstone County Board of Planning recommendation.)**

Planning Division Manager Wyeth Friday explained that Agenda Item 19(a) was the first of a multi-portion presentation. He advised there were four items attached to the Lenhardt Square project. Mr. Friday said his first presentation would be on the Urban Planning Study and Urban Planning Boundary, the action, and the recommendation from the Yellowstone County Planning Board. He said he would also give a combined presentation on the recommendation to amend the Limits of Annexation Map to include the property, the recommendation from the Annexation Committee for inclusion of the entire property within the limits of annexation area, and the recommendation for petition for annexation for the property to be included within the city limits. Mr. Friday said Ms. Cromwell would present the final portion for the planned development zoning application within the city limits for the property.

Mr. Friday began his PowerPoint presentation showing the location of the subject property. He advised the subject property was approximately 114 acres and was adjacent to The Village Subdivision for the St. Vincent's project. He also pointed out existing irrigated cropland; the King Meadows Subdivision that Council had recently approved; Montana Sapphire; and Shiloh Crossing.

Mr. Friday explained that the Urban Planning Area was established in 1964 to determine where city services could be safely and effectively extended. He said one of the prerequisites from the Annexation Policy and Requirements was to make sure properties were within the Urban Planning Area. He said it also allowed for the review of extension of city services. Mr. Friday advised the Planning Board made recommendations to the City Council for any amendments to the Urban Planning Area, and also reviewed and accepted any Urban Planning Studies conducted to maintain properties within the Urban Planning Area boundary.

Mr. Friday said that evening Council would review the resolution accepting the Urban Planning Study for the property and maintaining the property within in the Urban Planning Area boundary. He said Council would then move to the public hearing and consideration to amend the Limits of Annexation Map and the hearing for the petition for annexation.

Mr. Friday advised the property was owned by Lenhardt Property, LP; Lenhardt Enterprises, LLC; and Lenhardt Farm, LLC, all under the Lenhardt family.

He said the property was 114 acres and currently zoned Agricultural-Open in the county. He advised the proposal was for a Planned Development city zone change. He said the proposal was for approximately 1,400 residential units and commercial development in a mixed-use style. Mr. Friday told Council they would see more detail in the zoning review.

Mr. Friday said the request to be maintained within the Urban Planning Area was partially consistent with both the Growth Policy and the West Billings Plan. He showed the Urban Planning Area boundary as it currently existed. He advised the property was within the boundary. Mr. Friday advised whenever a boundary was expanded, an Urban Planning Study was required to show how the property could be served in the future for city services. He said the study was very broad and specified that additional analysis would be required as individual properties requested inclusion within the city limits. Mr. Friday advised the applicant had prepared an Urban Planning Study specifically for the property. He said another item being considered was whether to maintain the Urban Planning Area boundary. He said if the Urban Planning Study was not approved, the property would be taken out of the Urban Planning Area boundary. Mr. Friday pointed out the property and the existing Planning Area boundary on the overhead.

Mr. Friday advised all aspects and impacts had been looked at, how services would be affected, and how services could be provided. He said, with approximately 1,400 residential units, they were looking at potentially 3,300 new residents. He said the access would be off of King Avenue West, and Monad Road would be a connector coming in from the The Village Subdivision to the east. Mr. Friday said there would be an expectation of potentially 14,000 vehicle trips per day at full build-out. Mr. Friday advised there would be outside requirements and improvements based on traffic accessibility studies at development time. He said they had not been completed to date, and there had only been general estimates provided. He said the connections and impacts to King Avenue West, Monad Road, and Shiloh Road would be looked at during the development process. Mr. Friday advised that particular portion of King Avenue West was under the jurisdiction of the Montana Department of Transportation, so they would need to review any accesses.

Mr. Friday said storm water management was expected to include on-site retention and a connection into the city system along Shiloh Road. He advised that the City was currently preparing a Storm Water Master Plan for the entire City. He said there was expectation that some of that information would be used when the development on the property occurred.

Mr. Friday advised sewer and water lines would be extended to serve the property at the expense of the developer. He said there was a current expansion project in King Avenue West going out to Shiloh that would facilitate the extension to the subject property. He said the King Meadows Subdivision was also looking at extensions that would potentially serve both properties. Mr. Friday advised there were current City water storage limitations, and there may need to be a limitation on the amount of water initially provided to the subject property based on future water storage projects.

Mr. Friday advised the Street/Traffic Division had some concerns about future impacts and services based on their current budget estimates. He said the landfill had adequate capacity for the solid waste generation from the property, and it would be a fairly minimal impact based on the amount of available space the landfill currently had.

Mr. Friday said, in terms of the specific site development plans for parkland, there was a proposal for some active recreational spaces. He said the Parks Department had concerns about the overall maintenance and actual availability of usable space. He said there were some larger gathering areas in park space and also quite a bit of proposed trail. Mr. Friday said, at that point, the Parks Department was very interested in having the parks potentially privately maintained and privately held in order to stay away from the maintenance and concerns they had with some of the smaller and different-sized park properties proposed by the development.

Mr. Friday advised, in terms of the Fire Department services, the development could affect the levels of service to the property. He said, however, the Fire Department felt if there was phasing based on the concern of water capacity, they were supportive of moving forward as long as the water needs would be met.

Mr. Friday advised the Police Department could provide services to the area, but they were concerned with coverage and response times in the long term as more residents were added. He said the same comments would be fairly similar as they moved forward with the other applications that evening.

Mr. Friday said School District No. 2 continued to face overcrowding. He said there were approximately 500 elementary students already living west of Shiloh Road, and there was no elementary school west of Shiloh Road. He said if a school was built west of Shiloh Road, it would only house approximately 450 students.

Mr. Friday said, in terms of effects on urbanization and the environment and agriculture, the entire property had been used for agricultural purposes for many, many years and was irrigated. He said the Urban Planning Study stated that parcels less than 400 to 500 acres on the west end were no longer viable for agriculture and were more valuable as developable property. Mr. Friday advised soil conditions may require initial geo-technical analysis before beginning construction on the property.

Mr. Friday said the applicant had provided information on estimates of Raw Land taxes after annexation on the property of \$71,000 to \$72,000 and estimates on taxes on the property with full build-out of between \$1.2 and \$1.5 million. Mr. Friday advised information had been provided by staff and the Finance Department that all of the tax dependency City departments were deficit spending at the current time. He said there would be a phasing of how to attach the revenue returns to the City over a six-year period. He said the situation would be that the tax revenue would be coming in, but coming in gradually, and at the same time, addressing other developments.

Councilmember Veis commented the developer had given a good estimate on what the taxes would be, and asked if the developer was required to give an

estimate on what it would cost the City to provide the services. Mr. Friday advised the Urban Planning Study did not go into that much detail at the present time. He said they looked to the departments to give their comments and information based on whether they thought they could serve the property. Councilmember Veis asked if there were criteria for the study that had to be followed or if staff just took what came in and decided if it was adequate. Mr. Friday said there had not been specific criteria. He said in the past they had asked a couple of applicants to go back and do additional research because the initial information provided was not adequate. He said the departments needed more detail now compared to several years ago, so the City had "upped" the requirements on what they would like to see, such as impacts for water. Councilmember Veis asked Mr. Friday if the City required the applicant to put a dollar figure on the increase in services. Mr. Friday said the City did not. City Administrator Volek advised it would be easier to do once the Cost of Services Study had been completed.

Mr. Friday advised the Planning Board conducted a meeting and public hearing on January 22, 2008, and was recommending that Council accept the Urban Planning Study and maintain the property within the Urban Planning Area boundary. He said the Planning Board also recommended that Council include the property in the red limits of the annexation map area. Mr. Friday advised there was concern from the Planning Board that the outlined analysis from staff indicated that growth should be restricted, and that the recommendations and concerns about the services were getting in the way of growth. He said the Planning Board discussed it at some length, conducted the hearing, and decided it was not a good time to retract the area from the Urban Planning Area. Mr. Friday advised that when the Council adopted the Annexation Policy and Limits of Annexation Map a few years ago, to some extent it "eclipsed" the Urban Planning Area boundary in terms of a tool to be used for growth. He said the Annexation Policy looked specifically at a five-year horizon; and the Urban Planning Area looked specifically at a ten-year horizon. Mr. Friday said he thought there would be more discussion in the future on how the Urban Planning Area boundary really functioned. He advised that the Planning Board told staff to leave it alone for now and move forward with their recommendation to accept.

Mr. Friday said there were four letters of support for either inclusion of the property in the Urban Planning Area boundary, addition of the property to the Limits of Annexation area, or annexation. Mr. Friday asked if there were any questions.

Councilmember Ulledalen said one of the first presentation slides indicated the property "partially" met the criteria of the Growth Policy and the West Billings Study. He asked where the property did not meet the criteria. Mr. Friday referenced the paragraph, "Consistency With Adopted Policies or Plans", in the staff report. Councilmember Ulledalen said he had read it and just wanted to make sure he was on the right track.

Councilmember Ulledalen referenced the issue of delivering water being predicated on the development of additional reservoirs. He asked what would happen if the reservoirs were not built. Public Works Director David Mumford advised that the issue was not that they could not deliver water to the development at present, but that they would not be able to meet the peak demands. He said the

reservoirs were needed to meet the peak demands. He said they felt they could provide 600,000 gallons a day currently and still maintain safety in the reservoirs. Mr. Mumford advised there was a Zone 3 Reservoir in the CIP budgeted for 2009. He said after it was completed, an additional 300,000 gallons a day could be provided. Mr. Mumford said the amount of water would be phased in as reservoirs were constructed. He said if one reservoir was not built, there would be an issue. He also said the developer could zone R7000, and the City could supply the whole site. He said as they began to develop staff would address actual flows and what each phase was proposing. Mr. Mumford said, at that point, they could figure out and insure that domestic, and fire flows and pressures were met. Mr. Mumford repeated the City could provide the first 600,000 gallons without any real concern.

