

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

### **May 27, 2008**

The Billings City Council met in regular session in the Council Chambers on the second floor of the Police Facility, 220 North 27<sup>th</sup> Street, Billings, Montana. Deputy Mayor Ed Ulledalen called the meeting to order at 6:30 p.m. and served as the meeting's presiding officer until Mayor Tussing returned at 9:40 p.m. from out of town. Councilmember Ronquillo gave the invocation.

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

**MINUTES** - May 12, 2008, approved as distributed.

**COURTESIES** – None

**PROCLAMATIONS** – None

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

- City Administrator Volek reminded the Council that the Agenda Review meeting was scheduled for the following evening at 5:30 p.m. in the City Hall Conference Room, to be followed by a budget workshop for Parks & Recreation and the Library.
- Ms. Volek advised staff was asking to have Consent Agenda Item D separated and postponed until the June 9, 2008, meeting, due to failure to advertise the sale of property.
- Ms. Volek listed the following additional items that had been modified or not included in the agenda packet.
  - ✓ ITEM L – Revised resolution from Dorsey & Whitney sent in the Friday packet.
  - ✓ ITEM 3 – Two e-mails received from property owners; copies of which were on their desks.
  - ✓ ITEMS 11(a), 11(b), and 12 – Staff memos that were forwarded to Council via e-mail over the Memorial Day weekend; copies of which were on their desks.
  - ✓ ITEM 14 – The Agreement that had been revised that afternoon; copies of which were on their desks. Ms. Volek advised that if Council was interested in additional discussion on the item, action could be delayed until the June 9, 2008, meeting to allow for an Executive Session.

Ms. Volek advised copies of all items were located in the Ex-Parte notebook in the back of the room for public review.

**PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: 1, 12, 13, and 14 ONLY. Speaker sign-in required.** (Comments offered here are limited to 1 minute per speaker. Please sign up on the clipboard located at the podium. Comment on items listed as public hearing items will be heard ONLY during the designated public hearing time for each respective item.)

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

- **Eric Nord, Crist Law Firm**, said he represented the Gundlachs with respect to Item 14. Mr. Nord said they would like to make a slight change to the Agreement to allow installation of an automatic gate for Tuscany Subdivision. He said the Agreement contained a provision that did not allow gates, and the prospective purchaser of the property had requested an automatic gate. He said the gate would be “just a bar” and would allow any vehicle (residents, non-residents, emergency) to access the subdivision by triggering the gate.

Councilmember Veis asked Mr. Nord to explain the purpose for the gate. Mr. Nord said the purpose for the gate was a marketing tool to show where Ironwood Subdivision ended and Tuscany Subdivision began.

- **Catherine Schaeffer, 2113 Walter Road**, said she was a member of the Billings Animal Care Leadership Team and the Executive Director of the Last Chance Cat Sanctuary. Ms. Schaeffer said she was appalled by the unprofessional comments made within the first 15 pages of the Yellowstone Valley Animal Shelter’s (YVAS) proposal. She said the proposal “bashed” the Animal Shelter and rescue groups.
- **Angie Cook, Help for Homeless Pets**, said she was against privatization of the Billings Animal Shelter by the YVAS for two reasons. She said it would cost the taxpayers a lot more money to relocate the current Animal Control and finance a private shelter. Ms. Cook said the animal control of the Billings Animal Shelter had just begun to work with rescue groups, and the groups did not want that to end. She said the current Animal Shelter should be given another chance because they were not allowed to work with rescue groups in the past. Ms. Cook said she felt for the safety of City funds and taxpayer satisfaction, the City Council should uphold the original \$500,000 Performance Bond requested in the original proposal.

Councilmember Ruegamer asked Ms. Cook if she was saying she could not work with the YVAS. Ms. Cook said she did not feel Help for Homeless Pets could because the YVAS’s proposal criticized the Animal Shelter for allowing groups with disease to take animals. She said there would never be a shelter without disease. Councilmember Ruegamer asked Ms. Cook if she felt she could not work with the YVAS. Ms. Cook stated she could work with the YVAS; but did not feel the YVAS could work with them.

- **Sandra Wulff, Old Hardin Road**, said privatization of a municipal animal shelter was normally done by well-established humane organizations. She said the YVAS was a new organization made up of a small group of people with no experience in shelter operation and was formed solely for the purpose of taking over the Billings Animal Shelter. Ms. Wulff said, due to the lack of experience in the unique field, the YVAS had idealistic and unrealistic goals in terms of both adoptions and volunteer workforce. She said she questioned if the current enthusiasm of the YVAS would be long term when their plans went awry. She said she felt the \$500,000 Performance Bond originally requested should be mandatory, and the City of Billings should not allow a newly-formed group with no track record to use taxpayer dollars to experiment with the privatization of any City department.
- **Mary Ann Wagner, 2113 Walter Road**, said the steps and policies taken by the Billings Animal Shelter over the past two years had been positive with regard to how companion animals were viewed and valued. She said one of the policies was mandatory spay and neuter to help reduce the number of unwanted animals. Ms. Wagner said any proposal that would even hint at changing the mandatory spay and neuter policy that would allow an animal to leave the shelter unaltered should be severely scrutinized. She said the policy of equalized adoption fees for dogs and cats, regardless of breed, was paramount in elevating the value of companion animals. She said to ask different fees or require different adoption applications based upon breed or species was a terrible disservice to what rescue was all about. Ms. Wagner said there was no room for prejudice or discrimination with animal rescuing and sheltering, and she strongly urged the Review Committee and Mayor and Council to not accept any proposal that would ultimately undermine or set back the positive policies of the Billings Animal Shelter's current management.

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

## **CONSENT AGENDA:**

### **1. A. Bid Awards**

- (1) **City Parking Garage Painting** (opened 5/27/08). Recommend delay of award until June 9, 2008.
- (2) **SID 1379 King Avenue West – Landscaping Design** (opened 5/27/08). Recommend delay of award until June 9, 2008.
- (3) **W.O. 07-14, Moore Lane and Monad Road Water and Sewer Improvements** (opened 5/27/08). Recommend delay of award until June 9, 2008.

**B. Approval of Contract** with Yellowstone County Animal Shelter, Inc. for City of Billings Animal Shelter Operations. Recommend delay of action until June 23, 2008.

**C. Approval of License Agreement for Maintenance Access to** Briarwood sanitary sewer main lines located in the Briarwood Country Club Golf Course with PM & M, LLC, Max E. Thornton, and Katherine K. Thornton Testamentary Trust, at no cost to the City.

**D. Approval of Right-of-Way Agreement and Two Bargain and Sale Deeds** with Montana Department of Transportation for Airport Road Project MT 009, \$184,400 revenue, less \$24,692 returned to the FAA, for net revenue of \$159,708.

**E. Approval of Seven Temporary Construction Easements** for W.O. 07-22, King Avenue East Widening, between Orchard Lane and South Billings Boulevard, \$1,650 total cost to the City.

**F. W.O. 07-22 King Avenue East Right-of-Way Agreements and Warranty Deeds**

- (1) Tract of land situated in Lot 1, Block 5, Pinnick Subdivision, 3<sup>rd</sup> Filing, Christ the King Lutheran Church, \$65,100.
- (2) Tract of land situated in Lots 1 and 2, Block 9, Orchard Lane Subdivision, 3<sup>rd</sup> Filing, Kurt. E. and Delores A. Cummins, \$1,603.86.
- (3) Tract of land situated in Tract 1, C/S 2350, Robert Medvec, \$38,220.
- (4) Tract of land situated in Lot 24, Sugar Subdivision, Emil and Gladys Rennich, \$40,372.50.

**G. Approval of Application for Substitution of a Certificate of Deposit** in lieu of cash retainage as security for performance for Aronson Avenue Extension Project, COP Construction, with expiration of CD at completion of project.

**H. Approval of Quarterly Report for Pledged Collateral** on Wells Fargo, First Interstate Bank, and US Bank Certificates of Deposit; US Bank Municipal Investor Accounts, and US Bank Repurchase Account.

**I. Acknowledge Receipt of Petition to Vacate** portions of Lake Hills Subdivision, 25<sup>th</sup> Filing, right-of-way, and set a public hearing date for June 23, 2008.

**J. Street Closures:**

- (1) Perfect Pitch, Inc. - Montana Avenue Live, Fridays, 1:30 p.m. – 12 midnight, 6/13/08 through 8/22/08, N. 25<sup>th</sup> from Montana Avenue to 1<sup>st</sup> Avenue North.
- (2) St. Vincent's Health Care Heart and Sole Race, 6:00 a.m. – 1:00 p.m., 6/14/08; commencing on N. 30<sup>th</sup> Street across from St. Vincent Healthcare, south to 7<sup>th</sup> Ave. N., west on Avenue B, through Pioneer Park, north on Virginia Lane, west on Parkhill Drive, north on 17<sup>th</sup> Street West, west on Colton

Boulevard, north to Poly Drive, east on Poly Drive, ending on Poly Drive north of Grandview Park.

(3) Alberta Bair Theater Annual Fundraiser, 6:00 a.m. on 6/28/08 through noon on 6/29/08, N. Broadway between 3<sup>rd</sup> and 4<sup>th</sup> Avenues N. and the alley behind the theater between the Miller Building and the theater.

**K. Acceptance of Donation** from Parmly Billings Library Foundation for Library multimedia equipment, \$11,710.

**L. Resolution** authorizing issuance and sale of a general obligation note with US Bank to finance the entire Dehler Park scoreboard upgrades prior to the 2008 baseball season with annual debt service payments made by previously-approved Pepsi Cola donations over a 10-year period.

**M. Second/Final Reading Ordinance** expanding the boundaries of Ward II to include recently annexed property in Annex #08-06: a 20.6-acre parcel legally described as Tracts 1A, 1B, and 1C, Amended Tract 1, C/S 2055, and located north of Alkali Creek Road. Jim Pickens, Best Development Corporation, owner and petitioner.

**N. Preliminary Plat** of Amended Lot 1, Block 1A, Tierra Yellowstone Industrial Park Subdivision, conditional approval of the plat and adoption of the Findings of Fact.

**O. Preliminary Subsequent Minor Plat** of Amended Lot 2, Block 1, Shiloh Crossing Subdivision, conditional approval of the plat and adoption of the Findings of Fact.

**P. Preliminary Subsequent Minor Plat** of Amended Lot 6B, Flanagan Subdivision, conditional approval of the plat and adoption of the Findings of Fact.

**Q. Final Plat** of Riverfront Business Park Subdivision.

**R. Bills and Payroll**

- (1) April 25, 2008
- (2) May 2, 2008

**(Action:** approval or disapproval of Consent Agenda.)

Councilmember Veis separated ITEMS B and D. Councilmember Clark moved for approval of the Consent Agenda with the exception of ITEMS B and D, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

Councilmember Clark moved for approval of ITEM B, seconded by Councilmember Astle. Councilmember Stevens recused herself from the vote because she was President of the Yellowstone Valley Animal Shelter.

Councilmember Ruegamer asked Councilmember Stevens if she felt she could work with the other animal groups in Billings. Councilmember Stevens said she could and said it was necessary in order to reduce the kill rates.

On a voice vote, the motion was approved 8 to 0. Councilmember Stevens abstained from voting.

Councilmember Clark asked if the name of the organization was Yellowstone 'County' Animal Shelter or Yellowstone 'Valley' Animal Shelter. Councilmember Stevens advised it was 'Valley.' She said 'County' was inadvertently typed on the RFP.

Councilmember Clark moved to delay ITEM D until June 9, 2008, seconded by Councilmember Ruegamer. Councilmember Veis asked if the delay would affect the bid date on the project. Kevin Ploehn, Assistant Director of Aviation, advised he had spoken with the MT Department of Transportation and was told the June 9<sup>th</sup> date would not affect the bid; but any date beyond June 9<sup>th</sup> would delay the project a month.

