

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

April 25, 2005

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

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

MINUTES – April 11, 2005. Approved as printed.

COURTESIES – Mayor Tooley recognized former Councilmembers Ralph Stone and Owen Neiter in the audience this evening.

PROCLAMATIONS – Mayor Tooley

- **Arbor Day: April 29, 2005**
- **Days of Remembrance: May 1-8, 2005**

BOARD & COMMISSION REPORTS – Parks, Recreation & Cemetery Board

- Jim Collins, chair of the Parks, Recreation & Cemetery Board said the department has two projects under construction – an ADA trail project in Pioneer Park and two miles of trails in Swords Park. Mark Jarvis the new Parks Planner is looking at ADA compliance for the Castlerock Park parking lot and facilities. Two master plans are underway – Stewart Park (park enhancements) and Lampman Park strip (trail and possible golf course and dog park). The department is submitting a request to fund a consultant to address the Cobb Field issue and determine what the public interest might be. Subdivision park regulations are also under review including establishing what constitutes a park. Mr. Collins thanked the Council for restoring some of the funds to the Parks Dept. in the current budget. Seasonal employees are now being hired for the summer season.
- Mr. Collins commended Parks Dept staff for the support and coordination they provide for the Board. He said he would like to see Cobb Field addressed in this next budget year, and a resolution to the pool issue in the Heights.
- Parks & Recreation Dept. Director Don Kearney noted an Arbor Day Celebration is scheduled for 10:00 A.M. Friday at Amend Park.
- Leo Wohler, chair of the Aviation & Transit Commission, said the Commission has reviewed the proposals submitted to the Mayor's Ad Hoc Committee, as well as their evaluations of the sites. The MET staff also provided the Commission with a tour of sites #4, #5, #7a, #7b, #8, and #9. The Commission finds sites #5 (Wells Fargo site) and #9 (Library site) to be acceptable locations, but their preference is the Library site. The City currently owns the Library site, which will

create cost savings for a much-needed City function. The benefits of placing a convenient, attractive and functional transit center in the downtown will be evident now and for many years into the future. The site also offers additional parking in the downtown area via two levels of parking above the transit center. Mr. Wohler noted that the Library site is also endorsed by the Library Board. The project could begin immediately, because there would be no delays for site acquisition, relocation of existing businesses or demolition. No further environmental studies are needed for this site, he added. He said if the Council feels a site other than the Library site should be considered, Site #5 – the Wells Fargo site is recommended. The site is an excellent location that would adequately and conveniently serve all destinations and transferring MET passengers. This site has a single, willing seller, a significant advantage for the site. The existing business on the site could be relocated to other City property.

ADMINISTRATOR REPORTS – Kristoff Bauer

- Mr. Bauer said Item 6 – NW Shiloh Plan has an additional addendum relating to cost of services on the council desks this evening. An update and revised recommendation was provided in the Friday packet for Item A4. Item #12 is recommended for delay to a special meeting to be held on Wednesday evening, April 27th at 5:30 p.m. in Council Chambers.
- Mr. Bauer reminded the Council that the consultant doing an analysis on annexation costs will be in town for two sessions on May 4th at 1:30 A.M. and May 5th at 8:00 A.M.

LEGISLATIVE REPORT – Jani McCall

- City Lobbyist Jani McCall said the local legislators were very helpful to the City and local government in general. In terms of the session, it began on January 3rd and ended on April 21st. The state budget was set at \$7 billion, \$2.6 billion which comes from the State General fund. The remaining \$4.4 million comes from matching funds through the Federal Government and some special revenue accounts.
- Specific city legislation favorable to the City: HB262 allows municipalities to have a part-time municipal court judge. SB279 allows certain infractions to become civil infractions instead of criminal infractions under state law. SB32 changes the definition of minor sidewalk repair in street maintenance districts, including cracking, sinking and replacement of not more than 6 feet of sidewalk in any 100-foot portion of sidewalk. SB175 allows the use of zoning classification as another method for assessing costs within a street maintenance district.
- Significant local government legislation having a large impact on the City: SB146 establishes a state-wide public defender system establishing consistency. SB345 is the tax increment financing bill that allows the continued use of revolving loan funds. HB540 is the long-range bonding bill. It will bring \$9 million to Billings for the College of Technology. HB 249 created the Big Sky Economic Development Fund with money taken from the Coal Trust. HB270 revised the workforce training program. HB481 establishes a main street program to be developed in conjunction with the National Trust for historic preservation. SB167 authorized the

creation of technology districts. She noted SB185 – imposing impact fees on new development has recently been approved after much struggle.

- Legislation the City supported that did not survive the process: HB551 – a local option tax was not supported by rural legislators because they feel it is not fair to their residents and other legislators who prefer a State-wide sales tax and feel that local option taxes would interfere with that concept. SB185 – a local option tax with a distribution formula did not pass. HB483 allowing for binding arbitration for police was opposed by local governments but was approved by the legislature and will become law.
- Legislation the City opposed that did not survive the process: HB793 creating a waste reduction and recycling grant act and a commission to administer the act was defeated. HB794 creating criminal and civil penalties for violations by public officers of the right- to- know was defeated. This bill was opposed by every public entity possible. SB411 providing for the regulation of off-premises outdoor advertising and reimbursing parties for billboard signs was defeated.

