

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

January 23, 2006

The Billings City Council met in regular session in the Council Chambers located on the second floor of the Police Facility, 220 North 27th Street, Billings, Montana. Mayor Ron Tussing called the meeting to order and served as the meeting's presiding officer. The Pledge of Allegiance was led by the Mayor, followed by the Invocation, which was given by Councilmember Jim Ronquillo.

ROLL CALL – Councilmembers present on roll call were: Ronquillo, Gaghen, Stevens, Brewster, Veis, Ruegamer, Ulledalen, Boyer, Jones and Clark.

MINUTES -- January 9, 2006. Approved as printed.

COURTESIES –

- FROSTY ERBEN, President of the Billings Association of Realtors appeared on behalf of the Realtors Association and its Government Affairs Committee. Mr. Erben presented Planning Director Ramona Mattix with a *Quality of Life* award recognizing her commitment to ensuring and improving the quality of life for the community. He said the partnership and working relationship with Ms. Mattix, the Planning Department and area realtors is a prime example of how working together can lead to great things for this City and our community. Ms. Mattix expressed her appreciation for the award and noted that any successes could not have been accomplished without the support of her colleagues and her hard working staff.
- JOHN BREWER, President of the Billings Area Chamber of Commerce introduced Bruce McIntyre as the new Director of Governmental Affairs. The Government Affairs Department has recently undergone reorganization, identifying its top priorities which include the Shiloh Economic Development Corridor, MetraPark, the local option tax, coal bed methane development, and a tourism promotion area that could bring \$600,000 back to the community. Many of those items require a partnership with the Council and City Staff. He added that Interim City Administrator Tina Volek has agreed to serve on the board of directors for the Chamber.
- COUNCILMEMBER VINCE RUEGAMER, on behalf of the Spring Creek residents, presented Interim City Administrator Tina Volek with a *Certificate of Appreciation* for her work on restoring the water flow to Spring Creek. He also praised the persistence of the neighborhood, which spearheaded the action to restore Spring Creek. Ms. Volek thanked the community for this distinction and noted that this would not have happened without the hard work of the Public Works Staff headed by Public Works Director Dave Mumford.

PROCLAMATIONS

- Adoption of City of Long Beach, Mississippi in order to focus its efforts for recovery from Hurricane Katrina

BOARD & COMMISSION REPORTS – NONE

ADMINISTRATOR REPORTS – Tina Volek

- Interim City Administrator Tina Volek requested that Item K be separated from the Consent Agenda to allow for a brief staff report on a correction to the subdivision regulation ordinance language.
- She noted that the Council received copies of a petition concerning Special Review #800 (Item #3) in their Friday packets.
- Ms. Volek noted the late addition of the 2006 Federal Affairs Program request (presented at the 1/17/06 work session) and said it would need to be added as an agenda item.
- She reminded the Council of the joint meeting with the County Commissioners Thursday, January 26, 2006 at 5:30 P.M. at the Yellowstone Room at MetraPark.
- She informed the Council of a press release announcing a press conference on Tuesday, January 24, 2006 at 1:30 P.M. at the Billings Airport to announce a new air service – Allegiant Airlines.

LATE ADDITION:

Councilmember Ruegamer moved to add the 2006 Federal Affairs Program requests as Item #10 to the regular agenda, seconded by Councilmember Gaghen. Councilmember Veis asked why the Federal Affairs late addition was not placed on the regular agenda prior to the meeting. Ms. Volek said it was not finalized and presented to the Council until the January 17th work session where an addition to the request was made. The agenda packets were already prepared at that time. She noted that it can be open to public comment during the “non-public hearing” comment period. On a voice vote, the motion was approved with Councilmember Veis voting “no”.

RECONSIDERATION:

Councilmember Brewster moved to reconsider approval of Item #8 - the Bellville Subdivision and delay action to 2/13/06, seconded by Councilmember Veis. Councilmember Brewster noted that the amendments proposed during the approval of the subdivision are not workable and he would like to make some corrections to them. City Attorney Brent Brooks recommended that this must be placed on a future agenda to allow time for public notification of the reconsideration. He added that the extension period may have expired and could be a concern. Ms. Volek said placing this on the agenda for February 13th would give the Staff time to research the item and communicate with the property owner to see if another extension is acceptable. On a voice vote, the motion was unanimously approved.

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: #1, #7 thru #9 ONLY. Speaker sign-in required. (Comments offered here are limited to 1 minute per speaker. 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.)

- TOM ZURBUCHEN, 1747 WICKS LANE, spoke on new Item #10. He said there was no public notice that this item would be on the agenda tonight. By discussing it this evening, the Council is restricting public comment because most of the public is not aware of the item. He said this item should be delayed to next month to allow for public notice and comment.

CONSENT AGENDA:

1. A. Bid Awards:

(1) Two New Current Year Large Area Mowers and One Tandem Trailer. (Opened 1/17/06). Recommend postponing to 2/13/06.

B. W.O. 04-33: Lake Elmo Road Right-of-Way Acquisition, Professional Services Contract for surveying, Engineering, Inc., \$60,828.00.

C. W.O. 03-23: Turn Lane for Yellowstone River Road & Hawthorne Lane, Right-of-Way Agreement with Tracy R. Arnold, Lot 1, Block 2, Fritz Subdivision, \$337.50.

D. Memorandum of Understanding with BikeNet for PPL Montana Community Fund grant application for the Big Ditch Trail, Phase 2, \$10,000.00, contingent upon transfer of the grant funds to the City.

E. Airport Business Park Secured Storage Space Lease with Big Sky Airlines, \$1,153.20 in the 1st year, adjusted annually by CPI-U, term: 2 years.

F. Limited Commercial Aviation Hangar and Ground Lease with Billings Clinic, \$21,600.00 1st year, adjusted annually by CPI-U, term: 5 years.

G. Limited Commercial Aviation Hangar and Ground Lease with Jack Bolme, current lease of \$15,840.00/year, adjusted annually by the CPI-U, term: 5 years.

H. Consent and Estoppel in regard to Commercial Ground Lease for communication equipment site lease at the Billings Regional Landfill, MTPCS, LLC, \$5,000.00 lease and use fee in the 1st year, adjusted annually by CPI, term: 20-year lease, 15 years remaining.

I. Consent and Estoppel in regard to Stewart Park Antenna Site Lease, MTPCS, LLC, \$2,500.00/year ground space rent and \$2,500.00 use fee for each antenna installed on the tower, adjusted annually by CPI, term: 15-year lease, 7 years remaining.

J. Acknowledge receipt of petition to vacate a portion of Broadwater Avenue right-of-way located on the existing Tract 3, C/S 1877, Engineering, Inc., petitioner, and setting a public hearing date for 2/13/06.

K. Second/final reading ordinance amending BMCC by repealing Chapter 23, Sections 23-101 through 23-1501, declaring them to be null, void and of no effect, and adding a new Chapter 23 with sections to be numbered 23-101 through 23-1107, providing comprehensive subdivision regulations.

L. Second/final reading ordinance 06-5358 for Zone Change #772: a zone change from Residential Manufactured Home to Residential 6000 on Lot 6, Block 3, Superior Homes Subdivision, located at 406 Roxy Lane, Ann Bustell, owner, approval of zone change and adoption of 12 criteria.

M. Final plat of Tierra Yellowstone Industrial Park Subdivision.

N. Bills and Payroll.

- (1) December 22, 2005
- (2) December 30, 2005
- (3) December 1, 2005 (Court)

(Action: approval or disapproval of Consent Agenda.)

Mayor Tussing separated Item K from the Consent Agenda. Councilmember Veis separated Item G from the Consent Agenda. Councilmember Ronquillo moved to approve the Consent Agenda with the exception of Items G and K, seconded by Councilmember Gaghen. Councilmember Veis asked if all property owners of the 78 parcels concerned with Item B have been appropriately notified relating to surveying and acquisition of rights-of-way. Public Works Director Dave Mumford said notification and surveying are currently in process. On a voice vote, the motion was unanimously approved.

Councilmember Ronquillo moved for approval of Item G of the Consent Agenda, seconded by Councilmember Ruegamer. Councilmember Veis asked why the hangar lease is not being directly leased to U.S. Fish and Wildlife. Airport Director Bruce Putnam said the original owner, Jack Bolme constructed the hanger and has first right of refusal and chooses to keep the lease in his name. On a voice vote, the motion was unanimously approved.

Councilmember Ronquillo moved for approval of Item K of the Consent Agenda, seconded by Councilmember Ruegamer. Planning Director Ramona Mattix noted that a handout placed on the Councilmember's desk this evening contains language corrections to page 51. The corrections involve strike-outs on items 4, 5 and 6 and inserted terms "back-of-curb to back-of-curb" that pertain to the width of the street and right-of-way.

Councilmember Stevens asked about language on page 39 stating that all subdivisions should provide a 20' wide multi-use trail easement across property if the Heritage Trail Plan indicates that it or a proposed greenway crosses the subdivision property. She stated that the December 2005 Policy Coordinating Committee (PCC) voted to remove all proposed trails across private property from the map. She asked how that will be articulated relating to the Subdivision Regulation ordinance if the proposed trail is not on the map. Ms. Mattix said a map will denote trail endings and

places where connections are required. If a subdivision occurs in between those two points, there will be discussions with the property owners or developers regarding their desire to contribute to the Heritage Trail Plan. She noted that results of those discussions will be contained in any staff reports that come before Council. Councilmember Stevens made a substitute motion to delay approval until a "marked-up" version can be provided to the Council, seconded by Councilmember Jones. Ms. Mattix said this would be a huge cut and paste project. Councilmember Brewster amended the substitute motion to ask Staff to provide summary information of the changes and bring this item back to Council for action on 2/13/06, seconded by Councilmember Ruegamer. On a voice vote, the amendment was approved with Councilmember Ulledalen voting "no". On a voice vote for the substitute motion as amended, the motion was approved with Councilmember Ulledalen voting "no".

REGULAR AGENDA:

2. PUBLIC HEARING AND RESOLUTION 06-18384 to adopt the *Billings Heights Neighborhood Plan*. Planning Board recommends approval of adopting the plan as part of the Yellowstone County/City of Billings 2003 Growth Policy. (Action: approval or disapproval of Planning Board recommendation.)

Planning Staff Lora Mattox said the Neighborhood Planning Steering Committee has been working with the plan for a year and half beginning in May of 2004 with a kick-off meeting to announce the planning effort and elicit resident input. Fifteen residents met monthly to identify and discuss issues facing the Heights. A website was developed which included information on the meetings and a resident/business owner survey. She said 157 completed surveys were received and much of what was contained in the surveys went into the plan. Four neighborhood-wide meetings were held along with discussions with the County Commissioners and a public hearing with the Planning Board.

Ms. Mattox said the focus areas that were identified by the Steering Committee included: 1) transportation, 2) land use, 3) utilities and infrastructure, 4) housing, 5) parks and recreation, 6) community facilities, 7) public safety, 8) economic development, and 9) schools and education. Each focus area was addressed and goals were identified throughout the plan. A land use map (as part of the plan) was also developed from input of the residents at the meetings. She said it was discovered that although the residents were in favor of mixed-uses, different densities and commercial development, the same type of housing within their own neighborhood was preferred. This was considered when drafting the map.

Councilmember Boyer asked about the validity of these Neighborhood Plans. Ms. Mattox said the plans are not a regulatory document but a guidance tool. The plans assist the Council during the Capital Improvement Plan (CIP) process by identifying the projects in the plan that are important to the neighborhood. The plans also help with decisions on zone changes and special reviews, through the land use map.

The public hearing was opened. DENIS PITMAN, 1730 BITTERROOT DRIVE, chair of the Billings Heights Community Development Task Force, said this plan is a great blueprint for the future and growth of the community. He said the public meetings were well attended and input received was implemented into the plan. Mr. Pitman said the plan will promote all of the focus areas and insure residents a peaceful residential experience

while providing current and future councils with a guide for business expansion and for families desiring affordable housing. He encouraged the Council to adopt the *Billings Heights Neighborhood Plan* and use it to promote and guide future growth in the Heights.

