

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

April 14, 2008

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

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

MINUTES – March 24, 2008, approved as distributed

COURTESIES – **Lloyd Mickelson, Montana Library Association Trustee of the Year Award**
National Crime Victims Rights Week (Brent Brooks)

PROCLAMATIONS – **National Library Week – April 13-19, 2008**
Crime Victims Rights Week – April 13-19, 2008
Administrative Professionals Week – April 20-26, 2008
Fair Housing Month – April, 2008

ADMINISTRATOR REPORTS – Tina Volek

- City Administrator Tina Volek advised that Friday packets included a letter from the owner of the Don Luis Restaurant regarding its application for a street closure for the Cinco de Mayo Celebration, Consent Agenda O1. The letter requested a time extension for the street closure, but a second letter was received prior to that evening's meeting that withdrew the request for the extended hours, so the original application would be considered. Both letters were available in the Ex-parte Notebook in the back of the room for public viewing.

Councilmember Astle pointed out that the application listed the 100 block of North 26th Street but the diagram on the application showed the 0-100 block and that appeared to be an error.

- Ms. Volek advised that additional information for Items 8a and 8b had been distributed in the Friday packet and was available in the Ex-parte Notebook in the back of the room for public viewing.
- Ms. Volek advised that the following items had been distributed that evening and were available in the Ex-parte Notebook in the back of the room for public viewing
 - Item 5 – Schedule II of Attachment A, which was not printed properly in the Council packets
 - Item 5 – Miscellaneous correspondence items related to the item
 - Items 8a and 8b – correspondence from the Chamber of Commerce

- Ms. Volek advised that there was a correction for Item 4 – the public improvements would be for 23, not 13 lots related to SID 1372, Summerhill Subdivision. She explained that 13 lots represented the major property owner's holdings.
- Ms. Volek reported that the Agenda Review Meeting for April 28, 2008, would be held the following evening at 5:30 p.m. in the City Hall Conference Room.

Mayor Tussing asked Mr. Brooks if Item 101 needed to be separated or if the Chair could take judicial notice that Council considered the 0-100 block, not the 100 block as noted on the application. Mr. Brooks responded that as long as the Chair took notice of the correct location, the 0-100 block, it was allowable to leave the item within the Consent Agenda. Mayor Tussing thanked Councilmember Astle for pointing that out.

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Item: 1 ONLY.

Speaker sign-in required. (Comments offered here are limited to 1 minute per speaker. Please sign up on the clipboard located at the podium. Comment on items listed as public hearing items will be heard ONLY during the designated public hearing time for each respective item.)

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

The public comment period was opened. Mayor Tussing noted that there were some problems with the technology and the timer box's warning light might not work so he would allow some latitude if the warning light didn't work.

- **Kevin Nelson, 4235 Bruce**, said the City received a letter from the State and statement of blight had a requirement of 7-15-3202, and without independent analysis the Council didn't have authority or the qualifications to proceed with the resolution for Item S. He said under that statement of policy, the Council needed independent analysis to relieve the City of exposure. He said for item B, it stated on page 177, “to minimize the effects on local services, the SIA will be revised to be consistent with the development agreement adopted September 10.” He said the City Link stated that the first step in the process was the completion of a new development agreement. He asked what Council was basing its plan on that night, the September 10 development agreement or the current development agreement. He said he wanted clarification of which development agreement would be used to base the night's decision on.

Councilmember Veis stated that he wanted to point out that if people were present to talk about the Animal Shelter, the public comment period was the time to do that.

- **Catherine Schaeffer, 2113 Walter Road**, said she was the Executive Secretary of the Last Chance Cat Sanctuary and a Team Leader for the City of Billings Animal Care Leadership Team. She said she wasn't against privatizing the Billings Animal Shelter and believed the \$500,000 performance bond should be left as it stood. She said that once the shelter was privatized, all budgeted monies for the care and maintenance of the animals would be distributed to other departments within the city. If the venture failed and the City was again responsible for the care and maintenance

of the animals, the bond could be utilized to re-establish the department rather than take money from other departments. She said she felt that lowering the bond would be a major change to the RFP and if that happened, the RFP should be put out to bid again as there may be other groups that could meet the bond criteria that was out of reach at \$500,000.

- **Sandra Wulff, 2946 Old Hardin Road**, said she reviewed the proposal by the Yellowstone Valley Animal Shelter and noticed that the proposal included spay/neuter, animal medicines and euthanasia expenses but didn't include an estimated dollar amount for the services proposed. She said any of the local animal groups would agree that those expenses took up one-third to one-half of their budgets. She said she felt the budget was underestimated and missed key items. She suggested requesting a more detailed budget to determine if the venture saved money for the City while better animal care was offered.

City Administrator Volek explained that as part of the RFP process, respondents submitted dollar amounts for operations in a separate, sealed envelope. She said that envelope was yet to be opened and dependent on that night's action on the item, it would be part of the contract negotiations.

- **Sarah Shipman, 1440 West Lane**, said there were several instances where Councilmember Stevens breached the Code of Ethics set forth by State and local codes. She said Councilmember Stevens placed her fellow Councilmembers in an awkward position when they would have to make a contract decision proposed by one of their own. She added that Councilmember Stevens stated in the proposal that another Councilmember's wife would volunteer for her and she clearly attempted to sway the decision in her favor by speaking with other Councilmembers and their families. She said Councilmember Stevens refused to disclose at a Council Work Session that she was submitting a contract as part of Yellowstone Valley Animal Shelter after being asked and was also involved in drafting the RFP submitted by the City and continued to be involved in the deliberations on the issue.
- **Dave Bovee, 424 Lewis**, said from his personal experience of trying to get loose dogs off the street, he didn't see the advantage of privatizing the animal shelter. He said he wanted to see increased services, hours, and budget.
- **Susan Peacock, 1116 Ginger Avenue**, said she was a volunteer at the Billings Animal Shelter and at the local spay/neuter clinics. She said she was for changes at the animal shelter and some had been made. She said she wondered about the lack of experience of the people who submitted the proposal for the animal shelter and preferred that the people involved had more experience working with volunteers since volunteers would be a large part of the staffing. She said that at the present time, most of the veterinarians who had helped with low-cost spay/neuter clinics had been run off. She said privatizing wasn't what she expected it to be. She said she had hoped a recognizable company would submit an offer.

Councilmember Ruegamer asked Ms. Peacock to explain her statement that veterinarians had been run off. Ms. Peacock said when she moved to the area three years ago, low cost spay/neuter clinics were held and she volunteered to help. She said

there was a good success rate and she was pleased with how it ran. She stated that in the last year, that group got tired of doing it and now there had been darts and arrows thrown at their procedures which resulted in the vets not wanting to assist. She said three years ago a letter was sent to every veterinarian in the area to ask for help at the spay/neuter clinics. From that, there were three vets who agreed to help, two of which didn't live in Yellowstone County, and those had been run off as well.

- **Kelly Sontono, Fromberg, MT**, said she would like to see privatization of the shelter although she had nothing to do with it. She stated that the City proved time and again that there was controversy. She said Mayor Tussing had stated that people were afraid of retaliation and that she was probably one retaliated against. She said whoever ran the shelter, if it was privatized, should be given a chance. She provided pictures taken of an injured dog that was at the shelter in 2006. She said the dog had a broken back and the volunteer who took the picture said the staff wouldn't put the dog at the front office to try to find the owner. She said the dog had not been given a chance and as far as that went, privatization was the answer.
- **Angie Cook, 3420 Quinella Drive**, said she felt the animal shelter performance bond was necessary from a business perspective and protection of the City and community assets. She said she felt the proposal alienated certain groups and animal shelter staff. She said that wasn't the time or place to burn bridges with people who had a wealth of knowledge and experience in animal rescue and could be a resource for proposed projects. She said there seemed to be the concept that the rescue would be disease free and in the real world, that wasn't possible. She stated that the Billings Animal Shelter implemented new policies and received undue criticism in the proposal. She said \$5,000 was put into the community for spay/neuter, it started the Save-A-Life Program and the proposal criticized HHP for its help with the Save-A-Life Program and the low-cost spay/neuter program. She said that work with animal rescue groups seemed to be a wish throughout the proposal but the action didn't indicate that it could be accomplished.
- **Wilma Joins, 4000 Huntington Hills Road**, said the low cost spay/neuter program was much needed in the community. She said the HHP, its vet in the low-cost spay/neuter clinic, and other volunteers contributed to a large number of adopted animals. She said that based on her background and experience, she felt the proposal submitted for the animal shelter operation was not realistic.
- **Diana Kay Bachman, 2213 2nd Avenue N**, said she currently served on the Animal Control Board and had seen both sides of the issues. She said the Animal Shelter had done a lot and people had no idea of the things they had done. She said the privatization of the shelter would be for the adoption of the animals, not animal control which would remain in place. She hoped the number of volunteers and adoptions would increase. She said the current shelter had increased the number of animals given to other organizations rather than having to euthanize them. She said she felt the proposal contained positive things and people who spoke that night were against the shelter in the past. She said the proposal should be given a chance and agreed with postponement of the final decision until all the details were known.

Councilmember Gaghen asked Ms. Bachman how long she had served on the Animal Control Board. Ms. Bachman responded that it had been about three years but she had worked with the organization prior to her appointment to the board.

- **Megan McBride, 2223 Belknap**, said many people said that the proposal was unrealistic but because something had been done in a mediocre fashion in the past, didn't mean that changing it was unrealistic. She stated that the lack of enthusiasm at the animal shelter was the problem, not the lack of funding. She said volunteers weren't treated with any enthusiasm and the jobs weren't taken that way either. She said Fred McCracken stated that 'we're animal catchers.' She said it needed to be more than that.
- **Michael Mansfield, 1125 Siesta Avenue**, said he ran the rescue group Gator Hunter. He said there was a Montana code dealing with reptiles and it hadn't been addressed in any of the animal shelter discussions. He felt it should be considered, as well.
- **Michele Johnson, 2705 Blue Creek Road**, said she thought the City was sloppy in creating the TIF and what happened at the public meetings was not forthcoming. She said she personally asked if property would be condemned and was told that it wouldn't happen, but people in a trailer court and another property owner on Calhoun and King Avenue East were being condemned. She said the Council sugarcoated things to get people to agree to the TIF. She stated that residents were told the improvements would be paid for but \$4 million was going to Cabela's. She said a resolution was passed and property was being condemned on King Avenue East after the City stated that condemnation would not be part of that project.

Councilmember Veis asked Ms. Johnson when the resolution was passed. Ms. Johnson replied that it hadn't passed yet but she knew it would because the property was staked. She said the Planning Board indicated the condemnation was going to happen, possibly in a couple of months. She said the gentleman on the corner would probably not want to leave. Councilmember Veis said it hadn't been done and she assumed it would be done. Ms. Johnson said she didn't assume it, she had been told. She said the stakes in the ground were reality, not an assumption on her part. She said she didn't appreciate being lied to at the meetings.

Councilmember Ruegamer said he was disappointed because he and Greg Krueger spent about 2-1/2 hours with Ms. Johnson and another person to clarify the issue, but Ms. Johnson and the other person kept returning with total misrepresentation of what happened in the TIF district. He said he thought it was clarified and now it was as if they didn't listen to the discussion.

Councilmember Gaghen asked if it was appropriate to get a response from Public Works Director Dave Mumford on the issue.

Public Works Director Dave Mumford advised that when the TIF district came forward, it contained original language that the City wouldn't utilize eminent domain but that was changed because it was possible that the eminent domain would be needed at some area within the TIF district. He said stakes had been placed during the design to know where the road would be and there was property that needed to be acquired along the north side of King Avenue. He added that appraisals had been received and no property owner had indicated it wouldn't sell. He said the City appraised at the highest

and best use, which meant the properties were appraised as if they were commercial properties so the highest rate would be paid for them. He stated that an item on the April 28, 2008, Council meeting agenda would be a request for eminent domain authority as a first step to get a judge to allow the City right of entry. He said the project could continue with that right of entry during the negotiation period. Mr. Mumford said he and City Administrator Volek had discussed the possibility of an alternate design if a property owner refused to sell and the City chose not to exercise the eminent domain right. He said owners of all the other properties had been willing to work together. He said staff was working on fencing and landscaping for the property owners as well. He noted that the City wasn't working with businesses, just a developer. He added that without the TIF, the developer would only have to build half of the street which would result in congestion in front of the properties and if an SID was required, the property owners would have to pay to fix that road. He explained that the TIF funds allowed building the full arterial so that when development occurred it wasn't such a large impact and didn't require the north side property owners to pay for any portion of the road because it was being paid by the developer's assessments over time. He reiterated that Cabela's wasn't getting anything because the City worked with the developer, no particular business. He said the difference between that project and past projects was that a City employee handled all the negotiations with property owners and there wasn't a third party involved. He said the schedule was tight and the hope was to start construction in July.

Councilmember Gaghen thanked Mr. Mumford for his thorough explanation. She clarified that it was a misconception that \$4 million was paid to Cabela's to lure them to open a business in Billings. Mr. Mumford added that the \$4 million was strictly to build King Avenue East and complete improvements to the on and off ramps needed to make the area work. He reiterated that no money was paid to any business or developer; all funds were intended for infrastructure needed for the present and future.

Councilmember Astle asked how much property was in dispute. Mr. Mumford said there were four property owners and six properties for which right-of-way was needed. He said the amount varied from three feet to 19 feet, the majority about 10 feet wide. He said there was one property where 19 feet was needed. Councilmember Astle asked if a zone request had been submitted already from the church and trailer court to obtain similar zoning as the Cabela's property. Mr. Mumford responded that it was requested and not needed for the appraisal but the property owners wanted that zone change. Councilmember Stevens asked if the road would be improved regardless of the TIF. Mr. Mumford responded that the road improvement would still be needed and the City and property owners combined would have to fund the improvements under the SID program which currently didn't exist.

Ms. Volek clarified that the City didn't fail to hold a hearing, it failed to publish the required two notices. She said all hearings were held as required and that was discussed extensively in the district. She said the issue would be clarified and corrected at that meeting.

- **Christina Leininger, 3560 King Avenue East**, said Mr. Mumford assured property owners at a November meeting that no more than 10 feet would be taken from property owners along King Avenue East. She said double that amount was taken which was a concern for her because she lived on King Avenue East and property was taken for Cabela's and other developers. She said the small property owners

paid the price for Cabela's to come to Billings and wanted to know if Cabela's would pay any of the development fees.

Mr. Mumford said all the property owners would be compensated for the land at a higher rate than the current zoning. He said at one property, more was needed than anticipated, but only 10 feet was taken from the rest of the properties. He noted that the five-lane road wouldn't go beyond Calhoun; it tapered to a three-lane road to Orchard, and then returned to a two-lane road after that. He said compensation was provided to property owners and some owners had even requested stubbing services to the properties for future development. Mr. Mumford noted that King Avenue East was a major arterial and would always be subject to development with growth. Mayor Tussing asked if there would be a public hearing on the issue. Mr. Mumford said a public hearing would be held April 28, 2008. Councilmember Ronquillo asked if two controlled intersections would be installed. Mr. Mumford responded that signals would be installed at Orchard and Calhoun and improvements to the South Billings Boulevard intersection would be completed along with the on and off ramps of the interchange. He noted that Cabela's would be just one of many stores that could be located at that site.

- **Dave Brown, 544 Wigwam Trail**, asked if the City collected impact fees from commercial businesses to cover cost of the impact to the surrounding areas.

