

## REGULAR MEETING OF THE BILLINGS CITY COUNCIL

February 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. Mayor Thomas W. Hanel called the meeting to order at 6:30 p.m. and served as the meeting's presiding officer. Councilmember Crouch gave the invocation.

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

**MINUTES:** February 9, 2015 - Councilmember Crouch moved for approval, seconded by Councilmember Yakawich. On a voice vote, the motion was unanimously approved.

**COURTESIES:** Mayor Hanel recognized Boy Scouts from Troop 375 who were in attendance. The Troop Leaders and the Boy Scouts introduced themselves. Each Boy Scout provided the name of the school he attended.

**PROCLAMATIONS:** Engineers Week - February 23-28, 2015

### ADMINISTRATOR REPORTS - TINA VOLEK

- **Item O2 – Bills and Payroll.** E-mail from Alan Miller, dated 2/23/15, sent to Mayor and Council. Copy was on Council's desk and filed in the ex-parte notebook. The Fire Chief was available to answer questions.
- **Item 5 – Public Hearing and First Reading Ordinance for Zone Change #932: A zone change from R7000 to Community Commercial on the north 36,000 square feet of Lots 2 and 3, Pierce Sub, located at 808 Grand Avenue.** E-mail from Candi Millar and Nicole Cromwell, dated 2/23/15, sent to City Administration. Copy was on Council's desk and filed in the ex-parte notebook.

### **PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: #1 and #2 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. Mayor Hanel recommends that Council confirm the following appointments:**

	<b>Name</b>	<b>Board/Commission</b>	<b>Term</b>	
			Begins	Ends
1	Sean Lynch	Billings BID	02/23/15	12/31/18
2	Ryan Walker	Board of Appeals - Electrical	02/23/15	12/31/17
3	Nate Fawcett	Board of Appeals	02/23/15	12/31/18
4	No Applications	Board of Appeals	02/23/15	12/31/18
5	No Applications	Community Development - Low Mod	02/23/15	12/31/18
6	Nate Fawcett	Community Development	02/23/15	12/31/18
7	Kathleen Grooms	Housing Authority - Resident Comm	02/23/15	12/31/19
8	No Applications	Housing Authority - Resident Comm*	02/23/15	12/31/15
9	Nate Fawcett	Human Relations Commission	02/23/15	12/31/18
10	No Applications	Mayor's Homelessness - Lending*	02/23/15	12/31/16
11	No Applications	Mayor's Homelessness - Librarian	02/23/15	12/31/18
12	Don Christman	Mayor's Homelessness - Work Force Ag	02/23/15	12/31/18
13	Steve Janich	Mayor's Homelessness - Veteran*	02/23/15	12/31/16
14	Walter Herbert	Mayor's Homelessness - Philanthropy	02/23/15	12/31/18
15	Kathryn Waitman	Mayor's Homelessness - Health Care	02/23/15	12/31/18
16	Myrna Martinson	Mayor's Homelessness - Service Provider	02/23/15	12/31/18
17	Kelly Donovan	Parking Advisory Board	02/23/15	12/31/18
18	Gordon Gooselaw	Parking Advisory Board	02/23/15	12/31/18
19	No Applications	Parking Advisory Board	02/23/15	12/31/18
20	David Goodridge	Planning Board - Ward I	02/23/15	12/31/16

\* 8 Vacancy not filled  
\*10 Vacancy not filled  
\*13 Unexpired term of Ken Chase

**B. Bid Awards:**

1. **Car Rental Transfer Parking Lot Lighting Project.** (Opened 2/10/2015) Recommend Central Electric; \$44,371.60.
2. **Decorative Colored Concrete Wall Blocks for Airport.** (Opened 2/10/2015) Recommend Cretex Concrete Products; \$54,766.
3. **W.O. 15-01, Schedule 3, 17th Street West Water Main Replacement - BBWA Canal Crossing.** (Opened 2/10/2015) Recommend COP Construction, LLC; \$223,374.
4. **W.O. 13-21, Swords Park Trail Outlet.** (Opened 2/10/2015) Recommend H.L. Ostermiller Construction, Inc.; \$120,931.05.

**C. Change Order #1 - Airport Vehicle Security Access Gates Replacement Project; Yellowstone Electric Company, \$108,156.82.**

**D. Contract with Mahoney & Associates, LLC, for Cost Allocation Consulting Services; FY17 and FY18 - \$9,850; FY19 and FY20 - \$10,300; FY21 and FY22 - \$10,800.**

**E. Contract with Play Space Design for all playground equipment, installation and fall protection at the South Park Playground; \$254,886.43.**

**F. Approval of Public Works Department's submittal of application for Montana Air and Congestion Initiative (MACI) program funding through State of Montana for financial assistance to purchase a new sweeper for Street/Traffic Division.**

**G. Grant Application Request to submit 2015 Recreational Trails Program grant application; up to \$20,000 with required 20% local match. APPROVED**

**H. Second/Final Reading Ordinance expanding the boundaries of Ward I (Annexations 14-06, ORD #15-5640; 14-07, ORD #15-5641; 14-08, ORD #15-5642; 14-09, ORD #15-5643; 14-10, ORD #5644; 14-11, ORD #5645; and 14-12, ORD #15-5646) for approximately 18 acres, including rights of way, in the area of East Billings between East Billings Urban Renewal District and MetraPark. Service Candy Company; Bollinger Trust; Peter Yegen, Jr. Family Trust; Converse Properties, LLC; Cherry Properties, LLC; Earl L. Keenan, et al; and Industrial Land and Realty, LLC, owners.**

**I. Second/Final Reading Ordinance #15-5647 expanding Ward V (Annexation #14-14) for an un-platted, 80-acre parcel of land generally located on the southwest**

corner of the intersection of Broadwater Avenue and Shiloh Road; Billings Clinic, owner and petitioner.

**J.** **Resolution #15-10430** authorizing the issuance and calling for the public sale of up to \$11,750,000 Storm Sewer Revenue Bonds, Series 2015.

**K.** **Resolution #15-10431** relating to the financing of proposed water system improvements for Briarwood Reservoir; establishing compliance with Reimbursement Bond Regulations under the Internal Revenue Code.

**L.** **Preliminary Minor Plan** of Lee Manufactured Home Park located at 428 Sharron Lane in Billings Heights and legally described as Lot 6, Block 2, Superior Homes Subdivision; conditional approval and adoption of the Findings of Fact.

**M.** **Preliminary Major Plat** of Mont Vista Subdivision, 2nd Filing, generally located on the east side of 54th Street West and south of Rimrock Road; Mont Vista, LLC, owner; Kadrmas, Lee & Jackson, agent; conditional approval and adoption of the Findings of Fact. **APPROVED**

**N.** **Final Plat** of Sartorie Subdivision, 1st Filing.

**O.** **Bills and Payroll:**

1. January 12, 2015
2. January 26, 2015
3. February 2, 2015

Councilmember Yakawich separated Consent Agenda Items B4 and C. Councilmember Brown separated Consent Agenda Items O1, O2, and O3 in order to abstain. Councilmember Cromley moved for approval of the Consent Agenda with the exception of Items B4, C, O1, O2, and O3, seconded by Councilmember Bird. On a voice vote, the motion was unanimously approved.

