

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

May 28, 2013

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 Ronquillo gave the invocation.

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

Note: Councilmember McCall arrived at the meeting at approximately 6:40 p.m.

MINUTES: May 13, 2013 - PENDING

COURTESIES: Councilmember Ronquillo noted last Saturday South Park turned 100 years old, and they celebrated their new gazebo. He thanked Parks Director, Mike Whitaker, and Parks Superintendent, Jon Thompson, for setting up for the celebration. Despite the rain, the event was a success. Mayor Hanel and Senator Baucus attended. Councilmember Ronquillo said the new gazebo should last over a hundred years.

PROCLAMATIONS: None

ADMINISTRATOR REPORTS - TINA VOLEK

Ms. Volek commented on the following items.

- Item J – Second & Final Reading Ordinance amending Billings City Code Article 26-600, Industrial Waste Discharge: Copy of memo sent to Council in the May 24th Friday Packet from Boris Krizek, City Environmental Engineer, explaining EPA Region 8 review and approval process. Copy of memo is filed in ex-parte notebook.
- Item 3 – Public Hearing and Special Review #904: City Council received the following e-mails:
 - ✓ E-mails from Michelle Cormier Lee, Jean Shelp, and Brenda Binstock, dated 5/15/13, outlining concerns with the proposed development.
 - ✓ E-mails from John Jones of Moulton Bellingham Law Firm, representative for the developer, dated 5/24/13 and 5/25/13.
 - ✓ E-mail from Vickie Christie, dated 5/27/13, opposed to the proposed development.Copies of all e-mails are filed in ex-parte notebook.
- Reminder of the final budget work session scheduled for Wednesday, May 29th, at 5:30 in the Council Chambers.

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Item: #1 ONLY. Speaker sign-in required. (Comments offered here are limited to one (1) minute. Please sign in at the cart located at the back of the council chambers or 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. Bid Awards:

1. W.O. 12-18, Canyon Creek Drain, Phase 1 - King Avenue West. (Opened 5/28/2013) Bid award recommendation to be made at the June 10, 2013, City Council meeting.

2. City Hall Lighting Retrofit. (Opened 5/28/2013) Bid award recommendation to be made at the June 10, 2013, City Council meeting.

B. Development Agreement with SunCap Property Group outlining necessary public improvements for a proposed FedEx Facility on Tract 1, Certificate of Survey 3329, located at Hesper Road and Gabel Road.

C. Approval of lease renewal for office, storage, and wareyard space at the Billings International Airport to the Bureau of Land Management Fire Cache operation; 9/1/2012 - 8/31/2022; revenue first year \$62,436.60; revenue subsequent years adjusted each anniversary by the Department of Labor – Bureau of Labor Statistics Consumer Price Index for Wage Earners and Clerical Workers (CPI-W).

D. Supplemental Lease Agreement #4 with the Federal Aviation Administration (FAA) extending term of Lease #DTFANM-07-L-00039 for office and operation space in Airport Terminal Building; 4/1/2013-9/30/2017; annual revenue - \$26,089.32

E. Memoranda of Understanding between the City of Billings and Billings Public Schools for two (2) middle school resource officers and three (3) high school resource officers (7/1/13 - 6/30/14); Billings Public Schools payment to the City of Billings - \$121,366.

F. Subordination of Housing Rehabilitation Loan for Wesley K. Hazen and Brandi L. Hazen; \$19,600.

- G. Acceptance of Donation** of a retired Boeing 727 to the Billings Logan International Airport from FedEx Express to be used for training and education purposes.
- H. Resolution #13-19271** extending City Administrator's change order signing authority not to exceed \$1,300,000 for the Empire Garage Project.
- I. Resolution #13-19272** relating to \$5,545,000 Special Improvement District No. 1385 Refunding Bonds, Series 2013; fixing the form and details and providing the execution and delivery of the bonds.
- J. Second/Final Reading Ordinance #13-5600** amending Billings Montana City Code (BMCC) Article 26-600, Industrial Waste Discharge, conditioned on approval by the United States Environmental Protection Agency.
- K. Second/Final Reading Ordinance #13-5601** amending the boundaries of Ward I to include recently annexed property in Annexation #13-03: a tract of land generally located at the southeast corner of Bench Boulevard and Yellowstone River Road; Ryan and Jodi Rookhuizen Family Trust, owner.
- L. Second/Final Reading Ordinance #13-5602** amending the boundaries of Ward IV to include recently annexed property in Annexation #13-04: a tract of land generally located at the northwest corner of the intersection of Grand Avenue and 48th Street West; Mary Beth Gregory, owner.
- M. Second/Final Reading Ordinance #13-5603** amending the Billings, Montana, City Code (BMCC), Chapter 17- Noise; Repealing Sections 17-103, 17-105, 17-109, 17-110, and 17-111; and Amending Sections 17-101, 17-102, 17-104, 17-106, 17-107, and 17-112.
- N. Second/Final Reading Ordinance #13-5604** amending Billings, Montana, City Code (BMCC), Sections 18-302, 18-303, 18-306, 18-307 and 18-308; Public Nuisances.
- O. Second/Final Reading Ordinance #13-5605** amending Billings, Montana, City Code (BMCC), Sections 7-300 through 7-321, Going Out of Business.
- P. Bills and Payroll:**
1. April 29, 2013
 2. May 6, 2013

Councilmember Cromley separated Consent Agenda Item P2. Councilmember Pitman separated Consent Agenda Item H. Councilmember Cimmino separated Consent Agenda Items P1 and P2.

Councilmember Astle moved for approval of the Consent Agenda with the exception of Items H, P1, and P2, seconded by Councilmember Pitman. On a voice vote, the motion was unanimously approved.

Councilmember Cromley referenced Item P2, #765581, and said he would abstain due to his employment. Councilmember Cimmino referenced Item P2, #765530, and said she would abstain due to her employment. Councilmember Pitman moved for approval of Item P2, seconded by Councilmember Ronquillo. On a voice vote, the motion was approved 9 to 0.

Councilmember Pitman referenced Item H and asked for more information about what they were actually giving the City Administrator authority to do. Assistant City Administrator, Bruce McCandless, said there was a provision in the city code that allowed City Council to give the City Administrator more than the typical amount of change order authority on large and complex public improvement projects. The current city code allowed up to 10% of the project; \$500,000; or the contingency, whichever figure was lowest. In many large and complex projects the \$500,000 or contingency amount was exceeded. In the Empire Garage case, they were already over the \$500,000 limit so all future change orders would have to come before the City Council. The proposed resolution would give the City Administrator the authority to approve change orders up to a maximum limit of \$1.3 million. He said it was already slightly below \$1 million now, so it would be about \$300,000 of additional authority, which was still within the contingency amount of the project.

Councilmember Cimmino said in reading the staff report the original construction contract to develop the Empire Garage was \$11.5 million; but between the initial part of this year and up until now, they had already approved over \$900,000 in change orders. She asked if granting authority of another \$1.3 million would be a cost over-run. Mr. McCandless advised it was a total of \$1.3 million and not an additional \$1.3 million. He said he thought about \$700,000 out of the amount approved so far were known costs going into the project. They thought they would be bidding those parts of the project through separate contractors. When the City found out Sletten had the ability to perform those work elements, it was better if Sletten controlled the site; and the change orders to have Sletten do the work were brought to City Council for approval. He said they had to be treated as change orders because they were not originally in Sletten's contract, but known work elements that had to be performed as part of the project. City Administrator Volek asked Mr. McCandless to provide an example. Mr. McCandless said the asbestos abatement in the old Windsor Court building was not part of Sletten's original contract and was added as part of Change Order 2. He said the underground trenching and utility relocation in the alley was a known element of the project but not in Sletten's original contract. Councilmember Cimmino asked to clarify that, in addition, the City hired an engineering firm to oversee the construction administration. Mr. McCandless said that was correct; the City had hired OAC Services.