Councilmember Veis said he didn't believe they were collected. Mr. Mumford added that there weren't impact fees in place, but system development fees for water and wastewater were collected. Mr. Brown said the payments to the TIF would be on the price of raw land and as the property increased in value it would be paid to the TIF. Mayor Tussing explained that as the property value increased and the taxable value increased, the TIF assessment would increase. Mr. Brown said that was true but it was still less than the tax that would be paid on a completed building that wasn't in a tax increment district. Councilmember Ruegamer said he thought that was another misconception. He said property tax would be paid on the completed building and the difference between the property taxes paid on the improved lot as opposed to the present raw land went into the TIF district and that was a significant amount. Ms. Volek said that helped pay for the improvements that were being constructed.

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

CONSENT AGENDA:

1. A. Bid Awards

- (1) **Phase 3 Landfill Expansion** (opened 3/11/08 and delayed to 4/14/08). Recommend Montana Civil Contractors, Inc., \$1,358,235.
- (2) **Airport Improvement Program (AIP) 34 Project Taxiway "H" Rehabilitation and ARFF Staging Area Pavement Reconstruction** (opened 3/25/08). Recommend Knife River, \$587,416.25.

(3) Animal Shelter Operations Request for Proposals. Recommend postponing award of contract until May 27, 2008.

B. Professional Services Contract for Hazardous Waste Collection Events (3-year term), Burlington Environmental, Inc., \$165,000.

C. Change Order #5 for protective netting – New Baseball and Multi-Use Stadium at Athletic Park, Langlas & Associates, Inc., \$13,069.00.

D. Amendment #4 – Airport Improvement Program (AIP) 34 Project, Engineering Services, Morrison-Maierle, Inc., \$379,462.00.

E. CTEP Project Specific Agreement – Poly Drive Sidewalk -Billings (CN 6633), Montana Department of Transportation, CTEP Grant - \$74,084.00; Local Match - \$11,483.00.

F. CTEP Project Specific Agreement – Broadwater Crossing Project – Billings (CN 6634), Montana Department of Transportation, CTEP Grant - \$92,325.00; Local Match - \$14,311.00.

G. CTEP Project Specific Agreement – On-Street Bike Lanes Project – Billings (CN 6631), Montana Department of Transportation - \$97,186.00; Local Match - \$15,064.00.

H. Right-of-Way Agreements (2) with Montana Department of Transportation for Airport Road Project, 5 parcels, \$80,950.00 total revenue.

I. Assignment and Transfer of Limited Commercial Aviation Ground Lease from Corporate Air to Corporate Jet, LLC.

J. Assignment of Limited Commercial Aviation Ground Lease with BVDS, Inc. to Western Security Bank.

K. Acknowledge Receipt of Petition to annex #08-06: 20.632 acres of Tracts 1A, 1B, 1C, C/S 2055 Amended, generally located north of Alkali Creek Road, Best Development Corp., James Pickens, President, owner and petitioner; and set a public hearing date of April 28, 2008.

L. Acknowledge Receipt of Petition to vacate a portion of North 26th Street and 2nd Avenue N., Big Sky Economic Development Agency (BSEDA) and Downtown Billings Partnership (DBP), owners; and set a public hearing date of May 12, 2008.

M. Confirmation of Police Officers:

- (1) Karl Rude
- (2) Jeremy Dennler

N. Property Transfer to Western Security Bank, Lots 1-6, Block 108, Original Town of Billings, with no revenue to the City.

O. Street Closures:

(1) Cinco de Mayo Celebration, 3 p.m. – 10 p.m., May 3, 2008, 100 block of 26th Street North.

(2) Yellowstone Rimrunners, Montana Women's Run, 6:30 a.m. – 12 Noon, May 10, 2008, 2nd Avenue North from North 10th Street to Division; full closure from North 27th Street to North 19th Street; partial closure from North 19th Street to North 10th Street; full closure from North 27th Street to Division; 3rd Avenue North from North 10th Street to Division; full closure from North 19th Street to Division; partial closure from North 19th to North 10th.

(3) Montana Pride Network, 9 a.m. – 11:30 a.m., June 21, 2008, 3rd Avenue North from N. 25th Street to North 33rd Street.

P. Acceptance of Donation to Parks, Recreation and Public Lands from Billings Mustangs Baseball Organization for protective netting behind the dugouts at the new baseball and multi-use stadium at Athletic Park, \$13,069.00.

Q. Acceptance of Donation to Police Department from ConocoPhillips to send School Resource Officers to the National Conference in Phoenix, AZ, July 28-August 1, 2008, \$8,000.00.

R. (a) Resolution #08-18696 authorizing construction bids for SID 1378, water, storm drain, curb and gutter, and street improvements to the 4200 Block of Clevenger Avenue.

(b) Bid Award for SID 1378, water, storm drain, curb and gutter, and street improvements to the 4200 Block of Clevenger Avenue (opened 3/25/08). Recommend Knife River, \$219,444.00.

S. Resolution #08-18697 repealing Resolution #07-18687 and creating the South Billings Boulevard Urban Renewal District, declaring blight, intent to create the district and setting a public hearing for April 28, 2008.

T. Resolution of Intent #08-18698 creating expanded PMD #4026, Twin Oaks Subdivision and Uinta Park Subdivision and setting a public hearing date of May 12, 2008.

U. Preliminary Subsequent Minor Plat of Amended Lot 4, Block 1, Shiloh Crossing Subdivision, generally located on the southeast corner of Shiloh Road and King Avenue West; conditional approval of the plat and adoption of the Findings of Fact.

V. Preliminary Plat of Miller Crossing Subdivision, 2nd Filing, 10 lots on approximately 18.15 acres, generally located on the south side of King Avenue East

between Newman Lane and east of Calhoun Lane; conditional approval of the preliminary plat and adoption of the Findings of Fact.

W. Final Plat of Eagle View Subdivision.

X. Final Plat of Amended Lot 5, Block 1, Shiloh Crossing Subdivision.

Y. Bills and Payroll

- (1) March 7, 2008
- (2) March 14, 2008
- (3) March 21, 2008

(Action: approval or disapproval of Consent Agenda.)

Mayor Tussing separated Items E, F and G. Councilmember Ruegamer separated Item A1. Councilmember Stevens separated A3. Councilmember Astle asked if Item 01 had to be separated and Mayor Tussing said Mr. Brooks stated that wasn't necessary since Council knew what it was voting on.

Councilmember Gaghen moved for approval of the Consent Agenda with the exception of Items A1, A3, E, F, and G, seconded by Councilmember Pitman. Councilmember Veis asked if Item S meant that the process was back to the start as it was in the past except two notices would be published for the public hearing and there would be public hearings at the Council meetings and Planning Board. Assistant City Administrator Bruce McCandless explained that there wasn't a public hearing required for the Planning Board but it was required to advise the Council whether the urban renewal plan conformed to the Growth Policy. He said it had done that once and unless the plan had changed, it didn't need to be done again. He noted that a public hearing would be held at the April 28, 2008, City Council meeting. Councilmember Veis asked if neighborhood meetings were required or had to be repeated. Mr. McCandless said neighborhood meetings weren't required, but numerous neighborhood meetings were held prior to the initial adoption of the plan. Ms. Volek said Ms. Beaudry advised her that the Planning Board reconfirmed its vote at its meeting last month. On a voice vote, the motion was unanimously approved.

Councilmember Gaghen moved for approval of Item A1, seconded by Councilmember Pitman. Councilmember Ruegamer asked Mr. Mumford if the City owned the land involved in the landfill expansion. Mr. Mumford responded that the City owned the land and the costs were for construction and some roads into the area. On a voice vote, the motion was unanimously approved.

Councilmember Gaghen moved for approval of Item A3, seconded by Councilmember Pitman. Councilmember Stevens advised that she recused herself from the discussion and vote of the item since she served as President of Yellowstone Valley Animal Shelter; the group that submitted a proposal for the Animal Shelter Operations RFP. Councilmember Veis asked for clarification that the item allowed Ms. Volek to negotiate a contract with that group on the RFP. Ms. Volek responded that she created a group which included Councilmember Ruegamer, herself, the City's purchasing agent, the head of the Animal Control Board and Lisa Posada-Griffin from

the Police Department. She explained that the group would negotiate and return to the Council with a contract and request for approval. Councilmember Veis asked if there would be a hearing with the Animal Control Board. Ms. Volek responded that the Animal Control Board's meeting was April 23 to review the proposal, not the contract. Councilmember Veis clarified that people had opportunities for comments. Mayor Tussing advised that the vote at that meeting was to allow postponement to May 27 and the item would be considered if negotiations were reached, but that didn't mean that the contract would be approved May 27. Ms. Volek said there were several possible scenarios for the May 27 meeting; one being that a contract was available for Council's review and vote; another that a contractual agreement wasn't reached and a recommendation to reject bids and start over or return to the original operation; and a third possibility would be to request an extension if negotiations weren't complete by that date. On a voice vote, the motion was unanimously approved.

Councilmember Gaghen moved for approval of Item E, seconded by Councilmember Pitman. Mayor Tussing announced he recused himself from Items E, F and G because his wife was involved in all three projects. On a voice vote, the motion was unanimously approved.

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

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

REGULAR AGENDA:

2. PUBLIC HEARING AND CONTINUED FIRST READING ORDINANCE FOR ZONE CHANGE #826: A zone change amending Sections 27-201, 27-305 and 27-612 to allow small retail services to be developed by special review approval within existing residential zoning districts. Action delayed from 11/26/07 and 3/10/08. Zoning Commission recommends approval. (Action: approval or disapproval of Zoning Commission recommendation.) Planner Nicole Cromwell advised that since November, 2007, Planning Staff had worked to address Council's concerns about the proposed amendment to the Unified Zoning Regulations. She said the amendment allowed neighborhood convenience stores by special review in all of the residential zoning districts. She said businesses had to meet minimum qualifications and couldn't be a type of store that Council had specifically named as prohibited uses in the new draft ordinance. She added that the draft ordinance provided the definition of a neighborhood convenience store, prohibited certain uses such as used merchandise, pawn shops, massage parlors, tattoo or body art, studios, etc. and the square footage of permitted uses would be limited to 3,000 square feet or less. She added that fuel sales would not be allowed and alcohol and tobacco sales would be very limited. Ms. Cromwell said special review would be required in all residential zoning districts. She provided a PowerPoint presentation of a few examples of convenience stores in residential zoning districts throughout the City. She said most of them dated from the 1960s or late 1950s when the current zoning regulations weren't in existence. She advised that the Zoning Commission forwarded a recommendation of approval by a 4-0 vote. She noted that the draft ordinance met several of the 2003 Growth Policy goals.

She added that the County had already adopted an earlier version of the text amendment. She advised that if Council passed the ordinance, Staff would likely return to the County Zoning Commission to see if they wanted to make those ordinances conform together or leave the adopted version in place.

Councilmember Ruegamer asked if there would be a choice whether or not to allow a business if it met all the criteria listed on the ordinance. Ms. Cromwell responded that each special review application was based on the detailed circumstances of that application. She said if the City Council determined that it didn't fit with the neighborhood even if it met minimum qualifications, Council could still deny a special review approval. She said there were three criteria for deciding special reviews and each had to be weighed based on the specific location. Councilmember Clark stated that the businesses were referred to as convenience stores but it wasn't the typical convenience store. He said that people would think they were typical convenience stores without the gasoline. He noted that businesses such as a laundromat or bakery could be opened under that proposed ordinance. Ms. Cromwell confirmed that it was a convenience store that was based primarily on pedestrian access rather than vehicle access. She said it could be a variety of businesses such as coffee shops, sandwich shops, drop off and pick up of laundry, etc. Councilmember Clark asked if the non-conforming businesses would be allowed to remain non-conforming. Ms. Cromwell replied that under the Unified Zoning Regulations, they were considered prohibited uses and if something happened to the business, such as a fire, it couldn't be rebuilt. She noted that under the amended code, the business could come back if it met the minimum criteria if 50% or more of the business was destroyed. She said a trigger mechanism for existing non-conforming businesses would be needed because the City couldn't make them come in on their own; a trigger mechanism would be an event that would damage at least 50% of the business.

Councilmember Ruegamer referred to the picture displayed of Dick's Market at 8th and Yellowstone and asked if a store could be opened there now. Ms. Cromwell said the business owner had to apply for a special review and also had to meet the minimum criteria. Councilmember Ruegamer asked if that could be done without the amended ordinance. Ms. Cromwell replied that it could not. She said the non-conforming use of the property lapsed when the store was closed and not re-opened as a similar type of business within a year. Councilmember McCall asked how many businesses currently existed that fit in that category. Ms. Cromwell estimated 50-100.

Councilmember Gaghen advised that the business referred to by Councilmember Ruegamer had been vacant for 10 to 15 years and asked how that would be dealt with for another commercial use. She asked if the City had leverage to require a less startling view of the building. Ms. Cromwell responded that as long as the property was maintained and didn't become a nuisance, the owner was allowed to maintain the structure and she thought that in that particular situation, the owner used it for personal storage.

The public hearing was opened.

- **Bruce Simon, 217 Clark** said the ordinance was well-intentioned but not workable throughout the City. He said non-conforming uses were in his current neighborhood and the conforming uses were empty buildings. He said people started with a good

idea but it failed and then there was an empty commercial property. He said he felt pressure would be put on to approve another use for the property because once commercial use was approved for an area it was stuck that way forever. He said he had another concern that the amendment didn't apply to all the areas of the City because there were many areas it would never apply to because those areas were governed by covenants put in place by developers. He added that since businesses couldn't locate in those areas because of the covenants, they would look to the older neighborhoods. He said he felt it wasn't right and if commercial development was intended for newer areas, then the provision should be put in place for that. He said he doubted that type of development would occur at Ironwood, Rehberg Ranch or Briarwood developments. He said he hoped the item would be rejected. He said his current neighborhood used to have several small businesses and now there were zero.

Councilmember Stevens said Ms. Cromwell showed a picture of the market at 8th and Yellowstone and asked Mr. Simon if it was better to have the empty building being used as storage as it currently was or the possibility of a store there and improvement of the site. Mr. Simon said that site couldn't be used for that purpose because it couldn't provide on-street parking. Councilmember Stevens said the building could be taken down and re-built to provide parking. Mr. Simon said that particular property probably wasn't big enough to do that and provide a building large enough for a business. Councilmember Stevens asked if that property could even qualify as an example. Ms. Cromwell responded that the lot was about 5,000 square feet, but the building extended further on Yellowstone Avenue so there was probably enough area for a rebuild slightly less than the maximum size of 3,000 square feet and still provide the required parking of one space for every 500 square feet. She said it may not be ideal but would be an opportunity for use of the property.

Councilmember Astle asked who proposed the zone change. Ms. Cromwell said that in September or October of 2006, the Planning Division reviewed regulations to bring them into line with the goals and policies of the 2003 Growth Policy and that was one idea to further the goals. She said it was presented to the City Council and County Commissioners in November, 2006, and January, 2007, and both the City Council and County Commissioners agreed to initiate it.

- **Allyn Kelton, 4419 Loma Vista Drive** said she also grew up in the neighborhood referred to by Mr. Simon. She said rather than being a throwback to an earlier time, it was a design standard being implemented with great success in other model communities that were trying to get away from the sprawl models of having to drive to the market for a loaf of bread, or no village center within walking distance to gather for coffee with a neighbor, etc. She said that with the success of some small markets like Poet Street, there were very attractive buildings that were successful and did very well without causing distress in the neighborhood. She encouraged the Council to be forward-thinking and the zone change could set a precedent for doing things differently and possibly better.

There were no other speakers so the public hearing was closed.

