

# **REGULAR MEETING OF THE BILLINGS CITY COUNCIL**

## **June 26, 2006**

The Billings City Council met in regular session in the Council Chambers located on the second floor of the Police Facility, 220 North 27<sup>th</sup> Street, Billings, Montana. Mayor Ron Tussing called the meeting to order at 7:45 p.m. and served as the meeting's presiding officer. This meeting immediately followed a special meeting of the City Council that began at 5:30 p.m.

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

**MINUTES** – June 12, 2006. Approved as printed.

**COURTESIES** – There were no courtesies.

**PROCLAMATIONS** – There were no proclamations.

### **ADMINISTRATOR REPORTS – Tina Volek**

- Interim City Administrator Tina Volek noted that copies of ex parte communication were received on several agenda items. Copies of this communication is contained in a binder at the back of the Council Chambers and concern ZC#782 – Item 6B, ZC#780 – Item 12, and ZC#773 – Item 14.
- Ms. Volek reminded the Council of their agenda review meeting tomorrow evening at 5:30 p.m. in the City Hall Conference Room.

**AGENDA CHANGE:** Councilmember Jones made a motion to move Item #14 on this agenda to Item #4, seconded by Councilmember Brewster. Councilmember Jones said this is a group that appeared before the Council awhile back and had quite a few people at the meeting. He noted that the Council “cut them off” in the middle of their testimony. Councilmember Jones said he received a notice from them asking that the item be moved forward on the agenda so they don’t have to sit around for the entire meeting tonight. On a roll call vote, the motion failed 4-6. Councilmembers voting “yes” were: Jones, Ronquillo, Gaghen and Brewster. Councilmembers voting “no” were: Clark, Stevens, Ruegamer, Ulledalen, Boyer and Tussing.

### **CONSENT AGENDA:**

The Consent Agenda was considered at the special meeting that began at 5:30 p.m.

### **REGULAR AGENDA:**

1. **PUBLIC HEARING AND VARIANCE #CC06-02: variances from Site Development Section 6-1208(h)(5) re: driveways and Section 6-1208(j)(2) re: curb**

**cuts in Kingston Place Subdivision, Jeff Junkert, developer. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

There was no Staff presentation. The public hearing was opened. There were no speakers. The public hearing was closed.

Councilmember Clark moved for approval of the Staff recommendation, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

**2. PUBLIC HEARING AND RESOLUTION 06-18445 vacating a 193.67-foot portion of Kyhl Lane right-of-way across the north portion of Brewington Park and the north 30 feet of Lot 1, Block 3, Bellville Sub. Steve Kerns, petitioner. Staff recommends approval of the vacation at no cost. (Action: approval or disapproval of Staff recommendation.)**

There was no Staff presentation. The public hearing was opened. There were no speakers. The public hearing was closed.

Councilmember Jones moved for approval of the Staff recommendation, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.

**3. PUBLIC HEARING AND RESOLUTION 06-18446 transferring \$11,000.00 of Council Contingency Funds to the Public Safety Fund (Police) for overtime when enforcing the fireworks ordinance on July 1-4, 2006. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

Police Chief Rich St. John reported that each year law enforcement and public safety personnel are confronted with the problem of fireworks and the use of illegal pyrotechnic explosive devices and their subsequent disposal. They are responsible for countless injuries and property damage and constitute one of the greatest threats to public safety personnel. Chief St. John said, "over a three-day period spanning July 3-5 last year, the police dept. received 762 calls for service. Of those 250, or 32% were for fireworks."

Chief St. John said the officers are seeing "consumer" fireworks around the Billings area – i.e. firecrackers, stick and bottle rockets, mortar aerial shells, roman candles, smoke bombs, novelty items such as jumping jacks, large mine shells, sparklers and snaps. The commercial fireworks or the fireworks at large displays are the aerial displays which have lifting charges. The fireworks of most concern to public safety are the "illegal PEDs" or pyrotechnic explosive devices – sparkler bombs, dry ice bombs, M80s, M100s, M250s, M500s and M1000s. He said consumer firecrackers have 50 mg of flash powder. An M80 has .26 oz or 7.1 grams; an M1000 has 27.5 oz or the equivalent of a quarter stick of dynamite.

Chief St. John said the dept.'s planned deployment for this holiday season is as follows: eight officers for special enforcement for July 1 – 4. They will be working primarily afternoon and evening hours. On July 4 at Stewart Park, there will be 20 officers assigned to that area and the surrounding residential areas. The regular contingent of patrol officers will be on duty and will also take enforcement action as necessary. The strategy includes proactive patrol, with confiscation the first response and citations for egregious violations. State statute governs the possession and use of the PEDs. Officers will also be responding to calls based on complaints. Chief St.

John noted that Castle Rock Park is also hosting a fireworks display sponsored by Harvest Church. He said this event is well policed by the church staff. Chief St. John said Fire Chief Marv Jochems has indicated his firefighters will do enforcement action at this event because the Castle Rock Park event has presented little or no problems in the past.

The public hearing was opened. KEVIN NELSON OF 4235 BRUCE AVE. said this is a 2-day window in which the calls are about noise, not about "little Johnny blowing his hands up. I bet we don't have any extra officers when the Harley boys show up on Friday and Saturday with all their illegal mufflers that are against the law... I bet we don't see any extra duty come on when the kids are putting their race mufflers on their Mitsubishi's and Accords and running around town... I bet we don't see any extra enforcement when it comes to loud car stereos running around town." He said he finds it ironic that the Council will "suddenly jump up and throw \$11,000 at an issue, that last year was a low priority". Mr. Nelson suggested that the Council consider making fireworks legal for two days because the Council is not going to stop it. He wanted the Council to take some initiative on resolving some other noise issues that citizens put up with every day at every hour constantly.

Councilmember Gaghen said that while the noise from fireworks is an issue, the larger issue concerns public safety. Councilmember Ruegamer asked Mr. Nelson where the City should start. Fireworks are against the law. "If one of those lands on your house and burns it down while you leave town because you don't like the noise, what are you going to do? Go to your insurance company and say 'pay for it' and then be happy about it because you left? What would be your answer to that," asked Councilmember Ruegamer. Mr. Nelson said he didn't know. "We've had cops drive up the street and there have been fireworks lined up in the driveway, and they drive on by... I don't know. I just find it frustrating," stated Mr. Nelson.

Councilmember Boyer said the Council has heard from a lot of citizens about the safety and noise issues with fireworks. She said the Council needs to take a stand and this is the step they are taking to try to address the concerns with fireworks.