On a voice vote, the motion to delay ITEM D until June 9, 2008, was unanimously approved.

## **REGULAR AGENDA:**

**2. PUBLIC HEARING AND RESOLUTION to sell an approximate 10,000 square foot parcel of vacant land north of Leavens Reservoir, generally located at Rimrock Road and Normal Avenue, north of the MSU-B campus.**  
**Staff recommends approval. (Action: approval or disapproval of staff recommendation).** City Administrator Volek advised that staff had no presentation but was available for questions. The public hearing was opened. There were no speakers, and the public hearing was closed. Councilmember Astle moved for approval, seconded by Councilmember Clark.

Councilmember Astle asked if the subject property was north of Rimrock Road. Deputy Public Works Director Al Towlerton advised the property was north of Rimrock Road just south of Airport Road. He said it was an open area between the Leavens Reservoir and Airport Road.

On a voice vote, the motion was unanimously approved.

**3. PUBLIC HEARING AND RESOLUTION ordering construction of improvements for W.O. 02-08, Milton Lane School Route, \$480,500 total project cost.**  
**Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** David Mumford, Public Works Director, advised the project had no formal protests from property owners. He said staff had received an e-mail from a daughter of one of the property owners expressing concerns over the amount of the SID.

Councilmember Stevens said she had received a telephone call that afternoon from Denise Mehia indicating that she had not been noticed of the project and asked if notices had been sent. Mr. Mumford advised notices had been sent out, and public hearings were held.

Councilmember Veis asked what steps would have needed to take place if someone wanted to submit a formal protest. Mr. Mumford said the public would

have needed to call with a concern, mail in a protest, or e-mail a concern to Public Works or the City Clerk's Office.

The public hearing was opened.

- **Traci Seward, 438 Milton Road**, said she lived directly across from the school. She said she had no problem with a sidewalk, but a boulevard would mean the hedge along her property would need to be removed. She said the hedge was the only privacy she had between her home and the school. Ms. Seward said she was against the boulevard.

Councilmember Stevens asked if the hedge was located on her property, and Ms. Seward said it was. Councilmember Stevens asked Ms. Seward how the hedge could be removed if it was on her property. Ms. Seward said she did not know the details. She said they were informed of the public meeting, but they were unable to attend; and they had not received any further information. Ms. Seward said she did not see anything in the paperwork they received about how to submit a formal complaint. She said her neighbors attended the public meeting and told her the plan would extend halfway down the middle of her hedge, and the hedge would be 'trimmed', which would create 'half a hedge'.

Councilmember Astle asked if the area had been surveyed and staked. Ms. Seward said it had not. Councilmember Astle asked Ms. Seward if she was sure the hedge was on her property. Ms. Seward said she understood the hedge was on her property. She said there was approximately four or five feet from the hedge to the street and another three feet to the actual pavement.

Councilmember McCall asked staff for clarification. Mr. Mumford said the City was not purchasing any right-of-way, which would lead him to believe the hedge was currently in the right-of-way.

Councilmember Stevens asked if there was a staff presentation so Council could learn more about the project. Mr. Mumford advised there was no staff presentation prepared for that evening. Councilmember Stevens said she did not understand the boulevard portion. Mr. Mumford advised that, under the current standards adopted through the Subdivision Regulations, curb and gutter; a grass strip, and sidewalk would be built to provide separation between pedestrians and traffic and eliminate mailboxes on the sidewalk that violated ADA regulations.

Councilmember Ronquillo asked if the project had been staked. Mr. Mumford advised the project had not been bid at that point, and staff was only asking for approval of the SID.

Councilmember Stevens said she presented a Council initiative over a year ago to have staff look at the possibility of a TIFD along Main Street in the Heights. She said the subject area would work well for use of TIFD money because it was lower income. Councilmember Stevens asked for the current status of a TIFD for the Heights. Mr. Mumford said he was not able to address Planning's work, but said he knew the area involved some low income properties, and Community Development had provided assistance information at the public meeting.

Wyeth Friday, Planning Division Manager, advised Planning did not move forward on exploring the possibility of the Heights TIFD because, at the time, they were working on the South Billings Boulevard TIFD. Mr. Friday said they would need to consider the current availability of staffing resources before taking on the project.

Councilmember Stevens asked Mr. Mumford if the school side could be constructed now and the residential side postponed until staff could look into a TIFD. Mr. Mumford advised the road needed to be built in order to build a sidewalk, and curb and gutter drainage would be needed to work with the rebuilt road. He said it would cost more to come back and do the south side at a later date. Mr. Mumford advised CTEP funding and Gas Tax Funds were available to offset the project, and the assessments were about as low as they could get them. Mr. Mumford said the SID was for \$67,000 and the remaining costs were being offset by CTEP and other funding sources. Councilmember Stevens asked how many property owners were responsible for paying the \$67,000 and what the average assessment would be per property. Mr. Mumford advised the SID was being spread over 14 properties, and one-third was the School District. He said the School District would be assessed just over \$23,000 of the \$67,000.

- **Joe Seward, 438 Milton Road**, said the only problem he had with the project was the 'beautification' part for a boulevard. He said the sidewalk was a great idea. He said they had lived there for nine years and nothing had been done before. He said they paid extremely high taxes living right next to the school, and the project would fall on seven residences and the school.

Deputy Mayor Ulledalen stated there were 14 property owners, and one-third was the School District. He said it sounded like the hedge may be built in the City right-of-way. Mr. Seward said he could not say, but there was approximately seven to eight feet to the road, which could be the boulevard.

Councilmember Veis asked Mr. Seward if he had attended the meetings on the project. Mr. Seward said there was only one meeting that he was aware of, and he was unable to attend. Councilmember Veis asked Mr. Seward if he understood that the boulevard was not a 'beautification' item but part of the City of Billings standards established to eliminate mailboxes on sidewalks that created ADA compliance issues, as well as, served as a place to store snow plowed from the streets during the winter months. Mr. Seward said there were not many homes in the Heights with boulevards and asked why those neighborhoods did not have to follow the standards. Councilmember Veis advised that the standards were established two years ago.

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

Councilmember McCall moved for approval of Item 3, seconded by Councilmember Ruegamer.

Councilmember Clark asked for the width of the right-of-way. Mr. Mumford advised the width was either 50' or 60'; he was not positive. He said either way, if it was seven feet to the hedge and there was 12 feet of asphalt, the hedge would be well within the right-of-way.

Councilmember Stevens made a substitute motion to delay the item for two weeks, seconded by Councilmember Veis. Councilmember Stevens said she would like more information, possibly a Google Earth picture with property lines drawn on it.

Deputy Mayor Ulledalen asked how a delay would affect the construction schedule. Mr. Mumford said delaying the item would not affect the schedule because the design had not been started. He said staff was trying to get the SID passed so the design could be started.

Councilmember Veis said questions never seemed to come to a head until an actual meeting. He told Mr. Mumford it would be helpful to have more outreach with the neighbors. He suggested a poster board at Public Works and a mailing to the property owners inviting them to come down and visit to get a better understanding of the project and how to protest the SID, etc. Councilmember Veis said he knew Public Works had done what they were supposed to do, but it would give the property owners another opportunity to participate.

Councilmember Astle asked if any of the money would disappear if the project was delayed. Mr. Mumford said the money would not necessarily disappear; but a budget amendment would need to be done to make sure the money was available in 2009.

Deputy Mayor Ulledalen asked if it was reasonable to say there was sufficient opposition to prevent the project from moving forward. Mr. Mumford advised there was only one person who actually expressed concerns, which was the daughter of a property owner with two lots; and the Seward, who had a concern with the design standards.

Councilmember Ruegamer asked Mr. Mumford if there was a need to delay the project over a hedge; and if the hedge issue could be worked through as the project went on. Mr. Mumford advised the hedge was a design issue, and they would work with the property owner during the design stage. Mr. Mumford said the Council would have a 'second shot' at it because Council would be deciding to approve or disapprove the construction contract based on the design.

Councilmember Stevens asked who would pay for the design and what percentage it would be. Mr. Mumford advised a design fee was typically 10 percent; and if the SID failed after the design was completed, the design fees would be absorbed by Public Works for a future date when the SID was approved.

Councilmember Veis said there were also two e-mails from property owners who seemed somewhat confused about the process, and there could be others.

The substitute motion to delay the item for two weeks passed 6 to 3. Councilmembers Clark, Astle, and Ruegamer voted 'no'.

**4. (a) PUBLIC HEARING AND RESOLUTION FOR ANNEXATION #08-07: A 4.765-acre parcel described as Tract 1, C/S 2350, generally located on the northeast corner of King Avenue East and Calhoun Lane, Robert Medvec, owner and petitioner. Staff recommends conditional approval. (Action: approval or disapproval of staff recommendation).** City Administrator Volek advised staff had no presentation on 4(a), but was available for questions.

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

Councilmember Ruegamer moved for approval of Item 4(a), seconded by Councilmember Stevens. On a voice vote, the motion was unanimously approved.

**(b) PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #842: A zone change from Residential 9600 (R-96) to Entryway General Commercial (EGC) on Tract 1 of C/S 2350; a 4.34-acre parcel generally located on the northeast corner of King Avenue East and Calhoun Lane; Robert Medvec, owner; Kristin Omvig and Jared LeFevre of Crowley, Haughey, Hanson, Toole & Dietrich Law Firm, agents. Zoning Commission recommends approval and adoption of the 12 Zoning Commission determinations. (Action: approval or disapproval of Zoning Commission recommendation).** Lora Mattox, Neighborhood Planner, advised the property was recently annexed into the City of Billings and located at 4517 King Avenue East directly across from the new Four Square development site. She began her PowerPoint presentation showing a plat of the property and explaining the current zoning for the surrounding properties. Ms. Mattox advised a neighborhood meeting was held on February 25, 2008, and approximately 52 residents signed the attendance sheet. She added the Zoning Commission held a public hearing on May 6, 2008, and was recommending approval on a 4 to 0 vote based on the following Zoning Commission determinations.

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

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

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

The proposed zoning will permit commercial development along the north side of King Avenue East across the street from commercial development, which will provide more business choices within the surrounding neighborhood. Mixed use development with residential uses is also allowed in the EGC zone with special review approval.

- *Coordinated economic development efforts that target business recruitment, retention, and expansion. (Economic Development Goal, page 6)*

The proposed zoning will encourage new businesses along the north side of King Avenue East across the street from another commercial

development, which will expand the commercial development along King Avenue East.

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

The proposed zone change will allow more businesses along King Avenue East that may increase traffic in this area of Billings. However, this area will be experiencing a substantial increase in traffic from the commercial development that is already proposed for the area, the Foursquare Properties development on the south side of King Avenue East. It is likely any new businesses would take advantage of the increased traffic from the Foursquare Property development but not create new vehicle trips.

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

With the proposed zoning, there are requirements that help to insure safety from fire, panic and other dangers. All buildings built within the city of Billings must be approved by the Billings Building Division to make certain that they meet current fire code requirements. Also, when the developer submits a proposed site plan, the Engineering Division, Planning Division and the Fire Department review what the developer is proposing to build and have input to ensure that it is designed to meet these safety requirements.

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

The proposed zoning will permit commercial uses. The Unified Zoning Regulations specify minimum setbacks, lot coverage requirements and height restrictions within the proposed EGC zone. In addition, the EGC zone has landscape requirements and minimum setbacks to enhance the look of the site and make it a positive addition. The development of the property will likely bring some neighborhood type services to the area including restaurants, medical services and banking services.

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

The proposed zoning requires very specific setbacks from street frontage and setbacks and separation from residential properties. These setbacks are designed to allow for adequate separation between structures and adequate light and air.

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

The proposed zoning to EGC will allow building heights of 40 feet and lot coverage of 50%. Standard residential zoning building heights are 34 feet maximum with 30% lot coverage maximum. These requirements are designed to prevent overcrowding of the land.

