

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

January 23, 2012

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

ROLL CALL: Councilmembers present on roll call were: Cromley, Ronquillo, Pitman, Cimmino, McFadden, Bird, McCall, Ulledalen, Astle and Crouch.

MINUTES: January 9, 2012 – Councilmember McCall moved for approval, seconded by Councilmember Pitman. On a voice vote, the motion was unanimously approved.

COURTESIES: Councilmember Crouch said he would like to salute the Black Heritage Foundation and Not in Our Town for the excellent programs they provided the previous weekend for the Martin Luther King, Jr. Celebration.

PROCLAMATIONS: Martin Luther King, Jr. Day – January 16, 2012

ADMINISTRATOR REPORT - TINA VOLEK: There was no Administrator Report.

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: #1 & #6 ONLY.
Speaker sign-in required. (Comments offered here are limited to one (1) minute. Please sign up on the clipboard located at the podium. Comment on items listed as public hearing items will be heard ONLY during the designated public hearing time for each respective item. For Items not on this agenda, public comment will be taken at the end of the agenda.)

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

1. **CONSENT AGENDA**

A. Mayor Hanel recommends that Council confirm the following appointments:

1.

	Name	Board/Commission	Term	
			Begins	Ends
1	Sandra McKee	Mayor's Committee on Homelessness - Health Care	01/23/12	12/31/12

1. Unexpired term of Judy Stewart

B. Bid Awards:

1. **Airport Operations Paging System Replacement.** (Opened 1/10/2012 Recommend Industrial Communications and Electronics; \$69,816.30.

C. Bus/Bench Advertising Concession Agreement with Blair Unlimited, 40% annual gross sales revenue or a minimum annual guarantee of \$50,000 (whichever is greater), term: 5 years.

D. Amendment #18, Preliminary Engineering Services for Runway 10L/28R Overlay and Contract Extension through November 2013; Morrison-Maierle; \$336,014.

E. Street Closures:

1. **Magic City Blues Festival.** August 10, 11 & 12, 2012; 9:00 am Friday, August 10, to 1:00 am Sunday, August 12; Montana Ave from N. 23rd to N. 25th Streets.

F. Memorandums of Understanding between the City of Billings and the Montana State Library for (1) expanded broadband access for Parmly Billings Library patrons; and (2) network infrastructure equipment and installation; funded through federal Broadband Technologies Opportunities Program Grant.

G. Second/Final Reading Ordinance #12-5546 amending the boundaries of Ward IV to exclude the portion of recently de-annexed property in De-Annexation #11-04 described as Lots 26, 27, the west half of Lot 28 and Lot 38, and Lot 40 of the Sunny Cove Fruit Farms.

H. Final Plat Approval of Amended Lot 2, Block 1, Midland Subdivision, 1st Filing.

I. Bills and Payroll:

1. December 28, 2011
2. January 3, 2012

Councilmember Pitman separated Consent Agenda Item B1. Councilmember Cimmino separated Consent Agenda Items I1 and I2. Mayor Hanel separated Consent Agenda Item E. Councilmember Ronquillo moved for approval of the Consent Agenda with the exceptions of Items B1, I1, I2, and E, seconded by Councilmember McCall. On a voice vote, the motion was unanimously approved.

Councilmember Pitman referenced Item B1 and said he would be abstaining from the vote, due to a business relationship with Industrial Communications. Councilmember Cimmino moved for approval of Item B1, seconded by Councilmember Ronquillo. On a voice vote, the motion was approved 10 to 0.

Councilmember Cimmino referenced Item I1, Invoice #751820, and Item I2, Invoice #751980, and said she would be abstaining from both items because the invoices were submitted by her employer. Councilmember Astle moved for approval of Items I1 and I2, seconded by Councilmember Pitman. On a voice vote, the motion was approved 10 to 0.

Mayor Hanel referenced Item E and asked if the Blues Festival street closure would be in conflict with the two phases of construction scheduled for Montana Avenue. City Administrator Volek said she had discussed it with City Engineer, Debi Meling, and the first condition for the permit was that they would coordinate with the City in regard to the water main work that would occur this year. Mayor Hanel asked where the construction would start and in what direction it would proceed. Ms. Volek said she was not sure, but this year the project would be water main replacement and the following year would be re-surfacing the street. Councilmember Cimmino moved for approval of the street closure as noted in the staff report for the annual Magic City Blues Event in August, seconded by Councilmember Ronquillo. On a voice vote, the motion was unanimously approved.