Councilmember Ronquillo asked Mr. McCandless if it would present a problem, because change orders would still have to be brought back to Council either way. Mr. McCandless advised the proposed resolution would give the City Administrator authority to approve change orders up to a maximum of \$1.3 million on the whole project. If something were to occur that required a change order that exceeded that amount, it would come back to the City Council. He said they expected at that point in the project

there should be no more large change orders and were comfortable additional change orders would not exceed the \$1.3 million. Mr. Ronquillo said he could not remember exactly what happened, but there had been a problem with getting city approval on permits in a timely manner, and it ended up costing another \$230,000. Mr. McCandless said the amount was closer to \$150,000 included in a change order that totaled \$230,000. He explained the city asked Sletten to postpone work on the job site so bonds could be sold prior to demolishing the Northern Hotel's parking garage. If the garage had been torn down and the city was not able to sell the bonds, the city would still have been obligated to provide parking to the Northern Hotel, which would have been a difficult task. Selling the bonds took a little longer than they had anticipated.

Councilmember Pitman asked that the City Administrator keep Council informed of any change orders. Ms. Volek advised she would.

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

Councilmember Cimmino referenced Item P1, #765332, and said she would abstain due to her employment. Councilmember Pitman moved for approval of Item P1, seconded by Councilmember Ronquillo. On a voice vote, the motion was approved 10 to 0.

REGULAR AGENDA:

2. PUBLIC HEARING AND SPECIAL REVIEW #903: a special review amending the conditions and site plan for previously-approved Special Review #900 allowing construction of a new, private elementary school on a 3.83-acre parcel of land located at 4809 Grand Avenue. Grace Montessori Academy, owner; Eggart Engineering Company, agent. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)

Planner II, Nicole Cromwell, said Special Review #900 was previously approved with conditions by the City Council in August of 2012. The applicant had since added approximately two more acres to the site and would like to build a larger building than what had been approved. Ms. Cromwell presented a map showing the additional area acquired for the school. The school building site was in the same place with area for future expansion and a larger parking lot. She showed an aerial view of the property, the proposed new building and site plan, the proposed building elevations, classroom spaces, entryway, and photographs of the site. She commented the entrance and exits from the property would essentially remain the same. The Zoning Commission held a public hearing on May 7, 2013, and was recommending approval based on the following eleven conditions.

1. The special review approval shall be limited to Zimmerman Acreage Tracts as amended and generally located at 4809 Grand Avenue.
2. The special review approval is for the construction of a new school building of 20,058 gross square feet and no other use is intended or implied by this approval.
3. Any expansion of the proposed building or off-street parking including the future expansion area greater than 10 percent of what is shown on the submitted site plan will require an additional special review approval.

4. All exterior lighting shall have full cut-off shields so no part of the fixture or lens projects below the cut-off shield. The maximum height of any light pole in the parking or outdoor play areas shall be 20 feet above grade.
5. The proposed new drive approaches shall be reviewed and approved by the City Traffic Engineer.
6. No outdoor announcement system is allowed on a permanent or temporary basis.
7. No construction or demolition activity will occur before 8 am or after 8 pm daily.
8. Any new sign will require sign permit approval from the Planning Division. The school will be allowed one (1) monument sign not larger than 32 square feet and may have external illumination.
9. The site will be developed in substantial conformance with the submitted site plan including landscaping, parking and building locations.
10. 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.
11. The proposed development shall comply with all other limitations of Section 27-613 of the Unified Zoning Regulations concerning special review uses, and all other City of Billings regulations and ordinances that apply.

Councilmember Bird noted initially there had been concerns about access onto Grand Avenue. Ms. Cromwell said the applicant worked with City Engineering on a deceleration right-turn approach for the east entryway. Ms. Bird asked if the new boundaries for the annexed property would be along 48th Street. Ms. Cromwell said they would not. The accesses would be off Grand, and there were no plans for accessing off 48th Street. All the facilities were set back far enough to accommodate the right-of-way. Ms. Bird asked if there would be any increased concerns about the traffic with the additional property. Ms. Cromwell said there would not.

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

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

3. PUBLIC HEARING AND SPECIAL REVIEW #904: a special review to allow multi-family dwellings in an R-60 zone on property located on the north side of Avenue E between 16th Street West and 17th Street West and legally described as Lots 1 through 9A of Block 10, Partington Park Subdivision, 8th Filing; McDonald Land Holdings, LLC, owner; AT Architecture, agent. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.) Planner II, Nicole Cromwell, advised the special review request was for multi-family dwellings on the former location of the Plaza Pool Apartments between 16th and 17th Streets West on the north side of Avenue E. She reviewed a zoning map of the subject property and surrounding properties, an aerial view of the property and the site plan submitted with the application. She referenced the alley that would be paved and noted the garages separating the units. Each garage would have a parking space in front of it for a total of two parking spaces per each dwelling unit, which was more than required for multi-family dwellings. Ms. Cromwell

showed the building elevations and interior floor plans for each unit. Each unit would have access from the garage to the first floor. She showed photographs of the Plaza Pool Apartments prior to demolition, surrounding streets, and the existing, unpaved alley. She noted the dumpsters for the apartments and the round barrels on the north side of the alley. The Zoning Commission conducted a public hearing and heard testimony from the applicant and several surrounding property owners. The Planning Division recommended conditional approval to the Zoning Commission, and the Zoning Commission amended two of the recommended conditions. The first condition recommended by Planning staff was that all properties on the north side of the alley be given the opportunity to have new privacy fences with gates installed at the applicant's expense per the property owners' desires and materials. The Zoning Commission chose to amend that condition to state that the fences would be replaced on the north side of the alley if they were damaged during construction in the alley for paving or utility work. The second condition dealt with start and stop times for construction activity, and the Zoning Commission amended the condition to be compliant with the current city code. Ms. Cromwell said the Zoning Commission recommended the following 14 conditions for approval of the special review.

1. Lots 1 through 9A of Block 10, Partington Park Subdivision, 8th Filing generally located at 1802 16th Street West.
2. The special review approval is for the construction four 6-plex dwellings and two 4-plex dwellings for a total of 32 dwelling units and no other use or development configuration is intended or implied by this approval.
3. Any expansion of the proposed buildings or off-street parking greater than 10 percent of what is shown on the submitted site plan will require an additional special review approval.
4. All exterior lighting, including security lighting above garage doors, shall have full cut-off shields so no part of the fixture or lens projects below the cut-off shield. The maximum height of any light pole in the outdoor areas shall be 15 feet above grade. Exceptions to this requirement are allowed for porch or entry doorway lighting.
5. The proposed new drive approaches shall be reviewed and approved by the City Traffic Engineer.
6. The applicant shall consult with adjacent property owners north of the alley to coordinate the timing of the alley improvements. The applicant/owner will replace any or all fencing on the north side of the alley that may be damaged during construction activities. The adjacent property owner may choose not to have fencing replaced or repaired by the applicant. If the adjacent owner agrees to allow the fencing to be repaired or replaced by the applicant/owner, the adjacent owner may choose any style or type of fencing material allowed by the zoning regulations for the new or repaired fencing.
7. Construction or demolition activity will occur in conformance with City Code Chapter 17 - Noise.
8. Any new sign will require sign permit approval from the Planning Division. The property will be allowed one (1) monument style sign not larger than 12 square feet in sign area not including the support structure and may have external illumination. No banner signs will be allowed on the exterior of any of the buildings or on the property.

