

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

August 22, 2011

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

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

MINUTES: August 8, 2011 – Councilmember Cimmino moved for approval, seconded by Councilmember Pitman. On a voice vote, the motion was unanimously approved.

COURTESIES:

- Mayor Hanel said on behalf of the Billings Fire Department who recently conducted their annual Muscular Dystrophy fundraising drive, he wanted to extend a courtesy to the citizens who contributed. He said the Fire Department, once again, raised a significant amount breaking their record from previous years and the record throughout the State of Montana for fire departments. Mayor Hanel commended the Billings Fire Department for their hard work and dedication to such an important program.
- Mayor Hanel said on behalf of the City of Billings, the City Council, and all citizens, he recognized the Billings Big Sky All Stars for their success. He said they had played exceptional ball, they were coached by exceptional coaches, and had exceptional parents and families as supporters. Mayor Hanel wished them continued luck as they represented the City and the State of Montana.
- Councilmember Gaghen introduced her son, Matthew, and his wife, Shannon, and grandchildren, Caroline and Ryan, who were visiting from Richfield, CT.
- Councilmember Ronquillo thanked Tim Goodridge for bringing the Blues Fest to South Park the past weekend. He said they had a very good turnout.

PROCLAMATIONS: None

ADMINISTRATOR REPORTS - TINA VOLEK

Ms. Volek commented on the following items:

- Item 1A2, Bid Award for Yellowstone Family Park Improvements:
 - An incorrect bid tab was attached to the staff memo. A corrected bid tab was forwarded to Council in the August 19 Friday packet and was filed in the ex-parte notebook.

- The remaining construction budget referenced in the staff memo was incorrect. Instead of \$1,953,252.06, the amount should have read \$953,252.06.
- Item 1A3, Bid Award for 29th Street West and Central Avenue Traffic Signal Improvements: Agenda incorrectly listed the location as 19th Street West and Central Avenue. Should have been 29th Street West and Central Avenue. Agenda had been changed to reflect the correct location.
- Item 1F1, Yellowstone Art Museum Oktoberfest: Insurance they submitted was expired. Need to approve pending receipt of current insurance certificate.
- Item 1F2, Yellowstone Family Dental Miles of Smiles 5K/10K Race: Insurance they submitted was inadequate. Need to approve pending receipt of current insurance certificate.
- Item 1F4, Waddell & Reed and the Western Heritage Center – Honoring our History Traveling Exhibit: Insurance they submitted was inadequate. Need to approve pending receipt of current insurance certificate.
- Item Q, Preliminary Major Plat of Whisper Ridge Subdivision: E-Mail from Gary Groshelle to Councilmember Ulledalen, dated 7/27/2011, in opposition of the project. Copy of e-mail was forwarded to Council in the August 19 Friday packet and was filed in the ex-parte notebook.
- Item 2, Resolution approving a 25-cent per month surcharge per subscriber Public Education and Government PEG fee:
 - Revised resolution sent in August 19 Friday packet and filed in ex-parte notebook. Date on Tina's memo should say 12/1/11 and not 12/1/12.
 - E-Mail from Lynne Turner Fitzgerald, dated 8/22/11, to Mayor & Council. On Council's desk and in ex-parte notebook.
 - Letter from Shawn Beqai, dated 8/19/11, on Council's desk.
- Item 4, Public Hearing and Resolution authorizing the sale of parkland in the Twin Oaks Subdivision: Resolution was not attached to the staff memo. Staff recommended approving the item and a copy of the resolution provided to the Mayor for signature to allow the developer to begin the construction.
- Item 5, Public Hearing and Resolution adopting Complete Streets Policy: As of 4:00 p.m. that day, 34 e-mails had been sent to Mayor and Council in support and 2 e-mails had been sent to Mayor and Council in opposition. List of persons who sent e-mails was filed in ex-parte notebook.
- Item 7, Public Hearing and Special Review #891: E-Mail received from Ed Jorden and Gerald Neumann, dated August 22, requesting postponement until September 12 meeting. Copy of E-mail on Council's desk and in ex-parte notebook. She said because the public hearing had been advertised, staff recommended opening the public hearing and continuing it until September 12.
- Memo from Patrick Weber, City Finance Director: Asking Council to add a resolution to the agenda adjusting the parameter of savings to \$150,000 for the Gabel Road SID refunding. Memo forwarded to Council in the August 19 Friday packet and was filed in ex-parte notebook.
- Memo from Candi Beaudry, Planning & Community Services Director: Asking Council to add Community Challenge Planning Grant – Request for Tax Increment Finance Funds to the agenda for approval of \$100,000 annual

commitment for three years of EBURD TIF funds as match for the grant. Memo forwarded to Council in August 19 Friday packet and was filed in ex-parte notebook. Ms. Volek said she spoke with Marty Connell, who indicated he believed the item would be approved by the Billings Industrial Revitalization District Board. She said she recommended considering approval contingent upon recommendation coming from the Board.

Councilmember Gaghen moved to add the resolution adjusting the parameter of savings for Gabel Road SID Refunding to the regular agenda as Item 9, seconded by Councilmember Ronquillo. On a voice vote, the motion was unanimously approved.

Councilmember Ronquillo moved to add the Community Challenge Planning Grant – Request for Tax Increment Finance Funds for approval of \$100,000 annual commitment for three years of EBURD TIF funds to the regular agenda as Item 10, seconded by Councilmember Gaghen. Councilmembers Pitman and McCall recused themselves due to professional conflicts. On a roll call vote, the motion was approved 7 to 0.

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: #1, #2, #9 and #10 ONLY. Speaker sign-in required. (Comments offered here are limited to one (1) minute. Please sign up on the clipboard located at the podium. Comment on items listed as public hearing items will be heard ONLY during the designated public hearing time for each respective item. For Items not on this agenda, public comment will be taken at the end of the agenda.)

The public comment period was opened.

- **Lynne Turner-Fitzgerald, 315 N. 30th, Billings, MT**, referenced Item 2 and said she was speaking on behalf of Channel 7. She said the letter received from Cablevision stated that the Franchise Agreement between Cablevision and Billings specifically prohibited Cablevision from carrying PEG channels in HD format. Ms. Turner-Fitzgerald read from Paragraph 2.7 of the Franchise Agreement that said by March 1, 2011, franchisee would offer the City's PEG channel currently known as Channel 7 on the city's channel lineup high definition format at no cost to the City. She said she could not explain the letter and said all she could do was point out the differences between the Franchise Agreement and what was in the letter from Cablevision.
- **Tim Goodridge, 2990 Lohof, Billings, MT**, referenced Item 2 and said he was in support of the Channel 7 PEG fee. He said it would be a great way for them to receive revenue and build up a nice production facility that would be outside of the Lincoln Center and give them access at all hours. He said he was also in support of Complete Streets.
- **Jean Steele, 25 Mountain Side Drive, Billings, MT**, referenced Item 2 and said she was currently a member of the Community 7 Board and a former producer. She urged Council to vote in favor of the resolution.
- **Jonathan Peart, 828 Yellowstone, Billings, MT**, referenced Item 2 and said he was the Executive Director of Eagle Mount Billings. He said as a small non-profit

they had very limited advertising and marketing monies, and Community 7 was a wonderful venue for them. He asked Council to support the resolution.