REGULAR AGENDA:

2. PUBLIC HEARING AND SPECIAL REVIEW #896: a special review to allow a beer and wine license with gaming in a Community Commercial (CC) zone on a 4.73 acre parcel of land described as Lots 1-10, Block 13, and Tract A1, B, and B1 less the west 10 feet for street, Gorham Park Subdivision, generally located at 525 24th Street West. Theresa Jenkins, owner; Jill Lindell of Won \$800 Casino and Sports Pub, applicant; Attorney Peter Stanley, agent. Zoning Commission makes no recommendation due to lack of quorum. (Action: approval or disapproval of Special Review.) Zoning Coordinator Nicole Cromwell began her PowerPoint presentation showing a zoning map of the subject property and surrounding properties. She advised that the Zoning Commission had three members in attendance at their January 3 public hearing, but one of the members abstained from voting because he represented the property owner so there was no recommendation from the Zoning Commission. Ms. Cromwell showed a site plan of the subject property, an aerial photo, and photographs of the property and surrounding properties.

Councilmember Astle asked if the rear entrance would be a service entrance only or if it would be open to the public. Ms. Cromwell said the back entrance would not be the normal entrance for the public, but because of the nature of the use, they had to have two doors available to go in and out of the building. She said the entrance would probably be used mostly by employees but would not be blocked or marked "employees only."

Councilmember Bird asked if the public would be able to enter through the rear door. Ms. Cromwell said she was not sure if the building code would require the rear door to be a separate public entrance, but the applicant and agent were in the audience and could answer the question. Ms. Cromwell said they had received a letter from an adjacent owner who was concerned that a beer and wine license with gaming could generate activity at the rear of the building that faced a residential neighborhood. She said at the public hearing the applicant explained there was a security agency under

contract for the entire building that responded to disturbance calls and regularly patrolled the area. Councilmember Bird said she would also like to know if there would be any other type of security and lighting installed. Ms. Cromwell said the site plan noted that the entry along the rear exterior would be under camera surveillance.

Councilmember McCall asked if there was a formal alleyway behind the building. Ms. Cromwell said it was a city street, and there was at least one drive approach into the back parking lot of the building. She pointed out a portion of landscaping and fencing that separated the street from the back of the building.

Councilmember Cimmino asked for clarification on the location of the exit door as it related to the property owners across the street. Ms. Cromwell said the exit door was technically located in front of Custer Avenue.

Ms. Cromwell said there was a 600-foot separation requirement of liquor licenses from any schools, churches, parks, and playgrounds, and there were no separation issues. She said although the Zoning Commission had no recommendations, the Planning Division recommended five basic conditions of approval as follows.

1. The special review approval shall be limited to Lots 1-10, Block 13 and Tract A1, B and B1 less the west 10 feet for street, Gorham Park Subdivision.
2. Any expansion of the proposed interior space greater than 400 square feet will require an additional special review approval.
3. There shall be no outdoor public address system or outside announcement system of any kind.
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.

The public hearing was opened.

- **Peter Stanley, 3860 Avenue B, Suite C, Billings, MT**, said he was the applicant's attorney. Mr. Stanley said the Zoning Commission did not make a recommendation because it did not have a quorum, and there were no other parties present who objected. He said it was an existing business that was just moving and not adding another gaming license; and the applicants had a long history of responsible management at the current location in Rimrock Mall. Mr. Stanley said the special review was consistent with the City's Growth Plan, an in-fill of an existing structure, a re-use of the structure, provided neighborhood availability of the businesses, and encouraged stable businesses and employers in the city. He said the five conditions were acceptable, and he thought it would improve the under-utilized shopping center. Mr. Stanley said it was his understanding the rear door was required by the fire code, and it would not be used by customers because all of the parking was in the front. He said the back door would be used for deliveries. Mr. Stanley commented there was adequate fencing and a landscaping barrier separating the residences across the street

from the business. He said the owner of the building provided security through Sunset Security.