Councilmember Yakawich referenced Item B4 and asked Public Works Director, David Mumford, to explain the project in more detail. Mr. Mumford advised the Swords Park Trail Outlet was one of 14 projects the Planning Department brought forward with CTEP. It was being funded through CTEP with a match from BikeNet. He said following along the Aronson alignment and under the underpass behind Applebee's, a 10-foot-wide, multi-use trail would be built on the west side of the bypass that would connect the Swords Park Trail to the 6<sup>th</sup> Avenue sidewalks. There would be a separation from the existing pavement. Councilmember Yakawich moved for approval of Item B4, seconded by Councilmember McCall. On a voice vote, the motion was unanimously approved.

Councilmember Yakawich referenced Item C and asked Aviation and Transit Director, Tom Binford, to explain the reason for the change order. Mr. Binford advised the project was security-related and replaced the automatic gates at the Airport that were the barrier between the secured and the public side of the facility. The project was paid for with an approximate \$735,000 FAA grant. About half of the change order was

somewhat related to the gate project, but not entirely. The new gates had an updated, closed-circuit television system; and after a small security incident occurred, the TSA requested that the same type of cameras used at the gates be put on the terminal building ramp. Since it was a federally-funded project, they had to communicate with the FAA. There was money within the grant, so they created a change order to put the same cameras on the terminal building. They could use the same unit price as the gate project for much of the equipment, which saved money. The FAA approved it, the TSA recommended it, and they moved forward with the project. Mr. Binford said the project also involved replacing old gates. They had to match the existing access control system in the terminal building to the new gates and some cabling had to be replaced that they had not anticipated. They also had to replace sensors at the gates to allow for different vehicle profiles. One of the gates directly west of the terminal building had to be moved further west to allow more room for an airline to operate around its aircraft. Because there were emergency generators in so many remote locations at the airport, there was no cheap way to get emergency power to each of those gate locations, so they were able to install emergency, battery back-up on the gates to run during power failures. Councilmember Yakawich moved for approval of Item C, seconded by Councilmember Swanson. On a voice vote, the motion was unanimously approved.

Councilmember McCall moved for approval of Item O1, seconded by Councilmember Pitman. On a voice vote, the motion was approved 9 to 0.

Councilmember McCall moved for approval of Item O2, seconded by Councilmember Pitman. Councilmember Crouch asked Fire Chief Dextras to comment on the e-mail City Council received from Alan Miller. Chief Dextras said they had a partnership with the County. The maintenance issues Mr. Miller referenced were part of the 10-year agreement on the radio system, which also included upgrades and software. Last week a representative from Airbus, who managed the radio system, was in town installing upgrades. The technology was based on 800 MHz. The City had made very significant upgrades to the radio system; and trying to match existing digital technology with an analog system was a challenge. The system was calibrated and set perfectly for the 800 radio system. Last Thursday Mr. Miller; Duane Winslow, Director of Emergency and General Services for Yellowstone County; and Sheriff Linder met with Anne Kindness, 9-1-1 Center Manager, and talked about different radio issues. They had learned that day about the concern with the audio and believed it was a simple fix with the county's base system. The concern about the audio not being turned up enough to go to the repeaters would be dealt with as soon as possible. The request had been given to Industrial Communications. There were two primary issues in Mr. Miller's letter. The City was spending a significant amount of money on maintenance. Chief Dextras said it was part of an agreement and came with the territory of trying to manage a radio system that provided for police, fire, all city departments, and the county. It was money that had to be spent. They took advantage of software upgrades on a regular basis; and the provider came to town a minimum of every 12 to 18 months to go through the system, perform preventative maintenance, and install software upgrades. The city had a mutual aid agreement with the county. From time to time the city sent its resources to the county to help with issues, and the city expected the same in return. The partnership had worked for many, many years. They had been made aware of the problem late last week, and it was a priority to get it taken care of as soon as possible.

Councilmember Brown said Industrial Communications was a local resource and asked if they were covered in the maintenance amount to perform general maintenance. Chief Dextras said it would depend on the situation. Airbus was the parent company that contracted with Industrial Communications to oversee, monitor, and correct any issues. They were also able to get 24-hour monitoring of the radio system through the parent company, as well as the local technicians. It was the best of both worlds.

Councilmember Brown asked if the issue with the volume to the county site was a recent development. Chief Dextras said that day was the first time it had been brought to his attention. Last week the county had done some testing, tuning, and installing other repeaters. It was a glitch in the system from the county, it should be easy to fix, and it would be addressed as soon as possible. Councilmember McFadden asked Chief Dextras if he was happy with the overall maintenance and support of the equipment. Chief Dextras said he was very satisfied with the service. On a voice vote, the motion was approved 9 to 0.

Councilmember McCall moved for approval of Item O3, seconded by Councilmember Pitman. On a voice vote, the motion was approved 9 to 0.

#### **REGULAR AGENDA:**

**2. RESOLUTION #15-10432 relating to \$6,270,000 General Obligation Refunding Bonds, Series 2015, determining the form and details, authorizing the execution and delivery, and levying taxes for the payment thereof. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** City Administrator Volek noted the item was the bond issue in regard to Dehler Park. The rating for the bond was an Aa2 and as a result of the much improved rating, the city would save \$467,877 in interest as a result of the bonds being refunded.

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

**3. PUBLIC HEARING AND FIRST READING ORDINANCE amending Billings, Montana City Code, Article 26-500, Reimbursement and Compensation of Water and Wastewater Extension and Replacement. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** Public Works Director, David Mumford, explained about 11 years ago the Public Utilities Department, while doing upgrades to the rules and regulations for water and wastewater, made changes to the ordinance. Staff was now asking to return to the original methodology. He advised they had advertised the public hearing on February 12 and February 19, and they had made a presentation to the Homebuilder's Association. There were two types of facilities - (1) Special Benefit Facility, which was if the infrastructure was to serve only a single property, and it would be the cost of the property owner; and (2) General Benefit Facility, which was if the infrastructure would benefit a larger number of water and/or wastewater customers. Currently, the City of Billings paid 100% of the cost of the General Benefit Facility infrastructure. Staff was proposing that the City would compensate the developer for the cost of materials for the oversize rather than pay for the total cost of the main. Mr. Mumford advised if sufficient funds were not available by

the City, the developer would pay for the construction of all mains and required appurtenances, and the City would then reimburse the developer as funding became available. Mr. Mumford said returning to the original methodology would bring parity to all property owners. The proposed ordinance change would be presented to the Development Process Advisory Review Board (DPARB) that week. Mayor Hanel said, simply put, the customer would only pay the base cost. Mr. Mumford said that was correct. The customers would pay for what they needed to develop the property, and the City would pay for the required oversizing.