- **Tim Harrington, 415 N. 30th, Billings, MT**, referenced Item 2 and said he was Operations Manager at Community 7. He said Community 7 provided programming to approximately 35,000 households in the area. He said they had been at a fixed, flat rate for the past 10 years. He said the PEG access fee was an opportunity to expand their services to the community that would cost subscribers less than a penny a day. Councilmember Astle said when the subject was first presented, it was for \$100,000 to upgrade equipment and no one had said anything about moving. He asked what the rest of the money would be used for. Mr. Harrington said at a previous work session they had talked about future development plans and payment of outstanding debt. Councilmember Astle asked if they were talking about strictly hardware and not salaries. Mr. Harrington said it would not be used just for equipment and would be used for staffing, as well.
- **Oscar Heinrich, 4210 Wells, Billings, MT**, referenced Item 2 and said Channel 7 was an asset to the community. He asked Council to vote in favor of the resolution.
- **Shari Nault, 5219 Golden Hollow Road, Billings, MT**, referenced Item 2 and urged Council to support the resolution. She said as a host for two of Channel 7's programs, they really needed new equipment. She said they had wanted to do remotes and a number of other things but could not because of lack of equipment.
- **Joe White, Billings, MT**, referenced Item 2 and said Channel 7 provided a wide-spread way to have public witness, public knowledge, public information, and government operations and affairs. (The rest of Mr. White's testimony was inaudible.)
- **Monty Wallis, 4165 June Drive, Billings, MT**, referenced Item 2 and said he was a Community 7 Board Member. He said every commercial and non-commercial television station in the U.S. had gone digital, and Community 7 was analog. He said sooner or later analog would go away because the bandwidth was needed for digital. He said Channel 7 would be able to provide digital and high definition facilities with the funding.

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

1. CONSENT AGENDA

A. Bid Awards:

1. **W.O. 10-30, Broadwater Avenue and 32nd Street West Right Turn Lane.** (Opened 8/9/2011) Recommend Riverside Sand and Gravel; \$168,239.

2. **Yellowstone Family Park Improvements.** (Opened 8/9/2011)
Recommend delay of bid award until September 12, 2011.

3. **W.O. 10-31, 29th Street West and Central Avenue Traffic Signal Improvements.** (Opened 8/9/2011) Recommend Ace Electric; \$153,796.33.

B. Approval of One-Year Maintenance Agreement between the City of Billings and EF Johnson for maintenance and repair of current radio system; 152,979.61.

C. Amendment #3, W.O. 10-08: Water Treatment Plant Clearwell Improvements, Professional Services Contract, Morrison-Maierle, not to exceed \$85,495.

D. Approval of 5-Year Non-Commercial Aviation Ground Lease with St. Vincent Healthcare; 9/1/2011 - 8/31/2016; revenue first year - \$4,762.56; revenue subsequent years adjusted by CPI-U.

E. Acknowledging Receipt of Petition to Annex #11-02: 16.94 acres located on the South Frontage Road, west of the intersection of Sugar Avenue and South Frontage Road addressed as 3128 South Frontage Road. Knife River, Inc., owner; Land Use Consulting, agent; and setting a public hearing date of September 12, 2011.

F. Street Closures:

1. Yellowstone Art Museum Oktoberfest. Saturday, October 1, 2011, from 8:00 a.m. to 10:00 p.m.; N. 26th between 4th Ave. N. and 6th Ave. N.

2. Yellowstone Family Dental Miles of Smiles 5K/10K Race. Saturday, September 10, 2011, 8:00 a.m. to 12:00 noon; 5K: starting at 1690 Rimrock Road, proceeding east on Rimrock to Park Lane, turning around and heading back on Rimrock Road, ending at 1690 Rimrock Road. 10K: starting at 1690 Rimrock Road, proceeding south on 17th St. W., west on Poly Drive, south on Elizabeth, east on Colton Boulevard, north on Nina Clare, east on Poly, north on 17th St. W., ending at 1690 Rimrock Road.

3. Holy Rosary Church, Little Flower Church, and Our Lady of Guadalupe Church Picnic/Potluck Community Builder. Saturday, September 10, 2011; noon to 10:00 p.m.; South 34th Street between 2nd Ave. South. and 3rd Ave. South.

4. Waddell & Reed and the Western Heritage Center - Honoring our History Traveling Exhibit. Friday, September 23, 2011, from 12:00 a.m. until Saturday, September 24, 2011, at 11:30 p.m.; south of Montana Avenue on North 29th Street.

G. Acceptance of Donation from the Yellowstone County DUI Task Force to the Police Department for purchase two new Intoxilyzer I-300's for the purpose of investigating alcohol related crimes; \$1,000.

H. Approval of grant award to Rimrock Foundation to be used for purchase of equipment supporting the Bokashi Composting Processing Center at The Salvation Army; \$100,000.

I. Approval and acceptance of Operation Medicine Cabinet Montana Prescription Drug Collection and Disposal Grant, \$1,000.

J. Approval of River Rock Estates Subdivision Master Plan.

K. Second/Final Reading Ordinance #11-5539 approving the Empire Parking Garage and Northern Hotel Projects as Urban Renewal Projects in the Expanded N. 27th Street Urban Renewal District Area - 2008.

L. Resolution #11-19091 approving a Bond Anticipation Note with US Bank to provide interim financing to construct park improvements in Yellowstone Family Park (SID 1392) in anticipation of the issuance and sale of bonds in the amount of \$1,260,000.

M. Resolution #11-19092 amending Resolution #11-19044 correcting the legal description for the vacations of portions of Shaw Circle in Twin Oaks Subdivision, 2nd Filing.

N. Resolution #11-19093 temporarily suspending Section 24-411, BMCC, Parking for Camping Purposes, in the Shrine Auditorium parking lot, 1125 Broadwater Avenue, during the Big Sky Polka Club's Polkafest, September 2-4, 2011.

O. Final Plat Approval of Twin Oaks Subdivision, 2nd Filing.

P. Preliminary Major Plat of Josephine Crossing Subdivision, 2nd Filing, generally located south of Elysian Road and east of Mullowney Lane; McCall Development, Inc., owner; Sanderson Stewart, agent; conditional approval and adoption of the Findings of Fact.

Q. Preliminary Major Plat of Whisper Ridge Subdivision generally located on the north side of Rimrock Road between Clear View Drive and 54th St. West; Aviara, Inc., owner; Sanderson Stewart, agent; conditional approval and adoption of the Findings of Fact.

R. Preliminary Subsequent Minor Plat of Amended Lot 4A, Block 2, Goodman Subdivision, 4th Filing, generally located on the southeast corner of Avenue C and 41st St. West, just northwest of the Shiloh Road/Grand Avenue intersection. Randall Swenson, Jeff Muri, LLC, and Bearcreek Investments, LLC, owners; EEC, Inc., agent; conditional approval and adoption of the Findings of Fact.

S. Amended Plat of BDC Heights Subdivision for the relocation of an access easement/driveway on Main Street.

T. Bills and Payroll:

1. July 22, 2011
2. July 29, 2011

Councilmember Ronquillo separated Consent Agenda Item E. Councilmember McCall separated Consent Agenda Items F1, F2, and F4. Councilmember Cimmino separated Consent Agenda Items T1 and T2. Councilmember Astle moved for approval of the Consent Agenda with the exceptions of Items E, F1, F2, F4, T1, and T2, seconded by Councilmember Pitman. On a voice vote, the motion was unanimously approved.