Councilmember Ulledalen said he felt it was a very large scale commitment at that point in time. He asked how it would affect other potential development in the future if the City could not get reservoirs built. He said he felt the City was quickly approaching a limit. Mr. Mumford said the City could supply the areas already determined for annexation. He said the first 600,000 gallons would not give the City any real concerns.

Councilmember Veis asked Mr. Mumford if he knew what the estimated density would be for feeding the area when the Zone 3 Reservoir was developed. Mr. Mumford advised, when they took the aggregate of the area, they believed the City could handle the density because other areas would have lower densities. Mr. Mumford said the City would need reservoir capacity before the area went to full build-out.

Councilmember Gaghen said Mr. Friday indicated the potential was for 1,400 dwellings and 3,300 residents. She said those numbers seemed to be quite low, because it only figured out to be roughly 2.4 per unit. Ms. Gaghen then commented the information indicated there could be as many as 1,000 students. She said she was puzzled how the numbers were derived. Mr. Friday advised the 2.4 or 2.34 was a nationally-accepted number they looked at for estimation of residential occupants per residential unit. He said the 2.34 from the census information was used as the multiplier for so many units. Mr. Friday said it could fluctuate in that type of development.

Councilmember Astle asked Mr. Friday if the parkland would be kept private. Mr. Friday said the Parks Department had concerns because the proposal was for larger park areas with a lot of trails. He said the Parks Department was looking for more programmable space, such as soccer fields and baseball fields, because they could be more easily maintained in a more cost-effective way. Mr. Friday said the Parks Department's concerns were maintenance-related, and there would not be enough room for programmable-type activities. He said, at that point, the Parks Department was recommending that the parks initially be privately-maintained and then potentially privately-owned. Councilmember Astle asked if the parks would be inaccessible to the general public. Mr. Friday said it would depend on how the development was done and what type of public access was provided. He said if it would be private parkland, there would be the question as to how much access from the outside would be allowed. He said it would depend on how the development was configured; what type of commercial uses there were; and what

type of public access was provided. He said the answer to that question had not been ironed out.

Councilmember McCall said she was interested in the response from the Board of Planning in terms of talking about elementary schools. She said clearly in Mr. Friday's report there was concern from School District No. 2. Councilmember McCall asked what the exchange in comments was during the hearing. Mr. Friday advised they did not talk about it specifically that he could recall. He said Superintendent Copps attended the review meeting for the zoning application; and Kathy Olson, the Elementary Director from School District No. 2, attended the Annexation Committee meeting. Councilmember Veis asked Mr. Friday, if they were to get through 19a, 19b, 19c, and 19d that evening, did he expect to receive a Planned Unit Development so Council could address the parks issue. Mr. Friday advised Council would see an application in 19d. He said there would be a general conceptual site plan showing where the park areas were located. He said the way it was being presented was that in different portions of the property there were amounts of parkland provided that overall met or exceeded the requirements for parkland dedication. Mr. Friday advised there was some flexibility in exactly how the parks would be developed, shaped, and designed when the development started to occur. Councilmember Veis asked if it would include discussion of limiting use of water on-site until the City was able to provide the full amount they needed. Mr. Friday said that was not specifically in the Planned Development Agreement. He said it would be covered in the annexation petition with a condition that required limited water usage based on what Mr. Mumford had already explained. Mr. Friday said five tracts were currently proposed. Councilmember Veis asked if Subdivision Improvement Agreements would be required if the developer subdivided each tract or if a Development Agreement would be required if they did not. Mr. Friday said as they started actual construction, the requirements would be looked at.

Councilmember Ulledalen referenced Page 11 of the staff report and asked if the following quote was accurate: *“Several members of the Planning Board expressed concern that the City staff’s report that there are significant challenges to serving the Lenhardt Square property indicated a potential restriction on growth by the City instead of a partnership with new development. Planning Board Vice President Bill Iverson stated that City Departments must support growth and not limit it. He characterized the challenges to serving the property outlined by staff to be ‘troubling’.”* Councilmember Ulledalen asked Mr. Friday if it was an accurate quote as he remembered. Mr. Friday said he had looked at the minutes from the meeting and his notes to summarize it.

Councilmember Stevens said Mr. Friday's report indicated that Jack Copps and Kathy Olson had attended various meetings, and asked if they typically attended the meetings. Mr. Friday advised Kathy Olson had been attending the Annexation Committee meetings as a representative. He said Mr. Copps had not, and there was usually a different representative. Mr. Friday said they had tried to include a District No. 2 representative at the Planning Board meetings for any of the major subdivisions for the purpose of reviewing the school impacts.

The public hearing was opened.

- **Alan Lenhardt, 240 East (inaudible-did not sign in), Baton Rouge, Louisiana**, said he was very happy to be home that evening, and thanked everyone for staying up late to talk about the item. Mr. Lenhardt introduced his sisters, Janice Rehberg, who represented Lenhardt Farms; and Lorraine Newman and her husband, Ester Newman, of Bellingham, Washington, who owned Lenhardt Properties, LLC. Mr. Lenhardt said he represented Lenhardt Enterprises, LLC. Mr. Lenhardt thanked the Council for reviewing the items that evening. He stated when he and his family decided that farming was no longer viable on the property they decided they wanted to do something beautiful for the City. He said they wanted to serve the needs of the Billings area utilizing the best in Smart Growth policies by trying to follow the plans already set. Mr. Lenhardt said he would turn the discussion over to Rick Leuthold and the others who would be speaking on the item. He asked Council to approve 19a, b, c, and d, and said he would not come up all four times to say the same thing.
- **Rick Leuthold, Engineering, Inc.**, said he was working for the Lenhardts on the project. He referenced 19a and said it was not unlike the Frank property they dealt with on 56<sup>th</sup> a year or so ago where part of the property was in the Limits of Annexation area and part of it out. He said it began back in the fall of 2006 along with the Capital Improvements Plan. He said at that time they simply requested inclusion in the Limits of Annexation with no further action. He said they were denied because of the lack of a direct sewer solution, which had now been identified with what was happening in front of King Avenue, and the lack of a formal plan with regard to the property. Mr. Leuthold said they understood at the time that they had the ability to bring the property back in when those items were addressed. Mr. Leuthold said, with regard to the Northwest Urban Planning Study Area, they were asked to provide an updated Urban Planning Study. He said that was done. He said they also provided a request for annexation because, at that time, they had entered into a purchase agreement on a portion of the property. Mr. Leuthold said they were also asked to expand the Urban Planning Study with regard to new criteria, which they had done and received favorable review. Mr. Leuthold said the property was in a path of growth and referenced St. Vincent's. He said they were currently working on the extension of storm drain and surface improvements in King Avenue. He said the project was started and should be in by this fall. Mr. Leuthold indicated Montana Sapphire already had their letter of credit in place for the completion of their improvements. He advised that next morning they would be meeting with several other owners with regards to facilitating improvements. He said King Meadows would like to have open doors next spring. Mr. Leuthold addressed Councilmember Ulledalen and advised King was different than Shiloh. He said MDT wanted to maintain ownership and maintenance, which was a unique change of events. He said they were agreeable to the water supply issue; the sewer was there; the storm drain

was coming; and they would pay whatever fees were in place at the time the subdivisions developed. Mr. Leuthold said it was a 5-year plan Limits of Annexation, and the Urban Planning Study....(Mr. Leuthold's speaking time expired.)

Councilmember Veis asked Mr. Leuthold if he understood why Council struggled. He said \$1.5 million in taxes would be great; but asked what if the cost was \$2 million to provide the services. Councilmember Veis asked Mr. Leuthold if that was something he could study and how much data he would need from the City to do the study. Mr. Leuthold said it was an interesting question, because they had fairly extensive discussions with staff and Mr. McCandless when they put the documents together. He said the level of information currently required in the new Urban Planning Study documents was several thousand dollars worth of data in some cases, and tens of thousands of dollars worth of data in others. He said it used to be a fairly simple document just indicating that the services were there. He said as they delved deeper into the cost issues, it took more time and energy. He advised there were some things that were a stab in the dark for consultants as compared to staff providing the real time data. He said there would be a melding of data that would come from the Cost of Services Study and the data they could provide. Mr. Leuthold added that whatever the costs were, the developers and owners were willing to pay.