9. The applicant/owner will install 24 trees of at least 8 feet in height and 1.5 inch caliper at the time of planting. The trees will be installed in substantial conformance with the submitted site plan. The trees shall not be any of the following species: Carolina poplar, Canadian poplar, other populous subspecies including any variety of aspens, elms, lombardy poplar, silver leaf poplar, weeping willow, or box elder. The trees will be continuously maintained and replaced as necessary by the owner.
10. Any centralized solid waste storage shall be enclosed by a wall on 3 sides and a closing gate or gates. The wall and gates for the solid waste storage shall be similar or complimentary in color to the adjacent buildings and shall be sight-obscuring. The wall and gates shall be tall enough that no part of the interior dumpster(s) are visible from the outside.
11. The site will be developed in substantial conformance with the submitted site plan including landscaping, parking and building locations.
12. The applicant will place pedestrian crossing signs in the alley where it intersects with 16th St West and 17th St West so traffic is aware of pedestrians on the adjacent sidewalks.
13. 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.
14. 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 noted before a recommendation of approval or conditional approval could be made, each special review request must demonstrate conformance with three primary criteria: 1) the application must comply with all parts of the Unified Zoning Regulations, 2) the application must be consistent with the objectives and purposes of the Unified Zoning Regulations and the 2008 Growth Policy, and 3) must be compatible with surrounding land uses and otherwise screened and separated from adjacent land to minimize adverse impacts. She noted the application conformed because it was in a district that allowed multi-family dwellings by special review. The proposed dwellings met the required setbacks, maximum lot coverage, and maximum building heights. She said it was in conformance with the Growth Policy and supported the in-fill policy. The application also conformed to the third criteria and conditions of approval were recommended to mitigate any potential impacts to the surrounding properties.

Councilmember Astle asked if the alley was ten feet off the back of each lot making it a 20-foot right-of-way. Ms. Cromwell said that was correct. He asked if the paving would be on the 20 feet of right-of-way already owned by the City. Ms. Cromwell said that was correct.

Mayor Hanel referenced Condition #12 and asked for clarification on placing pedestrian crossing signs in the alley at street intersections. Ms. Cromwell explained at the intersections of the alley at 16th or 17th, signs would be posted in the alley facing the drivers that would say "Caution-Pedestrian Crossing". He asked if it was for the safety of traffic in and out of the alley. Ms. Cromwell said that was correct. Mayor Hanel referenced the condition for the fencing and asked if initially the developer was going to

replace all fences. Ms. Cromwell said that was a proposed condition from Planning staff, and the developer voiced objection to it at the public hearing of the Zoning Commission. Mayor Hanel asked if after that a motion was made that the fencing be replaced only if it were damaged. Ms. Cromwell said that was correct.

Councilmember Ronquillo asked if the alley would be widened. Ms. Cromwell said it would not be widened. Mr. Ronquillo questioned if the alley would be wide enough for a vehicle to back up. Ms. Cromwell advised there would be a 20-foot driveway in addition to the alley. Mr. Ronquillo asked where visitors would park. Ms. Cromwell advised parking would not be allowed in the alley, and visitors would have to park in the garage driveway or on the street.

Councilmember McFadden asked what considerations had been made for the merging vehicle and pedestrian traffic at 17th Street West where people would be entering and exiting the alley to access their homes. Ms. Cromwell said the Public Works Director had spoken with the applicant about the alley construction requirements. She said the alley was used for garbage collection at least three times a week, and there were people with garage access from the north side into the alley. She said it would be like a driveway going out onto any arterial street where slowing down and using caution would be necessary. Mr. McFadden asked if any formal studies had been conducted on the increased traffic flow at either end of the alley. Public Works Director, Dave Mumford, advised traffic studies were not required unless there were over 500 trips per day, and volume on the total project was under 200 going both to the alley and to Avenue E. Vehicles backed into alleys or onto streets all over the city, and he did not consider it to be any more dangerous than any other street or alley in Billings. The developer had worked with Engineering to pave the alley, which was not required, and speed tables would be placed in the alley to slow down traffic. Mr. McFadden said his main concern was with vehicles exiting the alley onto 17th Street West. Mr. Mumford said the vehicles would need to come to a stop and yield to any traffic on the street.

Councilmember Cimmino said the past development was 20 units and the proposed development was for 32 units, so they would be going from 20 families to 32 families on two acres. Ms. Cromwell said that was correct. Ms. Cimmino asked if the garages were single-car garages. Ms. Cromwell said they would be single-car garages with a 20-foot parking space in front of them. Ms. Cimmino said conceptually there would be a vehicle in the garage and another vehicle parked outside on the driveway; and a lot of people used their garage for storage. Ms. Cimmino asked if the alley would be a one-way directional alley. Ms. Cromwell advised it would be a 2-way alley so it would be a yield situation. If two vehicles were coming in opposite directions, one would pull over and stop to let the other go by.

Councilmember McCall asked if there were an equal amount of units on the alley side and the street side. Ms. Cromwell said there would be 16 units with access from the alley and 16 units with access from Avenue E.

Councilmember Bird asked if there had been discussion on the merits of having a two-way alley or a one-way alley. Ms. Cromwell said she did not recall that discussion at the Zoning Commission hearing, but it may have come up afterwards. Engineering entertained the option but decided against it. Mr. Mumford said if they went to a one-way alley, all the dumpsters would need to be on one side and people would need to cross the alley to access them. Councilmember Bird asked if there was a similar type of

development in the city with front entries on the alley. Ms. Cromwell said the apartments at 802 Avenue E all had garage entrances off the alley, but she could not think of any particular multi-family development with whole entrances off the alley. She said it was not an unusual site development considering the dimensions of the lot. Councilmember McCall commented she had a family member who lived in the development where the garages backed off onto a paved alley with cement going out from the driveways; it was very convenient; and it worked.

Mayor Hanel asked Mr. Mumford if the infrastructure servicing the multi-family units was in the alley. Mr. Mumford said there was infrastructure in the alley and in Avenue E. Mayor Hanel asked what condition the infrastructure in the alley was in and if they could be assured the alley would not have to be dug up in six months. Mr. Mumford said he believed the utilities were in the front, but he was not sure what was in the alley. He did not believe there was anything that needed to be replaced, or they would be looking into it now. Mayor Hanel asked if the application to control speed in the alley was a condition. Mr. Mumford said Engineering discussed installing speed tables in the alley with the applicant, and the applicant had agreed to them as part of paving; along with dealing with drainage in the alley onto their site and trying to mitigate drainage issues of a flat surface.

Councilmember McCall asked Mr. Mumford to explain the difference between a speed table and a speed bump. Mr. Mumford said speed bumps were typically installed in parking lots; they were short, they bumped, and they were very hard on vehicles and heavy equipment. A speed table had a gradual incline with a flat surface usually four to six feet across; a vehicle moving 15 to 20 mph in an alley would barely feel it, but a vehicle moving faster than that would feel it and it would slow the vehicle down.