- **Jill Lindell, 5630 Billy Casper Drive, Billings, MT**, said she was asking for council approval to move Won \$800 Casino to 525 South 24th Street West. Ms. Lindell said she and her husband had been in business for over 20 years at the Rimrock Mall location. She said their business had video surveillance, and they provided their employees with handheld alarms that were state of the art, which would continue to be provided at their new location. Ms. Lindell said she would work with the property owner to make sure all necessary lighting for the back door was maintained. Ms. Lindell said there would be an entrance in the back and in the front to be compliant with all fire exit codes. She said the front entrance would be the main entrance because of the parking.
- **Teresa Jenkins, 5629 Billy Casper Drive, Billings, MT**, said she was president of M & K, Inc., the ownership of the property. Ms. Jenkins said she felt Won \$800 Casino would be a good fit in the shopping center. She said the space had been empty for a long time. She said the lot was signed with "no loitering" and "customer parking only", and Sundown Security provided security for the property. She said there was ample space in the back for deliveries and employee parking. Ms. Jenkins commented the chain-link fence along the back had privacy webbing, and shrubs and vines provided a visual barrier. Ms. Jenkins commented the shopping center was built in 1965 and most of the current nearby residents had chosen to move there since then. She said the Lindells were on-premise managers and had an excellent management and safety history. Ms. Jenkins said there had to be enough lighting to make the business secure but not too much lighting to bother the neighbors. She said currently there was a light over the back door area that could be focused more downward, but they were willing to do whatever was recommended.

Councilmember Bird clarified that her earlier concerns were to address the need for employee safety and take into consideration the late operating hours of the casino. She said there needed to be a balance to provide some security without frightening the residential neighborhood.

- **Richard Clark, 1207 25th Street West, Billings, MT**, said he had worked with Ms. Jenkins for over 40 years in the convenience store business, and he and his son helped her out with the shopping center. Mr. Clark said there were currently lights on the back doors of each location. He said an existing license was just being moved to a new location, and the Lindells had a good record at Rimrock Mall according to mall security. He said the space would be tastefully remodeled, and it would be a nice location for them.

Councilmember Bird asked if there would be exterior video surveillance. Mr. Clark said the plans showed exterior video surveillance in the back. He commented that the only other liquor license in the complex was at the Chinese restaurant. He said the pizza place had sold their license.

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

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

3. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE

#879: a zone change from Residential 9,600 (R-96) to Residential 7,000 (R-70) on property legally described as Lot 8, Block 1, Meadowood Subdivision, generally located on the northwest corner of the intersection of Meadowood Street and Lyman Avenue and addressed as 2302 Meadowood Street. Mark Dawson, owner; BlueLine Engineering, agent. Zoning Commission recommends approval of the zone change and adoption of the 12 criteria. (Action: approval or disapproval of Zoning Commission recommendation.) Zoning Coordinator Nicole Cromwell said the applicant had brought the zone change request to Council once before in 2010 for an existing duplex built in the 1950's that was in a current, legal, non-conforming use. She said at that time the Zoning Commission forwarded a recommendation of denial, and the City Council adopted that recommendation. Ms. Cromwell said the current request was identical to the request in 2010; however, since the first denial, the Planning Division had conducted further research on the differences; whether or not it could be considered an illegal spot zoning; and if it were significantly different than the R9600 zoning that surrounded the subject property. Ms. Cromwell showed a zoning map and photographs of the subject property and the surrounding properties and an aerial photo. She said the property was originally built as a two-family dwelling with separate entrances, there was no communicating door between the two units, and there had been no building permit to change it from a two-family dwelling. She commented there were three other similar duplexes in the neighborhood. Ms. Cromwell said the question of whether or not it would be spot zoning in a single-family residential zone was clarified recently by the Supreme Court through a decision that was made on a Great Falls re-zoning case. She said the Supreme Court determined that the differences in density were not significant and; therefore, it would not be considered an illegal spot zoning. Ms. Cromwell said if they applied that case to the current application, they could see that building codes, engineering codes, insurance, and mortgage lending all treated single family and two-family dwellings almost identically. She said they had received several letters in support of the zone change from the surrounding neighborhood. She said the Zoning Commission considered all of the arguments and was recommending approval based on the following 12 criteria.

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

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

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

The proposed zoning would permit an existing nonconforming use to continue in a single family residential neighborhood. The proposed zoning is not significantly different from the proposed zoning. The neighborhood was fully developed prior to the 1972 zoning. Removing the risk of the legal nonconforming use will allow the property to improve.

The proposed zoning is consistent with the surrounding character of the neighborhood. Three other properties in the immediate area have been developed with attached

dwelling units.

- The proposed zone does not meet the three tests for creation of an illegal spot zone.

