

## REGULAR MEETING OF THE BILLINGS CITY COUNCIL

March 23, 2015

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. Deputy Mayor Jani McCall called the meeting to order at 6:30 p.m. and served as the meeting's presiding officer. Councilmember Bird gave the invocation.

**ROLL CALL:** Councilmembers present on roll call were: Cromley, Yakawich, Pitman, Cimmino, McFadden, Bird, Crouch, and Brown. Councilmember Swanson was excused.

### **MINUTES:**

- February 23, 2015
- March 9, 2015

Councilmember Yakawich moved for approval of the February 23, 2015, and March 9, 2015, minutes, seconded by Councilmember Cimmino. On a voice vote, the motion was unanimously approved.

**COURTESIES:** Community Development Manager, Brenda Beckett, introduced Jackie Girard, Montana State Director; and Anna Yeagle, Program Officer, for the Corporation on National and Community Service Montana Field Office. Ms. Girard thanked the City Council for supporting their AmeriCorps VISTAs and the Billings Metro VISTA project. The VISTA volunteers introduced themselves and provided their home state and current VISTA project. Ms. Volek also recognized Ms. Beckett and her staff for their dedication and hard work. Ms. Beckett thanked Ms. Girard for her support and her nearly \$500,000 investment in the Billings community for the current year and next year.

### **PROCLAMATIONS:**

- National Service Recognition Day - April 7, 2015 & VISTA 50th Anniversary Recognition
- Diabetes Alert Day - March 24, 2015

Leif Wellhaven said he was the Montana Board Chair for the American Diabetes Association. There were about 84,000 Montanans who were either Type 1 or Type 2 diabetics, and another 30,000 Montanans who were pre-diabetic and did not know it. Mr. Wellhaven encouraged everyone to get tested. Kirsten Weatherford said she was the Montana Manager for the American Diabetes Association. She thanked the City of Billings for the proclamation and for drawing awareness to the disease. Deputy Mayor McCall disclosed she had Type 1 diabetes and was on an insulin pump. She thanked Mr. Wellhaven and Ms. Weatherford for their advocacy to move the research forward. She said it was critically important, and early intervention was key.

### **ADMINISTRATOR REPORTS - TINA VOLEK**

- **Item A2 – W.O. 15-17, WWTP Aeration Blower Improvements.** Staff was asking that the item be separated for further discussion.
- **Item 4 – Public Hearing and Special Review #924:** City Planning Staff received a letter from Octagon Consulting Engineers, LLC, dated 3/17/15, requesting the special review be withdrawn from the agenda. Copy of the letter was on Council's desk and filed in the ex-partie notebook.
- **Item 7 – Public Hearing and First Reading Ordinance for Zone Change #934.**
  - ✓ Staff and Council received a letter from North Park Neighborhood Task Force, dated 3/9/15, and an e-mail from Kevin and Cheryl Davis, dated 3/16/15, in opposition to the zone change. Copies were filed in the ex-partie notebook.
  - ✓ City Administration e-mailed to the Council a letter from the Montana Tow Truck Association on 2/11/15 in favor of the zone change. Copy was filed in the ex-partie notebook.
  - ✓ Mayor and Council received e-mails from Jennifer Hamlet, dated 3/4/15, and Ralph Hanser, dated 2/10/15, in favor of the zone change. Copies were filed in the ex-partie notebook.

**PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: #1 ONLY.**

**Speaker sign-in required.** (Comments offered here are limited to one (1) minute.

Please sign in at the cart located at the back of the council chambers or at the podium. Comment on items listed as public hearing items will be heard ONLY during the designated public hearing time for each respective item. For Items not on this agenda, public comment will be taken at the end of the agenda.)

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

**1. CONSENT AGENDA**

**A. Bid Awards:**

**1. W.O. 15-10, Water Treatment Facility UV System.** (Opened 3/10/15)  
Recommend Trojan Technologies; \$1,032,270.70.

**2. W.O. 15-17, WWTP Aeration Blower Improvements.** (Opened 3/10/15)  
Recommend Aerzen USA Corporation; \$162,533.

**B. Certified Local Government Program Contract with the State of Montana Historic Preservation Office; \$5,500. Local matches: City-County Planning Division - \$1,031; Yellowstone County - \$1,000; City of Laurel - \$469.**

**C. Reimbursement Agreement with AT&T for W.O. 12-31, East End Storm Drain Improvements, Phase II; \$240,973.**

**D. Acknowledge Receipt of Petition to Annex #15-01:** portions of 6th Avenue North, 4th Avenue North, 3rd Avenue North, 2nd Avenue North, 1st Avenue North, Main Street (Exposition Drive), and some alleys in the area of East Billings; City of Billings, petitioner; and set a public hearing date for April 27, 2015.

**E. Acknowledge Receipt of Petition to Vacate:** alley within Block 38, Fosters Addition, located between North 26th Street and North 27th Street and 7th Avenue North and 8th Avenue North; Honaker Realty and Thomas Properties, petitioners; and set a public hearing date of April 13, 2015.

**F. Phillips 66 Easements**

- 1. Easement** to Phillips 66 for installation of a pipeline on city property at Mystic Park.
- 2. Easement** from Phillips 66 for W.O. 12-31, Phase I, Yegen Drain Improvements.