Councilmember Ronquillo referenced Item E and asked for clarification on the location because he could not find the referenced address. Planning Division Manager Wyeth Friday advised there was nothing on the site. He said the address had been assigned but there was nothing built. He said in the past fill work had been done, and it was just west of the Garden Avenue/Sugar Avenue intersection on the south side of the Frontage Road. Mr. Friday advised Mr. Kober from Knife River was present if there were additional questions. Mayor Hanel asked for the intended use. Mr. Friday said the current plan was to petition for annexation of the property and then prepare it for future development. Councilmember Ronquillo moved for approval of Item E, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.

Councilmember McCall moved for approval of Item F1 pending completion of insurance, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

Councilmember McCall moved for approval of Item F2 pending completion of insurance, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

Councilmember McCall moved for approval of Item F4 pending completion of insurance, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

Councilmember Cimmino referenced Items T1, Invoice #746685, and T2, Invoice #747197, and said she would be abstaining from the vote due to her employment. Councilmember Pitman moved for approval of Items T1 and T2, seconded by Councilmember Gaghen. On a voice vote, the motion was approved 8 to 0.

REGULAR AGENDA:

2. RESOLUTION #11-19094 approving a 25-cent per month per subscriber Public Education and Government (PEG) fee to be paid by Bresnan Communications (BBHI Holdings, LLC) to support Channel 7 Operations. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) City Administrator Volek advised there was no further presentation, but staff was available for questions. Councilmember Clark asked if the name should be changed from Bresnan to the new company. Ms. Volek advised it was still Bresnan but also provided the name of BBHI Holdings, LLC.

Councilmember Gaghen moved for approval of Item 2, seconded by Councilmember Ronquillo.

Councilmember Ruegamer moved to amend the motion that the item be brought before Council for annual approval and contingent upon a report from Channel 7 staff as to what was done with the money the prior year and what would be done with the money the upcoming year, seconded by Councilmember Astle. Councilmember Ruegamer commented there was no end date, and it should be contingent upon the Council seeing where the money was going. Mayor Hanel said he felt Channel 7 staff would gladly present updates on how the money was spent, and asked if the dates could be changed within the agreement. City Attorney Brooks said he did not have the agreement in front of him, but suggested trying it and he would report back if it needed to be reconsidered.

Councilmember Astle asked how the members of the Board were appointed. Ms. Volek advised Channel 7 was a not-for-profit agency independent of City Government, and the board members were nominated and voted by other board members. She said they generally represented people with a background in the industry and/or people involved in production with the channel. Councilmember Astle asked if the Board hired the staff. Ms. Volek said that was correct.

Councilmember McCall said she was concerned about the logistics once the assessment was put on and if they would require it to come back to Council each year. She asked if the assessment would start and stop or continue. City Attorney Brooks advised the motion would require an annual renewal, and the Council could revoke the 25-cent fee on an annual basis.

Councilmember Ruegamer said the topic had been discussed at the work session, and Channel 7 staff had no problem with the report. He said it was Council's job to make sure the money approved was being spent properly. He said he felt Channel 7 should bring their report two to three weeks before the due date. Attorney Brooks said his only concern was what the Franchise Agreement said, but he did not think it would affect it. He said they could amend the resolution to add the language, if necessary. Councilmember Ruegamer asked if the item should be delayed until they had the contract straight. Attorney Brooks said there were timing issues under the current Franchise Agreement, and if the item was continued, it would go beyond the date the company had promised to provide some support equipment.

Councilmember Clark said he did not know if looking at the 25-cent per month every year was the right thing to do, but he thought the annual report was a good idea.

Councilmember Cimmino noted for the record she would not support the amendment. She said she believed Community Seven; since they were televising the Council meetings, other government meetings, and community events, would be forthcoming and provide Council with an annual report.

Councilmember McCall said she would not support the amendment. She said it was important that Channel 7 report their activities to Council on an annual basis; but it was a nominal amount and they should trust it and go forward.

Councilmember Gaghen said she concurred with Councilmembers Cimmino and McCall because it provided the opportunity for Channel 7 to better plan, and the report each year would provide accountability to the Council. She said she was sure Channel 7 would follow through with the annual report.

Councilmember Ruegamer commented he had been on the Council eight years, and it was the first time they had been provided any kind of report from Channel 7, and

it was because they were adding money. He said they did not know who would be running Channel 7 next year or in ten years, and they were opening up a checkbook by not making them accountable like they made City departments accountable. He said he would not support the fee unless restrictions were placed on it.

City Administrator Volek advised other possible options would be to require an annual report and hold a re-consideration every five years or to require an annual report and automatically renew, barring action by the City Council, by a certain date of every year.

Mayor Hanel asked Lynne Turner-Fitzgerald to come to the podium. He asked her to state her position with Community Seven TV. Ms. Turner-Fitzgerald said she was the Executive Director. Mayor Hanel asked if she would have any difficulty representing those on the Board and providing a semi-annual or annual update of expenditures for Community Seven. Ms. Turner-Fitzgerald said she would have no problem with it.

On a roll call vote, the amended motion failed 5 to 4. Councilmembers Ronquillo, Pitman, Ruegamer, and Astle voted in favor. Councilmembers Gaghen, Cimmino, McCall, Clark and Mayor Hanel voted in opposition.

On a voice vote, the original motion passed 7 to 2. Councilmembers Ruegamer and Astle voted in opposition.

3. PUBLIC HEARING AND RESOLUTION #11-19095 setting mill levy rates for Public Safety Fund, General Obligation Debt Service Parks, General Obligation Debt Service Streets, and General Obligation Debt Service Series A Baseball Stadium, and General Obligation Debt Service Series B Baseball Stadium for tax year 2011. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) City Administrator Volek advised staff had no presentation but was available to answer questions.

Mayor Hanel asked for a brief explanation for the benefit of the public.

City Finance Director Pat Weber explained there were certain levies within the City that could not be set before receiving certified value. He said one was the Public Safety Levy voters approved in 2004. He said until the City received certified value, they could only raise \$8.2 million; so that was how they knew how many mills to set. Mr. Weber said there was also General Obligations in the City. He said they knew what their debt service payment would be, which dictated how mills were set to raise the debt service payment.

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

Councilmember Astle moved for approval of Item 3, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

4. PUBLIC HEARING AND RESOLUTION #11-19096 authorizing the sale of parkland described as Parcel A - 1.012 acres, Parcel B - .122 acres, and Parcel 3 - .11 acres within the undeveloped area of the Twin Oaks Subdivision to The Oakland Companies for a total amount of \$3,000. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) Mayor Hanel asked Ms. Volek if her earlier comment on the item was that a resolution would be

forthcoming. City Administrator Tina Volek advised that was correct, and there was no presentation but staff was available to answer questions.

The public hearing was opened.

- **Terry Hankinson, 1408 Twin Oaks Drive, Billings, MT**, referenced the letter they received and said it lacked a lot of clarity. She said the property owners may like the opportunity to form an association to buy the parcels and maintain them as parklands within the City. She asked Council to not approve the item and let the property owners find out more about it.

Councilmember Ronquillo asked if she had spoken with her neighbors since receiving the letter. Ms. Hankinson said she had, and they thought the developer was going to take ownership of the parklands and maintain them as parklands. She said it was her understanding that was not what would happen.

Councilmember Astle asked if she received a map of the subject parcels. She said she did, but it lacked clarity on what land was affected.

Councilmember Gaghen asked if she was aware the total of the three parcels was 1.244 acres. Ms. Hankinson said she was and the total price the developer would pay was \$3,000.