Councilmember Yakawich asked why the Public Utilities Department had made the change 11 years ago. Mr. Mumford said there used to be a construction compensation fee and a system development fee that were merged; and a consultant, at that time, felt the City should pay for extension of lines across properties. He said staff now felt it may have been done in error because it spread unequal costs between property owners. Eleven years ago the Public Utilities Department had a study done on how it did business, and the change was an outcome of that study.

Councilmember McCall asked if there were other motivators, besides equity, that brought staff to the current conclusion. Did they receive feedback from property owners? Mr. Mumford advised staff watched it and felt some property owners were paying everything, and some property owners were developing in a specific way where they would not have to pay but the next person would. He said they had also received some complaints. Mr. Mumford said it started to become an issue as development grew out because the City was taking money away from rehabilitation and other projects. Staff felt development should never have to pay for something that was beyond their needs, which was why the City wanted to pay for oversizing; but general development and growth with extension of the lines should be the developer's responsibility.

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

Councilmember McCall moved for approval of Item 3, seconded by Councilmember Cromley. On a voice vote, the motion was unanimously approved.

**4. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #931: A zone change from Residential 7,000 to Residential 6,000 on Parcel A of Amended Tracts A-G of C/S 87 and an un-platted portion of Section 5, T1S, R26E generally located on Yellowstone Avenue between 10th and 11th Streets West; Riley and Yvonne Kelly, owners. Zoning Commission recommends approval of the zone change and adoption of the 10 criteria. (Action: approval or disapproval of Zoning Commission recommendation.)** Planner II/Zoning Coordinator, Nicole Cromwell, began her presentation showing the zoning map, an aerial photo, and photographs of the subject property and surrounding properties. She said the property had remained undeveloped and had topography issues. She noted there were barricades at the end of Yellowstone Avenue that crossed only the right-of-way. She showed the site plan for the proposed townhome project and said the master site plan approval process had not been completed because of the pending zoning. The proposed private street would be the continuation of Yellowstone Avenue. The applicant proposed that Yellowstone Avenue not be a connected street and that it be a private road at that location. Another private road would run north and south to access the

property to the north. Without the zone change, the owners would be allowed 13, two-family dwellings. The proposed site plan showed 14, two-family dwellings and one single unit. She said the primary traffic entry and exit for the development would be north on 10<sup>th</sup> Street West to Lewis Avenue; and the City would not require that the developer build 10<sup>th</sup> Street West because of the grades in the area. Ms. Cromwell said the Zoning Commission was recommending approval based on the following 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 allow an underutilized property within the city limits to develop in a similar pattern and density consistent with the surrounding property. The zoning district is compatible with the neighborhood character and land use patterns. The Infill Policy encourages development of vacant and undervalued property within the city limits with emphasis on housing choice and efficient use of existing city infrastructure and services.

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 and public safety will be promoted by the proposed zoning. Development of the vacant land in the city will promote the public health and safety of the adjacent residential neighborhood by providing full development of streets, closing informal traffic cut-through on Yellowstone Avenue and address storm water issues in the area.

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

Transportation: The proposed zoning and subsequent Master Site Plan will have an impact on the surrounding transportation systems. The City Engineering Division will work closely with the owner to ensure impacts are minimized.

Water and Sewer: The City will provide water and sewer to the property. There should be no additional impact to the system from the proposed zoning.

Schools and Parks: There may be a limited impact to schools from the proposed zone change. Residential development is an allowed use in both the current zoning and the proposed zoning. The development plan is for two-family dwellings as townhomes (each unit separately owned).

Fire and Police: The subject property will be served by city public safety services. The Police Department had no concerns with the zone change and the Fire Department will be involved in the Master Site Plan approval process. Access for emergency services

will be assured through this process. Fire Station #4 is approximately  $\frac{3}{4}$  of a mile to the south and east.

*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?*

The new zoning will have an effect on vehicle and pedestrian traffic. Yellowstone Avenue is not a dedicated right of way all the way through this property. In addition, 10<sup>th</sup> Street West on the east side of the property is not a dedicated right-of-way although a sanitary sewer main exists under this gravel road. There is a small section of Yellowstone Avenue constructed along the south side of the property at 910 10<sup>th</sup> Street West (apartments) but it is a dead-end. People drive around the barricades to access the Shrine Auditorium parking lot. Development of the property will remove this informal access. There is an alley on the property's south side that will provide access to alley garbage service for some of the townhomes. 10<sup>th</sup> Street West, south of Yellowstone Avenue, is an incomplete street. The city has sanitary sewer main under the dirt/gravel section of the street but no right of way has been dedicated. This sanitary sewer main was installed in 1974. The City Engineering Division will determine the required street improvements for Yellowstone Avenue and 10<sup>th</sup> Street West.

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

The new zoning does promote compatibility with urban growth. The proposed zoning will allow residential uses with an efficient density as an infill project.

*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 the district and the suitability of the property for a mix of housing types in the neighborhood.

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

The property is currently vacant. The value of existing buildings should increase when the property is developed.

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

The proposed zoning will permit residential dwellings of similar type and density as the surrounding neighborhood and is the most appropriate use of land at this location.

Councilmember Yakawich said he thought 10<sup>th</sup> Street West would need to be somewhat developed. Ms. Cromwell said traffic-wise, the primary access for the development was to the north and not to the south; and there was no additional infrastructure required to be installed under what would be 10<sup>th</sup> Street West, so the City would not require the developer to do any street improvements. Mayor Hanel asked Ms. Cromwell to describe the terrain of that portion of 10<sup>th</sup> Street West. Ms. Cromwell said it

was a steep hill and without a lot of cutting down and reinforcing the adjacent properties with retaining walls, it would not meet the City's design requirement for maximum grade. Councilmember Yakawich said he was concerned about drainage and infrastructure. Ms. Cromwell said the developer had to retain all of the stormwater on site for at least a 50-year storm before it could be released into the city stormwater system.

Councilmember Cromley asked if Yellowstone Avenue could be completely opened. Ms. Cromwell said it could be opened, but the decision was up to the City Traffic Engineer. She said it was currently closed to prevent people from driving on an unpaved, undedicated piece of street. Councilmember Cromley asked if the closure was at the request of the City or a private property owner. Ms. Cromwell said the City installed the barricade when it completed improvements on Yellowstone Avenue. Councilmember Cromley asked if there was any restriction on the property owner taking the barricades away. Ms. Cromwell said the City would not want them to until the entire street was developed. Councilmember Cromley asked if the City could legally keep the street closed. Ms. Cromwell said without a dedicated right-of-way, it would need to be discussed with the City Traffic Engineer when the development happened through the master site plan process. The developer's plan was to keep it closed. Councilmember Cromley asked if the City had a way of keeping it closed. Ms. Volek advised if the developer had chosen to design the project in another way, he could have opened Yellowstone Avenue if he dedicated it to the public. Councilmember Cromley asked if there was anything the City could do to prevent the landowner from taking down the barricades. Ms. Cromwell said the barricades were on public property, and only the City Engineer could authorize taking the barricades down. It was noted the applicant was in attendance and available to answer questions.

City Attorney Brooks said the barricades were on the City's dedicated right-of-way. If the barricades were taken down for whatever reason, he would assume the property owners would not want people to head east because they would be trespassing if the property was appropriately posted.