There were no other speakers. The public hearing was closed. Councilmember Stevens moved to approve the Planning Board recommendation, seconded by Councilmember Ruegamer. Councilmember Brewster said it is nice that the Heights finally has a planning document and he encouraged its adoption. Councilmember Stevens noted the hard work of the committee members but expressed concern about how few people participated in the process. She said the plan is vague enough to cause concerns, but overall is an important guiding document. On a voice vote, the motion was unanimously approved.

3. PUBLIC HEARING AND SPECIAL REVIEW #800: a special review to allow a four-plex and a rehabilitation service center in a Residential-6,000 zone described as Tract A of C/S 2237 and located at 1721 8th Avenue North, Rimrock Foundation, David Cunningham, applicant, Design Lab Architects, agent. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)

Zoning Coordinator Nicole Cromwell said this special review request is to locate a four-plex apartment building that operates a community residential facility in a Residential 6,000 zone at 1721 8th Avenue N. in the North Park neighborhood. She said the Zoning Commission considered the application and voted 4-0 to recommend conditional approval. The four-plex will be located on Tract A that is mainly surrounded by Residential 6,000 properties with some Community Commercial to the south and west across 8th Avenue N. The only structure the Council is being asked to consider tonight is the first four-plex apartment building at the northern most end of the 1.5-acre site plan. The other structures noted in dotted lines are future construction that would require future special reviews if they were to be built according to the site plan.

Ms. Cromwell said there are two existing structures currently on the southern end of the site plan, one a duplex and the other a single-family structure that are being operated as community residential facilities for 8 or fewer persons for the past two years. These facilities do not require any special review approval. She noted that the 8th Avenue Apartments are located to the east, across N. 17th Street and did not require a special review at the time of their construction. Since 2003 a special review for multi-family apartments in Residential 6,000 is required. Other multi-family developments are located to the north of the proposed four-plex and single-family and duplex residential are located to the south and west. She noted the proposed development is a transitional property between multi-plex apartments to the north and east and the single-family and two-family that exists to the west and south.

Ms. Cromwell said the Zoning Commission concluded that the special review meets all the requirements of the zoning code and is consistent with the objectives of the code, the Growth Policy and any neighborhood plans that are in place, including the *North Park Neighborhood Plan*. The Zoning Commission also considered whether the special review is compatible with the surrounding land uses and is otherwise separated from the adjacent land uses to minimize adverse impacts. She said the Zoning Commission is recommending conditional approval with the following conditions:

1. The special review approval is limited to one (1) 4-plex apartment building to be operated as a Community Residential Facility for more than eight (8) persons on Tract A of C/S 2237.
2. The proposed location of the 4-plex apartment building shall be as shown on the submitted site plan (adjacent to the northern property line). Additional multi-family structures for either private residences or for use as Community Residential Facilities shall require additional special review approval of the Billings City Council.
3. Prior to the occupation of any multi-family structure, a 6-foot tall sight obscuring fence or wall shall be installed along the west property line beginning at a point not more than 56 feet north of the property corner at the intersection of the alley and 8th Avenue North and ending at the northwest property corner. A continuous evergreen hedge may be substituted for the required fence if the evergreen trees or shrubs are at least 4 feet in height when planted, reach a mature height of at least 8 feet, a mature width of at least 6 feet and are planted no greater than 7 feet on center. Any sight obscuring fence must be constructed of wood, stone, vinyl, brick or block or other conventional fencing materials. No chain-link or wire fencing is allowed in this application.
4. The applicant shall maintain as many of the existing healthy trees within the subject site. Prior to the occupation of any multi-family structure, the applicant must install, or financially guarantee the installation of at least four (4) canopy trees, of a 2-inch caliper and 8-foot tall minimum. These four (4) trees shall be evenly spaced within the front yard setback along the northern 200 feet of property frontage on North 17th Street. The remaining landscaping of the subject property shall comply with the landscaping standards in BMCC 27-1105; 27-1106; 27-1107 and 27-1110.
5. The applicant and any subsequent owner or operator shall provide 24-hour supervision of the residents in the approved 4-plex apartment, the number of residents shall not exceed sixteen (16) on any given day and the facility shall be duly licensed by the State of Montana.
6. Any lighting within the parking lot shall have full cut-off shields so light is directed to the ground and not onto adjacent property.

Ms. Cromwell said she has prepared a memo containing the three options that the Council can consider for this special review. Those options are:

1. The City Council may choose to accept and approve the Zoning Commission recommendation of conditional approval for Special Review #800 with the six conditions as outlined.

2. The City Council also has the option of amending the recommended conditions of approval if the Council believes that issues of compatibility with the existing neighborhood have not been adequately addressed by the proposed conditions, which include and are not limited to:

- a) Street and road capacity;
- b) Ingress and egress to adjoining streets;
- c) Off-street parking;
- d) Fencing, screening and landscaping;

- e) Building bulk and location;
- f) Usable open space;
- g) Signs and lighting; and/or
- h) Noise, vibration, air pollution and similar environmental influences.

She added that issues of compatibility cannot include race, culture, sex, age, religious or political affiliation, social status, marital status or disability of the potential residents of this property. Drug and alcohol addictions are considered disabilities and members of that classification are a protected class under the Federal Fair Housing Act. She noted that the State has specifically exempted group homes that house 8 or fewer residents from local zoning regulations. The reason for tonight's special review is that Rimrock Foundation is proposing to house more than 8 residents in a single facility. The state does allow a special review for those group homes or facilities that will house more than 8 persons and allows the policy body to impose conditions that are reasonable and will mitigate any potential incompatibility with the neighborhood.

3. The City Council may deny the special review if they have considered the conditions of approval and think the special review would amount to a fundamental change in our zoning practices and the conditions cannot make the facility compatible with the neighborhood.

4. The City Council may delay action on this item for up to 30 days.

Councilmember Ulledalen asked if the site development ordinance requires the 41 parking spaces that are included in the site plan. Ms. Cromwell said the applicant is requesting those spaces which is over the minimum that is needed for total development of the property. Councilmember Ulledalen asked if this would trigger the construction of all 41 parking spaces or could they be phased in. Ms. Cromwell said they could be phased it.

Mayor Tussing asked for clarification that 7 to 9 duplexes (housing 56 people) could be constructed without Council approval. Ms. Cromwell said Residential 6,000 zoning two-family housing may be provided on an undivided lot as long as the duplex has 7,000 square feet of land area and two off-street parking spaces for each dwelling unit and if each dwelling unit has 8 or fewer residents. She noted that 9 duplexes and the required off-street parking would be a challenge to accomplish.

Councilmember Stevens asked if this special review constitutes a fundamental change in zoning practices in this neighborhood. The Zoning Commission believes that this four-plex in this location on this site plan is not a fundamental change in the City's zoning practices, Ms. Cromwell stated.

Councilmember Boyer asked if this special review represents a change in the intention of the *North Park Neighborhood Plan* for this area. Ms. Cromwell said the *North Park Neighborhood Plan* was completed in 1993 and identified this area as primarily residential, which is single-family and two-family housing. At the time the plan went into effect, multi-family uses were allowed by right in a Residential 6,000 zone. Infill development in 1996 was in the form of 4 large multi-family units directly across the street because it was anticipated that multi-family would fill in some of the vacant Residential 6,000 areas. She said this special review application is not a deviation from the *North Park Neighborhood Plan*. A fundamental City policy change in 1997 required special reviews for all multi-family uses in Residential 6,000 zones throughout the City in

response to “row-house” developments on the Southside prompting the need for some level of control over multi-family development.

Interim City Administrator Tina Volek said that upon advice of legal counsel, any ex parte contact (those outside of the public hearing process) must be disclosed. She is aware of one such contact by a North Park resident inquiring as to whether this operation was a business use rather than a residential one and the other was a letter from the Montana Fair Housing Commission indicating that they have provided informational material to the Council. Mayor Tussing said there were several emails between Staff, legal Staff, Planning Staff and the Council over the weekend regarding these issues. He stated that he received an email from a resident of the area, an individual who is on the Board of Directors who is the President of the Rimrock Foundation and former councilmembers. He said this prompted the memo from Ms. Cromwell determining the Council’s options including the impacts of state and federal statutes.

Mayor Tussing reminded the Council that conditions can be imposed on the construction of four-plexes where none can be imposed on duplexes at the same site. Ms. Volek added that there could be 7 to 9 duplexes with 8 residents in each unit, but the site plan can only accommodate 6 duplexes which would house the same number of residents as four-plexes with 16 residents. With the duplexes however, screening and fencing could not be required. Ms. Cromwell said the Council is only considering approval of one four-plex at this time. However the site plan shows two additional four-plexes in the future, housing a maximum of 48 residents. The site does not lend itself to more than 3 four-plexes with the required parking. She noted that if the future four-plexes were denied, single-family or two-family residences could be built based on the remaining lot area. Councilmember Stevens asked where the number of residents (16) in each duplex is derived from and can the Council impose limits on the number of residents. Ms. Cromwell said it is a firm condition that was recommended by Staff and accepted by the Zoning Commission. Rimrock Foundation has agreed to abide by that condition and it is an enforceable condition just like any other zoning code through the Code Enforcement Division.

Councilmember Jones disclosed as part of the ex parte that he has communicated with people on both sides of this issue. Councilmember Ruegamer also disclosed his communications about this agenda item. Mr. Brooks said when the Council is acting in a quasi-judicial capacity in land use decisions it must identify communications where it has received additional information that is beyond the public hearing process. This alerts public hearing participants that the Council has received additional information on which it may base its decision. Non-land use or policy-making decisions allow extra-curricular communications to the Council, but by case law and general principals of due process it is prudent for the Council to disclose that communications via email, telephone, by letter and in person regarding land use decision have taken place.

Councilmember Brewster noted that the goal is that all members of the decision-making body have the same information (even information distributed outside of Staff) to make its decision. Mr. Brooks said that is correct and it is also to inform the public of the information that the Council has been provided to make its decision. He added that if all members of the Council have received the same information it is appropriate for the Mayor as presiding officer to make the disclosure for the entire Council, emphasizing that it is wise to disclose emails even if they are consistent with what the Council anticipates

will be testified to so that the public is aware of the information upon which the Council is basing its decision. Mr. Brooks noted this concerns third-party communications from concerned individuals, residents, and citizens. Ms. Volek noted that Ms. Cromwell actually received everything that she distributed to the Council in written form.

The public hearing was opened.

MONA SUMNER, CHIEF OPERATING OFFICER OF RIMROCK FOUNDATION, 2227 7TH STREET WEST, said the proposal that the Zoning Commission is recommending to the Council this evening will serve patients with drug and alcohol addiction only and will not allow any sex-offenders or other violent or predatory types of people. All of the residents of the four-plex will be there voluntarily and will be supervised 24 hours a day, as are all of Rimrock's facilities. She said patients are randomly drug screened to assure a drug-free environment and are not allowed to have vehicles. The patients must have three things to be successful in recovery: 1) a job, 2) transportation to that job, and 3) drug-free safe housing. Rimrock Foundation is proposing this type of facility to expand treatment capacity.

The first four-plex will house 16 people actively seeking and undergoing treatment. Subsequent housing will be patterned after Rimrock's current "sober-housing" program that is currently on the site, which is transitional and longer-term housing. She stated that the goal is not to produce a dense type of housing complex. In fact the design is deliberate with a courtyard with recreational and picnic facilities; a place where a recovery and healing community can be fostered and encouraged. Ms. Sumner said the Rimrock Foundation has listened to its neighbors over many months and has complied with many of their requests. One of the requests related to the facility name which is now called Silverleaf Center rather than including the Rimrock name. Another request was to not have the color red on the building, and she said "we won't". It is the desire of Rimrock to blend in and fit in with any neighborhood where its facilities reside.