Councilmember Ronquillo moved to accept Zone Change #826, seconded by Councilmember Stevens. Councilmember Ruegamer said he would be forward thinking as suggested by Ms. Kelton but he felt that would be opening a can of worms the Council wouldn't like. He said Ward I and III would be most impacted by the ordinance. He said there were many empty, deserted and run down commercial buildings in those areas. He said the convenience use would not be the same as the small markets and didn't see any business becoming a meeting place. He referred to Poet's Street Market on Poly Drive as a former grocery store that had a lot of traffic passing by it. He said it was high-end baked goods, not the inexpensive items needed in a neighborhood market and that business had good traffic. He noted that the market at 8th and Yellowstone didn't have the traffic and there were other businesses nearby that were allowable uses so he didn't see that property working out. He said he was scared of the special review possibility because if one was granted, the same thing would have to be granted in another location because the Council had learned that it didn't have as much control with the special reviews as it thought.

On a voice vote, the motion failed 6-5. Councilmembers Ronquillo, Gaghen, Veis, Ruegamer, Astle and Clark voted 'no.' Councilmembers Pitman, Stevens, McCall, Ulledalen and Mayor Tussing voted 'yes.'

3. PUBLIC HEARING AND RESOLUTION #08-18699 creating SID 1384, Yellowstone Country Club Estates sanitary sewer extension. Staff recommends approval. (Action: approval of disapproval of staff recommendation.) City Administrator Volek advised there was no staff presentation for the item and no protests were received for the item.

The public hearing was opened.

- **Tom Ebzery, 3728 Tommy Armour Circle** said he was president of the Yellowstone Country Club Estates Association and that item was what they hoped was the final step of the subdivision's connection to the City sanitary system. He said the five-member board voted unanimously to support the SID and thanked Ward IV Councilmembers Ulledalen and McCall, as well as past Councilmember Nancy Boyer for their help, along with David Mumford. He said approval of the SID was one step closer to the connection to City services and the subdivision residents hoped for approval of the item.
- **Sterling Starr, 3713 Tommy Armour Circle** said he wanted to add to Mr. Ebzery's comments. He said he was chair of the Annexation Committee for Yellowstone Club Estates since the process started and regarded the sewer hookup as the culmination of a long process, and it was good to reach conclusion and establish the City services to that area. He said he recommended approval as well. He commented that the SID details indicated a letter would be sent regarding the connection fees and the option to pay the fees over 15 years. He said those who wanted to pay over time would incur an add-on fee of 18-20% for special considerations related to selling bonds. He said the letter sent to the property owners needed to explain the fees and the add-on fees for paying it over the 15 year period. He also noted that if the letter was addressed to Yellowstone Club Estates not Yellowstone Country Club

Estates owners, all property owners would know they were being addressed correctly.

There were no other speakers so the public hearing was closed.

Councilmember Clark moved for creation of SID 1384, Yellowstone Club Estates Sanitary Sewer, seconded by Councilmember Astle. Councilmember Clark noted that the agenda referred to Yellowstone Country Club Estates and the Staff memo indicated Yellowstone Club Estates.

Councilmember Ulledalen expressed appreciation to Public Works Director Dave Mumford and his staff for their work on the project. He said it had been a long process and something that needed to be done. He asked for support of the item. Councilmember Gaghen added that special thanks needed to be given to Ward IV representatives along with Nancy Boyer who served prior to Councilmember McCall's involvement. She asked if there were any protests and City Administrator Volek responded that there were none.

On a voice vote the motion was unanimously approved.

4. PUBLIC HEARING AND RESOLUTION #08-18700 repealing and superseding Resolution #05-18330 and creating SID 1372, Summerhill Subdivision, for construction of public improvements of 23 lots on Winter Green Drive, West Antelope Trail and Antelope Place. Jeff Essman, requestor. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) City Administrator Volek said there was no staff presentation for the item but staff was available to answer any questions.

The public hearing was opened.

- **Jeff Essman, 3130 McMasters Road** said he was the requestor of the SID. He said the property was originally subdivided by the Sheridan family in the late 1970s as a planned unit development. He said the first couple of phases were built and improved and then when the economy turned in the 1980s, the lots were eventually sold by Yellowstone County for taxes in the late 1980s. Mr. Essman said his father purchased some of those lots at that time and they had been unimproved since then. He said he acquired nine other lots which gave him a total of 13 lots for which he hoped to get water, sewer and streets to. He said the lots would be developed according to the covenants of the planned unit development. He said small builders had expressed interest in purchase of two or three lots to build houses in the \$200,000 plus or minus market range.

There were no other speakers so the public hearing was closed.

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

Mayor Tussing called a recess at 7:52 p.m. The meeting was called back to order at 8:07 p.m.

5. PUBLIC HEARING AND RESOLUTION #08-18701 setting rates and fees for water and wastewater utilities. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Public Works Director Dave Mumford reported that the Public Works Department completed a rate study for a three-year period. He advised that a committee had been formed which consisted of home builders, realtors, engineering firms, Councilmember Veis, former Councilmember Brewster, and a member from the Community Development Block Grant Committee so there was representation from the lower income group. He explained that members met several times and worked very hard. He noted that Alan Towleron, Deputy Director of Public Works, and Dwile Weagle of Public Utilities were present along with Paul Matthews from Red Oak Consulting. Mr. Mumford explained that the study addressed how the City would pay for operations and capital expenses of water and wastewater. He said three methods were explored – rates, debt financing and system development fees. He stated that the system development fees process partly governed how the committee was selected because that was established under Montana Code. Mr. Mumford said the recently approved Master Plan and Capital Improvement Program were also used to evaluate the community needs.

Mr. Mumford noted that one of the things that came out of the Master Plan and Capital Improvement Program that affected the system development fees was that 62-65% of the improvements expected to be completed in the next five years were due to aging infrastructure, requirements due to federal and state regulations and improvements needed to provide good quality service to current customers. He noted that 35-38% of the improvements were due to growth, which played a role in how system development fees were calculated. He said that the water and wastewater system building fees recommendation was endorsed by the Utility Board and members from that board were also present.

Mr. Mumford explained that water rates were reviewed based on two different structures; the first being the current structure that was evaluated, which charged the same rate to each user. He advised that the second structure evaluated was a block rate or tiered system. He reported that the tiered system allowed the department to look at water users and how they paid their share based on the demand their use put on the system. He said tier/block 1 was for use of four units or less and no rate increase on volume basis was recommended for that group of customers. He said the next block rate was for 5-16 units and the recommendation was a nominal increase of nine cents for every 1 ccf, which equated to 748 gallons. He went to explain that the upper tier consisted of users of 17 units or greater, which would pay a higher rate. Mr. Mumford said a Billings Gazette article indicated there was a 58% difference between the lower rate and the highest rate that could be charged. He added that a person would never pay 58% more for water because of the way the tier system worked. He added that to reach that 58%, a person would have to use more than 440 ccf, which was more than 330,000 gallons each month. He said that although the article explained the tier system, there was some misunderstanding. He stated that the lower end users weren't subsidizing the higher end users. He noted that the higher rate was necessary to provide the higher flow to provide that volume and in a flat-rate system, the lower end user was paying the same rate as a high end user. He said committee representatives were concerned about people on fixed incomes and how to minimize the impact to

them. He said the decision was made not to raise the rates during the current year on the volume, but there would be an increase in the monthly fixed-rate fee.

Mr. Mumford said a benefit from the rate increase may be some water conservation, especially at the higher rate. He noted that the consultant believed there could be a savings of up to 1 million gallons per day. He stated that it wouldn't offset building everything but it was a start toward it. He said they reviewed the number of bills for each tier each year and 20% of the bills sent out would never go beyond block 1; 75% would never go beyond block 2 and only 25% would ever be in the highest tier level. He said of all of the customers, only 10% of them would ever have more than 38 ccf in the entire billing cycle in the entire year.

Mr. Mumford reported that the rates were set so that no matter which rate the Council approved, the uniform rate or the block rate, the same amount of revenue would be generated for operation of the utilities. He said the utilities needed revenue to cover the additional expenses that had occurred. He noted that the electricity at the plant went up approximately \$600,000 in the last twelve months. He added that other ongoing costs went up as well. He stated that in addition to the volume rate increase, a fixed fee of \$1 to cover billing and meters would also be added to the customer accounts bills.

Councilmember McCall asked if activity from the previous year was used to establish a baseline for the customer use. Mr. Mumford responded that it was used and the group reviewed five years of use in the event that there was a situation that would have resulted in extreme usage. He noted that all customers – residential, commercial, seasonal, and the Heights Water District would see a rate increase. He said some of those customers were very consistent users and wouldn't see a big change in their accounts. He noted that the Heights water was based on a contract and the rates were set by that. Councilmember McCall said she was interested in knowing about the Heights contract at some future work session.

Councilmember Astle asked Mr. Mumford to repeat the percentages of customer bills for each tier category. Councilmember Stevens asked for clarification of the block 2 tier which was stated that 75% of the customers wouldn't exceed 16 ccf. She said she thought it was a small amount if a person had any lawn to water. Mr. Mumford said the average summer usage was 31 ccf. She stated that she reviewed three years of her bills and had one month that she used 31 ccf and she watered a small garden and flowers. Mr. Mumford said he had averaged 60 ccf during three months of the year and 31 ccf was the City's summer average. He noted that some customers had wells that were used to water lawns, there were smaller lots with smaller yards, and some ground formations with higher rock created higher water usage. Councilmember Gaghen noted that Sunnyside Water Users District in the east end of the City had water supplied from the Big Ditch and there were several other more-or-less independent entities that used ditch water, so that would cut the average a bit. Mr. Mumford said to put it into perspective, the City of Billings provided customers with five gallons of water for every penny they paid. He said he was proud of the Staff because they did a good job of providing water.

Councilmember Veis asked Mr. Mumford to look at Schedule I, Block I where it showed 0-4 ccf and 5-16 for Block II classification. Mr. Mumford explained that the charges were for whole numbers used and any increment above the whole number

carried over to the next month so the bill was always for a whole number within the corresponding block. Councilmember Astle asked for further clarification of the billing if he used 16 ccf. He stated that he understood the first four ccf would be at the block 1 rate and the remainder would be at the block 2 rate. Mr. Mumford responded that was correct. Councilmember Ruegamer asked what the average user used. Mr. Mumford responded that the average 12 month usage was 15 ccf, which translated to a monthly bill of approximately \$55 and the new rate would raise it approximately \$2 per month. Councilmember Pitman inquired of Table 4-2 in the Water and Wastewater Rate and Fee Study that referred to existing and proposed rates for Billings Heights customers. The table indicated an existing rate of \$89.04 and a proposed rate of \$182.05. Mr. Mumford explained that was the rate charged to the Heights Water District for its bulk purchase which it in turn distributed to Heights customers. He added that there were Heights residents that purchased water from the Heights Water District and some purchased City water. Councilmember Clark said that meant that the City sold the water to the Heights Water District at that rate and that district set its own rate to recover its costs.

Councilmember McCall asked Mr. Mumford if there was a reserve fund. Mr. Mumford responded that there were several in both water and wastewater. He said the reserve fund was to make up shortfall if there was a year when not enough water was sold to customers and there was also a reserve in case something significant occurred, like a pump that would cost several hundred thousand dollars to repair. He added that the reserve was set by the financial services function of the City. Councilmember Clark asked if the reserves were higher in the past prior to spending them for projects like Briarwood and the water plant. Mr. Mumford said the reserves were brought to the level recommended by the City's Finance Department. Councilmember Pitman asked how dramatically chlorine had increased. Mr. Mumford said chemicals increased about \$50,000 during the past year; all expenses had risen, but the electrical expense was the largest increase over what was budgeted.

Councilmember Ulledalen said the question came up regarding why such a large increase all of a sudden, but he said there were \$270,000 million in expenses for both water and wastewater. He said someone commented that it had been a while since someone stepped up to the plate with significant infrastructure spending and the bulk of it was done in the 1970s and 1980s. Mr. Mumford said there was the downturn of the 1980s and the City was able to live with the infrastructure that was built prior to that, but now the City had outgrown it, even at the 1-2% replacement rate, which meant pipes were expected to last 100 years before they were replaced. He said there were also new state and federal regulations regarding the water quality. He said a large consideration was reservoir capacity because the City had grown and not kept up with reservoir capacity which would be shown in the Capital Improvement Program. He said Zone 2 had the only adequate reservoir for peak demand flows. Mr. Mumford said 65-68% of revenue was to keep up with the system needs.

Councilmember Stevens asked if there was a rate increase three years ago. Mr. Mumford responded that a rate study was completed every three years and there would be a small increase each year. He added that the rate study was done regularly so the rates kept up with the expenses so there weren't such large jumps. Councilmember Stevens said she did some calculations and with the proposed rates if a person

purchased 100 ccf at the 2008 rate it would be \$226 and in 2010, it would be \$260 which was a 16% increase over those two years. Mr. Mumford said that was because the usage rage was in the high end tier. He added that a 3.3% flat rate across the board required every user to pay the same rate or tier but the same dollar amount was generated.

Councilmember Ulledalen said the fees for the storage tanks were startling. He said he understood why there were problems such as around 24th Street West and Lewis Avenue, because the water was pumped out and clogging it when there wasn't any storage. Mr. Mumford said he didn't know if that was the only problem, some of the reason was the pipe was old, pressure shifting and other factors. He added that construction costs rose 10-15% annually so each year the projects were delayed would result in increased cost of the project.

Councilmember Gaghen said she wanted to reinforce the scope of the study. She asked for confirmation that the Billings rates were compared with cities of similar size and it wasn't a random increase. Mr. Mumford responded that was how the process was conducted and that Billings was among Montana cities with the lowest rates. Councilmember Stevens stated that the Council was concerned about the ability to provide services for the city's growth and she asked how much anticipated growth drove the rate increase. Mr. Mumford replied that for operating costs, none, which meant they weren't looking to add any personnel. He said that in reviewing the CIP and Master Plan, it was estimated that between 35-38% of the CIP projects were growth related and the rest were due to needed upgrades to the current system. Councilmember Veis stated that the growth was augmented by the system development fees. Mr. Mumford stated that the system development fees paid for the portion of growth associated with that development.

Mr. Mumford said wastewater was more simplistic and was a uniform rate. He said the monthly wastewater fixed fee would be reduced by 27¢, and the wastewater rate would increase an average of 4%. He added that the monthly rate increased as the strength of wastewater increased.

Mr. Mumford stated that the City followed the Montana Code process to address system development fees, which set the committee membership and what was classified as a system development fee. He said one change that occurred was that two fees were charged previously; one was a system development fee and one was a construction fee. He advised that in review of the statutes with the committee, it was determined that the construction fee was another form of a system development fee so those were combined together. He explained the difference was that previously, the construction fee was paid at the time the plat was filed and the development agreement was obtained, and the system development fees were paid at the time the building permit was requested. He said the payment of the newly combined system development fees would be at the time the building permit was requested and eliminated the lag time of waiting for the construction to occur. He said those fees would be reduced by about \$500 per lot due to the difference in construction and what portion the builder needed to cover and what the City had to build.

Mr. Mumford thanked all who served on the committee because there were nights when everyone was tired and at times the topic was boring, but there were also

times when there was contention in the effort to determine equitable rates and what was needed to be able to continue to provide the utility services.

The public hearing was opened.

- **Rod Wilson, 422 Shamrock Lane**, said he served on the System Development Fee/Construction Fee Fees Advisory Committee. He said it was an incredible learning opportunity. He said his premise was to understand the facts, figure out the problems, look at the opportunities and reach the conclusion, which was how the group started. He said the group didn't talk about dollars until the fifth month of discussion but instead talked about facts and the consultant kept them on track and answered all of the questions. He noted that system development fees were an interesting creature and with the impact fee laws, the City followed them and would continue that practice. He said someone told him he was happy with his water and his water bill and asked why he had to pay more. Mr. Wilson said his response was that the federal government regulated the water quality and it changed constantly and those demands had to be met. He said that it couldn't be left alone for people who had lived here but then proceed to build a new plant for the new people who moved to town. He said the only way for people to pay their fair share was through the system development fee for new construction and the water rate increase. He said he read all the reports and felt he understood the issues. He said replacement of existing water lines was \$38 million and that needed to be covered through rates and new people should pay the new rates as well.
- **Dave Brown, 544 Wigwam Trail**, said he didn't mean to mislead on the Tax Increment District during his previous comment. He said that parks used to be watered with ditch water, then City water was used and now they were sprinkled. He stated that the cost of that water went back to the taxpayers in the form of fees. He said sewer was included in those fees, yet the water department didn't have sewers to speak of. He said he was curious about the Lockwood situation where the City gave them sewer. He asked if that would be passed on in the City of Billings water bills.