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Item: #1 and 12 ONLY.

Speaker sign-in required. (Comments offered here are limited to 1 minute per speaker. Comment on items listed as public hearing items will be heard **ONLY** during the designated public hearing time for each respective item.)

(NOTE: For Items not on this agenda, public comment will be taken at the end of the agenda.)

- GREG KRUEGER, Director of the Downtown Partnership spoke in support of Items 1G and 1H. He reminded the Council that approximately a year ago he had presented a 4-year plan for investing in the downtown. The Partnership just received its 100th façade project application and has helped put a lot of large and small projects in place in the downtown. He asked the Council to approve Items 1G and 1H,
- RON CARLSON, 26 S. 24th St W, said he is a general partner in the Oliver Building, a structure that has been vacant since 1997 and the proposed project will provide housing, retail and office space for the downtown. He asked the Council to support Item 1G. He said he supports the downtown renewal and states there is a need for this type of facility.
- RANDY HAFER, NO ADDRESS GIVEN, spoke in support of Item 1G, the old Oliver Motor Works Building. Mr. Hafer said the building was constructed in 1910. This project has sixteen individuals from the community working on redevelopment of the building. They have contributed \$485,000 in personal funding towards what will be a \$1.8 million renovation of the building. The grant is a critical part of their financing on this project.
- BILL COLE, NO ADDRESS GIVEN, said he represents Chief Construction Specialties, the low bidder on the S. Billings Boulevard project. He asked that Item A4 be separated from the Consent Agenda and recommended that the bid award be delayed so that the issues can be discussed further. He said the unit price of a gravel item in the Chief Construction bid, which was in error, did not affect the total price in any way. He noted the April 14th version of the agenda identified Chief Construction as the recommended contract winner. Mr. Cole said Chief Construction would like the opportunity to discuss the situation with the City before the contract is awarded.

- TODD TAXLEY of Chief Construction asked the Council to “table” Item A4 to look at the facts and evaluate the circumstances.
- MICHAEL ERICKSON, SOUTH HEIGHTS LANE, said he is a Heights resident speaking on behalf of the *This One for the Chief* group. Mr. Erickson noted the Council is being asked to approve a contract with the IACP on tonight’s agenda. He noted the group supports this contract. He noted Chief Ron Tussing supported this on 2/20/05 and it was not the idea of the City Administrator. It is only with the conclusions from the IACP can the residents of Billings begin to understand all the facts surrounding the dispute between the Chief of Police and the City Administrator. He urged the Council to approve this contract.
- ANDY RIO, 3037 BARTONIA DR. said he is a member of *This One for the Chief*. Mr. Rio said it appears that Mr. Stacey’s report was dismissed and Lou Reiter could not find enough damaging evidence against the Police Chief, so he expanded his report to include an operational view of the police department. He said the group supports the IACP contract. He asked the Council to insure that the IACP gets all the information they need to conduct their investigation. Mr. Rio said they are only asking for a fair, impartial and complete report to put this “mess behind us”.

CONSENT AGENDA:

1. A. Bid Awards:

(1) One New Current Model 2005 800 KW Skid-mounted Diesel Generator Set and a 2,000 Gallon Above Ground Storage Tank with 250 Gallon Base Mount Diesel Day Tank for Wastewater Treatment Plant. (Opened 4/12/05). Recommend Cummins Rocky Mountain LLC, \$99,999.00 and consideration of Tractor & Equipment Company bid as non-responsive.

(2) Uniform Rental Service for Public Works Dept – Utilities. (Opened 4/19/05). Recommend delaying to 5/9/05.

(3) Flight Information Display System Equipment. (Opened 4/12/05). Recommend Flights-Now.Com, \$73,586.00.

(4) W.O. 04-11: SID 1373: South Billings Boulevard – King Ave East to Underpass Avenue. (Opened 4/14/05). Recommend JTL Group, Inc., \$2,037,141.70. NOTE: APPROVED; SEE RECONSIDERATION AT END OF AGENDA.

B. Amendment #1, Professional Services Contract, SID 1366: Rimrock West Subdivision Park and storm drain improvements, Interstate Engineering, Inc., \$21,975.00.

C. Contract with International Association of Chiefs of Police (IACP) for Police Operations Study, \$75,000.00.

D. W.O. 04-12: Alkali Creek Road, Right-of-Way Easement, Billings Saddle Club, \$0.00.

E. W.O. 00-15: Widening Grand Avenue: 8th St. W to 12th St. W., Right-of-Way Agreement, Griffin Family LLP, \$46,650.00.

F. Authorization to purchase five (5) new 35-foot Transit coaches from Gillig Corporation, \$1,399,080.00.

G. Approval of large project GAP funding grant to Oliver Building Development Venture, LP, up to \$285,000.00 for the Oliver Building Redevelopment Project at 2702 Montana Avenue.