1. The requested use is not significantly different than the prevailing use in the area.
2. The area requested for the use is small in area.
3. The requested zoning benefits this owner but also provides benefit to the surrounding owners by allowing regular maintenance of the building and improvements.

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

There should be no effect of traffic congestion. The 2-family dwelling is an existing structure and no increase in dwelling unit density is proposed.

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

The subject property is currently serviced by City Fire and Police. No change to the existing use is proposed that would affect public safety.

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

The proposed zoning would permit a 2-family dwelling to continue in perpetuity in a single family neighborhood. The surrounding property values may be positively affected by zone change. 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, like all zoning districts, contain limitations on the maximum percentage of the lot area that can be covered with structures. The R-96 and the proposed R-70 zone allow 30% lot coverage. The proposed site plan does not increase the foot print of the existing building.

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

The new zoning does avoid undue concentration of population. The R-96 zoning only allows single family homes on a minimum lot size of 9,600 square feet. The proposed zoning would allow 2-family dwellings on a lot of at least 9,600 square feet. The 2-family dwelling exists and there is no proposed increase in dwelling unit density.

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 impact the surrounding streets.

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

Schools and Parks: School District #2 will provide education to students that may live on this parcel. There should be no impact to school census from the proposed zone change.

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

9. Does the new zoning give reasonable consideration to the character of the district? The proposed zoning will permit a legal nonconforming use – a 2-family dwelling, to continue within an existing single family residential neighborhood. Three of 105 surrounding properties within 600 feet have also developed as a 2-family or triplex dwellings. All of the surrounding zoning is R-96 with the exception of the Poly Drive Elementary school (zoned Public). The character of the neighborhood is single family and two-family dwellings. The proposed zoning does give reasonable consideration to the character of the district.

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. While most surrounding property is developed for single detached dwelling the property has supported the two-family dwelling for 55 years and the lot is over 9,800 square feet in area.

11. Was the new zoning adopted with a view to conserving the value of buildings? Surrounding residential property to the north, south and east have much higher taxable value for buildings than this property. The taxable value of the land at 2302 Meadowood Street is 58 percent greater than the building value (2009 reappraisal). It appears from the exterior photographs of the dwelling that regular maintenance has been deferred on the structure. This is likely due to the inherent risk associated with a legal nonconforming use. At any time, the investment may be damaged or destroyed without the possibility of rebuilding under the current zoning. The proposed zoning of R-70 would preserve the right of the owner to re-build a 2-family dwelling so the investment on the part of this owner could be preserved. The value of surrounding property may be positively affected by the proposed zoning.

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

The proposed zoning will permit the current two-family dwelling to continue and allow improvements to the building.

Councilmember Bird asked if parking had been an issue for the subject property. Ms. Cromwell said it had not. She said there was parking in the back and abundant street parking.

The public hearing was opened.

- **Marshall Phil, Blueline Engineering, 2110 Overland Avenue, Billings, MT,** said he represented the applicant. He said the first application for zone change was denied mainly because of spot zoning concerns, so they felt it was important to communicate with the neighborhood. He said they held a neighborhood

meeting and no one attended, so they sent letters to the neighbors asking them if they were for or against the zone change. He said they received 10 or so letters with positive responses.

Councilmember Cimmino asked if the structure would be rebuilt as a duplex or single family dwelling if it were to burn down. Mr. Phil said the owner would have to answer that question.

- **Mark Dawson, 2458 Eastridge, Billings, MT**, said he wanted to be able to rebuild the structure as it was currently used if it burned down. He said insurance and financing were factors for moving forward with the application. Mr. Dawson said he wanted to sell each side as an individual townhome, so the use would be the same as far as number of families and the difference would be owner-occupied residences rather than rental units.

Councilmember Bird asked if his intent was to rebuild on the property or to renovate what was currently there and then sell them as owner units. Mr. Dawson said he wanted to improve them and make them FHA financeable.

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

Councilmember McCall said she was glad the applicant pursued the request again because she thought it was a really good solution for the property and the neighborhood. Councilmember McCall moved for approval of Zone Change #879, seconded by Councilmember Astle. On a voice vote, the motion was unanimously approved.

4. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #880: a zone change from Residential 9,600 (R-96) to Residential 7,000 (R-70) on an 11,600 square foot parcel of land legally described as Lot 16, Block 6, Suncrest Acres Subdivision, generally located on the southeast corner of the intersection of Parkhill Drive and 12th Street West; Patrick Naglich, applicant. Zoning Commission recommends approval of the zone change and adoption of the 12 criteria. (Action: approval or disapproval of Zoning Commission recommendation.)