Mayor Tussing responded to Mr. Brown that he believed the consensus was 'no.'

- **Bruce Simon, 217 Clark**, said he testified the last time water and sewer rate increases were discussed and brought up the fact that when that was done, another tax was raised at the same time and that wasn't on the agenda. He said the franchise fee was raised, which was 4% of the gross revenues and additional money would come to the general fund since that amount had to be paid by taxpayers. He said he stated 3 or 4 years ago that the Council had to find out if that was legal. He said a higher authority needed to be asked if that was an illegal sales tax because he feared it was and the City would be liable to have to pay it back someday if it was sued. He challenged Council to move ahead and find out if the franchise fee was legal. He said the rate increase was complicated. He stated that when the notice arrived with his bill there was a number to call regarding the water rate adjustment so he called it. He indicated

that when he talked to someone the tiered system wasn't explained, only that water and sewer rates would increase. He said he wasn't told about the tiers and it was difficult for the public to testify because it didn't have the information. He said it was wise to look at the system development fees to encourage infill development where the infrastructure was already in place. He said there may be additional provisions required on the system development fees and the City had made a move in the right direction.

Councilmember Veis stated that that issue was discussed during the committee meetings, and committee member Tom Llewellyn was in favor of Workforce Housing Authority's review of system development fees. He noted that Councilmember Ronquillo served on that task force as well. He said the wish of the water and wastewater group was that the workforce housing group reviewed that particular instance of system development fees for infill development. He said the City would be happy to hear about it. Mr. Simon said he served on that committee as well and he thought something would be brought forward on that topic.

Councilmember Ulledalen said it was complicated and that the City faced approximately \$270 million in expenses in the next 10 years to upgrade the system to adjust it to fit new federal regulations and to account for new growth. He said the level fee charged everyone the same rate but the current proposal was a tiered fee and the system development fees were changed. He asked if there were other ideas that could be considered because an issue the Council struggled with was how to pay for growth. Mr. Simon said he tried to turn the City inward to look at infill development rather than expansion. He said he felt the City made a terrible error when it annexed Briarwood because the cost of extending services to that area was enormous; millions of dollars that ratepayers had to pay. He said water quality standards were revised to make sure the drinking water was safe and he had lived here 66 years and thought the water was fine, so he didn't know why it had to keep getting better. He said he didn't understand why the standards changed so much. He said he lived in a house that was almost 100 years old and that property had paid for almost 100 years so there should be money set aside and available when waterlines needed to be replaced in front of his house, not to be used for annexation miles from the city limits.

- **Tom Llewellyn, 5819 Rimrock**, said he served on the rate study committee and was proud to be from Billings because things were done right. He said he studied communities in the state of Montana and Billings was the only one that had gone through the process correctly. He said some things discussed at that water rate committee and with the workforce housing group was that the City tried to use the tier to encourage smaller lots for the infill areas to bring more people back into the City. He said one of his ideas was that a house could be delivered within a given dollar amount under a formula in which the City would return half of the system development fee. He said there was a misnomer that development didn't pay its own way, but everything that went into a subdivision was paid for by the developer. He stated that the combination construction and system development fee meant the developer paid for the lines and it wasn't a burden on the ratepayer. He noted that new subdivisions paid their own way and

people needed to realize it created other assets to the community such as jobs and income through taxes and fees. He said it was important to balance it out and it was both the ratepayer and the new development that shared the cost and burden. He added that he thought it was great that there was a plan to go forward and to know what the roadmap was to keep the system and community running. He said he didn't think Billings understood where it would be in the next 10 years and the City was about to see the 100,000 population mark. He said the real growth hadn't occurred yet but was coming. He said he was pleased to have served on the committee.

Councilmember Ulledalen asked if the workforce housing group had come up with a definition of workforce housing in terms of a dollar range. Mr. Llewellyn responded they used 80-120% of median income and used \$43,600 as the median income, which priced housing at \$125,000-185,000. He said there were opportunities in the community through workforce housing in conjunction with the utilities to accomplish things that he didn't think he'd ever see and most of it was in the area that would be served by the tax increment district.

- **Allyn Kelton, 4419 Loma Vista Drive**, said the presentation by Mr. Mumford was enlightening and people couldn't say they didn't know and understand about financial pressures to stretch what they had as far as possible. She stated she was happy to pay her fair share for the things that made Billings a great place to live. She stated that she appreciated that a citizen board came together with Councilmembers to determine the best rate increase structure. She said she had a concern, however, about which residents would be burdened with the rate increase. She said she understood that the rate increase applied to residents, but not commercial users and not to the Heights Water District because it was under a bulk contract, and it didn't apply to seasonal users. She said in the last month, her water bill reflected use of four ccf and her household consisted of two people and there wasn't any lawn watering included in that bill. She said that she knew approximately what her summer water bill would be using Councilmember Ulledalen's figures. She said his rate wouldn't increase 58%, but would increase about 51%, which was significant when the commercial users didn't appear to be burdened with the increase. She said if they bought in bulk, they received a discount because they used more. She said she wanted the Council to clarify the items and wanted to be convinced that paying it was fair and everyone would pay his or her fair share, including commercial users.

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

Councilmember Veis asked Mr. Mumford to address Schedule I and how it changed.

Mr. Mumford stated that everyone was subject rate increase even though it was different for residential and other classifications. He said the tier rate only applied to residential users. He said there was a rate increase for resale purchasers, seasonal users and non-residential. He said to reach a 51% increase would mean a customer

used quite a bit of water. Councilmember Veis said wholesale customers, such as Billings Heights, paid a rate to the City for the water, then sold it to their customers at the rate they set. Mr. Mumford said the rate charged to the wholesaler included the fee for processing the water, replacement of lines, building of reservoirs, etc. He said the water was sold to the Heights at the retail price of \$1.28 per ccf and they had a distribution system to fund so their rates were believed to be slightly higher than the City's. Councilmember Veis said the City only treated the water and sold it to that district, which differed from the service offered to its own residential customers. Councilmember Astle asked how the wastewater was charged if the water was sold in bulk to the Heights, since wastewater charges were based on usage. Mr. Mumford said there were City residents who purchased Heights water and because their monthly consumption was known, the wastewater rate was based on that usage. Heights residents outside City limits didn't use the City sewer system and were not charged for wastewater. Councilmember Astle asked for a definition of seasonal water customers. Mr. Mumford explained that there were customers who purchased water for irrigation, such as Geyser Park, the water slide, etc.

Councilmember Gaghen said there was concern that it was not passed on to commercial users; it was her understanding that it was based on the fact that the diameter of the pipe size for a residential home was typically $\frac{3}{4}$ -1 inch and a 10 inch pipe would deal with a larger entity, namely businesses. Mr. Mumford said that was true because charges were based on meter size and as the meter size went up the price went up. He added that non-residential customers paid a cost increase, but seasonal users didn't change much and paid a flat rate. Councilmember Gaghen confirmed that the rate increase was not based solely on residential customers, but for all users. Mr. Mumford added that the overall increase for all users was approximately 7%.

Mayor Tussing said that Mr. Mumford stated that 60-some percent would be devoted to maintenance of the current system and the remainder was attributed to growth. He asked if the growth meant anticipated growth or recent growth, recent growth meaning what happened with Briarwood and the extension of pipes to Ironwood and that type of situation. Mr. Mumford replied that those situations fell into the 60% category but each time a lot came on, the system development fees would be paid to help repay those expenses. He said new lots paid the system development fees and the rest were part of the 60-some percent that the City took care of. Mayor Tussing asked if it was fair to say that the leap-frog type of annexations that occurred in 2002 had a significant impact on the cost of the existing infrastructure. Mr. Mumford answered that they had an impact on the costs and there were ongoing costs with reservoirs and other things that occurred. He said the expense of extending the pipes had to be paid from somewhere and were paid from the rehabilitation program, which put us farther behind in keeping up with pipes so there was an impact.

Councilmember Stevens said that Mr. Mumford said the average bill would increase approximately 7%, but that was only from 2007 to 2008 because there was an elephant in the corner that was ignored and that was that there would be an increase in 2009 and 2010. She said from 2008 to 2010, the increase was 16%. Mr. Mumford said he didn't know if it was an elephant in the corner but it was the cost of service. He said the City didn't look to expand, add personnel or grow government. He said the question

was how much it cost to provide the services, the chemicals, meet the requirements and what it cost to do that. Councilmember Stevens said she understood that, but they weren't talking about the fact that there would be a rate increase in 2009 and 2010, but kept talking about what was going to happen next year. Mr. Mumford said the report showed all three increases.

Councilmember Ulledalen asked if there was room in the future to address other fees to balance what new development paid and if there were tools not looked at. Mr. Mumford said that in following the State statute which regulated system development fee charges, it was followed as close as possible to get everything possible and by changing the methodology it provided a faster collection of the fees. He said the previous system didn't really provide for recouping because of the time factor so the change provided the ability to collect the money faster and not lose so much with inflation.

Councilmember Ulledalen moved for approval of Item #5, seconded by Councilmember McCall. Councilmember Stevens said she had concerns about it. She said it was small numbers but if looked at on a percentage basis, there were huge leaps. She said some talked about conservation and she was all for that, but if the City was going to make rate increases based on conservation, people first needed tools to help work on conservation. She said an example was that she was working with a landscaper to design features that required less water. She said that to suddenly learn that water rates would increase was a tough pill to swallow without other assistance. She said a constituent sent her a letter and asked if anyone had thought about the aesthetics of brown lawns. She said she didn't mean to pick on bike paths, but everyone said we had to have bike paths because that's what attracted people to the community and made businesses want to move here, but brown lawns did the opposite. She said the Heights between Airport Road and west of Main Street would bear the brunt of the increase because in the Yellowstone Valley, many residents had wells but residents in the Hilltop area couldn't sink a well because of the ground formation so those residents didn't have alternate water supplies like others did. She said she couldn't support the item and hated that she didn't have a better answer because she said the study was well done and Billings had great water and residents were fortunate for that. She said her constituents would be impacted unevenly. Councilmember Ulledalen said he agreed that it would be nice if we didn't have to deal with it, but the combination of impacts of growth and neglect made it necessary. He said he would support the increase even though he would be one of the customers who would see a significant increase. He shared that his water bill wasn't a big deal to him but his typical usage was 15-18 ccf each month for a typical bill of \$55-60, which translated to one semi-load. He said his summer consumption jumped to 149 ccf, which was 11 semi loads. He said that bill was about \$250 and his new bill would be about \$300, but he planned to adjust his sprinkler system and timer and would also consider alternate landscaping that would require less water. Councilmember Ruegamer said he agreed with the end of what Councilmember Stevens said that we're fortunate to have clean water. He said he appreciated Councilmember Ulledalen's conversion of water usage to truck loads. He said there was a good deal of thought and work on the study and he was glad that Mr. Mumford addressed the inflation issue. He said he could assure everyone and felt he spoke for the whole Council that whenever a vote occurred for a

rate increase, it was painful and it wasn't done without a lot of thought. He advised that he reviewed his water bills from 1984 and they averaged \$34 each month while last year's average was \$35 each month. He said he also conducted the same study with cable, phone, electricity and gas and he discovered there had been large increases in most of those utilities. He said it was a fact that increases were necessary to maintain infrastructure. He said he would support the increase. Councilmember Veis stated that it wasn't fun to vote for a rate increase but if it wasn't done now, the costs would become exorbitant. He added that a little percentage was painful but something that had to be done because we either paid now or later.

Councilmember McCall said she also supported the issue and thought the group did a really good job. She said several constituents contacted her and most of the concern was that they didn't understand it. She said the more she learned the easier it was to explain it to them. She said she was consistently asked if there would be a commercial rate increase and most constituents indicated support of the increase and conservation efforts but they wanted it to be fair. She said most of the people she spoke with didn't realize the rate increase applied to commercial users as well so it would be helpful if the public was informed that it was going to occur. Councilmember Ronquillo stated that the water rate increase would wake up a lot of people. He said he had seen many people water roads and sidewalks and waste water in other ways. He said the first bill with the new rate would be a wake-up call for some. He added that MDU offered energy-saving devices and there were devices that could be considered that would help people conserve water. He said even the City parks needed to be mindful of watering practices to avoid wasting water and the attention paid to that would save money in the long run. Councilmember Gaghen echoed Councilmember Ronquillo's sentiments and said that all of the Wards would be impacted by the increase. She said the City had aging infrastructure, especially in the older parts of the City and we had to anticipate upgrading and maintaining those in a better way than we had. She said the problem had to be addressed rather than waiting for the next group to do so. She said it was a bit of a bitter pill but the efforts had to be made to save and watch what was done. She said the consultant and the group did a very good job of presenting the information and helping people understand the issue. She stated that she hoped that the idea about commercial users was clarified at that meeting.

Mayor Tussing said he didn't know if everyone he heard from was in the same boat as him that their rate would go up astronomically because he said he used very little water and it was going to go up an average of \$27 per month even with his conservation efforts. He said he wasn't convinced that it wasn't necessary because some bad mistakes were made five or six years ago and we paid for them now. He said the percentage was too significant and he wouldn't support the increase.

On a voice vote, the motion passed 8-3. Councilmembers Pitman, Stevens and Tussing voted 'no.'

6. PUBLIC HEARING AND ALLOCATION OF CDBG FUNDS for Housing Authority of Billings grant application for \$62,000 for site development costs for the Lake Elmo Drive affordable housing project. Community Development Board and staff recommend approval. (Action: approval or disapproval of Community Development Board and staff recommendation.) Community Development Manager

Brenda Beckett advised that the action item would provide grant funding to the Housing Authority of Billings for site development for a large parcel of property, almost 14 acres, along Lake Elmo and northeast of Uinta Drive. She said she understood there were questions and she and Gib Glasson from the Housing Authority could answer those questions. Councilmember Ronquillo said when the group came before Council with the Community Development Block Grant, there was only one entrance to the property and he wondered if they obtained permission for access from the nearby property owner. Mr. Glasson responded that two proposals were obtained through an RFP process for access options. He said one proposal consisted of a connection across the ditch above Uinta Park, and it was determined that two accesses were allowed from Lake Elmo Road. He explained that a U-shaped road that went back to the end of the property just to the south of Heather Heights could work with the first entrance at Crow Lane and the second entrance just to the south of Heather Heights. Councilmember Ronquillo asked if the access road would be from Heather Heights onto Lake Elmo. Mr. Glasson said that was correct; there would be two access points from Lake Elmo and according to the City of Billings Planning Department, there was enough setback room and it met the requirements to do that. Councilmember Ronquillo asked if the group met with the contractor that was building beyond the area. Mr. Glasson said they weren't to that point until the funds were secured so they were unable to sign a contract with an engineering firm to get started.

Councilmember Clark asked about the value of the project upon completion. Mr. Glasson said he didn't have an overall figure because it depended on funds and the project would probably be completed in phases. He said they tried to keep the developed properties for the 50% or less than median income group. He said costs would be kept down in order to qualify for grant funds. Councilmember Clark asked if they would be rental properties and Mr. Glasson responded that some would be rentals, some may be home ownership, and some could be tax credit projects, but the project was still in the design phase. Councilmember Clark said the home owner portion would mean the people paid property taxes and he asked if tax was paid on the remainder. Mr. Glasson responded that taxes were paid in lieu of.