RICHARD A. (TAZ) WORDEN, NO ADDRESS GIVEN, said he has lived in the city for about 30 years. He said the option of firecrackers, incendiary bombs, bottle rockets, etc. are dangerous. The city ordinance says incendiary devices cannot be fired within the city limits – including anything from a gun, a bow and arrow to firecrackers. Mr. Worden reiterated an experience he had last Saturday evening at McKinley School. He said there were five people there after the parking lot closed at 10 p.m. These individuals were exploding different types of fireworks at the location. Mr. Worden said the police were called and the dispatcher told them three calls had already been received on this situation. He said he went over to the school and confronted the five individuals. Mr. Worden said an officer showed up and said he would handle it. Mr. Worden said he didn't know how the officer handled the problem and added that at 12:30 a.m. the problem started all over again. This time no one came to handle the problem. He urged the Council to take action on the illegal fireworks problem because someone is going to be hurt if the problem is allowed to continue.

JOHN OLIVER OF 1203 CONCORD said there are two four-plexes across the street at the intersection of Concord Dr. and 12<sup>th</sup> St. West. Mr. Oliver said they filed complaints last year about fireworks. He said it is not so much an issue of the \$11,000

to the police dept. to enforce the ordinance as it is the “big scope, big picture” of the expense to the fire dept., the ambulance service, etc. Mr. Oliver asked why tickets aren’t being issued when fireworks are illegal in city limits. He said ignorance of the public to respect something that can hurt someone is where the real problem is. “It’s not the officers, the fire dept.; it’s not your job, it’s not my job. But it is my responsibility as a citizen of this community that if my neighbor is doing something that could potentially harm my property and increase my insurance rates to go over and say something,” stated Mr. Oliver. He urged the Council to get tough on the fireworks law and put an end to it. “To me, you are either going to take a stand against it or you will have an attitude of tolerance and that’s pushing the stress onto the officers to evaluate on the spot and figure out who needs to get their hands slapped,” he stated.

There were no other speakers. The public hearing was closed. Councilmember Ulledalen moved for approval of the Staff recommendation, seconded by Councilmember Ruegamer. Councilmember Gaghen asked if it is up to the officer whether to confiscate or issue a ticket. Chief St. John said officers will always confiscate – without question. The policy to date has been to exercise discretion except for egregious violations. On a voice vote, the motion was unanimously approved.

**4. PUBLIC HEARING AND RESOLUTION 06-18447 using \$25,850.00 of Council Contingency Funds for sound system improvements in the Council Chambers. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

There was no Staff report. Interim City Administrator Tina Volek noted this was the focus of a presentation and discussion at the last work session. Staff was available to answer additional questions. The public hearing was opened. There were no speakers. The public hearing was closed.

Councilmember Boyer moved for approval of the Staff recommendation, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.

**5. PUBLIC HEARING AND RESOLUTION 06-18448 establishing fees for various applications and services provided by the City/County Planning Dept. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

Interim Planning Director Candi Beaudry said the Planning Division is planning to raise the fees for a number of applications that it issues and administers. The last fee increases were in 2004. Since then a number of changes have occurred in the application types, primarily because of the new subdivision regulations. Staff has also proposed to increase some fees that it feels were too low to cover the cost of the service being provided.

The existing fees are numerous and are divided between zoning, subdivisions and annexations. The proposal includes the following:

- Increase the sign permit fee from \$1.00 to \$3.00 a square foot.
- Applying a fee to zone change resubmittals, special review resubmittals and variance resubmittals

- Requiring a deposit for “application” signs for zone changes and special reviews. These signs often disappear in a few days. Ms. Beaudry noted they are working with the Street Dept. to manufacture signs for the Planning Division that will be bolted on tubular steel stands that can be driven into the ground.
- Requiring fees on preliminary subsequent minor plats and final subsequent minor plats
- Requiring fees on expedited plats
- Requiring fees on corrections to recorded plats
- Requiring fees on corrections to preliminary plats
- Increasing the annexation fee from \$200 for residential and \$600 for commercial to \$800 for all annexations

Councilmember Gaghen asked if an estimate was prepared of the additional revenue these fees would generate. Ms. Beaudry said this would be difficult to estimate. She said many of the items occur infrequently but take a lot of staff time to review. The sign fee increase would have the largest impact because it would increase three-fold. Ms. Beaudry said the division expects to see more subsequent minor plats. She guessed that the revenue increase will not be substantial.

Councilmember Gaghen asked if fee increases were common in cities of similar size. Ms. Beaudry said all cities and counties that have subdivision regulations are required to revise their fees by October of this year. She said she is seeing all cities and counties adjust their fees to meet this mandated state requirement.

The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Ruegamer moved for approval of the Staff recommendation, seconded by Councilmember Ronquillo. Councilmember Jones moved to amend the motion to change the sign permit fee from \$1.00 to \$2.00 per square foot. The amendment failed for lack of a second to the motion. Councilmember Jones moved to amend the motion to change residential annexation fees to \$400 and commercial annexation fees to \$800, seconded by Councilmember Brewster. Councilmember Stevens said she is concerned the Council is “second guessing” the amount based on size, rather than understanding the amount of Staff time spent on reviewing the annexation application.

Ms. Beaudry said there is no distinction in the amount of review time for residential versus commercial annexations. Staff is required to insure that there is no problem in providing services to the property asking for annexation, which requires Staff to delve into what types of utilities are present, look into response times for fire and emergency responders, look into the impact to the General Fund for all internal City services, etc. She said many of the annexations come in as single parcels which are later subdivided into many lots, something that must also be taken into account. Councilmember Brewster said he is interested in a “graduated” rate. Councilmember Jones asked if the proposed rate was based on actual review hours. The initial rate increases in 2004 were actually based on specific time allocations. Ms. Beaudry said the proposed annexation and sign fees are based on Staff’s knowledge that review is taking more time now than before. On a voice vote on the amendment, the motion failed. Councilmembers Jones and Brewster voted “yes”. On a voice vote on the

original motion, the motion was approved. Councilmembers Jones and Brewster voted "no".

**6. ROCKY MOUNTAIN COMMUNITY CHURCH:**

- A. PUBLIC HEARING AND RESOLUTION 06-18449 annexing 5.651 acres in petition Annex #06-06: C/S 1011, Tr. B Amended, and adjoining rights-of-way in Grand Ave. and Zimmerman Trail, located east of 34<sup>th</sup> St. W and north of Grand Ave., Rocky Mountain Community Church, petitioner. Staff recommends conditional approval. (Action: approval or disapproval of Staff recommendation.)**
- B. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #782: A zone change from Agriculture Open-Space to Community Commercial on a 4.2-acre parcel described as: Tract B of C/S 1011 Amended, and located on the northeast corner of the intersection of Zimmerman Trail and Grand Ave. Rocky Mountain Community Church, applicant; Engineering, Inc., agent. Zoning Commission recommends approval of the zone change and adoption of the determinations of the 12 criteria. (Action: approval or disapproval of Zoning Commission recommendation.)**

Interim Planning Director Candi Beaudry gave the presentation that covered both parts of Item 6 because the same property is involved in both actions. The subject property lies at the corner of Grand Ave. and Zimmerman Trail and is owned by Rocky Mountain Community Church. The annexation will also include the adjoining right-of-way along Zimmerman Trail and Grand Ave – approximately 1.4 acres. The property is currently vacant and has not been used for agricultural purposes in a number of years.