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

The proposed zoning of EGC is a commercial zoning and therefore, does not increase the population in this area. Residential uses could be included with special review approval within the commercial development as a mixed use. However, the requirements for setbacks and lot coverage should alleviate crowding.

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

*Transportation:* This area of Billings will experience high volumes of traffic on the streets. King Avenue East is being widened to accommodate high volumes of traffic for the Foursquare Property development south of King Avenue East. The access driveways to the property will need to be approved by the City Traffic Engineering prior to construction. Traffic impacts will have to be assessed at the time of a proposed development. King Avenue East should accommodate any new traffic from the site.

*Water and Sewer:* The property has submitted a concurrent annexation request and city services will be available to this site.

*Schools and Parks:* The proposed zoning is intended for mainly commercial use; however, residential development could occur in a mixed use development. There could be some impact on the school system or parks.

*Fire and Police:* The subject property is currently served by the City of Billings fire and police departments.

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

King Avenue East from South Billings Boulevard to Orchard Lane will be experiencing change from residential and agricultural uses to commercial uses. The EGC zoning requested will mirror the Four Square property. The adjacent residential neighborhood to the north and east should be protected by the required screening and buffering regulations in the EGC zoning district, or if a mixed use development with residential uses is constructed on the site.

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

The subject property is suitable for the requested zoning. The proposed commercial development will provide the surrounding citizens with a shopping

area within their neighborhood. The property has street frontage on an arterial street to accommodate commercial traffic.

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

The increased commercial development along the south side of King Avenue East will affect the character of the residential uses to the north. The new zoning may provide a buffer from King Avenue East and the intense commercial traffic to the south.

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

The proposed zoning will encourage commercial development on a busy street where single family residences may not be appropriate or desirable. A mixed use development with some residential uses allowed in EGC zoning by special review also could provide a good transition from King Avenue East.

The public hearing was opened.

- **Kristin Omvig, Attorney with the Crowley Law Firm**, said she was one of the agents for the applicant, Mr. Medvec. She said the Zoning Commission had determined that the EGC zone change met the statutory requirements. She said the five-lane expansion of King Avenue and the new Cabela's site created a commercial footprint, and they were asking for an expansion of that zone. Ms. Omvig said significant thought and consideration was given when the applicant requested the zone change; and the zone change would reduce the need for special reviews. She added the zone change was the best and most appropriate use of the land; it promoted the Growth Policy; it provided infill in the area; and it would provide retail services to an underserved area. Ms. Omvig said she felt banks, bakeries, dentists, etc., were the types of businesses that would be built on the property.

Councilmember Veis asked what other zoning was considered and why they did not meet the criteria they were looking for. Ms. Omvig advised that the area was 'entryway' just by its nature. She said they did not feel 'mixed use' was appropriate because there was no residential property to be built up further.

Councilmember Stevens asked what the maximum building height was in an EGC zone. Ms. Omvig said it was 40 feet.

Councilmember Veis asked if other zoning classifications would work for banks, bakeries, etc. Ms. Omvig said, given the natural size and depth limitations of the property and the entryway area, the current zoning request would provide the best look and be the better neighbor. Councilmember Veis asked if Ms. Omvig felt the businesses would serve the neighborhood or serve people coming off the interstate. Ms. Omvig said she felt they would mostly serve the people in the area and people

visiting Cabela's. Councilmember Veis asked if there would be a difference in the type of zoning for targeting the neighborhood or targeting people off the interstate. Ms. Omvig said she felt it would be consistent either way given the nature of the changes in the area. She said two years down the road, the area would be significantly different.

- **Mike Walker, 2231 Green Terrace Drive**, said he was a commercial broker specializing in retail real estate. He said his specialty was looking at pieces of land and determining what types of businesses would be built on the land. Mr. Walker said he felt the land would be occupied by a financial service and other retail uses, such as food, dental, hair salons, etc., that would serve the neighborhood area and other areas no more than a mile or two away.

Councilmember Astle asked if he meant banks when he said financials and asked if someone was interested in the property. Mr. Walker said he meant banks, and he believed they were waiting on a proposal for part of the property.

Councilmember Ronquillo advised there had been a survey asking if a bank was wanted in the neighborhood, and the results indicated a bank was needed.

- **Darlene Wystub, 4622 Murphy Avenue**, said she was against the zone change. She said the area was currently residential. She said they were taking the small piece of land just because it was across from the Cabela's development. She said there was no guarantee that casinos or four-story motels would not be built, and it did not promote the health and general welfare of the nearby residents.
- **Reverend Ryan Wendt, 36 Nimitz Drive**, said he was the Pastor of Christ the King Lutheran Church. He said he was in support of the zone change for Mr. Medvec's property, as well as the church property, for the improvement of services and businesses in the area.
- **Bob Medvec** said he had lived at 4513 King Avenue East for 30 years. He said approximately 12 of his large Cottonwood trees, bushes, and fences would be taken out for the expansion of King Avenue East, and he would have a five-lane road in his front yard. Mr. Medvec said a 12-inch water line and three six-inch T's for commercial use were recently installed in front of his house, as well as three new fire hydrants. Mr. Medvec asked the council to approve the zone change.
- **Al Koelzer, 2828 Westwood**, said he was the agent who brought forward both zone changes. Mr. Koelzer asked Council to approve the zone change based on the fact that Entryway General Commercial was the most appropriate entryway zoning for the property. He said there was no place for residential on the property. He said Entryway Light Commercial had many of the same uses as Entryway General Commercial. He said they were currently waiting for a bank offer. He said expected uses would bring more products and services to the south side, making it a more attractive place to live and increase property values. Mr. Koelzer said the zone change had nothing to do with Cabela's.

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

Councilmember Ruegamer moved for approval of Item 4(b), seconded by Councilmember Ronquillo.

Councilmember Veis asked Ms. Mattox why the Planning Department initially recommended denial to the Zoning Commission and what happened at the Zoning Commission meeting to change their recommendation. Ms. Mattox advised the Planning Department, even though they concurred the site was not suitable for low density, single-family housing, felt Entryway General Commercial was too intense when there were other options more compatible with the neighborhood. She said the limitation of 3,000 square feet was per use and not per building size, so a multi-tenant building could be built with 3,000 square feet per use. She said the neighboring residential area was a high dense, single-family or two-family neighborhood, and staff felt the compatibility and impacts on the neighborhood would be more mitigated with the less intense commercial zone. Councilmember Veis asked if staff had moved forward with a different recommendation on the type of zoning. Ms. Mattox advised staff discussed other zoning options available. She said under Entryway zoning, they discussed the Entryway Light Commercial in the zoning reports and met with the applicants to discuss the varying Entryway Commercial zoning districts. Ms. Mattox said the Zoning Commission felt the General Commercial was a supported zoning for the area, and their determinations of the 12 criteria passed. Councilmember Veis asked what the Planning Department's recommendation would be for a zone change for the area if it could make one. He asked if Entryway Light Commercial would work. Ms. Mattox advised staff felt it would.

Councilmember Stevens asked if the South Side Neighborhood Plan included the subject area. Ms. Mattox said it did not. Ms. Mattox said they sent out a land use survey in the Southwest Task Force newsletter asking what the residents would like to see, and many surveys came back with service-oriented businesses directed toward the existing neighborhoods.

Councilmember Astle asked if the 52 people who signed in at the neighborhood meeting were more for or against the commercial development. Ms. Mattox said the feeling she received was that the people were not so much against the commercial development as they were about the type of commercial that would be backed up to their residential properties.

Deputy Mayor Ulledalen asked if access would be allowed onto the property from any place other than King Avenue East. Ms. Mattox said she assumed access would be limited as much as possible but thought there may be an access on Calhoun Lane. She said it could not be determined until there was a site plan.

Councilmember Veis said he would support Entryway Light Commercial but felt Entryway General Commercial went too far. He said he did not have a problem with special reviews because they were helpful in letting the neighbors know what was happening.

City Attorney Brooks advised the current zone change had been advertised as Entryway General Commercial and reminded Council that local

ordinance on zone changes required that they act only on the particular zone change being requested.

Councilmember Ruegamer commented that Ms. Wystub, who testified during the public hearing, had some good points. He said everyone knew the area would develop once Cabela's was approved. Mr. Ruegamer said he could not see a bakery or a hair salon being built in the area and said nobody really knew what might be built. Mr. Ruegamer said Ms. Omvig made a good point when she said it would be infill, which would make a nice development in the area.

Councilmember Stevens said she agreed with Councilmember Veis that Entryway General Commercial was too dense of a zoning change, and there were several criteria that she believed that had not been met. She said the materials talked about 'mirroring' what was on the other side of King Avenue. She said they were not 'mirroring' it because on the backside of Cabela's was an interstate and the backside of the subject property were residential homes. Councilmember Stevens said she would not be in support of the zone change request to Entryway General Commercial and would be more inclined to approve Community Commercial or Neighborhood Commercial.

City Attorney Brooks reminded Council that if the current zone change request was denied, there could not be another zone change application submitted for the same property for one year.

On a voice vote, the motion for approval passed 6 to 3. Councilmembers Veis, Stevens, and Gaghen voted 'no'.

**5. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #838: A zone change for property in a Planned Development (PD) with underlying zoning of Public (P) to an underlying zoning district of Highway Commercial (HC) on a .75-acre parcel of land legally described as a portion of Lots 1-4 & 15 of Amended Lot 15A, Block 2, Southgate Subdivision, 1<sup>st</sup> Filing, located directly east of 5379 Southgate Drive. City of Billings, owner; Bruce McCandless, Assistant City Administrator, agent. Zoning Commission recommends approval and adoption of the 12 Zoning Commission determinations. (Action: approval or disapproval of Zoning Commission recommendation).** Dave Green, Planner I, advised the staff memo listed site photos as an attachment in error. Mr. Green began his PowerPoint presentation showing the location of the subject property and explaining the zoning of the surrounding properties. He advised the initial development included parkland dedication, and the initial intent was to develop the area as mixed use. He said it had not developed over the years as intended and was mostly industrial with some commercial. Mr. Green advised MRL had approached the City with an offer to buy the property so they could expand. He said the Parks Department came before the City Council in January 2008 regarding the sale of the property, which was approved. Mr. Green advised the zone change would match the surrounding zoning in the area. Mr. Green said a public meeting was advertised and held, and only City staff and the applicant attended. He said they had received no negative input or opposition to the zone

change, and the Zoning Commission was forwarding a recommendation of approval based on the following 12 determinations.

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

The proposed zone change is generally 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 5)*

This property is in an area of Billings that is industrial in nature. The HC zoning will allow an existing use to expand and provide more jobs and a larger tax base for the city.

- *New developments that are sensitive to and compatible with the character of adjacent City neighborhoods and County Townsites. (Land Use Element Goal, page 6)*

The proposed HC zoning will be consistent with the zoning in the neighborhood and any proposed project will need to meet the required setbacks and provide site improvements associated with the zoning.

- *Contiguous development focused in and around existing population centers separated by open space. (Land Use Element Goal, page 6)*

This property is vacant land between existing businesses. Expansion of the existing business onto this parcel will focus development in an existing business population area. The development requirements will ensure separation of uses and open space between buildings.

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

The proposed land use will provide an existing business the opportunity to expand and possibly provide additional services and job opportunities to the residents of Billings.

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

The new zoning will not decrease the congestion on the streets of this neighborhood. This part of Billings is a mixed use neighborhood with industrial and commercial uses. Changes to the site with this additional parcel will most likely have minimal effect on the traffic.

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

With the proposed zoning, there are requirements that help to ensure safety from fire, panic and other dangers. Also, when the developer submits a proposed site plan, the Engineering Division, Planning Division and the Fire Department review what the developer is proposing to build and have input to ensure that it is designed to meet safety requirements.