Councilmember Cimmino asked Parks Director Mike Whitaker to respond to Ms. Hankinson's question as to whether the property owners would have an opportunity to take a look at the possibility of purchasing the parkland. Mr. Whitaker advised the developer was pushing forward to re-plat the area and asked Park Planner Mark Jarvis to comment. Mr. Jarvis said the developer had come to staff to talk about re-arranging the format of his development. He said, as stated in the staff memo, due to the decreased desirability of linear parkland as part of the greater Billings area trail system for the City Parks and Recreation Department and the future homeowners, as well as due to the re-design of the Shaw Circle street layout, the subdivider proposed to re-assume the linear parkland area, with one exception, as part of the saleable lot area within Twin Oaks, 2nd Filing. Mr. Jarvis pointed out on the map and described the three areas being discussed. He said everything east of Twin Oaks Drive had been developed at the developer's expense. Mr. Jarvis showed an access way for future lot owners to get to the parkland and asked Councilmember Cimmino if her question was answered. She said it was but asked if there was an opportunity for Ms. Hankinson and other property owners to purchase the land.

Attorney Brooks said they would almost have to start over. He said they would have to put it out for bid. He said it was his understanding they were very small sections of land and if the homeowners were to get together, they would be required to maintain them. He said he was not sure the homeowners fully understood that.

Councilmember Astle asked if Parcel C was land-locked. Mr. Jarvis advised Uinta Park was to the south of it. He said Parcel B was originally an island inside of a cul-de-sac, and the developer would like to re-arrange things to make the street come through and tie into Watson Peak Road. Councilmember Astle said it did not appear to him that any of the parcels were suitable to build on

and asked Mr. Jarvis if that was correct. Mr. Jarvis said he thought some of them would be road right-of-way and the remainder would appear to be extensions of lots. Councilmember Astle asked if any of the lots had homes on them. Mr. Jarvis said they did not.

- **Joe White, Billings, MT**, said he was not familiar with what it was all about, but \$3,000 for an acre was too low, and he supported Ms. Hankinson.
- **Rob Foster, 330 Stillwater Lane, Billings, MT**, said he owned the property on the west boundary of the Twin Oaks Subdivision. He asked where the money from the transaction would go. Mayor Hanel advised the money could be used for park improvements and would go specifically into an account for such. Mr. Foster said he wanted to be assured that the use of the funds would “meet the spirit of the law” and provide parks for different subdivisions. Attorney Brooks said approval by the Council would be specific to the Sale of Parkland account referenced in the staff memo and the account number could also be included in the resolution. Mr. Foster said the price for the parcels of land was quite low, and he recommended that the property be put out for bid because the landowners had the right to have a piece of the pie and not be eliminated from the proceedings.
- **Gary Oakland, The Oakland Company, Suite 900, Wells Fargo Center, Billings, MT**, said the current parklands evident in the subdivision were not affected. He said the highlighted areas were narrow strips of land that the Parks Department did not feel were cost-efficient to maintain and had minimal market value because of their configuration. He said the preliminary and final plats were approved and registered on the property so putting it out for market in some other fashion would be in violation of both plats. He said half of the property had already been constructed. Mr. Oakland said they went for a second valuation from a certified appraiser to come up with a value above zero considering the areas were unbuildable for residential construction and essentially difficult to sell at any price. He said they followed the Subdivision Rules and Regulations to the letter.

Councilmember Pitman said it appeared like they were moving the roads to make the lots bigger, and asked if they would be adding any houses. Mr. Oakland said they would not be getting extra houses and pointed out that it was land that he gave to the Parks Department to begin with and he was paying to get it back. Mr. Oakland said they had parkland in excess of the statutory requirement, and the parks that were developed and remaining were developed for \$100,000 at their own expense and given to the Parks Department.

Councilmember Cimmino said, with all due respect, the parkland that was dedicated to the City was part of the Subdivision Improvements Agreement negotiated at that time. Mr. Oakland said that was true, and they had exceeded the statutory requirements by the construction of the park.

- **Whit Dross, 1402 Twin Oaks Drive, Billings, MT**, said when he purchased his home a \$5,000 park premium was tacked on to the price of his house, and now it looked like to him they would be doing away with the parks after charging every homeowner \$5,000 for the park premium. He said to him it was highly unethical.

Mayor Hanel advised any contractual agreement for the purchase of his home or land did not involve the City of Billings directly.

- **Landy Leef, 175 N. 27th, Suite 900, Billings, MT**, said he was Vice President of the Twin Oaks Corporation and was involved in the marketing of the project. He said earlier on they charged a \$1,500 premium if a house backed up to a park. He said Mr. Dross' house backed up to a park that had already been built. He said he was not aware of a \$5,000 fee and the most that was ever charged was \$1,500.

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

Councilmember Pitman moved for approval of Item 4, seconded by Councilmember Cimmino. Councilmember Astle commented that the three parcels were very small and even though square footages of land in Billings were worth more, segments that size were not worth anything so he would support the motion.

Councilmember Pitman moved to amend the motion that the \$3,000 be spent in High Sierra Park, seconded by Councilmember Cimmino. Councilmember Astle said there they went again with the Heights versus the world, and he abhorred that kind of behavior. He said if they wanted to do it by taxes, then everything out of Ward IV ought to stay in Ward IV, and they had the most taxes paid to the City of anyone. He said if the Heights park needed it, that was fine; and if Rose Park needed it, that was fine. He said Rose Park made money that went to the Heights, and Rose Park was the only enterprise fund in the Parks Department. He said when the Kiwanis raised money for it, it went for trees and some of the trees went to the Heights and some to South Park. He said to give the money to the Parks Department, let them use it, and do not restrict them that way. Councilmember Cimmino commented with all due respect to everyone involved, the Council adopted the budget and allocated \$180,000 to South Park for the gazebo replacement; so in the spirit of working together as a community, she believed it was the same negotiation. Councilmember Ruegamer said they should trust the Parks Department to put it back into the Heights.

On a roll call vote, the amended motion was approved 6 to 3. Councilmembers Ronquillo, Gaghen, Pitman, Cimmino, McCall, and Clark voted in favor. Councilmembers Ruegamer and Astle and Mayor Hanel voted in opposition.

On a roll call vote, the original motion was unanimously approved.

5. PUBLIC HEARING AND RESOLUTION #11-19097 adopting the Complete Streets Policy. Healthy By Design Advisory Committee and Ad Hoc Committee recommend approval. (Action: approval or disapproval of Healthy By Design Advisory Committee and Ac Hoc Committee recommendation.) Hillary Hansen, member of the Healthy By Design Advisory Committee, said she wanted to review the staff memo with the Council to make sure they had seen some of the changes that had taken place since the July 18 work session. She said the resolution had not changed from July 18. She reminded Council there were letters of support from the Chamber of Commerce, Big Sky Economic Development, Board of Health, Bicycle and Pedestrian Advisory Committee, Traffic Control Board, and the Yellowstone County Board of Planning.

Councilmember Ronquillo asked if there had been any communication with the MT Department of Transportation (MDT). Planning Director Candi Beaudry advised they had spoken with MDT staff and were told that there were concerns with the policy because it addressed (1) consideration of Complete Streets on road maintenance and repair projects; and (2) the requirement to justify why Complete Streets was not being considered for a project. She said those were the only two comments MDT had that she was aware of. Councilmember Ronquillo asked if MDT was told the policy was just a guiding document and not set in concrete, and Ms. Beaudry said they had been told. She said three other Montana communities had passed Complete Streets policies and even though MDT objected to them, they would have to deal with them in other communities, as well.