Ms. Beaudry said the applicants are proposing to change the zoning to Community Commercial. One of the conditions of approval for annexation is that prior to recording the resolution of annexation, the owner must sign the plat that finalizes the dedication of right-of-way to the City along Zimmerman Trail. She noted that the right-of-way agreement has been signed, but the plat remains unsigned. Ms. Beaudry says the annexation of this property will be used as leverage to get that plat signed so the agreement can be formalized.

She said this is an instance where the ability to provide service is straight forward. The property adjoins contiguous city limits and water and sewer are available in Grand Ave. and Zimmerman Trail. The only issue that City Engineering raised concerns the right-of-way issue. Ms. Beaudry said the property is proposed for development as a hardware store on the north side with the existing parcel to be subdivided into two parts. No plans are proposed for the south parcel at this time. The zone change is from Agricultural Open Space to Community Commercial.

Ms. Beaudry noted that both the annexation and zone change comply with the Growth Policy. The contiguity with the city limits is a major factor, which the Planning Dept. is trying to encourage. The location is also within the annexation limits – the red area. For the twelve zoning criteria, it has been determined that it is consistent and complies with all twelve criteria – it supports the Growth Policy and it promotes health and general welfare.

The Zoning Commission held a public hearing on the zone change. She noted that a City Engineer spoke at this meeting regarding a situation between this property and the property immediately north, where there was a joint access provided in the right-of-way agreement initially signed by the adjoining property owner to the north and this property owner. Because it is a joint access, how utilities would be extended in that access needed to be determined. Ms. Beaudry said there is still some discussion going on regarding this issue.

Ms. Beaudry said the proponents feel the zone change is compatible with the area and have had meetings with the neighbors. One of the concerns of the neighbors was the potential for liquor sales and gambling. She said the owners are willing to put in covenants that they will prohibit liquor sales and gambling on that property. The opponents included Bob Cover, who provided a lengthy letter discussing his concerns with the joint access. Ms. Beaudry noted discussions are ongoing between Mr. Cover's engineer and this property owner's engineer. The zone change and annexation will not have an effect on what eventually is agreed to and will not affect the existing right-of-way agreements that have been signed. She added that Staff feels that the City can proceed with these items even though there is continuing discussion of how utilities will be extended to the lot to the north.

Ms. Beaudry noted that Staff is asking the Council to take action on two separate motions – (1) conditionally approve the annexation resolution and the condition to ensure that the plat for dedicating a portion of the right-of-way be signed prior to recording the annexation resolution, and (2) approve the zone change and adopt the determinations of the twelve zoning criteria.

ITEM 6A: The public hearing was opened. RICK LEUTHHOLD OF ENGINEERING INC. said he represents the Kings with regard to the Rocky Mountain Community Church property. He said the annexation and zone change are land use issues. Mr. Leuthhold said he feels they have shown that the proposed land use as Community Commercial is compatible. The King's Ace Hardware is proposed for the north parcel with other future commercial activities on the south parcel. Mr. Leuthhold said there have been questions surrounding the issues of the development agreement and access. He said as the church has looked at continuing to develop this property, this issue has continued. The right-of-way agreement concerns the property that was required by the church for Zimmerman Trail. The church has accepted cash-in-lieu of that right-of-way and signed the right-of-way agreement. He noted they have worked for some time with the Covers, the property owners to the north to secure a joint use agreement for the intersection. Water is stubbed in on one side of the property and sewer on the other side. Water would need to be provided to the Covers or sewer provided to the King's Ace Hardware site.

An agreement has not yet been reached between the two parties. The Covers do not want to incur any cost at this time. Mr. Leuthhold noted also that the Covers have had special review approval for an assisted living facility and expressed the possibility of developing 22 lots in that area. He said because an agreement has not been secured at this time, the subject property owners will extend the water at their expense and stub into the property line. They have also moved the building to the south to allow for future access, should the Covers want to have that as dedicated right-of-way. Mr. Leuthhold emphasized that everything they have done allows the Covers

full option of development on their property in the future. In addition, the properties to the west and south support this development. A cinder block fence will be provided, additional width to the building and cutoff lighting are proposed. The church has asked for a "no liquor and no gaming" restriction, to which the developer has agreed. Additionally, a "no tire sales and a no auto sales and no RV sales" restriction for that lot has been added. He urged the Council to approve both items.

BLAINE POPPLER OF 5403 KING AVE. WEST said he represents the church as their listing real estate agent. He said they are asking the Council's approval on the annexation and zone change, adding that they follow the 2003 Growth Policy and the West End Plan. The property is at the intersection of two principal arterial streets, which is where the growth plan calls for using Commercial Community zoning. Mr. Poppler thanked those councilmembers that attended the neighborhood meetings and those that followed this process through the email updates. He noted that this is one of the most organized neighborhoods in Billings. Through a series of neighborhood meetings, he believed they have achieved consent for the project through cooperation and plan changes to meet the desires of the neighborhood desires in regard to landscaping, fencing, lighting, setbacks and limiting some uses. Mr. Poppler said this commercial location will serve Billings from the north to the south – i.e. Zimmerman Trail Corridor people, people from the Golden Meadows Trailer Park on King Ave. up to the residents of Rehberg Ranch Estates. He urged the Council to approve the proposals and the recommendations of Staff and the Zoning Commission.

There were no other speakers. The public hearing was closed. Councilmember Brewster moved for conditional approval, seconded by Councilmember Boyer. On a voice vote, the motion was unanimously approved.

ITEM 6B: The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Brewster moved for approval of the Zoning Commission recommendation, seconded by Councilmember Boyer. On a voice vote, the motion was unanimously approved.

**7. PUBLIC HEARING AND RESOLUTION 06-18450 annexing 2.66 acres in petition #06-08: two portions of C/S 1834, Tract 3-C-1, located north of Rimrock Rd. at 50<sup>th</sup> St. W, Aviara, Inc., petitioner. Staff recommends conditional approval. (Action: approval or disapproval of Staff recommendation.)**

Interim Planning Director Candi Beaudry said this annexation is an addition to an annexation approved in 2001. Since 2001, the property has been amended to include these two parcels. The proposed use for the property is for residential and is currently zoned Residential 9600. Upon annexation, the zoning would not change. The two parcels are contiguous to existing city limits. One parcel does not have access to a City street, but because it is part of a larger parcel which does have access to a City street, the access is not an issue. The second parcel has direct access onto Clearview Drive, which is on the west side of the Mormon Temple.