H. Approval of Downtown Revolving Loans:
(1) Whistling Water Coffee Shop & Training Center, Inc., not to exceed the lesser of \$8,000 or 20% of purchase price of Skooterz Java Pub
(2) Yellowstone Community Cooperative (dba Good Earth Market), not to exceed the lesser of \$140,000 or 20% of actual project costs.

I. Acknowledging receipt of petition to annex #05-02: a unplatted tract that is the W2W2SW4 of Section 32, Township 1 North, Range 25 East, containing 40.568 acres, Bishop Fox Company, petitioner, and setting a public hearing for 5/9/05.

J. Acknowledging receipt of petition to annex #05-03: C/S 1877, Tract 3 in SW4NW4 of Section 4, Township 1 South, Range 25 East, DC Capital Real Estate, petitioner, and setting a public hearing for 5/9/05.

K. Chase Hawks Association *Burn the Point* Street Dance and Car Show, temporary street closures for parade, street dance and car show on September 2-3, 2005; street closure on established parade route and from N. 27th St. to N. 29th St., and from 1st Ave. N. to 3rd Ave. N.

L. Moss Mansion *Homefront Warriors*, temporary street closures for antique car show on May 21, 2005; street closure of Clark Avenue from 1st Ave. N. to Division St.

M. Resolution of Intent 05-18255 to Create PMD #4026: Uinta Park Subdivision and setting a public hearing for 5/23/05.

N. Preliminary Plat of Bishop Fox Subdivision, conditional approval of plat, acceptance of the findings of fact and approval of the variances from BMCC Sections 23-602 and 23-605(d).

O. Preliminary Plat of Copper Ridge Subdivision, 1st Filing, conditional approval of plat, acceptance of the findings of fact and approval of the variances from BMCC Section 23-601(k).

P. Final Plat of Lot 5, Block 3, Superior Homes Subdivision, Second Amended.

Q. Bills and Payroll.

(1) April 1, 2005

(Action: approval or disapproval of Consent Agenda.)

Councilmember Jones separated Item A4 from the Consent Agenda. Councilmember Brown separated Item A1 from the Consent Agenda. Councilmember Gaghen moved for approval of the Consent Agenda with the exception of Items A1 and A4, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

Councilmember Gaghen moved for approval of Item A1 of the Consent Agenda, seconded by Councilmember Brewster. Councilmember Brown asked if the generator is to be used to run the UV purification equipment. Public Works Director Dave Mumford said the UV system is not currently in place. The generator will be used to operate the plant during times of power outages. He said there is some backup work that can be done currently through a methane gas generator, but it is not sufficient to run the entire plant. City Administrator Kristoff Bauer noted the Staff is recommending the Council follow the recommendation in the staff report and not what appears on the agenda. On a voice vote, the motion was approved with Councilmember Brown voting "no".

Councilmember Gaghen moved to delay Item A4 for two weeks, seconded by Councilmember Brewster. Mr. Bauer said if the Council is uncomfortable with the status of the bid award, it would be wise to reject all bids and request a rebid. He said the Staff does not see an opportunity to resolve the contract issues and Chief Construction would not be "comforted" unless the Staff would consider an alternate recommendation. Mr. Mumford said after reviewing the contract specifications and anticipating the protest by JTL Group, this could become a protracted decision. He said the recommendation to reject all bids would allow the Engineering Staff to get back on schedule by processing some modifications and start work on the south end to get work completed in front of the school first before school starts in the fall and proceed with the Suburban Ditch work in the fall alleviating the need to disrupt irrigation this summer. He noted the City has the option to reject all bids. Mr. Bauer noted that some states do not allow rejecting bids because it provides the opportunity to review confidential competitor's calculations setting an atmosphere for lowering bid prices. He suggested the Council be cautious in using this mechanism of rejecting bids but noted that may be the only method available in this situation. He noted that both contractors have warned the City that they will challenge either decision to award the contract.

Councilmember Brown asked if the error that occurred was on the part of the contractor. Mr. Mumford said "yes", the quantity specification cost figure is what governs the bid if there is an error, and that is where the error was. He said this will drive Chief Construction's price upwards. He said JTL Group feels this is a violation of the bidding process if the bid is awarded to Chief Construction, because the specifications state that quantity estimates on unit price must be used and that should ultimately force Chief Construction out of the low bid position.

Councilmember McDermott made a substitute motion to reject all bids and rebid, seconded by Councilmember Boyer. Councilmember Jones suggested it is worth the time to go back to all the lawyers and the legal department and work out this

discrepancy. On a voice vote, the substitute motion passed 5-4 with Councilmembers Gaghen, McDermott, Brewster, Boyer, and Mayor Tooley voting "yes" and Councilmembers Brown, Ulledallen, Clark and Jones voting "no".

Mayor Tooley called for a recess at 7:35 P.M.
Mayor Tooley reconvened the meeting at 7:45 P.M.