Councilmember Pitman asked if the Traffic Engineer was okay with it never being a through street. Ms. Cromwell said the Traffic Engineer had seen the master site plan, and she had received no concerns from him over maintaining the barricades.

Councilmember Swanson asked if it would make sense to include landscaping that would create a nice green space. Ms. Cromwell said everything not shown in a box or a street on the site plan would be lawn and landscaping. A privacy fence would also be constructed.

Councilmember Bird said she was concerned with density, traffic, and public safety if there was only one access point coming off of Lewis Avenue. She said it was a recipe for disaster. Ms. Cromwell said the Fire Department did not voice any concerns on the proposed zone change, and she did not believe they had any significant concerns with the proposed master site plan based on the hammerhead turnarounds provided and the proposed break-away gates.

Councilmember McCall asked if the City had considered dedicating the portion of Yellowstone Avenue and connecting it east and west. Ms. Volek advised it was private property, and the City had not obtained the appropriate easement to build the road. Ms. Cromwell said the normal way of receiving right-of-way dedication was through a subdivision, and the applicant was not intending to subdivide.

Councilmember Brown said he was concerned about the traffic that would be entering and existing on 10<sup>th</sup> Street West at Lewis Avenue. He asked how the increased traffic would impact the property owners on 10<sup>th</sup> Avenue West and Lewis Avenue. Ms. Cromwell said when a new development generated 500 or more new traffic trips, a traffic accessibility study was required; and the City Traffic Engineer did not require a study at the master site plan review stage.

Councilmember Yakawich commented that 10<sup>th</sup> Avenue West along the Elks Club was somewhat paved and had a median. The Family Support Network was located on 10<sup>th</sup> Avenue West, so there were a lot of kids in the area; and he was concerned about the increased amount of traffic. Ms. Cromwell said that area of 10<sup>th</sup> Avenue West would not be improved, and she was confident the City Traffic Engineer would address any specific impacts.

Councilmember Bird said she still had a concern for public safety access. Ms. Cromwell said all public safety vehicles would be able to pass through the barricades at Yellowstone Avenue.

Ms. Volek reminded City Council they were looking at the zoning that evening and not the master site plan. The Council could approve or disapprove the zoning on the basis of the 10 criteria listed in the staff report. She encouraged City Council to focus on the 10 criteria rather than conjecture what would happen in the future. Mayor Hanel asked Ms. Cromwell if the 10 criteria had been met. Ms. Cromwell said the 10 criteria had been met.

The public hearing was opened.

- **Tom Llewellyn, 3113 Stanford Drive, Billings, MT**, said he represented the property owners. He said to make it a public road, they would have to give 54 feet of right-of-way, and they would lose all proposed units on the other side. They worked with the Fire Department and City Traffic Engineer to design only 34 feet of pavement. The Fire Department asked for the hammerheads in two locations; and they met those requirements. A neighborhood meeting was held, and after answering many questions, there were no objections.

Councilmember Yakawich asked about stormwater runoff down the steep hill. Mr. Llewellyn said there would be no runoff. They were required to keep it all on-site, and they had their application into the DEQ for approval. They would have grass swales behind all the units with a larger pond area behind the hammerheads. Once they reached a certain level, they would have a trigger point to drain into the city's storm drain system. A city storm drain was located in the alley on the south side.

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

Councilmember McFadden moved for approval of Zone Change #931 based on the 10 criteria, seconded by Councilmember Cromley. On a voice vote, the motion was unanimously approved.

## **5. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE**

**#932: A zone change from Residential 7,000 to Community Commercial on the north 36,000 square feet of Lots 2 and 3, Pierce Subdivision, located at 808 Grand Avenue; 808 Grand LLC, owner; David Mitchell, agent. Zoning Commission forwards no recommendation. (Action: approval or disapproval of Zone Change**

**#932.)** Planner II/Zoning Coordinator, Nicole Cromwell, advised the subject property was located on the southwest corner of Grand Avenue and 8<sup>th</sup> Street West and was purchased in the last year by 808 Grand, LLC, and Griffin Development. The property included a former church, which had recently been leased by Sunrise Montessori School, an adjacent parking lot, and a single-family home formerly used as a parsonage. The zone change was proposed for just the north piece of the property. Ms. Cromwell showed a zoning map and photographs of the subject property and surrounding properties. She noted the property owners to the west at 824 Grand Avenue had an easement of right of access across Lots 2 and 3 of the subject property to provide access to their property, as well as to the former parsonage. The Zoning Commission had four members at their public hearing, and there was a motion to recommend approval and adoption of the findings, but the vote was split two to two; so the Zoning Commission had no recommendation to City Council. Ms. Cromwell said the Planning Division was forwarding support of the zone change based on the findings of the following 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 allow an underutilized property within the city limits to develop in a similar pattern with the surrounding property. The zoning district is compatible with the neighborhood character and land use patterns. It is located at the intersection of 2 high traffic streets. Adjacent residential zones will be protected through application of the criteria for development in Section 27-612.e of the Unified Zoning Regulations that requires mitigation of light, noise, traffic and other typical commercial site issues.

The Infill Policy encourages development of vacant and undervalued property within the city limits with emphasis on efficient use of existing city infrastructure and services.

### *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 and public safety will be promoted by the proposed zoning. Development of the vacant land in the city will promote the public health and safety as well as the general welfare by developing the final corner of this major intersection of Grand Avenue and 8<sup>th</sup> Street West. The applicant and developer is cognizant of the access easement, the underground spring as well as the adjacent residential neighborhood that

will need protection from intrusion of commercial activity.

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

Transportation: The proposed zoning will have an impact on the surrounding transportation systems. The City Engineering Division will work closely with the owner to ensure impacts are minimized.

Water and Sewer: The City will provide water and sewer to the property. There should be no additional impact to the system from the proposed zoning.

Schools and Parks: There may be a limited impact to schools from the proposed zone change. Residential development is an allowed use in both the current zoning and the proposed zoning. A development plan and specific use of the property is not yet finalized.

Fire and Police: The subject property will be served by city public safety services. The Police Department had no concerns with the zone change and the Fire Department will be involved in any development plan and building permit(s). Fire Station #4 is approximately 1 mile to the south and east.

*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?*

The new zoning will have an effect on vehicle and pedestrian traffic. Any new development will need to be evaluated for its impact on Grand Avenue and 8<sup>th</sup> Street West. Existing sidewalks may need to be repaired or replaced at the time of a building permit. Construction on the site may disrupt traffic patterns for short periods of time. Any new access will be evaluated by the City Engineering Division. The existing private access easement across the property from 8<sup>th</sup> Street West must be retained but it could be re-located by mutual agreement of the property owners.

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

The new zoning does promote compatibility with urban growth. The proposed zoning will allow commercial and residential uses with an efficient density as an infill project.

*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 the district and the suitability of the property for a mix of housing types in the neighborhood.

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

The property is currently vacant except for a vacant residential structure. The value of

existing buildings should increase when the property is developed.