She said the first four-plex is the most important piece because it is the treatment center with the others designated as supportive housing. Councilmember Ruegamer asked how big each unit is and how is each unit supervised. Ms. Sumner said the size of each unit will be 1,000 sq.ft. and each unit will be supervised with a 24-hour awake staff person per floor with alarms set during the evening hours to prevent unauthorized exit of the buildings. Mayor Tussing said the facility would not be paying taxes on the four-plexes, but asked how many new jobs will be created with this operation. Ms. Sumner said it is anticipated there would be 10 new jobs for the community. Councilmember Stevens asked in what state the in-patients would be. Ms. Sumner said each patient in the treatment center must be medically detoxified and substance-free for three days. Any residents of the supportive housing will have been drug-free from the start of their treatment stay. Councilmember Boyer asked if the patients can walk away at any time. Ms. Sumner replied "yes, one can walk away from any Rimrock facility at any time."

Councilmember Boyer noted the limited space in the detox facility and asked how the 16 four-plex residents will be able to receive the detoxification treatment. Ms. Sumner said approximately only 12% of treatment patients need detoxification. Councilmember Ruegamer asked what risks the treatment patients pose on the community. Ms. Sumner said there is very little risk to the neighborhood. She noted that Rimrock treatment facilities exist in five other neighborhoods in this community and the Council will hear testimony from some of those impacted neighbors. She stated that people with active

substance-abuse problems are currently in the community and are not supervised. In contrast, the people in the proposed facility will be drug-free and supervised and if they choose to walk away, they will not walk away intoxicated. These people will be a much safer "bunch". She noted that an active drug-dealer incurring related drug activity was evicted from the property during the process of opening the Silver housing program.

BILL LAMDIN, PRESIDENT OF THE BOARD OF DIRECTORS FOR RIMROCK FOUNDATION, 3031 LYONS LANE, said Rimrock Foundation has a history of stewardship and being a good neighbor in all of its locations. The Silver-living program has been in the North Park neighborhood for over two years. During that time, Rimrock Foundation has attended the task force meetings and worked to assist neighbors with code enforcement problems in the area. He said the current four-plex proposal was presented to the North Park Task Force in September 2005 and the the plans described fully for the property at 8th Avenue N. and 17th Street. After responding to questions at that time, there was no resistance to the proposal at that meeting. Prior to City notification for the special review, Rimrock Foundation sent a letter to all property owners within 300 feet of the proposal explaining in detail what would be constructed and why. He added that neighbors were invited to call about their questions, with no response. Mr. Lamdin said another meeting in December 2005 with the North Park Task Force included a description of the plans for the property. Four neighbors from the Vucrest area attended that meeting and for the first time expressed their concerns and opposition to the project. Those neighbors were informed that an informational meeting would be hosted by Rimrock for their benefit. A letter was sent to all neighbors inviting them to attend a luncheon and learn about the project. This lunch meeting took place last week and only one neighbor from Vucrest opposing the project attended. He said the Rimrock Foundation has acted in good faith to communicate with its neighbors and he urged the Council to support the special review.

FRAN KUNZ, 15 ALDERSON, said she lives across the street from the Rimrock Foundation's Michelle House, a women's treatment center. Her neighborhood consists of duplexes, four-plexes, single-family dwellings and multi-family apartments. She said there are five families living in the Michelle House, which has been in operation for four years. When she first learned that the Michelle House was to be located across the street from her residence she was quite concerned about the possibility of drugs and alcohol and decreased property values. She stated that nothing could have been more wrong. Ms. Kunz said Michelle House is one of the best neighbors she has ever had with appropriate off-street parking, playgrounds for the children, great landscaping, fencing and a facility that blends into the neighborhood. Ms. Kunz wished that everyone in this community could have and that her other neighbors were as good a neighbor as the Michelle House.

REPRESENTATIVE ROBYN DRISCOLL, 724 N. 16TH STREET, said she lives adjacent to the Rimrock Foundation's duplex which has been a good neighbor for over two years. She said she welcomes the expansion of Rimrock Foundation into her neighborhood. Since Rimrock has owned the facility, it has given the existing structure a face-lift and landscaped the yard. She added that Rimrock has worked with City Code Enforcement to get another neighbor's property cleaned up. Rep. Driscoll said she has never had a problem with any of the residents nor seen a police car at the facility. She said Ms. Sumner has assured the neighborhood that sex-offenders will not reside in the

housing and those residents that do reside there will be supervised around-the-clock. She stated that the Vuecrest neighbors are worried that their property values will decrease. She showed pictures of residences that are across her alley which is a "complete dump". Code Enforcement has not been able to rectify this terrible situation, which only continues to get worse. She said she does not think any property values have decreased from being located next to one of Rimrock Foundation's facilities. Rep. Driscoll noted the petition opposing Rimrock's proposal where she has highlighted renters and persons who do not reside within two blocks of the facility and that have signed the petition. She asked the Council to inquire as to how the signatures were garnered. She noted this area is a high rental area where the turnover is huge. She thinks most of the current neighbors will not even live in the area when this building is completed.

CECI BENTLER, 302 BEVERLY HILLS BLVD., said she does not discriminate against treatment centers noting that Montana needs them. She also said she does not think Rimrock Foundation's proposal for 3-4 homes for short-term patients does not compare to group homes that provide treatment for addictions and teaching life skills over a minimum year-long period of time. She said this is a definite business pursuit, a whole medical facility campus where money is received for services. It appears that Rimrock is trying to keep its facilities close to the medical corridor so it can benefit from an implied association. The hospitals have agreed to limit their intrusion into adjacent residential areas and if Rimrock wants to benefit from an implied relationship with them it should be bound by the same social responsibility and legal zoning laws. Downtown neighborhoods are diverse and that diversity is needed to revive the downtown area. She further asked if it is appropriate for Rimrock Foundation to use charitable donations to destroy residential areas and upset the neighbors and taxpayers who "pay the bills". She alleged that Rimrock Foundation has considered bringing suit against persons opposing their proposed facility. Ms. Bentler said she hopes Rimrock Foundation can use its enormous resources to find a more appropriately zoned location for this proposed facility and get back to the business of healing and not dividing this community.

ED STEVENSON, 1721 VUECREST ROAD, said Rimrock's proposed facility is not "okay" with the *North Park Neighborhood Plan*, noting that page 21 states that business should be encouraged to locate south of 6th Avenue N. and commercial intrusions into residential areas must not be allowed. He said Rimrock Foundation has a CEO, COO, a Board of Directors and a Board President, receives money for treatment of patients and pays out salaries. He said this sounds like a business to him. Mr. Stevenson said this "does not fit with the *North Park Neighborhood Plan*." He compares Rimrock's proposed facility to a hospital because both have 24-hour supervision, on-site counseling, communal cooking, a campus, rotate people in and out, and a high-density of people in the buildings. He said this is commercial. Mr. Stevenson asked the Council to deny the special review because it goes against the North Park Plan. Councilmember Stevens asked Staff to respond to Mr. Stevenson's allegations that this is a business or commercial facility. Planning Director Ramona Mattix said the zoning code does not differentiate between who are not property owners and people who reside in residential. Property owners could be prevented from renting their houses out if this is done across the board in the City. She said calling Rimrock's proposal a business is compared to calling a carpet cleaning job in someone's house a business. Rimrock Foundation has an

office and conducts its business in another area, but providing treatment in a residential area does not make that residential setting a business or commercial operation.

KELLY ADDY, DEPUTY CITY ATTORNEY, said in his response to the previous question he noted language contained in *United States v. City of Jackson, Mississippi* calling a group home or shelter a business would not defeat its right to protection under the federal or Fair Housing Act. Group homes, even if they are commercial may be the only way for disabled individuals to live in a residential community which is the purpose of the act. He noted other cases state that disabled individuals may have little choice but to live in commercial homes if they desire to live in a residential neighborhood. He also said that another case stated that the fact that a group home is a business should not be the basis for denying accommodation when reasonably necessary. Councilmember Boyer asked if the group homes classified as 8 persons or under and 16 residents are defined differently. Mr. Addy said that the group home classification is for the purposes of state statute. The Federal Fair Housing Act analysis offers what is a reasonable accommodation (discussing whether it is a business or not) and the above is a fair summary of what the courts have done.

AARON FRISBIE, 1687 VUECREST ROAD, said one of the concerns of his neighborhood is keeping the area zoned for residential single-family homes or duplexes. He said his realtor told him this area was zoned for residential homes and not for future commercial buildings. The definition of a multi-family dwelling in the zoning code is a building constructed and designed for occupancy for three or more families living independently. He said this definition does not fit with the proposed four-plex treatment center. He noted that the property tax code for the subject property is classified as commercial and is the only property Rimrock Foundation owns that is coded by Yellowstone County in that manner. It is his understanding that this residential area was zoned by the Council in 1993 to keep commercial businesses out of the area. He said this facility can be classified as a care-giving business and not a residential facility. Mr. Frisbie asked why Rimrock Foundation is so set on building a commercial facility in a restricted residential area. He said these patients can be treated at a facility located in a commercial zone that would be a better fit. He asked the Council to uphold the zoning restrictions in the North Park area. Councilmember Stevens noted that Rimrock Foundation has the right to construct 6-9 duplexes at the proposed site without a special review and asked if Mr. Frisbie would prefer the duplexes over the one controlled four-plex. Mr. Frisbie said he would prefer duplexes as they would not look like a medical campus.

DAVID CUNNINGHAM, CEO OF RIMROCK FOUNDATION, 1231 N. 29TH STREET, read from a letter from Sheriff Chuck Maxwell asking for the support of a community residential facility on the property of 8th Avenue N. and 17th Street owned by Rimrock Foundation. The letter stated that the plan is for four-plexes to house low-income population that is in recovery and in need of safe and affordable housing. It states that the Yellowstone County Detention Center is in a continual crisis due to over population because the facility that is designed to hold 187 prisoners has a daily average population of over 420 persons. It further states that 75% of those incarcerated suffer some form of addiction or alcoholism. Mr. Maxwell stated he is very supportive of any additional treatment program which will alleviate the detention facility population crisis and whole-heartedly supports Rimrock Foundation's program for treatment housing. Mr.

Cunningham added that U.S. Attorney General Bill Mercer has reviewed the treatment program and the property along with Montana Attorney General Mike McGrath. Mr. Cunningham also stated that Rimrock Foundation has never, under any circumstances, expressed to anyone that it was considering suing anyone over this proposed facility. He acknowledged that the Federal Fair Housing organization did send a letter.

WALTER SHORN, OUTPATIENT SUPERVISOR AT RIMROCK'S SILVER HOUSING, 1353 KUHNS PLACE, said he is involved with the screening and admitting process for recovery patients that seek housing at Silver Housing. The program has been in existence for over two years and assists persons who cannot otherwise afford safe/sober housing during their recovery. The individuals that he supervises could not have given him an easier job, as he has experienced no significant problems with the facility. He noted that the residents have been able to do their own "policing" and work out any issues that arise among themselves. He said they seek recovery and find it at this facility, becoming self-reliant, respectable citizens. Silver Housing is the opportunity for these individuals to turn their lives around. He urged the Council to support and approve the special review.