Councilmember Bird asked Mr. Mumford if the neighbors to the north would be responsible for sharing the costs if the paved alley needed repaired; and if so, how would they be assessed. Mr. Mumford advised future repairs would be chip sealing, and the property owners would not be assessed. Ms. Bird asked Ms. Cromwell how illegal parking in the alley would be handled. Ms. Cromwell advised parking in the alley was not allowed throughout the city. It would be complaint-driven, and City Code Enforcement would need to be called and a parking ticket would be issued. Ms. Bird asked if "no parking" signs could be posted in the alley. Ms. Cromwell said they could if Engineering thought it was reasonable. Mr. Mumford said signs could be posted. He commented all the parking in Josephine Crossing was off of very narrow alleys, and he thought talking to the McCalls about what worked or did not work would be helpful.

Councilmember Pitman asked how many accesses were on the north side of the alley. Ms. Cromwell said she was not sure, but some people used their backyards for RV storage.

Councilmember Cimmino said Josephine Crossing was considered a Planned Unit Development, and they implemented Smart Growth strategies. She did not think it was similar to what was being proposed. Ms. Cromwell said most of the homes in Josephine Crossing had a street front and alley accesses to the garages. She was not sure if there were any dwelling units that only had carriage-way access as their front. Councilmember Cimmino said the concept with the front porches was creating a walkable community; they wanted to meet their neighbors; it was very user-friendly. Their alleys looked absolutely beautiful, were well maintained, and specifically designed that

way. To her, comparing 32 dwelling units to a project as large as Josephine Crossing would be comparing apples to oranges.

Mayor Hanel asked Attorney Brooks if he had identified anything within the matter that would be in violation of zoning codes or any reason that would prevent them from moving forward. Attorney Brooks said he had not seen anything that would indicate an issue. He said the public hearing would be held and Council would decide if it wanted to adopt some or all of the conditions set forth in the staff memo.

The public hearing was opened.

- **Terry Padgett, 1632 Avenue F, Billings, MT**, said there were four large garbage containers for the previous 20 units, and they were now proposing two garbage containers for 32 units, which would require more days of garbage pickup. Most weeks there was excess garbage spilling over most of the containers. He said from what they had been told and in looking at the alley side, there was a 15-foot setback, which meant the driveways were only 15 feet long. If that were the case, a mid-sized vehicle would not legally fit in the parking spots. The bigger issue was no sidewalk being proposed along the alley side of the 16 units. All pedestrians wanting to leave their front would walk to 16th or 17th Streets West through the alley, which was a significant potential for mishaps. A developer should not be allowed to disregard pedestrian traffic. He pointed out the lack of infrastructure at 17th and Grand. There was no turning lane on Grand, and Council had already approved 96 units to be built on the corner of 17th and Grand. It was a nightmare now to get on and off of 17th Street. He said there would be 128 new units accessing Grand Avenue where the infrastructure did not support it. He and his wife wanted to write a letter to the McDonald Land Holding Company to express their desire to not allow the project as planned, and they found out through the internet that the company was an out-of-state corporation, and asked if that was right.
- **Susan Barrow, 1546 Avenue F, Billings, MT**, said there was obvious conflict because the developers wanted to maximize their earnings by increasing the density, and the neighborhood wanted to maintain its quality of life. They had concerns about parking conflicts, adequate privacy, controlled traffic, low crime, and quality construction. The proposed project would be owned by the McDonald Company and managed by Rainbow Property, the same people who owned and operated the past eyesore for over 35 years. They asked the neighborhood to trust them to do a quality development, but they had done nothing to earn the trust. Maintenance was neglected, landscaping was ignored, and no one responded to complaints. She asked Council to do what it could to help the neighborhood and minimize the impact of the new development.
- **Len Richards, 1801 16th Street West, Billings, MT**, said he had large safety issues with changing city alleys into city streets. The City was setting a horrible precedent by allowing alleys to become streets. He had witnessed accidents on 24th and Grand behind Western Security Bank where people leaving the bank using the alley had wrecks trying to enter 24th Street West. What about all of the Rose Park kids walking back and forth to school on 16th Street West? He had

seen two near accidents within the last month where people were not paying attention and came close to colliding with school kids. Kids were not used to being careful in the alleys. Renters leaving the 16 units late in the morning would not be on the lookout for kids or other pedestrians. Sixteen units on the alley would increase traffic and noise levels. Two-car parking per unit was not ample, and there was no street parking in the alley. In the past 32 years he lived in the area on 16th Street West, college students had many loud all-night parties. The round dumpsters would take up part of the alley and would hinder pedestrians. The four big dumpsters previously in the alley for the 20 units were not adequate, and the developer wanted to put in only two dumpsters for 32 units. He asked if City Councilmembers would want alleys in their neighborhoods turned into city streets.

- **Michelle Lee, 1616 Avenue F, Billings, MT**, said in a very short period of time they have had to fight the development on 1^{6th} and Avenue E. She constantly ran into brick walls with city officials while trying to find out what the rights of the homeowners were, what the developer was required to do in order to take their alley, who would pay future repair bills, and who would be responsible for maintaining the new road. By the time they received notification of the magnitude of the project the Planning Department had already decided to approve the special review and were unable to answer her questions. The City Attorney's Office told her they would not discuss the project because the City had already decided to approve the special review. The City Engineer's Office told her they were requiring speed bumps entering 1^{7th} Street and that would solve all of their problems. She was also told there were no rules or regulations for alley takeovers other than it be paved. She asked how it was possible or right that someone could completely alter the atmosphere, livability, and safety of a neighborhood with absolutely no input from surrounding property owners. They were told the developer did not need the homeowners' permission to use the alley. The current design was simply the least expensive and most profitable and had nothing to do with fitting into the neighborhood. She said as soon as the market slowed, the property owners would turn to the same way they had done business the last 30 plus years by not re-investing any money and allowing it to suffer the same fate as the Plaza Pool Apartments. She said if Council approved the special review, it would be giving control of the alley to the worst polluter in the neighborhood the last several decades and opening the door for the take-over of every alley in the City.

City Administrator Volek commented that staff made recommendations to the Zoning Commission appointed by the City Council and did not approve or disapprove projects. Attorney Brooks indicated that he would be happy to forward to the City Council the advisory e-mail sent to Ms. Lee indicating it was not a staff approval and only a recommendation to the Zoning Commission, who made changes even after receiving staff recommendations. Mayor Hanel confirmed that the Zoning Commission public hearings were advertised and open to the public.

- **Brenda Binstock, 1636 Avenue F, Billings, MT**, said she could not emphasize enough her concern that entries to the duplexes were on the alley. She

referenced a project in the 800 block of Avenue E and Avenue F with the garages in the alley, and said they all had front doors on a street where emergency personnel could find them easily and quickly and visitors could park on the street. That was not the case with the proposed units because the alley was not named, so it would be harder to find people in an emergency; and it was inevitable the parking would become an issue.