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

The proposed zoning will permit commercial uses and mixed uses of similar type and density as the surrounding neighborhood and is the most appropriate use of land at this location.

Ms. Cromwell noted Bill Cole, who was not at the Zoning Commission public hearing, submitted a letter to the Zoning Commission on behalf of Fred and Jean Pierce, the property owners of 824 Grand. Mr. Cole proposed findings for four of the 10 criteria, as follows.

- Does not promote health and general welfare by allowing blockish buildings and giant electronic signs
- Is incompatibility with adjacent urban growth: next to adjoining, long established residential uses
- Is not peculiarly suitable land for Community Commercial uses: adjacent to established residential use of unique character
- Is not the most appropriate use of land: currently acts as a residential buffer to residential areas to the south and Neighborhood Commercial areas to the east

Ms. Cromwell said the main discussion at the public hearing of the Zoning Commission was how to resolve the access issue for Mr. and Mrs. Pierce. The access currently went through R7000 property, which may not be suitable for development for residential purposes given its location at the intersection of two major arterial streets that currently handled approximately 22,000 vehicle trips per day. Another issue discussed at the Zoning Commission public hearing was the existence of an underground spring. She said she called the City Engineer's Office regarding the underground spring, and they were able to locate old records showing the VanBramer Drain flowed from the north above Grand Avenue near Parkhill Drive and provided drainage to former agricultural properties. The VanBramer Drain still had water flowing through it. It was piped under the south lanes of Grand Avenue; emerged at 745 Alderson Avenue; went back under ground at Alderson Avenue; emerged again on the south side of Alderson; meandered through several properties; went back under the alley; and emerged again at 711 Burlington where it flowed into the city's drainage system. Ms. Cromwell noted Mr. and Mrs. Pierce at 824 Grand Avenue used the drain to provide water for their extensive landscaping. Ms. Cromwell re-stated that the Zoning Commission had no recommendation because of the split vote, and the Planning Staff recommended approval based on its findings of the 10 criteria. She noted several ballots in favor of the zone change were received from adjacent property owners, and one protest against the zone change was received from Mr. and Mrs. Pierce.

Mayor Hanel asked Ms. Cromwell to confirm they were dealing only with the request for a zone change. Ms. Cromwell said that was correct. Mayor Hanel asked Ms. Cromwell to confirm the one protest received did not constitute a valid protest. Ms. Cromwell said that was correct. Mayor Hanel asked Ms. Cromwell to confirm that the

criteria for the zone change were satisfied based on the 10 criteria for zone changes. Ms. Cromwell said the Planning Staff recommended approval based on their findings of the 10 criteria. Mayor Hanel asked Ms. Cromwell to confirm that the easement mentioned earlier would not be going away. Ms. Cromwell confirmed the easement would not go away, and there was no requirement to change the location of the easement by the property owner or by Mr. and Mrs. Pierce. She said the property owner would have to continue to accommodate the easement. Mayor Hanel said in that general area of Grand Avenue there had been a considerable amount of development; mostly recently a Starbucks. Ms. Cromwell confirmed the development of a Starbucks at 9<sup>th</sup> Street West and Grand Avenue.

Councilmember Yakawich asked if the property was being rezoned for a future commercial building. Ms. Volek asked Ms. Cromwell to outline some of the potential uses allowed in Community Commercial. Ms. Cromwell said Community Commercial was one of the largest categories for commercial zoning and allowed everything from offices, banks, gas stations, and restaurants. It was not likely a bar or casino would be allowed on the property because of the church and school directly to the south. Other uses could be a church, school, a wide variety of retail uses, residential multi-family, and a mixture of multi-family and commercial.

Councilmember Bird asked if one of the other uses could be an auto lot. Ms. Cromwell said it could.

Councilmember Cromley asked if the property was two separate lots. Ms. Cromwell said it was all one lot, but the property owners were choosing to rezone only the north 36,000 square feet. Councilmember Cromley asked if the Zoning Commission sometimes voted to recommend denial of a zone change. Ms. Cromwell noted if the fifth member of the Zoning Commission had been present, they would have had a vote to recommend approval or recommend denial of the zone change. The motion at the Zoning Commission meeting was to recommend approval based on adoption of the 10 criteria.

Councilmember Brown said he could understand both sides. He asked if the screening between the properties would be chain-link fence. Ms. Cromwell said screening would be at the property line and around any mechanical equipment. There could be no sign within 30 feet of the property line or facing the residential property. There were requirements about placement of solid waste collection facilities in relation to the property line of residential. Ms. Cromwell noted there was already an existing fence and extensive landscaping on both sides. If there was a need to enhance the landscaping on the east side of the fence, they would require it at the building permit stage.

Councilmember Bird asked if the easement had to stay in its current location. Ms. Cromwell said if adjustments needed to be made the property owners could work it out. Councilmember Bird asked if there had been any suggestions of what was being considered for the property. Ms. Cromwell said the applicant had not indicated if he had an interested buyer. Councilmember Bird asked if the Council had the authority to consider a zone change request when it was known what was planned for development of the property. Ms. Cromwell said Council did not. She said basing a zone change decision on a concept drawing, site plan, or subdivision plan was not one of the 10 criteria.

The public hearing was opened.

- **Bill Cole, 3733 Tommy Armour, Billings, MT**, said he represented Fred and Jean Pierce who lived at 824 Grand Avenue. The Pierces had two acres on Grand Avenue; and the Pierce family had lived on the property for approximately 70 years. He appreciated hearing the constructive dialogue between the developer and Mr. and Mrs. Pierce. Everyone had tried to be cooperative; but, reasonable minds could differ. The zone change to Community Commercial would have a direct impact on the Pierces and on their residential neighbors. Community Commercial was the most intensive commercial zoning allowed by the City. The Zoning Code had special provisions that would reduce, but not eliminate, the usual impacts of high-level, commercial development such as noise, traffic, etc. A big concern was the spring located five feet below the surface that ran from the northeast corner of the Pierce property, across the developer's property, and supplied the wells on the Pierce property and the homeowners to the southeast. He said he was sure the developer would try to prevent any impact, but nobody knew if it could be done. No studies, site plan, or engineering had been done. Zoning Criteria #3 specifically required that the zoning promote public health, safety, and general welfare. Criteria #4 required the zoning facilitate adequate provision of water. The burden of proof should be on the developer to show there would not be a problem, and not on the neighbors to show that there would be a problem. He said there was at least reason to think there could be. Mr. Cole said the Pierces had driven across the property for decades and had reserved the easement when they sold it to the Nazarene Church a quarter of a century ago. Contrary to Ms. Cromwell's earlier statement concerning the easement, the location was fixed based on an old road. Mr. Cole said they thought it was appropriate to consider the unique issues with the property and appropriate to consider the impact on the residential nature of the property.

Councilmember Cromley asked Mr. Cole if he knew who the architect was for the Pierce home. Mr. Cole said he did not know.

Councilmember Pitman asked Mr. Cole to confirm the easement for the road to provide access to the Pierce home was fixed. Mr. Cole said that was correct. It was based on the location of the road that existed for decades. It would obviously create logistical problems for the development.