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

The Unified Zoning Regulations specify minimum setbacks, lot coverage requirements and height restrictions. The surrounding businesses are in HC zoning within the PD. This zone change will continue the HC restrictions to ensure consistent requirements to promote health and general welfare of the neighborhood.

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 prevent overcrowding of land?*

The proposed zoning, as well as all zoning districts, contains limitations on the maximum percentage of the lot area that can be covered with structures. This requirement will help prevent overcrowding of land through these regulations.

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

The proposed zoning is for HC uses, which will not cause a concentration of population. HC zoning is not intended for residential uses and will not concentrate population in this area. The proposed use is for expansion of an existing business that produces roadway striping machinery.

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

*Transportation:* Any new development on this property may increase traffic in the area but it would most likely be minimal. The roads in the area are expected to be able to handle additional traffic.

*Water and Sewer:* The City will provide water and sewer to the entire property through existing lines.

*Schools and Parks:* The proposed zoning will have no impact on the school system or overall parks system. This parcel is parkland that has not been developed and which

the Parks Department would like to sell to the property owners to the west.

*Fire and Police:* The subject property is currently served by the City of Billings Fire and Police Departments.

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

The proposed zoning will allow an expansion of an existing business and will fit into the commercial and industrial character of the district.

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

The subject property is suitable for the requested zoning. The existing neighborhood is a mix of industrial and commercial uses. The business to the west is interested in the parcel to allow it to do business expansion. The property is suitable for expansion of an existing business.

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

The new zoning is expected to conserve the value of the surrounding buildings because the proposed use is an existing use in the area.

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

The proposed zoning will encourage expansion of an existing use in the neighborhood that will possibly provide more jobs and a larger tax base for the city.

Councilmember Veis asked Mr. Green if the Planning Department had received reimbursement from the Parks Department for processing the zone change. Mr. Green said they had not.

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

Councilmember Stevens moved for approval of Zone Change #838, seconded by Councilmember Clark. On a voice vote, the motion was unanimously approved.

**6. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #839: A zone change from Residential 9600 (R-96) to Neighborhood Commercial (NC) on Lots 3 through 7, Block 9, Central Acres Subdivision, 5<sup>th</sup> Filing, located at 3133 Central Avenue. Charles Haynes, Ira & Ruth Park, and Alan Oster, owners; Gerald Neumann, agent.**

**Zoning Commission recommends approval and adoption of the 12 Zoning Commission determinations. (Action: approval or disapproval of Zoning Commission recommendation).**

Nicole Cromwell, Planner II and Zone Coordinator, began her PowerPoint presentation showing the location of the subject property on the corner of 32<sup>nd</sup> Street West and Central Avenue. She said the property had been zoned Residential 9600 since it was originally annexed into the City in 1981. She said a zone change request to Neighborhood Commercial on the single corner lot was attempted in 1987, but it was denied because it was such a small lot by itself. She said, at that time, Council recommended that the applicant get with the neighboring property owners to develop a more comprehensive zone change plan. Ms. Cromwell advised a prospective owner had now come forward with a proposal to develop a retail service center for Neighborhood Commercial uses, which would exclude any on-premise liquor service and auto sales or auto-related services except for gasoline stations and convenience stores. She said there were two existing homes on the five lots proposed for the zone change and both would be demolished upon zone change approval.

Councilmember Stevens asked if the proposed owner owned the five lots. Ms. Cromwell advised there was a purchase and sale agreement with the underlying owners, and all of the underlying owners signed the application. She said the proposed owner was acting as their agent.

Councilmember Clark asked if the other three corners of the intersection were commercial. Ms. Cromwell said they were all commercial; the QWest switching station was located on the southeast corner; the Avanta Credit Union was located on the southwest corner, and a small retail center was located on the northwest corner.

Ms. Cromwell advised there would be no customer access from the alley to the subject property.

Ms. Cromwell advised a pre-application meeting was held on March 29, 2008. She said the issues brought up were buffering, screening, alley access, and how the alley would be developed. She said the issues were all addressed at the meeting. She advised the Planning staff forwarded a recommendation of approval to the Zoning Commission, who concurred with the recommendation based on the following 12 determinations.

*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 commercial development at the intersection of two principal arterial streets. Two existing single family homes on the lot would be removed to develop the five lots for commercial uses. This use is consistent with the zoning and uses on property directly abutting the intersections. The land use pattern in West Billings is to concentrate commercial uses at principal arterial intersections.

- *New developments that are sensitive to and compatible with the character of adjacent City Neighborhoods and County Townsites. (Land Use Element Goal, page 6)*

The proposed zoning is consistent with the surrounding character of the intersection. City development codes will require screening and buffering of single family uses to the north and east.

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

Each of the existing five lots could be developed for single family uses each with a drive approach on to Central Avenue. This pattern of development would decrease traffic safety on Central Avenue near this intersection. It would add to congestion on Central Avenue by creating traffic conflicts with these new drive approaches for residences. Five residences would generate between 50 and 75 new vehicle trips per day on Central Avenue. A commercial development would limit the number of new drive approaches to one or possibly two based on the City Traffic Engineer's approval. This would reduce traffic congestion and conflicts. The new zoning would increase the potential number of vehicle trips per day from residential uses. Those additional vehicle trips could be substantially more than residential uses depending on the specific uses proposed for the property.

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

The subject property is currently serviced by City Fire and Police. Any development will require a minimum width for access driveways, turn around areas, and provision of water for fire protection.

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

The current and proposed zoning have identical building height limits (34 feet) and identical building setback requirements. The city development code requires landscaping and buffering of adjacent residential uses. The existing zoning has not resulted in development of these vacant parcels. Dwellings on Lynn Avenue are not buffered from the traffic impacts on Central Avenue and 32<sup>nd</sup> Street West. Development of the lots will buffer the homes on Lynn Avenue from this traffic.

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 prevent overcrowding of land?*

The proposed zoning, as well as all zoning districts, contain limitations on the maximum percentage of the lot area that can be covered with structures. The

current R-96 zone allows 30% lot coverage and the proposed NC zone allows 50% lot coverage. The proposed increase in lot coverage should not overcrowd the property.

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

The proposed zoning would allow multi-family residences at the same density as RMF-R. The maximum density on this parcel would be 32 dwelling units or 26 dwelling units per acre. It is not likely this density could be achieved based on the maximum building height of 34 feet, requirements for off-street parking, drive aisles and landscaping. The Hunter's Pointe Apartments developed at a density of 108 dwelling units on 9.3 acres of land or about 11 units an acre.

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

Transportation:	The proposed zoning may have an impact on the arterial streets. Access and trips will be analyzed by the City Traffic Engineer and mitigation if necessary provided by the lot owner.
Water and Sewer:	The City will provide water and sewer to the property through existing lines on Central Avenue or north of the site through the alley.
Schools and Parks:	There should be no impact on schools or parks from this commercial development.
Fire and Police:	The subject property is currently served by the City of Billings fire and police departments.

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

The proposed zoning will permit commercial uses where currently only single family uses are allowed. The single family zoning dates from the original zoning of the property in Yellowstone County as R-96. The zoning remained the same when it was annexed in August of 1981. Development of the 5 lots has to date has included only two single family homes – one constructed in 1940 and the other in 1957. The character of the district has changed significantly since the subdivision was filed in 1956. Many of the homes to the north were built in the mid-1970s and into the early 1980s. The development of southwest corner of the intersection of Central Avenue and 32<sup>nd</sup> Street West started in 2003 and 2004. The Summer Ridge Subdivision south of the property includes the Hunter's Pointe Apartments and the Faith Evangelical Church. The small commercial center on the northwest corner was constructed in 1965 and remodeled in 2001. The new zoning gives reasonable consideration to the existing character of the district.

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

The subject property is suitable for the requested zoning district. Many properties that are within a short distance of principal arterial intersections have been zone for neighborhood commercial uses. The adjacent arterial streets are intended to provide access for commercial uses or higher density residential uses.

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

Staff cannot determine whether the proposed zoning would appreciably alter the value of structures within the area. Higher density multifamily dwellings may negatively affect single-family market prices. Commercial development may or may not negatively affect the single family market prices. The value of the existing single family homes is not affected by this zone change. Both zoning districts allow single family dwellings.

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

The proposed zoning will encourage the most appropriate use of this land at the intersection of two arterial streets and throughout the district.

Ms. Cromwell said she received a letter from one of the nearby condominium owners located on the corner of 31<sup>st</sup> Street West and Central Avenue, who was not able to attend the meeting. Her main concern was traffic in the alley and the lack of sidewalks on Central Avenue and 32<sup>nd</sup> Street West. Ms. Cromwell said the City would likely have a project to improve the 32<sup>nd</sup> Street West and Central Avenue intersection a year to a year and a half after the proposal was under development, which would include sidewalks.

Councilmember Clark asked if anyone had addressed the 45 mph speed limit on Central Avenue. Ms. Cromwell said it would be an issue the City Traffic Engineer could review. Councilmember Clark said he would make an initiative at the end of the meeting.

Councilmember McCall asked how many homeowners attended the pre-application meeting. Ms. Cromwell said eight surrounding property owners attended.

Councilmember Gaghen commented that traffic counts had increased by approximately 80 percent from 2005 to present. She said it was obviously a concern to the residents and others, and she appreciated the statistics being included in the report.

Councilmember Clark asked if improvements to the rest of Central would come as commercial properties developed. Ms. Cromwell advised the development would have to provide the improvements at the time of construction, or the City may ask for a cash contribution to a future project.

Councilmember McCall asked if the buffering and screening would be at the expense of the developer. Ms. Cromwell said it would.

The public hearing was opened.

- **Gerald Neumann, 2609 Selvig Lane**, said he was the current agent and if the zone change was approved, he would become the owner. He said he was approached by a bakery about opening a store on the corner. Mr. Neumann said he felt a nice neighborhood complex with ample access was needed because of the amount of traffic. He said everyone was positive at the neighborhood meeting because it was an infill site, and the biggest concern was the alley access. He said some of the property owners even felt the new development would buffer some of the Central Avenue noise from their homes. Mr. Neumann said the zone change would not generate a lot more traffic, and he felt it was a good project for the neighborhood.

Councilmember Stevens asked Mr. Neumann why he did not request Neighborhood Commercial. Mr. Neumann said he did not feel it was a corner for casinos or a big box restaurant. He said an insurance company had shown interest in a small space, and a small bakery wanted to locate there.

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

Councilmember Gaghen moved for approval of Zone Change #839, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

**7. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #840: A zone change from Residential Multi-Family-Restricted (RMF-R) to Residential Professional (RP) on Lot 4A, Block 2, Goodman Subdivision, 4<sup>th</sup> Filing, described as a 67,110 square foot parcel of land on the southeast corner of the intersection of 41<sup>st</sup> Street West and Avenue C. Randall Swenson, Steve Repac and Jeff Muri, owners; Engineering, Inc., agent. Zoning Commission recommends approval and adoption of the 12 Zoning Commission determinations. (Action: approval or disapproval of Zoning Commission recommendation).** Dave Green, Planner I, began his PowerPoint presentation showing the location of the subject property and describing the surrounding properties. He said the applicant had received interest in developing the property as office space, and had received no interest in developing the property as residential. Mr. Green said the property was currently vacant. He said the applicant held a pre-application meeting with seven people attending; two of which were from the neighborhood. Mr. Green said no positive or negative input had been received. He said the Zoning Commission held a public hearing and was forwarding a recommendation of approval based on the following 12 determinations.

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

The proposed zone change is generally 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 5)*

This property is in an area that is developing. The RP zoning will provide a separation between the more intense uses to the east off of Shiloh Road and the to the south from Grand Avenue between existing commercial uses, proposed commercial uses and the proposed residential uses to the west.