- **Greg McDonald, 620 Poly Drive, Billings, MT**, said the Plaza Pool Apartments were built in 1965, and his father purchased them sometime in the 1970's. Over the years they were approached by developers wanting to re-develop the property, which was in bad need. He said they had to decide to keep it as is and do the minimum amount of maintenance, sell it, or re-develop it themselves. He said they decided to keep the property, but there were safety concerns and structural problems that were not going away. After his parents' deaths, he and his sister hired Moulton Bellingham Law Firm, Jones Construction, and AT Architecture to help with the development. They also conducted a feasibility study and hired Colliers International out of Salt Lake City. Multiple options were considered, and they were looking for the highest best use while trying to improve the neighborhood. He felt his parents would be proud of the plan they had come up with to develop high-quality, high-end townhomes. Mr. McDonald said he understood the "heartburn" of the neighbors and the concern, especially on Avenue F. It would no doubt be a very big change. He said he had personally gone through the same experience about ten years prior when he lived on Rockrim Lane and a developer wanted to develop a vacant property behind the residences. He attended meetings because they were not happy about it; but with a lot of compromise and change, it all worked out. Mr. McDonald said he agreed with the neighbors and wanted to improve the safety and privacy which was why they were offering to build a fence on the back if the neighbors so desired and install speed tables, which was above and beyond what the Zoning Commission requested. He said they were excited about the project, desired to improve the neighborhood, and would work with the neighbors. He said they would definitely consider all reasonable requests.

Councilmember McFadden asked if the units could be reconfigured so main access was not from the alley. Mr. McDonald said he was not the expert, but they were already proceeding with the ideas and plans that had met approval all along. He said the architect may want to talk more about it.

Councilmember Bird referenced Mr. Padgett's concerns about lack of pedestrian safety in the alley and asked for Mr. McDonald's comments. Mr. McDonald said they could not predict how many children or families would live there. They were all 2-bedroom duplexes, and he felt it would be higher-end professional people living there. He said they were concerned about safety and would listen to any ideas people had. Councilmember Bird asked for the difference of the lengths of the driveways on Avenue E versus the alley. Mr. McDonald said he was pretty sure they were all 20 feet but would let the architect confirm it.

Councilmember Ronquillo said there had been four dumpsters for 20 units and now they were proposing only two dumpsters for 32 units. He asked if they

would be bigger. Mr. McDonald said there would be enclosed dumpster areas, and he was told by the City Solid Waste Division they would be enough to handle trash for all of the units. Mr. McDonald agreed the previous apartments were not well managed in the past, and he guaranteed he and his sister would run the new development very differently. Councilmember Ronquillo asked if the long area in between the two apartments would be a walkway. Mr. McDonald said it would be green space. Councilmember Ronquillo asked if a walkway could be installed. Mr. McDonald said it had been considered at one time and they had made so many changes; but it was where they agreed to end up and it had met all of the approvals.

Councilmember Cimmino told Mr. McDonald he had indicated the project had been preliminarily approved but technically in order to receive a building permit, the special review had to be approved first. Mr. McDonald said he just knew the plans were at the City; he did not know the exact term or time on it. He said all he knew it was approved by Planning and Zoning and the various departments.

Councilmember Bird said the conditional approval of the Zoning Commission was to replace fencing that had been damaged due to any construction. She asked for confirmation that they were offering new fencing for the neighbors to the north not necessarily tied to damage through construction but all new fencing if the neighbors would be willing to agree to it. Mr. McDonald said that was correct. He gave examples of the fencing built by Stockman Bank on Grand and by the Brosovichs at 802 Avenue E and said they would offer the same. They would work with the neighbors on the types of materials.

- **John Jones, 27 N. 27th Street, Suite 1900, Billings, MT**, said he was a partner at Moulton Bellingham and represented the McDonalds. They were proud to be an advocate for the project. He knew there was "heartburn" in the neighborhood, and they understood being a good neighbor did not stop that evening if approved. He said safety was big, and they understood the traffic and parking concerns. The issue that evening was the special review, and they had met all the requirements and then some. He said the Zoning Commission had "scrubbed it hard" and many of the conditions were directly in response to the neighbors. The developers did not have money in the budget for paving and fencing, but they understood that was what it would take to get it done. He described the efforts of the city staff as a plus. They had been accessible, on task, did their jobs, pushed hard, asked the right questions, and listened to testimony. The conditions they imposed were what they were supposed to do. Mr. Jones said at the very first meeting with the developer, they realized they needed to develop a neighborhood relations committee. He introduced Jane Kukas Penney and Tom Mutchler.
- **Jane Kukas Penney, PO Box 19, Molt, MT**, said she had worked for the McDonald family for over 16 years, and she was chair of the neighborhood relations committee. On the onset of the project it was very important to keep the neighbors informed. As soon as renderings of the townhomes were available they went door to door on April 4 to talk with the neighbors and show them what was planned. They reached out to 37 neighbors and were able to visit with 19.

Flyers were left in the doors of the neighbors not at home that included names and phone numbers for any questions. Of the 19 neighbors they visited, they had a very positive response and many said they were happy something new would be built. Questions were raised about the trees, street lighting, alley access, and a neighbor on the north side of Avenue E questioned addressing. All concerns heard were brought to the committee. Prior to the Zoning Commission meeting, they continued to meet with more neighbors one on one. On April 29 the committee went back out with the architectural firm to specifically address the concerns raised by the neighbors in a letter to the Zoning Commission. The committee diligently tried to keep the neighbors informed and listen to their concerns. Ms. Penney reviewed the maintenance schedule of the former units, and said Rainbow Property Management had never received a complaint from the neighbors. She said the new townhomes would be beautiful and well taken care of.

Councilmember McCall asked if any of the neighbors were on the neighborhood relations committee and said if the project moved forward it would be useful to include some of them.

Councilmember Cimmino said out of the 37 neighbors, they were actually able to talk to 19 of them and asked if there were neighborhood meetings or minutes available. Ms. Penney said they just went door to door and visited.

- **Tom Mutchler, 1417 13th Street West, Billings, MT**, said he was with Rainbow Property Management and would like to see the development move forward because all the new developments had gone out on the west end. It would be good for the neighborhood, and the McDonald family had done an excellent job.

Councilmember Cimmino asked Mr. Mutchler to respond to the concerns raised regarding pedestrian safety in the back alley. Mr. Mutchler said he did not think it would be that big of an issue. They were 2-bedroom apartments so on average there would be two to three people living there. There would be a little bit of pedestrian traffic but it was not like it was a multi complex with multi bedrooms where a lot of kids would live.

- **Travis McDowell, 848 Main Street, Suite 7, Billings, MT**, said he was with AT Architects and said the McDonalds first asked how they could build a nice project and did not ask how many units they could put on the property. Originally 44 units could have been built but they elected to build 32 units to keep it a lower profile project. They also kept the roof lines real low at 24 feet to the peak rather than the allowable 34 feet. Mr. McDowell displayed a rendering of the proposed project. He said the main issue seemed to be the alley access. He pointed out the property directly to the east had 20 duplex units all accessing the unpaved alley, plus six garages. The proposed project would have a paved alley, and the impact would be low. They worked with the Engineering Division to put in the speed humps, flair out the ends of the alley, and install boulevard walk on 17th so the sidewalks were set back off the street.

Councilmember Astle asked if there was 15 or 20 feet in the back. Mr. McDowell said there were 20-foot driveways in the rear and approximately 25-foot driveways in the front.

Councilmember McCall referenced the rendering displayed and asked if the alley version was identical. Mr. McDowell said it was identical. Ms. McCall asked if there was the same amount of green space in the front as on the alley side. Mr. McDowell said on the front there was a little bit more because of the street front.

Councilmember Bird asked if there would be sidewalk on the rear. Mr. McDowell said there would only be sidewalk on the front.

Councilmember McFadden commented the apartments to the east referenced earlier had alley parking but also had access to street parking on Avenue E so it would not be as congested as the proposed project. Councilmember McFadden asked if there was a Plan B that would allow the two acres to be developed without the alley access. Mr. McDowell said there was not. They looked at it every way. The site was long and narrow, and they were limited to the number of curb cuts on the front of the street. It was their best shot and what best fit the project.