Councilmember Ruegamer commented that the Planning Board had said both 'no' and 'yes' to it. Ms. Hansen said her understanding was that they voted in favor of removing the Complete Streets verbiage from the Master Trail Plan but wrote a letter of support for the City of Billings resolution. Councilmember Ruegamer asked for a response from a representative of the Planning Board. Zack Meyers said he was on the County Planning Board, Ward 1, and the Board voted in favor of the Complete Streets Guiding Policy for the City of Billings; however, they recommended taking it out of the Billings Bikeway and Trail Master Plan because it was rather contentious in some ways. He said they thought it was the right thing to do specifically for the City of Billings and not make a judgment on the County or tell MDT or the County as a whole what to do with their streets and roads. Mr. Meyers said they thought that even though the two philosophies coincided and matched, maybe they were two separate issues and to get the best for all involved, they could be separated. Councilmember Ruegamer said it seemed to him they were already doing what the policy asked, and he asked Ms. Hansen why the policy was needed. Ms. Hansen said when they brought together the ad hoc committee, they questioned if it was necessary; and the feeling was that they were already doing a lot of it, but not always doing it and sometimes it was contentious. She said they felt having a guiding document would assist staff in knowing what direction the community was going and making sure they had backing on some of the decisions made. She said it was a guiding document in the direction they wanted to go and not a regulatory document. Councilmember Ruegamer asked if the City would be opening itself up for a lawsuit if they did not follow the guiding document. City Attorney Brooks said the Council was expressing a policy in the resolution rather than a permanent decision so based on that, the short answer would be no. Councilmember Ruegamer asked if the City would be more vulnerable to a lawsuit if the City did not follow its own policy. Attorney Brooks said there was no black or white answer, but if the City decided not to follow its own policy, the policy or resolution would need to be amended to conform. He said legal liability was fact-driven so there was no yes or no answer. He said the important thing was that it was a policy document and should reflect what the Council wanted to do right now but with the understanding it could be amended later.

Councilmember Gaghen confirmed with Ms. Hansen that it was not a mandatory document and asked if it was a suggested policy in part to try to save developers and those looking at future expansion dollars. Ms. Hansen said that was correct, and they were hoping the components of Complete Streets would be considered during the

planning process so the costs would be decreased versus going back and having to add things later. Councilmember Gaghen said many of them had been a part of the planning process, and asked if Missoula, Helena, and Bozeman had crafted and enacted a Complete Streets policy differently. Ms. Hansen advised they were similarly crafted with resolutions. She said they were guiding documents in the communities to be used as such.

Councilmember Clark referenced the Bench Boulevard project and asked if the Complete Streets policy would have made any difference because the project showed it was not feasible to include a trail or walkway. Ms. Beaudry advised there were right-of-way constraints with the Bench Boulevard project and placing the policy components in the right-of-way would have been physically impossible. She said the plan was also justified because there was already a bike trail in the vicinity and the only thing that might have changed with the project would have been required documentation for the justification. Ms. Beaudry stated they all knew there would be exceptions allowed in the policy, but any exceptions should be documented because they needed to know why other alternatives were not considered.

Councilmember Ruegamer asked if they should talk to MDT before adopting the policy. Ms. Beaudry said one approach would be to delay and open a dialogue with MDT. She said another approach she would favor would be that Billings, Missoula, Helena, and Bozeman set the example and tell the State the type of road construction they would like to see.

Mayor Hanel commented that Shiloh Road was a state project and asked if the State had incorporated Shiloh Road with trails and bike lanes. Ms. Beaudry said they had.

Councilmember McCall said she agreed that the City needed to set the example for the State and asked Ms. Beaudry if they carried any risk with future city/state projects, given the guiding principles that might interfere with funding. Ms. Beaudry said she had not heard that objection from the State. She said their objection was mainly on the maintenance and repair and that it could add cost. She said they were not holding their feet to the fire to do it. She said the City was adopting it so its construction projects would be considered as Complete Streets. She said it was a guiding, non-regulatory document, and the City could not mandate the State to build in accordance with it. She said the State felt it was a higher authority than just a guiding document. Ms. Beaudry said the City had many policies in place that the Council sometimes chose not to adhere to 100%, such as the Annexation Policy. She said it was not a mandate for the City or State, and she did not see how they could object to a policy to guide direction for City streets and rights-of-way.

Councilmember Ruegamer asked if the policy would have any negative impact on the Federal rule. Ms. Beaudry said it should have positive impact on some of the funding streams largely because of the Sustainable Communities Initiative that looked at transportation choices making access more readily available to lower income residents and providing access to affordable housing. She said the grants available embraced the Complete Streets Policy. She said it would not penalize the City because it did not have a Complete Streets Policy; but because the City did, the City could bring it up in the application that it was achieving the same goals as the Sustainable Communities. She said she felt the City would be far more competitive because of it.

The public hearing was opened.

- **John Felton, President and Chief Executive Officer of RiverStone Health and Health Officer for Yellowstone County, 123 South 27th Street, Billings, MT,** said Complete Streets was a big issue. He said the policy embraced a really basic public health concept which was why they should make the healthy and safe choice. He said it was easier to do things healthy and safe than to do things unhealthy and unsafe. He said Complete Streets set aside a statement of philosophy that health mattered. Mr. Felton said several years ago the local Growth Policy was modified to include health as a consideration. He said the Complete Streets had exceptions allowed but asked the developer to look at it. He said the policy was an investment in the future health and safety of the community, an investment in future generations, and had the potential to lower the cost of health care.
- **Kelly Fisk, 34 Feldspar Way, Billings, MT,** said she served as the Vice President for People Resources at the Billings Clinic and was present on behalf of Billings Clinic to voice support of the Complete Streets Policy. She said they felt strongly adoption of the policy would create a long-term health benefit through the availability of pedestrian-focused transportation and increased physical activity. She said they felt a progressive planning focus would boost the vitality of the community and make it more attractive to professionals looking to relocate.
- **Michael Dennis, 3330 37th Street West, Billings, MT,** said he represented RiverStone Health's Board of Health and its Public Policy Development Committee. He said primary roles of RiverStone Health were public health and public safety and an essential feature of good public health and public safety was advocacy and future planning. Mr. Dennis asked for the Council's support of the Complete Streets Policy on behalf of RiverStone Health.
- **Ed (inaudible – no signature), 3015 10th Avenue North, Billings, MT,** pointed out the streets were public property, and it was appropriate that all of the governing bodies provided a safe means for the public to use the streets for a variety of transportation options including walking and biking. He said it would be inappropriate for streets to be designed exclusively for motorized uses. He asked for support of the Complete Streets Policy. He advised Senator Moss, Senate District 26, was not able to attend and read the following paragraph from a letter from Ms. Moss. *"I encourage you to think about the future of Billings. Please support the Complete Streets Guiding Policy and make sure we can create a safe, healthy, and economically vibrant community for the 21st Century."*
- **Mark Nicholson, 27 Clark Avenue, Billings, MT,** said he supported Complete Streets because he rode his bike to work every day. He said there was a lot of contention on the streets because bicyclists irritated people in cars and he would like nothing more than being able to get out of their way. He said people who could not afford a car needed Complete Streets, too. He said if they did not have the time and money to do it right, what made them think they had the money to do it over.