Councilmember Yakawich asked Mr. Cole to elaborate on Criteria #7, #8, and #10. Mr. Cole said Criteria #7 was if the new zoning would promote compatible urban growth. They contended the impact would not be compatible because it had a disproportionate impact on the residential property because of the unique circumstances to the west, and Community Commercial surrounded on most sides by residential or lower level Community Commercial. Criteria #8 was if the zoning considered the character of the district and the peculiar suitability of the property for particular uses. He said as he had described earlier, there was the potential spring impact and the definite impact on the residential access. Criteria #10 was if the new zoning would encourage the most

appropriate use of land throughout the City of Billings. Mr. Cole said it was not the most appropriate use. There were other options. The developer just bought the property last fall and knew what he was getting into. Neighborhood Commercial, Multi-Family, and Residential Professional were other options that would have a lesser impact and be a more appropriate use of the property.

Councilmember Cromley asked if he or his clients had received any information on the proposed use. Mr. Cole said they had asked, and the developer did not know. If the zone change were approved, it would open up a lot more options; and then they would probably sell it.

Councilmember Bird asked Mr. Cole to talk about the potential problems with the spring. Mr. Cole said he wished he were a hydrologist. He had seen the spring, and it was not the VanBramer Drain that he understood was in Grand Avenue. The water was in a 30-inch pipe in a culvert in the northeast corner that angled to 8<sup>th</sup> Street West, and then percolated up. Somehow it got from the northeast corner to the southeast presumably right through the middle of the property, but he did not know exactly where.

- **Jean Pierce, 824 Grand Avenue, Billings, MT**, said she and her husband strongly opposed the zone change because zoning the property commercial would decrease the value of their property. A zone change would increase crime in the neighborhood and be a safety issue for them. Building on the adjacent property would be a negative impact on the spring because it was unknown what would happen when someone built over the spring. They used the spring to water their trees and lawn. It would affect the environment. Even with their fence along Grand Avenue, they could still hear music at night from Off The Leaf and loud speakers from the casino directly across from them on Grand. The zone change would cause the noise and traffic to increase and create a lighting issue. She asked if the Mayor and City Council lived on the Pierce estate, would they want the proposed zone change not knowing what the user would bring. It could be a gas station, a casino, or a convenience store. She asked the Mayor and City Council to seriously consider keeping the zoning residential.

Councilmember Pitman asked if the subject property was once owned by the Pierces. Mrs. Pierce said they owned the property and sold it in 1991.

Mayor Hanel said a spring was typically where water came up out of the ground, and they had heard it may be drainage from somewhere else. He asked Mrs. Pierce if she knew for sure which it was. Mrs. Pierce said they had all wondered about it. The spring had always been there, and it had been a mystery. Supposedly it was in the archives somewhere in Billings, but they actually did not know. Mayor Hanel asked if they had registered water rights to the spring. Mrs. Pierce said she believed Fred did.

Councilmember Cromley asked if there was a residence on the property when it was sold in 1991. Mrs. Pierce said there was a house on the property and a parsonage. The house adjacent to the parsonage had burned down. Councilmember Cromley asked if she knew the name of the architect for the Pierce home. Mrs. Pierce said they did not.

- **Blaine Poppler, 5403 King Avenue West, Billings, MT**, said he was a real estate broker speaking in support of the zone change. They had heard a lot that

evening about infill development in Billings being a top priority of the Growth Policy. The proposed zone change was a perfect example of infill development. Grand Avenue was redeveloping quickly, and he did not feel the current R7000 was the best zoning for the property. The tax revenue currently generated by the subject property was about \$3,000 a year. If the property were redeveloped with a new commercial building, the tax revenue would increase to approximately \$15,000 a year. With the tight budget and the resistance to mill levies, he thought it was very important. He said the intersection was an arterial intersection, and the Growth Policy called for Community Commercial to be allowed at arterial intersections. Mr. Poppler said there had been three different access easements discussed between the two parties. The item of the spring was a red herring, and he could not see any difference if the property was developed as residential or commercial. He said it was the Pierce Subdivision, and the Pierces subdivided and sold the property. At that time, they could have placed restrictions on the property to prevent further commercial use, but they chose to sell the property without restrictions. At this late date, it was not fair to bring up non-recorded restrictions.

Councilmember Swanson said he grew up a block away from the Pierce property. He felt the rezoning was premature. The home was an icon with a historic family living there, and they knew what best to do with their property. Mr. Poppler responded that if they took every iconic home in Billings and prevented other development on the entire surrounding block, they would have nothing but huge holes in the city with beautiful homes surrounded by beautiful lawns and hardly any room for commercial or other uses.

Councilmember Yakawich asked what could be built on property zoned R7000. Mr. Poppler said R7000 allowed for a single family residence per every 7,000 square feet. It also allowed for duplexes on 9,600-foot lots. Councilmember Yakawich asked how many dwellings could be built on the property. Mr. Poppler said three, maybe four duplexes could be built, but the corner of 8<sup>th</sup> Street West and Grand Avenue would be a terrible place for a duplex. Even as well sheltered as the Pierce's house was, they could still hear the traffic and music from Grand Avenue; so he did not think they would want to build anything R7000 on the property. Mr. Poppler said it was stated earlier that Community Commercial was the most wide-open commercial zoning available in Billings. He would suggest it would be Highway Commercial or Controlled Industrial instead.

- **David Mitchell, 1010 Central Avenue, Billings, MT**, said they bought the property in 2014, and they felt the best use would be a restaurant or something of that nature that catered to the community, nearby residents, and everyone on Grand Avenue. When they purchased the property, they wanted to change both the top half and bottom half to Community Commercial or just the bottom half to Neighborhood Commercial. When they held the pre-application neighborhood meeting, they received a lot of feedback from the neighbors with concerns about the future of the church building; so they delayed their request and decided to keep the building as a church or school because that was what the neighbors requested. Once Sunrise Montessori moved into the church building, they went back to the City and moved forward with a request to rezone only the upper half

to Community Commercial. The City Engineering Division told them the current easement would not restrict commercial development. Mr. Mitchell said they did not necessarily have to work with the Pierce family, but they had been very open with them. They had suggested moving the Pierce's driveway from 8<sup>th</sup> Street West to Alderson Avenue, which for a residence they felt would be the highest value to their property. They had proposed several ideas and had hired a land designer to propose the ideas of an alternate driveway for the Pierces. He said they were trying to be as cooperative as possible with the Pierces to give them the best value for the property because they understood the circumstances. Mr. Mitchell said there were city services on the property not being utilized, and it was an eyesore at the corner that they felt they could redevelop into a beautiful, landscaped project.

Councilmember Pitman disclosed he had received an e-mail and a voicemail from Mr. Mitchell; and he had not responded because both times he had been asked for his feedback on a particular project. Councilmember Pitman said he knew this was coming up, and he could not discuss it outside of where they were right now.