- **Danny (last name inaudible – did not sign in), Studio VBM, 1601 South Rainbow Boulevard, Las Vegas**, referenced a packet Council received that provided an overview of the conceptual master plan and showed the open spaces discussed earlier. He said it was part of the Urban Planning Study showing the different areas by zone use in the Planned Development. He said the mixed use areas were shown in the red along King Avenue West. He said connecting green spaces, including bikeways, would connect all parcels. He said within each parcel was an idea and images, with obvious concentration in the core area. He said it gave the idea of using contextual architecture, which was architecture based on Montana regional materials responding to the site and the street. He said it would make a great place for people to get out of their cars. He said vertical mixed use meant commercial on the ground floors and residential on the upper floors, including parking. He said sharing a lot of uses would make it much more efficient and pliable for other developers. He said, with a streetscape, the architecture related to the street and created a great pedestrian environment where people could get out, walk around, and enjoy where they lived using the green areas. He said there were more intimate green areas rather than large programmable spaces, which was more responsive to the type of development they encouraged. He said an unusual or different type of green space would include rooftop gardens and green-top amenities, outdoor decks, and plazas at different levels for the residents to enjoy.
- **Bill Cole, Cole Law Firm, 3860 Avenue B**, said he would focus his discussion on the UPS and the UPA issue immediately before Council. Mr. Cole handed a letter to City Administrator Volek from Vern Mohlis, President

and CEO of Beartooth Bank located on the south side of Beartooth. He said it was a general letter of support, and the key sentence was "*Beartooth Bank fully supports the approval of the proposed changes to the Lenhardt development.*" Mr. Cole said there were really two things up in the first public hearing; one was the adoption of the Urban Planning Study. He said as far as he knew, City Council had never found an Urban Planning Study unacceptable. He said he did not know, but his guess would be that it was the most detailed Urban Planning Study that had ever been done on an individual property. He said staff came back and asked for more and more detail, and he suspected it set a new standard for Urban Planning Studies in the City. He said the request was that Council adopt the unanimous recommendation from the Planning Board to approve the study and to keep the area within the Urban Planning Area. He said they had a number of procedural concerns about removing anything from the Urban Planning Area. He said the property had been in the Urban Planning Area since 2002, and it was contiguous. Mr. Cole advised the Planning Board was very concerned that if the City was not planning for property that was contiguous to the City, what were they planning for. In addition, he said there was a city code that dealt with how to modify the Urban Planning Area, and it only talked in terms of expansion. He said it did not talk in terms of retraction. He said it also set up certain timing deadlines that had not been met in that case. He said there was also no notice given to his client or anybody else about any removal from the Urban Planning Area. Mr. Cole said they also started the annexation process before the City even was contemplating removal or retraction from the Urban Planning Area. He said there were a lot of serious procedural concerns about removing it.

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

Councilmember Ruegamer moved for approval of Item 19a, seconded by Councilmember Pitman. On a roll call vote, the motion passed 6 to 4. Councilmembers Gaghen, Pitman, Veis, Ruegamer, Clark, and Mayor Tussing voted 'yes'. Councilmembers Stevens, McCall, Ulledalen, and Astle voted 'no'.

**(b) PUBLIC HEARING AND RESOLUTION #08-18686 revising the 2007 Limits of Annexation Map to include the Lenhardt Square Property. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** Planning Division Manager Wyeth Friday advised Item 19b was the next portion of the process. He said he would combine presentations for Items 19b and 19c. He said with regards to the property and the Limits of Annexation Map, the property was partially located in the red existing Limits of Annexation Area, which was area that enabled immediate contemplation for annexation. He said the rest of the property was in the orange area, which was a 2013-2023 timeframe for potential annexation. He said there were about 84 acres in the orange area and about 30 acres in the red area. He said the proposal was to include the entire property within the red area making it possible to petition for

annexation. Mr. Friday showed the location of the five tracts, the surrounding properties, and the existing city limits.

Councilmember Veis asked if the small area shown would stay outside the city limits. Mr. Friday indicated it would for now. He said there were a couple of residences on the property, it was in the red area, but there had been no movement towards annexation. Mr. Friday said Rick Leuthold may be able to speak on whether there had been any more discussions with the property owners. Mr. Friday said the property was not included with the current application. Councilmember Veis asked if the small area would be a wholly surrounded island if the current property was annexed. Mr. Wyeth said it would. Councilmember Veis asked Mr. Friday if the small area was zoned Agricultural Open Space. Mr. Friday said he believed it was.

Councilmember Clark asked if the pieces of property were part of the St. Vincent's deal at one time. Mr. Friday said he was not sure.

Mr. Friday said the Annexation Policy provided the rationale for amending the Limits of Annexation Map and reviewing annexation petitions. He said the proposal to allow phased development based on infrastructural indications was one approach to try to address some of the rationale outlined. He said one rationale was distance from existing city services and response times. He said the property was on the western edge of the city limits and recent changes in Fire Department staffing and equipment configurations, and limits on the number of police officers, could contribute to future service challenges. He said it was brought up by both departments during the discussions; however, they were generally supportive of moving forward with the application. Mr. Friday advised the Fire Department's concerns stemmed from both staffing and the location. He said their ladder truck for taller structures was located at Station 1 and staffing was on an on-call basis, so they were concerned about getting to the properties. Mr. Friday advised another rationale was the capacity and location of existing facilities and future upgrades to facilities. He said the water and sewer had already been discussed and could be provided at certain levels. He said Public Works and the Fire Department were in support as long as the developments were phased in. He said an additional rationale was the cost of city services and the effect on existing residents. Mr. Friday said limited available resources and rising costs made it more challenging for the City to limit the cost and impacts to existing residents as new development occurred. He said the phasing could potentially help address those concerns. Mr. Friday advised the application conformed in some respects with the Growth Policy and West Billings Plan. He said there were specific goals outlined that were consistent with the Growth Policy and some that were inconsistent based on the different aspects in terms of agricultural land being used, specifically taking more agricultural land out of production, developments that were contiguous and around existing population centers, and the issue of lives and property in terms of location in relation to overall city service delivery. Mr. Friday said phasing would help provide a potential for balance to some extent.

Councilmember McCall asked Mr. Friday to go back to the section of services for fire and police and asked if it was the Police Department who indicated they could contribute to the future service challenges. Mr. Friday said the Police

Department stated they would be retiring a couple more officers in 2008, and they did not expect to hire additional patrol officers after that for some period of time. He said their concern was that their current staffing levels, in addition to the retiring officers, would basically bring them to a level of service they thought would be acceptable under current circumstances; but as more growth and addition to the City occurred, they felt they would be challenged to provide the same response times and levels of service. Councilmember McCall asked Mayor Tussing if it was appropriate to make a comment or wait for discussion. Mayor Tussing advised if she had a question to go ahead and address it, but if she just had an observation she wanted to make, she should wait for discussion. Councilmember McCall said she would wait.

Councilmember Ulledalen asked if the annexation boundary had been extended the last two or three years. Mr. Friday said they had added areas to the red, 5-year area. He said they had not expanded beyond the yellow area or made it bigger, but they had changed areas from orange to red.

Councilmember Veis asked Mr. Friday to talk about how the Urban Planning Study melded with the Annexation Policy and how there might not be as much need for one or the other. Mr. Friday advised the Annexation Policy talked about needing to be within the Urban Planning Area boundary to have the potential of being annexed. He said it was also tied in with the City Code regarding service delivery; which was tied in before the Annexation Policy. Mr. Friday said the boundary in the analysis was arguably more general in most cases than what was currently looked at when doing an annexation review for the Limits of Annexation Map. He said they now had the policy that Council adopted, the map, and the Annexation Committee made up of department staff. He said it was a very lengthy and detailed process. He said they still had the Urban Planning Area boundary, and a study with certain information was still required for expansion. He said once that was done, they would go back and ask for annexation information. He said it was somewhat the same type of information because they were facing requests that were immediate. Mr. Friday said the issue was to see how the two fit together.

Mr. Friday said the proposal complied and fit with a lot of what was discussed in the West Billings Plan in terms of urban densities, managing growth in the area, and the idea of compact development. He said the proposal was compact development and not infill development.

Mr. Friday summarized the following comments from the Annexation Committee specifically for annexation.

- Fire Department - supportive as long as the water supply limitations were met; and they noted there were concerns about ladder truck service out of Station One and their staffing levels. He said overall they were in support.
- Police Department - supportive but had issues with staffing levels and being able to meet future demands and maintain their response times.
- Public Works - supportive with the restriction of 600,000 gallons per day that could eventually be increased based on future water projects in the next couple of years, as outlined by Mr. Mumford.

- Road Capacities – King Avenue West was a principal arterial and under MDT jurisdiction. MDT would have to review any accesses and improvements. Monad Road was a minor arterial running from the other side of Shiloh Road and into a collector status as it went through St. Vincent's property. He said there had been discussion about the future alignment of Monad Road and how it would fit within the property. Traffic studies would be expected at the time of development; and either through a Development Agreement or Subdivision Improvements Agreement a waiver would be signed by the developers and owners allowing future special improvement districts for road improvements.
- Parks Department – supportive but said they did not want to be involved in the maintenance or management of the parks in the development and recommended privately-owned parks.

Councilmember Astle commented on the estimated 1,000 children and asked if they would have a private park for their picnics but would use Amend Park, Pioneer Park, etc. for soccer and baseball. Mr. Friday said the concern the Parks Department had was that if the parks were not large enough or designed to accommodate larger activities, it would put pressure on existing larger parks that provided for those types of activities. He said even though the development would have park space for certain types of outdoor recreation, the Parks Department's ongoing concern was the 1,000 children would still have to go to another facility to play soccer, etc.

- MET Transit – had no plans to expand services to the proposed area or anywhere within the City due to funding limitations.
- School District No. 2 – discussed earlier, and they specifically mentioned in some of the meetings and with the Annexation Committee that they were looking at purchasing the Cottonwood Park property for an elementary school; but they did not have a plan currently as to when they would build the school and be able to address the student services.
- City Finance & Administration – discussed tax revenue, and said the tax-revenue dependent departments were spending reserves to balance their budgets. Mr. Friday said there was an upcoming reappraisal of property at the State level that could reduce the overall amount the City received in taxes; and tax revenue from new development would come back to the City but over a longer period of time and would not be an immediate realization of value.
- Planning Department – supported the annexation with the recommendation of the phasing proposal utilizing the Growth Policy, West Billings Plan, and Annexation Policy as guides; and the realization and recognition that the City had to provide service to all City residents at adequate levels, including public safety. Mr. Friday said the balance seemed to become more challenging as they

reviewed the documents. He said the Annexation Committee's review was extensive, and there was a lot of information to be processed.