REGULAR AGENDA:

2. PUBLIC HEARING AND RESOLUTION 05-18256 making FY05 budget adjustments to the Wastewater Construction, Water, Public Safety, SID Construction and Series 2000 Parks Debt Service Funds. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

There was no staff report. Councilmember Brown asked how arbitrage applies in the case of this item. Finance Manager Pat Weber said there are many parts to arbitrage. It is a federal regulation through the IRS that governs the municipalities when they are buying or selling bonds and reinvesting. Time limitations for completing projects when selling the bonds are another part of arbitrage. He said the City hired a consultant to perform arbitrage services last year. Budget authority is now needed for this year to pay the consultant.

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

3. PUBLIC HEARING on the allocation of the City of Billings' 2005-2006 CDBG and HOME funding and FY2005-2009 Consolidated Plan. Final Council action scheduled for 5/09/05. (Action: public hearing only.)

Community Development Manager John Walsh said the CDBG and HOME Programs are designed to: 1) promote economic opportunities for lower income persons, 2) preserve and revitalize older residential neighborhoods, and 3) provide affordable housing activities on a City-wide basis. He said almost all CDBG activities undertaken by the City are targeted to benefit lower income households or areas. Low income for a family of two is \$34,500 and \$21,550 for very low income. Lower income households are defined as households with incomes at or below 80% of the median income and very low income is based on 51%, comprising much of the Southside and the North Park areas. Mr. Walsh said there is \$1.7 million available for allocation through the CDBG and HOME Programs. The Block Grant Program has been in existence for about 30 years and primarily has been used to revitalize older properties in older neighborhoods. The HOME Program is the Affordable Housing Program.

Mr. Walsh said the Consolidated Plan Strategy for the next five years are to:
Strategy #1) promote the preservation of the existing supply of affordable housing in the community by:

a) Providing affordable financing to allow low and moderate-income homeowners to perform needed repairs to their homes,

b) Providing affordable financing to encourage rehabilitation of affordable multi-family units in the community, and

c) Reduce the loss of existing affordable housing units (new strategy).

Strategy #2) promote the preservation and revitalization of the communities' older neighborhoods where the affordable housing stock is located (near the Central Business District) by:

- a) Upgrading the housing stock,
- b) Developing vacant or substandard properties,
- c) Providing funding for amenities and Infrastructure, and
- d) Supporting efforts of the residents of lower income neighborhoods to work together to address needs and respond to opportunities.

Strategy #3) promote new affordable housing opportunities on a City-wide basis by:

- a) Promoting home ownership (First Time Home Buyer Program) , and
- b) Encouraging the development of new affordable single family and multi-family housing emphasizing housing for the elderly and disabled, special needs populations, very low income renters, new housing in lower income neighborhoods.

Strategy #4) work as an active partner with non-profit, neighborhood groups, and other stakeholders to address housing and community development needs by:

- a) Supporting collaborative efforts to address needs, such as: Neighborhood Task Forces, Affordable Housing Task Force, Billings Partners for American Indian Homeownership, and Adjacent Neighborhood Committee, and
- b) Supporting activities that promote fair housing and increase awareness of the rights and responsibilities of protected classes.

Strategy #5) improve the economic conditions of lower income households in Billings by:

- a) Working with non-profit organizations to help address the human service needs of lower income residents, and
- b) Working with economic development and non-profit agencies to undertake strategies that result in job training and employment opportunities for lower income households.

Mr. Walsh said the public input process for this funding begins with applications for funding in December. Input from the task forces is solicited in February and March. The Community Development Board's budget hearings are held at the end of March. He noted tonight's Council meeting will include the public hearing for continued public input. Council action is scheduled for May 9th and the program year begins July 1, 2005.

Mr. Walsh said the Community Development Board recommendations for funding by strategy are as follows:

CDBG/HOME GRANT HISTORY (Current Projects ONLY)		2005-2006 Requested	CD Staff Recommendations		CD Board Recommendations	
			CDBG Funds	HOME Funds	CDBG Funds	HOME Funds
Admin / Planning / Fair Housing	Strategy #3 & 4	CDBG Administration	\$175,000	\$173,800	\$173,800	
		HOME Administration	\$65,000		\$66,000	\$66,000
		Professional Services	\$5,000		\$0	
		Yellowstone Historic Preservation Board	\$6,500	\$6,500	\$6,500	
		Community Housing Resource Board	\$17,500	\$13,000	\$0	