- **Tim Phillips, 812 Alderson Avenue, Billings, MT**, said he lived across the street from the church, and he protested. He was worried about the same thing that happened at 875 when the building burned down, and it filled his house with smoke. He was worried about noise, traffic going behind the church, lights, and signage. Mr. Phillips said he moved into the area because it was quiet, and they could now hear the noises and loud speakers from Grand Avenue.
- **Rebecca Despain, 119 Norris Court North, Billings, MT**, said she was the co-owner of Sunrise Montessori located in the church building. She and her partner were in support of the zone change. They planned to stay in the church and hoped to eventually buy the property. Montessori was very big into landscaping and gardening, so they would be planting trees and a garden that would help buffer the school from the commercial property.

Mayor Hanel asked if they had any opposition at all. Ms. Despain said they had no opposition. They let the owners know they preferred to not have a casino by the school. The owners had been very supportive and had helped them with the landscaping so it looked beautiful and incorporated the quality of the land.

Councilmember Cromley said he did not understand why it would be important to have more commercial adjacent to a school. It seemed to him the opposite would be true. Ms. Despain said Montessori was about community. Their previous location was near a commercial property, and they were treated very professionally. Councilmember Cromley asked if they preferred to have commercial rather than residential next to the school. Ms. Despain said they did because they did not want people complaining about their children who were 3 to six year olds.

- **Chandler Griffin, 5993 Sandalwood Drive, Billings, MT**, said he was a real estate associate and was in support of the zone change. He said currently 26,000 cars passed by the property each day; the noise would not go away and the lights would not get any dimmer. He said based on the highest and best use

of the property, a casino or laundromat would not pay the dollar amount for an arterial corner at 8<sup>th</sup> and Grand. It would more likely be a restaurant or high-end retail, and that was what they were going after. There was a handful of restaurants circulating Billings looking for a location. Grand Avenue was not easy to develop because of the cost. Most of the lots had existing buildings that would need demolished. If the zoning was changed to Community Commercial, they would have the opportunity to bring in a national tenant or a local business that wanted to expand. The Pierces had 77 years to see it coming. They changed the land and made the easement but did not protect themselves; so they were holding the corner somewhat hostage.

- **Jeff Kanning, 1008 Poly Drive, Billings, MT**, referenced Councilmember Cromley's question regarding the architect for the Pierce home and said based on Chandler C. Cohagen's own house on 3<sup>rd</sup> and Parkhill with similar characteristics, he would guess the architect for the Pierce home was Mr. Cohagen. Mr. Kanning said he was in favor of the zone change. He met with the Griffins that morning, and they had a proposed restaurant use for the site. They could fit a 3,500 square foot restaurant with 50 parking spaces on the northeast corner of the site away from the spring. They would not construct any facility over a spring of waterway of any kind because it was not good practice. The City had ordinances in place regarding commercial development adjacent to residential properties, so they would deal with lighting, noise, screening, parking lots, and 6-foot high fencing. He said there should be nothing to preclude the City Council from approving the zone change. It allowed for the highest and best use of the property, and it was a continuation of infill development along Grand Avenue.
- **Max Griffin, 1665 Valley Heights Road, Billings, MT**, said Fred and Jean Pierce were great people, and they had a great relationship with them. They just simply disagreed on what should be done with the land. He understood why the Pierces did not want it because everything that was built on Grand Avenue had impacted the Pierce family for 70-plus years. Mr. Griffin said the highest and best use of the property was not residential; the property was best suited for a restaurant, retail, or an office building. If there was a spring on the property, they would avoid building over it. The easement belonged to the Pierces, and they were not trying to take it away. If the Pierces wanted to relocate the easement, they were more than willing to help them. They had hired a land design architect to bring proposals to the Pierces for access alternatives; one being on Grand, three off of Alderson, and anywhere off 8<sup>th</sup> Street West. Mr. Griffin said the biggest issue for him was if the City Council did not approve the zone change. They would be left with three options: (1) build duplexes, which would not be the greatest use for the property; (2) remain status quo and rent out the old, rundown house; or (3) tear the old house down, which would reduce their tax bill and the City's revenue, and come back at a later date. He said none of those options would be helping the Pierces. They would like to work with the Pierces to come up with a solution; but they needed the Pierce's help because they were not there yet, and they had been working on it since October. He said according to Ms. Cromwell's earlier statement, the existence of an access easement should not have a bearing on whether the proposed zoning was appropriate for the

location. Mr. Griffin asked the City Council to approve the zone change and allow them to work on their development. He was confident they would work something out with the Pierces that would make everybody happy.

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

Councilmember McFadden moved for approval of Zone Change #932 and adoption of the 10 criteria, seconded by Councilmember McCall.

Councilmember Brown disclosed he had a brief conversation with David Mitchell with very little discussion on the zone change. He said he would support the motion and hoped the current property owners would continue to work very closely with the Pierces.

Councilmember McFadden said it was another prime example of infill, which was very important. He thought there was an issue of land ownership and land rights. If a person sold his property, he no longer owned it or paid taxes on it. Councilmember McFadden said he was in support of the zone change.

Councilmember Yakawich disclosed Mr. Mitchell also e-mailed him, and he responded to Mr. Mitchell it was not appropriate for discussion. Councilmember Yakawich said the Pierce property was a residential island, and he felt the Pierces had a case trying to protect it. They needed to look at a site plan and into the impacts to the spring. There could be infill, but he felt it should be residential infill; therefore, he was opposed to the zone change.

Councilmember McCall said she would support the motion. The 10 criteria had been met, and it was a good use for the property. It was a beautiful home, and clearly times had changed. She felt the new owners of the property were committed to doing a good project that would be as amendable as possible to the Pierce property. It was part of the city's infill commitment, and she totally supported it.

Mayor Hanel said he was in support of the motion for a variety of reasons. He stressed his respect for the testimonies of both parties. They were dealing with a zone change where criteria had to be satisfied in order to move forward; and the criteria appeared to have been met. There was talk about an easement; and the easement would not go away. There was talk about moving the easement in cooperation with the Pierces; and the easement was not a criteria of the zone change. There was talk about water. If there were registered water rights, they were protected. Should the development interfere with water rights, it could be halted and reversed. Mayor Hanel said they did not have sufficient cause to deny the zone change based on the criteria for zone changes. It had nothing to do with development; it was simply the zone change.

Councilmember Bird said she was a big supporter of infill development, but she agreed with Councilmember Yakawich that infill development did not always mean commercial development. She cautioned not to use and abuse a desire to infill to forgo other opportunities and ideas people brought to the table in terms of what infill was.

On a roll call vote, the motion to approve Zone Change #932 was approved 6 to 4. Councilmembers Pitman, McFadden, McCall, Crouch, Brown, and Mayor Hanel voted in favor. Councilmembers Cromley, Yakawich, Bird, and Swanson voted in opposition.

Mayor Hanel called for a recess at 9:10 p.m. Mayor Hanel called the meeting back in session at 9:27 p.m.