**G. Acceptance of Donation** of 23 bus seats and frames to Billings Airport for retrofitting donated FedEx B-727 to simulate passenger aircraft and enhance ARFF training; Sarpy Transportation, Inc.; \$1,200.

**H. Approval** of application for an AmeriCorps VISTA Project; and **authorization** for staff to negotiate and finalize the project, if awarded.

**I. Resolution of Intent #15-10436** to construct W.O. 15-02, Miscellaneous Improvements Program; and set a public hearing date of April 13, 2015.

**J. Resolution of Intent #15-10437** to construct W.O. 15-06, Poly Drive - 32nd to 38th Streets West; and set a public hearing date of April 13, 2015.

**K. Resolution of Intent #15-10438** to modify the East Billings Urban Renewal District (EBURD) including tax increment authority; declare the existence of blight within the EBURD, and set a public hearing date of April 13, 2015.

**L. Bills and Payroll:**

1. February 23, 2015
2. March 2, 2015

Councilmember Yakawich separated Consent Agenda Item C. Councilmember Cimmino separated Consent Agenda Items B, L1, and L2 in order to abstain. Councilmember Brown separated Consent Agenda Items A2 and D. Councilmember Brown said he would be abstaining from Consent Agenda Items L1 and L2. Councilmember Cromley noted he would be abstaining from Consent Agenda Item L2.

Councilmember Pitman moved for approval of the Consent Agenda with the exception of Items A2, B, C D, L1 and L2, seconded by Councilmember Crouch. On a voice vote, the motion was unanimously approved.

Councilmember Brown referenced Item A2 and said he separated the item at the request of the City Administrator. Deputy Public Works Director, Vern Heisler, explained due to the timing to submit staff memos, staff had to put information together as fast as possible following a bid opening. As a result staff was asking that the three bids received be rejected, and the project re-bid. Councilmember Brown moved to reject all bids, seconded by Councilmember Pitman. On a voice vote, the motion was unanimously approved.

Councilmember Cimmino referenced Item B and said because of a personal conflict, she would abstain. Councilmember Pitman moved for approval of Item B, seconded by Councilmember Bird. On a voice vote, the motion was approved 8 to 0.

Councilmember Yakawich referenced Item C and asked Mr. Heisler if there were alternatives to save money versus drilling. Mr. Heisler explained it was an investment into the East End Storm Drain project. One of the difficulties with stormwater was that it flowed by gravity and because it was such a large storm drain, they did not have a lot of options. He said the Engineering staff always tried to save money any place they could with any project; however, with this project the line really needed to go through in the recommended location in order for the outfall to end up where it needed to. The unfortunate part was that the fiber optic lines were exactly in the same spot; and needed to be lowered. New casings would need to be bored under the railroad tracks for about 250 feet. It was a very big project. It would be nice if they had a different way to do things, but in this case the two happened to be right on top of each other, and they did not have a lot of options. Councilmember Yakawich said the staff report indicated the estimate amount could be more or less. He asked how much more or less. Mr. Heisler said he did not have an exact figure. When the Engineering Division staff worked with entities such as AT&T they did everything they could to get the best price possible. Councilmember Yakawich moved for approval of Item C, seconded by Councilmember Pitman. On a voice vote, the motion was unanimously approved.

Councilmember Brown referenced Item D and said he separated the item because there were Billings Industrial Revitalization District (BIRD) members in the audience who would like to make comment. Deputy Mayor McCall asked Attorney Brooks if the time for comment would have been during the public comment period for Agenda Item 1. Attorney Brooks said that was correct; however, with the City Council's approval, testimony could be allowed. Attorney Brooks suggested that anyone else wishing to comment also be offered the same opportunity.

- **Marty Connell, 2903 Radcliff Drive, Billings, MT**, distributed a map of the Exposition Gateway expansion 30% design, and said he was happy to report it came in only \$300,000 over budget. He noted the two streets colored green on the map would be moved to Phase II, which would save them the \$300,000 and keep their budget balanced. He noted the street colored red on the map was surrounded with property owners who asked that only minimal improvements be made because the street would not be there in the future, which would save another \$100,000. Sanderson Stewart was on schedule, and on April 7 they

would provide the 90% estimate. Weed mat and river rock would be provided for the boulevards; and if the property owners wanted to immediately move forward with the landscaping, regular TIF funds could be used to assist them. Mr. Connell also distributed information on the streetlights selected for the future lighting district. He noted the property owners were excited about having streetlights. Mr. Connell told the councilmembers they would be contacted by county landowners who would be upset because they could no longer park in the right-of-way. All the streets would belong to the City of Billings. Mr. Connell said he; Public Works Director, Dave Mumford; City Engineer, Debi Meling; and Staff Engineer, Chris Hertz, determined there was no way to institute the plan with sidewalks, curbs, gutters, and landscaping and still allow parking out into the street.

Councilmember Yakawich said Mr. Connell alluded to people being excited and asked for the general mood beyond that. Mr. Connell said they could not believe that it was really happening. If the City was going to grow, they were going to make it beautiful and that was what they had to do.