- *New developments that are sensitive to and compatible with the character of adjacent City neighborhoods and County Townsites. (Land Use Element Goal, page 6)*

RP zoning will provide a less intense use of the land that is set between RMF-R zoning to the west and the commercial greenhouse, zoned CC to the east. This will also provide a separation of more intense land uses that are possible on the land farther south across Avenue B that is also zoned CC. The RP zoning, which allows predominantly office use, will provide a positive separation of uses between the existing commercial uses to the east and the proposed multi-family residential uses to the north and west of this property. This area of Billings is currently developing with a mix of uses and creating a commercial node at a major intersection. This zoning will provide a separation from those more intense commercial uses the future residential uses.

- *Contiguous development focused in and around existing population centers separated by open space. (Land Use Element Goal, page 6)*

This property is vacant land with commercial uses to the east and proposed multi-family residential to the west and existing twin homes to the northwest. Zoning requires specific building setbacks and landscaping to provide separation of buildings and uses and open space.

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

The proposed zoning will permit the development of professional offices or single family housing which will provide more choices within the surrounding neighborhood for a more mixed-use neighborhood.

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

- *Reduced traffic congestion in Billings. (Transportation Goal, page 10)*

The proposed zone change will likely increase traffic in this area of Billings once the site is developed. Any development in this part of Billings will increase traffic because it is vacant land. Grand Avenue and Shiloh Road are Principal Arterial Streets and are expected to handle higher traffic volumes.

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

The new zoning will not decrease the congestion on the streets of this neighborhood. This area of Billings is still developing and the traffic patterns are not yet established. This lot is not on an arterial street and would most likely be in an area that will have lower traffic around it. With what is allowed in RP zoning, traffic will most likely be highest during normal business hours. Traffic is also expected to utilize the surrounding streets to access to Grand Avenue and Shiloh Road to and from this business, which should direct most of the traffic away from the residential neighborhood to the north.

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

With the proposed zoning, there are requirements that help to insure safety from fire, panic and other dangers. Also, when the developer submits a proposed site plan, the Engineering Division, Planning Division and the Fire Department review what the developer is proposing to build and have input to insure that it is designed to meet safety requirements.

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

The proposed zoning will permit professional office or single family residential uses only. The Unified Zoning Regulations specify minimum setbacks, lot coverage requirements and height restrictions. RP zoning is restricted to requirements very similar to the requirements of the existing RMF-R zoning and is expected to fit into this mixed use neighborhood. RP zoning requires a front setback of 20 feet, a side setback of 10 feet and allows a zero setback adjacent to other commercial uses or a 15 foot setback when adjacent to residential uses. The maximum height allowed is 34 feet and the lot coverage maximum in RP zoning is 50%. RMF-R zoning requires a front setback of 15 feet, a side setback of 5 feet, and a rear setback of 15 feet. Maximum height allowed is 40 feet and maximum lot coverage is 55%. Given these setback, lot coverage and height differences, RP zoning may provide a good transition in land uses between the commercial uses to the south and east and the multi-family and single-family uses to the north and west in this area of Billings.

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 prevent overcrowding of land?*

The proposed zoning, as well as all zoning districts, contains limitations on the maximum percentage of the lot area that can be covered with structures. This requirement will help prevent overcrowding of land. The maximum height allowed in RP zoning is 34 feet and the lot coverage maximum is 50%. Maximum height allowed in RMF-R zoning is 40 feet and maximum lot coverage is 55%. Either of these zoning districts should prevent overcrowding of land.

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

The proposed zoning is for RP uses, which only allows single family residential development or professional office uses and will not cause an undue concentration of population. If the property develops as an office complex there will not be any increase in population as a result of this zone change. RP zoning only allows single-family residential development with a minimum lot size of 6,000 square feet, a front setback of 15 feet, a side setback of 5 feet, and a rear setback of 15 feet. Maximum height allowed is 40 feet and maximum lot coverage is 55%. The subject property is 67,000 square feet and could accommodate up to 11 single-family lots at 6,000 square feet each if all other regulations were met.

RMF-R zoning allows multi-family development based on the lot size. RMF-R zoning requires a front setback of 15 feet, a side setback of 5 feet, and a rear setback of 15 feet. Maximum height allowed is 40 feet and maximum lot coverage is 55%. The subject property is 67,000 square feet and could accommodate up to 42 units if all other regulations could be met. While either RP or RMF-R zoning could be developed without undue concentration of population, RP zoning does limit the residential densities significantly.

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

*Transportation:* Traffic in this part of Billings is predominantly residential traffic. With a great deal of the surrounding area not developed, traffic patterns have not been well established. Any development on this property, professional or residential, will increase traffic. Traffic is expected to travel north and south from Shiloh Road and Grand Avenue to access this property and not travel north into the residential neighborhood.

*Water and Sewer:* The City will provide water and sewer to the entire property through existing lines.

*Schools and Parks:* The proposed zoning will have no effect on the school system or parks unless it is developed as single family residential.

*Fire and Police:* The subject property is currently served by the City of Billings Fire and Police Departments.

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

The proposed zoning will allow smaller office buildings to be built on the lots with required setbacks, separations and heights. These restrictions will help ensure that the buildings blend in with future multi-family residential structures to the west, the exiting twin homes to the northwest, and the commercial development to the east.

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

The subject property is suitable for the requested zoning. It is not on a principle arterial street but is tucked into an area that transitions from commercial to residential. The RP zoning can provide office space for professional offices that may be providing services to the residential neighborhood to the north and the future multi-family to the west.

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

The new zoning is expected to conserve the value of the surrounding buildings because the use restrictions do not allow intense commercial uses on the site. It is not known if there RP zoning conserves values more or less than RMF-R zoning. The RP zoning will allow development that will provide a separation between commercial uses to the east off of Shiloh Road and the residential development to the west and north.

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

The proposed zoning will encourage office space in a neighborhood setting that is zoned for multi-family dwellings to the west and the commercial zoning to the north and the east. This zone change to RP will encourage a less intense use next to multi-family and twin homes and provide a separation between the residential and the commercial uses.

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

Councilmember Ronquillo moved for approval of Zone Change #840, seconded by Councilmember Gaghen. Deputy Mayor Ulledalen said he was abstaining from the vote because of a business relationship with someone involved. On a voice vote, the motion was approved 8 to 0.

**8. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #841: A zone change from Residential 7000 (R-70) to Entryway General Commercial (EGC) on Lot 1, Block 5, Pinnick Subdivision, 3<sup>rd</sup> Filing, less the north 110 feet; described as a 3.043-acre parcel generally located on the northeast corner of the intersection of Newman Lane and King Avenue East; Christ the King Lutheran Church, owner; Kristin Omvig and Jared LeFevre of Crowley, Haughey, Hanson, Toole & Dietrich Law Firm, agents. Zoning Commission recommends approval and adoption of the 12 Zoning Commission Determinations. (Action: approval or disapproval of Zoning Commission recommendation).** Dave Green, Planner I, began his PowerPoint presentation showing the location of the subject property and describing the surrounding properties. He said it was basically the same as previous Zone Change #842 and recommendation was based on the following 12 determinations.

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

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

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

The proposed zoning will permit commercial development along the north side of King Avenue East across the street from commercial development, which will provide more business choices within the surrounding neighborhood. Mixed use development with residential is also allowed in EGC zoning by special review approval.

- *Coordinated economic development efforts that target business recruitment, retention, and expansion. (Economic Development Goal, page 6)*

The proposed zoning will encourage new businesses along the north side of King Avenue East across the street from another commercial development, which will expand the commercial development along King Avenue East.

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

The proposed zone change will allow more businesses along King Avenue East that may increase traffic in this area of Billings. However, this area will be

experiencing a substantial increase in traffic from the commercial development that is already proposed for the area, the Foursquare Properties development on the south side of King Avenue East. It is likely any new businesses would take advantage of the increased traffic from the Foursquare Property development but not create new vehicle trips.

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

With the proposed zoning, there are requirements that help to insure safety from fire, panic and other dangers. All buildings built within the city of Billings must be approved by the Billings Building Division to make certain that they meet current fire code requirements. Also, when the developer submits a proposed site plan, the Engineering Division, Planning Division and the Fire Department review what the developer is proposing to build and have input to ensure that it is designed to meet all site development requirements.

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

The proposed zoning will permit commercial uses. The Unified Zoning Regulations specify minimum setbacks, lot coverage requirements and height restrictions within the proposed EGC zone. In addition, the EGC zone has landscape requirements and minimum setbacks to enhance the look of the site and make it a positive addition. The development of the property may bring some neighborhood type services to the area including restaurants, medical services and banking services.

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

The proposed zoning requires very specific setbacks from street frontage and setbacks and separation from residential properties. These setbacks are designed to allow for adequate separation between structures and adequate light and air.

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

The proposed zoning to EGC will allow building heights of 40 feet and lot coverage of 50%. Standard residential zoning building heights are 34 feet maximum with 30% lot coverage maximum. These requirements are designed to prevent overcrowding of the land.

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

The proposed zoning of EGC is a commercial zoning and therefore, does not increase the population in this area. Mixed use development with residential uses is allowed in AGC by special review. Mixed uses with residential dwelling must meet either the R-96 or RMF-R zoning requirements.

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

*Transportation:* This area of Billings will experience high volumes of traffic on the streets. King Avenue East is being widened to accommodate high volumes of traffic for the Foursquare Property development south of King Avenue East. The access driveways to the property will need to be approved by the City Traffic Engineering prior to construction. Traffic will have to be assessed at the time of a proposed development. King Avenue East should accommodate any new traffic from the site.

*Water and Sewer:* The City will provide water and sewer to the property through existing lines.

*Schools and Parks:* The proposed zoning is not expected to be for residential development therefore, there is no anticipated effect on the school system or parks.

*Fire and Police:* The subject property is currently served by the City of Billings fire and police departments.

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

King Avenue East from South Billings Boulevard to Orchard Lane will be experiencing change from residential and agricultural uses to commercial uses. The EGC zoning requested will mirror the Foursquare property. The adjacent residential neighborhood to the north and east should be protected by the required screening and buffering regulations in the EGC zoning district. EGC zoning does allow mixed use developments with residential uses by special review. A mixed use development also could make the development fit with the surrounding districts.

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

The subject property is suitable for the requested zoning. The proposed commercial development will provide the surrounding citizens with a shopping area within their neighborhood. The property has street frontage on an arterial street to accommodate commercial traffic.

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

The increased commercial development along the south side of King Avenue East will affect the character of the residential uses to the north. The new

zoning may provide a buffer from King Avenue East and the intense commercial traffic to the south.

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

The proposed zoning will encourage commercial development on a busy street where single family residences may not be appropriate or desirable.

Councilmember Veis asked if the Planning Department had initially recommended denial on the zone change. Mr. Green said that was correct.

The public hearing was opened.

- **Reverend Ryan Wendt, 38 Nimitz**, said he was the pastor of Christ the King Lutheran Church. He said the church had been good neighbors in the community with the changes taking place in their immediate neighborhood. He said they were trying to be the best stewards of their property as possible. Reverend Wendt said the church had worked with the City on the widening of King Avenue East and provided answers quickly regarding their property so not to slow down the City's progress. Reverend Wendt said they hired the best advisors they could find in the City, and the zone change was what they recommended. He said they had every intention to continue to serve the south side of Billings at Christ the King Lutheran Church. Reverend Wendt distributed a petition by 31 members of the church in support of the zone change.

Councilmember Clark asked Reverend Wendt if they knew where the church would move if the property sold. Reverend Wendt advised it had not even been decided that their property was for sale, and they were just looking forward to the future. He said they had considered property on Mullowney Lane across from the Catholic cemetery. He said they had considered adding a pre-school to the existing church and possibly a grade school or high school.

- **Erich Gabriel, 2010 S. Frontage Road**, said when the notice came out that the church would be losing square footage of their land for the road widening project, they decided to take the necessary steps to see how the change in neighborhood would impact the church and what options were available. He said they retained the advice of NAI Properties and the Crowley Law Firm and were advised the zoning type was the highest and best use for the area. Mr. Gabriel said the church property was currently not for sale, and over 200 church members would have to come to an agreement on a potential sale. He said they felt the zoning request was the highest and best use for the master development plans for the area. Mr. Gabriel said he strongly encouraged approval of the zone change.