Mr. Friday said there were two recommendations. First, the Annexation Committee recommended Council adopt the resolution to revise the Limits of Annexation Map to include the entire Lenhardt Square property within the red area boundary; and second, staff recommended that the annexation petition be approved contingent upon approved conditions, as follows:

(1) Maximum quantity of City water would be 600,000 gallons per day until such time as the first water storage improvement project for Zone 3 was completed; at which time the amount could increase 300,000 gallons. Once the final improvement for Zone 3 was completed, the amount would increase to 1.2 million gallons estimated as potential maximum consumption for the property. Availability would be reviewed and evaluated by Public Works.

Councilmember Veis asked if King Meadows was receiving their full allotment of water and if what was left was not enough in Zone 3 for the proposed area. Public Works Director David Mumford said they were looking at the whole area to Rimrock. He said Zone 3 was Staples, which was at 17<sup>th</sup> off Rimrock, and a very large area. He said they were looking at all of it and what they had for infrastructure, which was why they said they could do it. Mr. Mumford said the reason they put in actual and proposed usage was because they had been talking to the developer about utilizing the on-site irrigation for landscaping or any other outside usage instead of using City water, especially during the summertime when usage tripled. Mr. Mumford said they were trying to be more innovative to lower demand on the City. Mr. Mumford said the City could supply the 600,000 gallons no matter what was going on. Councilmember Veis asked if any subsequent subdivisions in the area would run into the same sort of problem of not having enough capacity for two or three years. Mr. Mumford said if the annexation boundary was expanded, they would keep "bumping" into it. He said the City had been through years with a deficit in reservoirs, and it was starting to become an issue.

Councilmember Astle asked if the 600,000 gallons would still be available if there was a build-out on the St. Vincent's property and on the property across the road. Mr. Mumford said it was not an issue of producing the water at the plant, but a concern during peak periods when people were washing cars, watering lawns, and washing many loads of laundry. He said the plant could deliver to the City far into the future based on normal growth and usage. Mr. Mumford said the City had started to be more conservative to make sure levels remained available.

Councilmember Ulledalen asked if a site had been lined up for the next reservoir the City would like to build in 2009 and how it would be paid for. Mr. Mumford advised the 2009 reservoir would be an expansion at the current site, and it was included in the Capital program as part of the loan rates.

Mr. Friday continued with Condition #2, as follows:

(2) A Development Agreement or a Subdivision Improvements Agreement would be executed with the City and the Developer to cover specific issues. Mr. Friday said there could actually be a combination on the property.

Mr. Friday reminded Council there were two public hearings, and his presentation was combined to discuss both the Limits of Annexation Map and the petition for annexation.

Councilmember Clark said he attended a meeting of the West End Task Force, and the proposed subdivision was discussed. He said most of the talk was on Monad Road and its alignment through the subdivision.

The public hearing for Item 19b was opened.

- **Rick Leuthold, Engineering, Inc.**, said he would like to follow-up on a couple of comments he did not get to previously. Mr. Leuthold said he had been doing this type of work for 24 years, and he knew others had been in the land development business longer than that. He said as far as a project that met the criteria, met the study and reports, and met the criteria for logical growth on the west end, there was not one much better. He said they had talked about water and water requirements, peak demands, and average demands. He said as Mr. Mumford indicated, there was more than enough water to supply the project. He said the reservoir capacity was an issue, and it was coming on line; but the City had been in a reservoir deficit ever since it built its first reservoir. Mr. Leuthold said Zone 2 was the only reservoir the City had with adequate reservoir capacity. Mr. Leuthold said he had talked about the project being a 5-year plan and said Yellowstone Country Club, Yegen Golf Course, MetraPark, Conoco, Cloverleaf on Grand Avenue, and Aldinger Acres were all in the red area and had never been backed out. He asked how many people thought those areas were going to develop in the next five years and demand water sources. He said they were not. Mr. Leuthold said the project was adjacent to the hospital, who was currently putting its first major building on the southwest corner. He said the hospital would need places to house their workers. Mr. Leuthold referenced the steel plant going up in TransTech and said the development would be a center where people would have services available without getting in their cars and driving a mile and a half. He said they had talked for years about logical places to build where the density could be clustered and advantage should be taken of those types of uses and facilities. Mr. Leuthold said he, too, wrestled with how to deal with the costs of providing the services and said he would help wherever he could to make it a reality. He said, in looking at the utilities cost of services, he advocated bumping the services up to what it would take to provide the service to the people in the areas being annexed, as well as the people who lived in town. Mr. Leuthold said Billings was not a whole lot different than the smaller communities that were always behind the curve because they did not want to raise the rate on the elderly user. He said Billings was behind the curve, and the rate needed to be raised. He said it was not just the annexed properties that were causing the service problem. Mr. Leuthold said he respectfully requested that Council approve the items. He said the City had a very good staff that had spent a

lot of time going over the project; and he felt the recommendations were reasonable.

Councilmember Gaghen referenced the workforce development housing Mr. Leuthold spoke of and asked him if there was a projection for a medium price level of housing. Mr. Leuthold advised the owners did not want to build the property out, so they would be selling to developers. He advised the first piece would be apartment rentals, and Billings was at a very severe deficit for apartment rentals. He said the rentals would be market-priced rentals. He said the other pieces would be four-plexes and six-plexes geared in the \$160,000 to \$220,000 range. He said it was the same thing with King Meadows across the road; a vast portion was geared for that market because there was such a severe lack in that area. He said it was where people, who were coming in from other parts of the country because they had lost their jobs or filed bankruptcy and were looking for a new life, needed to be to start a new life, build equity, and take the jobs provided in Billings.

Mayor Tussing asked Mr. Leuthold if he anticipated a lot of bankrupt people moving to Billings. Mr. Leuthold said he just threw that out as a thought.

- **Bill Cole, Cole Law Firm, 3860 Avenue B**, said he had an observation on Councilmember Ulledalen's question regarding if the Council had added to the annexation area. Mr. Cole said they had added the property on the other side of the street just eleven months ago. He said King Meadows was contiguous on the east side and maybe on the south side; he was not sure. He said four or five months ago the Dover Ranch property was added to the Urban Planning Area. Mr. Cole said what counted when adding to the map was the five criteria in the Annexation Policy. He said staff went through them. He said the first one, and all were affirmative, *distance from existing city services* – Mr. Cole said it was contiguous on two sides. *Capacity and location of existing facilities* - Mr. Cole stated the “so-called experts”, staff, and the Annexation Committee Council set up had determined adequate capacity. *Cost of city services* – Mr. Cole said he would come back to that one. *Effect on existing residences* – Mr. Cole said it was a voluntary petition. *Conformance with adopted plans* – Mr. Cole said there was no annexation west of Shiloh that had ever come before that was a better match with the West End Plan in every area, so the criteria had all been satisfied. He said it was probably the absolute best case scenario for annexation the City had ever seen. He said it was not what the costs were; not what the tax revenue was; it was the ratio of those things. He said there was exceedingly low cost because all of the services were already there, and there would be extremely high tax income because of the density of the services, of the rest of the residential development, and the commercial component. Mr. Cole said he did not know if he would have time and asked Council to ask him a question because he really wanted to comment on the parks issue. He said, as a park supporter, he was very concerned about the parks issue; and he was very concerned about what happened to parks if the property was not

approved. He asked the Council to think about it. He said the advantage was they were already offering more than any land, or the quantity would be more, than any subdivision because it was about 12 or 13 percent; so it was really a great deal. Mr. Cole said the agreement would be that the developers would pay to actually develop the parks “to the tune of one to three million bucks.”

- **Danny (last name inaudible-did not sign in), Studio VBM, 1601 South Rainbow Boulevard, Las Vegas**, said he wanted to follow up on Bill’s comment about the parks. He said one of the things they did in the conceptual master plan was add in a central parcel, Parcel #3. He said they added enough acreage to create a 5-acre park, which was in direct response to what Parks requested; one piece that could be used for a play field for soccer practice; but not necessarily soccer games. He said the comment from Parks was addressed in the Master Plan. He said he would like to address some of the issues about higher density and the cost of infrastructure service. He advised Council had the report, and they had taken a comprehensive approach to comment on misconceptions about higher density. He said a lot of dollars were saved because the same development in R6000 zoning would take up about 250 more acres. He said that would double infrastructure costs, service requirement, and service area. He said typically there would be a third less school-aged children in higher density developments because they were populated mostly by singles, childless couples, and empty nesters. He said there would be four to five fewer trips per day generated because it would be a walkable community with bikeways and walking paths and people living on top of the shops. He said there would usually be a 30 percent reduction in run-off, which lowered the impact on stormwater. He said water consumption would be reduced by about 83% when compared to typical suburban development because there would not be yards or other non-essential types of watering that were typical with suburban development.
- **Leo Barsanti, 3316 Pipestone Drive**, said he represented the West End Task Force and said they had concerns with the particular land development. Mr. Barsanti commented that later on they would see the conceptual plan for the basic build-out; and they were concerned primarily with Monad Road. He said the plan was that Monad Road would take a 90 degree turn to the south, run down a block or two, take another turn back to the west, and finally meander back to hook up with Georgina. He said they were very concerned about the loss of a secondary arterial on the west end. He said obviously there would be a tremendous amount of growth in the next 20-30 years. He said the City of Billings today had many dead-end arterials, such as 24<sup>th</sup> Street; Colton Boulevard; and Poly Drive. He said he would think it would be very important to keep places like Monad Road and some of the arterials feeding traffic from subdivisions further west. Mr. Barsanti said they also had a major concern with the density. He said he did not know how familiar people were with the area between Central Avenue and King from Stewart Park to Shiloh; but it had to be one of the highest

density areas in the City. He said in the last few years, Council had approved Hunter's Point – 200 plus units; Fox Meadows – 200 plus units. He mentioned Olympic Village had approximately 65 to 70 twelve-plexes, and added the Aspens, the Pryors, Cedar Grove, the Roan Trees, the Ponderosa, and the Beartooths. Mr. Barsanti said Big Sky School was the only place within any distance of the proposal. He said it currently had 450 kids, and it was the second most crowded school in the City of Billings. He said Cottonwood Park was the only proposed future school, and it was a long way from the proposed subdivision. He said water was a problem, there was not a lot of parkland, schools were a big problem, and they certainly did not want to see anything happen to Monad Road.