Zoning Coordinator Nicole Cromwell began her PowerPoint presentation showing the zoning map of the subject property and surrounding properties. She advised the applicant was interested in refinancing the property, and the Planning Division could not issue a rebuild letter. She said most mortgage financiers and underwriters required every mortgage to have a rebuild letter on file to ensure the value of the property was sustained through the life of the mortgage. She said a pre-application neighborhood meeting was conducted and one surrounding property owner attended with questions that were answered. She said there was no other public comment received from any of the surrounding property owners. Ms. Cromwell showed photographs of the subject property. She said Mr. Naglich lived in one half of the property and rented out the other half. Ms. Cromwell advised there were several similarly-situated properties in the immediate area, with only two that were actually in R7000 zoning. She said an illegal spot zoning was not an issue with the current property. She said the Zoning Commission 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 would permit an existing nonconforming use to continue in a single family residential neighborhood. The proposed zoning is not significantly different from the proposed zoning. The neighborhood was fully developed prior to the 1972 zoning. Removing the risk of the legal nonconforming use will allow the property to improve.

The proposed zoning is consistent with the surrounding character of the neighborhood. Six other properties in the immediate area have been developed with attached dwelling units.

- The proposed zone does not meet the three tests for creation of an illegal spot zone.

1. The requested use is not significantly different than the prevailing use in the area.
2. The area requested for the use is small in area.
3. The requested zoning benefits this owner but also provides benefit to the surrounding owners by allowing regular maintenance of the building and improvements.

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

There should be no effect of traffic congestion. The 2-family dwelling is an existing structure and no increase in dwelling unit density is proposed.

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

The subject property is currently serviced by City Fire and Police. No change to the existing use is proposed that would affect public safety.

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

The proposed zoning would permit a 2-family dwelling to continue in perpetuity in a single family neighborhood. The surrounding property values may be positively affected by the zone change. 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, like all zoning districts, contain limitations on the maximum percentage of the lot area that can be covered with structures. The R-96 and the proposed R-70 zone allow 30% lot coverage. The proposed site plan does not increase the foot print of the existing building.

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

The new zoning does avoid undue concentration of population. The R-96 zoning only

allows single family homes on a minimum lot size of 9,600 square feet. The proposed zoning would allow 2-family dwellings on a lot of at least 9,600 square feet. The 2-family dwelling exists and there is no proposed increase in dwelling unit density.

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 impact the surrounding streets.

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

Schools and Parks: School District #2 will provide education to students that may live on this parcel. There should be no impact to school census from the proposed zone change.

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

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

The proposed zoning will permit a legal nonconforming use – a 2-family dwelling, to continue within an existing single family residential neighborhood. Six of 133 surrounding properties within 600 feet have also developed as a 2-family dwelling. Zoning to the south across the alley is R-70 and R-96 exists to the north, east and west. The character of the neighborhood is single family and two-family dwellings. The proposed zoning does give reasonable consideration to the character of the district.

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. While most surrounding property is developed for single detached dwelling the property has supported the two-family dwelling for over 55 years and the lot is 11,600 square feet in area.

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

Surrounding residential property to the north, south and east have much higher taxable value for buildings than this property. The taxable value of the building at 1146 Parkhill Drive represents 57% of the total assessed value. Other properties exhibit much higher building values as a percentage of total value – ranging from 65% to 75% of total value. This is likely due to the inherent risk associated with a legal nonconforming use. At any time, the investment may be damaged or destroyed without the possibility of rebuilding under the current zoning. The proposed zoning of R-70 would preserve the right of the owner to re-build a 2-family dwelling so the investment on the part of this owner could be preserved. The value of surrounding property may be positively affected by the proposed zoning.

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

The proposed zoning will permit the current two-family dwelling to continue and allow improvements to the building.

The public hearing was opened.

- **Pat Naglich, 1146 Parkhill Drive, Billings, MT**, said he was the property owner. He said he wanted to refinance and if the property burned down he would rebuild it as is.

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

Councilmember McCall moved for approval of Zone Change #880, seconded by Councilmember Pitman. On a voice vote, the motion was unanimously approved.

5. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #881: a zone change from Residential R6,000 (R-60) to Community Commercial (CC) on a 27,101 square foot parcel of land legally described as Lot 1, Block 4 and all of Block 1, Central Avenue Addition, 2nd Filing, generally located at 640 St. Johns Avenue; AG Holdings, Inc., owner; Allen Greene, representative. Zoning Commission recommends approval of the zone change and adoption of the 12 criteria. (Action: approval or disapproval of Zoning Commission recommendation.)

Zoning Coordinator Nicole Cromwell commented the subject property had been a commercial property since 1949 and was located at the intersection of 7th Street West and St. Johns Avenue just one block north of Central Avenue. She began her PowerPoint presentation showing a zoning map of the subject property and surrounding properties. Ms. Cromwell advised Mr. Green, who owned Scott's Lawn Service and the property, came before Council in 2008 to change the property from a previous non-conforming use to the current non-conforming use, which was lawn service and landscaping service. She said it was allowed through the zoning code, particularly for properties that were commercial long before current zoning of 1972. She said permission was required of the Council every time a change was made and nothing could be expanded as far as the structure was concerned. Ms. Cromwell advised a pre-application meeting was held on November 2, and no negative comments were received from surrounding property owners. She said they received a phone call from the nearby linen supply company in favor of the zone change. Ms. Cromwell showed photographs of the subject property and surrounding properties, as well as an aerial photo. Ms. Cromwell advised the Zoning Commission was forwarding a recommendation of approval based on the following 12 criteria.

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

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

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

The proposed zoning would permit the existing commercial business to continue and remove financing and investment hurdles by placing the property in a conforming district. It is not likely the property will develop in single family, two family or multi-family dwellings.

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

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

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

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

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

There should be no immediate effect on traffic congestion. The existing property is used by Scotts Lawn Service and traffic generation should not increase with the proposed zoning. The new zoning is intended to make the existing uses conform to zoning. Future redevelopment of the property to another use under the new zoning could increase traffic in the area and impact on the local street system, including ingress and egress to the property, would be reviewed at that time.

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

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

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

The proposed zoning would permit the existing use to continue and expand. The existing buildings could be improved with less economic hurdles to financing. This will promote the health and general welfare of the neighborhood.

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

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

6. Will the new zoning prevent overcrowding of land?

The proposed zoning, like all zoning districts, contains limitations on the maximum percentage of the lot area that can be covered with structures. The proposed CC zone allows 50% lot coverage and the current R-60 zone allows up to 40% lot coverage. The proposed CC zone requires a separation between structures on the same lot, a minimum 20 foot front setback and a 10 foot side setback for any adjacent street. The CC zones do not require a rear setback unless adjacent to a residential zone. The required setback from the east property line is 15 feet for any new structure. Landscaping requirements also would require some buffering where the property is adjacent to property used for residential purposes on the east side.

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

The new zoning does avoid undue concentration of population. The existing zoning, R-60, allows the same number of dwelling units as the proposed CC zoning. Both zoning districts allow single family, two family and multi-family dwellings, although the existing R-60 zoning would require a special review approval for any multi-family development. It is not likely the new zoning will result in any residential use of the property. The new zoning should avoid undue concentration of population.

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

Transportation: The proposed zoning could have an impact on the surrounding streets depending on future uses of the property. Redevelopment of the property could require review of access and other transportation issues related to the property and the surrounding streets.

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

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

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

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

The proposed zoning will allow the existing development to continue as a conforming use in the proposed CC zoning district. Central Avenue, 1 block south, is a principal arterial street and the zoning to the south, east and west is compatible. The proposed zoning gives reasonable consideration to the district and neighborhood.

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

The subject property is suitable for the requested zoning district. The location is close to an arterial street that has sufficient capacity for the intended and existing uses. The new zoning allows the existing development to continue.

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

The existing building value will be conserved with the new zoning in place. Currently, the R-60 does not allow any commercial uses except by special review approval from one business to the next business type, however no expansion of the existing building can be allowed by this special review approval. The new zoning will allow the owner to consider future redevelopment of the property.

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

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

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

Councilmember McFadden moved for approval of Zone Change #881, seconded by Councilmember Bird. Mayor Hanel said he was contacted by one of the operators of the business who told him about a business arrangement that had been pre-arranged for quite some time so they would not be able to attend the council meeting, but they were prepared and willing to cancel it if necessary. Mayor Hanel said he told them it

was not necessary and he felt there would be sufficient information presented by staff. On a voice vote, the motion was unanimously approved.