- **Elizabeth Ciemins, 1971 Pryor Lane, Billings, MT**, said she was a Research Scientist and the Director of the Senate for Clinical Translational Research at the Billings Clinic. She said she urged her support for Complete Streets as a representative of Billings Clinic and as an active member of the community and mother of two elementary-aged children. Ms. Ciemins said today's children were the first generation that would not live as long as their parents due to obesity and obesity-related conditions and diseases. She said it put a big strain and burden on the health care system and everyone in the community. She said last year the Yellowstone County Community Health Assessment determined 7 of 10 adults in our community were overweight, or 75%. She said 25% of our children were overweight, and there was a correlation between an overweight parent and an overweight child. She said a few years ago a survey was done with 8,000 elementary-aged children by the Montana Department of Transportation and Safe Routes to Schools and 75% had never walked or biked to school because of crime, lack of sidewalks, and not having complete streets. Ms. Ciemins provided additional data supporting the reason the City needed the Complete Streets Policy.
- **Tracy Neary, 4560 Toyon Drive, Billings, MT**, said she represented St. Vincent Healthcare. She said when trying to recruit providers to practice in the Billings area, they looked for quality of life, and a walk-able, live-able community. She said the Complete Streets Policy would definitely help attract additional, top-quality medical providers. Ms. Neary said there was a growing rate of obesity, diabetes, heart disease and high cholesterol. She said adding safe places for people to walk and bike improved physical activity. She said Complete Streets was not a mandate to add cost to every single project, but a call to consider all users and a common sense approach.
- **Michael Sanderson, President of Sanderson Stewart, 1300 N. Transtech Way, Billings, MT**, said he was in support of the Complete Streets Policy and participated on the steering committee to help draft the policy. He said he was also on the National Board of Directors of the Institute of Transportation Engineers (ITE), which was one of the founding members of the National Complete Streets Coalition. Mr. Sanderson said Complete Streets was not being pushed by just a fringe of environmental organizations and a small group of cyclists. He said ITE was a group of 16,000 transportation engineers with a goal to promote traffic safety and efficiency, and Complete Streets was very much about that. Mr. Sanderson said the policy language was very flexible and only asked for consideration. He said he respected MDT's viewpoint, but they had very specific goals and objectives to move vehicles and goods on the state highway system. He said the City of Billings' goals about the public's quality of life were different goals than those of MDT.

Councilmember Astle asked if Mr. Sanderson had seen in the development of the City the past 10 years that the Complete Streets policy had actually been implemented by Planning and Public Works without a mandate. Mr. Sanderson said for the most part the recently constructed streets incorporated the elements of Complete Streets, but he felt the support of a policy would be helpful. He said the current Subdivision Regulations for new construction were

consistent with Complete Streets but rebuilds of existing streets would have to give consideration to Complete Streets elements.

Councilmember Gaghen asked if it could be a cost-saving factor for developers in the future. Mr. Sanderson said he would not go as far to say as it would save money, but he thought planning upfront would be much more cost effective than having to go back and retrofit.

- **Zach Meyers, 400 Beverly Hill Boulevard, Billings, MT**, said he was speaking as a physician and local professional in support of Complete Streets. He said as a physician he saw the costs of obesity, heart disease, and disability every day and the turmoil and suffering of the patients. He said they should be thinking more about preventative care because that was where the cost savings were. Mr. Meyers urged the Council to pass the Complete Streets Policy.
- **Mike Leo, 1971 Pryor Lane, Billings, MT**, said he supported the passage of the Complete Streets Policy for three reasons; safety so children could walk to school, the rising cost of obesity-related illness, and that they were not taking money away from motorized vehicle transportation and giving it to a cyclist or pedestrian community. He said the community all drove vehicles, biked, and walked and they all wanted their children and grandparents to have a safe place in the community. He asked for the Council's support of the Complete Streets Policy.
- **Kristi Drake, 2416 Avalon Road, Billings, MT**, said she was a former member of the Board of Directors of BikeNet and was the event coordinator the previous year for Ales for Trails. She said she envisioned a community that could easily choose healthy transportation and activities, which was what Complete Streets was all about. She said her children did not bike to school because of safety reasons. Ms. Drake urged Council to approve the Complete Streets Policy.
- **Svein Newman, 44 Alderson Avenue, Billings, MT**, said University of Maryland research found physical inactivity, obesity and stress contributed to a decrease in workplace productivity. He said healthy decisions such as Complete Streets would have a direct, positive impact on the City of Billings. He said research by the New York Academy of Medicine found \$1 invested in physical activity resulted in a \$5.60 return over five years with ongoing dividends. Mr. Newman said when he left Billings for a number of years and moved to a bicycle-friendly community he lost close to 70 pounds by commuting on a bicycle. He said when the citizens of Billings thrived, the City of Billings thrived.
- **Don Reed, 1039 Cedar Canyon Road, Billings, MT**, said he was a grandpa with six grandchildren in Billings who rode their bikes to school, and he was concerned about them. He said he was on the RiverStone Board of Health and he was chairman of the Lockwood Steering Committee. He said there was a need for safe streets and asked Council to support the Complete Streets Policy.
- **Clayton Fiscus, 1111 Main Street, Billings, MT**, distributed a handout of photographs. He asked Council to oppose the Complete Streets Policy. He said a lot of people testifying were in the health business and not in the street business. He discussed the pictures on his handout and the narrowness caused by an existing bike path and the potential for accidents. Mr. Fiscus said the cost of Complete Streets had not even been discussed for painting the streets and

installing sidewalks. He said the claim of obesity was more of a health issue than a road issue. Mr. Fiscus asked Council to oppose Complete Streets, allow traffic engineers to design the streets, and not make it mandatory. He said he supported trails in the community but did not support mixing traffic and people.

- **Kevin Nelson, 4235 Bruce Avenue, Billings, MT**, said according to the agenda, there should be no direct financial impact; then it went on to say it would guide the design and the development; and then future councils would identify and approve the projects for funding consideration. He said every street did not need to be a Complete Street and tying people's hands was not a good idea. He said the resolution talked about traffic calming measures and healthy by design and asked why he would want to go out on a complete street for his health. Mr. Nelson said as a recipient of several heart stints, noise not only affected hearing but increased blood pressure, had negative cardiovascular effects, increased breathing rate, and made it difficult to sleep. He said study after study showed that car stereos, mufflers, and all types of noise impacted health, so why would anyone want to go out onto a healthy street by design and have their health impacted because the city refused to enforce laws to mitigate the impacts on health. He said the City did not need the mandate all over town. He asked the Council to be cautious because the City did not have unlimited funds.

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

Councilmember McCall moved for approval of the adoption of the Complete Streets Policy, seconded by Councilmember Gaghen. Councilmember Astle said he would vote for it but he did not believe the statements made in the e-mails that Complete Streets would cure obesity. Councilmember Ruegamer said he would support it, but he felt it should be delayed a couple of months because they needed to talk to the Montana Department of Transportation first.

Councilmember Ruegamer amended the motion to delay until the second meeting in October. The amended motion died for lack of a second.

Councilmember Pitman asked Ms. Beaudry to what level someone had to go to say they were not going to make the recommended improvements. Ms. Beaudry gave the Moore Lane SID as an example where sidewalks were planned but there was organized opposition. She said the same situation could occur again. She said if it were an internal decision to not put in sidewalks, a crosswalk, or a bike lane, it would be a matter of staff drafting something in their memos explaining why they did not consider installation of a certain element.