Mayor Tussing advised that if anyone planned to testify on something other than revising the 2007 Limits of Annexation, he would not give them another three minutes on 19(c) and another three minutes on 19(d). He asked that people stick to the item under discussion at the time.

- **Jan Rehberg, 4401 Highway 3, Billings, MT**, said she was the managing member for Lenhardt Farms, LLC. Ms. Rehberg said it was difficult because all of the remarks were so similar on all of the reports. She said, as far as the limits of annexation, she would like to point out that when the request was originally submitted, part of the farm was put in the red area and part in the orange area. She said it was done at a time when her father was ill, and they were not particularly focused on what was going on. She said they thought it made more sense to have the area developed as a unit, as opposed to separate tracts, which was why they approached adding it to the Limits of Annexation. Ms. Rehberg said submitting it as a planned unit development would give them the ability to have an association, which would take over the maintenance responsibilities. She said that was something they had suggested to the City. Ms. Rehberg said, because of the concerns Council had for cost of services, she wanted to reiterate that there was not going to be 3,000 people dropping onto the farm the next day. She said it would be a phased development.

Mayor Tussing asked if the number 1,400 referenced dwellings or population. Ms. Rehberg said if everything was developed to its maximum, which probably would not happen, the number would be around 1,260 units. Mayor Tussing asked Ms. Rehberg how many people were estimated. Ms. Rehberg said it depended if the national average was applied or the more traditional average for high density areas. She said they used what the traditional models suggested; but in reality, it would probably be much less. Ms. Rehberg advised not all of the area would be put into dwelling units. Ms. Rehberg said the numbers provided were the worst case scenarios. She said they did not think it was reality, and it would be less than that.

Councilmember Gaghen asked Ms. Rehberg for her range of projection for full build-out. Ms. Rehberg said she would not know because they did not intend to be the builders. She said in the single family areas they could all be single family or a mix of single family and four-plexes. She said the capacity of mixed use was for a seven-story building; probably more

likely it would be five or six. She said the parking would be inside the building, so there could be two stories of residential as opposed to three or four. She said until someone actually came in to build, it would be hard to tell. Ms. Rehberg said Danny might be able to answer the question.

Councilmember Ulledalen commented the reality was that, over the next few years as the real estate market evolved in our community, there could be several iterations as different developers bought and sold the property. He said the conceptual plan was an idea but not necessarily what was going to happen.

Ms. Rehberg said that was correct, and it would all be subject to review. She said they set some parameters. She said it was where they grew up, both of her parents were deceased, and they wanted to have some control and some effort to make sure it was developed in a manner that their parents would be proud of. She said her dad sat on the Planning Board for years and was one of the first members. She said they felt they had an obligation to him to try to do it right; and by doing it with a planned unit development agreement, they had the ability to set up the covenants and restrictions, place requirements on park development, and set up the mechanisms where the association would be in charge of maintenance. She said it was set up so there could be some control as long as they still owned some of the property. She said there were review criteria for architecture and platting. Ms. Rehberg said they wanted to create a mechanism with constant review by the City as plats came in to determine if the water was really there and if the roads were put in correctly. She said the Monad issue was one that would be looked at more closely when that area was developed. She said right now that was where the roadways would seem to go because that was how the connection was made. She said it could be altered in the future, but it depended on how the City traffic studies came out and how the Engineering Department wanted to look at it. She said that was all input that was yet to come, and they were just putting the border around it and giving it a vision. She said the rest would be thoroughly analyzed as it came on.

- **Mark Kennedy, Kenmark Corporation, 3936 Avenue B,** said it made sense. He said this was an opportunity to decide how the City was going to grow. (inaudible.....not in my backyard.) He said the City could decide right now, and it was a real good piece of the City that could grow. He said they had the streets, the plan was in place, and it was a good idea. He said he developed for 20 years in Billings, and it just made sense.

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

Councilmember Veis moved for approval of the resolution to revise the 2007 Limits of Annexation Map to include the Lenhardt Square property, seconded by Councilmember Pitman.

Councilmember Ruegamer said he felt it was very well planned, but whenever there was a specific question, there was no answer. He said he did not

get an answer to the pricing because they did not know what the pricing was going to be. He said he did not get an answer to the Monad Road question. He said it would not be there anymore; there would be no traffic, and it would be just another dead-end street as Mr. Barsanti pointed out. He said he had a lot of reservations about it, and he would not support it. He said his main reservation was that he would like to see it come back to Council after the Cost of Services Study was completed. He said they could be told what had been annexed over time, but they did not even know if the City was making money on the deals or breaking even. Councilmember Ruegamer said only one person came to speak for the people of Billings; and everyone else spoke for the deal, the developers and the salesmen. He asked who would speak for the taxpayers. He said they did not know how much it was going to cost; and they did not know how much the previous annexations cost. Councilmember Ruegamer said, until the City found out what it cost, he would not support it.

Councilmember McCall said she was really conflicted because she was a proponent of Smart Growth, and she thought the vision was right on target. She said it reminded her of the Great Northern Project in Helena, and they had done a great job with it. Councilmember McCall said she had the same concerns as Councilmember Ruegamer. She said when running for office in Ward IV, she walked the entire ward and spoke with hundreds of people. She said clearly the issues most important to the people were public service, infrastructure, the City's ability to meet the existing needs; and at least 80% of the people were concerned about further annexation with the amount of property still within the City that needed to be developed. Councilmember McCall said she felt they needed to wait for the Cost of Services Study and that she was extremely concerned about police protection and coverage. She said they had received a lot of calls regarding snow removal and ice issues, and the City had not been able to meet the need. She said clearly it would be phased in but there were several developments on line to go. Councilmember McCall said, at that point, she would be in opposition.

Councilmember Stevens said, in listening to the testimony, she found a lot of inconsistencies. She said she heard it was supposed to be for workforce housing or maybe bankrupt people, yet there would be no bus service. She said she heard it would be for young singles with no kids or retirees with no kids, and those were inconsistent. Councilmember Stevens said the fact that the schools even commented and expressed serious concerns threw up a big red flag for her. She said, in reading through the staff report, the comments such as "limited resources", "future service challenges", "rising costs", "conform and conflict", "at certain times", "somewhat consistent", and "challenges the City's ability" were staff's way of being really politically correct in saying it probably was not the best idea right now, especially without a Cost of Services Study. Councilmember Stevens said the pictures all looked great, it looked beautiful, but it was all conceptual; and they did not know what was going to be built there. Councilmember Stevens said she did not think there would be roof-top gardens; maybe if it were downtown Atlanta. She said she felt the pictures were being shown as bait to get Council to bite, and she did not think it was ever going to come to pass. Councilmember Stevens said it was just her opinion and said she would not support it.

Councilmember Veis pointed out they were discussing Item 19(b), which was the revision to the Limits of Annexation Map. He said whether or not they supported the annexation, he felt it should all come together since it was one property owner. Councilmember Veis said the next step was the annexation, but asked Council to remember they were moving the limits of annexation, and it would serve the City better to have the property owner all within the same color.

Mayor Tussing said he agreed with Councilmember Veis. He said he would express his reservations when they were discussing 19(c); but he saw no reason at all not to support revising the annexation limits.

On a voice vote, the motion was approved 7 to 3. Councilmembers Ulledalen, McCall, and Stevens voted 'no'.

**(c) PUBLIC HEARING AND RESOLUTION annexing a 114-acre property located north of King Avenue West between 48<sup>th</sup> Street West and Shiloh Road and described as: Tracts 1-5, C/S 2063, (Annex #08-01). Lenhardt Property, LP; Lenhardt Farm, LLC; and Lenhardt Enterprises, LLC, owners and petitioners. Staff recommends conditional approval. (Action: approval or disapproval of staff recommendation.)**

Mayor Tussing asked if there would be another staff report, and Mr. Friday advised the staff reports for 19(b) and 19(c) were combined in terms of the recommendations.

The public hearing for 19(c) was opened.

- **Rick Leuthold, Engineering, Inc.**, said his comments would be brief. He recalled property on Grand Avenue and 54<sup>th</sup> where they wanted to build four-plexes, but there was public outcry; and they were not approved even though the parcel was ideally suited for them. Mr. Leuthold advised there was density occurring around 54<sup>th</sup> and Grand with Cottonwood Grove and the Granite Park parcels. He said it was an area they would need to ask for support on should they move forward; or they would need to come to something like this. He said that was why pieces of property like this were important because they could not approach them in some of the areas out in the community. Mr. Leuthold referenced the 30 acres for apartments and said there was only one other area in the red area that he was aware of that was available and priced efficiently to build that number of apartments. He said there was nothing else, and apartments would end up being put in Laurel in order to receive municipal services. Mr. Leuthold said it was a piece of property where they saw a demand, their clients were asking for it, and they felt it was well thought out. Mr. Leuthold said he did not necessarily see the inconsistencies, and he would be happy to talk them through with councilmembers. Mr. Leuthold said the Lenhardts indicated they needed to sell the parcel and move on, and it would be unfortunate if a portion came into the City and the other portion stayed in the county. He said it would create another 80 acres that they would not be able to get water and sewer to on the other side.