Councilmember Brown moved for approval of Item D, seconded by Councilmember Yakawich. On a voice vote, the motion was unanimously approved.

Councilmember Pitman moved for approval of Consent Agenda Items L1 and L2, seconded by Councilmember Crouch. On a voice vote, Item L1 was approved 7 to 0, and Item L2 was approved 6 to 0.

#### **REGULAR AGENDA:**

**2. PUBLIC HEARING AND RESOLUTION #15-10439 approving FY2016-FY2020 Capital Improvement Plan (CIP), FY2016 Equipment Replacement Plan (ERP), and FY2016 Technology Replacement Plan (TRP). Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** City Administrator Volek advised the item had been the subject of two external public hearings and two public hearings before the City Council, so there would be no presentation; but staff was available to answer questions.

Councilmember Cimmino referenced a recent presentation on the wastewater treatment plant and the lease with the county for use of the land. She asked if the County Commissioners would allocate funds to assist with the expansion of the wastewater treatment plant. Ms. Volek said she believed the answer would be 'no' because it would not benefit the county. The vast majority of county land, unless by specific action, did not receive city services. Councilmember Cimmino asked if there were any potential for the City to purchase the land. Ms. Volek said she understood it was a perpetual agreement and under those circumstances and given the other expenses, she did not anticipate that staff would recommend purchasing the land because of the additional cost it would bring to the project. Deputy Public Works Director, Vern Heisler, said the lease had been in effect since 1946 or 1947, and staff had not discussed purchasing the land. It was a system that had worked very well. Councilmember Cimmino referenced Library Services in the CIP. She said there was an effort with MSU-B City College for a joint community library. For the library general obligation bonds, they were looking at committing another \$7.2 million to help pay for

the campus library and asked if that particular bond would go to the voters. Ms. Volek said the library currently had a facility within the library at City College and she thought they were waiting for state funding of the library building for the campus.

Library Director, Bill Cochran, said the two projects remaining in the CIP after the completion of the downtown library were consensual support of having branches in the future should the City decide to go forward with them. They had schematic design documents done with funding from the City and University to build a stand-alone building, which was high priority before the downtown library became a community priority. Both projects had been pushed out indefinitely. Council was being asked in the CIP to delay what was scheduled to be a bond issue in 2017. They were pushing it out until at least 2019. They were delaying the site evaluation study in the Heights from 2016 to 2018 knowing that next year would be the third year of the 3-year planning process required by the interlocal agreement between the City and County. During that year they would prepare a new 3-year strategic plan and a 25-year facilities plan. Mr. Cochran said there was no illusion that there would be a library branch project anytime in the near future, but they would not lose sight of the fact there was a commitment in exploring with the community if it wanted to have branches in the Heights and on the west end. In the interim, the pilot project would continue where people could use computers and check out, drop off, and have material delivered from the City College Library.

Councilmember Cimmino asked if the former bookmobile had been retired or if it would be used as part of the effort for the Heights branch. They were always under the impression the old bookmobile would be parked in front of the Oasis Park from time to time during the summer so area residents could use it. Mr. Cochran said the old bookmobile was currently being stored to be used as a pilot branch. They did not have anyone to staff it, so part of the funding for the site evaluation study would be for the library to hire contract staff to operate the bookmobile. The Oasis Park might be one of the locations. The strategic planning process they anticipated going into next fiscal year would look at demographic data, along with survey results, to identify preferred locations in the Heights and on the west end.

The public hearing was opened.

- **Pam Ellis, 2000 Outlook Drive, Billings, MT**, referenced Skyway Drive and said the Heights residents were disappointed the CIP did not include the linkage from Skyway Drive to the west end. She said according to the Billings Gazette, the CIP was "a cool quarter billion dollars," and of that, the Heights was getting \$2.88 million. According to the 2010 census, the Heights was 20% of the City, and they were getting 1% of the CIP. Extending the link had been a huge focus of the Heights Task Force for years. Ms. Ellis said she realized money was an issue, but she also thought it would be possible to at least present to the public the reasonableness. She thought they held the City back by saying 20% of the people would receive 1% and telling them there were no plans for the traffic flow. The current plan was not okay with the Heights residents.

City Administrator Volek commented that the project was one of several that city staff listed upon request from the State Legislature for funding. It

remained a possibility, and she had not received any information indicating it had been removed from the funding. Although the CIP was a 5-year plan, it did not mean staff was unaware of the desire to extend Skyway Drive. There were concerns in light of the public safety levy not passing and how they would further spread a very thinly-resourced set of departments. She assured Ms. Ellis and the City Council they had plans to bring it forward. It would just not be in the next five years; particularly since so many of the City's resources were being devoted to Bench Boulevard, which would take most of the pass-through funding from the state and federal government for the next several years.

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

Councilmember Crouch moved for approval of the FY2016-FY2020 CIP, seconded by Councilmember Bird.