Councilmember Gaghen asked how long the church had been in its present location. Mr. Gabriel answered 42 years.

Councilmember Stevens asked if a church was a permitted use in Entryway General Commercial. Mr. Gabriel advised it would become non-

conforming and if they wanted to expand more than 3,000 square feet, a special review would be required.

Ms. Cromwell said her interpretation of the code was that no expansion would be allowed of a non-conforming use. She said they could continue the use, remodel the use, do interior work and items necessary to adapt to new technologies or designs, but they could not expand the use or rebuild.

- **Darlene Wystub, 4622 Murphy Avenue**, said she was against the zone change because her property backed up right against the church property. She said there was no alley and if any kind of heavy commercial zoning was allowed, she would be affected by lights, smells, and sounds. She said she was told the church wanted to expand and wanted the best price for the property that was being taken from them. Ms. Wystub said she did not feel the zone change was in the best interest of the entire neighborhood.

Councilmember Stevens asked Ms. Wystub how she would feel if a four-story motel was built on the property. Ms. Wystub said she would not like it because people would be able to see into her backyard and house.

- **Mary Chambers, 4610 Murphy Avenue**, said there was a dead-end alley behind her home, two neighboring properties, and the rest was church property. She said she respectively requested that Council deny the zone change and try to find a more neighborhood-friendly zoning. She said she was not opposed to Cabela's because there was a little buffer between King Avenue and her home. Ms. Chambers said she bought her home 33 years ago, and it was very peaceful and quiet.
- **J.W. Westman, 703 SE 7<sup>th</sup> Avenue, Park City, MT**, said he was currently the church council president and asked that Council approve the zone change.
- **Kristin Omvig, Crowley Law Firm**, said she represented the applicant. Ms. Omvig stressed that the area was commercial. She said she respectively disagreed with the staff's conclusion that Entryway Light Commercial would be the most appropriate use. She said the size and configuration of the lot was limited, and if property was purchased and a buffer was provided, the property value would be destroyed because it would be 'carved up'. Ms. Omvig also pointed out that Entryway General Commercial had significant landscaping requirements. She also said she doubted a four-story motel would meet the 40-foot requirement.

Councilmember McCall asked Reverend Wendt if he understood the limitations on the non-conforming uses. Reverend Wendt stated he understood the non-conforming use.

- **Kayla Krenzler, 4533 Ryan Avenue**, said she had lived in the area for almost 50 years and thought commercial moving into the area was great for the south side. She said they had wanted development for so many years, and everyone had gone to the west end or to the Heights. Ms. Krenzler said she would like Council to approve the zone change.
- **Yvonne Schmeling, 4628 Murphy Avenue**, said she lived right behind the church. She said the problem with the zoning change was no one

knew what would be built, and whatever was built would be in her backyard. Ms. Schmeling said she had lived in the neighborhood for 24 years, and it was a quiet neighborhood. She said she helped mow the church's weeds, and they looked out for each other. Ms. Schmeling said she opposed the zone change.

- **Mike Walker, 2231 Green Terrace Drive**, said he spoke earlier on Zone Change #842 and some of the possible land uses. He mentioned bakeries and referenced businesses like Wheat Montana, Grains of Montana, Log Cabin, Grand Bagel, Great American Bagel, etc. He said the area could include other uses such as City Financial, GNC Centers, various cellular phone businesses, McKenzie River Pizza type restaurants, Hallmark Greeting Cards, Payless Shoes, Easy Money, and various banks. He said all of those types of businesses came along with the advent of a larger scale development in the general area. Mr. Walker said he did not see a large, single box store for the parcel because they typically wanted to be a part of a larger center. He said even though EGC zoning had a wide range of uses, he felt the Four Square Development changed the complexity and value of the area. He said he did not see auto dealerships in the area, and felt it would be difficult for them because of the land values.

Councilmember Astle asked Mr. Walker if he had a buy/sale for the property. Mr. Walker advised the property was not currently for sale.

- **Al Koelzer, 2828 Westwood**, pointed out the zone change would not have a major impact on the Cabela's/King Avenue project. He said three acres would not create a big detriment on the neighborhood. Mr. Koelzer said one of the reasons they were in favor of the zone change was because expected uses of the land would bring new products and services making the area more attractive and increasing property values. He said there was a man at the Zoning Commission meeting who lived in a house right behind the proposed zone change on the corner of 32<sup>nd</sup> Street West and Central, and he was in favor of that zone change because he wanted someone to build something between his house and Central Avenue. Mr. Koelzer said that could happen with this zone change, as well. He said any development on their property would increase property values and possibly buffer the neighbors from the activity on the five-lane highway.

Councilmember Astle told Mr. Koelzer he had just said "our property", and asked if he had an interest in the property. Mr. Koelzer said he did not, and he did not have the property listed for sale. He said he should not have said "our property" but because he had been working on it, he said he referenced it as "our property". Mr. Koelzer said he was not a member of the church and had no personal interest in the church property. Councilmember Astle asked Mr. Koelzer if he would appear on his behalf if he called him because he had a piece of property he wanted to zone change. Councilmember Astle said something "did not ring true". He said Mr. Koelzer and Mr. Walker were both there, and they worked together. Mr. Koelzer said he said "our property" only because he was working on the property, and Councilmember Astle could construe it anyway he wanted. Mr. Koelzer said he was working on the property but did not have

it listed. He said he went to the church when the Cabela's project started to take form and asked them if they wanted to do something; and the ball started rolling from there. Mr. Koelzer said he had no relationship other than that idea, working with them, and helping bring both zone changes to Council at the same time.

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

Councilmember Clark moved for approval of Item #8, seconded by Councilmember Ruegamer.

Councilmember Stevens advised, for the same reasons as the companion zone change request, she did not agree. She said the purpose of zoning was to gradually change so that neighborhoods were protected. She said she felt it was taking a big leap by placing higher use zoning right next to a residential area.

Councilmember Ruegamer said they knew it would happen when Cabela's was approved. He said it would happen anytime a big development was approved, and he would support the zone change.

Councilmember Astle said he would vote for it, but it did not "smell good to him". He said he did not feel they were being told "the truth, the whole truth, and nothing but the truth". He said he believed the property was on the market. He said he believed he would see an NAI Business Property or buy/sale agreement "before his birthday and to look it up if you didn't know when it was".

On a voice vote, the motion was approved 6 to 3. Councilmembers Stevens, Veis, and Gaghen voted 'no'.

Deputy Mayor Ulledalen called for a brief recess at 8:35 p.m. The meeting was called back to order at 8:47 p.m.

**9. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #843: A text amendment to Section 27-1502(b) of the Unified Zoning Regulations requiring that a pre-application neighborhood meeting be held within a 2-mile radius of the subject property of a proposed zone change. Zoning Commission recommends approval. (Action: approval or disapproval of Zoning Commission recommendation).** Nicole Cromwell,

Planner II and Zone Coordinator, advised that in July 2007 the City Council adopted amendments to the Zone Change requiring that pre-application meetings be held in a timely manner, be held a certain number of days prior to an application, and surrounding property owners within 300 feet be notified. She said at that time, Council did not include specific meeting location requirements. Ms. Cromwell advised it had become necessary to add the meeting location requirements because pre-application meetings were being held quite a number of miles from the subject property hindering participation of surrounding property owners. Ms. Cromwell advised Council's initiative in December 2007 asked for a required maximum distance from the subject property for pre-application neighborhood meetings. She said staff believed a two-mile radius requirement was sufficient to allow applicants to have a choice of meeting locations and not hinder neighborhood participation. Ms. Cromwell said the Zoning Commission held a public hearing on May 6, 2008, and was forwarding recommendation on a

4 to 0 vote to add one sentence to the existing text. Ms. Cromwell said the two-mile radius would reduce conflicts in existing neighborhoods, create opportunity for negotiation between owners and applicants prior to an application, and allow applicants to have many location choices.

Councilmember Stevens asked if staff had looked at a one-mile radius. Ms. Cromwell said they had, and a one-mile radius would exclude some properties, particularly in west Billings or certain parts of the Heights, from capturing a public school or public building. She said the two-mile radius gave enough leeway to capture public buildings for every property. Councilmember Stevens asked if the language could be added to read "shall be conducted as close as possible to the subject property but no greater than two miles." She said the purpose would be to keep the meetings as close as possible. Ms. Cromwell advised there had been no pre-application neighborhood meetings held further from the subject property than absolutely necessary since November 2007.

Deputy Mayor Ulledalen said he had received a comment that because it had become so difficult to get a zone change, people were not coming forward with zone change applications and asked Ms. Cromwell if she had heard the same comment. Ms. Cromwell advised she had not heard that comment, and the zoning application numbers were remaining steady. She commented there had been several pre-application meetings for zone changes that did not result in applications because of the response the applicants received at the meetings.

Councilmember Clark commented he had heard just the opposite. He said both the residents and the applicants felt the change was a good idea.

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

Councilmember Stevens moved for approval of Zone Change #843, seconded by Councilmember Ruegamer.

Councilmember Ruegamer said he felt the wording should include that neighborhood meetings must be held in a public building and not in a private office. Ms. Cromwell said the pre-application neighborhood meeting was an invitation to a public meeting that was mailed to every property owner within 300 feet. She said the property owners had to be invited to the same meeting. Ms. Cromwell advised staff provided the applicant with the list of property owners and the mailing labels with specific instructions as to what needed to be included in the meeting notice according to regulations.

City Administrator Volek noted the existing ordinance stated that the applicant and/or his agent shall notify in writing persons on the surrounding properties as provided in Subsection 2. Ms. Volek said she felt the City was covered.

On a voice vote, the motion was unanimously approved.

**10. PUBLIC HEARING AND SPECIAL REVIEW #857: A special review to allow a drive-through window for a proposed CVS Drug Store in a Community Commercial (CC) zone adjacent to Residential Multi-Family (RMF) and Residential 6000 (R-60) zoning districts on Lots 5-10, Block 4, Central Avenue Addition, generally located at 615 and 617 Central Avenue; Greg and Becky Pekovich, owners; Velmeir Companies and Kevin Heaney**

**of Crowley, Haughey, Hanson, Toole & Dietrich Law Firm, agents. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation).**

Nicole Cromwell, Planner II and Zone Coordinator, advised the property was the current location of the Overpass Motel located on the northwest corner of Central Avenue and 6<sup>th</sup> Street West. She said the property was zoned Community Commercial, and CVS Caremark Corporation was proposing to purchase the property, demolish the existing buildings, and build a pharmacy with a drive-through. Ms. Cromwell began her PowerPoint presentation showing the subject property and noting the zoning of the surrounding properties. She showed a copy of the site plan and explained that the City Site Development Code did not allow customer access through the alley without a variance from the City Council. Ms. Cromwell advised the applicant was proposing to develop the alley access to a full 30-foot width instead of the existing 20-foot width. She said the site plan was presented to the Zoning Commission on May 6, 2008. She said access to the alley would be limited to delivery trucks, emergency vehicles, Solid Waste pick-up, access to employee parking, and temporary parking for drive-through patrons.

Councilmember Stevens asked how the public would be prevented from using the alley. Ms. Cromwell said the public could not be prevented from using the alley access, but it would be very inconvenient to get anywhere using the alley. Ms. Cromwell said all of the arterial setbacks for parking, building and structure requirements, enclosure requirements for solid waste disposal, radius turning requirements for fire trucks, and all landscape requirements had been met. Ms. Cromwell advised all of the existing access points would be closed and two new access points would be built. She said the front of the new building would face 6<sup>th</sup> Street West, and there would be a screening fence along the north side of the property line.