Mayor Tussing commented the proposal looked great, but it was not necessarily what would happen because the people testifying were the current owners and not the developers.

Mr. Leuthold said the real crux of it was the Planned Development Agreement, and that was what "put the teeth in it." He said the next piece would be the zoning, which would be a requirement on how the land was to be developed and a master plan on how it would be laid out. Mr. Leuthold said that was the document that told what to build on the property and the agreement entered into with the City and the developer. Mr. Leuthold referenced the roof-top gardens and said everyone thought of them as being downtown. He said with the types of activities and densities occurring at the intersection, the fifth parcel would be designed for work-live and multi-level buildings with some clients pushing lead-certified property. He said one of the first things a builder would do was put in roof-top gardens. Mr. Leuthold said he did not think it was out of the question to have that type of development along King Avenue next to the next hospital.

Mayor Tussing said it was not out of the question, but it was not guaranteed either. Mr. Leuthold said it was a guideline on how to use the property.

- **Lorraine Newman, 4035 Cedar Grove Court, Bellingham, WA**, said she was one of the partners of Lenhardt Properties. Ms. Newman said she would like to address the questions about the workforce people. She said when they started looking around for what kind of development they wanted, they looked at their own lifestyles. She said all of them had children who were just completing college and were entering the workforce. Ms. Newman said they looked at the type of housing they looked forward to as they moved out of college housing and into their first home. She said they were looking above college housing, and they wanted the next step up. She said they thought a lot of those people would be working in the hospital and in that area. Ms. Newman said they also looked at where they were in their lives and what their friends and neighbors were doing in the same age group. She said they were empty nesters, their children were in college and out the door, and they were looking at downsizing. She said they were looking into getting into planned communities where the amenities around them were nice but taken care of because they were traveling. Ms. Newman said they looked at the two groups of people they knew very well because it was their lifestyle. She said that brought them to the zoning item and the planned development. She said the only way they could do a planned development was to be able to take the entire piece and plan it together. She said it would not work as a piecemeal because it would be in two separate developments. She said they wanted to keep it together, put in strict criteria that made five different developers build it to look like one piece. She said the developers would know upfront before they bought the property what they had to do to make it match and look good together. Ms. Newman said they were all at retirement age, and they could not maintain the farm anymore. She said they were done and had moved out.

- **Pat Schindele, Prudential Floberg Realtors, Billings**, said he was born in Billings and had been a broker for 14 years. He said when researching the availability of lots for multi-family development in Billings, he searched the entire multi-list system that day and found only eight lots currently available for purchase. Mr. Schindele said it was a typical scenario of recent years, as he has had developers/investors looking for some time but never finding much. He said the properties were in tight hands or just not out there. Mr. Schindele said of the eight lots marked multi-family, only three were four to seven unit build lots, and the rest were duplex lots. He said there were no parcels available with proper zoning for a multi-plex subdivision. Mr. Schindele said it was a major need in Billings. He said he had buyers calling daily looking for investments, and they would buy multi-plexes if they were available. He said there were only old buildings in dis-repair or requiring high maintenance. He said if the housing market in Billings were to slow, there would be an even greater demand for rental units. He said he owned apartment buildings for 25 years; and his rents had gone up 15 to 25 percent a year on average. Mr. Schindele said Lenhardt Square Subdivision was a much-needed development in the right part of town. He said it did not have adjacent, existing single-family housing that would put up a lot of resistance. He said he had an interested developer/buyer who wanted to purchase infill farmland off of Grand Avenue in 2007, and it became very clear when talking with other developers and builders that the surrounding homeowners were well organized and had threatened a charge against multi-plex density. Mr. Schindele said he heard all of the concerns about market and pricing. He said he was involved in marketing the parcel, had done a lot of research on it, and knew what they were looking at for pricing. Mr. Schindele said he would be glad to answer any questions.

Councilmember Gaghen commented there was a copy of Mr. Schindele's letter in the packet sent by Mr. Cole.

- **Bill Cole (said the address was already in the record)** said the only reason there would not be roof-top amenities would be if the City chose not to enforce the requirement. He said the PDA made the roof-top amenities an explicit, legal zoning requirement, or at least they should if the City enforced the zoning requirements. Mr. Cole referenced the mandatory waiver for parks and said the City could not require public access in a PDA because the mandatory waiver of the park dedication requirement would make it illegal. He said there was no desire to bar the members of the public from using the parks, and it was very important that they had access. Mr. Cole said Councilmember Stevens was very correct in saying there was concern on part of the staff about annexation. He said that was why the Annexation Committee met three times. He said they met it with great skepticism but the experts, the people who could provide or not provide the services, came to the conclusion that they could. He said that was a critical component. He said they also looked at the cost issues, and they were best able to make that determination. He said they did not know exactly what the dollars and cents were, although they found them better than a lot of past

annexations. Mr. Cole said there would be no street expense, no utilities, and no park maintenance. He said there would be extra fire and extra police, but the dense development was the most cost effective. Mr. Cole told Council if they said 'no' to the annexation, they would have to say 'no' to every other annexation. He told Council they had to look at what they had done in the past. He said the property across the street had been annexed just a few months prior, which was less cost effective and less dense. Mr. Cole said he could not tell Council where every dollar and cent was, but it was the best one they probably had ever seen or would see for a long time coming. He said he thought it would be arbitrary for the Council not to approve the annexation.

Councilmember Stevens said she had some concerns on a couple of Mr. Cole's comments. She said Mr. Cole had indicated the people that made the decision for approval were the people that best knew the costs. Councilmember Stevens asked if those people approved the budget, approved any changes to the budget, or had to find money to pay for things. Mr. Cole said he would never want to suggest that Council did not have the ultimate role in the "buck stops there" in making those determinations. Mr. Cole said Ms. Stevens' point was very well taken, but said the departments probably were the best equipped to know what their own budgets were. Councilmember Stevens said the departments were but not some of the boards. Councilmember Stevens said she agreed with Mr. Cole that maybe they needed to take a harder look at allowing any more annexations. She said the Briarwoods, the Ironwoods, and the Rehberg Ranches had all cost the City a lot of money, and the cost was getting spread out among all the taxpayers when only a few of them truly benefited. Councilmember Stevens said she was to the point that she was really considering no more annexations until the City figured out how to pay for them. Mr. Cole said her concerns were very well taken, but his point was that this annexation was a completely different animal. Councilmember Stevens agreed it was a completely different animal, and the City was having problems meeting the service needs, as the wording in the documents indicated. Mr. Cole agreed the City had a real difficult financial situation in front of them.

- **Jan Rehberg (said the address was already in the record)**, said she felt no one there did not appreciate the financial condition the City found itself in, as the result of many, many things, some of which may include annexations, lawsuits, and just the fact that everything was more expensive. She said people in the private sector all faced those concerns, which was why they came with their proposal because they understood that cities had to take a hard look at how they were developing and what they were doing. She said if people, who were Smart Growth advocates, turned a project like this down now, they may never have another chance for a similar opportunity because of the risk. Ms. Rehberg said Council was right; they did not have all of the answers because it was a risk. She said it was a risk of going out and trying something new; trying something that the experts say should work. She said it had not been done in Billings, but they were trying to be proactive in

adopting some of the policies that urban planners all over the country said worked. She said she was a member of the Urban Land Institute, one of the foremost urban planning associations in the country. Ms. Rehberg said that was where they got their ideas; they did not pull them out of the air. She said the ability to annex and the ability to incorporate the growth in a county was one of the things that led to fiscal health of the community and city. Ms. Rehberg said the information from Smart Growth was that high density, compact growth was the most cost effective pattern a city could adopt. Ms. Rehberg stated, "If you turn this one down and you think somebody else is going to come in and do this, why would they? Why would they?" She referenced Mr. Cole's comments that staff looked at it; they recognized the budget constraints; they all had budget cuts; they all knew it was coming down the line; they said right now they were doing more with less; but they all said they could do it. She advised staff said they could put it together, but they wanted to give the message that they were not sure how much more they could do. She said it was not that they could not do it, it was they knew times were tough; they were being pushed a little further than they had ever been; and they could do it; and they wanted to get things rolling. Ms. Rehberg said those were the comments. Ms. Rehberg said she would like to talk about schools.