6. DEVELOPMENT AGREEMENT with Stockman Bank for reimbursement of up to \$630,000 from the Downtown Tax Increment District for certain public improvements. Downtown Billings Partnership Board of Directors recommends approval. (Action: approval or disapproval of Downtown Billings Partnership Board of Directors' recommendation.) Assistant City Administrator Bruce McCandless advised the land and building cost for the Stockman Bank Downtown Branch was approximately \$13,700,000. He said the current proposal was to reimburse Stockman Bank for a number of public improvements they made to the property. He said the reimbursement would be made with 15% of excess tax increment annually for a maximum of \$630,000. Mr. McCandless explained that a base taxable value was established at the beginning of the district and remained in existence for the life of the district. He said the taxing jurisdictions that had been receiving taxes based upon the established taxable value continued to receive the taxes on the base taxable value. Mr. McCandless said what they hoped would happen in a tax increment district was that the taxable value would increase due to private development, and as the taxable value increased, the amount of taxes would also increase. He said the City Council had previously approved similar development agreements with First Interstate Bank in 2009 and Zootist Hospitality – Northern Hotel in 2011. He said the Stockman Bank proposal for reimbursement was for building material abatement and demolition of the pre-existing buildings, relocation of utilities underground, and landscaping and parking improvements. Mr. McCandless said reimbursement was structured so that \$50,000 would be paid out of the tax increment district fund to Stockman Bank on June 30, 2012, and then in subsequent years the amount would be 15% of the excess increment. He went on to explain excess increment by giving the example that if the district produced \$1.9 million in increment and then deducted \$1.2 million for the Empire Parking Garage; \$300,000 for the annual Downtown Billings Partnership Management Agreement, and amounts for several smaller projects, the amount left would be considered excess, or approximately \$400,000. Mr. McCandless said according to the Northern Hotel's agreement, it would receive 45% or \$180,000; and the Stockman Bank would then receive 15% of the excess amount or approximately \$60,000. Mr. McCandless reminded everyone that all of the numbers he was giving were estimates only and not absolutes, and there could actually be a range of values depending upon what the taxable value of the district was. He said the maximum reimbursement of \$630,000 was absolute and it would be the lesser of either \$630,000 or how much had been reimbursed by the time the district sunsetted. He said the district could sunset as early as 2020 or go beyond 2020 if the City issued revenue bonds before the sunset. Mr. McCandless listed benefits with the Development Agreement as added value to the downtown tax increment district; a large, attractive presence on a prime corner; and 40 to 60 bank and tenant employees who would generate additional downtown business. He said concerns with the Development Agreement would be that between Stockman Bank and the Northern Hotel Project, about 60 percent of the excess increment would be consumed, and it would most likely be the last large scale project to be financed out of the district until the district increment substantially increased. He said, in addition, if

the City issued bonds in order to finance the construction of the Empire Parking Garage, the City would likely be required to have about 1.5 to 1.7 times the annual debt service payment being generated in the district; and having the pre-commitments in the district could discourage some investors from purchasing the bonds. Mr. McCandless said the Council could approve the Development Agreement, disapprove the Development Agreement, or propose changes to the Development Agreement.

Downtown Billings Partnership (DBP) Development Director Greg Krueger said the DBP's support for development of the 4th Avenue North and Broadway corner began in 2003. He said the DBP Board had worked with Stockman Bank since 2005 regarding the development of the corner. Mr. Krueger said the DBP always wanted mixed use on the corner and had originally called for a parking garage but later determined the location was not feasible for a parking structure. He said Stockman Bank's investment of approximately \$14 million translated to about \$8.33 per square foot taxable market value and could potentially add 90 new employees to downtown. He said the utility relocation, demolition and abatement, and landscaping and parking were all tax increment finance district law-qualified expenditures. Mr. Krueger said the reimbursement would take place over the next eight plus fiscal years depending upon the value of the district. He said they would start with a \$50,000 payment in the current fiscal year followed with 15% of the unencumbered increment annually, which could be as high as \$130,000 depending on the growth of the district. Mr. Krueger said he agreed with Mr. McCandless that it would probably be the last large project they would be able to assist with until there was significant growth in the district.

Councilmember Astle moved for approval of the Development Agreement with Stockman Bank, seconded by Councilmember McCall.

Councilmember Cimmino asked if improvements consisting of building demolition and hazardous material abatement would also apply to the public library building once the Underriner building was demolished. Mr. McCandless said that type of work would be considered public improvement and would be an eligible tax increment expenditure.