Councilmember Pitman moved to amend the FY2016-FY2020 CIP to include the second phase of the Inner Belt Loop; also known as Skyway Drive, the connection between Alkali Creek and Zimmerman Trail, seconded by Councilmember Cimmino. Councilmember Pitman said it was important to have it as a priority in the CIP and not just a footnote. If it was not actively within the CIP, staff would say it was not there and would look at the other identified projects. It was an important project. He understood the City Administrator's concerns over safety and spreading the resources a little thin; but his perspective was that the road would connect safety, fire, and police and provide better access to the Heights.

City Administrator Volek asked for the year the Council wanted it placed and the funding source. Councilmember Pitman said he had not picked a date because he was not sure what the legislature was going to do. The funding source was unknown. They were only restricted by the funding requirements of their own rules. He was asking for a placeholder that it be there upon any funding becoming available. Councilmember Pitman provided the date of 2018 and would like it to say "or if funding becomes available sooner that the project be addressed at that point."

Councilmember Cimmino said a memo was received a month ago from the Public Works Director indicating Skyway Drive was not part of the CIP this go-around because of other priority projects. She reminded everyone that they had studied the Inner Belt Loop (IBL) concept for the past 27 years, and the memo indicated they would have to put it on the system, receive funding from the Federal Highway Administration through the Montana Department of Transportation, and refer it to the Planning Department as a pass-through. Councilmember Cimmino said they had already paid for the design and for so many other amenities towards the project; and it would be a sad state of affairs to stop now. The memo indicated the Public Works Director was proposing another 20-year wait on the IBL until the Outer Belt Loop was completed. She felt they were two different projects altogether, so she was very optimistic they could move forward with it. They could also wait to see what happened in the current legislative session.

On a voice vote, the amended motion was unanimously approved.

On a voice vote, the original motion was unanimously approved.

Councilmember Pitman moved for approval of the ERP, seconded by Councilmember Cimmino. On a voice vote, the motion was unanimously approved.

Councilmember Crouch moved for approval of the TRP, seconded by Councilmember McFadden. On a voice vote, the motion was unanimously approved.

**3. PUBLIC HEARING AND SPECIAL REVIEW #923: A special review for an all-beverage liquor license with gaming in a Controlled Industrial zone on approximately two acres described as Lot 4A, Block 3, Midland Subdivision, 3rd Filing, and located at 960 S. 24th Street West. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)** Planner II, Nicole Cromwell, began her presentation showing a zoning map, aerial views, and photographs of the subject property and surrounding properties. She also showed a floor plan and architectural plan for the subject property. She noted the City Engineer's Office advised the parking currently provided would accommodate the proposed eating and drinking establishment. The Zoning Commission conducted a public hearing on March 3, 2015, and was recommending approval based on the following conditions.

1. The special review approval shall be limited to Lot 4A, Block 3, Midland Subdivision, 3rd Filing.
2. The special review approval is for the location of an all beverage license with gaming and no other use is intended or implied.
3. Any expansion of the interior space greater than 347 square feet will require an additional special review approval. The addition of an outdoor seating area will require an additional special review approval.
4. There shall be no outdoor public address system or outside announcement system, whether permanent or temporary, of any kind.
5. These conditions of special review approval shall run with the land described in this authorization and shall apply to all current and subsequent owners, operators, managers, lease holders, heirs and assigns.
6. The proposed development shall comply with all other limitations of Section 27-613 of the Unified Zoning Regulations concerning special review uses, and all other City of Billings regulations and ordinances that apply.

Councilmember Cromley said he was concerned about the parking and asked if the Zoning Commission considered parking. Ms. Cromwell said staff sent their applications to all city departments for review prior to the Zoning Commission. Staff from the City Engineer's Office sat down with the applicant to review the parking numbers, and they determined the parking was adequate. She said it was not a concern of the Zoning Commission mainly because the property was surrounded by other adjacent parking lots, so they could lease additional parking, if necessary.

The public hearing was opened.

- **Grant Agnew, 2624 Southridge Drive, Billings, MT**, said he was the owner of the property and was available to answer questions. He bought the building in

2012, and they had been through several different operators. There had been two salons in the location with different owners and four or five different managers. He said he knew there were excellent operators in the casino and gaming business, and he was anxious to get the health of his property back to where it needed to be as far as timely rent. The two salons cost him tens of thousands of dollars in back rent. He was looking forward to a long and prosperous relationship with the casino owners, who were also present.

Councilmember Bird asked if the proposed business would include a full-service restaurant. Mr. Agnew said there may be appetizers served; but they would not have a big kitchen. He felt the casino would be a win-win situation.

Councilmember Yakawich asked why it was such a good location for a casino. Mr. Agnew commented it had ample parking, there were three hotels nearby, and he trusted Century Gaming's opinion that it was a good location. The owners of the proposed casino had a very good reputation in the state. He was confident it was a good location.

- **Richard Clark, 1207 25<sup>th</sup> Street West, Billings, MT**, said he was chairman of the West End Task Force. The proposed casino was discussed at their meeting, and there were no concerns with the location for the casino.

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

Councilmember McFadden moved for approval to include the conditions, seconded by Councilmember Bird. On a voice vote, the motion was unanimously approved.