Councilmember Bird referenced the apartments to the east and asked if the primary entrances were on the alley or if they just had access on the alley. Mr. McDowell said one side of each duplex faced the street and one side faced the rear, so there were at least 10 with primary access to the alley.

Councilmember Cimmino said there was speculation discussed that evening that the occupants would be adults maybe with no children, more or less. She asked if that meant there was a waiting list of new tenants coming in. Mr. McDowell said the property manager would need to answer that question. Ms. Cimmino said comments were still being made that there would not be young families so they would not have to worry about a lot of children walking in the alley to and from the unit development.

Councilmember Bird asked if during the study of the area and with the demographics they were going for if there was any discussion about pedestrians because people did like to walk. It seemed to her they were appealing to a younger, upwardly mobile, professional crowd; and it was definitely a walk-able neighborhood. Mr. McDowell agreed the units facing Avenue E for sure; and from the rear units it would be a matter of walking down a very mildly-used alley, which would be no different walking along the edge of a city street. Ms. Bird asked what about during the winter when there was snow. Mr. McDowell said it would be the same thing with the sidewalks and agreed when it was snowy it was hard to walk.

- **Lance Egan, Prudential Floberg Realtors, 1550 Poly Drive, Billings, MT**, said he was invited to discuss how the development would potentially affect the property values for the neighboring properties. He had seen a lot of work go into the proposed project, and the McDonald family had hired a talented architect and a very reputable builder with the intent to have a very nice project that would enhance the neighborhood and the area. The improvements along Grand Avenue by Stockman Bank, West Park Plaza, and Billings Toyota were making their way into residential areas, and it was the transition point where commercial and multi-family met single-family. He said taking into consideration the design and that the McDonalds had not maximized the density or the height restrictions

the project would be a nice balance and good for the neighborhood. It would be a positive transition from single-family to commercial. Mr. Egan said he understood the rents would be up potentially 40 to 50 percent from the previous units, and the new project would no doubt have a positive effect on the neighboring properties.

Councilmember Bird asked if it was true that new multi-family properties would truly have a positive impact on single family residential properties. Mr. Egan said his point was more on the enhancement of the neighboring property. By enhancing the property, it would absolutely have a positive effect on the neighboring properties.

- **Marvin Kastrop, 1701 Avenue E, Billings, MT**, said he owned the professional building adjacent to the property on 17th Street and a residence on Avenue F. He was “tickled to death” to see the old units coming down and what was being proposed. He said he remodeled his professional building three times, and the last time he made it ADA-approved. The City made him pave the alley, which he was opposed to at first; but as it turned out, it was the best thing. The people using the alley really appreciated it. Mr. Kastrop said rather than having urban sprawl, it was coming back into the City of Billings; and it would be a great improvement. Most of the residents in the area took pride in keeping their homes up, so the demolition of the old apartments was welcomed. He hoped the proposed development could be worked out.

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

Councilmember Crouch asked Mr. McDonald to return to the podium. He told Mr. McDonald his team had given a very positive presentation, and said they had spoken to only 19 of 37 property owners. Mr. Crouch referenced the recent FedEx project where the proposers said they would pull out and talk about it for another month. He asked Mr. McDonald if he had concerns about talking more to the neighbors on Avenue F and addressing their issues. Mr. McDonald said he did not know if it would be comparing apples to apples with the FedEx project, but it seemed to be different to him. They would listen to the neighbors, and they wanted to do what was right. Mr. Crouch said the people testifying that evening were not in favor. Mr. McDonald said the 19 neighbors were the result of the first round; there was a round two; and there were one-on-one meetings. Even though they did not have a community meeting, they tried very hard to approach everyone and left flyers for those they were unable to contact. He felt the immediate concern was with the nine neighbors right behind the project. Mr. Crouch asked if it was something they would postpone for a month to allow for more discussion. Mr. McDonald said he would sure hope not. They had worked very hard; there was a lot of money involved; they were following everything the City had asked them to do; and they wanted to work with the neighbors.

Councilmember Ulledalen commented that if it was approved that evening it did not mean that the conversation with the neighbors would stop. Mr. McDonald agreed and said they wanted to be good neighbors.

Councilmember Bird asked Ms. Volek if there would be any ADA issues as a result of the lack of the sidewalks on the back side. Mr. Mumford advised there were no ADA requirements on alleys so there would be no ADA violation.

Councilmember Pitman moved for approval of Special Review #904, seconded by Councilmember McCall.

Councilmember McCall said she would definitely support the project. It was a very good example of what infill was about. It was well-designed, and she thought the alley would actually be safer for pedestrians because it would be paved. There were cities across the country with the same types of developments, and they worked very well.

Councilmember Ulledalen said he was assuming Councilmember Pitman's motion included the recommended conditions. Councilmember Pitman confirmed it did. Councilmember Ulledalen said he would specifically like to make sure it included installation of the speed tables Public Works talked about and the fencing option negotiations between the developer and the neighbors at the neighbors' wishes.

Councilmember Cromley advised he would be abstaining from the vote.

Councilmember Bird said she was really torn by it. She thought it was a great project in terms of infill. It was the kind of development they wanted to see in the inner city; however, the neighbors had brought up some very valid points that Council was obligated to consider. They would be negligent not to consider the pedestrian issue on the alley in terms of walking and accessibility. It was a missing piece in the project and asked why they would not want to have sidewalks or some sort of maintained walkway for the people living on the back side. She said it was a real oversight and if she were going to vote for it, it needed to be part of the package.

Councilmember Ulledalen said the concerns were certainly valid but beyond the scope of the discussion that evening. He said they were getting astray from the issue in front of them because they had development codes and the aspects of the special review designed to mitigate the impact on the neighbors. He said they were talking about convenience issues that were not relevant at that point in the discussion and asked Attorney Brooks for his comments. Attorney Brooks told Mr. Ulledalen he was correct. The conditions articulated were reasonable mitigation conditions, and the sidewalk issue could be looked at as a stand-alone policy of the Council in coordination with Planning and Public Works.

Councilmember Cimmino said she was a firm believer that both the developer had property rights and the surrounding property owners who had been established for years had property rights. However, they did negotiate; the fact they were going to include the speed tables, they were going to replace the fences; they were going to pave the alley; that was a lot of money for a developer to offer when technically he was not even required. The main point she wanted to make was that there still had to be ongoing discussion with the relations committee; and because there were 18 neighbors that technically did not respond or were not active; she thought the key was open communication between the developer and the neighbors. It was an excellent example of infill development, she would support it; and she believed that both sides of the fence really worked together.

Ms. Volek noted Condition #6 specifically addressed the replacement of fences that may be damaged during construction and advised Council may want to amend it to

include all fences. She said she did not see a condition regarding the speed tables and advised Council may want to add them as a condition.

Councilmember Ulledalen amended the motion to include the conditions that (1) the fences be replaced at the option of the homeowners; and (2) the speed tables be installed in the alley, seconded by Councilmember Crouch.