Mayor Hanel said according to the information received the tax being received as a result of the new structure would be approximately \$200,000 per year. Mr. McCandless said that was the calculation shown in the application material, but said he thought it would be somewhere in the range of \$150,000 to \$200,000 depending on the Department of Revenue's value of the new building.

On a voice vote, the motion was unanimously approved.

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

The public comment period was opened.

- **Joe White, Billings, MT**, talked about Interstate Trucking and buying a bus for the children, the transfer of the City Administrator's position to Candi Beaudry, and damages to the air supply. (The remainder of Mr. White's testimony was inaudible.)

COUNCIL INITIATIVES

- **McCall:** MOVED to direct staff to provide a detailed, written report on the construction mistakes made on Shiloh, State, and Bench. She said there may be a legislative hearing with a local government interim committee. She said she had spoken with a couple of other elected officials, and it appeared people had a few of the facts and were making assumptions on what did or did not happen. She said she wanted a detailed report on what actually occurred, what mistakes occurred, and what kind of strategy would be used in the future. She said it would be helpful to have the information prior to the legislative hearing so they could be well prepared. The motion was seconded by Councilmember Cimmino.

Councilmember Pitman said it was a great idea, and he would like to invite Stefan Streeter and the County Commissioners. Councilmember McCall said she felt they needed to have detailed facts in writing from city staff, and it would be helpful to have the facts before getting into a discussion with the other parties. Councilmember Ulledalen commented it would be a good idea to hear from the designer of the project.

Councilmember McCall said she would like to have the information no later than the next formal meeting. Councilmember Cimmino asked if it would include information involving federal, state, city, the design firm, and the contractor who constructed the project. Councilmember McCall said she would like the City information and some sort of an analysis of where the City's responsibility broke down. She said she was mainly concerned with the City's responsibility and what they could do to make sure it did not happen again.

Councilmember Ulledalen said they needed to take a hard look at if they wanted to use available federal money to do projects in the future. He said it was a huge problem, and in the meetings they sat through with everybody up to and including Director Lynch the "stuff just kept oozing out as the project developed." He said if they looked at the stretch of King Avenue the City built from 32nd Street West to Shiloh, it included storm drain, and they did it for about \$3 million. He said the Shiloh project was two to three times that and did not include storm drain. He said it was the problematic aspect of what happened when they received federal money that was handled by the State of Montana and then the project was handed to the City when it was done. He said the City's comments in the process were limited, and the meetings were very, very frustrating. He referenced Zimmerman, and said they were still struggling with the demands the State injected on the City on how the money was used. He said it went back to the whole strategic planning process, and if they were going to grow, they needed to ask how they were going to pay for it in the future. City Administrator Volek commented the City paid the State of Montana a 14% fee to manage the project. Councilmember McCall said those were the kinds of facts they really needed to have. On a voice vote, the motion was unanimously approved.

- **Astle:** Commended the Police Department for their work on solving the recent vandalism spree. Ms. Volek said the Police Chief and the County Attorney had announced that five young individuals had been charged with more than 200 alleged acts of vandalism during the Christmas and New Year's holiday. She said

it was through a cooperative effort between the schools, the city, and the county to identify the individuals, as well as an individual who provided information resulting in the reward of \$1,000 that was offered. Ms. Volek said there would be a community meeting on Thursday at 5:30 p.m. at the Community Center for individuals who suffered a loss as a result of the vandalism. She said they were being asked to bring documentation of their loss to the meeting so a better estimate on the total amount of damages could be determined.

- **Ronquillo:** MOVED to have the new councilmembers brought up to date at a work session on the parking issues and the covering of the parking meters, seconded by Councilmember Pitman. On a voice vote, the motion was unanimously approved. Councilmember Ulledalen asked how close they were to receiving information on what had happened with the parking change. Assistant City Administrator Bruce McCandless advised the test was to run for six months, and the conclusion date would be March 31st. Mr. McCandless advised after the first few weeks and with a few minor changes to the meter test area, things had settled down substantially. He said he thought the Parking Advisory Board's recommendation would be to remove a number of the meters that were part of the test. On a voice vote, the motion was unanimously approved.

There was no further business, and the meeting adjourned at 8:13 p.m.



CITY OF BILLINGS

BY:

Thomas W. Hanel
Thomas W. Hanel, Mayor

ATTEST:

BY:

Cari Martin
Cari Martin, City Clerk