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

Councilmember McCall moved to approve Item #6, allocation of CDBG funds for Housing Authority of Billings grant application for \$62,000 for site development costs for the Lake Elmo Drive affordable housing project, seconded by Councilmember Pitman. On a voice vote, the motion was unanimously approved.

7. PUBLIC HEARING AND FIRST READING ORDINANCE AMENDING NUISANCE WEED REGULATIONS: Staff recommends approval. (Action: approval or disapproval of staff recommendation.) Mayor Tussing asked if this was the same as the previous work session presentation. City Administrator Volek said it was and staff was available to answer any questions. Councilmember Veis stated that he and Councilmembers Stevens and McCall missed the work session and asked for a brief review of the item. Planner Nicole Cromwell said that after the last weed season, City Council, the Planning Board and the City Administrator instructed staff to review the code with Deputy City Attorney Craig Hensel's assistance to develop a process

whereby people who objected to a violation notice could appeal it or appeal charges assessed for weeds cut by the City. She said that at the same time, some of the language was updated to bring it to conformance with State statute to make sure that all of the codes were consistent with each other and updated. She said the definition was refined, other definitions were adjusted to bring them to current practice, a section was provided for the City Administrator to assign responsibility for removal of nuisance weeds on City properties and it shortened the weed season by one month from October 30 to September 30, which allowed the department to close out weed bills quicker to and would enable the financial issues to be completed in a timely manner. She said there typically weren't many new complaints after September 30. Councilmember Veis asked if a contractor would be required to take a picture of the height of weeds at a certain date. Ms. Cromwell said three pictures would be taken of each property; one prior to the mowing, one prior to the mowing with a date and measuring device and one picture after the weeds were mowed. Councilmember Ulledalen asked if the additional specifications imposed would add to the cost of the contractor's bid. Ms. Cromwell said there would be no cost increase and only one picture was added to the contractor's requirement. She noted that Code Enforcement and the contractor both took pictures of the nuisance weed areas.

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

Councilmember Ruegamer moved for approval of Item #7, seconded by Councilmember Ronquillo. On a voice vote, the motion was unanimously approved.

8(a) PUBLIC HEARING AND RESOLUTION #08-18702 reconsidering annexing a 114-acre property located north of King Avenue West between 48th Street West and Shiloh Road and described as Tracts 1-5, C/S 2063 (Annex #08-01). Lenhardt Property, LP; Lenhardt Farm, LLC and Lenhardt Enterprises, LLC, owners and petitioners. Considered and denied initially on 2/25/08. Staff recommends conditional approval. Planning Division Manager Wyeth Friday stated that this was a return item from the February 25, 2008, meeting. He said that at that meeting, Council reviewed several items for the property, two of which were approved; one to maintain the property within the Urban Planning Area boundary and accept the Urban Planning Study that had been prepared for the property and secondly to include the entire property within the red Limits of Annexation Area to enable the property to petition for annexation. He added that the two other items before the Council at that meeting were the annexation request and the zone change request from agricultural open space to planned development. He advised that the annexation was denied at that meeting so the zoning request was not considered. He said that at the March 10, 2008, meeting, Council voted to reconsider the annexation petition and also the zone change application, which brought it to that meeting for consideration.

Mr. Friday reviewed the subject property in relation to the City limits and the annexation areas with a PowerPoint presentation. He said that since the process started, the applicants moved forward and filed a County exempt plat to align the boundaries of the lots and there was an updated configuration and amended legal description. Councilmember Veis asked for clarification of where Monad Road was on the map. He asked if the County plat included an easement for Monad Road and Mr.

Friday responded that the area Councilmember Veis referred to was not for a road. Councilmember Astle asked what traffic study plans showed for that area. Mr. Friday responded that a traffic accessibility study had not been completed and the only traffic analysis was what was provided in the Urban Planning Study and that analysis looked at potential traffic based on what might develop. He said King Avenue and Monad would likely provide a route in and out of the subdivision. Councilmember Astle said he didn't mean the traffic related to the Lenhardt proposal but a traffic study regarding future development for Monad Road which showed it going straight out to 48th Street West. Mr. Friday said that the transportation plan and map in his department showed that Monad Road was a minor arterial as far as Shiloh, then became a collector level road and curved over to 48th Street. Mr. Friday noted that was a proposal for where that road might go in the future based on past analysis. Councilmember Astle said it was his understanding that there would be a roundabout there. Councilmember Veis said there would not be a roundabout there but it was a three-quarter intersection. He said it was important to realize that with the current configuration of Shiloh Road, a person couldn't travel straight across Shiloh Road to reach Monad. A person could not go straight across, nor could they make a left turn onto Shiloh from that proposed development. Councilmember Veis said Monad would connect to Shiloh on both sides, but to go west on Monad across Shiloh wouldn't be allowed, there would be barriers. He said drivers on Shiloh Road could turn right, go to the roundabout at Central, and then go back around to Monad.

Mr. Friday said the request to annex the property to the City went through a review process with the annexation committee and was evaluated in relation to the Annexation Policy as well as other plans and policies throughout the City. He noted that departments throughout the City reviewed annexation requests and in that case, several meetings were held to review the request along with the Urban Planning Study. He said the proposal allowed phase development based on infrastructure limitations that would be discussed later in his presentation. He said the different items looked at in the policy included distance from existing City services and response times. He said the property was on the western fringe of the City and recent changes in the fire department staffing and equipment configurations and limits on the number of police patrol officers contributed to further service challenge concerns. He stated that another point of consideration was the capacity and location of existing facilities and future upgrade or new facilities. He said water and wastewater services to the property would be provided at certain levels and conditions would be proposed to phase the amount of water provided to the property based on reservoir capacities. He said that issue came up when the ability to serve the property was reviewed. He said the cost of City services and the effect on City residents was reviewed. He said it was a known fact that limited resources and rising costs made it more challenging for the City to provide new developments and balance the provision of services to new developments with services to existing residents. He said the phasing of the development was based on the ability to provide the resources to it and the impact to existing residents.

Mr. Friday advised that another consideration was whether it conformed to adopted plans. He said that depending on the development of the property, it was expected to both conform and conflict with various plans. He said that in the Yellowstone County Growth Policy, there were inconsistencies in terms of providing

more housing and business choices within that area of the City and County, and a multi-purpose trail network was proposed throughout the development that would connect to the proposed trail along Shiloh Road that would eventually provide connectivity throughout other parts of the community.

Mr. Friday stated there were inconsistencies with the Growth Policy. He said one inconsistency was the protection of groundwater, surface water, riparian areas, air quality and productive agricultural land and that specifically looked at agricultural land because 114 acres were taken out of agricultural production in prime agricultural property on the west end. Mr. Friday reviewed another item from the policy: "Contiguous development focused in and around existing population centers separated by open spaces" and noted that the property was on the fringe of the City Limits and marginal in that regard. Mr. Friday said that in regard to protecting public lives and property, there were challenges for the City to ensure adequate and acceptable levels of service. He stated that when new property was considered, the phasing helped alleviate some of the service concerns of getting police and fire and other services to the property in a timely manner.

Mr. Friday said the West Billings Plan was reviewed because the property was within the West Billings Study Area. He noted that it was consistent with the plan in terms of what was proposed with the planned development proposal. He said the higher density development wasn't infill development which was something looked at in the West Billings Plan.

Mr. Friday noted that the provision of City services provided to the property was reviewed and responses were as follows:

- **Fire Department** was supportive of the annexation petition as long as the water supply limitations specified by Public Works were noted and followed. He said the Fire Department was concerned, however, about the limitations of the ladder truck and staffing of it to get it to that location if it was needed based on the fact that it was housed at Station #1 at the present time.
- **Police Department** was supportive and indicated that it would add two additional officers in 2008, and the additional staff would bring the department closer to current authorized strength but would not address additional demands and growth, so long-term they saw some concern.
- **Public Works** was supportive of the property as long as it followed the proposed restrictions on maximum daily water demand starting out at 600,000 gallons per day and based the expansion beyond that on several new water projects and reservoirs as Mr. Mumford alluded to earlier during the rate study discussion. Mr. Friday said the reservoirs were not in place yet but one project was proposed for 2009, and another in 2013 that could address that and could provide additional capacity to serve the property. He said road capacities were reviewed and that was discussed earlier. He noted that King Avenue West was classified as a principal arterial and would be a main service to the property for access to the entire development and MDT had jurisdiction over that road in that area and would have to approve any proposed accesses. He noted that Monad Road was classified as a minor arterial as it reached Shiloh and west of Shiloh it was classified as a collector street and as mentioned earlier, the alignment of the road

to the property and its service capabilities would need to be analyzed and considered when the project moved to development and the developer provided a traffic accessibility study to show exactly how the traffic could be handled based on those two main access roads.

- **Parks Department** was supportive of the annexation but stated that the additional development without large park areas for ball fields and playground type areas continued to stress the existing parks available to city residents. The Parks Department didn't want to take on the maintenance responsibilities for the proposed development. He said there was concern about how much open space would be available. He noted that the Parks Department was needed more programmable space, but there was a significant area in the center portion of the development that could be used for a limited amount of activity. Mr. Friday noted that the park property within the development could become private and therefore, not maintained by the City's Parks Department.
- **Met Transit** had no plan to expand in that area or any other area at the present time due to funding limitations
- **Billings School District #2.** A member from the district served on the annexation committee and provided input from the school district's standpoint. Serious concern was expressed about the lack of an elementary school west of Shiloh and the West High capacity and the continued problems they would face based on those two situations. School District representatives pointed out that there were 580 elementary students west of Shiloh, with no elementary school west of Shiloh Road. They advised that a new one in that area would accommodate approximately 400 students, which didn't alleviate that issue. He noted that the District continued to consider property at Cottonwood Park but there were no immediate plans to fund and build a school at that location.
- **City Finance Department and Administration** stated that every property tax-supported department was spending reserves in order to balance operating budgets and an expected reappraisal of property value may reduce property tax revenue to the City because of the way the appraisal process was figured. Mr. Friday reported that it was also discussed that the tax revenue from new development came back to the City over a six-year increment and the concern was that as development occurred, the services had to be put in place immediately but the revenue was returned at a much slower rate.
- **Planning Department** reviewed the request and supported the annexation if the development was phased based on the infrastructure limitations. Mr. Friday advised that the Growth Policy, the Westend Plan, and the Annexation Policy provided the city with orderly growth and looked seriously at the City's responsibility to ensure that service levels for all residents were maintained even as additional residents were brought into the city.

Mr. Friday advised that the City's Planning Department recommended approval of the annexation contingent on the following three conditions:

1. The maximum quantity of City water supplied to this property will be 600,000 gallons/day until such time as the first water storage improvement project for

Zone 3 is completed. At the time of completion of the first reservoir improvement, an additional 300,000 gallons/day will be available. Once the final improvement to Zone 3 is completed the entire 1.2 million gallons/day will be available. Availability of water will be evaluated by the Public Works Department after 600,000 gallons/day based on actual and proposed usage to ensure domestic and fire supply and pressure.

2. Prior to site development, a Development Agreement shall be executed between the owner(s) and the City that shall stipulate specific infrastructure improvements and provide guarantees for said improvements; and/or
3. A Subdivision Improvements Agreement (SIA) and Waiver of Right to Protest the Creation of Special Improvement Districts shall be approved and filed that will stipulate specific infrastructure improvements and provide guarantees for such infrastructure improvements. If required, the subdivider will be responsible for forming a Park Maintenance District at the time of subdivision.

Mr. Friday said two conditions were typically required but one more had been added regarding water service and availability. He said the applicants and their agents were present at the meeting.

Councilmember Ulledalen said if he understood correctly, there could be up to five different buyers for the five parcels over a number of years. He said he struggled with the fact that it was considered for annexation when up front the City stated it couldn't supply what was needed in terms of water. He asked how to make sure that was communicated to potential buyers in two to three years that even though the property was annexed, the City couldn't provide the service package they may be looking for. Mr. Friday responded that each developer would have to work with the City, provide a development agreement and follow the appropriate process for any proposed development. He said it would have to be clear from the way the annexation was completed that there were limitations. He said there would be reliance on Public Works to make sure the numbers all matched up because right now it was uncertain what kind of density would be seen.

The public hearing was opened.

- **Rick Leuthold, Engineering, Inc.** said he wanted to express his appreciation for reconsideration of the annexation and the potential zone change items. He referred to the FAQ document distributed to Council and said that demonstrated that a considerable amount of time had been spent with staff and other consultants to bring forward a project that met all annexation criteria and provided for a well thought-out development. He said the project created a higher degree of density and close proximity to new commercial and hospital development, provided a greater diversity of housing and land use products and helped recapture costs of previously installed infrastructure on King Avenue. He said that as Councilmember Veis pointed out at a previous meeting, there was a substantial upside to the City to annex a contiguous parcel to allow control in accordance with City standards and garner City taxes to maintain and improve

the roads, library, parks and other facilities that residents in the area would use whether they were in the City limits or not. He said the project had received little or no public protest and had actually received a wide support from significant businesses, individuals, and agencies in the community. He said it was governed with regard to the services provided; fire and police were in the area, sewer capacity was there, and adequate water pressure was in the area. He noted that water quantity was questioned but the City had been behind the curve in water capacity since the first storage tank was put up. He said the calculations were based on a 2-1/2% growth rate and used the same numbers that were used in the current water and wastewater plan. He continued that the only zone that was adequate was Zone 2, so the city was paying for the sins of the father. He said he'd be happy to discuss the other items brought up and several of the comments made with regard to the access, platting procedures, the quantity of water and storage and asked that Councilmembers review department and staff reports which recommended conditional approval. He asked that Council embraced the project as so many others had. He also pointed out that the owners and their attorney were present for further questions.

Councilmember Stevens asked where Zone 2 was. Mr. Leuthold responded that it was primarily in the area that impacted the medical corridor, an area where water supply needed to be provided in the event of a catastrophic event. He noted it was the only zone in the city that had adequate storage capacity. He said the city was behind in water storage capacity and a big portion of the \$270 million in the CIP was part of what needed to be done there. He stated that he and his parents and grandparents had never paid the price and he applauded the city for the rates.

- **Dan Poling, 687 Black Diamond**, said he was present to represent St. Vincent's Healthcare. He said that the Hospital voiced support of the annexation currently and previously when the annexation was considered. He said the Hospital would be the neighbor on the east side and had been involved in many of the discussions with their consultants and team. He said the Hospital felt the development was consistent with what it developed in The Village and they supported the annexation and completion of that block and believed it was the right thing to do.
- **Bill Cole, 3733 Tommy Armour Circle**, said he was present to answer questions but had three or four points to justify the annexation. He said the development met all the criteria and was what the City said it wanted. He said it implemented the smart growth principals that had been sought out, was contiguous and a best case scenario from a cost-benefit analysis. He noted it was a relatively low cost to the City because it wasn't a Briarwood or an annexation that required infrastructure costs, there were no park maintenance or development costs, and a double bonus because there were 14 acres of park area and not only did the City not have to pay for it, it would remain on the tax roles to continue to generate tax revenue. He noted it was consistent with the West End Plan and was needed. He said Pat Shindele and others talked about

the need for workforce housing and that would provide the opportunity for reasonably-priced convenient housing near a part of town experiencing growth.

- **Dan Cotrell, 1007 Lewis**, said he represented the Firefighters Local 521 in Billings. He said he understood where the Council came from in trying to increase tax revenue and he had a few concerns as a representative of the labor force that provided fire suppression to the City. He said he understood the project would be phased in over a several-year period and agreed that was a good plan. He said he didn't see any way that adequate staffing would be provided to the fire department and it was even said that there was uncertain staffing of the ladder truck, and yet multi-family use housing units were planned. He said two six-plexes burned down the day before and the City was protected for over two hours with one fire engine and three people. He said it was a poker game and he didn't know if the Council wanted to continue playing it. He said they had gone to bat in partnership with the City several times to try to increase staffing to the appropriate levels and still hadn't succeeded in that for multiple reasons. He said he'd like to see a plan enacted to get the staffing of the fire department where it needed to be to protect the safety of the citizens and the safety of the firefighters. If that could be done, they could support the plan, otherwise, they did not support the annexation.