#### **4. PUBLIC HEARING AND SPECIAL REVIEW #924: A special review to allow four, nine-plex, multi-family buildings in a Residential 6000 zone on a 1.98-acre parcel of land described as Lot 4, Block 1, Chalice Acres Subdivision, generally located west of 1442 Bench Boulevard. Zoning Commission recommends denial. (Action: approval or disapproval of Zoning Commission recommendation.)**

Planner II, Nicole Cromwell, noted the letter from Octagon Engineering requesting the application be withdrawn and sent back to the Zoning Commission was referenced by the City Administrator earlier that evening. She said based on the original site plan submitted, the Zoning Commission recommended denial on a 3 to 1 vote based on the following findings of the three criteria for special review.

- ✓ Existing approval for 28 units (seven 4-plexes) may be best site design
- ✓ Several site requirements missing or incomplete – waste storage, fencing & buffering, internal street design.
- ✓ Not complementary or compatible with closest residential uses of 1 or 1.5 story structures

The Zoning Commission was recommending that City Council grant the withdrawal; however, City Council could approve the application, conditionally approve the application, delay action for 30 days, or deny the application. Ms. Cromwell showed a zoning map, aerial views, and photographs of the subject property and surrounding

properties. She noted the property had received previous special review approval for seven 4-plexes in 2008. There were three single-family homes to the east of the subject property, and there was an access easement between the north and middle properties and along the south property on the south end of the lot. Ms. Cromwell showed the original site plan with noted changes, and the interior floor plan. She said there were concerns with the original site plan that centered on the height and bulk of the buildings, meeting just the minimum off-street parking requirements, no locations specified on the plat for solid waste collection and mail delivery, the lack of pedestrian safety for residents to get to Bench Boulevard, and dissimilar uses in the area with the exception of the Volunteers of America Elderly Housing.

Councilmember Cromley asked if the letter from Octagon Engineering addressed the Zoning Commission concerns. Ms. Cromwell said it addressed the parking issues, and the new site plan addressed the concern about the height of the buildings. Councilmember Cromley asked if there were concerns of the Zoning Commission that were not addressed in the letter. Ms. Cromwell said she could not think of any.

Councilmember Bird asked if there had been any discussion or review of the impact of traffic on Bench Boulevard. Ms. Cromwell said a full traffic accessibility study had been prepared as part of the original application, and it was determined there would be no change based on the changes to the site plan.

The public hearing was opened.

- **James Cameron, 1448 Bench Boulevard, Billings, MT**, said he was the owner of one of the adjacent properties. He said he felt a solution through redesign was in order and Kincaid Land should be given the opportunity. He was in opposition to the current application because proposed Buildings #1 and #4 were too high, too close, and too much for the space. Building #1 would tower within 10 feet of his property line and 15 feet of his neighbor's property line, which meant no sunshine for them. He and his neighbor had experienced problems with unwanted parking, constant foot traffic, and trespassing on the private access that ran between their parcels to the subject parcel. Kincaid Land platted Chalice Acres and did not grant any rights or dedication to the private access depicted on the plat. No rights were reserved, described, or explained when deeding the residences at 1442 and 1448 Bench Boulevard out of Kincaid's unitary ownership. The proposed development suggested parking on the street and more specifically in the area of the private access on their properties. It would lead to parking on the private access as if it were a public street. He and his neighbor owned the property and paid taxes on it. Mr. Cameron said there was also concern about negative drainage. He said taking two acres of permeable ground and making it parking lots and concrete would cause the drainage to drop off within 10 feet of his property and even closer to the Best Friends Animal Hospital's dog runs.
- **Chris Jones, 1442 Bench Boulevard, Billings, MT**, said he was an adjacent neighbor to the subject property. His concerns with the initial proposal were the design and heights of the buildings, the proposed street was very close to his children's bedroom windows, the utility easement would literally touch his house,

the additional traffic was worrisome, and no sidewalks in the easement section of the road access meant people would be walking in the middle of the street or on his or his neighbor's properties. There were price points for rent brought up at the Zoning Commission meeting that seemed very low and could devalue his property. Mr. Jones said there would be very little to offer renters with the extremely small living spaces, inadequate parking, no yard space, and no options for medium to large pets. He said when the special review was approved in 2008 to allow the seven 4-plexes, there was no landowner opposition because Kincaid Land owned the properties at 1432, 1442, and 1448 Bench.

- **Gene Culver, 3208 Rugby, Billings, MT**, said he represented Kincaid Land. He said a lot of what Mr. Cameron and Mr. Jones talked about was based on the plans they would not use. They had redesigned the plans based on the concerns, and they would like to have a chance to bring it up in front of the Zoning Commission with an open forum. As a result, they were requesting the item be removed from the agenda that evening.

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

Councilmember Cromley moved to consider the letter from Octagon Engineering and grant the request to withdraw, seconded by Councilmember Bird. On a voice vote, the motion was unanimously approved.