Ms. Beaudry said this is "infill" annexation and all departments responded favorably. The utilities can be extended from either Rimrock Road or Clearview Drive. The annexation is consistent with the Growth Policy and complies with the Annexation Policy. Staff is recommending one condition: that either a development agreement or a Subdivision Improvement Agreement (if the parcels are subdivided) be signed.

The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Stevens moved for approval of the Staff recommendation, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.

**8. PUBLIC HEARING AND SPECIAL REVIEW #815: A special review to locate a microbrewery with a sample room in a Central Business District (CBD) zone on a 14,000-square foot parcel of land described as Lots 1-4, Block 89, O.T. and located at 2405 1<sup>st</sup> Ave. N. Donald Lee, owner; Tim Mohr, agent. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

Juliet Spalding of the Planning Dept. said the subject property is on the corner of N. 24<sup>th</sup> Street and First Ave. North. The existing building once housed an automobile garage. The applicant is proposing to convert this building into a microbrewery producing less than 1500 barrels/year. This is an allowed use in the CBD. The special review is for a small sample room, in which up to 3 pints of microbrew could be consumed by each sampler. State law governs the amount of beer and hours of operation that this type of sample room can have. There are no schools, parks or churches within 600 feet of the property.

Ms. Spalding said there is ample parking on site – 13 spaces and will be sharing it with other area businesses when the sample room is not open. The open hours for the sample room will be 4 p.m. to 8 p.m. The three conditions are:

1. The special review approval shall be limited to Lots 1-4, Block 89, Billings Original Town, located at 2405 1<sup>st</sup> Avenue North.
2. No outdoor seating, outdoor music or outdoor public announcement systems shall be permitted.
3. All other limitations on expansion shall apply in accordance with Section 27-613 of the Billings Montana City Code.

The public hearing was opened. TIM MOHR OF 1028 HARVARD AVE. presented some letters of support. He said the sample room is essential to the success of the microbrewery. It is a source of revenue as well as a marketing and educational tool. Customers can learn about the different styles, ingredients and the brewing process creating a more informed consumer. The microbrewery will create two full-time jobs, one part-time sample room position, and generate tax revenue of \$8.30 on each barrel of beer produced. The brewery will also be taxed on its Class 8 manufacturing equipment. By using Montana-grown malt barley in the production of the beer, the brewery will significantly add value to Montana agricultural products. Mr. Mohr said the brewery will be locally owned and operated and the majority of its income from operations will be spent in Billings. He said the proposed location is an old garage that is currently unattractive and presents a poor image for the downtown. Mr. Mohr said he will spend a substantial amount of money to not only bring the garage into code compliance, but also improve the overall appearance of the building. He will add more parking spaces on the lot for a total of 13 spaces. He said locating the microbrewery and sample room downtown will provide yet another unique business with the ability to draw people to the downtown area. The unique character of the brewery matches well with the businesses that currently make up the Montana Avenue dining and

entertainment district. "Having a diverse and eclectic group of businesses in the downtown area creates a strong central core for the Billings community and is essential to sustaining the revitalization of downtown Billings," he stated.

Mr. Mohr said they operate under a manufacturing license and therefore operate under a different set of rules. Samples may be provided between the hours of 10 a.m. and 8 p.m. He noted the sample room will operate between the hours of 4 p.m. and 8 p.m. on Monday through Saturday. Up to 48 oz. of beer/customer/day may be served. He said they will use tyvex wrist bands for monitoring the consumption. Only the beer produced on premise can be sold. There will be no gaming with the operation.

Councilmember Ruegamer asked about the condition that states no outdoor seating, outdoor music or outdoor public announcement systems shall be permitted. He noted that this site is not far from the Yellowstone Brewery, which has outdoor seating and music. Councilmember Ruegamer said he cannot see the harm in having it at this site and asked the reason for the condition. Mr. Mohr said they would like to have it; it was just a matter of "doing this once before and got killed. I believe the comment was milk toast, so it's milk toast. How do we get this thing passed? How do we prove that we are going to do what we say we are going to do? That we will be good neighbors," he stated. Councilmember Ruegamer asked if they were simply erring on the side of caution by not asking for outdoor seating. Mr. Mohr said it was a cautionary move and they may be back in a year to ask for it, once they have demonstrated that they are good corporate citizens.

There were no other speakers. The public hearing was closed. Councilmember Gaghen moved for approval of the Zoning Commission recommendation, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

**9. PUBLIC HEARING AND SPECIAL REVIEW #816: A special review to allow a 4-plex apartment in a Residential-6,000 zone on an 11,000-square foot parcel of land described as: Lot 24A & 25, Block 13, Broadwater Subdivision and located at 1151 Howard Avenue. Robert & Kari Pearson owners; Michael Stock, agent. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

Aura Lindstrand of the Planning Dept. said the subject property is located on the northeast corner of Howard Ave. and 12<sup>th</sup> St. West. It contains an existing residence that was built in 1940, which will be removed upon development of the property. The surrounding zoning is R6000 and R7000. To the north and west are single family residences and to the south and east are duplexes and multi-family residences. Two accesses are being proposed – one off Howard Ave. and the other off 12<sup>th</sup> St. W. This will be reviewed as a commercial site plan and reviewed for adequate access and parking. The Zoning Commission hearing was held on June 6<sup>th</sup>. There was one neighbor in opposition stating there could be potential traffic conflicts in this area and there could be a massive structure built, which does not fit in with the neighborhood.

Staff and the Zoning Commission recommend approval of this special review with the following conditions:

- (1) The Special Review approval shall be limited to Lot 24A and Lot 25, Block 13, Broadwater Subdivision Amended.

(2) The 4-plex shall be constructed in accordance with the submitted site plan and shall comply with standards set forth by the Unified Zoning Regulations. A building permit shall be obtained for all structures on the property.

Councilmember Boyer asked if there is any neighborhood planning going on in that area. Ms. Lindstrand said there was no such planning at this time. It is part of the Central Terry area and the entire area is zoned for this type of use. There are a number of existing duplexes and multi-family residences that surround the property.