Councilmember Ulledalen said Mr. Cotrell brought up a couple of good points and asked what he thought the staffing level needed to be. Mr. Cotrell said former Fire Chief Marv Jochems came to the Council with support of the firefighters and a recommendation to provide 12 additional firefighters to staff Fire Station #7 and three additional firefighters to staff the ladder company. He said that would have meant a minimum of three men on each response unit in the City, which would be 26 people per shift. Councilmember Veis said the question arose then if it was the position of the firefighters union that a moratorium was needed on annexation for the City of Billings. Mr. Cotrell said something of that size would put quite an additional workload on them and more and more was asked of the labor force of the City, and yet the tools weren't provided to achieve the level of success that was wanted. Councilmember Veis asked if that was a 'yes.' Mr. Cotrell said they would not support a project of that size with the increased workload they would have to step to the plate and provide and they didn't feel they could safely provide it for their members and a safe environment couldn't be provided for the people they're supposed to protect. He said their job was highly technical, labor intensive and manpower dependent. He said the fire engines provided didn't drive themselves to fires, put bandages on people who needed help, didn't put out the fires, didn't open the roofs of cars to get people out; people were needed on the equipment provided. Councilmember Veis said the question then was what size annexation was the firefighters union comfortable with. Mr. Cotrell said they didn't have a specific size.

Councilmember Ulledalen asked Mr. Cotrell to tell him about the ladder truck because there would be multi-story buildings built in the proposed development and he asked if that was something the fire department could currently deal with – a fire situation in a multi-story building in that part of town. Mr. Cotrell said he didn't understand the question. Councilmember Ulledalen said the annexation proposal

included multi-story buildings and there was a new station and a crew at the new station, but there was an issue about whether there was sufficient apparatus to defend that part of town. Mr. Cotrell said staff was stationed on the west end. Councilmember Ulledalen said he was talking about equipment, not people. Mr. Cotrell said the equipment issue was that the ladder truck downtown was not staffed at times. He said it was staffed prior to January 1 of the current year, but was not staffed at times. He said it wasn't staffed 14 of 29 days in February. He noted that for an 80 foot tall building, one could appreciate the need for a 104 foot ladder to get to the top and if the ladder truck wasn't running, the longest ladder available was 24 feet. Councilmember Astle asked about the response time from where the ladder was housed, which he assumed was Station #1, to King and Shiloh. Mr. Cotrell said he couldn't say what the response time was; it would have to be driven to determine that.

- **Joesph Sands, 2512 Terry**, said he was also an executive board member for Firefighters Local 521 and he supported Dan Cotrell and the other members of the Local. He said the Council had always supplied them with great apparatus and well written procedures. He said they also had a lot of the latest gadgets, but all that was in vain without the manpower or staffing to staff the equipment and to put the gadgets and equipment to work. He said there was a nationally-accepted standard of four firefighters for every piece of apparatus in the City. He said they didn't meet that, nor do most of the other departments in the State. He said they were faced with three-man engine companies and the difference in that was palpable on a fire scene. He said a four-member engine company, or fully staffed truck company with four or even three members, could accomplish more in a five-minute time frame than three people could accomplish in ten minutes on a fire scene. He said on February 5, 2008, in Prince William County, Maryland, a department roughly in excess of 70 more members than what the Billings Fire Department currently had, placed 23 operational people, not including a battalion chief at its typical response to a structure fire. He said in seven minutes, rookie firefighter Carl L. Wilson was inside the building and the building started to collapse around him and that firefighter was lost for an eternity. He said the 23 guys on scene could do nothing to save him. He compared that to the Billings department placed 13, including a battalion chief at its typical response. He said firefighters now were in more jeopardy without a fire truck being staffed and with an annexation of that type and density. He said it was all about density, packing people on top of each other. He said it was inherent for them to address staffing for large annexations like that.

Councilmember Veis said the area was in the BUFSA and it didn't have to be annexed, they could go to the County and get it. He asked if the City had to fight fires if the building was in the BUFSA. Mr. Sands responded that they would still have to fight fires there but he believed there were other means through BUFSA increase and money the department received that may help increase staffing or other alternatives on that aspect. Councilmember Veis asked if it was built in the County, could the firefighters negotiate the BUFSA contracts so the City would get more staffing at the fire department. Mr. Sands responded that it could be a means of addressing that. Councilmember Veis said the Fire Department administration was supportive of the

annexation and he asked if there were errors in its support. Mr. Sands said he believed fire administration supported it but also had concerns, specifically about the aerial that came from Station #1 and with the aerial not being manned; there were 15 of 29 shifts in February when the aerial wasn't manned. He asked what the trade off was; how they would be able to rescue someone from the fifth story of a building on the west end without the 104 foot aerial. He said the 70 foot bucket from Station #4 couldn't service that height. He said that by the time the building was figured, parking next to the building and bringing the apparatus out from there, the 70 foot bucket wouldn't touch the fourth floor of a building. Councilmember Veis said it wasn't in the staff report that the Fire Department said they couldn't do that and it was generally supportive. City Administrator Volek advised that both Public Works and the Planning Director informed her that the fire administration had indicated that if a building was 80 feet or less, it could be handled without the ladder. City Administrator Volek asked Mr. Sands about the shifts in which the truck wasn't manned and what percentage of calls on those shifts were fire calls. Mr. Sands said he didn't know the percentage but knew that on those shifts, there was not an aerial device staffed and they responded to 20 structure fires in that 15-day time frame. Ms. Volek said '20 structure fires in the City of Billings?' Mr. Sands responded that there were 20 alarms. Ms. Volek asked if there was a fire in every case or if it was the smell of heat, fire smell, or smoke, etc. He said it was a dispatch for a structure response. Ms. Volek said that didn't necessarily equate to fire in the structure and Mr. Sands said that was correct.

- **Mike Kase, 2908 Vermillion Drive**, said he was the Vice Chairman of the West End Task Force. He said one of several concerns was the density. He said he saw that numbers weren't mentioned but they were included in the minutes of the last meeting and there were 3,300 residents dropped in that area. He said in checking the census of 2000, that number was equal to the City of Hardin, Deer Lodge, or Shelby, Montana. He also said Billings already carried a large inventory of buildable land along Shiloh Road and as soon as that was commenced that building would take place. He stated that Monad Road was a concern and as Councilmember Veis stated, it would include a blockage across Shiloh. He said the task force strongly recommended that would be looked at although he didn't know who a recommendation went to, but Broadwater was already cut off so there was Grand Avenue, Central Avenue and King Avenue going west and if the development added another 3,300 more people who had to travel in that direction, plus what was beyond that, that could be an issue. He said a third concern was parks and recreation. He said site map reflected very little area for the tenants and the plan talked of family units. He said the parks were already overloaded and the plan indicated an addition of 1,000 children. He said he was also a coach in the City of Billings and knew how difficult it was to get park time for organized teams. He stated that he knew that School District #2 expressed concern and to add 1,000 students without anything set up for them was a concern. He said the West End Task Force recommended against approval of the annexation.

Councilmember Veis stated he wanted to clarify that the decision on the intersections was made by the Montana Department of Transportation and blessed by the Council.

- **Leo Barsanti, 3316 Pipestone Drive**, said he was also with the West End Task Force. He said he followed the proposal through the planning process, with the Zoning Commission and was at the February 25, 2008, Council meeting when it was first considered. He said he listened carefully and was interested in some of the staff comments citing 'service challenges; conforms but conflicts; supportive, but; stress; serious concerns; contingent.' He said there were a lot of words, a lot of 'buts' and a lot of reservations. He said proponents commented that it was risky, but a risk the City of Billings needed to take. He said risks had been taken as alluded to on Briarwood, Ironwood, possibly the Country Club, and maybe even Rehberg Estates where the City probably overextended itself. He said there were problems with some of it but the most interesting comment he heard was last time he was there when the Lenhardt family basically admitted they had no plans to build out the particular project. He said there was no smart growth there and all the pretty pictures shown by the man from Las Vegas were very unlikely to ever come to fruition. He predicted that it would be sold to six to 10 different developers and for the next dozen years the Council would be dealing with those individuals and what they wanted to build on that particular property. He said Council would be faced with reconfigurations, rezoning requests, etc, etc. He said Shiloh Road wasn't even funded at the present; only 60%. He added that when and if it was funded, Council would be looking at hundreds of millions of dollars worth of development along Shiloh Road and that property sat west of all of that and the cart was before the horse there because infill would come in and now there seemed to be enough lots available. He said approval was needed of developments based on merit by developers that were ready to go and had a plan and wanted to build, not simply for the profit potential and principals involved which was what he figured that was about. He said he empathized with the Council because they had a difficult job. He stated that the task force hoped that growth was considered with a careful planned manner and within the parameters of the City budget and he sincerely hoped it would be turned down.

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

Councilmember Veis moved to approve a resolution for annexation #08-01 with conditions, seconded by Councilmember Pitman. Councilmember McCall said she had a question and a couple of comments. She referred to the question and answer document item "Will the cost-of-services study recently initiated by the city provide definitive information regarding annexation" and the answer was "Probably not. . . as a whole but will not break out or compare the costs of old versus new construction." She asked if that was an accurate statement. Assistant City Administrator Bruce McCandless said he believed that was probably correct. He said the cost of services study was intended to be a first step toward what could eventually be a more detailed study on the cost of annexation. He said he thought it would likely tell how much it

would cost to provide services, like fire protection for example, to a residential subdivision located somewhere within the City of Billings. He said he didn't think the study would be fine enough to give the distinction of the cost of building on the perimeter of the City versus building in the interior. Councilmember McCall asked when completion was anticipated. Mr. McCandless said it would probably be late summer. Councilmember McCall said Mr. Barsanti kind of took the words out of her mouth. She said she thought the plans were good in many ways and she was very concerned about supporting it. She said she agreed with his comments that departments supported it but there were several issues they were concerned about and for her, some of those issues were around safety such as police, fire, and schools. She said at this point, she would still vote against the proposal.

Mayor Tussing said he supported the proposal the last time, somewhat reluctantly because of the concerns expressed. He said that unfortunately, there were less firefighters than believed there would be at the present due to circumstances beyond most of the current Council's control. He added that the development would still be in School District #2, still in the BUFSAs, and if it was built the people would still use the City parks and he was concerned that it was built to City standards and said he didn't think the Council could arbitrarily approve developments. He said there were other concerns that needed to be addressed, like public safety. He said Mr. Llewellyn testified earlier that new development paid for itself which was true they paid for sewer, water and streets but they didn't necessarily pay for themselves when it came to public safety. He added that was an issue and a bandaid had been put on even though the public safety levy was passed. He said that area hadn't gained ground and was barely keeping its head above water. He said it needed to be addressed but unless the Council said it was stopping now and wouldn't start again until it had all the answers, he would support the annexation.

Councilmember Pitman said he supported the annexation as he did the first time. He said he believed that with new buildings, there was less chance of fires because there were higher fire codes. He said the buildings that burned the day before were older buildings. He said it was the core of the City that had the highest usage and he didn't believe a new subdivision created a huge demand. He said he thought that was what came from staff was that when it looked at the hard core facts, it seemed like it would create demand, but when it looked at the fact of new construction, it was dense and there probably wouldn't be the fire calls that a spread out area would have. He said the police calls didn't seem to go to the enclosed subdivisions as much as to the downtown and more open areas. He added that he didn't see a huge impact on the safety immediately and, obviously, as the City grew, that would be an issue. He said as far as the schools went, when there was talk of 1,000 children, that didn't mean they were all students; 0-6 year olds didn't go to school. He said it was easy to throw out numbers and he didn't think it would be as big of a stretch as was being presented.

Councilmember Astle said he had a question about Monad Road. He said that in making an assumption that Shiloh Road was built and the roundabouts were installed and the state handed it over to the City, he wondered if the roundabouts be removed because it would be the City's property. Councilmember Veis said the access agreements that would be in place when MDT built the road would be the same access agreements that would be given to the City when the road was built and to change them

would mean convincing the Transportation Commission that it was a good idea. Councilmember Astle said that basically, Monad was a dead-end street no matter what the City did. Mr. Mumford said it would be a right in/right out street and would have two of the four movements, but the access agreement allowed full access at the one mile increments only. Councilmember Clark asked if that agreement was currently in place and Mr. Mumford said that it did not exist until the road was built.

Councilmember Stevens advised that she opposed the annexation last time and would continue to oppose it for the same reasons. She said as Mr. Barsanti testified, staff used 'buts' and caution and tried to be as optimistic as possible but she thought there were concerns and she said she had questions about how much annexation the City should take on given the current financial situation.

City Attorney Brooks added that if there was an inclination one way or the other regarding approval of the annexation, the seven criteria should be referenced whether they had been satisfied or not. He pointed out that those criteria were found on the first page of the annexation policy. Councilmember Stevens said the last time she did that thoroughly so she wondered if she could reference her comments from the last meeting. Mr. Brooks said they could be adopted but it would be better if she could remember them generally to articulate them. He said he didn't suggest to Council that it vote one way or the other, but wanted to point out the basic criteria. Mayor Tussing asked if it was more critical if it wasn't approved that it was articulated which criteria the Council thought it didn't meet and why it didn't approve it, than it was if the annexation was approved because the Council felt it met the criteria. Mayor Tussing said he was going to vote for it and wasn't going to articulate that.

Councilmember Clark said the real concern he had with the subdivision was the fact that if it wasn't approved by the City it would be built in the County anyway and eventually another subdivision would be picked up that wasn't built to city standards and then there were all kinds of problems like some of the others that had been picked up. Councilmember Stevens asked why those subdivisions had to be picked up and why Councils continued to do that. Councilmember Clark said it was because otherwise they were jumped over and something outside of that subdivision was annexed. He said there would be a County island in the middle of the City. City Administrator Volek said the development could be done in the County but it could not be developed to the density proposed without water and sewer. She said it wasn't physically possible to put 3,000 people on 114 acres without water and sewer as part of it. Councilmember Veis said to add to Councilmember Clark's comments, they probably wouldn't be able to build to the density they're talking about currently, and sooner or later they would run out of groundwater on the west end and when that happened, they would come to the City for annexation because the area was out of water or because it had wastewater issues. He said nobody knew what the scenario could be because it was brought up quite often that maybe the council didn't make wonderful decisions in the past in regard to leapfrog annexation. He added that Council needed to remember that the proposed annexation bordered by the City on two sides; it was not an island being annexed, but a piece of property bordered by the City. He said he knew it was tough on the services and part of that was because of some of the annexations outside the City, but the Council would be ahead of the curve if it was annexed now and built to City standards so it didn't need to be done later and this was not leapfrog annexation.

On a voice vote, the motion was approved 7-4. Councilmembers Gaghen, Stevens, McCall and Ulledalen voted 'no.' Councilmembers Ronquillo, Pitman, Veis, Ruegamer, Astle, Clark and Mayor Tussing voted 'yes.'