**5. PUBLIC HEARING AND SPECIAL REVIEW #925: A special review to allow expansion of an assisted living facility in a Residential 9600 zone on Lots 26 and 27, Block 2, Howard Heights Subdivision, located in the Billings Heights. BLW Investments, LLC, owner; AT Architecture, Inc., agent. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)** Planner I, Dave Green, began his presentation showing a zoning map, aerial view, and photographs of the subject property and surrounding properties. He explained the existing two structures were on four lots, and there were two other lots platted residential. The property owner would be purchasing property from the Trinity Church of the Nazarene and from the Heights Baptist Church to complete their site and give them room to expand and provide parking. Mr. Green reviewed the site plan of the proposed expansion. He said there were fewer assisted living facilities in the Heights compared to the west end; and the proposed expansion would help to accommodate more individuals in the Heights area. He advised the Zoning Commission was forwarding a recommendation of approval based on the following conditions.

1. The special review approval is for the expansion of an assisted living facility generally located at 72 and 77 Lily Valley Circle.
2. The approval is limited to Lots 26 and 27, Block 2, Howard Heights Subdivision, 10,576 sf and 7,865 sf (34,429 sf total) additional land from Churches.
3. The property currently owned by the Heights Baptist Church and the Trinity Church of the Nazarene included in this site plan must be purchased and lot lines relocated before construction of the new addition can begin.

4. Increases in the number of units or the number of off-street parking spaces greater than 10% of the numbers shown on the site plan will require additional special review approval.
5. The site will be developed in substantial conformance with the submitted site plan dated 01-25-15. Minor modifications to the site plan are acceptable.
6. These conditions of special review approval shall run with the land described in this authorization and shall apply to all current and subsequent owners, operators, managers, lease holders, heirs and assigns.
7. The proposed development shall comply with all other limitations of Section 27-613 of the Unified Zoning Regulations concerning special review uses, and all other City of Billings, regulations and ordinances that apply.

The public hearing was opened.

- **Alex Tommerup, 2010 Wentworth Drive, Billings, MT**, said he was the architect on the project. He said the owner was also in attendance, and they would be happy to answer questions.
- **Elizabeth Hoff, 1513 Linda Lane, Billings, MT**, said she had worked at Butterfly Homes for over 11 years and asked for Council's approval. She said they provided a safe home environment for the elderly. They currently had 12 residents in each home. They had a good reputation in the community and a constant wait list, which is why they wanted to expand their facility.

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

Councilmember Pitman moved for approval to include the conditions, seconded by Councilmember Cimmino. On a voice vote, the motion was unanimously approved.

**6. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE**  
**#933: A zone change from Residential 9600 to Residential 6000 on a 17,500 square-foot parcel of land described as Lots 15-19, Block 1, College Subdivision, 1st Filing, located at 1229-1239 Poly Drive. Zoning Commission recommends approval of the zone change and adoption of the findings of the 10 criteria.**  
**(Action: approval or disapproval of Zoning Commission recommendation.)**

Planner II, Nicole Cromwell, noted the item was a council-initiated zone change. She noted the Council had previously approved a similar zone change for another owner on 13<sup>th</sup> Street West. Ms. Cromwell showed a zoning map, an aerial view, and photographs of the subject property and surrounding properties. The zone change would allow the owner to rebuild, refinance, or sell the property in the future. Ms. Cromwell displayed a map highlighting the non-conforming, 2-family or multi-family units near the subject property, and said she would estimate at least 30% of the dwellings in the College Subdivision were non-conforming to the single-family-only zoning. The Zoning Commission was recommending approval based on the findings of the 10 criteria.

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

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

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

The proposed zoning would permit the existing multi-family apartment to continue in conformity with the zoning. The development has fit in well with the existing neighborhood for more than 40 years and continued investment in the property will preserve the neighborhood integrity. The proposed zoning, R-60, is consistent with the neighborhood character and land use patterns on Poly Drive.

- *More housing and business choices with each neighborhood. (Land Use Element Goal, page 6)*

The existing zoning is restricted to single-family only residential uses. The proposed zoning will allow the retention of the multi-family apartments on Poly Drive. This will allow the housing choice in this neighborhood to remain diverse.

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

The new zoning requires minimum setbacks, open and landscaped areas and building separations. The new zoning, as do all zoning districts, provides adequate building separations and density limits to provide security from fire and other dangers.

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

Public health, safety and general welfare will be promoted by the proposed zoning. The nonconforming zoning discourages investment in the property.

4. *Will the new zoning will facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirement?*

Transportation: The proposed zoning should have no impact on transportation.

Water and Sewer: The City provides water and sewer services to the property.

Schools and Parks: There should not be any impact to schools from the proposed zone change.

Fire and Police: The subject property is currently served by the city Public Safety Services.

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

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

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

Traffic generation from the apartments will not change since the maximum number of units on the lot has existed since 1967.

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

The new zoning does promote compatibility with urban growth. The new zoning will allow investment in the property increasing property value over time.

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

The proposed zoning does consider the character of district and the suitability of the property for multi-family uses. The location of the property on a minor arterial street near a signal controlled intersection makes it suitable for this use.

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

The existing multi-family apartment value will be conserved by the new zoning.

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

The proposed zoning will permit an existing housing type in the neighborhood to continue and is the most appropriate use of the property.

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

Councilmember Crouch moved for approval of Zone Change 933, seconded by Councilmember Cromley. On a voice vote, the motion was unanimously approved.