The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Ronquillo moved for approval of the Zoning Commission recommendation, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

**10. PUBLIC HEARING AND SPECIAL REVIEW #819: A special review to expand an existing church in a Residential-9,600 zone and a Community Commercial zone on a 16.76-acre parcel of land described as: Tracts 1 & 2, C/S 3106, Tract 1, C/S 3230 and located at 517 Shiloh Road. International Church of the Foursquare Gospel (Faith Chapel), owner; Engineering, Inc., agent. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

Nicole Cromwell of the Planning Dept. said Faith Chapel has consolidated and expanded some of their holdings. The Shiloh Veterinary Clinic has moved south and redeveloped. The church has developed a master plan to basically “rebuild” the church in a new location on the same property – except the property has now all been consolidated. The proposed master plan also ties in and shares services, parking and building area with the College of Technology.

There were no objections from the neighborhood at the Zoning Commission hearing. The Shiloh Road Overlay District covers the subject property. On the “new” development of the parcel, the church will meet all of the required points – absolute and relative, for the Shiloh Road Overlay District. The one part of the overlay district they will not meet is they do not intend to alter the development or landscaping of the part of the property that is already developed. She said this includes the large sanctuary building right now. The overlay district when originally written envisioned that commercial properties would have to bring their entire parcel into conformance with the overlay district if they did a certain amount of expansion or added a certain number of parking spaces regardless of how much of that property was actually in the overlay district.

Ms. Cromwell said the Planning Dept. decided to process the special review as submitted and not go through a formal variance process from the Shiloh Road Overlay because it is a large parcel and because it is a significant redevelopment of this parcel and the church has made a considerable effort to meet all of the criteria on the new developed parcel as opposed to the northern portion. When the northern portion was developed, the City did not have the overlay requirements. The church actually gave right-of-way to the City for the Shiloh Road project and in exchange the City gave them administrative relief from the landscaping criteria in place at the time.

The Zoning Commission recommended the following conditions:

1. The special review approval shall be limited to Tracts 1 & 2 of C/S 3106 and Tract 1 of C/S 3230 as shown on the site plans submitted with this application.
2. Any expansion of the buildings or parking area greater than 10 percent will require an additional special review approval as per BMCC 27-613(c).
3. Any new lighting within the parking lot areas shall have full cut-off shields so light is directed to the ground and not onto adjacent property.
4. Landscaping shall be provided as shown on the site plan submitted and dated April 30, 2006.
5. The site shall be developed as shown on the submitted site plan including the general location of the new structures and the layout of the parking lots.
6. A Traffic Accessibility Study shall be submitted to the City Engineering Department for review at the time that Building Permits are submitted for the site. Recommendations provided in the TAS shall be implemented by the applicant at the discretion of the City Engineering Division.
7. There shall be no outdoor public address system or outside announcement system of any kind.
8. The proposed development shall comply with all other limitations of Section 27-613 of the Unified Zoning Regulations concerning special review uses, all landscaping requirements specified on Section 27-1101, and all other City regulations that apply.

\*\*NOTE\*\* Approval of this Special Review does not constitute approval of a building permit, sign permit or fence permit. Compliance with all applicable local codes will be reviewed at the building permit level. This application is for a Special Review as noted above and no other request is being considered with this application. The Planning Department points out that the use and development of the property must be in accordance with the submitted site plan.

Councilmember Boyer said she didn't want the "exception" to the overlay district to represent a "crack" in the Shiloh Corridor Overlay and to minimize the impact of the overlay. Ms. Cromwell noted that 2/3 of the site will meet all of the Shiloh Road Overlay criteria. The northern portion where the existing building, parking and landscape layouts will not change. Councilmember Boyer said she is concerned that there will be requests for more and more exceptions and that is exactly what the Council does not want to happen.

Interim City Administrator Tina Volek noted that Staff is reviewing the Shiloh Road Overlay District and there are likely to be some modifications proposed later this year. Ms. Cromwell said these proposals are just starting to be discussed at neighborhood meetings. Councilmember Gaghen asked how many parking spaces are required. Ms. Cromwell said a significant number of spaces are required, hence the requirement for a Traffic Accessibility Study.

The public hearing was opened. RICK LEUTHHOLD OF ENGINEERING INC. said he is representing Faith Chapel. He noted the development works well with the proposed Shiloh Road development, whether it utilizes roundabouts or standard intersections. Mr. Leuthhold said 852 parking spaces are required for the size of the new sanctuary, but they have 915 spaces in the plan. A lot of thought went into providing access through the site, but not direct access where it becomes a speedway. For the church activities and the

College of Technology, there are timeframes that are mutually compatible, so parking will be shared.

There were no other speakers. The public hearing was closed. Councilmember Clark moved for approval of the Zoning Commission recommendation, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

The mayor called a brief recess at 9:35 p.m. The mayor called the meeting back to order at 9:45 p.m.

**11. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE**  
**#779: A zone change from Residential Professional to Neighborhood Commercial (NC) on a 1.26-acre parcel described as: Lots 2B and 2C, Block 1 of Hancock Grand Subdivision, and located at: 3737 Grand Avenue. Darrell Kreitzberg, applicant. Zoning Commission recommends approval of the zone change and adoption of the determinations of the 12 criteria. (Action: approval or disapproval of Zoning Commission recommendation.)**

Nicole Cromwell of the Planning Dept said Residential Professional is the most restrictive commercial zoning, noting this was the zoning placed on the property when it was originally annexed and subdivided. The property immediately adjacent to this parcel is zoned Community Commercial. The nearby cemetery is still in the county and zoned Agricultural Open Space. The property directly north is zoned Residential Professional and has been developed as Autumn Springs Assisted Living Facility.

She noted the applicant came to the Planning Dept. with a sign proposal that exceeded the maximum 32 square feet allowed for residential professional zoning. A 32 square foot sign on Grand Avenue for a multi-tenant building would be significantly less than what would be required to be actually read by a motorist in a car traveling at 35 mph. The applicant had the option of requesting a sign variance or requesting a zone change to a zoning classification that would allow a larger sign area. The applicant chose to proceed with a zone change to Neighborhood Commercial, the next step up in the ladder of commercial zoning. NC would allow the applicant to have up to three square feet of sign area on a freestanding sign, based on the linear feet of property frontage. Ms. Cromwell noted that NC zoning does not allow any liquor or gaming and restricts most retail businesses or professional offices to 3,000 square feet or less in floor area.

The public hearing was opened. DARRELL KREITZBERG, NO ADDRESS GIVEN, said he has one building of approximately 9,000 square feet built now and another of nearly 9,000 square feet under construction. He indicated there would be approximately 100 parking spaces provided. Mr. Kreitzberg said the sign code for Residential Professional allowed a 14 inch sign and the Neighborhood Commercial allowance is for 22 inches. "Tenants pay a lot of money for rent of these spaces. They would like to have their names noticed as people drive down the street 40 – 45 mph," he stated.