Councilmember Ruegamer said he felt a lot of pressure with Mr. Cole telling Council they were being arbitrary and Ms. Rehberg telling Council if they did not do this they would "never get another bite at the apple." Councilmember Ruegamer said he felt a lot of pressure, and he asked why all of a sudden it was being thrown at them; and they were being told they were dumb and arbitrary if they did not approve it because they would never get another chance, and they would be sending a message to the whole world not to do it. Councilmember Ruegamer said he did not believe any of it, and he could not agree with any of it. Councilmember Ruegamer asked Ms. Rehberg why they could not wait four or five months until the Cost of Services Study was done so they could talk about it rationally. He said they were not answering some of Council's questions, and Council could not answer their own questions about the costs. He said they wanted Council to approve it before Council knew how much it would cost. Councilmember Ruegamer said they had done it in the past, and Ms. Rehberg had brought up lawsuits and things that had happened in the past that had cost the City before anybody on the present Council was there. Councilmember Ruegamer said they were trying not to make the same mistakes. Councilmember Ruegamer asked Ms. Rehberg again why they could not wait a few months until the completion of the Cost of Services Study. Ms. Rehberg advised that even though Council was just getting it that day, they had been at it since the fall of 2006. Councilmember Ruegamer said they had been working at it for two years, and now they expected Council to make a decision in three hours. Ms. Rehberg said it had been reviewed at various stages along the line. Ms. Rehberg said it would have been done in a different manner had they been allowed in the limits of annexation a year

ago. She said they would have had more time to present it and not all in one night. She said those decisions were made by staff and Council, so they went along, and that was where they were today. Ms. Rehberg said the other factor was that they had two buy/sell agreements that were going to expire, so for them, it was important. Ms. Rehberg said they had decisions to make as to how they would farm the property. She said they did not try to bring it all in one parcel that night; they tried to bring it in a more phased fashion, but it was sidelined along the way. Ms. Rehberg said, as far as she understood the Cost of Services Study, it would be used to adjust the rates; and if they found they needed to charge more for whatever it was they were doing, then they could charge more. Ms. Rehberg said she did not see what the Cost of Services Study would say. She asked if it would say the City could not annex anymore. She said if that was what they were expecting, they needed to tell some of the commercial people who were planning to put in Kohl's Department Store and Cabela's because those people making the commercial decisions were making them on the basis that Billings was going to be a growing community. Ms. Rehberg said if they were going to be out Branding Billings and Billings was not going to grow, it seemed to be a little bit counterproductive. Ms. Rehberg said it was important to them that they do it now. She said they had a lot of considerations going on. She said bringing it into the limits of annexation did not mean there would be 3,000 people there tomorrow. She said it meant in a year there would be an apartment complex, because the platting still needed to be done; and the determinations would all come to Council and Council would have the ability to look at them and approve or not approve. Ms. Rehberg said, as far as services, the City would not need to put ten firemen and five policemen onboard to service the community; not today, not in a year, probably not in five years. She said if people came to Billings, they would go somewhere, and the City would still have to provide policemen, firemen and schools. She said it did not matter if they were on the west end, south side, or the Heights.

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

Councilmember Veis moved for approval of the resolution for Annexation #08-01, Lenhardt Square, seconded by Councilmember Pitman.

Councilmember Ulledalen commented that the next four months they would spend wrestling with the budget, and they had a waiving, but an across-the-board admission, from staff that the services could be provided with no real big questions. He said if this item passed, he would expect and hope to see the same can-do attitude from staff during the budget process.

Mayor Tussing said he agreed with Councilmember Ulledalen. He said it did not surprise him in the least that a realtor, a banker, and the Chamber of Commerce thought it was a great idea because they tended to benefit from it without having to provide the services to make it happen. He said, by the same token, it was not the requester's fault that the City did not have a Cost of Services

Study done or that Council had just received the item last Monday. He said it was not their fault, and they had followed the process the City laid out for them. Mayor Tussing said he heard what Councilmember Ulledalen was saying. He said it seemed to him that he was more concerned than staff about meeting the needs and the budget, because staff had relatively "wishy-washy" responses, such as "water could be a problem, but I guess its okay; parks could be a problem, but I guess its okay, the Police Department says they are going to add two additional officers, but they're concerned with the future." Mayor Tussing said staff was not very specific. Mayor Tussing said he did not get a good answer as to how many additional people there would be. He said 3,000 more people would ultimately mean seven additional police officers. He said the City just lost 11 or so firefighters through no fault of anyone on the present Council. Mayor Tussing said he was concerned about delivering the services. He said the City could charge for sewer hook-up, water hook-up, make them put in streets, and require cash in lieu of parks or a designated amount of parkland. He said it had been indicated, although not guaranteed, that there would be more than the normal amount of parkland dedicated in the subdivision. Mayor Tussing said he had no choice but to support it because the staff said they could handle it. Mayor Tussing said they had just received another report that evening indicating the emphasis seemed to be on "handling citizen complaints when we have five unsolved homicides, a bunch of stabbings and bank robberies, and people are calling all the time about traffic enforcement, but we don't care about that. We care about investigating complaints against officers; and if we have enough cops to do that, then I guess everybody is happy."

City Administrator Volek advised she needed to rise to the support of the staff. She said she had emphasized customer service to staff, and she believed the Council had demanded a standard of customer service. She told Council what they had before them that evening was a Planning Board that was critical of staff; a Planning Board that accused staff of being non-participatory; a Planning Board that said, essentially, growth at all cost was an acceptable way to proceed. Ms. Volek suggested to Council that staff was attempting to work as hard as it could to provide service, and she believed staff had been as cost conscious as they possibly could have been. Ms. Volek asked Council to recall last year's budget increase that was the lowest it had been in five years in the departments. She said staff came to Council with a budget that was extremely lean and would continue to do so. Ms. Volek told Council staff was very conscious of dollars, but also conscious of the fact that if the City did not grow, it would die. She said it was not only the City's responsibility, but the responsibility of the legislature; and the fact that the State was heading into reappraisal. She said those who were here several years ago, including Mayor Tussing, knew full well that the predictions of what increase and income the City would receive from the first public safety level were thoroughly defeated by the cost of reappraisal. Ms. Volek said there were many factors; and she simply could not allow it to look like staff was being "wishy-washy". She said it was an attempt to provide customer service and to keep growth opportunities; but to give Council the heads up about what was coming and problems that would continue. Ms. Volek said their predictions were 1,400 units,

and 3,300 people in the development. She said she was not saying Smart Growth was not a wonderful thing, but she wanted Council to be aware when they entered into it that there were issues attached, and it would not be the last. Ms. Volek said she had lived in communities where the decision finally came that farming was not the future of that community. She said she had worked in a community that started out with 25,000 people in 1950 and grew to 500,000 people. Ms. Volek said one reason they proposed the Cost of Services Study was to become very aware of what services were costing so they could be accurate in making charges and not put it back on the people who had lived and contributed in the community for a very long time.

Councilmember Astle said he was new on the Council and represented the people in Ward V. He said he heard the comments and felt like he was being lectured that staff said they could tough it out, so everyone needed to "suck it up a little bit." He said the people in Ward V had been "sucking it up a long time." He said if he were a betting man, he'd bet the people in Wards I, II, III, and IV were not "sucking it up any less." Councilmember Astle said he would not vote for it.

Councilmember Stevens said she was looking at the procedural history, and she found it very interesting that in Winter 2006, the City denied the request for inclusion in the immediate area for annexation; yet the applicants, in the face of that, proceeded forward and now that evening had 19(a), (b), (c), and (d), which took it all the way through the zoning. Councilmember Stevens said she was seeing where staff said things such as "generally consistent", "limited city services at this time", "challenges the City's ability", "serious concerns with School District 2", "but funding operating costs is a major issue", "beginning to feel the budget pinch", "reducing services or spreading them thinner", "any additions to the City at this time will diminish services to existing city residents", "no plans to expand current bus service to this property", "the addition of two officers will not address the significant city growth that is occurring." She said all through the documents she was seeing staff trying to be diplomatic and customer service oriented to try to figure out a way to make it happen. Councilmember Stevens said she thought in their "heart of hearts" they knew it was going to be very difficult to do; and then they heard Ms. Rehberg say they had a buy/sell on the land. She said that was why they were pushing it because they stood to make "a bucket of money"; and asked who would pick up all the extra costs. She said it would be all the other citizens and taxpayers. Councilmember Stevens said she could not support it and would not.

Councilmember Veis said he thought the staff did a pretty good job trying to reflect what they wanted Council to do, and he blessed them for trying because he sometimes did not have any idea. He said he knew staff was doing the best with it, Council gave staff conflicting things, and it was tough to reflect what Council wanted staff to do. Councilmember Veis said he thought staff was "giving their best stab at it." He said there had always been "scuttlebutt" about annexation; and that evening was the first time Council had to take a really hard line about annexation. He said staff's report was a good reflection on where they had come from as a Council. Councilmember Veis said he completely understood and agreed with what had been said about the cost, but the alternative was that it would probably go across the street to the County Commissioners and could very well become

R15000; and within five years the City would get it as R15000, and it would not even be close to city standards. He said Billings would end up having the same fun as Missoula, Helena, and Bozeman when they tried to move properties into the City that had been developed just outside the City and not to City standards. He said it was the same thing they struggled with over and over again. He said he looked at it hard, and right across the street or right next door there was the extension of water and sewer. Councilmember Veis said since they were already out there, they should continue.

Councilmember Clark said density paid for services. He said if it was allowed to be developed in large lots, it would never pay.

Councilmember Ulledalen said he agreed with Councilmember Veis that staff bent over backwards to get things done; but those who were involved in a broader range of things, including trying to get tax reform; ways to address how to fund what they were doing and not getting anywhere; and knowing the governor had already said he was not going to allow increases in appraisals, they had a tough nut to crack the next several years. He said there were no easy answers. He said the ability and willingness of constituents to pay was getting strained. Councilmember Ulledalen said he would be consistent and not vote for it.

Councilmember Ruegamer said he had no problem with what the staff presented. He said staff gave them the facts, and they make the decision. He said the applicants gave their side of it, and Council needed to make a decision; but Council needed to represent the people in their wards and think about the taxpayers and not just the people who wanted to build it. Councilmember Ruegamer said he thought it was a great project, and he was tremendously impressed. He said he was really conflicted with it, and it was one of the most difficult decisions he had ever had to make.