8(b) PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #829: A zone change from Agriculture-Open Space (A-1), a county zoning district, to Planned Development with three underlying zoning districts - Mixed Use (MU); Multi-family Residential (MF-R); and Single Family, Residential Multi-Family (Four-plex) (MF-4) located at 4345 King Avenue West. Lenhardt Property, LP; Lenhardt Farm, LLC and Lenhardt Enterprises, LLC, owners, Engineering, Inc. and Bill Cole agents. Zoning Commission recommends approval and adoption of the determinations of the 12 criteria. (Action: approval or disapproval of Zoning Commission recommendation.) Planner Nicole Cromwell stated that this was the last piece of the Lenhardt applications. She said many of the previous staff recommendations and reviews were based on the zoning application from the agriculture open space to a planned development zone with various uses as described within the Planned Development Agreement, attached to the staff report. She said the document covered everything from definitions to allowed, prohibited and special review uses, and maximum densities for each of the specific zoning districts. She displayed a map that showed the agriculture zoning that surrounded the property to the north and the west. She indicated that the streets, street names and access points to King Avenue were all for illustration purposes only; not a final layout of interior streets or access points to King Avenue. She said the proposed zoning for the mixed use zone (MU) was a total of 19.9 acres and the maximum density of that would be 20 dwelling units per acre. She said the maximum height of buildings was proposed at 80 feet and they were allowed to build similar to downtown buildings where the ground floor was commercial/retail/restaurants and it could contain several stories of residential uses above that. She said the interesting part of the mixed use zone was that after the third story was on the building, the remaining stories had to be stepped back so it didn't have as much bulk or weight on the street. She pointed to the second zoning type of multi-family restricted (MF-R) for 52 acres with a maximum density of Tract 1A at 20 dwelling units per acre and Tract 3A at 15 dwelling units per acre, a 40 foot maximum height, 50% lot coverage and it was primarily for attached two or more family six-plexes in any configuration up to the maximum allowance. She said the third type of zoning was single family residential multi-family (MF-4) which covered 27 acres and allowed a maximum of 10 dwelling units per acre, a 34 foot maximum height which was consistent with the maximum height of all single family and two family residential districts. She said the zoning type also allowed for 50% lot coverage and was primarily be for single family and multi-family up to four-plexes only. She said the fourth zoning type was open space or public zoning for 14.27 acres to be used for public trails, linear parkways and some larger open space in the center that would be similar to a village commons area. She displayed the aerial view which showed that there were three lots that would be wholly surrounded by city property with the annexation which put them in jeopardy of being annexed by the City at any time. She showed that The Village Subdivision was directly east and hadn't been developed yet but construction was planned to begin in the spring. She said the Zoning Commission recommended approval and referred to

modifications to the Planned Development Agreement as listed beginning on page 5 of the staff report. She noted that the underlined sections were changed, added or deleted. She said the seven issues were addressed by the Zoning Commission. She said on February 25, because there wasn't a public hearing, the applicant and agent also submitted what she believed to be minor amendments and corrections to the planned development which were outlined in attachment B. She said her recommendation was to adopt those minor amendments to the Planned Development Agreement as well as adopt the changes recommended by the Zoning Commission. The Zoning Commission's vote recommended approval based on the following 12 zoning criteria:

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

The Growth Policy and the West Billings Neighborhood Plan support higher density residential and mixed uses along arterial streets between intersections. The proposed density could be supported at this location. Standard density for Residential Multi-family (RMF) zoning districts is a maximum of 76 dwelling units per acre. This zone does not limit height, however 1.5 parking spaces must be provided for each unit and the maximum lot coverage is 55%. The proposed Mixed Use (MU) zone has a maximum density of up to 20 dwelling units per acre, or 26% of the maximum residential density in an RMF zone. The Growth Policy encourages new development that is compatible and complementary of the surrounding land uses or planned land uses. All of the surrounding zoning districts have maximum building heights of 45 feet and maximum lot coverage ranging from 30% to 50%. The proposed zoning allows maximum building height in the MU zone of 80 feet and lot coverage of 100%. This is compatible and complementary to the surrounding existing and proposed land uses.

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

The new zoning is not designed to lessen congestion in the streets but does locate zoning districts that generate the highest number of vehicle trips on arterial streets that are designed to handle the increase in traffic. Traffic impacts have not been identified but may be identified in a future Traffic Accessibility Study when a subdivision of one of the tracts is submitted or site development occurs. If developed to a maximum residential density of 1,411 dwelling units, up to 14,110 new vehicle trips could be generated from residential uses. Commercial, retail and office uses will add to the trip generation. The Montana Department of Transportation will control access to King Avenue West as well as determine what mitigation will be required such as traffic lights, turning lanes or other mitigation measures.

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

The property has public street frontage on King Avenue West and is proposing to extend Monad Road from the adjacent property to the east. The zoning master plan shows a proposed road layout that jogs the right-of-way for Monad Road to the south after it enters Lenhardt Square. There is concern about street continuity for Monad Road, a designated collector street west of Shiloh Road.

The zoning Master Plan is not the final layout of streets and access points for any future development. Those details will be finalized in a future subdivision or development agreement. There is some concern about providing water for the full build out of the development. Planned water storage improvements should mitigate this concern, but may limit the timing of build out of the property.

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

The new zoning contains restrictions on uses allowed. In general, this list of allowed uses restricts the development of any type of manufacturing. The zoning does allow zero lot line setbacks in the Mixed Use zone and higher density. This should not affect the health and general welfare.

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

The new zoning provides for sufficient setbacks in the Residential Single Family and Multi-Family zoning districts. The Mixed Use zone has a central Common Open Space area that will allow for adequate light and air even with zero setbacks for structures and 100% lot coverage.

6. *Will the new zoning prevent overcrowding of land?*

The new zoning, as do all districts, have limits on the maximum percentage of lot that can be covered with structures. In the Residential zoning districts this is proposed at 50% of the lot area. The Mixed Use zone allows 100% lot coverage but the central Open Space area will mitigate this allowance. In addition, maximum residential densities are proposed that will prevent the overcrowding of the land.

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

The Residential zones allow single family and multi-family dwellings. The average density of the entire parcel will result in approximately 12.5 dwelling units per acre (maximum) or a population of 1,411 families. This is a similar density to other existing or proposed neighborhoods in the area. The average household in Billings is 2.34 persons resulting in a population increase of approximately 3,302 over an estimated 10-year build out period. The existing population of this area of Billings is about 9,450.

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

Transportation: The new zoning will have an effect on the adjacent streets and traffic patterns. A traffic study has not been completed but additional traffic analysis to determine how traffic will be accommodated must be completed.

Water and Sewerage: The City will provide water and sewer service to the property and does not have adequate capacity to serve this property at full build out at this time. The Urban Planning Study indicates the total build out may use more than the remaining capacity for this water service zone. The Public

Works Department is proposing an interim maximum of 600,000 gallons per day until the storage improvements are completed.

Schools and Parks: There will be an effect on parks and schools from this rezoning. The proposed parks will be developed at the time of the subdivision and will need to be maintained through the private owners association. The school district will be impacted by this development. The potential increase in school age population will require additional classroom space and staff. This will not be offset by an overall increase in mill levy to the School District.

Fire and Police: The property is within the Billings Urban Fire Service area. It is currently active agriculture land with one existing dwelling. At the proposed maximum building height of 80 feet in the MU zone, service calls for new buildings in the MU zone may require the bucket truck from Fire Station #4 at Terry Park to respond. Response time will be greater than otherwise anticipated for these structures. Other structures can be protected by apparatus at Fire Station #5 on 24th Street West or new Fire Station #7 at 54th Street West and Grand Avenue.

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

The primary zoning in this area is Planned Development to the east with mixed uses of commercial, medical and residential dwellings, Entryway Light Industrial to the south with primarily commercial development, and Agriculture Open-Space zoning to the north and west with very low density residential uses and active irrigated crop land. The proposed density and mixed uses are compatible with the existing and planned land uses to the east and south. The King Meadows Subdivision south and west of Lenhardt Square does provide for a mix of residential densities including Residential Multi-family-Restricted (RMF-R) and Community Commercial zoning at the intersection of King Avenue West and 48th Street West.

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

The subject property is suitable for the requested zoning district.

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

The new zoning may alter the value of buildings in the area. There are three parcels of land directly east at 4245, 4249 and 4253 King Avenue West that have single family homes and the marketability of these properties may be significantly reduced if sold as single family homes. These parcels are also bordered by the Village Planned Development further east on King Avenue West.

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

The new zoning will encourage the most appropriate use of this land in the area for urban development.

Ms. Cromwell noted that the overall density was about 12.5 units per acre, which was a sufficient density to support public transportation if additional funding became available to provide it. She said the proposal used property in an efficient manner at that development density and the surface providers talked with during the planned development review believed that the initial development proposed was much denser and the buildings were taller. After the initial review, the planned development was modified to set the maximum density limits, lowered the building heights and gave some relief to that building bulk in the mixed use area. After those amendments the Zoning Commission and City agencies that saw the second plan said that was an acceptable plan for the property.

Councilmember Clark asked if the requirements were set in stone if the zoning change was approved. Ms. Cromwell said there were some minor things that could be done in a planned development that they wouldn't otherwise be able to do. She said it could add up to 2% per unit than what was proposed, but she didn't see that often with the current planned developments and that was an option on every planned development. She said the zoning followed the tract designation so even if a tract changed the boundary, the zoning would go with that. Councilmember Clark asked if the boundaries could be changed without approval. Ms. Cromwell said if someone said they wanted to purchase Tract 1A and wanted to put in a subdivision, it would come to Council even if it was a minor subdivision. She said the zoning set the maximums and whether the maximums were achieved through the development was another thing entirely. Councilmember Clark asked what zoning classification it was with the just approved annexation. Ms. Cromwell said it was automatically zoned residential 9600 and without a zone change, it would remain at that classification. Councilmember Ullendale said he visualized five tracts that could potentially be bought and sold by any number of people before it was developed. He asked what would happen if someone came forward in the future and said they couldn't use the property for the original use and wanted to change its classification. He said a potential buyer could want to rezone it for whatever use they felt was better for them. Ms. Cromwell said all applications were taken and any change to the planned development would require the applicant to follow the zone change process which basically added months to a zone change. She added that some minor things could be done to change the zoning plan without coming back to Council and a future Council would have to make the decision based on zoning criteria.

The public hearing was opened.

- **Rick Leuthold, Engineering, Inc** said he would speak to a couple of things that were brought up then he would turn it over to Mr. Cole who was essentially the author of the document. He said to remember the things talked about were teeth, control – things they didn't want to get away. He said the Planned Development Agreement and zoning essentially had all of the teeth and the

position of any of the zoning documents and ordinances in place currently. He stated that in order to change that for the property, it would go through that zoning process, through the Zoning Commission and back to the Council to have it changed, the same as any other zoning area within the City. He said in regard to platting, the only things that existed right now were the five tracts identified by single lines that existed. He said contrary to Mr. Barsanti's comments, the development was ready to go and the first step was a subdivision plat with an SIA document that came before the Planning Board and before the Council and met the criteria of the planned document in every detail. He added that it would go before the Public Works Director and his staff with regard to water consumption and the things talked about in previous hearings. He noted that all the other parcels would follow the same process as the project progressed. He said it was full of checks and balances that came before the City Council and it was the teeth, as talked about before, that gave control over what would happen to it tomorrow, five years from now and ten years from now. He said it didn't necessarily mean that in eight years the dynamics of the economy couldn't change. He stated that the development tried to mimic the things seen in Stapleton, Lowery, Centura, and the rubber plant redevelopment in the Denver area that made better and more efficient use of the property and provided a better product to the people living there in a more cost-effective standpoint. He said that in regard to access, they had to go to MDT but 44th and 46th were keyed in and designed to be there. He said Monad road would be pinned down as the project went through the platting process through work with Staff and would come back to Council with regard to the plat process. He said all the things talked about with regard to access would be handled in those areas. He said the densities were maximums and were very rarely achieved under existing zoning.

Councilmember Astle asked if tract 180 that ran north and south on the east end was sold. Mr. Leuthold said it was under contract contingent on the actions taken by Council that evening. Councilmember Astle asked if it would be a high density area. Mr. Leuthold said that it would be built out according to the densities in the plan, and was an apartment type of facility. Councilmember Astle said he understood it would be 500 units. Mr. Leuthold said he thought was what had been kicked around in regard to the ultimate build out and again, timing and absorption came into play because there were four or five pieces that would be built out in the next several years. Councilmember Astle asked for the height of the buildings. Mr. Leuthold responded that under the PDA, the limitation for those buildings was 40 feet which was the same as a residential building and was essentially the same as a residential multi-family zoning that allowed up to 40 feet. He said it was a three story concept similar to a development on Monad Road. Councilmember Astle said it was the same builder as well and Mr. Leuthold said that was correct.

- **Bill Cole, 3733 Tommy Armour Circle**, said it would be difficult to try to go through the 37 pages of the agreement so he would make himself available for questions more than anything. He said he wasn't really the author. He said the document was based on what Council already approved for The Village for St.

Vincent's. He said staff was intimately involved for a number of months and it had been well reviewed by the Planning Department. He said this was a different document than what had originally been presented to the Council. He said the densities were decreased dramatically as Mr. Leuthold referenced. He said in the mixed-use area just discussed, the density limitation of 20 units was really only about 26% of what the Council allowed in that same type of zone. He said that document had a real limitation on density that didn't exist in the existing zoning regulations. He also pointed out there were innovative features that he wouldn't take the time to talk about in detail, but parking arrangements, limitations on the amount of surface parking, multi-story parking, the town square concept so there would be a commercial product around the green space on King would all be attractive and created a neighborhood walkable community which was what the Council said it wanted in the West End Plan. He said it would be a great model for development all over town and especially in that area west of Shiloh. He said it there would be very detailed design regulations and covenants.

Councilmember Astle said he wanted to talk parks. He asked about a term that was bantered around over the weekend among two high ranking democrats with one calling the other one an elitist and he thought it translated to one person thinking they were better than other people. He said when parks were locked out from the general public, and yet those same people wanted to use the public parks like Gorham Park and Pioneer Park, that would be an elitist attitude to him. He said Mr. Basanti and Mr. Kase, lived in his area and he had known them for a long time. He noted that Mr. Kase was correct that parks were needed for kids and they didn't need to be locked up. Councilmember Astle said he wanted to talk about item #9 (under Article IV of the Planned Development Agreement) where it said that parks wouldn't be available. Mr. Cole said the City didn't want the park. Councilmember Astle said the City Parks Department didn't want to take care of the park at this point; that was not to say that the City didn't want it. He said the City may have to be told how to do it, but he was part of the City too. Mr. Cole said Councilmember Astle made a good distinction. He said the Parks Department made it very clear that they didn't want ownership through a dedication or maintenance obligation so the owners responded that they would pay to develop it, would pay to maintain it, would keep it on the tax roles and would make no effort to exclude the public whatsoever although it was very significant under both Montana law and under the City's own park development requirements that a planned development zoning unit like that was completely exempt from any park dedication requirement. He said the City had no ability to require dedication of land in that case, although in that case because they agreed wholeheartedly, the public needed easy access to the area and there wouldn't be any effort to exclude the public. Mr. Cole said the owners actually expanded the amount of land that would be developed beyond what would be required if it were to be dedicated to respond to the Parks Department desire for at least a five acre piece for pick-up games of softball, soccer, etc. - uses which were very legitimate and important needs for the City. Councilmember Astle said he specifically recalled from the last time the item was considered that there was a move to limit parking so there wouldn't be any parking adjacent to the parks, which meant that a

person could drive by and look at the park, but if they didn't live within walking distance they couldn't go there. Mr. Cole said he didn't think that had been resolved and it would be addressed in the planning process. He noted that he didn't think there was an overt attempt to eliminate parking but it may be limited. He said another thing about parks that was important to understand was that by doing that as a package, there actually would be a large quantity of parks and if the property was developed in small pieces, there wouldn't be any ability to require a large dedication of park. He said a bunch of developers would probably end up getting cash in lieu to the City and then there wouldn't be any parks in the area which would be a real tragedy.