Councilmember Ronquillo said he wanted to make sure that people understood that adopting the policy did not mean it was in concrete and could not be changed. Ms. Beaudry said that was correct. She said it had been the history of the current council and previous councils to negotiate with landowners to arrive at the best solution and design; but they wanted to make sure that the citizens were aware of what the objectives were, and that was where the policy came into play.

Councilmember McCall commented that they had a great community with people who had collaborated together and worked hard and who were coming forward with something that was very important for the community. She said Peggie, Jim, Dick and

she had the opportunity to work with many of the people on part of it, and she felt it was about the future, what was right, and setting the bar high. She said she felt they were doing the right things for the right reasons that evening.

Councilmember Pitman said it had been incredible as far as organization. He said he had not been able to keep up with the e-mails and phone calls and apologized for not being able to respond to each one. He said he had looked at the pros and cons, and he felt it was a positive for the community and made sense.

Councilmember Gaghen said she was only sorry Billings was the fourth city to consider the Complete Streets Policy and not the first. She said if the three major health serving industries would have wanted to make more money, they would not have brought it forth, so she would support the motion.

Councilmember Clark said he attended most of the meetings, and it took a lot of work and community participation to create the policy. He said it was well done.

Mayor Hanel read from the resolution, *"the City will develop a complete streets policy which will design and operate to enable safe access for all users including pedestrians, bicyclists, motorists, and transit riders of all ages and abilities to safely move along and across a complete street."* He said Complete Streets had been challenged very aggressively and was referred to as a mandate and a must. He said it was a guiding principle; and if the money was not available, it simply would not happen. He said it was a quality of life for everyone in the community, the state, and people who came to visit. He said he would support the motion.

Councilmember Cimmino said she was the kind of person who loved to do research, writing, and weighing the pros and cons of issues. She said she also liked to respond to e-mails and hoped she had responded to all of them. She said she researched the documentation from Helena, Missoula, and Bozeman, and they were all very proactive. She said in 2009 Senator Thomas Harkin from Iowa presented a bill called Complete Streets Active 2009, and even though it did not pass, the definition said, *"Complete Streets means a roadway that accommodates all travelers, particularly public transit users, bicyclists, pedestrians including individuals of all ages and individuals with mobility, sensory, neurological or hidden disabilities, and motorists to enable all travelers to use a roadway safely and efficiently."* She said that was good enough for her and she supported the Complete Streets as a guiding document.

Councilmember Cimmino called for the question, seconded by Councilmember Gaghen. On a voice vote, the call for the question was unanimously approved.

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

Mayor Hanel called for a brief recess at 9:07 p.m.

Mayor Hanel called the meeting back to order at 9:15 p.m.

6. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #878: A zone change request from Entryway Light Industrial (ELI) to Highway Commercial (HC) on a 12.99-acre parcel of land described as Lots 3 and 5, Block 1, Montana Sapphire Subdivision and generally located in the Montana Sapphire Subdivision at 4300 Montana Sapphire Drive; Montana Sapphire, LLC, owner; Sanderson Stewart, agent. Zoning Commission recommends approval of the zone change and adoption of the determinations of the 12 criteria. (Action: approval or

disapproval of Zoning Commission recommendation.) Zoning Coordinator Nicole Cromwell began her PowerPoint presentation showing the zoning map, an aerial view, and photographs of the subject property and describing the surrounding properties. She advised the zone change request was because Entryway Light Industrial did not allow residential uses by right and required a Special Review, and it mandated residential use be mixed with commercial or office use and could not be a single, or stand-alone residential use. Ms. Cromwell said the owner and the agent indicated they had interest in the property for residential, multi-family use. She said the proposed Highway Commercial would allow mixed uses by right, multi-family uses by right, and allowed many of the same uses that already existed in Entryway Light Industrial. She advised the Zoning Commission conducted a public hearing and was recommending approval 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 more flexibility of land uses that are more consistent with current development in the area and with Shiloh Corridor Overlay zoning. Highway Commercial zoning is compatible with the existing uses in Montana Sapphire Subdivision, Shiloh Crossing Subdivision to the east, and Lenhardt Square and St. Vincent Healthcare Subdivision to the north.

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

The existing zoning is restrictive of mixed uses, and certain types of commercial uses. The proposed zoning will allow more housing and business choices in the area including mixed uses with multifamily dwellings.

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

The proposed zoning will encourage new businesses and development within the Montana Sapphire Subdivision.

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

There should be no immediate effect on traffic congestion. The existing vacant land is part of an existing subdivision. Streets have been constructed and access is available to King Avenue West and Shiloh Road. Any future development may require a traffic impact analysis to ensure these existing access points continue to be functional.

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

The subject property is currently serviced by the Billings Fire Department and Billings Police Department. There should be no effect on these services.

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

The proposed zoning would allow the owner to market the property for a greater variety of commercial uses and mixed uses. Additional development in the subdivision will promote the general welfare.

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

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

6. Will the new zoning prevent overcrowding of land?

The proposed zoning, like all zoning districts, contains limitations on the maximum percentage of the lot area that can be covered with structures. The proposed HC zone allows 75% lot coverage and the current ELI zone allows up to 50% lot coverage. The proposed HC zone setbacks are similar to the current ELI requirements. The maximum residential density is the same for both zoning districts of 26 dwelling units per acre.

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

The new zoning does avoid undue concentration of population. The existing zoning, ELI, allows single family dwellings on lots of at least 9,600 square feet and multi-family dwellings at the same density as RMF-R – 26 units per acre. The proposed HC zone has identical requirements except that single family developments can occur on lots of 6,000 square feet per dwelling unit. In the ELI zone, all residential uses or mixed uses require special review approval and these are allowed uses within the HC zone. The new zoning should avoid undue concentration of population.

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

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

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

Schools and Parks: There should be no impact to schools from the proposed zone change. However, a residential development in the future could affect the schools in the area.

Fire and Police: The subject property is currently served by the city Public Safety Services.

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

The proposed zoning will allow the property to develop in character with the surrounding land 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. The location is west of Shiloh Road and south of King Avenue West, both principal arterial streets. The property may be more suitable for mixed uses and similar development that does not require arterial street frontage for commercial or industrial uses.

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

Surrounding commercial property exhibits higher taxable land value. The property is currently vacant and should increase in value when developed.

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

The proposed zoning will permit more flexibility with future development. The surrounding development is compatible and this is the most appropriate use of the land.

The public hearing was opened.

- **Pat Davies, Sanderson Stewart, 1300 N. Transtech Way, Billings, MT**, said he represented the agent for Montana Sapphire LLC. He asked for Council's support and said he was available to answer any questions.

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

Councilmember Astle moved for approval of Zone Change #878, seconded by Councilmember Clark. On a voice vote, the motion was unanimously approved.

7. PUBLIC HEARING AND SPECIAL REVIEW #891: A special review to allow a drive-through window for a new coffee or food kiosk in a new building in a Neighborhood Commercial (NC) zone adjacent to a Residential 9,600 (R-96) zone on Lots 6 and 7, Block 9, Central Acres Subdivision, 5th Filing, generally located on the northeast corner of the intersection of Central Avenue and 32nd Street West; Gerald Neumann, applicant. Zoning Commission recommends denial. (Action: approval or disapproval of Zoning Commission recommendation.)