GENE JARUSSI, 1131 N. 32ND STREET, said he has been in Billings for 30 plus years and since that time has known that to have a vibrant downtown and to keep people living in the downtown, residential areas are needed. He said there is a well-defined corridor set aside for medical services. The question becomes where the City can allow businesses to grow in the downtown area when people need to live there. He said that asks the question that concerns the special review tonight, "should the City allow a new business on the 1700 block at 8th Avenue N?" Mr. Jarussi said group homes are afforded (rightfully so) certain protections, but shouldn't they be located on a "pre-planned campus?" He said the campus circumstances would appear to be a business and he questioned whether it is appropriate to place a campus of this size and nature in a residential neighborhood. Even though Mr. Addy quoted case law, the fact remains that this may constitute some kind of business and he asked the Council to recognize it as such and consider applying the rules and regulations when a business wants to locate in a residential area. Councilmember Jones asked if Mr. Jarussi, a lawyer, would classify this site plan as a business. Mr. Jarussi replied "yes", because there are officers and directors and revenue generated by services rendered. He said that is a business to him, but noted that Mr. Addy is trying to explain "things" that he found indicating that it would be protected. It may be an accepted business, but it certainly is a business and the question is "should it be located in a residential neighborhood."

ERIC HALSETH, BOARD OF DIRECTORS FOR RIMROCK FOUNDATION, 1931 LILAC LANE, said there was a recent survey of realtors in Spring of 2005 about the impact of group homes on neighborhoods. Dan Wenger, President of Billings Associated Realtors stated in the Gazette, "I've never had a listing next to a group home affect the price of that home. Most of the group homes are good neighbors." He asked the Council to ask the neighbors of Rimrock's current group homes if it is a good neighbor. Mr. Halseth said Rimrock Foundation decided on the four-plex design to make the site more pleasing to the neighbors.

KATHY WOODWARD, 17 HEATHERWOOD LANE, said she has worked as a methamphetamine researcher at UCLA for the last six year and is currently working as a Methamphetamine Prevention Specialist for the Yellowstone County Health Department.

She said she knows how destructive methamphetamine addiction can be for individuals, families and communities. One-third of the persons seeking treatment in Billings are claiming meth as their primary drug and the wait time to get into a residential treatment facility is from 4 to 8 weeks. As a meth-researcher she has traveled across the state discussing drug issues including treatment availability. She said Billings is very fortunate to have Rimrock Foundation as a treatment provider that stays current on drug trends and treatment research and contributes greatly to the community's knowledge about drug addiction. Additionally Rimrock Foundation has provided valuable assistance both in Family Drug Treatment Court and Drug Court, programs which have shown to have a positive effect in communities. Ms. Woodward said it is concerning to her to hear citizens in various neighborhoods speaking out against Rimrock Foundation and other treatment providers who are seeking to find properties in their neighborhoods. She stated that no neighborhood is immune to the problems associated with drug use and manufacturing in the form of property crime, violence, DUIs, theft, burglary and physical problems. It has been heard many times this evening that Rimrock Foundation is a good neighbor, such as Michelle House on Alderson, a nicely maintained property where the residents are well on their way to becoming free of their addictions and anti-social behaviors. Ms. Woodward said Rimrock Foundation is seeking to improve the community's health and well-being through these facilities that offer an adequate place to overcome addiction and return the residents to the community as productive and functioning individuals of society. By refusing to allow Rimrock to continue its good work of treating addiction, the citizens of Billings are depriving their families and community of an important resource. Rather than throwing up obstacles to Rimrock Foundation's attempts to rid the community of the scourge of drug addiction, we should be applauding their efforts. The citizens of Billings should be proud to live in a community where an organization like Rimrock remains devoted to improving the quality of life in Billings, despite all of the opposition. She asked the Council to approve the special review and bring this very important project to our community.

DALE KNEBEL, PLANT MANAGER AND ENGINEERING SUPERVISOR FOR RIMROCK FOUNDATION, said his staff has spent two years renovating the subject property and getting to know the neighbors. The existing buildings were in disrepair and occupied by actively using and dealing drug addicts. The land was littered with glass, garbage, downed tree limbs and discarded drug paraphernalia. He said the neighboring children were not safe playing on this land. Now the land is cleared of all debris and is being maintained in the same manner. The existing buildings have been completely renovated with new windows, insulation and landscaping to enhance the neighborhood. Mr. Knebel said the neighbors have said they appreciate the efforts of Rimrock on the property and he is proud to say that is how it takes care of all of its properties. He considered Rimrock an attentive and responsive neighbor. He urged the Council to allow Rimrock to develop this land to help people build new lives and renew families.

GARY GOETTEL, 1721 8TH AVENUE N. #B, said his residence is the "sober living housing" at Silver Housing and he has lived there seven months. He said he came from a very desperate situation and went into in-patient treatment at Rimrock in June. To return to his former life would be difficult and failure-prone at best. The opportunity at sober-living housing has meant extending his stay in a safe, secure and very clean sanctuary environment where he has a chance to get out of the terrible disaster he was

in. Mr. Goettel said he has seen many successes in this place and during his stay at Freedom House. He urged the Council to approve the special review because of the great need for this type of housing. There is no organization better suited to developing this type of treatment facility.

RUSS BRIDGES, 1701 VUECREST ROAD, said he has heard many people speak about Rimrock Foundation being a good neighbor, but it did not send the required notice to the residents within 300 feet of the land where it is proposing this facility. Only a few of the residents received this notice because, as Rimrock stated, "it got the mailing list from the City". He added that Rimrock had no problems getting addresses to everyone when inviting them to its facility when convenient for Rimrock. He spoke about a letter from Montana Fair Housing where Rimrock allegedly implied that it will sue the Vuecrest opponents and the Council for discrimination. The letter from MFH on behalf of Rimrock was conveniently received when there was no opportunity to talk with Montana Fair Housing today. Mr. Bridges said his opinion is that these are not actions of a good neighbor. He said he is not discriminating against anyone as he has a family member who is currently "coming off meth". Not wanting to change a zoning is not discrimination. He was told the zone change would allow Rimrock to treat disabled persons; but claimed this is not true. He said during a North Park neighborhood meeting Rimrock Foundation told the participants that 66% of residents at the proposed facility would not be in treatment. According to Montana Fair Housing only residents considered disabled would be those receiving treatment. Mr. Bridges said Rimrock Foundation would be trying to classify 2/3 of their residents as disabled when by definition they are not because they are not receiving treatment. To zone this as a treatment center, all of the residents need to be in treatment. He asked the Council not to take the letter from Montana Fair Housing into consideration when making their decision.

DANIEL SMITH, 1721 8TH AVENUE N., said he lives in the Silver Housing facility. He said there are no words to allow him to express his gratitude for what Silver Housing has enabled him to do during his recovery. It has provided a clean, safe and peaceful place with guidelines that have helped him through his recovery. He has been able to rebuild his work status within the community and the facility is conveniently located to transportation and other amenities. He said the property is one of the nicest on 8th Avenue N. and the residents take pride in keeping it that way. Mr. Smith said the residents are always helping neighbors that need help with anything. Rimrock Foundation has helped him regain his place in society and he is willing to help in any way he can.

MICHAEL CAHILL, IN-PATIENT SUPERVISOR FOR RIMROCK FOUNDATION, 521 PARKHILL DRIVE, said he is a member of the professional staff at Rimrock Foundation working in the Veteran's program at Freedom House. He said a neighbor of the Freedom House responded to a survey of how its neighbors feel about having Rimrock Foundation as a neighbor. The survey by Mike Francis stated that he has lived in his house on Ash Street for thirteen years and said he was worried about the plan to locate this treatment home across the street. Mr. Cahill quoted from the Billings Gazette "but since the group home has been operating for the past year or so the house looks much nicer and the operations have run smoothly. We weren't comfortable at first, but we are now and I'm much more concerned about the encroaching business from Montana State University than I am Rimrock Foundation," states Mr. Francis.

GREG ALDRICH, BOARD OF DIRECTORS FOR RIMROCK FOUNDATION, 210 YELLOWSTONE AVENUE, said any time a facility of this nature is proposed for a neighborhood, residents are understandably concerned about the impact on their property values and resale of homes. He offered testimony of one of his neighbors that lives next to Michelle House, "over the past four years Rimrock Foundation has renovated what is now called Michelle House, provided regular maintenance, staffed the house around-the-clock and generally been great neighbors. If they have done anything, they have increased my property values." Mr. Aldrich said he hired a resident of the Silver Housing who has been alcohol free for over a year and is a success story.

PATTY DRISCOLL, SECRETARY, NORTH PARK TASK FORCE, 724 N. 16TH STREET, said during the last task force meeting in December when Rimrock Foundation spoke, Lora Mattox was there to ask people to help with the neighborhood plan. She noted that the people that are complaining the loudest did not volunteer, which she sees as a problem. She said the list that her sister (Rep. Robyn Driscoll) printed from an offender website shows that the neighborhood contains sex-offenders, robbers, a kidnapper, meth-lab operators including two of the offenders signing the petition. She asked the Council to listen to the supporters of Rimrock Foundation.

FORMER COUNCILMEMBER SHIRLEY MCDERMOTT, 2110 10TH STREET N., said she is one of the authors of the 1993 *North Park Neighborhood Plan* and is here tonight to restate that the plan intended that it protect the shrinking residential area and encourage new residential development and redevelopment. The plan protects the residential area that is being discussed tonight, which is zoned residential. The Planning Board, the task force and the Council unanimously approved the plan, so to allow a business of this size to enter into our residential area that is currently redeveloping as multi-family and single-family housing would be very disruptive to the neighborhood and the plan. Councilmember Jones asked if Ms. McDermott would rather have duplexes with no controls or four-plexes with controls at this site. Ms. McDermott said she believed the neighborhood would rather have duplexes because that would not have a medical campus design. The duplexes may reduce the number of additional people and fit the neighborhood better. Even though there are some multi-family structures in the area, the neighborhood is "trying to reduce that number" and encourage single-family housing particularly on that block. She also noted that a developer is willing to develop single-family housing there if he could buy the property. Councilmember Stevens asked what about the campus look concerns Ms. McDermott. Ms. McDermott said the "campus look" is having 3 four-plexes in the current configuration and having treatment centers and certain facilities that lend to the look of a campus. Duplexes would not give it a campus look. She also expressed concern for the people coming and going out of that facility.

BRITTAN FRISBIE, 1687 VUECREST ROAD, said Rimrock Foundation had three months to plan the luncheon meeting that invited the neighborhood, but sent a letter on Friday for a meeting on Tuesday. She would have attended the meeting had she had more time to plan for it.

TOM ZURBUCHEN, 1747 WICKS LANE, complimented Rimrock Foundation on the good job it does. He said the rehab center is in truth a living center, group home and treatment facility. He said he received treatment at a treatment center for physical concerns and noted that he went there for treatment not for residency. Putting this treatment center in a residential neighborhood will assist any treatment center to locate in

a residential neighborhood, such as one for the mentally ill. Treatment centers belong in hospital settings. The last phase of the Rimrock project is half-way homes, residences that are not treatment centers. He stated that a treatment center and a group home cannot be defined in the same way. He urged the Council to deny this special review tonight.

CURT ZYGMOND, 1695 VUECREST ROAD, said he opposes Special Review #800. He said he helped to gather over 220 signatures from the citizens from the surrounding area. A petition with 200 signatures was sent to the Council previously and he presented another petition with 18 signatures that he asked the Council to review. He said no one is against helping anybody, but what the neighbors are against is a business in a residential community. As a taxpayer, he said he does not want his zoning changed, not because the facility isn't important or that he is discriminatory. He read from a letter from a homeowner at 707 N. 17th Street that stated "we feel that any kind of treatment center in our neighborhood would not benefit any homeowner or child in the area. In the event that this project is started it would not be safe for our children to play outside. Also my property value would decrease tremendously. We definitely do not want the Rimrock Foundation project to pass." Councilmember Jones asked the duplex versus four-plex question of Mr. Zygmond. Mr. Zygmond replied "unequivocally yes" for duplexes. Councilmember Stevens asked if there are rental units in his neighborhood and did he classify them as a business. Mr. Zygmond said he did not know if there are rentals in the area and did not think housing rental is a business. Councilmember Stevens noted that his concern was that would be a business in their neighborhood and asked if he realized the duplexes would still represent a business. Mr. Zygmond replied "yes".