Councilmember Clark asked why Mr. Kreitzberg didn't choose to pursue a variance from the sign code instead of a zone change. Mr. Kreitzberg said when he talked to the Planning Dept. they suggested the zone change to NC would be more appropriate.

There were no other speakers. The public hearing was closed. Councilmember Jones moved for approval of the Zoning Commission recommendation, seconded by Councilmember Ronquillo. On a voice vote, the motion was unanimously approved.

**12. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE  
#780: A zone change from Residential-9,600 to Residential Multi-family on a 16,800-square foot parcel described as: Lot 21, Block 16 of Lake Hills Sub., 16<sup>th</sup> filing, and located at: the intersection of Green Briar Rd. and Clubhouse Way. Jerry Wolf, owner and applicant. Zoning Commission recommends denial of the zone change. (Action: approval or disapproval of Zoning Commission recommendation.)**

Aura Lindstrand of the Planning Dept. said the property is located on the northeast corner of the intersection of Greenbriar Road and Clubhouse Way in the Heights. The applicant is proposing a 4-plex on the site and a rezone from R9600 to RMF. Under the current zoning, one single family unit could be constructed on the property. Under the proposed zoning, based on the gross square footage, eleven possible units could be constructed on the property, not taking into account any lot coverage or setbacks. She emphasized that it is quite a significant change.

The property is surrounded on the north and west by single family zoning and on the south by residential multi-family zoning. To the east is a 4-plex which is zoned Residential 6000. Ms. Lindstrand noted that at the Zoning Commission hearing, six property owners spoke in concern for the build out of eleven possible units and how it would fit in with the neighborhood. Twenty-eight letters of opposition were received, which constitutes a valid protest to this application. 42% of the surrounding property owners within 150 feet of the property did protest. Therefore a 2/3 majority vote is required by the City Council. The Zoning Commission is recommending denial based on the 12 determinations.

Councilmember Brewster asked what determinations were used for denial. Ms. Lindstrand said it was based on the density. The Zoning Commission felt that the R9600 was more appropriate across the street and that Greenbriar Road created a buffer, signaling the end of the Residential Multi-Family.

The public hearing was opened. TERA WOLF OF 5955 HELFRICK RD. said she is representing her father-in-law on this lot. She and her husband are builders and have owned this lot for the last 10 ½ years. Ms. Wolf said they waited until the buildup started in the area. "We now have an SID of \$12,000 on this lot, so this felt like the appropriate time to build up this lot," she stated. She noted there is a 4-plex across the street which faces her lot. There is another 4-plex west of her property and across the street from that is another 4-plex. Ms. Wolf said because of the existence of 4-plexes in the immediate area they felt this would be a good balance. She said she has called the opposition and offered to reduce her zone change request to R6000 and build a duplex. Ms. Wolf said she was told, "I would be opposed to anything." She said the neighbors discussed with her the merits of homeownership over renting. She suggested that she could build 4 townhomes (which are also being built on Greenbriar Rd) and sell them, if the neighbors would prefer homeowners there instead of renters. Ms. Wolf said she has tried to accommodate and "felt she got a little bamboozled at the Zoning Commission. The opposition in their great number came and a lot of them are local realtors. I am also a new bee in the industry and spoke out quite harshly against the idea. The word "checker boarding" came in a lot; leapfrogging ... This is not a checkerboard; it is completing the street and balancing out Clubhouse Way, she stated.

TERRY ODEGAARD OF 3254 GRAINGER AVE. EAST said he and his wife have a new home under construction in this area. He said changing the zoning does not insure that the owner will build a 4-plex. The owner could sell the lot as soon as the zoning is changed

and it could be changed down the road to an eleven-unit development. He said he went into contract on his home in March with the full expectation that this lot would be R9600 and fully aware of what exists to the south. Mr. Odegaard said there is still a good share of the area yet to be developed off of Lake Hills Drive. The homes there are medium to higher value homes. "I never would have gone into a contract to build a home there had I had the knowledge that might be changed. I am a realtor and have been doing it for eleven years. I've never seen anything quite like that. I've worked with twenty-nine builders in many subdivisions," he stated. He urged the Council to approve the Zoning Commission's recommendation to deny the zone change.

RON HILL OF 2242 WEST SKOKIE said Mr. Odegaard's concerns and any homebuyer's concern is predictability. "When you buy a lot and contract to have a home built, you have a right to know what is going to be in your back yard. That's what the Zoning Commission is all about," he stated. The Zoning Commission unanimously voted to deny the zone change, which disallowed zones leapfrogging street buffers and starting checkerboard patterns. In doing so, they upheld the goals of the Heights Neighborhood Plan and the City/County Growth Policy by recognizing Lake Hills Subdivision's adherence to multi-zones, while maintaining zoning compatibility. Mr. Hill said in most instances, there are not back yards that have different zoning. "Our goal as the primary land developer in Lake Hills Sub. for the past several years and into the future is to reduce land conflict by blending land uses gradually. This is recognizable as you drive north on Gleneagles from Wicks through there, from the Community Commercial to the RMF on into the R9600," he explained.

Mr. Hill said the zoning of the R6000 lot across the street from the subject property was changed from R9600 in 1976, 19 years before the applicants purchased their property, so they were aware of what was across the street from them when they purchased their property in 1995. He added that records indicate this lone lot would not have been allowed a zone change after the area was annexed in 1984. It was county property at that time and the applicant owned the bulk of the property around it at that time and there was no opposition. Mr. Hill said there are no townhomes on Greenbriar; there are some currently being built on Lakehills. He asked the Council to deny the zone change.

There were no other speakers. The public hearing was closed. Councilmember Ullendalen moved for denial of the zone change, seconded by Councilmember Stevens. Councilmember Stevens said the only way to truly control what happens to a piece of property is to own it. "That being said, I do believe that the people surrounding this had a reasonable expectation to assume that the zoning would not change, that that particular lot would stay R9600. I am really concerned about the leapfrogging across the street on this and since the motion was to deny, I will be voting for it," she stated. On a voice vote, the motion was unanimously approved. The zone change was denied.

**13. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE**  
**#781: A zone change from Community Commercial to Public on a 6.14-acre parcel**  
**described as: Tract 1-B-2 of C/S 2277, and located at: 3803 Central Avenue. Board of**  
**Regents of Higher Education, owner; Engineering, Inc., agent. Zoning Commission**  
**recommends approval of the zone change and adoption of the determinations of the 12**  
**criteria. (Action: approval or disapproval of Zoning Commission recommendation.)**

Nicole Cromwell of the Planning Dept. said this zone change is for land recently acquired by the MSU-B College of Technology (COT). The college would like to consolidate the zoning on its land as Public. Part of this property lies within the Shiloh Road Overlay District. The Zoning Commission has recommended approval of the zone change. The COT also had a public hearing before the Board of Adjustment because its proposed plan meets many of the criteria of the overlay district, but they did not want to bring the additional 32-acre parcel that is currently developed for the COT into conformance with the overlay district when it developed its new building.