**7. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #934: A text amendment to the Unified Zoning Regulations, Section 27-601(a) and 27-606, to allow the off-street parking and storage of Class A or Class D tow trucks in all residential zones. Zoning Commission recommends denial and adoption of the findings of the 10 criteria. (Action: approval or disapproval of Zoning Commission recommendation.)** Planner II, Nicole Cromwell, advised the zone change was initiated by the City Council. She began her presentation explaining the different classifications of tow trucks according to the State of Montana, as follows.

CLASS A = a minimum manufacturer's boom or combined boom rating of 4 tons and must be mounted on a truck chassis with a minimum manufacturer's rating of 10,000 pounds gross vehicle weight.

CLASS B = minimum manufacturer's boom or combined boom rating of 8 tons and must be mounted on a truck chassis with a minimum manufacturer's rating of 18,000 pounds gross vehicle weight.

CLASS C = minimum manufacturer's boom or combined boom rating of 16 tons and must be mounted on a chassis that has a minimum manufacturer's rating of 32,000 pounds gross vehicle weight.

CLASS D = manufactured rollbacks and car carriers with manufacturer's gross vehicle ratings of 10,000 pounds and over.

Ms. Cromwell showed the following proposed changes to Section 27-601 and Section 27-606. She noted the disparity between the two sections with the gross vehicle weight and said Sec. 27-606 had been amended to reflect the 12,000 pound vehicle weight limitation.

**Sec. 27-601. - Parking and storage restrictions.**

(a) *Residential.* The following standards for off-street parking and storage shall apply in all residential zoning districts and on property that is developed for residential use.

(4) Open storage and off-street parking of one (1) licensed and operable motor vehicle used for commercial or business purposes, including a commercial tow truck classified as either Class A or Class D by the State of Montana, is an allowed accessory use. All such motor vehicles, except the commercial tow trucks noted above, shall provided it does not exceed twelve thousand (12,000) pounds in G.V.W. (gross vehicle weight). Outside the city limits on property zoned agriculture open space or agriculture suburban this motor vehicle weight limitation shall not apply.

**Sec. 27-606. - Home occupations.**

A *home occupation* is defined as an occupation carried on by an occupant of a dwelling, which is located in a residential zoning district, as an accessory and incidental activity to the main residential use of the building.

(i) One (1) business vehicle that is associated with the home occupation and which does not exceed eight thousand (8,000) twelve thousand (12,000) pounds gross vehicle weight (G.V.W.), may be parked or stored on the premises. This weight limitation shall not apply to commercial tow trucks classified as either Class A or Class D by the State of Montana. In addition, there shall be no outside storage of materials or equipment related to the home occupation, except the one (1) allowed business vehicle.

Ms. Cromwell showed photographs of the four different classes of tow trucks and the stickers applied to the inside passenger-side windshield designating the appropriate class. The Zoning Commission held a public hearing and was recommending denial based on the findings of the 10 criteria, as follows.

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

The proposed zone change is not consistent with the following goals of the Growth Policy:

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

The proposed zoning would permit commercial tow trucks weighing as much as 19,500 pounds to be parked on any residential driveway throughout the city. This is not a predictable land use decision based on the intent of residential zones; to provide an area for the quiet enjoyment of residential living.

- *New development that is sensitive to and compatible with existing neighborhoods (Land Use Element Goal, page 6)*

The proposed text amendment does not meet the objectives of maintaining a high quality of life for existing residents and reducing conflicts between neighbors. Starting, running and warming up tow trucks on a residential neighborhood during overnight hours would tend to increase conflicts between neighbors and reduce the quality of life in those neighborhoods.

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

The new zoning would allow commercial tow trucks to park on residential driveways. Parking this type of equipment on a residential driveway may impede access to the dwelling unit depending on the layout of the site.

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

Public health, safety and general welfare will not be promoted in residential neighborhoods by allowing commercial tow trucks to park on driveways. Regular use of a residential street by higher weight vehicles will increase street maintenance costs. Regularly parking a commercial tow truck in a residential neighborhood will tend to depress the marketability of residential homes. Starting, running, and warming up commercial tow trucks adjacent to residential sleeping rooms and living areas would not promote the public health.

4. *Will the new zoning will facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirement?*

Transportation: The proposed zoning should have no impact on provision of transportation. However, the transportation system in existing and new residential neighborhoods may be negatively affected by regular use of heavy tow truck traffic. Residential streets are not designed for regular use by commercial trucks.

Water and Sewer: The proposed zoning should have no impact on provision of water and sewer service.

Schools and Parks: The proposed zoning should have no impact on schools or parks.

Fire and Police: The proposed zoning should have no impact on the provision of adequate public safety services. The Association has pointed to a decrease in response times for towing vehicles to accident or emergency scenes as the motivation for the change in the zoning code. The call rotation service requires the business to be able to respond in 30 minutes or less. If the business cannot respond in that time frame, the next company on the list is called. This standard and procedure will not change.

Accident and emergency clearance services will not be enhanced or diminished. The ability of tow truck businesses to provide timely response will not be enhanced or diminished by this change to the zoning regulations. Commercial tow truck businesses are required to have an office and a storage yard for vehicles that are towed. These locations are in commercial zones. Tow trucks are stored here as well. Most residential zones are within 1-mile of a commercial zoning district.