Zoning Coordinator Nicole Cromwell advised the applicants had requested in an e-mail that day that the item be postponed until the meeting of September 12. She said she would delay her presentation until September 12 but because the public hearing had been advertised, it would still need to be opened.

Councilmember Cimmino asked if the reason behind the delay was because the Zoning Commission recommended denial. Ms. Cromwell said she believed so, and the applicants were trying to work with the City Traffic Engineer and their own Traffic Engineer and hold discussions with the surrounding property owners who testified at the Zoning Commission to come to a resolution.

The public hearing was opened. There were no speakers. Mayor Hanel continued the public hearing until September 12, 2011.

Councilmember Clark moved to postpone action until September 12 and continue the public hearing at that time, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

8. PUBLIC HEARING AND SPECIAL REVIEW #892: A special review to allow the addition of one dwelling unit within an existing duplex dwelling at 721 and 723

N 16th Street in a Residential 6,000 (R-60) on a 7,000 square foot parcel of land legally described as Lots 52 and 53, Block 1, North Park Subdivision; Jonathon Kober, applicant. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)

Zoning Coordinator Nicole Cromwell began her PowerPoint presentation showing the zoning map, an aerial view, and photographs of the subject property and surrounding properties, and drawings of the proposed building. She said the applicant had also applied for a city lot area variance because normally under zoning rules 8,500 square feet was required for a tri-plex. She said the City Board of Adjustment heard the application on August 3 and conditionally approved the lot area variance. Ms. Cromwell advised the Zoning Commission held a public hearing on August 2 and was recommending approval based on the following conditions.

1. The special review approval shall be limited to Lots 52 and 53, Block 1 of North Park Subdivision, generally located at 721 and 723 N 16th Street.
2. The special review approval is for one 3-plex multi-family dwelling in a single structure and no other use is intended or implied by this approval.
3. Any expansion of the proposed building, greater than 10 percent of what is shown on the submitted site plan will require an additional special review approval.
4. 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.
5. 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.

Ms. Cromwell advised the existing duplex was built in 1997 and had a significant unfinished basement area currently used for storage. She said there was an existing ground level entry from the east side, and there was more than enough parking on the property to accommodate a third unit. She said there would be no exterior expansion of the building, and it would all be interior remodeling including the addition of a shared laundry facility. Ms. Cromwell advised there was no public testimony at the Board of Adjustment or the Zoning Commission from surrounding property owners.

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

Councilmember Ronquillo moved for approval of Item 8, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.

9. RESOLUTION #11-19098 setting new parameters for the SID 1360 (Gabel Road) refunding. Staff recommends approval. (Action: approval or disapproval of staff recommendation). (This item was added to the agenda at the Council

meeting.) City Administrator Tina Volek advised there was no presentation, but staff was available for questions.

Councilmember Ronquillo asked why they were giving the money back. Finance Director Pat Weber advised the City was not giving the money back. He said they were refunding the bonds and saving approximately 1.5% in interest, which over six years would save all the property owners \$150,000 in debt service payments.

Councilmember Astle moved for approval, seconded by Councilmember Ronquillo. On a voice vote, the motion was unanimously approved.

10. APPROVAL of commitment of \$100,000 annually for three years of East Billings Urban Renewal District (EBURD) TIF funds as match for Community Challenge Planning Grant. Staff recommends approval. (Action: approval or disapproval of staff recommendation). (This item was added to the agenda at the Council meeting.)

Planning Director Candi Beaudry advised the grant was of great importance to the City of Billings and the EBURD. She said the contribution of \$300,000 over the life of the grant, along with over \$400,000 of in-kind contribution from the Sustainable Communities Partnership by attending meetings, facilitating the grant, and creating planning documents could leverage \$3 million. She said the \$3 million would be used to create a Sustainable Communities Fund, which recipients could apply for to offset the costs of land purchase. Ms. Beaudry advised the fund would be managed by the Partnership. She said the fund would require that recipients align themselves with the criteria of the original grant, which was to provide affordable housing, improve economic development, and reach out to underserved populations. She said other criteria would be how well it aligned with the existing EBURD Master Plan. She said part of the effort would be to create the criteria to determine whether sub-recipients were eligible for the money. Ms. Beaudry said they were also exploring a possibility that they would require or request the sub-recipients make some type of negotiated contribution to the fund so it would be sustainable. Ms. Beaudry said it was a great community effort with over 24 partnerships, including representation from the Senators' Offices and asked that Council commit \$100,000 annually for three years and join the Partnership as a City Council. She added she had spoken with Marty Connell, who was unable to receive approval of the Billings Industrial Revitalization District (BIRD) to move forward prior to the council meeting, so she asked that the decision be made contingent upon receiving BIRD approval.

Councilmember Clark asked if the Council could commit the \$100,000 without permission of the BIRD since it was tax money. Ms. Beaudry said it could. She said the City had a Memorandum of Understanding between the BIRD and the Big Sky Economic Development Authority. She said the BIRD was only an advisory board to the Council, and the Council had final approval on the expenditure of tax increment funds.

Councilmember Gaghen moved for approval of the Community Challenge Planning Grant application stipulating \$100,000 for three years contingent upon receiving BIRD approval, seconded by Councilmember Ronquillo. On a voice vote, the motion was approved 7 to 0. (Councilmembers Pitman and McCall recused themselves earlier in the meeting when the Item was added to the agenda.)

PUBLIC COMMENT on Non-Agenda Items -- Speaker Sign-in required. (*Restricted to ONLY items not on this printed agenda. Comments here are limited to 3 minutes. Please sign up on the clipboard located at the podium.*)

The public comment period was opened.

- **Kevin Nelson, 4235 Bruce Avenue, Billings, MT**, asked if the Council really thought they held a fair hearing on Item 5. He said Councilmember McCall mentioned four councilmembers who worked closely with the Complete Streets resolution. He said Councilmember Clark said they worked and wrote the resolution, and then they voted on it. Mr. Nelson asked the councilmembers if any of them had any ethics. He said a public hearing was to listen to the staff report, hear the public comment, and ask questions. He said they did not want to hear their opinion while people were testifying. Mr. Nelson also said on Wednesday night at North Park a particular group came to town, bought a park permit and paid for their insurance. He said there were gubernatorial candidates and legislative people there and during the event there were 200 people who surrounded the gazebo in protest. Mr. Nelson said it would be a very dicey election cycle and people had the right to express their opinions without being taunted by other groups. He warned that the elections this year could create potential violence and the City needed to get a handle on it and be prepared to mitigate situations.
- **Brian Kenat, no address given**, said he wanted to respond to Mr. Nelson's comments. He said he was in attendance on Wednesday at the rally and spent time going between both crowds. He said it was union folks who protested and both sides remained very peaceful.

COUNCIL INITIATIVES

- **Ruegamer**: MOVED to allocate by resolution up to \$10,000 of council contingency funds for Montana League of Cities and Towns Convention expenses, seconded by Councilmember Clark. He said they did not anticipate needing a lot of money, but he would like to have it available if they needed it. Mayor Hanel asked if it was normal for the hosting city to be involved financially. Councilmember Ruegamer said the League asked the City to host the President's Reception and to give everyone some kind of memento. He said the League contributed \$10 per person towards the memento, and Billings was considering giving jackets. Councilmember Astle recused himself due to a business conflict. On a voice vote, the motion was approved 8 to 0.

There was no further business, and the meeting adjourned at 9:53 p.m.

CITY OF BILLINGS

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

ATTEST:

BY: Cari Martin
Cari Martin, City Clerk