ANNA SNYDER, 1631 VUECREST ROAD, said there are two points that have not come up: 1) Rimrock Foundation does own this land, and 2) is going to build on the property no matter what. She said the neighbors have asked Rimrock to assure that it fits with the neighborhood. Other Rimrock facilities are smaller homes that fit within the neighborhood. She said Rimrock plans to build a rather large facility on the other side of her block. There are some things Rimrock has agreed to change, but there are things with which she still does not agree. She said most of the residents in the proposed facility area do not know what Rimrock intends to do because the notices were sent to property owners and those owners did not pass that information along to their tenants. She accused Rimrock Foundation of "flying below the radar" and trying to get as little publicity and public knowledge out as possible to "get this pushed through without conflict." "It did not work because we are here", she said. Councilmember Stevens asked what Rimrock Foundation could do aesthetically to make this better for the neighborhood. Ms. Snyder said she personally would not like Rimrock to be in the neighborhood.

DAVID BOVEE, 424 LEWIS, asked why the City has zoning regulations when the decisions of this body in the last twenty years have never been made in favor of a resident. When it comes to the "rich" people, he said he can't remember very many denials on violations of zoning regulations. He said the Council should not continue the habit of for-profit corporations violating every zoning regulation because this does not benefit the community. He said there must be all kinds of commercial space available for this facility. Mr. Bovee said he wished Rimrock Foundation would buy the drug-dealer house in his neighborhood, renovate it and "flip" it. He is totally against this and hopes the Council denies it.

PAM BEAN, MONTANA FAIR HOUSING, 2522 S. 3RD STREET WEST, MISSOULA, said the letter that was sent from Montana Fair Housing was educational with no threats included. There is no intention for litigation at this point. She said her organization has heard and continues to hear discriminatory statements as the reasons for opposing the treatment center/group home. She said Mr. Addy did a good job giving the Council a quick overview of some of the regulations and case law. The case law on this issue supports the introduction of group homes and treatment centers into residential neighborhoods. She said Mr. Bridges has misled the Council about their conversation today. She made it clear to him that "any followup housing that went up into which folks moved would be continued treatment and 66% would not be exempt." She said she encouraged Mr. Bridges to get a legal opinion, perhaps from Mr. Addy. Ms. Bean said Montana Fair Housing's concern is over discriminatory statements and decisions that this Council or residents of the area may make, whereas special reviews and zoning issues are not its concern. Councilmember Brewster asked if Ms. Bean is suggesting that someone on this Council has made discriminatory statements. Mr. Bean replied "no". She said she has heard discriminatory statements from residents, but if that were the reason behind a Council decision to deny, that could potentially be an issue. Councilmember Boyer asked what triggered the Council receiving this letter. Ms. Bean said these types of letters are sent on an educational basis before issues end in an administrative review or litigation. She said this letter was generated after Montana Fair Housing was contacted about a potential for discriminatory activity taking place. She said she was contacted by people on both sides of the issue but noted the intake information is legally protected as confidential.

BILL SHAFFER, CO-CHAIR NORTH PARK TASK FORCE, 824 N. 25TH STREET, said the one duplex on the property is a well-run duplex. Nine duplexes with 4 residents each would equal 36 people whereas 4 four-plexes would house 53 people and that is quite a variance. He said he would like to see a delay or denial of this special review. He said Rimrock treats sex addictions not sex-offenders and he supposed that was semantics. The North Park Task Force did not allow sex-offenders in the group home on N. 18th Street, he said. The North Park plan also does not allow businesses and this treatment center is an expansion of the hospital corridor as far as he is concerned. Mr. Shaffer asked the Council to respect the task force plan.

SUSAN STEWART, 4443 LOMA VISTA, said she has been associated with the Rimrock Foundation for approximately 16 years as an independent auditor and serves on the Board of Directors. She spoke about the organization and how well it is run. She said Rimrock takes care of its properties and assists other properties in the area. An article in the Gazette in April of 2005 talked about how the neighbors felt about Rimrock Foundation and contained all positive comments. She said she owns property in the area of the proposed facility and is not afraid of their presence.

SCOTT SANDERS, BOARD OF DIRECTORS OF RIMROCK FOUNDATION, 1620 ARCADIA DRIVE, said he has been on the board for a little over a year and finances commercial real estate. He noted that east of the subject property is a 24-unit low-income housing unit with an on-site employee, owned by one of his customers. He definitely looks at this as a business. He encouraged the Council to visit the site and view the neighborhood where you will find many multi-family homes which is not incompatible with Rimrock's design. He reminded the Council that the special review was approved by

the Zoning Commission on a vote of 4-0. Ms. Sanders said the Rimrock Foundation thought the neighbors would appreciate the site design and is not predisposed to reallocating a building or holding a neighborhood design sharett.

EMILY SHAFFER, 824 N. 25TH STREET, said she has lived in Billings most of her life. She said access to the property is limited from one of the corners making the residents travel down a neighborhood street every time they exit the property. Smaller properties "would look more like the places across the way." Ms. Shaffer noted that this property will be off the property tax rolls because the facility is non-profit.

MARY WESTWOOD, 2808 MONTANA AVENUE, said she opposes the special review. She said this is purely a matter of zoning and she is concerned that her neighborhood is disappearing into the medical community. The neighborhoods around downtown that continue to exist are very important to the people downtown. The difference between those residences and a facility like the one proposed is that the rentals are available to the public on a non-discriminatory basis; they are businesses in that regard but anyone can live there. A diverse population is essential for the downtown area. She also is concerned about the way Rimrock Foundation has approached this concern. At the task force meeting she understood that this was not going to be a treatment center and did not find that out until she read an agenda. It was also reported in the media that meth-addiction would be treated at the facility and this treatment takes 9-12 months to treat. Ms. Westwood said she is concerned about what the neighbors will really have at this site. The Vuecrest neighborhood is a development that has some of the best views of the City and she does not want to see this neighborhood harmed. The people in the neighborhood do not want to be harmed either and that is why the zoning was set as it was. She said this facility is an extension of the medical corridor and needs to stay on the other side of 27th Street. She said it is the Council's job to ensure that.

JOE WHITE, 926 N. 30TH STREET, said before the application is approved an air monitoring study should be initiated. He said Billings is short on air with some of the air becoming putrid and stagnant in the North Park area. He said North Park is a crowded neighborhood with a terrible drug addiction problem and 12-15 murders in the last fifteen years. He suggested commissioning a detailed study of the air quality before approving the special review.

CONNIE WARDELL, 1302 24TH STREET WEST, said she is interested in the fact that this facility is considered a business, because there are offices at another location. She said she is a property manager, managing 210 properties across this town which has her extending commercialization all over the town. By that same standard, she manages properties near the subject property, so there is already commercial there. Ms. Wardell said she supports this facility because these individuals are self-admitted into a very expensive program. She said allowing more residents per housing will open up the affordability of this program to others, which is an important factor. She also noted that a former property that she managed was a group home that was kept in great condition and when that status changed so did the upkeep of the residence. Ms. Wardell said Rimrock Foundation is a good steward of the community and does a great service for the individuals in their programs. She said she does not see anything that could be considered non-conforming in the proposed location.

CRAIG FROHLICH, 100 POLY DRIVE, SUITE 160, said he is the architect for Rimrock Foundation and would clarify a few issues: 1) the proposed building will be

reviewed by the City according to International Building Code (it is residential occupancy by the IBC that includes apartment houses, boarding houses, convents, dormitories, fraternities, sororities and vacation time-share properties); 2) the four-plexes house a maximum of 48 people versus 7 duplexes (housing four patients on each side) housing 56 total residents; and 3) there is an economy of scale with the four-plexes versus the duplexes where there would only be one service per four-plex as opposed to seven services for the duplexes.

FRANCIS HARRIS, THE TERRACE, said she is not taking a side in this issue. She said approval of this special review would be giving Rimrock the City's "blessing" whereas denial would force them to build the smaller housing. She said Rimrock has far bigger plans than the Council realizes and asked the Council to honor the petitions that have been presented. Ms. Harris said "the broken borders have turned into broken neighborhoods" which is a sign of no respect for homeowners and neighborhood residents. These people need help and healing, but it should not be at the expense of homeowners. She said there are better places for this facility, such as Rimrock Road, close to the hospital.

There were no other speakers. The public hearing was closed.

Mayor Tussing called for a recess at 9:26 P.M.

Mayor Tussing reconvened the meeting at 9:37 P.M.

Councilmember Gaghen moved to postpone action to 2/13/06, seconded by Councilmember Ruegamer. Councilmember Gaghen said the Council has been deluged with information, comments and options for this special review. She thinks that a postponement will allow the Council time to find the best possible alternative for this request. Councilmember Ronquillo wondered why these projects seem to be requested for low-income neighborhoods. He said clustering facilities creates problems and hurts the neighborhoods.

Councilmember Ruegamer said he would like a firm clarification on the number of residents that would be housed in the proposed facility. He also said he sees a great deal of room for compromise and would like to see Rimrock Foundation make another attempt to meet with the neighborhood. Additional communication could eliminate many of the current concerns. He urged all persons involved in this issue to meet, discuss the concerns and find a workable compromise.

Councilmember Brewster said it is important to remember that this special review only concerns the construction of one four-plex and anything else that happens (other than duplex construction) on this property will have to come back to the Council for special review. He said the Council knows the numbers and has all the facts it needs to make a decision tonight.

Councilmember Boyer said she viewed the area and was pleasantly surprised to see the new homes and redevelopment in the area. She views this issue as a zone change and is hearing that the neighborhood does not want the zoning changed.

Councilmember Jones agreed with Councilmember Ruegamer that more discussion between concerned parties is appropriate. Additional discussion about the aesthetics is evidently one of the concerns and a design sharett is a good idea. Ms. Volek said Rimrock Foundation has now offered to do a design sharett with the

neighborhood. City Attorney Brent Brooks said there is a 30-day timeframe according to the Unified Zoning Code where action on the special review must be completed. He cautioned the Council from attending any additional meetings such as the design sharett because of the quasi-judicial nature of the decision. He urged the Council to be a disinterested party to that meeting to keep the process fair and open. Councilmember Brewster noted there would not be an additional public hearing with the delay. Mr. Brooks concurred that the Council has discharged its obligation to allow public comment and input prior to its final decision.

Councilmember Stevens said she would like to see a legal brief from Staff relating to the letter from Montana Fair Housing stating the alternatives for the Council especially if the Council votes for denial. On a voice vote, the motion was approved with Councilmember Veis voting "no".

4. PUBLIC HEARING AND SPECIAL REVIEW #801: a special review to allow a 72-unit assisted living facility and 7 independent living cottages in a Residential-6,000-Restricted zone described as Tract C of C/S 1011 and located at 3345 Grand Avenue. Robert and Cynthia Cover, applicants, Springer Group Architects, Lowell Springer, agent. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)

Planning Staff Member Wyeth Friday said this special review is for a 4-acre property along the eastern side of the Zimmerman Trail corridor. The property is currently zoned Residential 6,000-Restricted and there is Residential 8,000 zoning to the north and east of the property which includes some patio-home and condo development. There is agricultural zoning to the west and south which is outside of the city limits. He said the proposal for the property is for a full-assisted living facility with 72-units and 7 independent living cottages on the northern portion of the property. The main structure would be two-stories with a maximum height of 34 feet complying with the Residential 6,000-Restricted requirements. He said there are two existing residences currently on the property that are used by the owner as rental properties.

Mr. Friday said the Zoning Commission is recommending conditional approval on a 4-0 vote. The conditions are:

1. The special review approval shall be limited to Tract C of Certificate of Survey 1011 as shown on the site plans submitted with this application.
2. Any expansion of the buildings, parking area or number of living units greater than 10 percent will require an additional special review approval as per BMCC 27-613(c).
3. The landscaping, parking, buffering and accesses shall be designed as submitted on the site plan included with the application for this Special Review unless City access requirements or City Fire Department regulations require adjustments. A proposed emergency access off Avenue E with a crash gate addressed the need for another access. A six-foot-high site obscuring fence shall be constructed along the entire eastern edge of the property with landscaping provided on both sides of the fence. No chain link or wire fencing will be allowed on this site.