Councilmember Boyer asked if this is yet another exception to the overlay district. Ms. Cromwell replied that it was another exception and added that under state law, state agencies and local agencies can request to use land contrary to zoning. She said this type of application has been before the Board of Adjustment for the COT, MSU-B, School District #2, the City of Billings, and many other applications of this type. The exception is made so that the City is not imposing restrictions on land use or adding requirements according to local zoning. Ms. Cromwell said certain economies are required to develop those types of properties that may or may not conform to local zoning. That is the reason for this exception to local zoning for all public agencies to develop on public land.

The public hearing was opened. RICK LEUTHHOLD OF ENGINEERING INC. said that both of the exceptions to the overlay district are anomalies within the system that call for some unique application. He noted that one of the aspects discussed with the creation of the overlay district was that those owners of larger tracts – agricultural tracts, etc. that did not want all of their property to succumb to the overlay district -- could plat that parcel off separately. Mr. Leuthhold said that could be done on this parcel to stay in strict compliance with the overlay district requirements. However, the COT's long-term goals include a substantial master plan for the entire COT campus. Mr. Leuthhold explained that all of the new construction meets the criteria for the overlay district. Because of the differences in the master plan, it did not make sense to spend millions of dollars on landscaping, etc. as the remaining area will be developed as the buildings "come on line." He reminded the Council that the COT changed the zoning to public so that the criteria are met for all of its property and the COT is beginning the process of redeveloping its entire site. As it redevelops, the criteria are being met.

EKLE BARFIELD OF MSU-BILLINGS, said he is requesting support from the Council for the zone change, noting that the request is consistent with Staff recommendation and the Zoning Commission recommendation. He noted that the master plan includes a joint library with the City, accommodates the Heritage Trail, addresses green space and sports fields (baseball, soccer and tennis courts), and allows for shared parking and access. He concluded his comments by displaying and briefly explaining the highlights of the COT's master plan.

TERRY SUKET WITH JGA ARCHITECTS said he is on the design team for the master plan. Mr. Suket said the team has taken a cursory review of the Shiloh Overlay zone permit application and requirements. He noted he was pleased to report that essentially the proposal is scoring points in eight of nine categories; the tally for the immediate site around the building is 36, which exceeds the 20 required.

There were no other speakers. The public hearing was closed. Councilmember Boyer moved for approval of the Zoning Commission recommendation, seconded by Councilmember Ruegamer. Councilmember Ruegamer said he will vote for the proposal,

but he is concerned about the two anomalies that appeared on tonight's agenda. Councilmember Jones said each situation had to be handled on a case-by-case basis because it has to make sense for the area, adding that both of these exceptions tonight made sense. On a voice vote, the motion was unanimously approved.

**14. PUBLIC HEARING CONTINUED AND FIRST READING ORDINANCE FOR ZONE CHANGE #773: text amendments to Section 27-611 of the Unified Zoning Regulations regarding sexually-oriented businesses. (Delayed from 2/13/06). Zoning Commission recommends approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

Nicole Cromwell of the Planning Dept. reminded the Council that the public hearing on this zone change originally began on February 13<sup>th</sup>. Ms. Cromwell also noted the following: (1) the ballot election held on June 6<sup>th</sup> contained the question of whether or not to change the county zoning regulations, not whether or not to change the "city" zoning regulations. The vote on June 6<sup>th</sup> was in favor of changing the county zoning regulations. The County Commissioners adopted the changes to the county zoning regulations on June 21<sup>st</sup>. (2) the hearing tonight is a continued hearing based on the Council's desire to delay the rest of the public hearing from February until after the election to determine whether or not to go forward and change the city zoning regulations.

Ms. Cromwell said if the Council votes to deny this zone change, the existing regulations remain in place, adding that the regulations will be different between the city and the county however. The City already has a separate ordinance that prohibits nude dancing where alcohol is served; the county did not have that type of regulation prior to the recent changes. The existing City regulations have been in place since 1992, with minor amendments made in 1996. Ms. Cromwell noted the City does not have problems with enforcing the existing regulations.

The public hearing was opened. MAE WOO, NO ADDRESS GIVEN, said she is the coordinator of C.A.S.E. and noted she will give her personal testimony later. She introduced Dallas Erickson who will speak on his proposed licensing law for sexually-oriented businesses. Mr. Erickson has an extensive background in this area and has helped to put a similar law on the books of five other Montana cities – Laurel, Manhattan, Belgrade, Townsend, Three Forks and Judith Gap is in the process.

DALLAS ERICKSON OF STEVENSVILLE, MT said the county does not have the authority to license businesses or control businesses in any other way, other than zoning. He said they are asking the Council to adopt only the portion of the ordinance that relegates these businesses into certain areas of the city/county zoning area and adopt those as law, but also look seriously at a sexually-oriented business (SOB) ordinance that is comprehensive and work with licensing and the City's regulation authority via licensing. Mr. Erickson said the primary reason that CASE wants this done is they do not want to pay the taxes to enforce it. Through licensing, the City would be able to recoup reasonable costs for enforcement of the SOB licensing ordinance. "In our state, we have to get a license to cut someone's hair, but in these establishments, they can do anything in there that they want to and that causes secondary effects. I don't know of any city that has done a serious study of SOBs that have not found many negative secondary effects of SOBs. They run from a higher crime rate, a higher sexual crime rate, a higher case of DUIs ..., a lowering of property values and an increase in sexually-transmitted diseases (STDs)," he stated. Mr. Erickson asked the Council

to consider approving those items that relegate SOBs to certain areas of the city and county and the distance requirements as part of the changes to zoning regulations AND look at regulating them more completely through the City's licensing authority.

CAROLL SMITH OF 1828 ALDERSON said at the last meeting (in February) the mayor stated that, "you couldn't legislate morality". Mayor Tussing replied that was not what he said. "I said trying to legislate morality is like trying to teach a pig to sing; it frustrates you and annoys the pig. I didn't say you couldn't do it; I was trying to express my opinion about the futility of it," stated Mayor Tussing. Mr. Smith said there are statistics on the negative effects of SOBs. He said he works with a gynecologist in town, doing some volunteer work. Mr. Smith asked the doctor whether there was an increase in STDs and the doctor confirmed there was an increase. Mr. Smith said the rape victim advocate from the county stated there is a constant increase in rapes in the county. He said he was told by the advocate that for someone who has been raped, 'it never goes away'; they continue to need counseling. He closed by asking the Council to do something more than the current regulations provide for.