Councilmember Ruegamer asked how many of the Overpass Motel units were currently occupied. Ms. Cromwell stated most of the units were occupied and were rented on a weekly basis. Ms. Cromwell added most of the motel structures were built in 1957 or earlier.

Ms. Cromwell advised the Zoning Commission was recommending conditional approval based on the following seven conditions.

1. The special review approval shall be limited to Lots 5 through 10 of Block 4, Central Avenue Addition as shown on the site plans submitted with this application.
2. Any expansion of the proposed new CVS building greater than 10 percent will require an additional special review approval as per Unified Zoning Regulation Section 27-613(c).
3. Any new lighting within the parking lot areas shall have full cut-off shields so light is directed to the ground and not onto adjacent property.
4. The building location, landscaped areas, drive approaches, parking lot layout, drive through location and site circulation shall be installed as shown on the site plans faxed to the Planning Division on April 4, 2008, including the dumpster enclosure and the 6-foot sight-obscuring fence along the north property boundary.

5. There shall be no outdoor public address system or outside announcement system of any kind. The drive through may have an outdoor private address system as standard for all drive through services.
6. Demolition of the existing structures on the property will provide for site security, debris and trash containment, dust control during and after structure demolition, and no demolition work shall occur prior to 8 am or after 8 pm daily. A demolition permit from the Building Division is required.
7. The proposed development shall comply with all other limitations of Section 27-613 of the Unified Zoning Regulations concerning special review uses, all landscaping requirements specified on Section 27-1101, and all other City regulations that apply.

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

Councilmember Stevens asked for the location of the drive-through window. Ms. Cromwell advised the drive-through window would be on the northwest corner of the building.

Councilmember McCall asked for the timelines of the project. Ms. Cromwell advised there was a representative in attendance who could answer that question.

The public hearing was opened.

- **Kevin Heaney, 139 Alderson**, said he was with the Crowley Law Firm. He advised the drive-through would be for the purchase of prescription pharmaceuticals only, which would decrease the traffic normally seen in a drive-through situation.

Councilmember McCall asked what the timelines were if the project moved forward. Mr. Heaney said he understood construction would begin and be completed in 2009, but he was not certain. He offered to provide additional clarification if needed.

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

Councilmember Astle moved for approval of Special Review #857, seconded by Councilmember Clark.

Councilmember Ruegamer said the project would be a great addition to the area, and he would support it.

On a voice vote, the motion was unanimously approved.

**11. (a) CONTINUANCE OF PUBLIC HEARING AND FIRST READING ORDINANCE – MODEL CABLE TV ORDINANCE. (Continued from 4/28/08)**  
**Staff recommends approval. (Action: approval or disapproval of staff**

**recommendation.)** City Attorney Brent Brooks referenced Items 11(a) and 11(b) and advised the technical aspects of the cable system and technical questions would need to be addressed by Mr. O'Donnell of Bresnan. Mr. Brooks said Items 11(a) and 11(b) were continued from April 28<sup>th</sup> at his request so a draft of the general cable ordinance could be finalized and the negotiations with Mr. O'Donnell and Bresnan on Item 11(b) could be concluded. Attorney Brooks said negotiations had continued into Friday afternoon, and an e-mail had been sent over the weekend to the Council with the changes to the ordinances for both 11(a) and 11(b). He said the changes had been noted by underlines and strike-throughs. Mr. Brooks suggested that any motion to approve both of the documents reference the changes that had occurred since April 28, 2008. Mr. Brooks commented that Mr. O'Donnell had been very good to deal with, and the revisions to the cable ordinance franchise had been needed for a long time.

Councilmember Stevens referenced Section 7-903.2 B, on Page 12 of the Model Cable TV Ordinance, and the deleted paragraph notation. She asked if it meant that the 'B' paragraph was deleted. Attorney Brooks said he had seen it earlier that day and said he thought there was a paragraph that had been deleted but he would find out for sure. Councilmember Stevens commented that she would not want to lose the 'B' paragraph as it was currently written. Attorney Brooks advised they intended to keep the 'B' paragraph, so the language would remain.

The public hearing was continued from April 28, 2008. There were no speakers, and the public hearing was closed.

Councilmember McCall moved for approval of Item 11(a) to include the changes made since April 28, 2008, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

**(b) CONTINUANCE OF PUBLIC HEARING AND FIRST READING ORDINANCE repealing existing Cable TV Franchise Ordinance and enacting new Franchise Ordinance with Bresnan Communications. (Continued from 4/28/08) Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** Attorney Brooks advised Mr. O'Donnell may ask for a slight modification to Section 7-908(i) concerning capital contributions to the Public Education Government (PEG) channel.

The public hearing was continued from April 28, 2008.

- **Shawn O'Donnell, 6021 Sandalwood**, said he represented Bresnan Communications and thanked Attorney Brooks and City Administrator Volek for their help. He said the City of Billings was very important to Bresnan. He said Bresnan had in excess of 440 employees that called Billings home, and they looked forward to many years of partnership with the City. Mr. O'Donnell referenced Section 7-908(i), 'A' and 'B'. He said 'A' would be an incremental fee passed onto subscribers above and beyond what they already paid for the PEG channel. Mr. O'Donnell asked that it not be included as part of the agreement because Bresnan liked to control their rates as much as possible. He said it was his best estimate that

approximately \$1 million of franchise fees would be collected on behalf of the City of Billings that year and one percent of the five percent was usually earmarked for PEG budget and PEG purposes. Mr. O'Donnell referenced 'B' and said Bresnan had worked closely with City Administrator Volek on what a capital contribution would include. He said they were still working through the final numbers, and Bresnan could pass up to \$50,000 on to their consumers and subscribers. He said they were looking into possibly absorbing some of it.

Councilmember Stevens asked if the \$50,000 was currently being passed on to customers. Mr. O'Donnell said the \$50,000 would be brand new; it would be a one-time fee for the duration of the franchise that Bresnan would pay. He said the intent and purpose would be for capital equipment for the PEG channel, specifically items that included cameras for the council chambers.

Councilmember McCall asked if it was something that did not need changed in terms of approval that evening. City Administrator Volek advised it was the City's understanding that if 'B' was adopted that evening, it would not require additional action other than a second reading of the ordinance. She said it represented a request from the cable television channel for cameras that would provide additional and better service in the council chambers and upgrades in their studio equipment. She said the \$50,000 was the number the cable television channel suggested.

Councilmember Veis asked Attorney Brooks what the genesis of paragraph 'A' was. Attorney Brooks said it was to provide the Council with flexibility for additional funding for PEG channels. Councilmember Veis asked if it was an idea from a model ordinance or something the City created. Attorney Brooks said it was a very common practice across the country to give the governing local bodies the opportunity to provide additional funding through the duration of the franchise. Attorney Brooks advised the City had consulted with Joe Van Eaton of Miller & Van Eaton in Washington D.C., who was a highly specialized law firm in telecommunications.

Councilmember Stevens asked if the City anticipated the need or if they included it just because others had included it. Attorney Brooks advised it would give the Council flexibility. He said, if the Council felt they would never need to provide additional PEG funding, it could be deleted. He said they wanted to at least give the Council the opportunity to understand they would have flexibility to provide additional funding within the duration of the franchise if needed.

Deputy Mayor Ulledalen asked Mr. O'Donnell if there would be any HD issues to be concerned with. Mr. O'Donnell said they currently did not have the capacity outlined that would provide both the analog spectrum and an HD spectrum, but it was something that could be worked on if necessary.

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

Councilmember McCall moved for approval of Item 11(b) to include the changes made since April 28, 2008, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

**12. CONSIDERATION AND APPROVAL of the Cottonwood Park School Site Purchase and Sale Agreement. (Action delayed from 5/12/08.) Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** Attorney Brent Brooks said it was his understanding there was a question by Councilmember Veis and others concerning an indirect effect of approving the Agreement. He said the concern related to the possible amendment of Section 13 on Page 4 of the original 2002 Agreement. Attorney Brooks said he learned late Friday afternoon that the School District's attorney had been in contact with the original donor's attorney, who agreed to amend Section 13 on Page 4 of the original 2002 Agreement to address the Council's concerns. Attorney Brooks said he anticipated receiving an amendment to the original document within the next two to three weeks. Attorney Brooks suggested that the Council conditionally approve the Purchase and Sale Agreement in front of them that the language in Section 13 on Page 4 of the original Agreement be deleted that imposed a requirement on the Council to accept a School District property and building 'as is' should the property revert back to the Council.

Councilmember Veis asked if the amended original Agreement would have to come before Council for approval. Attorney Brooks said it would require involvement and approval of four parties; the original donors (Westward Ho, Inc.), the County Commissioners, the City, and the School District. Attorney Brooks said it could come back before Council at one of the Council meetings in June. He said the School District was hoping to close on the property before June 30<sup>th</sup>.

Councilmember Veis asked if approval at the June 23<sup>rd</sup> meeting would preclude having the closing on June 30<sup>th</sup> or just really reduce the timeframe available. Attorney Brooks said it would certainly press the timeframe necessary to gather the closing documents. Councilmember Veis asked if the conditional approval was driven by the City or the School District. Attorney Brooks said conditional approval was his suggestion to address the concerns and provide Council enough leverage to make sure the original development agreement was amended to their satisfaction. Councilmember Veis asked Attorney Brooks if he had visited with the School District's attorney about the conditional approval. Attorney Brooks said he had spoken with the School District's attorney and sent him a copy of the revised staff memo that was sent to Council over the weekend.

Councilmember Veis moved for conditional approval of the Cottonwood Park School Site Purchase and Sale Agreement amending Section 13 before the Agreement went into effect, seconded by Councilmember Astle. On a voice vote, the motion was unanimously approved.

Mayor Tussing entered the Council Chambers at 9:40 p.m. and began presiding over the remainder of the meeting.

**13. APPROVAL OF SETTLEMENT WITH RIMROCK FOUNDATION. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** Attorney Brent Brooks advised the item had come before the Council in Executive Litigation Sessions on several occasions in the past. He told Council the memo in front of them would be translated into an official

settlement document if approved. He said he did not believe there was anything in the memo that Council had not discussed before.

Councilmember Ruegamer moved for approval, seconded by Councilmember Astle.

Councilmember Clark advised he would be voting against the settlement agreement. He said the night it was first brought before Council it was represented as a four-plex; it was actually an office building with a dining hall. Councilmember Clark said he still did not feel Council had done anything wrong that night and with the \$400,000 of taxpayer money, he could not bring himself to vote for it.

Councilmember Stevens said she echoed Councilmember Clark's sentiments. She said she was very disappointed that Rimrock Foundation did not come to the Council to talk about it but chose to run to the courthouse instead. She said she could not support the settlement.

Councilmember Veis said he would love to be able to vote against it because he had wanted to give Rimrock the ability to move forward on the advice of the attorneys in the beginning. He said they could continue to vote against it and continue on with the lawsuits. He said it was a practical reality and the City's best option at that point.

Councilmember Ruegamer said he agreed with everyone, and he was disappointed in the way the Rimrock Foundation handled it. He said it should have never gotten there, and they did not have a choice. He said he would vote for the settlement.

Councilmember McCall said she would vote for it. She said it was time to stop placing blame and move forward.

Councilmember Gaghen said she had some real reservations about voting for the item, but she knew the City was found to be in a position of discriminating against a protected class. She said she would vote in favor of the settlement.

Mayor Tussing said he agreed with Councilmember Gaghen and would reluctantly support the motion. He said the item came up the very first meeting he was on the City Council, and he apparently misunderstood the advice the City Attorney's staff thought they were providing. He said he had not voted against the facility being in the neighborhood; he had voted against the form it was taking.

On a voice vote, the motion was passed 8 to 2. Councilmembers Stevens and Clark voted 'no'.