On a voice vote, the motion to approve annexation failed 6 to 4. Councilmembers Gaghen, Stevens, Ruegamer, McCall, Ulledalen, and Astle voted 'no'.

**(d) PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #829: A zone change from Agriculture-Open Space (A-1), a county zoning district, to Planned Development with three underlying zoning districts - Mixed Use (MU); Multi-family Residential (MF-R); and Single Family, Residential Multi-Family (Four-Plex) (MF-4) located at 4345 King Avenue West. Lenhardt Property, LP; Lenhardt Farm, LLC; and Lenhardt Enterprises, LLC, owners, Engineering, Inc. and Bill Cole agents. Zoning Commission recommends approval and adoption and determinations of the 12 criteria. (Action: approval or disapproval of Zoning Commission recommendation.)**

Item 19(d) was contingent upon approval of Item 19(c). The motion for approval of 19(c) failed.

Councilmember Veis asked if the public hearing on 19(d) needed to be held since it had been advertised or if the defeat of 19(c) precluded the need for the public hearing.

Attorney Brooks said it would be precluded at that point. He said the public hearing could proceed, but there would be no decision for the council to make.

**20. RIMROCK FOUNDATION SPECIAL REVIEW #800. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** City Attorney Brooks advised the item was consistent with two recent litigation strategy sessions the Council had concerning ongoing litigation, and he advised the correspondence Council had in front of them was consistent with those recent sessions.

Councilmember Stevens moved for approval of extending a reasonable accommodation to Rimrock Foundation for a residential treatment facility at 1721 8<sup>th</sup> Avenue North, seconded by Councilmember Astle.

On a voice vote, the motion was unanimously approved.

**21. PUBLIC COMMENT on Non-Agenda Items -- Speaker sign-in required.**  
*(Restricted to ONLY items not on this printed agenda; comments limited to 3 minutes per speaker. Please sign up on the clipboard located at the back of the Council Chambers.)*

The public comment period was opened.

- **Kevin Nelson, 4235 Bruce Avenue**, said he jumped off the couch and had to come down. He said he previously had the TIFD information. Mr. Nelson said, "Officers that had invested by municipality with urban renewal projects may not voluntarily acquire interest, direct or indirect, in any urban renewal project." Mr. Nelson said he believed there were people in the room with interest in the district. He said the terms were the downtown association, or whatever. He said they were people in the district controlling it, and that was a direct conflict of interest of 17, 15, 42, and 39. He said he demanded the board dis-ban the group and have nothing to do with them. He said they could not make decisions for controlling the money. He said it was unethical; it was against the law. He said there were all kinds of people who want (inaudible) questions, and he has had 11 questions he wanted the City to answer for two or three months, and no one would answer them. Mr. Nelson said he would like to see the Council, if they wanted to have an urban renewal law, have one of the rules that there could not be people inside the district with interest, sitting on the boards, deciding where the money would be spent. He said it was absolutely illegal and unethical. He said that was just his opinion. Mr. Nelson said he thought the City should really try to follow the law, and he believed this one was pretty clear on why City should go about and dis-ban the thing.

Councilmember Stevens asked Mr. Nelson if he would mind if they got a real legal opinion on it.

Mr. Nelson asked Councilmember Stevens if she would request that Attorney Brooks answer that question in writing.

Councilmember Stevens asked Attorney Brooks if he knew what the question was.

Attorney Brooks said he thought he did. He advised he had scheduled at least two, if not three, meetings with Kevin, and said Kevin had cancelled each one of them. Attorney Brooks said Kevin did ask that staff respond directly to him with the legal opinion. Attorney Brooks said, with all due respect to Kevin, he answered to the Mayor, the Council, and the City Administrator. He said on numerous occasions, as Kevin would have to admit, he had offered to meet with Kevin, and he had cancelled on numerous occasions. Attorney Brooks said he would still meet with Mr. Nelson if he wanted, and said he would be more than happy to answer any questions the Council put to him. He said he thought Kevin had given them a long list of questions, and staff would have been more than happy to sit down with him and try to answer all the questions he had. Attorney Brooks said, at that point, he was more than happy to do whatever Ms. Volek and the Council directed him to do. Attorney Brooks said Mr. McCandless and other city staff had offered to meet with Mr. Nelson, as well.

Mayor Tussing asked Attorney Brooks if they made the decisions where the money went or if they requested Council to make the decisions. Mayor Tussing said none of them had a personal interest, or at least no one had recused themselves that he was aware of. He said the Council was the actual decision maker, so it seemed to him there was no violation; but he had not looked at the statute.

Attorney Brooks advised that ultimately the Council was the decision maker in terms of what happened to the money. He said, by statute, they could employ and contract with other businesses to help discharge the responsibilities of urban renewal.

Councilmember Stevens addressed Mr. Nelson and said, in light of what they had just heard; she was not inclined to direct staff to rebut his legal analysis. She told Mr. Nelson if he could find an attorney in town who would agree with his legal analysis and was willing to bring it forward, she would give it more weight. Councilmember Stevens said, at that point, she was not inclined to make staff defend a layman's legal analysis.

Councilmember Gaghen said she was not sure if Mr. Nelson was aware that the State of Montana had great oversight on how tax increment funding districts were operated and how they performed. She said the first one about to sunset in March had been held up as an example of how it was done correctly. Councilmember Gaghen asked Mr. Nelson if he thought the City would have been held in that regard if they had been operating illegally for that many years. Mr. Nelson said he did not know if anyone had ever questioned the City and said all he wanted was to have his questions answered in writing; and he did not know what was so difficult. Mr. Nelson said to put it in writing; it was very "simple, simple, simple, simple stuff."

Councilmember Ulledalen told Mr. Nelson they had said 'no'. Mr. Nelson said, "that's fine, don't put it in writing." Mr. Nelson left the meeting.

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

## Council Initiatives

- **Tussing:** MOVED to reconsider the Lockwood Sewer District Contract that failed previously on a tie vote, seconded by Councilmember Veis. City Administrator Volek asked Mayor Tussing if he had a date certain. Mayor Tussing said he thought about March 10<sup>th</sup>.

Councilmember Veis asked if it could be brought up at any meeting.

Attorney Brooks advised that, under the rules of reconsideration and because of public notice requirements, they could move that evening to reconsider that would place it on the next agenda; or Council could dictate on which agenda in the future to place it on.

Mayor Tussing clarified his motion for a date of March 10<sup>th</sup>, and Councilmember Veis agreed to the clarification. Mayor Tussing said there were two reasons he agreed to make the motion. He said he had some ex parte communication with Dick Larson where Mr. Larson talked to him about the \$2 million the City would get in development fees. Mayor Tussing said he apparently had missed that last time. Mayor Tussing said Councilmember Gaghen had asked him, since she was not able to be there the last time, to re-discuss it because it had failed on a tie vote and since not everyone was able to vote, the outcome could have been different.

Councilmember Ulledalen advised he would not be at the next meeting, which probably meant it would pass.

Mayor Tussing said it was not his intention to try to make it happen and if Councilmember Ulledalen preferred, he would amend his motion for a meeting Councilmember Ulledalen would be attending.

Councilmember Veis said he was happy to do it, but it had come up before and trying to find a meeting everyone would be attending tended to be a little difficult.

Councilmember Astle amended the motion to place the item on the March 24<sup>th</sup> agenda, seconded by Councilmember McCall.

Councilmember Clark said he saw no problem with changing the date so Councilmember Ulledalen could attend. He said it was being redone because Councilmember Gaghen could not be present the first time.

Mayor Tussing said he was not trying to dictate the outcome and was only making the motion for an opportunity to discuss it, and the intent was to have the whole council discuss it.

Councilmember Veis said he just wanted to speak out against using the phrase "until the whole Council can be there," because that could get to be very tricky.

Councilmember Stevens said she could not wait until the Lenhardts came back and wanted to buy sewer and water from the City.

Councilmember Gaghen said she wanted to point out it was not just accommodate her not being able to be there. She said the new information or the monies that were not seemingly as obvious at the time of the consideration did make an impact on some who might have felt differently about it.

Mayor Tussing said he indicated when it was voted on that he was torn and said initially he had supported it, and he had reservations about all the back and forth in the contract. He said he felt it was his main responsibility to the citizens of Billings to make sure they were protected, but he was concerned about what would happen to the river or the environment if they do not do it. Mayor Tussing added there was still no guarantee that the citizens of Lockwood would agree to it either. He said it was important enough that he was willing to listen to it again.

Councilmember Clark said it was only a small area of Lockwood that would be included in it. He said the homes with septic tanks were still going to be sitting there without.

Councilmember Ulledalen said he felt they were told one thing, but there was really another issue there. He said it was not purely about dealing with the broader issue of Lockwood; but there were millions of dollars of commercial development that were waiting completion in Lockwood, and all they needed was a sewer connection.

Councilmember Veis said they could go around about it, but there was no development that was being stopped in Lockwood. He said to tell the Commissioners to put their foot down and say no, it is not going to stop, and said he really did not see the Commissioners putting their foot down.

Councilmember Ulledalen said the point was that the project did not make sense if they had to build their own sewer.

On a roll call vote, the motion passed 7 to 3. Councilmembers Gaghen, Pitman, Veis, Ruegamer, McCall, and Astle, and Mayor Tussing voted 'yes'. Councilmembers Stevens, Ulledalen, and Clark voted 'no'.

**ADJOURN - The meeting adjourned at 1:20 a.m.**

*(NOTE: Additional information on any of these items is available in the City Clerk's Office)*

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<http://ci.billings.mt.us>