**6. PUBLIC HEARING AND SPECIAL REVIEW #922: A special review to allow a new, 100-foot-tall wireless communication tower and ground equipment within one mile of another communication tower over 50 feet; and to allow a new wireless communication tower over 50 feet in a Public zoning district at the Billings Airport. Zoning Commission recommends conditional approval. (Action: approval of disapproval of Zoning Commission recommendation.)**

Planner II/Zoning Coordinator, Nicole Cromwell, advised the City Airport currently hosted two wireless communication facilities. The subject property was located west of Southview Drive, which was just west of the main airport development. She showed a zoning map of the property, an aerial view, a site plan of the proposed tower, and photographs. The proposed tower would be located directly adjacent to one of the existing towers owned by Verizon Wireless. Network Information Systems approached Verizon Wireless to co-locate their equipment on Verizon's tower; however, Verizon was unsure of the exact structural capacity of its tower, plus they would be upgrading their own equipment to accommodate additional 4G antennas. Ms. Cromwell noted Network Information Systems currently had a temporary roof-top location until a new tower was approved.

Councilmember Bird asked who the customers were for Network Information Systems. Ms. Cromwell said Network Information Systems mainly transferred data.

The Zoning Commission was recommending approval subject to the following conditions.

1. The special review approval is for the construction of a 100-foot tall wireless communication facility and ground base equipment shelter.
2. The approval is limited to the proposed 4,200 square foot lease parcel as shown on the submitted site plan dated March 11, 2014, generally located at 284 Southview Drive in Tract 1, C/S 2334.
3. Minor modifications of the tower are allowed as follows: the addition of more antenna arrays, so long as the addition of the antenna arrays add no more than twenty (20) feet in height to the facility and the increase in height of the support structure is no greater than ten (10) percent. Placement of additional antennae, up to the number the antenna support structure was originally designed to accommodate, shall be considered a minor modification.
4. The site will be developed in substantial conformance with the submitted site plan dated March 11, 2014. Minor modification of the site plan are allowed within the proposed 4,200 square foot lease area.
5. The site is granted a waiver of the 1-mile separation distance to another wireless communication facility over 50-feet in height (BMCC 27-620(g)11) since it is technically infeasible to place the required antennae on any existing tower within 1 mile or to re-locate the facility to another location 1 mile or more from the proposed location.
6. A building permit must be applied for within six (6) months of special review approval and the project shall be completed within one (1) year from the date the special review is granted by the City Council.
7. 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.

8. 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 Pitman asked for the dollar amount of the lease. Director of Aviation and Transit, Tom Binford, said the lease would appear in April and be in the neighborhood of \$5,000 for the ground rent and \$5,000 for each antenna.

Councilmember Bird asked for the basis of the one-mile separation referenced in Condition #5. Ms. Cromwell said when the City updated its regulations in 2001, it was on the leading edge of the building movement of wireless facilities because of the demand for wireless services. The one-mile separation was meant to ensure that the City did not build a lot of really tall structures with a lot of antennas close together throughout the City. The City instituted co-location and the one-mile separation at that time. Councilmember Bird asked if the City had given a variance to the one-mile separation distance in the past. Ms. Cromwell said she was not sure, but maybe two in the last 15 years.

Councilmember Cromley asked Ms. Cromwell if the one-mile separation was still necessary. Ms. Cromwell said she felt it was still good to have because it challenged the carriers, tower builders, and developers to be creative and to seek out existing structures. Billings had a significant number of tall structures that could be used.

The public hearing was opened.

- **John Robinson, 8427 King Avenue West, Billings, MT**, said he was with Network Information Systems. He was proposing to build the tower; and he had been unsuccessful finding an alternate location. The tower would provide fixed wireless, which would provide data services between businesses such as internet and data back-ups. It would not provide mobile service for cell phones. His tower would connect the two halves of Billings separated by geological structures that prevented quite a few businesses from communicating with each other. He said to address the concern of additional towers being built in the near future, the existing Verizon tower was built in 1991; and it had taken until now for the need for another tower. Mr. Robinson said his tower would be built heavier than Verizon's tower to accommodate additional services, if necessary.

Mayor Hanel asked Mr. Robinson if he contracted with a company to erect the tower. Mr. Robinson said he was a local business, and he would build the tower for himself.

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

Councilmember Pitman moved for approval of Special Review #922 with the eight conditions, seconded by Councilmember McFadden. On a voice vote, the motion was unanimously approved.

## **7. PUBLIC HEARING AND RESOLUTION #15-10433 assessing the cost of tree removal at 624 17th Street West and 1708 Clark Avenue. Staff recommends**

approval. (Action: approval or disapproval of staff recommendation.) City Administrator Volek advised the assessment was the result of the discovery of Dutch Elm Disease. The owners were asked to remove the trees and did not do so. After the 10-day period to remove the trees, the City removed the trees and were assessing the properties for the removal costs.

Councilmember McFadden asked if the property owners had given reasons for not removing the trees or had filed an objection. Parks Director, Mike Whitaker, said one of the property owners told the City to take care of it and put it on his taxes. A local arborist was hired to bring down the trees.

Councilmember Bird asked what the assessments were to remove the trees. Ms. Volek said the total to remove both trees was \$2,537.50. Councilmember McCall said the amount was very reasonable considering what had to be done. Mr. Whitaker said Dutch Elm Disease had not been sighted in Billings for several years, but they needed to remain pro-active and bring it down. Ms. Volek advised the vast amount of Elm trees were taken down 30 years ago when the disease was more prevalent.

Councilmember Brown asked if the reason the trees were removed was not because they were in danger of falling but because they would infest other trees. Mr. Whitaker advised it was a combination of both.

Councilmember Bird asked if there were other tree pests currently on the radar. Mr. Whitaker advised they were watching for the Emerald Ash Borer.

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

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

**8. PUBLIC HEARING AND RESOLUTION #15-10434 assessing the cost of cutting and/or exterminating weeds. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** City Administrator Volek advised the assessment was the result of the annual weed assessments and reimbursement to the City through taxes for a total of \$5,765.63. There was no presentation, but staff was available to answer questions.

Planning Director, Candi Millar, said the initial assessment was \$5,765.63 but several property owners had come forward and paid their assessment, so the initial assessment total would be less.

Councilmember Brown asked if any of the assessments had been contested. Ms. Millar said none had been contested.

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

Councilmember McCall moved for approval of Item 8, seconded by Councilmember Swanson. On a voice vote, the motion was unanimously approved.

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

The public comment period was opened.

- **Dennis Ulvestad, 3040 Central Avenue, Billings, MT**, said he would like to see the creation of a city-wide arterial streetlight district in which all residents would pay for the streetlights on major city streets. It should not be combined with the arterial street fee because it would open up another can of worms. The City and Montana Department of Transportation should use LED lights to save energy. In 2009 it was brought to Council's attention with Shiloh Road, but Council did not want to consider it.
- **Marty Elizabeth Ortiz, 707 1<sup>st</sup> Street West, Billings, MT**, thanked the Downtown Billings Association and the City of Billings for the work being done with the Community Innovations.

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

**COUNCIL INITIATIVES** None

There was no further business, and the meeting adjourned at 10:05 p.m.

CITY OF BILLINGS

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

ATTEST:



BY: Cari Martin  
Cari Martin, City Clerk