4. Any neighborhood identification signs shall be submitted for a sign permit from the Planning and Community Services Department and be no greater than 32 square feet in sign area. (BMCC-27-705(a)(6)).
5. Any lighting within the parking lot areas shall have full cut-off shields so light is directed to the ground and not onto adjacent property.

Mr. Friday said issues that were discussed at the Zoning Commission meeting related to lighting and orientation of the building because of close proximity to property owners to the east. The developer and property owner addressed the lighting and fencing issues, but the orientation of the building remained as originally proposed. He noted one letter in opposition to the special review was received and distributed in the Council's Friday packet.

Councilmember Ulledalen asked about the access onto Avenue E. Mr. Friday said, after conversations between the architect and the Fire Department, his understanding is that the emergency access appeared to be adequate but there are no building plans currently submitted nor has that review process begun. A commitment for the emergency access is not finalized, but he noted that the access would not be a full access and will be finalized during the permit process. Councilmember Ulledalen said he would like to see this access addressed so this will not be a concern for neighbors to the north.

The public hearing was opened. ANN DEEGAN, 1732 GOLDEN BLVD., said she has a concern about the large building located very close to her property. She would like to see the setbacks increased because "this will be an awfully big building to have in your backyard." She is also concerned about the 10% variance condition. She said that is a lot when one is considering 72 units and 7 cottages. Ms. Deegan said she would like to see that variance be 1 to 2%. This facility is going to be more commercial-like with the large 72-unit building.

BELVA DRISCOLL, 1658 GOLDEN BLVD., said she was pleased to see the fence requirement shielding the residents adjacent to the property. She said this facility will be housing elderly people and the need for emergency vehicles will be great. She said there is 17-1/2 feet between her property and the fence and asked that the fence not be allowed to be vinyl (she suggested cinder-block). Her concern is for the additional traffic and traffic speed generated by the teenage workers that will be driving close to the houses in her neighborhood where bedrooms face the proposed facility. A heavier fence that would sound proof the traffic noise from the facility would be a better solution. Ms. Driscoll also noted there are several people that are not represented at this public hearing and asked if a delay could be considered. Councilmember Stevens asked if Ms. Driscoll thought a row of evergreen trees on each side of the fence would alleviate some of her concerns. Ms. Driscoll said her residence is very close to the road and has concerns about teenage workers driving on it.

BOB COVER, NO ADDRESS GIVEN, said he is the property owner and noted that the plans were drawn by Springer Group Architects without his input. Springer Group Architects are the ones requesting the special review. The current zoning would allow 22 single-family homes. He said Avenue E is a standard City street, not a private road and within the jurisdiction of the City's plans for improvement. Because of the neighbors' concerns that traffic not be allowed to go onto Avenue E from the facility, the architect

placed a crash gate there. He also noted that there is no reason for teenage drivers to be driving at the back of the facility when access is in the front. He noted the fence along the back will have the restrictions requested by the City. He did not think the cinder-block fence would be economically feasible. Mr. Cover said the architect has planned landscaping to add aesthetic appeal to the fence and is willing to work with the City on these issues.

VALERIE KAY, 1600 GOLDEN BLVD., asked why the variance needs to be 10% for the number of units. She expressed concern that this would allow additional cottages that much closer to the setbacks. She said the proposed height of the main unit is going to be quite site-obstructing. She asked if the building could be repositioned to get the points of the structure between the existing houses.

JOE WHITE, 926 N. 30TH STREET, said an air study should be completed before constructing a huge number of units for assisted living. People who are handicapped or elderly need a higher air supply than normal. This should be reviewed before the Council's decision.

Councilmember Gaghen asked if the 10% variance is a standard requirement. Mr. Friday said this is a standard condition that is in the code. Councilmember Gaghen asked if it is possible to reposition the building. Mr. Friday said it was explained that the back corner of the building that is closest to the property line is actually only 17 feet from the ground to the roof, because the roof is sloping back away to the 34 feet. The building was designed in this configuration so that the commonly used services are in the middle of the structure and easily accessible. Councilmember Ruegamer asked if the 10% variance would allow 7 more cottages to be constructed. Mr. Friday said the additional cottages could be built if they could be fit onto the site and still meet all of the other requirements.

CINDY COVER, NO ADDRESS GIVEN, said she and her husband are the owners of the property. Currently the zoning is Residential 6,000-Restricted and the property was large enough to support 22 lots with single-family dwellings. The height of those houses can be 34 feet with the same 20-foot setbacks and the lots would not require fencing at all.

There were no other speakers. The public hearing was closed. Councilmember Brewster moved for approval of Zoning Commission recommendation for conditional approval, seconded by Councilmember Gaghen. Councilmember Boyer said she is concerned because she thought the issues had been previously decided upon. She said she is now hearing three or four concerns that sound pretty major. Mr. Cover said the conditions are part of the code and not something that he requested. He said he is not a developer and is 99% sure he will not be building the facility. If the variance is stated in the code, he could not dictate to the future builder that they could not take advantage of the variance. He said the facility was designed as proposed with no intention of any expansion on his behalf. Mr. Cover reminded the Council that the property size is 4 acres and there is not enough room to place 7 additional cottages. He said he is the owner of the property. Springer is the designer and his representative will market this property with this specific plan as proposed. "It has to be this plan and can't be any other plan", he said. Mr. Friday said even though there is a 10% flexibility, two things must be kept in mind: 1) the site plan must be adhered to in terms of the layout as proposed regardless of the 10% variance, and 2) because of spacing and access requirements the additional

units would have to meet all other requirements for this type of facility before approval. Councilmember Jones said the 10% is standard and there for needed flexibility. On a voice vote, the motion was unanimously approved.

5. **TOM ROMINE PROPERTY – LOTS 25-27, 38-40, SUNNYCOVE FRUIT FARMS:**
(A) PUBLIC HEARING AND RESOLUTION 06-18385 approving the Tom Romine Property Urban Planning Study and expanding the Urban Planning Area to include the subject property. Planning Board recommends approval. (Action: approval or disapproval of Planning Board recommendation.)

Planning Manager Candi Beaudry said this is the first part of the annexation process for the Romine property that is the subject of Annexation #06-01. If this first request to approve the Urban Planning Study is not approved, the annexation cannot proceed. The study involves 6 10-acre lots in the Sunnycove Fruit Farm located south of Rimrock Road between 58th and 62nd Streets West. The Urban Planning Area is an area that surrounds the city limits that the Council has determined City services can be extended to within a ten-year period. Properties must be within the Urban Planning Area prior to annexation. She said the request goes before the Planning Board where a public hearing is not held, but a recommendation is made for expansion. The Council holds the public hearing on the expansion of the Urban Planning Area and adoption of the Urban Planning Study.

Ms. Beaudry said only four lot owners are involved in the annexation request. This request does not obligate either the owners or the City to annex the property; it simply makes the property eligible for annexation. The area included in the study involves 99 acres of which 60 acres is the requested expansion area. She said the subject area is currently zoned Residential 9,600, Residential 15,000 and Agricultural-Open Space. The proposal in the planning study is to rezone the property Residential 9,600 and Residential 7,000. She said there is not a conceptual plan for the development but the Urban Planning Study states that it will be a mix of single-family and duplex residential with the total umber of units as 315 based on the 99-acre development.

Ms. Beaudry said the request is consistent with the Growth Policy, within the limits of annexation and is adjacent to existing city limits to the north. It is partially inconsistent with the West Billings Plan and Northwest Shiloh Land Use Plan because it will convert agricultural land to residential property which is not the most efficient use of agricultural land. She noted the planning study was forwarded to all City departments for comments with receipt of no negative comments. When built out, the property is calculated to house 725 people in the 315 single-family and duplex units. Access to the area would be from Rimrock Road, 58th and 62nd Streets West increasing traffic to 2,669 daily trips from the area. She noted that sewer and water is available in Rimrock Road and 58th Street West. Solid Waste, Public Safety and Parks and Recreation services would be dealt with through the subdivision process, but she noted the services are readily available.

Ms. Beaudry noted that word was received today from School District #2 stating that there is no capacity in either the elementary or middle school for this area. This conflicts with statements in the Urban Planning Study. The high school has no capacity to serve this area. Children from this area would have to be bused to alternate schools, but it is unknown which schools that would include.

Ms. Beaudry said there is one environmental concern that may be significant, but there are not enough details to determine the exact boundaries. The property lies within the 100-year and 500-year floodplain which was determined through an approximate study. It is not on the flood insurance rate maps however, she noted. During the subdivision process, if it is determined to be in the floodway, mitigation would be required or demonstration that it is not in the floodplain with mapping.

Ms. Beaudry said the Planning Board has recommended approval of the Urban Planning Study and expansion of the Urban Planning Area. Councilmember Veis asked if the two property owners that are not involved in the Urban Planning Study would be annexed also. Ms. Beaudry said there is no obligation for them to annex into the City unless they desire and the City does not have a reason to annex. The annexation will only involve the four parcels of the other two owners.

Councilmember Brewster asked when the Water and Wastewater Study will be completed with service lines redrawn. Ms. Beaudry said this would come out in draft form in mid-February. Councilmember Brewster asked when the recommendation of the Water and Wastewater Study would come to the Council. Interim City Administrator Tina Volek said that would come to a work session in February or March.

Councilmember Boyer expressed concern about moving the urban planning area boundary farther out. Ms. Beaudry said the City is looking at the availability of services. Ideally the Urban Planning Area should be coincident with the limits of annexation, but one does not drive the other, she said. Councilmember Boyer noted the comments from the Police department that the extension of city limits negatively impacts staffing and budget and expressed concern about the costs to the City.

Mayor Tussing said the land could still be developed without annexation and the residents would still be part of School District #2. Ms. Beaudry said it could be developed, but it would be at much lower densities (a minimum of 1-acre lots due to water and septic requirements). This would be 60 units as compared to 315 units. Ms. Volek noted that Cottonwood Park is located on 54th Street West and there is a plan for development of the land to include an elementary school, but the exact timing of that is unknown. Ms. Beaudry added that School District #2 has property at the corner of Grand Avenue and 56th Street West, but there are no planned facilities at this time either. Councilmember Jones asked if there are ways to develop this area with the same densities using a community water system. Ms. Beaudry replied "yes".

The public hearing was opened. JANET LUTTSCHWAGER, 2616 58TH STREET WEST, said there are water problems with property in the area of her residence. She said the Council may know that the City is wondering whether it is in a lawsuit relating to this issue. A sewer line down 58th Street West has affected her residence. She said she was only notified about a possible annexation on a pink piece of paper on a fence line behind her house. The subdivision she lives in is called Pop's Meadows and is not currently served by the City with public safety or water and sewer facilities. Their aquifer was recently drained along with that of the Cloverleaf Subdivision. She said this seems like leap-frog development. Ms. Luttschwager said the City should have extended a little more consideration and notified the residents of her subdivision. She said this will disrupt her home and she does not want to see a "bunch of little homes or duplexes out there." Councilmember Veis asked if Ms. Luttschwager was interested in being annexed into the City. Ms. Luttschwager said she did not know what that involved and was not sure.

Councilmember Jones asked if Ms. Luttschwager's property is already in the Urban Planning Area. Ms. Beaudry replied "yes".

MONICA CARTER, 5818 MARED, said her property is on a well system. She also spoke about the sewer project that caused her residence to completely lose her drinking and bathing water and irrigation water. She paid \$9,000 to \$10,000 for repairs to her wells and associated motors. The entire west side of her house is cracked and the windows were damaged and had to be replaced due to the sewer project. She said her neighborhood is devastated after finding the "pink sign" which she feels shows no consideration for the surrounding residents and is no way to "win over a neighborhood."