Mayor Hanel said he lived off of 17th Street West and drove through the intersection of 17th and Grand Avenue on a regular basis. The City was well aware that Grand and 17th was a dangerous intersection and had intentions of making future improvements. He said the Plaza Pool Apartments were depleted and ugly, attracted problems, and it was time for them to go. Being a resident in the general vicinity and seeing an improvement was pleasing to him; and as difficult as it may be to accept, it would enhance the value of the properties in the adjoining areas. It was an example of infill, the process had been followed legally, the opportunity had been presented for anyone to attend public meetings and testify, there was no reason to vary or stray from the zoning as it was, the compliance was there, and if they did not allow the proposed development the City would probably be faced with legal challenges because the developer had followed the procedure. It was a huge investment on the City of Billings as far as improvements, but also on the developer. Mayor Hanel said the Pust family who was not present that evening had expressed concerns that the development would add traffic but he would like to think that family, as well as the adjacent neighbors, would see nothing but improvement to their personal property. Mayor Hanel said he would support the amended motion with all of the conditions.

Councilmember Bird said since her concerns related to sidewalks in the alley were not part of the special review issue right now, she asked if they were beyond the ability to make a recommendation to see if sidewalks or walkways on the alley could be made a part of it. Attorney Brooks said because the condition was not imposed from the beginning of the project, it could be raised at the Council initiative stage where staff could be directed to bring forth available options or alternatives.

On a voice vote, the amended motion was approved 9 to 1. Councilmember McFadden voted in opposition.

On a voice vote, the original motion was approved 8 to 2. Councilmembers Ronquillo, Pitman, Cimmino, McCall, Ulledalen, Astle, Crouch, and Mayor Hanel voted in favor. Councilmembers McFadden and Bird voted in opposition.

Mayor Hanel called for a recess at 8:29 p.m. Mayor Hanel called the meeting back to order at 8:43 p.m.

Note: Councilmember Cimmino did not return to the meeting following the recess.

4. PUBLIC HEARING AND SPECIAL REVIEW #905: a special review to allow the expansion of an existing church located on a 5-acre parcel legally described as Tract 2, Certificate of Survey 1161, and addressed as 3140 Broadwater Avenue. Apostles Evangelical Lutheran Church, owner; Carl Rose and Durward Sobek, agents. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.) Planner II, Nicole Cromwell, advised the special review was for an addition of a little over 11,000 square

feet to the Apostles Lutheran Church located at the intersection of Broadwater and 32nd Street West. She noted the addition was already under construction, as the church was given an at-risk building permit for only the footings and foundation knowing that if Council did not approve the Special Review, they would have to be removed. Ms. Cromwell showed a zoning map of the subject property and surrounding properties, an aerial view, drawings of the proposed addition, and photographs. The Zoning Commission conducted a public hearing on May 7 and was recommending approval based on the following 11 conditions.

1. The special review approval shall be limited to Parcel 2 of C/S 1161 a 5 acre parcel of land generally located at 3140 Broadwater Avenue.
2. The special review approval is for the construction of an addition to an existing church. The addition to be constructed now is 11,288 square feet with 2 future additions for classroom space, a future storage building and a future 24-space parking lot. No other use is intended or implied by this approval.
3. Any expansion of the proposed building or off-street parking greater than 10 percent of what is shown on the submitted site plan, including the future expansion, will require an additional special review approval.
4. All exterior lighting shall have full cut-off shields so no part of the fixture or lens projects below the cut-off shield. The maximum height of any light pole in the future parking lot or any new light pole will be 15 feet or less above grade.
5. The proposed future parking lot on the east property line shall require the installation of a 6-foot sight obscuring fence for the length of the proposed parking lot at the time of its construction.
6. No outdoor announcement system is allowed on a permanent or temporary basis.
7. Construction or demolition activity will conform to the requirements in Chapter 17 (Noise) of the city code.
8. Any new sign will require sign permit approval from the Planning Division.
9. The site will be developed in substantial conformance with the submitted site plan including landscaping, parking and building location.
10. 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.
11. The proposed development shall comply with all other limitations of Section 27-613 of the Unified Zoning Regulations concerning special review uses, and all other City of Billings regulations and ordinances that apply.

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

Councilmember Astle moved for approval of Special Review #905 with conditions as presented, seconded by Councilmember Crouch. On a voice vote, the motion was unanimously approved.

5. PUBLIC HEARING AND RESOLUTION #13-19273 de-annexing approximately 6.64 acres of undeveloped land described as Lot 20, Block 3, Rolle Subdivision, generally located between Alkali Creek Road and Highway 3 (Airport

Road). Robert Honaker, owner and petitioner. Staff recommends approval based on the criteria outlined in the City's De-annexation Policy. (Action: approval or disapproval of staff recommendation.) Planning Division Manager, Wyeth Friday, pointed out the subject property on the Limits of Annexation Map. He noted the subject property contained rock outcrop terrain along the northern portion of the property, it did not front any public right-of-way, access to the property was obtained from Airport Road, and it did not access down to Alkali Creek Road due to the topography. The request to de-annex met some of the criteria in the City's De-Annexation Policy, as follows:

1. The property is not connected to City water, wastewater, or storm drainage facilities, and appears to not be able to connect to these facilities without a significant expenditure of personal or public funds, and
2. The property is not encumbered by any indebtedness of any improvement district of which the territory is a part, and
3. The property is not adjacent to any public right-of-way.

The request to de-annex did not meet some of the criteria in the City's De-Annexation Policy, as follows:

1. The property is not located on the outer perimeter of the City limits and upon exclusion of the property will contribute to a series of parcels wholly surrounded by City limits.
2. The property is bordered by other property within the City Limits on the north and east, and is adjacent to the acceptable limits of annexation as defined on the most recent update of the Limits of Annexation Map.

Mr. Friday said due to the service and access challenges to the property and the lack of utilities staff was supportive of the de-annexation given there was no timeframe they were aware of when utilities could get to the property. There was city-owned park property to the east of the subject property that was on the Park Department's list of property to sell.

Councilmember Bird said she thought they were trying to get away from having county islands within the city limits. Mr. Friday said there would be an island of sorts; however, the challenges of service and access to the property were unusual, and there was no way of knowing when the property could ever be served. Councilmember Bird asked how much revenue would be lost. Mr. Friday said he did not have the tax information, but it was undeveloped so it would be very low. It was zoned R9600 and because of the geographic topography, the current proposal would be for one single-family dwelling, which would be limited to septic and a cistern or well. Ms. Volek noted the tax revenue lost would be \$2,026.

The public hearing was opened.

- **Robert Honaker, 428 Tumbleweed, Billings, MT**, said he was the petitioner and was available to answer any questions. He said Mr. Friday was an incredible

person to work with at the City and a real asset. He was very professional and courteous through the entire process.

Councilmember Ronquillo moved for approval of the de-annexation, seconded by Councilmember Cromley. On a voice vote, the motion was unanimously approved.

6. PUBLIC HEARING AND RESOLUTION #13-19274 FOR ANNEXATION #13-06: approximately seven acres of land described as Lot 5, Block 2, and Lot 1, Block 3, Titan Subdivision, generally located on the north and south sides of Interstate Avenue just east of the intersection of Interstate Avenue and Mullowney Lane; Origer Enterprises, Inc. and TNC Development, LLC, petitioners. Staff recommends conditional approval. (Action: approval or disapproval of staff recommendation.) City Administrator, Tina Volek, advised there was no presentation but staff was available to answer questions.

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

Councilmember Ronquillo moved for approval of Annexation #13-06, seconded by Councilmember McFadden.

On a voice vote, the motion was unanimously approved.