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		Community Housing Resource Board - HOME FUNDS	\$2,500		\$2,000		\$0
		FAIR HOUSING ACTIVITIES				\$13,000	\$2,000
Affordable Housing Activities	Strategy #1 & 3	Housing Rehabilitation Loan Program	\$300,000	\$250,000		\$250,000	
		Minor Home Repair Program	\$100,000	\$60,000		\$60,000	
		Rental Rehabilitation Program	\$60,000	\$40,000		\$57,290	
		HOME/CDBG Affordable Housing Support	\$400,000		\$271,133		\$271,133
		HOME First Time Home Buyer Program	\$300,000		\$300,000		\$300,000
		homeWORD - Homebuyer Education	\$3,000		\$3,000		\$3,000
		Set-Aside for CHDOs	\$80,310		\$80,310		\$80,310
		Living Independently for Today & Tomorrow	\$12,500	\$10,000		\$10,000	
		Yellowstone County Council on Aging	\$5,000	\$5,000		\$5,000	
		Rebuilding Together	\$5,000	\$5,000		\$5,000	
Neighborhood Projects	Strategy #2	CDBG Demolition Program				\$0	
		Property Management	\$8,000	\$8,000		\$8,000	
		Special Assessment Grants	\$50,000	\$40,000		\$40,000	
		Paint Program	\$5,000	\$2,000		\$2,000	
		South West Bike Path	\$150,000			\$150,000	
Park Improvements	Strategy #2	PRPL-Skate Park - The Galles Building Improvements	\$60,000	\$234,790		\$30,000	
		PRPL - South Park - Pool Heater	\$30,000			\$30,000	
		Athletic Park Pool Heater	\$100,000			\$10,000	

		<i>CDBG Grant History (current projects only)</i>	<i>Amount Requested</i>	<i>CD Board Recommendation</i>
Public Service Activities	Strategy #5	Billings Chapter Prevention of Elder Abuse	\$9,025	\$9,025
		Billings Food Bank	\$20,000	\$10,000
		Billings Healthy Community Coalition	\$9,500	\$9,500
		Boys & Girls Club - Bair Family Clubhouse	\$5,000	\$5,000
		Boys & Girls Club - Castlerock Clubhouse	\$5,000	\$0
		Community Housing Investment Program (CHIP)	\$6,200	\$0
		Family Service, Inc.	\$30,000	\$20,000
		Friendship House - Summer Enrichment	\$15,000	\$12,000
		HRDC - Growth Thru Art	\$20,000	\$11,771
		HRDC - Housing Counseling	\$15,000	\$10,000
		Interfaith Hospitality Network - IHN Day Center	\$7,560	\$5,000
		Open Bible Christian Center	\$15,000	\$0
		Parents Let's Unite for Kids	\$5,000	\$2,500
		Senior Helping Hands Program, Inc.	\$19,000	\$19,000
		Southgate COP Shop	\$6,000	\$0
Tree Trimming, Planting & Removal	\$15,000	\$10,000		

	Tumbleweed Runaway Program, Inc.	\$20,000	\$12,500
	Young Families Early Head Start	\$32,000	\$10,000
	Young Life - Campership Fund	\$5,250	\$0
	YWCA of Billings Children's/Women's Services	\$2,100	\$2,100
	YWCA Gateway House	\$10,000	\$8,000
	BSEDA	\$10,000	\$7,500

Mike Kenney, chair of the Community Development Board thanked all of the applicants and fellow board members and the CD Staff for all their hard work. He said the board met for five hours on May 5th to develop the allocation of the funds. The recommendations represent a consensus of the board for the use of the funding for the community. They are consistent with the five strategies. He said the board is supportive of the affordable housing activities and this funding provides unique resources to the community for those activities. He said he is available for questions from now until the May 9th Council meeting.

The public hearing was opened. JEAN NEYRICK, 205 WYOMING, said she is a member of Community Development Board and the Central/Terry Task Force. She said she is speaking in regard to the funding request for the Parks Department for \$100,000 to purchase heaters and covers for Athletic pool. She said the CD Board did not support this request, but does support the pool. The recommendation sets aside \$10,000 for the pool with the contingency that the future Athletic Pool be included in the \$60,000 study of Cobb Field in the 2006 CIP. Ms. Neyrick said the board believes that the entire complex should be considered as one entity and not allow the pool to disappear to accommodate the extended Cobb Field. She asked the Council to follow the CD Board recommendation that the future of Athletic Pool be included in the study. She noted she is representing 20 other citizens who are voicing the same request.

SARA MCNAMARA, 417 YELLOWSTONE, asked the Council to include Athletic Park as part of the Cobb Field Study and preserve the \$10,000 from the CD Board recommendations. She read from a letter that states her family's wishes regarding Athletic Pool. She said it should be included in the \$60,000 study of Cobb Field in the CIP for 2006. All of the pools amenities should be investigated and addressed because the revitalization of Athletic Park in another positive step toward keeping the center of Billings alive. She asked the Council to support preserving Athletic Park. Ms. McNamara read a letter from the Troy Hyams family residing on Wyoming Avenue. The letter stated that this family also is requesting that the pool at Athletic Park be included in the study of Cobb Field listing in the CIP. The pool is an important part of the park and is used quite frequently during the summer by the family. Public recreational facilities, such as the pool should be an integral part of any plan for redevelopment of the downtown area.

MARIE KELLY, 7559 CHAROLAIS, said she is the Development Director of Family Services, Inc. She thanked the CD Board for their hard work on the recommendations and for their past support of Family Services, Inc. This year there are additional challenges for their agency due to escalating utility rates and scarcity of low income housing. Ms. Kelly said their request for funding is very important to their agency. She urged the Council to accept the recommendations of the CD Board.

KARLA LAWRENCE, 3335 TAMPICO, said she is the chair for the Community Housing Resource Board. She said the CHRB Board has asked that the Council adopt the CD Board recommendations for funding CHRB in the amount of \$15,000 with the

understanding that the CHRB will coordinate more directly with the CD Board regarding their expectations.