JACKIE SMITH OF 1828 ALDERSON said she is concerned about what is going on in the community. She said she is asking the Council to take the necessary steps to protect the community from the effects of SOBs. She reminded the Council that in the June 6<sup>th</sup> election, more precincts in the City voted for the ordinance than voted against it. Ms. Smith said this shows the people of the city are concerned about what is going on and would like to see something done that regulate these businesses more to have a healthier and safer community.

MAE WOO OF 17 LAVENDER ST. said she is addressing the SOB law from the point of view of a health professional. She said she is a retired dentist. Ms. Woo said it is known that disease is passed through contact with bodily fluids. Restaurants are required to have health and cleanliness inspections; medical and dental facilities are very strictly regulated for disease control and sanitation. Yet, in these SOBs, there is sexual activity occurring and a release of bodily fluids. But, there are no cleanliness checks required at all. "To me, there is something really wrong with this picture, where we are requiring rigorous checks for restaurants and dental and medical facilities and here we have a release of bodily fluids and there are no regulations and no checks at all. There are at least 50 types of viral bacterial and fungal infections that are associated with STDs... and you don't necessarily have to have sexual intercourse to get them. A cut or abrasion in the skin or being in contact with these sexual fluids can be a point of entry for the infectious agent," she stated. Ms. Woo said these businesses should be monitored and controlled for cleanliness and disease control. She noted that one good point of the proposed licensing law is that existing adult businesses would not need to be grandfathered in and therefore could be monitored immediately for cleanliness. Ms. Woo emphasized that having this law on the books would be a good preventive measure to discourage other types of SOBs from setting up in the community. She urged the Council to review the licensing law proposal and adopt portions of it for the City to begin the monitoring and control.

There were no other speakers. The public hearing was closed. Councilmember Ruegamer moved for disapproval of the zone change, seconded by Councilmember Stevens. Councilmember Clark asked what would change if this ordinance were approved. Ms. Cromwell said the existing ordinance already has separation requirements between residential zones and SOBs and these businesses are only allowed in four zoning districts. The businesses that were not in compliance in 1992 had four years to become compliant or

cease business. Ms. Cromwell said this requirement eliminated four different businesses in 1996. The existing SOBs are fully regulated by the existing ordinance; the only exception is an adult massage parlor, which is not defined in the existing ordinance.

Councilmember Jones said earlier this evening fireworks were discussed and how impossible it is to control fireworks. "If we took the same attitude that I just heard here, we would get rid of the fireworks law because there's no way we can actually control it and have enough people on staff to make sure that nobody shoots off fireworks in the city. To carry that over into this mentality, that there is no way we can control this, I think is ridiculous. There's no doubt that we would not be able to have somebody there every minute, but you would actually have the people that could go out and check it periodically and make sure that it was right," he stated. Councilmember Jones asked a question about Section 4, concerning signage. He asked if that section would address some of the objects in the window of businesses on 1<sup>st</sup> Avenue North. Ms. Cromwell reminded the Council that even if that section on signage were adopted, the existing signs would stay, even if they are not in conformity with the new regulations; only "new" things after enactment of the ordinance would have to be in conformance with the new regulations. So anything that is in the window now or in 30 days before the new ordinance would go into effect would be allowed to remain.

Councilmember Ruegamer said while he thinks these individuals are well-meaning, there seems to be a lot of misinformation involved. He said the city has an ordinance in place that works; tampering with it will produce unknown effects. Councilmember Ruegamer noted the difference between fireworks and SOBs; fireworks are illegal, SOBs are immoral and he did not think morality could be legislated.

Councilmember Stevens said she is not happy that this ordinance in this form is before the Council this evening. "I don't want to talk about the merits of whether SOBs are good or bad for the community. I'm going to address my comments to this ordinance the way it is written.

- On page 9, we see that a whole bunch of cases have been cited and that is going to be included in the ordinance. It looks more like a law review article than it does an ordinance and has no business being in an ordinance. For example, what happens if any of these cases are overturned? It's part of our law; it makes no sense.
- On pages 10-11, it's a bunch of dicta. Again, it has no business being in an ordinance.
- On page 14 on Section 4, ... as far as the sign codes. What we are trying to do is place certain requirements on these types of businesses that we are not placing on any other businesses. We're going to have some issues with First Amendment rights. We are not requiring them of any other business; but we are requiring them of this business. When we get into that position, we will need to look at the reasonable restriction related to a legitimate government interest.
- On page 16 on K(3) – requiring a building to be a single, monochromatic color – is that a reasonable restriction on this sort of business when we don't require it for any other business? No, it's not," stated Councilmember Stevens.

Additionally Councilmember Stevens noted that Mr. Erickson testified that he really doesn't even know what the City's current code says. "They are coming and saying 'well, just pick and choose what you want'; that's not our job tonight – to pick and choose, to go through this and clean it up to make it workable. It should come to us in a workable format," she

emphasized. Councilmember Stevens said for those reasons she believed the Council should not approve the ordinance.

Mayor Tussing said if the Council is inclined to do something more than required in the current code, the Council should instruct the City Attorney to draft a new ordinance that incorporates the things the Council thinks need to be added. He added that he would be more concerned about this matter, (1) if there was someone from the health department here complaining about the proliferation of STDs and producing some hard statistics about what is occurring in Billings and (2) if the Police Dept. was before the Council begging for another tool because they cannot adequately enforce the law or sex crimes are a result of SOBs. Mayor Tussing said he agreed with Councilmember Stevens in that there were many items in the proposed ordinance that could be challenged.

There was no further discussion. On a voice vote on the motion (to disapprove the zone change), the motion was approved. Councilmember Jones voted "no".

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

- MARY WESTWOOD asked the Council to consider including the names of the appointees on the agenda when making appointments to ad hoc committees. She also suggested that whenever issues before the Council are divided, a roll call vote be used instead of a voice vote. Lastly, Ms. Westwood spoke briefly on the sexually-oriented business ordinance, adding that visibility is the last thing these businesses want.

**COUNCIL INITIATIVES**

- Councilmember Jones moved to direct Staff to report on a plan to address noise, especially loud stereos and to provide a report on the number of complaints received and tickets issued, seconded by Councilmember Brewster. On a voice vote, the motion was approved. Councilmember Ulledalen voted "no".

**ADJOURN** – With all business complete, the meeting was adjourned at 11:20 P.M.

THE CITY OF BILLINGS:

By: \_\_\_\_\_  
Ron Tussing, \_\_\_\_\_  
MAYOR

ATTEST:

BY: \_\_\_\_\_  
Marita Herold, CMC/AAE, City Clerk