**14. APPROVAL OF SETTLEMENT WITH GSK PARTNERS, LLP. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** Attorney Brent Brooks advised the settlement document was the result of litigation filed against the City by GSK Partners. He said the document had been modified to include only two parties – GSK Partners Limited and the City of Billings. He said Item 5 on Page 2 came up late last week, which was what Mr. Nord had referenced earlier during the Public Comment Period on Non-Public Hearing Items. Attorney Brooks said the mediation agreement before Council at the present time was the best reflection of what was agreed upon

during the mediation. Attorney Brooks advised that Council could delete the three words "with no gates" or simply leave the agreement as it was written, sign it, and send it back to GSK Partners and Mr. Nord for further consideration. Attorney Brooks recommended that if Council chose to remove the words "with no gates", it would be with the understanding that gates would not be promised by the Council now or in the future but addressed during the usual subdivision development process through the preliminary and final plat approval.

Mayor Tussing asked Attorney Brooks if he had a preference to approve the document as written or approve it with the deletion of the three words. Attorney Brooks said either one, in his opinion, would be fine but the current document reflected the mediation agreement itself. He said either one would take care of the current issues, but the bottom line was that Council would be considering variances applied for by GSK Partners in the future, and either way would not effect the variances from coming forward to be considered by Council. He said if the variances were denied in the future, it would revert back to the litigation. He said if the variances were approved, the case against the City would be dismissed with prejudice at the mediation agreement price. Attorney Brooks advised that 'gates' were not part of the litigation that led to the mediation agreement to begin with. Attorney Brooks said the Council would be protected either way in terms of the gate issue that came up late Friday afternoon.

Councilmember Ruegamer asked if the City of Billings would be liable if an emergency vehicle could not get through the gate. Attorney Brooks said it could certainly impact the City. He said Council would not know what kind of gate, just that it was an automatic gate, and that was why Council needed flexibility down the road when considering what type of gate, the purpose of the gate, and what kind of liability would fall onto the City. He said if the City approved a gate that concurs liability; the City would get sued, not the developer or anyone in the history of the property. Attorney Brooks advised again that if the Council chose to omit the three words, they make it clear they were not specifically approving or promising that a gate would even be considered at that community.

Councilmember Veis asked Attorney Brooks to explain again why the Ironwood Homeowners Association was taken out of the agreement. Attorney Brooks said his understanding was that during the mediation process, the Ironwood Homeowners Association representatives agreed to be a signatory to the agreement and had agreed not to oppose any potential variance applications by GSK Partners Limited. He said it was also his understanding that subsequent to the informal mediation, the Ironwood Homeowners Association representatives withdrew from participation. He said it meant the Homeowners Association could appear and oppose or agree with one or two of the anticipated variances.

Councilmember Stevens said she had a mechanical gate that had failed, especially during very cold temperatures, because of the electronic equipment.

Councilmember McCall said she felt the original agreement should be approved. She said one of her concerns, including the liability potential, was that perception was reality. She said if a public road had a gate, it meant no access unless there was a sign with instructions on how to open the gate.

Councilmember Astle asked Attorney Brooks if the Ironwood Homeowners Association could sue the City if Council approved the agreement. Attorney

Brooks said it was “the modern consequence” of a governing body having to do with land use. He said land use was a “mine field” and everyone was lining up to sue. Attorney Brooks said the original reason the Ironwood Homeowners Association was involved with the agreement was to agree not to oppose the anticipated variance applications in the future. He said he could not foresee how they could possibly sue the City, but he did not know what was in their minds.

Councilmember Veis asked Mr. Nord how important it was to remove the gate language. Mr. Nord advised the language was included during mediation at the Planning Department’s request. He said Mr. Joyner had always wanted to have a gated community. He said when Tuscany Subdivision went to preliminary plat, gates were actually approved for the community. Mr. Nord advised that Mr. Joyner perceived value with respect to having gates and whether he would walk away, Mr. Nord said he could not predict.

Councilmember Astle moved for approval of Item 14 as originally written, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

**15. PUBLIC COMMENT on Non-Agenda Items -- Speaker sign-in required.**

*(Restricted to ONLY items not on this printed agenda; comments limited to 3 minutes per speaker. Please sign up on the clipboard located at the back of the Council Chambers.)*

- **Kevin Nelson, 4235 Bruce Avenue**, said the board was appalling and pathetic that evening, especially Mr. Mark Astle, Ward V. Mr. Nelson advised that when a member of the public came up to comment, he did not believe it was Mr. Astle’s job to ridicule, demean, and publicly embarrass that person. Mr. Nelson said that person said he did not have an interest in the property, and Mr. Astle sat there and needled him on tv, in front of the public, for no good reason. Mr. Nelson said that was not the way that body treated the public. He said it was amazing that Mr. Astle would sit there and demean that person but under the dog pound, he did not have time to ask Joy where the personal interest was. Mr. Nelson read, “the official shall publicly disclose the nature and extent of such interests and disqualify him or herself from participating in deliberation, as well as voting.” He said Joy recused herself, a question was asked, and she responded. Mr. Nelson said that was a conflict of interest. He said back when Matt wrote the article, Mr. Tussing called it a conflict of interest. Mr. Nelson said it was the Board’s duty to hold a conflict of interest hearing to see if Joy had a conflict of interest in pursuing the dog pound. He said Mr. Tussing said she did, and he believed the Mayor, if he was going to lead, should lead and provide the board, convene a board, hold a hearing, determine the conflict of interest, and see where it was at because it was very clear she had a conflict of interest. He said the Board refused to acknowledge it but took the time to publicly humiliate someone in a public hearing. Mr. Nelson said it was appalling that the board would do that, and he found it repulsive.

Councilmember Gaghen asked Mr. Nelson if he felt any sense of remorse or guilt when he came and assailed Council in a similar way that

Mr. Astle had demeaned someone,. She said there was no courtesy in how he perceived them. She told Mr. Nelson she knew he held them in low regard, but they, too, did not deserve the kind of comments coming from him and she personally resented it. Mr. Nelson told Councilmember Gaghen that she sat and let Councilmember Astle take the guy on for five minutes without doing anything and then wanted to chastise him in public because he brought the point forward.

Councilmember Ruegamer commented that they were a Council and not a Board. He asked Mr. Nelson to tell him specifically and briefly how Joy Stevens had a conflict of interest in the dog pound.

Mr. Nelson said it was personal interest. Mr. Nelson stated that no official, either on his or her own behalf or on behalf of any other person, should have a financial or personal interest in any business or transaction with the City. Councilmember Ruegamer asked Mr. Nelson if Joy's personal interest would be liking dogs. Mr. Nelson said she was head of the group that wanted to get the contract to provide the privatization service. Councilmember Ruegamer told Mr. Nelson he did not agree with him.

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

## **Council Initiatives**

- **Clark:** Moved to have the Traffic Engineer check on reducing the speed limit on Central Avenue from 29<sup>th</sup> Street West to Shiloh Road from 45 mph to 35 mph, seconded by Councilmember Ruegamer. Councilmember Astle commented the roadway was not capable of handling 45 mph with the Career Center, the College of Technology, and the apartment buildings on Central Avenue. Mayor Tussing commented that Broadwater Avenue to Shiloh Road used to be 45 mph, but it was lowered to 35 mph. On a voice vote, the motion was unanimously approved.
- **Clark:** Moved to have staff look into requiring new city employees to live within the city limits, seconded by Councilmember Ronquillo. He said it used to be a requirement that was changed, and he felt it was a big mistake. Councilmember Ronquillo asked if staff could provide Council with the number of city employees who lived outside the city limits. Mayor Tussing asked Councilmember Clark if his motion was asking to just have the matter looked into or did he want living outside the city limits prohibited. Councilmember Clark said he would like to see it changed to prohibit city employees from living outside the city limits. Councilmember Clark said right now he would just like the pros and cons discussed at a work session. On a voice vote, the motion was unanimously approved.
- **Stevens:** Said she would like to know where the Heights TIFD was on the Planning Department's priority list. City Administrator Volek advised that staff's capacity to do any type of TIFD study would be very limited pending on the budget with the Planning Department. She said staff could provide a current list of the existing TIFD requirements and what order they were in. Councilmember Ruegamer commented the TIFD on Sixth Avenue was

really pushed by the people who would benefit, and that was how to get it done quickly. Councilmember Stevens said the Heights Task Force did not seem to have the involvement the other Task Forces did, and it concerned her. Councilmember Gaghen said, in the past, she had seen wide-spread participation and a lot of energy in the Heights Task Force, but lately she had noticed they had not even broken a quorum. She said participation depended on what motivated people and if it was right next door to their property.

- **Ullendale**: Said at one time there was a proposal for a Minimum Standards Ordinance that came back much more onerous than Council wanted, so it was sent back to staff. He asked for an update on the status.
- **Stevens**: Moved to direct staff to require Boards and Commissions to always meet in public facilities, seconded by Councilmember Astle. Councilmember Veis recommended receiving a report on where all of the Boards and Commissions met first before making any requirements. Councilmember Stevens said the Energy Commission had been meeting at the Billings Operations Center; but since April they had been meeting at the Northern Plains Resource Council (NPRC). She said she felt it sent a really bad message to citizens wanting to attend the meeting. She said she felt they should not be meeting there, nor should they be meeting in energy companies' meeting rooms. She said they needed to meet on neutral ground, and NPRC was not neutral in the community. City Administrator Volek advised that staff had a discussion that day about the Boards and Commissions ordinances and developed a process that would be reported back to Council within six weeks. She said she would ask staff to convey that it was the Council's preference that the meetings be held in a publicly-owned building. Mayor Tussing said he agreed with Councilmember Veis and would like to find out if the Energy Commission had a reason for meeting at the NPRC other than the one time he was aware of when they took a tour of the building. Councilmember Veis said he thought it was a good idea that the meetings should be in a public place, but he did not want it to be so onerous that it would cause problems. City Administrator Volek suggested using the language "routinely meet". Councilmember Ullendale said people needed to know where the meetings were held and not have to "bounce all over town" trying to figure out the location. He said the Energy Commission should not be holding its meetings at the NPRC on a regular basis. Councilmember Veis asked if the motion was to happen that evening or be part of the Board and Commission report. City Administrator Volek said staff would convey Council's sentiments as part of the process. Councilmember Stevens said that was fine with her. Mayor Tussing asked if Council was voting on a rule forbidding the Boards and Commissions from ever meeting in any place other than a public facility or just telling them that was what Council preferred. Councilmember Stevens said they were directing staff, as part of the Boards and Commissions ordinance, that Council wanted the meetings held on public property.

On a voice vote, the motion was unanimously approved.

- **Ulledalen:** Said he was looking for guidance from the Council on meeting with the School District on a regular basis. He said they had one meeting in which two other meetings were scheduled, and there was no follow-through from the School District. He said they were supposed to meet with the School Board and discuss the Cottonwood Park issue. He said Dave Mumford was going to do the technical side, and he was going to accompany him. He said they tried to schedule a meeting, but they did not receive a call back or an answer. He said at the first meeting in February, the next quarterly meeting was scheduled for last Thursday. Councilmember Ulledalen said there were five members of the Council present on May 23, and no one from the School District showed up. Councilmember Ulledalen asked if the Council had any desire to continue, to drop it, or to talk to the School Board. Councilmember McCall said she felt it would be worthwhile to go to the School Board and make the public statement so it was documented. Councilmember Ulledalen said he would be willing to do it and would ask Councilmember Ruegamer to accompany him. Councilmember Veis said one other option would be to combine a Council and School Board work session at their building. Councilmember Gaghen said last week the School Board was in negotiations with BEA, and possibly that was the reason no one attended. Councilmember Ruegamer said he felt there was still no excuse for missing the meeting. He said everyone was busy.

**ADJOURN** – The meeting adjourned at 10:30 p.m.

*Additional information on any of these items is available in the City Clerk's Office.*

*Reasonable accommodations will be made to enable individuals with disabilities to attend this meeting. Please notify Cari Martin, City Clerk, at 657-8210.*