Councilmember Pitman said one thing he just covered was that they could have done cash in lieu of any kind of park land and not had anything. He asked if it would be a gated community. Mr. Cole responded that he hoped not because they had to make a lot of money on the commercial area so the volume of people flowing through would be important. Councilmember Pitman said he thought exclusion of the public which would mean the residents as well, wouldn't be an accurate statement. Mr. Cole said there was no effort to exclude the public.

Councilmember Ulledalen asked how the Council could make future buyers understand that they didn't have full access to water. He said he had heard stories that speculative buyers called from places like California. Mr. Cole said that was a good question. He said the average homebuyer would probably not be impacted by that because when the 600,000 and 300,000 water numbers were reached, they would be large issues that impacted large sales of the tracts. Councilmember Ulledalen said that was what he meant, a tract buyer that wanted tracts. Mr. Cole said it would be a multi-million dollar purchase and a pretty sophisticated party so that was important. He said the water issue would be in the development agreement and that was an important part that had to be developed between the City and the developer, and it would be recorded and part of the title. He said they could potentially talk with staff about an abstract that would really stick out for tract purchasers. He reiterated it would be recorded and part of the title search.

Councilmember Ulledalen said the reviewer seemed to have pretty broad latitude in terms of what was done and what wasn't done in it. He asked who the reviewer was. Mr. Cole responded that it was appointed by the founders, which would be the Lenhardt family, as long as they owned property in the development. He said the reviewer had broad discretion and it was spelled out. He said the reviewer discretion was less than what the City allowed with the St. Vincent's property in that the reviewer couldn't affect setbacks and couldn't affect percentage of lot coverage which the City allowed with The Village property.

Councilmember Astle said the fireman testified to his concern and he was concerned as well. He asked where the 80 foot building was contemplated. Mr. Cole said it was in tract 4A, on the south section. Councilmember Astle asked if it was under contract. Mr. Cole said it wasn't and would probably be toward the end of the buyout. He said commercial development typically liked to see rooftops around. He said that wasn't just a commercial area, it was a mixed-use area and every development had to have a combination of residential and commercial. He added that Fire Department administration didn't talk about its truck availability and thought the department could service the 80 ft building and that was consistent with his recollection.

Councilmember Ulledalen asked if developers had any liability. He said it was basically on record and the fire staff told us that there were questions regarding rescues. Mr. Cole said he hoped to never find out. He said the nice thing about that area was that it would be subject to commercial building codes and it would be sprinkled, unlike the recent apartment fire tragedy so the need for fire protection would be reduced, but not eliminated. He said there would also be insurance that would cover such things.

There were no other speakers so the public hearing was closed.

Councilmember Veis moved for approval of zone change #829 with the minor modifications from the Zoning Commission and the applicant, seconded by Councilmember Ruegamer. On a voice vote, the motion was approved 8-3. Councilmembers Gaghen, Ulledalen and Astle voted 'no.'

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

- **Kevin Nelson, 4235 Bruce**, said he wanted to set the record straight about earlier comments. He said to Councilmember Ruegamer that they did sit in a meeting together and he quoted him as saying, "City staff is going to look out and make sure that we are following the law." Councilmember Ruegamer said he didn't say anything like that and he shouldn't tell him he said that.

Mr. Nelson said he had an email from Bruce that said the City was going to start over, and the district was void. He said that at the Planning Board, Candi Beaudry said the staff was returning to the first step of the process. He said public participation was allowed under state statute. He said that was the urban renewal that was put out for public review October 23 at the Planning Board meeting. He added that on November 26 there was a public hearing and after the public hearing was closed there were additional comments. He said the red lines in the document reflected those comments after public review and it was full of red lines. He said on Monday, December 10, 2007, the City Council agenda recommended several language changes to the Urban Renewal Plan, which was after the public comment. He quoted from a document, "Mr. McCandless said earlier that there were no changes. Mr. Veis said 'why isn't this going back to the planning board'" and that was his question. He said there were additions to the plan; it was evident by the agenda items, and the plan needed to go back for public review and comment from the Planning Commission so they could follow the law. He said it was very clear that the law needed to be followed. He said not to do it, he didn't really care because one of the things he noticed was that the cameras were running, his documents were at the State and if Council refused to answer the questions he didn't care because his documents and the tapes would go to Helena and the Department of Revenue would review the documents to determine if they followed the law. He said he didn't care. He said they asked for a meeting and he didn't want to meet with them. He said Council was going to vote on it, they were not and it was up to Council to answer the questions, not them. He said Council could sit there and do

nothing and refuse to answer the questions he brought forward, he said he had tried to get the questions answered and as he said, his documents were there. He said how much of it was relevant to the request the State made of Council to withdraw those documents, he didn't know. He said additional documents would go to the State and his weight was just as weighted as Council's and they would review the documents, compare the statutes and make the determinations.

Councilmember Ruegamer said he would set the record straight. He said that Mr. Nelson said they spoke for 2-1/2 hours and he knew Mr. Nelson didn't remember everything Councilmember Ruegamer said any more than he remembered everything Mr. Nelson said. He said they talked about tax increment districts and how that would affect that area, period. He said he didn't speak for Staff; however he said that Staff followed the law, they had done several tax increment districts in Billings, Montana. He said the State looked at the City as a model and Mr. Nelson was the only one who didn't like what was done. Councilmember Ruegamer said Mr. Nelson could send everything in the world to Helena but the fact was that Helena looked at Billings as a model for tax increment districts. Councilmember Stevens said that the reason it was withdrawn was because Staff, upon review, realized it had missed a portion of the law so it was withdrawn and started over to follow the law which illustrated that they followed the law. She noted that was a comment, not a question.

- **Tess Kimball, 1810 Virginia Lane**, said her comment was in regard to folf in Pioneer Park. She said she had a two year old child and lived across the street from the park. She said it was a public park and even though she could walk around it to get to the playground, she was concerned about the safety of children in the area with the folf and large groups of older children that were intimidating to the younger children in the parks. She said the park was important to her since she didn't have her own lawn and hoped the Council would consider relocating the folf course or establishing some safety guidelines for the safety of the children.

Councilmember Ulledalen stated that a number of meetings had been held regarding the folf issue and it wasn't an easy question to resolve. He said he deliberately drove by the area at various times of day and most of the time he didn't see anyone there. He asked when the complaints came in. Ms. Kimball said she wasn't complaining but was concerned about the safety and didn't mean it was all of the people who folfed but it was the select few that were inconsiderate and caused her concern for the safety of her child. She said she understood it was a public park but she would like to see safety guidelines or a specific spot for the game. Councilmember Ulledalen said it was a tough conflict because there was nothing for older teens or non-driving teens to do. Ms. Kimball said Pioneer Park had always been a good park for community events but it was a safety factor. Councilmember Ulledalen asked if she saw consistency in when people were there. Ms. Kimball said it was usually about 4-8 p.m. She said there were some large groups and there was also additional concern about those groups with other use of the park. Councilmember Ulledalen said part of the issue was that there were some older players who were protective of the course and more organized and some had even talked about taking the responsibility of guiding the younger players. He said he asked because he was trying to figure out if what they implied they would do had been done. Ms. Kimball

said she hadn't seen that. Councilmember Ulledalen asked if she was concerned about people in the park only or if there was concern about people who came from the park to her yard. Ms. Kimball said the concern was for what went on in the park.

Councilmember Astle said he received a phone call in regard to folf. He said the gentleman who called said his wife got hit in the head by a folf as they walked along Parkhill Drive. He noted that the discs were weighted and heavy, not a standard frisbee. He said another complaint by that caller was that the park was torn up by the folf tees. Councilmember Astle said Ms. Kimball wasn't the only one with a concern. Councilmember Stevens said she was trying to think of a possible solution and asked if it would help to limit the folf hours. Councilmember McCall said there wasn't a representative from the Parks Department present to answer the question, but she wondered if there were guidelines that weren't being followed. Councilmember Pitman said he served on the Parks Board and this had been an issue every spring for the last several years. He said there were a lot of things going on right now; one big item was the review of the Pioneer Park master plan. He said that folf was currently not authorized to be in the park and the Parks Department let it happen and now it was hard to control. He said statistics from Bozeman indicated that more problems were created if it was just stopped. He said one alternative was to find a place to redirect it. He said the master plan process included public input find out what the people of Billings wanted. He said that he also looked to staff to look into the definition of a projectile, which had been a key component because this wasn't just a frisbee. He said he hated to say it, but until something tragic happened, a blind eye was turned to the issue but it was time to address it. He said the Parks Board tried at one time to get a whole course put in but until it was in a master plan, funds couldn't be appropriated to control it. He said right now the City would be directing an illegal activity in the park. Councilmember Ruegamer said he was going to make a council initiative but he wondered if City Administrator Volek could get it moved forward instead of just talking about it.

City Administrator Volek said there was another folf course in the City, in a county Park, Phipps Park. She said it was a technically difficult course and was not used by the younger players that would typically use Pioneer Park. She said a revamp of the Pioneer Park Master Plan was in next year's CIP and the question, as always, would be to find funds for all the CIP requests. She said she would talk with the Parks Department about hours but a problem was that the City didn't have park rangers. She said park rangers could be funded by citing people in the parks for illegal activities and Council would hear about that or police officers could be devoted to it during off hours, summers and those kinds of things. She said there were several occasions when Council went to Pioneer Park and talked about the various activities. She noted that Mr. Brooks and his staff had checked with surrounding communities about the folf issue. Mayor Tussing asked if statistics could be obtained from the Police Department regarding folf complaints. He said he had been to Pioneer Park's folf area and hadn't had any trouble with other players, nor had he noticed that it was a problem.

Councilmember Gaghen said she received numerous calls, sometimes from the same individuals, regarding activities in the park. She said some people took advantage of the market, so to speak, for the illicit activities. Councilmember Gaghen said she understood there were a number of people at the park board meeting last week who were channeled into continuing to attend because there were other focuses at that meeting.

She said other concerned citizens expressed the same concerns that Ms. Kimball brought forward. Councilmember Ulledalen said Pioneer Park had become a regionally known course because it was beautiful and had varied terrain, etc. He said one issue discussed with folf players was to build tee boxes which were essentially rubber mats so players threw from the same spot. He said some of the fairways could also be realigned to change the direction so the discs didn't reach the rest of the park. He said his point was that young kids who couldn't drive weren't going to go to other parks or a school yard, so there needed to be a place for them to go and he felt a reasonable alternative was to set folf only hours.

- **Dave Brown, 544 Wigwam Trail**, said that when he was on the Council and the folf issue came up, it was discovered there was an ordinance against flying missiles. He said unless the ordinance changed, folf was in violation. Councilmember Gaghen said it still mentioned projectiles because she had heard that from individuals who had called her. Mr. Brown said the problem with folf was that it was integrated into the picnic areas, not fenced like the tennis courts. He said he didn't see any difference between paying to golf at Par 3 or another specialized park. He said revenue was raised by putting certain facilities in parks and possibly a folf park should be considered. He suggested using the Police Department, not park rangers and if that was done a lot of problems would be solved for the people who lived in that area. He said he would like to see that as a Council initiative. Councilmember Ruegamer said an initiative wasn't needed because it would be addressed in the master plan review that was in progress.
- **Michele Johnson, 2705 Blue Creek Road**, asked if the City had developer impact fees in place. Councilmember Veis said system development fees were currently in place to charge on the water and wastewater rates. He said the City didn't have traditional impact fees as other Montana cities had. He said the answer to her question was yes and no; that we did for our water and wastewater system but when it was compared to a city such as Bozeman, we didn't charge fees similar to the way they did. Ms. Johnson asked why. Councilmember Veis said there was a whole process that needed to be followed to get impact fees approved and the City had chosen not to do that at the time. He said it had been discussed but it wasn't something that had come to fruition. He said it may or may not change after the cost of services study. Councilmember Ulledalen said that two legislative sessions ago, the Legislature allowed it, but the problem was that it was a nebulous law. He said part of what the cost of services study would identify, was what it cost to provide a variety of services. He said impact fees couldn't be used for operations, only for capital expenditures. He said Bozeman and Belgrade collected fees for specific projects hadn't substantiated the costs so they would probably be challenged in court. He added that was an issue that could be explored, to make sure the process was put in place methodically and mechanically. He said if it was developed, a charge could be assessed to recover costs that had been identified. He said a problem was that the argument would be that it wasn't how it had been done in the past and there was the whole fight thing about trying to move into the future. Councilmember Veis said Bozeman did that for quite a while and a homebuilders association sued and was awarded a large judgment

from the City of Bozeman. He said the process had to be very precise. Councilmember Ulledalen said that was why Mr. Llewellyn said Billings was doing it correctly by laying the ground work first before trying to levy the fees.

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

Council Initiatives

- Councilmember Veis said he would like a presentation from the fire chief and disaster services about non-routine disaster procedures. He said that a non-routine emergency would be like Hurricane Katrina, the World Trade Center, etc. He said during those emergencies, city leadership was found to be unorganized and unsure of what to do and he wanted to be brought up to speed on those procedures. City Administrator Volek said a presentation would be scheduled after the budget process was completed. She said the City participated with the County in their emergency plans. Councilmember Ulledalen said Jim Kraft would likely provide a good overview of our resources

Councilmember Veis moved to request a presentation at a future work session from fire department and disaster services representatives regarding processes for non-routine emergencies, seconded by Councilmember Pitman. On a voice vote, the motion was approved

- Councilmember Astle said he visited with a representative from the American Legion who said they couldn't march at Veteran's Park and fire off a couple of rounds without filling out a park permit, so consequently they wouldn't go to Mountview Cemetery because of the restrictions placed on them. He said he would like to discuss flexibility of the permits. Mayor Tussing said he and City Administrator Volek had been working with a couple of those individuals. Ms. Volek said she responded in writing to one gentleman and left a message for the other one and didn't hear back from either of them. She said State Statute limited the City's liability to \$1.5 million per occurrence and \$750,000 per claim. She said less than that was a liability to the City. She said if Council agreed to an event and didn't require the participants to have adequate insurance, then the City had to accept the responsibility for the difference between what the group had and the City's coverage. She gave the example that if someone fell and broke a hip, and as statistics showed, more than 50% of hip injuries resulted in death, there was a potential liability. She said there was a blanket policy operated for the City by Hoiness LaBar, groups could buy into that for approximately \$250, which provided total coverage. She noted it was MMIA's advice not to exempt people, no matter how worthy the group, because once that was started, a precedent was set. She said she didn't discount the value of veteran contributions, but that policy was a Council choice. She said if the Council wished to go a different direction and accepted the responsibility if there was an incident, that could be looked at.

Mayor Tussing asked Councilmember Astle if he wanted a motion and Councilmember Astle replied that it wasn't necessary because Ms. Volek was addressing that issue.

- Councilmember Astle said he wanted to discuss abandoned or unmoved vehicles at a work session. He said he received numerous complaints and he wanted to put teeth into the issue to get something finished. Mayor Tussing said it had been dealt with but Councilmember Astle said it must not be working. City Administrator Volek said she believed there was a previous initiative on that topic and the Planning Department was developing an ordinance. Councilmember Veis said Code Enforcement had stickers that could be put on trailers now in addition to cars. He said it could be discussed, but that would be like chasing a tail because if a person was told to move the vehicle, they might move it only as far as they were told to move it, then the whole enforcement process started over. Councilmember Astle said they should be told to move it from the area. He suggested an ordinance with the assistance of legal counsel. City Administrator Volek said if there wasn't an initiative already in place, she would notify Council and it could be addressed.

Mayor Tussing asked if there were statistics on the number of tickets issued. City Administrator Volek said the code may need revision so it would become a criminal issue for multiple violations.

- Councilmember Stevens asked for a map for the water zones. City Administrator Volek said she would provide one to Councilmembers.

The meeting adjourned at 11:32 p.m.