7. PUBLIC HEARING FOR ZONE CHANGE #909 amending an existing Planned Development (PD) to allow an increase in the maximum density from 15 dwelling units per acre to 20 dwelling units per acre on a 25.186-acre parcel of land described as Tract 3A, C/S 2063, with underlying zoning of Planned Development-Multi-Family-Residential (PD-MF-R) in the Lenhardt Square Planned Development. Zoning Commission recommends approval and adoption of the findings of the 10 criteria. (Action: approval or disapproval of Zoning Commission's recommendation.) Planner II, Nicole Cromwell, began her presentation showing a zoning map and describing the subject property and surrounding properties. She said the proposed parcel included a large public park for the subdivision, which would not be included in the calculations for density. She showed photographs of the subject property, which still included some agricultural activity, photographs of the current construction of 44th Street West, and photographs of the existing apartments on the first two lots off of King Avenue West and 44th Street West. The Zoning Commission was recommending approval based on the following criteria for zone changes.

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 change to the maximum average density will be consistent with the other lots zoned MF-R in the Lenhardt Square Subdivision. The average density in this area is 14 to 22 units per acres including developments in Lenhardt Square and in surrounding subdivisions.

- Contiguous development focused in and around existing population centers. (Land

Use Element Goal, page 6)

The proposed change in the development density will continue to focus new multi-family housing inside the city limits, and avoid "leapfrogging" development outside of the urban area.

2. Is the new zoning designed to secure from fire and other dangers?

The new density limitation will not change the existing approved building height limits and setbacks. Those setbacks, open and landscaped areas, and building separations will provide adequate building separations and density limits to provide security from fire and other dangers. The City Fire Department will ensure safe access to the site and provision for minimum fire flow to the new buildings.

3. Whether the new zoning will promote public health, public safety and general welfare?

Public health and public safety will be promoted by the proposed zoning. Any development of the property will require connection to the city public utilities and improvements to adjacent streets and intersections. The city and state have invested in nearby transportation systems and utilities that will provide service to the property. Additional users and rate payers for those systems will benefit the general welfare.

4. 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 impact the surrounding streets, and a traffic impact study or an update of an existing study will likely be required prior to development of the property. The City Engineering Division will have to assess any traffic impacts and may require street and intersection improvements prior to or concurrent with any development of the property.

Water and Sewer: The City will be able to provide water and sewer to the property by extension of lines. The developer will pay all related costs of this utility extensions as well as systems development fees. The development is governed by an agreement that limits the provision of water service based on completion of water system improvements. The current water use rate for the existing apartments is much lower than predicted in 2008. Public Works is not concerned the proposed density will exceed the existing limitation. The applicant expects the city improvements will raise the water use cap in near future.

Schools and Parks: There may be an impact to schools from the proposed increase in the development density. It is unknown how many of the multi-family dwellings will have school age children.

Fire and Police: The subject property is currently served by the Billings Fire Department and Police Department. Public Safety Services has no concerns.

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

The new zoning, as do all zoning districts, requires building setbacks and separations so adequate light and air are assured.

6. Will the new zoning effect motorized and non-motorized transportation?

The subject property when developed will likely add several hundred new vehicle trips per day to adjacent streets. Anticipated traffic generation greater than 500 new trips per day will require a Traffic Accessibility Study or an update to an existing study to determine the impacts and to provide for improvements to those streets and intersections. Lenhardt Square will have an interconnected system of pathways and

bikeways to improve non-motorized transportation.

7. Will the new zoning will promote compatible urban growth?

The new zoning does promote compatibility with urban growth. Lower density development is inefficient and ineffective in recovering the costs to extend city services. There are compatible uses and zoning to the south and east.

8. Does the new zoning consider the character of the district and the peculiar suitability of the property for particular uses?

The proposed zoning does consider the character of district and the suitability of the property for a multi-family uses at the proposed density of 20 units per acre. Similar density exists on the first lots developed in Lenhardt Square (18 units per acre) and in Montana Sapphire Subdivision to the south (16 units per acre – Sunset Beach Apartments).

9. Will the new zoning conserve the value of buildings?

Surrounding property may increase in market value if the increased density is approved. There are no structures on the subject property. Most structures in the area are new construction.

10. Will the new zoning encourage the most appropriate use of land throughout the City of Billings?

The proposed zoning will encourage the most appropriate use of land in this area of Billings. The proposed increase in density will make this parcel equivalent to the other PD-MF-R lots within Lenhardt Square and the surrounding subdivisions with multi-family residential zoning.

Councilmember Bird asked Ms. Cromwell to define “public park.” Ms. Cromwell said it would be accessible to the community, but it would likely be primarily used by the residents of Lenhardt Square. The Parks Department was involved with the master planning of the facilities for the park. Ms. Bird asked if it would be a city-owned park. Ms. Cromwell said ownership of the park would be retained by the Lenhardt founders, but it would be open to the public. Ms. Bird asked if the City would have to maintain the park. Ms. Cromwell said the City would not be required to maintain the park.

The public hearing was opened.

- **Pat Davies, Sanderson Stewart, 1300 N. Transtech Way**, said he was the agent for the applicant and asked for the Council’s support. He 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 #909, seconded by Councilmember Pitman. 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 in at the cart located at the back of the council chambers or at the podium.*)

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

COUNCIL INITIATIVES

- **Ronquillo**: MOVED to have staff research addressing primary residences located on alleys, naming the alleys like streets, and installing streetlights for emergency response purposes, seconded by Councilmember McFadden. Councilmember Bird asked if he was referencing any development in the future with a primary access on the alley. Councilmember Ronquillo said that was correct. On a voice vote, the motion was unanimously approved.
- **Ulledalen for Bird**: MOVED to have the police chief, facilities manager, and municipal court judge meet and bring back ideas about what could be done to free up space to accommodate a reconfiguration of the municipal court, along with some rough ideas of what it would cost, seconded by Councilmember Bird. Councilmember Ulledalen said the discussion needed to get started, and they needed to come up with preliminary ideas. They had heard about the problems for years, and it would not do any good to keep kicking the problems down the road. They had the reserves to use now to deal with the problem in a constructive manner.

Councilmember Pitman asked where they were with the facilities plan and inventory. He assumed it would be part of the process. Ms. Volek advised it was in the budget for the coming year, and the court was working at coming up with numbers for the issues identified in their budget presentation. Councilmember Pitman asked if it could be a focus of the facilities plan they were intending to enter into rather than re-creating a different wheel.

Councilmember McCall said she thought it was a very good idea and something that needed to be done; but she heard what Councilmember Pitman was saying. The site facility plan would be moving forward and asked if it should be a part of that comprehensive review.

Councilmember Astle said it was not the first time the building was overhauled. He said they needed to have the Cop Shop located where the cops congregated. There was no place for them to park downtown. Another court was needed, the police needed more room, and he could not find a downside to it. He said he was in favor of the motion.

Councilmember Bird said to put it off at this time was not what she wanted to see. The municipal court could be the first phase of the long term facilities strategic plan. Municipal court had been in a crisis phase for years, and they needed to do it.

Councilmember Ulledalen said he thought the facilities master plan ultimately needed to get done, but he thought, like a lot of things, it would become a reason not to do things because it would be another two, three, or four years by the time they had meetings, hearings, presentations, and hired a consultant. They would not be able to solve it within the next six to eight months, but if they did not start talking about now, it would never get done.

Councilmember Bird asked that the information be brought to Council at the first work session in October 2013.

On a voice vote, the motion was unanimously approved.

There was no further business, and the meeting adjourned at 9:29 p.m.

CITY OF BILLINGS



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

ATTEST:

BY: Cari Martin
Cari Martin, City Clerk