JIM BOWYER, 2704 58TH STREET WEST, said he owns lot #3. He said he is not against annexation in the area, but noted that the high water table and farm equipment running over the land disturbs the wells to the point that it costs "\$1,000 to get your water taken care of." He said he thinks the neighborhood should have been notified in some manner because growth has an adverse effect on them. He said 315 more people in the area will require a fire station which costs money. Mr. Bowyer said he is concerned about what the plans are for the area and some form of notification, because "that is our backyards". Ms. Beaudry said that during the subdivision process, all surrounding property owners will be notified, but at this point even Staff does not know what the plans are for the area if it is annexed. Mayor Tussing noted that a fire station is planned at 54th and Grand Avenue, and if the Public Safety levy is not overturned, will shorten the response time to Mr. Bowyer's area.

DANIEL CARTER, 5818 MARED STREET, said he is concerned about the density of this plan. He said there will be single-family units and duplexes located quite close to \$500,000 houses and wondered how that would affect their property values. He said he attends schools in School District #2 and deals with the congestion and increased traffic at school. He said the roads in the area are currently not designed for increased traffic. Mr. Carter said the current property owners have always been willing to negotiate, but have not been approached.

There were no other speakers. The public hearing was closed. Councilmember Veis moved to approve the Planning Board recommendation, seconded by Councilmember Ulledalen. Councilmember Boyer said she has real concerns about approving this particularly with the school situation. Councilmember Brewster said he has some insight on the school situation and noted that at some point in School District #2's life it must do some planning and move forward with some changes on how it operates. He said it can't continue to bus children because it can levy the taxes without a vote. He said it should manage the district in a way that accounts for where the growth is. Councilmember Boyer agreed that the district needs to plan, but the City must be responsible for growth in the City.

Mayor Tussing said he thinks it is pertinent to add this area to the Urban Planning Area, but is not sure about supporting annexation. Ms. Volek stated that 62nd Street forms the permanent western boundary of the annexation area and pointed out that the City has paid to extend City water and sewer along Rimrock Road. At some point to make this effort cost effective, the City will need to make additional connections. Councilmember Jones said this area is within the City's Annexation Policy area and within 500 feet of the water and sewer service. The Council made a decision to make a big investment in infrastructure in that area and the only way to recoup that investment is through new

connections. Councilmember Boyer said the Council needs to look at this as a "red alert" because she does not think the City can afford to do this. On a voice vote, the motion was unanimously approved.

(B) PUBLIC HEARING AND RESOLUTION annexing Lots 5, 6, 26-28, 38 and 39 40 of Sunncove Fruit Farms, located south of Rimrock Rd. between 58th and 62nd Sts. W, Thomas E. Romine and Paul V. Hoyer, petitioners, Annex #06-01. Staff recommends conditional approval. (Action: approval or disapproval of Staff recommendation.)

Planning Manager Candi Beaudry said the annexation request does not conform to the Urban Planning expansion that was approved in the previous item. The annexation is 63 acres and includes parcels that were previously in the Urban Planning Area and those that have just been included. She said the annexation is adjacent to the City limits to the north and is currently zoned Residential 9,600, Residential 15,000 and Agricultural Open-Space. The proposed use is residential. She said the annexation complies with the Annexation Policy and the public services report indicates no departmental opposition to the annexation. The Police Department noted that any annexation will put a strain on its resources. Water and sewer services may be safely and efficiently provided.

Ms. Beaudry said the Staff is recommending conditional approval with the following conditions:

1. That prior to development of the site the following shall occur:
 - a. 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; or
 - b. A Subdivision Improvements Agreement (SIA) and Waiver of Protest the Creation of an SID shall be approved and filed that will stipulate specific infrastructure improvements and provide guarantees for such infrastructure improvements. The subdivider will be responsible for forming a Park Maintenance District at the time of subdivision.

Councilmember Veis asked why the staff report indicates that Lot 39 is to be annexed but the graphic indicates Lot 40. Ms. Beaudry confirmed that the staff report and agenda are incorrect, however the resolution is correct: Lot 40 is included in the annexation petition and Lot 39 is not because it is owned by another party. Interim City Administrator Tina Volek recommended that the Council consider delaying action for two weeks to allow Staff time to verify that the correct lots were advertised for the public hearing. Councilmember Veis moved to delay the public hearing on the Romine annexation to 2/13/06, seconded by Councilmember Ruegamer. Councilmember Brewster suggested that someone present this evening might want to testify. Councilmember Jones made a substitute motion to hold and close the public hearing this evening and delay a decision to 2/13/06, seconded by Councilmember Stevens. Councilmember Jones said there may be persons present tonight that wish to comment and if it appears that the advertising is correct, the action can be scheduled for the next council meeting without a problem. Mayor Tussing asked if another public hearing will be required if the advertising is found to be incorrect. City Attorney Brent Brooks confirmed that the City will be required to re-advertise the public hearing if it is found that the

property description does not reflect what is contained in the resolution. On a voice vote, the substitute motion was approved with Councilmember Veis voting "no".

The public hearing was opened. JIM BOWYER, 2704 58TH STREET WEST, said he owns Lot #3 in Pop's Meadows. He said he does not understand how the annexation can go forward without stating what the plan for the property is. Mayor Tussing said the developer would present a plan during the subdivision process which will be a matter for another meeting.

DANIEL CARTER, 5818 MARED, said he is concerned about the underground aquifer that is under the current residences and continues under most of the area. If the water table is high and there are no water monitors, dewatering may be needed. He said dewatering causes new construction to settle and become un-level which is happening in the Cloverleaf Subdivision. Mr. Carter said the geology of the area is not being discussed and additional density may disturb the geology. Dewatering will also cause the houses in Pop's Meadows to settle more than they currently have. He said there are 10 lots in Pop's Meadows and more property owners would have been present this evening if there had been better notice. He asked that there be another public hearing at the next council meeting.

There were no other speakers. The public hearing was closed. Action was delayed to 2/13/06.

6. PUBLIC HEARING AND SPECIAL REVIEW #799: a special review for the production and storage of hydraulic cement and concrete materials in a Controlled Industrial zone on Lot 2, Block 6, Tierra West Industrial Park Subdivision, 2nd Filing, generally located at the northeast corner of Hesper and South 32nd Street W. Cretex Concrete Products West, Inc. (dba Elk River Concrete Products), Steve Wagner, applicant, Engineering, Inc., agent. Zoning Commission recommends conditional approval. (Public hearing continued and action delayed from 1/9/06). (Action: approval or disapproval of Zoning Commission recommendation.)

Planning Director Ramona Mattix said the three conditions included in the Zoning Commission recommendation are:

1. Screen materials stored outside. All materials, parts, equipment and similar items shall be placed and stored outside in a neat and orderly fashion and screened from public view and neighboring property with fences or landscape screening built in conformity with set back requirements.
2. Remove garage and waste weekly. Garage and waste removal shall be accomplished at least once a week, or more often, if necessary, to maintain the premises and keep clean and free of refuse.
3. Provide landscaping, mowing of weeds, and keep the new expansion area of Lot 2, Block 6 of the Tierra Yellowstone Industrial Park Subdivision, 2nd Filing, clean and free of refuse.

Ms. Mattix said the owner and an adjoining property owner have come to an agreement with the conceptual site layout and landscaping plan as proposed by Cretex Concrete Products West.

The public hearing was opened. MARSHAL PHIL, ENGINEERING, INC., said he represents the owner of Cretex Concrete Products West. He said the neighbors had

some issues with landscaping and were able to come to an agreement with Cretex which is included in the conceptual plan that is on the Council's desk this evening. He said he would be available for questions.

JERRY THOMAS, BOTTRELL FAMILY INVESTMENTS, said he represents the interests of Bottrell Family Investments, which is building the TransTech Center and the Gabel Road Commercial Center Subdivision located north and west of the subject property. He said the Bottrell Family has met with the owner and agreed to the plan that Cretex has submitted that includes landscaping with 8-foot Austrian pines planted on 20-foot centers with live irrigation and berming. He said the Bottrell Family appreciates the efforts of Cretex with the plan and if the improvements are completed as specified would support it.

There were no other speakers. The public hearing was closed. Councilmember Ruegamer moved for conditional approval of the Special Review #799, seconded by Councilmember Brewster. City Attorney Brent Brooks suggested the Council consider adopting the proposed conceptual plan as part of the conditions that are imposed. This would make the record clear that the recommendation includes the additional landscaping agreement. Councilmember Brewster amended the motion to include the conceptual landscaping plan as presented this evening, seconded by Councilmember Stevens. On a voice vote, the amendment was unanimously approved. On a voice vote on the amended motion, the motion was unanimously approved.

**7. EXCHANGE CITY GOLF CORPORATION (ECGC) 2006 ANNUAL BUDGET.
Staff recommends approval of the budget as presented. (Action: approval or disapproval of Staff recommendation.)**

There was no Staff report. Interim Parks and Recreation Director Gene Blackwell said he was available for questions. Councilmember Stevens asked if there was a fee increase in the budget. Mr. Blackwell said there is a fee increase of \$1.00 (from \$9.00 to \$10.00) for nine holes. It is anticipated that this increase will bring in \$13,000. Councilmember Stevens asked Mr. Blackwell to review what happens with excess revenues. Mr. Blackwell said the revenues cover operations and maintenance. There is a sequence of prioritized needs that are covered with the cash balance that results each year. The remaining funds are distributed to the Downtown Exchange Club and the City of Billings in a 1/3 to 2/3 distribution respectively.

Councilmember Stevens asked what the funds distributed to the City are used for. Mr. Blackwell said the City funds go into the Park Acquisition and Development Fund, a trust fund that includes cash-in-lieu payments from developers of subdivisions and is used for park acquisition and development appropriated and approved by the Council. Councilmember Stevens stated that raising the fees puts the money into more park development. Councilmember Brewster noted that the board is looking at funding capital improvement projects with the excess dollars. He said the City is not really going to see more money out of the fee increase. Councilmember Jones said the budget indicates that \$60,000 will be available at the end of the year. He said taking the fee increase out would reduce that to \$47,000. He said he looks at Par 3 as a public park where the City should make the fees reasonable. He does not understand why the increase is needed. Mr. Blackwell noted that the net cash last year was \$93,500 and this year with the fee increase it will be \$60,350. Mayor Tussing asked when the last fee increase was

implemented. Mr. Blackwell said the last increase was on 18 holes and was several years ago.

Councilmember Ulledalen moved for approval of the Staff recommendation, seconded by Councilmember Boyer. Councilmember Stevens amended the motion to remove the \$1.00 fee increase, seconded by Councilmember Jones. Councilmember Stevens said this increase is a means to have the golfers subsidize other park projects. Councilmember Brewster noted that this amendment will approve the budget while reducing the revenue. Councilmember Ulledalen reminded the Council that the increase was intended to rebuild reserves that were reduced when the well was replaced last year. He said the Council is quibbling over a very small amount. Councilmember Gaghen noted that the \$1.00 increase still keeps the fees on the very low end of other competitive public golf facilities. She said she supports the fee increase as a way to improve the golf course. On a voice vote, the amendment failed with Councilmembers Jones and Stevens voting "yes". On a voice vote on the original motion, the motion was unanimously approved.

8. AMENDMENT #1, COBB FIELD STADIUM DESIGN AND FEASIBILITY STUDY CONSULTANT CONTRACT. (Delayed from 12/19/05). HNTB Montana Inc., \$20,000.00. (Action: approval or disapproval of Staff recommendation.)