CLAUDIA STEVENS, 434 BUNTING, said she is the secretary of the CHRB. She urged the Council to approve the CD Board recommendations in regard to fair housing and allocate the \$15,000 to CHRB.

DAVE SWANSON, LIVING INDEPENDENTLY FOR TODAY AND TOMORROW, thanked the Council for their past support. He said his agency works with the downtrodden.

MARY WESTWOOD, 2808 MONTANA AVENUE, thanked the CD Board for their diligent work. She spoke in support of the Galles Building and the study of Athletic Pool. There are three major pools in Billings and it is important that the City keep those pools. She supports the recommendation of \$30,000 for the Galles Building. It is a good use of money and will make it a place where there is an indoor area with restrooms for users.

RUSS BROWN, PROJECT DIRECTOR FOR CHRB, said he will submit four letters to the Council that supports the testimony previously given by Claudia Stevens and Karla Lawrence.

WELDON BIRDWELL, 44 YELLOWSTONE AVENUE, spoke on behalf of the study for Athletic Pool. There are many issues about the pool that must be addressed and a study would be the best way to accomplish this. He is gratified that the CD Board included this study in their recommendations. This is an important downtown amenity for the "starter home" neighborhoods in the area and important to the vitality of the community. He urged the Council to support this recommendation. Mr. Birdwell also urged the Council to coordinate efforts with the School District for the Cobb Field facility.

There were no other speakers. The public hearing was closed. Action scheduled for 5/9/2005.

4. PUBLIC HEARING AND RESOLUTION 05-18257 vacating the "street bulb" portion of Indian Trail south of Alkali Creek School in equal exchange for a storm drain easement in Spring Valley Sub., Ernie Szillat, petitioner. Staff recommends approval. (Action: approval or disapproval of Staff recommendation).

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

5. PUBLIC HEARING AND VARIANCE #OP05-01: a variance from the Site Development Ordinance, BMCC Sections 6-1203(q)(2) and 6-1203(j) regarding surfacing of parking lots and minimum standards for required number of parking spaces. Northern Plains Resource Council, petitioner. Subject property is located on Lots 1-20, Block 164, O.T. and generally located between 2nd & 3rd Avenues South along the southwest side of S. 27th. St. Staff recommends denial. (Action: approval or disapproval of Staff recommendation.)

There was no staff report. The public hearing was opened. EILEEN MORRIS, MEMBER OF THE NPRC, urged the Council to reject the staff recommendation and asked the City to grant variances for surfacing of parking lots and minimum standards for the number of parking spaces on Lots 1-10, Block 164, O.T. She noted that NPRC

purchased the vacant food bank building at 220 South 27th Street at the end of 2003 and acquired adjacent lots in 2004. The intention is to renovate the existing buildings into energy efficient and water conserving facilities and hope to do the same on the parking areas and landscape. When completed the project would qualify to become Montana's first commercial building to achieve the nationally renown LEED Gold Certification award. She said the variance requests follow the efforts of the Yellowstone County Bright and Beautiful organization to conserve, preserve, restore, beautify and promote recycling within the City. With the approval of the variances, the NPRC's parking lot and landscape will beautify the 27th Street corridor. Ms. Morris asked the Council to approve both variance requests and in doing so support the landmark project.

ERICA FOLKER, 907 NO. 25TH STREET, said she is a staff member at NPRC. She said the surface material, called Gravelpave2, is a new paving technology that is being used all over the country. Gravelpave2 consists of a matrix of 1 inch plastic cups placed over the sand and gravel. Over that is placed ¼ inch gravel that is raked into the cups in the grid. The cups keep the gravel in place creating a different surface from traditional gravel and insuring that gravel will stay in place and not be carried onto 27th Street. Rainwater also would not collect in the cups because of a permeable weed mat type of grid. She stated that other areas such as Chicago and Colorado have used this method and are able to snowplow using skids on the plow blade. This would be the responsibility of the building owner. She also noted, due to the fact that they would not be connected to the stormwater drainage system, they must maintain the stormwater on-site. She said the boulder pit system would demonstrate another option available to alleviate stress on the City's stormwater system. Ms. Folker said the landscaping plan is the reason for the second variance request for fewer parking spaces than are required. The building users do not need the full 28 spaces, she added. She said there will also be many incentives built to encourage traffic other than auto, such as bicycle and transit use encouraging facilities.

JOAN HURDLE, 210 NALL, asked the Council to grant the two requested variances. She said she has been a member of NPRC for 15 years. She noted the recent adoption of the Growth Policy and said by approving the variances the Council would be implementing that policy in the area of encouraging different modes of transportation. Another example of implementing the Growth Policy would be to cooperate with preservationists to seek appropriate reuse of public and private facilities. The "blue beast" on 27th Street is really ugly and it will be transformed with the efforts of NPRC. It is appropriate for the Council to be forward thinking and approve the variances.