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

The proposed zoning may have a negative effect on air quality for at least brief periods of time in residential neighborhoods.

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

The transportation system in existing and new residential neighborhoods may be negatively affected by regular use of heavy tow truck traffic. Residential streets are not designed for regular use by commercial trucks.

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

The new zoning does not promote compatibility with urban growth. The parking of tow trucks in residential neighborhoods would diminish the quality of life in these residence zones.

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

The new zoning does not consider the character of residential neighborhoods that are designed and intended for the quiet enjoyment of residential property.

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

The new zoning will not conserve the value of existing homes in residential neighborhoods. Parking one or more commercial tow trucks in a residential neighborhood would diminish the marketability of the adjacent homes.

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

The proposed zoning does not encourage the most appropriate use of residential land throughout the City.

Ms. Cromwell noted she had a recording of what a Class D tow truck sounded like idling outside a building if Council would like to hear it. Deputy Mayor McCall said she did not feel that would be necessary. Councilmember Pitman asked if there was a decibel amount. Ms. Cromwell said they did not have a decibel meter and used a digital recorder.

Councilmember Yakawich asked why there was a separation between commercial and residential. Ms. Cromwell said they allowed home occupations that were typically commercial businesses that were service-oriented and daytime uses. Residential neighborhoods were meant for people to live and have families. There were certain uses in a home occupation that were not allowed such as auto repair and machine repair.

The public hearing was opened.

- **Pam Ellis, 2000 Outlook Drive, Billings, MT**, said she was Chair of the Heights Task Force. Her comments reflected a consensus of the group that she believed was accurate, but they did not take a formal vote. She said Council found a

measure to unite the task forces. Their concerns were noise, specifically during the night; and equity. There were businesses in the Heights that had big trucks; and they had been told they could not park them at home even though they had been doing it for a long, long time. The people felt they needed to be able to access their tow trucks. That was the cost of doing business, and they needed to find a place to park their trucks that did not disrupt a neighborhood and tear up the neighborhood streets.

- **Carol Moore, 615 N. 15<sup>th</sup> Street, Billings, MT**, said she was a member of the North Park Task Force, and she was against wreckers in her neighborhood. They were working very hard to establish peace and quiet in their neighborhoods. They did not need the noise and disruption. She said she attended the Zoning Commission meeting to listen to the reasons that had been put forth, and she thought it would help a few but it would cause problems city-wide.
- **John Armstrong, 903 N. 18<sup>th</sup> Street, Billings, MT**, said he was a member of the North Park Task Force. The task force voted 9 to 0 in opposition. It would benefit a few and put a lot of people at risk of losing a peaceful life in their neighborhoods. Integrating businesses into residential areas would cause problems. Mr. Armstrong said he would like to know how other progressive cities handled the situation.
- **Richard Clark, 1207 25<sup>th</sup> Street West, Billings, MT**, said he was President of the West End Task Force. The topic had been discussed at their meeting, and everyone present was against it. It was his understanding over 90% of the response times were within 30 minutes, so there was not a big problem.

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

Councilmember McFadden moved for approval of Zone Change #934. The motion died for lack of a second.

Councilmember Pitman moved to indefinitely table Zone Change #934, seconded by Councilmember Bird. On a voice vote, the motion was approved 8 to 1. Councilmember McFadden voted in opposition.

**8. PUBLIC HEARING AND FIRST READING ORDINANCE amending BMCC Article 24-406 allowing a commercial tow truck classified as either Class A or Class D by the State of Montana to be parked on city streets subject to parking requirements. Staff recommends approval if City Council approves Zone Change #934 (Agenda Item 7); or staff recommends disapproval if City Council disapproves Zone Change #934 (Agenda Item 7). (Action: approval or disapproval of staff recommendation.)** City Administrator Volek advised there was no presentation, but staff was available to answer questions.

The public hearing was opened.

- **Richard Clark, 1207 25<sup>th</sup> Street West, Billings, MT**, said the West End Task Force was opposed, as they were of Item 7.

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

Councilmember Yakawich moved to indefinitely table Item 8, seconded by Councilmember Cromley. On a voice vote, the motion was approved 8 to 1. Councilmember McFadden voted in opposition.

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

The public comment period was opened.

- **Richard Clark, 1207 25<sup>th</sup> Street West, Billings, MT**, referenced the recent public safety mill levy that did not pass. He said some years ago when the same thing happened and they needed a way to finance the Police Department, the Council appointed an ad hoc committee who came up with ideas. Mr. Clark thought that may be the way to go about it again since it did not look like the resort tax from the State would happen. He said people come up with some pretty good ideas. Councilmember Yakawich asked Mr. Clark if he would be willing to serve on the ad hoc committee. Mr. Clark said he would.

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

**COUNCIL INITIATIVES** None.

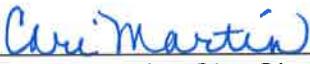
There was no further business, and the meeting adjourned at 8:51 p.m.

CITY OF BILLINGS



BY:   
Thomas W. Hanel, Mayor

ATTEST:

BY:   
Cari Martin, City Clerk