There was no Staff report. Ms. Volek noted that Mr. Iverson from the Steering Committee was available for questions. Mayor Tussing asked for clarification of what the Staff recommendation was. Ms. Volek said the recommendation is for approval of the contract with HNTB Montana, Inc. for \$20,000. Councilmember Ruegamer noted there should be a stipulation in the contract with HNTB that if the survey indicates that citizens will not support the Cobb Field Stadium proposal, the contract would be cancelled. Mr. Blackwell said HNTB agrees that the contract could be cancelled if that was the case. Councilmember Ruegamer said the Council should have this in writing. Mr. Brooks said the Legal department can include language in the termination portion of the contract that the City does not wish to proceed with the contract if the survey indicates no support for the Cobb Field Stadium proposal.

Councilmember Ruegamer said the language should include the Council's decision to discontinue the contract if it decides not to place the Cobb Field Stadium on the ballot. Councilmember Boyer asked for clarification of the purpose of the contract. Mr. Blackwell said the contract would include additional community interaction, contacts and meetings to further refine the proposal for the bond issue. He said Councilmember Ruegamer is referring to the poll that will be conducted within the next month by Harsted of Denver. Councilmember Clark said this poll will indicate the level of support for a bond issue. If the support is indicated, HNTB will proceed with the community out-reach to enlist support for passage of the bond issue. Councilmember Ruegamer said the poll conducted by Harsted will be a scientific poll that will indicate: 1) whether the people of Billings will support rebuilding Cobb Field?, and 2) if yes, how much are the citizens willing to spend? He said that is why he wants the contract language clear because if the poll comes back indicating the citizens will support a stadium for a certain amount of money and HNTB indicates that it cannot be completed for that amount or the Council does not agree with that amount, the Council will have the option to cancel the contract with HNTB.

Mr. Blackwell noted that the poll may cost in the range of \$9,000 to \$16,000 depending on the parameters of the polling that is done. He said the Steering Committee will meet next week and this poll (which is a separate unrelated contract) will be the major item of consideration. Councilmember Boyer asked why the Council is considering HNTB's contract now. Mr. Blackwell said the City desires to "lock in" HNTB because they have three big projects that will make scheduling difficult. This assures the City that they will be available at the critical time. Councilmember Boyer moved for approval of Amendment #1 of the Cobb Field Stadium Design and Feasibility Study Consultant Contract with HNTB Montana, Inc. in the amount of \$20,000 only if the poll indicates citizen support, seconded by Councilmember Gaghen. Councilmember Brewster said it seems odd to pay someone \$1,000 a meeting when the City has resources like Gene Blackwell, Joe Fedin, Kory Thomson, Mark Jarvis and Councilmember Ruegamer to "handle the leg work." Councilmember Jones said he agrees with Councilmember Brewster that it seems there are capable people locally that can do this. Mr. Blackwell clarified that HNTB would be responsible for the process of developing the stadium proposal and Harstad and Associates of Denver is conducting the poll about the bond issue. He noted that Harstad indicated they can do the poll in a two-week timeframe and on short notice. Mayor Tussing asked where the \$20,000 to HNTB will come from. Mr. Blackwell said that would come from the Park Acquisition and Development Fund that has been earmarked for Cobb Field. He said it is very important for a firm like HNTB to conduct outreach with groups like the Chamber of Commerce, building trade councils, service clubs and community organizations as well as some ward meetings with citizens.

Councilmember Jones asked Mr. Iverson to address these issues. Mr. Jim Iverson, chairman of the Steering Committee, said these have been tough deliberations for the Steering Committee. He said the first feasibility study (\$60,000 with HNTB and Patrick Zahn as consultant) included the proposal that devised two options for the stadium. There was public indication that the citizens wanted to be involved in the design of the stadium so it was discussed and proposed by HNTB that their firm come back and educate the public on the proposal for the stadium over a 6-7 day period. The Steering Committee approved that proposal. At the last meeting of the Steering Committee it was suggested by concerned citizens that Harstad and Associates conduct a poll that would cost approximately \$2,500 to \$5,000 that would indicate citizen support. The Steering Committee decided to go forward with the suggestion and pay for the poll out of the Parks and Recreation budget. Councilmember Ulledalen asked if the idea of using Harstad was because they could "piggyback on top of prior studies that they had done" instead of developing a totally different new poll through another party. Mr. Iverson said the Steering Committee wanted current information because the prior information was two years old. The other factor was that their previous poll results were accurate and "right on".

Councilmember Ruegamer said he would take responsibility for pushing the poll because it occurred to him that a step had been skipped, which was "if, what and when people would agree to the proposal." He also noted there would be discussions about the potential for private funding. Councilmember Veis asked if the dollar amount citizens will agree to has to be part of the poll. Councilmember Ruegamer said that is why he wants the language in the stipulation to include that placing the bond issue on the ballot next November would be based on the results of the poll and at the discretion of the City

Council. Mr. Brooks said he would include language in the termination portion of the contract based on Councilmember Ruegamer's proposal. On a voice vote, the motion was approved with Councilmembers Stevens, Brewster, Veis and Jones voting "no".

9. CHANGE ORDER #2: CONTRACT FOR CLASSIFICATION AND COMPENSATION STUDY, Associated Employers of Montana (AEM) and Employers Association Inc., \$17,550.00. (Delayed from 1/09/06). Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

There was no Staff report. Councilmember Jones moved for approval of the Staff recommendation, seconded by Councilmember Ruegamer. Councilmember Clark said he would abstain from voting. On a voice vote, the motion was approved with Councilmember Brewster voting "no". Councilmember Clark abstained.

10. LATE ADDITION:

2006 FEDERAL AFFAIRS PROGRAM REQUESTS. Staff recommends approval of the proposed 2006 Federal Legislative Agenda as presented and amended 1/17/06. (Action: approval or disapproval of Staff recommendation.)

Airport Director Bruce Putnam noted that the Federal Affairs Program request list includes the railroad project that was requested for inclusion at the 1/17/06 work session. The revised list was included in the Council's Friday packet. Councilmember Clark asked why this item was not advertised and placed on the agenda in time for public comment. Ms. Volek said this item would not normally require a public hearing. It is a discretionary item only that proposes a legislative request to the delegation which they may or may not choose to act on. She said this request needs to move forward in the federal process as the delegation is waiting. Mayor Tussing noted that the Council is not spending money in approving this item. Mr. Putnam said this is a difficult process that began in November. He noted this process was formally organized three years ago at the request of then City Administrator Dennis Taylor. In that first year, submittals were not done until the end of February which is too late for consideration because the delegation is already receiving sub-committee assignments. Mr. Putnam said the process last year was begun in December and this year in November looking for a mid-February submittal date only to find in early January that the congressional staff has backed up their process a couple of weeks which required City staff submission by the end of January and not February as originally proposed.

Councilmember Veis asked what the impact would be if the Council delayed this item to hold a public hearing on 2/13/06. Mr. Putnam said the requests would be too late to be seriously considered. He intended to email the request to the congressional staff at the beginning of next week and follow that up with a trip to Washington, DC in the middle of February to answer questions.

Councilmember Clark moved for approval of the Federal Affairs Program Project list, seconded by Councilmember Gaghen. Councilmember Veis said he is very distressed that something that is of significant public interest did not get placed on the agenda in time to schedule a public hearing. Councilmember Jones amended the motion to move forward but hold a public hearing, seconded by Councilmember Veis. Mr. Putnam said the congressional staff would probably indicate that this would be "okay", but the Council would run the risk of "missing the train" for serious consideration. He said this

needs to “get in the hopper”. Councilmember Jones asked if adding a project after the public hearing would negate the entire request. Mr. Putnam said eliminating or replacing a project would confuse the delegation as to what the Council’s priorities really are. Councilmember Boyer said Councilmember Veis’ concern must be considered in future Federal Affairs programs, but the Council should honor Mr. Putnam’s advice and act on this item immediately. Holding a public hearing after the fact would be counter productive because there would be no process. Councilmember Ronquillo said the Council should keep this moving. Councilmember Veis said he is fully in support of every project on the list, but is not happy about the late addition denying the possibility of public comment. He said the Council’s process would be better with the addition of a public hearing. Councilmember Ruegamer said this should move forward, but a public hearing and possible changes probably means the Council is “killing” the request and he is not inclined to do that.

Councilmember Stevens said there is a procedural issue here and asked what the legal repercussions would be. City Attorney Brent Brooks said the statute could say that the Council’s decision is void because of the lack of a public hearing and would have to be reconsidered with appropriate advertising and public hearing. If a public hearing is held after the fact; that is contrary to the statutes regarding public participation. He added that the statute is not worded in the best manner and not always aware of the local requirements. Councilmember Gaghen said she would like to know how other cities handle this type of item. After working in a congressional office she has not heard of this suggested public hearing process for federal affairs issues. Mayor Tussing said he supports the public process, but the voters have elected the Council to do certain tasks and when public funds are not involved, additional criteria can complicate the process. Ms. Volek said the items on the Federal Affairs list will eventually appear in the Capital Improvement Plan (CIP) that does have a public process where there is an opportunity for public comment. She assured the Council that next year the process would include the opportunity for public participation.

Councilmember Boyer called for the question, seconded by Councilmember Ruegamer. On a voice vote for the question, the motion to stop debate was approved with Councilmember Jones voting “no”.

On a voice vote on the amendment, the motion failed with Councilmember Veis and Jones voting “yes”. On a voice vote on the original motion, the motion was approved with Councilmember Veis voting “no”.

10.11. PUBLIC COMMENT on Non-Agenda Items. (Restricted to ONLY items not on the printed agenda; comments limited to 3 minutes per speaker.) **NONE**

COUNCIL INITIATIVES

COUNCILMEMBER STEVENS: Councilmember Stevens moved to direct staff to investigate an ordinance amendment that would reposition the “non-agenda” public comment portion of the meeting to no later than 9:30 P.M., seconded by Councilmember Jones. Councilmember Stevens said she has observed other cities that reserve a reasonable hour for public comment and noted that making someone wait in the audience until 1 A.M. is unreasonable. Councilmember Brewster noted that the ordinance would

have to be amended. Councilmember Veis also noted that he would like to see any consent agenda item that is separated go to the bottom of the regular agenda for consideration. Councilmember Boyer noted that this would keep concerned Staff to the end of the meeting which she would not like to see. Councilmember Gaghen agreed that she would hesitate to keep the Staff available to share their expertise to the end of the meeting. Councilmember Brewster said the whole point of the new agenda meeting is to allow for fewer items being removed from the consent agenda. Councilmember Ulledalen said he would rather not "tinker" with this issue at this time. On a voice vote, the motion was unanimously approved.

COUNCILMEMBER CLARK: Councilmember Clark moved to place a discussion item on the agenda for 2/13/06 that would consider forming a council appointed committee to negotiate a one-year contract offering the City Administrator job to Tina Volek, seconded by Councilmember Brewster. Councilmember Gaghen said this could give the public the perception that there was some kind of "backroom" dealing with Ms. Volek and that would make her more vulnerable. She said Ms. Volek may "float to the top" during a standard procedure, but changing the procedure will appear questionable. Councilmember Clark said he has received a lot of positive comments about his suggestion and he sees it being much easier to hire department heads with a city administrator in place. Councilmember Boyer agreed that some type of process is necessary or it will appear that this has been done in secret. Councilmember Ulledalen said the Council needs a structure for this process. Councilmember Clark said he would like to see this as an item for discussion on 2/13/06. Ms. Volek said she is grateful for the Council's discussion and stated that she is very much interested in the position, but the Council must do what is best for Billings. Her intent is to stay in Billings, but she believes to do the best for the City she would recommend conducting a national search. Councilmember Ruegamer said while he has no appetite for spending money, to leave the public and the department heads out of this process would not be the best decision. On a voice vote, the motion was unanimously approved.

ADJOURN – With all business complete, the Mayor adjourned the meeting at 12:32 P.M.

THE CITY OF BILLINGS:

By: _____
Ron Tussing, MAYOR

MINUTES: 01/23/06

ATTEST:

BY: _____
Susan Shuhler, Deputy City Clerk