MARK WRIGHT, 703 PARKHILL DRIVE, said he owns property at 2713 and 2717 4th Avenue South. He said he supports this project because it will do a lot to improve the neighborhood and the 27th Street corridor. He said he supports the variance requests. Even though he is not familiar with the technology, he said it sounds like a worthy demonstration of what the City could benefit from. The request for the reduction of spaces is an important one and should be supported. Minimizing parking lots contributes to more available green space. He also said the landscaping will certainly benefit the neighborhood. Mr. Wright urged the Council to support the project and approve the variances.

CONNIE WARDELL, NO ADDRESS GIVEN, spoke concerning the staff concerns about the gravel parking lot and the stormwater management. She said she manages two

storage units, one with asphalt paving and the other with the permeable plastic technology using asphalt tailing instead of gravel. She noted the one with the permeable plastic is always dry and ice never forms on the surface because it drains so quickly. This makes it a much safer and environmentally friendly surface.

RANDY HAFER, PRESIDENT OF HIGH PLAINS ARCHITECTS, said they are the architects on this project. He said this is a dream project because these folks are doing what he has always wanted to do on a project. It will take an ugly building on South 27th Street and transform it into a state-of-the-art energy and resource conservation type of building that will be a dramatic improvement. Mr. Hafer said the three additional parking spaces, if implemented, would decrease the green space by 50%. He urged the Council to approve the variances. Councilmember Ulledalen asked about the durability and maintenance of the type of gravel surface. Mr. Hafer said the cost of this system is similar to asphalt, but the maintenance over the long term is improved because it won't break down in the same manner as asphalt does. It has been used in the last twenty years in many different climates. He noted that it does not need to be pitched to drain as asphalt does, so a plow with skids would "float" over the flat top.

Councilmember Jones asked if the boulder pit will be required. Mr. Hafer said the stormwater must be retained on-site. With a system where the entire surface is permeable, the stormwater can be spread out over a large area. A thin layer will be created directly underneath the surface to allow the water to percolate because the water will not go directly into the soil below. He said this manages the surface water in a less expensive method with less disruption to the site. Councilmember Gaghen asked that the non-permanent parking striping be addressed. Ms. Folker said the plan is to utilize the concrete barriers that denote a parking space and prevent cars from driving into the landscaping. Councilmember Boyer expressed concern for the gravel being removed during the snow plowing operation. Mr. Hafer said the gravel would not be removed because a plow with skids or "skis" would be used so that the plow is elevated enough to prevent gouging into the surface. Proper equipment must be used, he added.

Councilmember Clark said the reason French drains don't work is that dirt becomes compacted into the gravel and don't allow the water to flow through the gravel. He asked if that same thing would happen to this system. Mr. Hafer said one of the big differences is that in a French drain the water is concentrated into one area and is ejected into the boulder pit and problems can arise. This system distributes the water over the entire surface and there is no concentration of dirt that can clog the system. If the system does need maintenance it would consist of lifting or scraping off the surface and putting it back down again. The layer of fabric would keep the dirt out of the lower permeable layer. Councilmember Brewster asked if a soils test has been done to verify if the system will work on this area. Mr. Hafer said a soils test has been done.

There were no other speakers. The public hearing was closed. Councilmember McDermott said she doesn't see a problem with reducing the parking spaces. She also would like to see the GravelPave2 used. Councilmember Ulledallen said this is an intriguing idea and a great opportunity to test a new product. It also has interesting implications for managing stormwater. Councilmember Boyer said the Council should support businesses that are encouraging other forms of transportation and landscaping.

Councilmember Brewster asked if the Council would be modifying their standards if they approve these variances. Public Works Director Dave Mumford said the concept of a

porous surface is very interesting and intriguing to the City. The reason for not recommending approval was because the Staff had concerns about gravel displacement and the City would be setting a standard for requests from other parties. He said he feels this particular business would be diligent in making sure the concept was successful because that is what they are about. His concern is that this facility would not always be in the care of this group and the City is lowering the parking requirements and setting a standard. He said the Council has the authority to do that and the Staff is not overly concerned about that.

Mr. Mumford said the Staff would be sure to take precautions for future requests for this type of gravel paving if the soil conditions are not appropriate. Councilmember Gaghen said there should be some safeguards or conditions that could be put in place that would not place the City in jeopardy for approving the requests. She would like to see the Council support this. Councilmember Clark asked if Staff has inspected other areas where this GravelPave2 has been used. Mr. Mumford said the Staff made some inquiries and found that the system does work, but there are some issues such as tracking gravel onto the roads to some extent. He noted it does work better than a traditional gravel lot. He said this probably would not work on larger parking areas such as Wal-Mart because striping and plowing would be some issues of concern. It may be practical for small businesses.

City Attorney Brent Brooks said there are no ordinances or statutes that would allow a conditional site variance where a period of time could pass before a review was performed to see how the site is progressing. He added that the site variance has language stating accepted engineering methods. Councilmember Brown questioned the wisdom of allowing experimentation by a non-taxpaying entity where they would not be sharing in resolving any future problems. Mr. Bauer noted that granting a variance cannot be reviewed later. He asked the Council to include very specific variance requirements so another similar situation won't have other individuals being less diligent in maintaining their system.

Councilmember Boyer moved to approve the variance from the site development ordinance and grant the Gravelpave2 surfacing, seconded by Councilmember Gaghen. On a voice vote, the motion was approved with Councilmembers Brewster and Brown voting "no".

Councilmember Boyer moved to approve the variance from the site development ordinance allowing 25 parking spaces instead of 28, seconded by Councilmember Gaghen. On a voice vote, the motion was approved with Councilmember Brown voting "no".

6. PUBLIC HEARING AND RESOLUTION 05-18258 adopting the North West Shiloh Area Plan. Planning Board recommends approval. (Action: approval or disapproval of Planning Board recommendation.)

Planning Department Director Ramona Mattix noted the Council studied this plan at a work session. The Planning Board conducted a hearing entertaining comments and making a recommendation. The planning process included a Steering Committee of landowners, area realtors, residents, environmental interests that was formed and met over a seven-month period. A CHIP exercise was conducted allowing the participant to determine where they might place 6,300 neighbors in that area. Three open housing

meetings were held with the last one being very well attended. A Planning Board public hearing was the last event.

Ms. Mattix said the plan goals have come from the West Billings Plan and the Growth Policy. These goals are used when reviewing development and land use applications. Those plans goals are:

- 1) Visually appealing and accessible neighborhoods.
- 2) Compatible development.
- 3) Orderly urbanization of agricultural lands.
- 4) Reduce sprawl and development pressure on agricultural lands.
- 5) Discourage strip commercial development.
- 6) Provide more housing choices in neighborhoods.
- 7) Reduce commuting and daily trips.
- 8) Cost efficient infrastructure extension and delivery of public services.
- 9) Protect public lives, property, sanitary and safe property.
- 10) Provide diverse recreational facilities.
- 11) Develop multi-purpose trail network.
- 12) Provide a safe and efficient transportation system.
- 13) Ensure the functionality of natural systems.
- 14) Protect the historical, archaeological, scenic and cultural resources of Yellowstone County.
- 15) Enhance public spaces.

Ms. Mattix said the land use assumptions developed by the Steering Committee and the Planning Board merit review. They are what "built" the goals and objectives in the plan document and are:

- 1) Heavy Industrial uses and Regional Commercial uses not likely in this area because there is no transportation system that would support them.
- 2) Agricultural lands will continue to urbanize.
- 3) A mix of Residential and Neighborhood and Community Commercial uses will be needed.
- 4) Public facilities such as parks, a fire station, school, and police substation will be needed to serve development.
- 5) Areas adjacent to existing development should honor the nature of those uses – a recommendation of the Planning Board.
- 6) Significant natural features should be protected, such as drainage ditches, the Rims.
- 7) Commercial activity is most appropriate due to arterial intersections; consistent in the West End Plan and the Growth Policy and in discussion in many of the neighborhoods.
- 8) Higher density should be encouraged near schools, parks, and shopping.
- 9) Major transportation routes should have continuity.

Ms. Mattix noted the plan scenario map illustrates all the potential opportunities in the subject area. She added some areas have covenants that restrict subdividing into less than five acres. Future roads and infrastructure is noted. She said single-family areas are noted so that care is taken to treat them with a good neighbor attitude. The plan would be used by the City when reviewing annexation petitions, subdivision and zoning applications, approving a master plan for mixed-use projects, and encourage

medium and high residential densities where appropriate, such as near schools. The Plan Infrastructure maps would be used to identify opportunities when considering a development application, crafting new land use tools such as conservation subdivision regulations and during review of subdivision regulations, or development of zoning classifications. Right-of-way design and traffic corridors can be reviewed for consistency with the plans.

Ms. Mattix referred to the recent costs for infrastructure in the area of Grand Avenue and Rimrock Road and stated that fees from 2,700 Residential 9600 homes at 4 units per acre would return the investment to the City. She said the assumption is that there is between 300 and 500 lots that have already paid that construction fee.

The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Ulledalen moved for approval of the Planning Board recommendation, seconded by Councilmember McDermott. Councilmember Brewster said this is a great development tool for the City that will prevent acrimony in annexations and developments. Citizens will have a reasonable idea of what the expectations are. Councilmember Brown asked if waivers of protest will still be used. Ms. Mattix said because the City has a policy of not providing water and sewer without annexation, there is no requirement for waivers to annex. On a voice vote, the motion was unanimously approved.

7. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #756: a zone change from Agricultural-Open Space to Community Commercial on Lot 1, Public on Lot 2, R-7000 on Lots 3-4 and R-9600 on Lot 5 for a 40.5 acre parcel of unplatted land in the proposed Bishop Fox Subdivision, generally located on the east side of 54th St. W. between Grand Avenue and Colton Boulevard. Bishop Fox Company, owner; Engineering, Inc., agent. Zoning Commission recommends approval of the zone change and adoption of the determinations of the 12 criteria. (Action: approval or disapproval of Zoning Commission recommendation.)

Planning Department Director Ramona Mattix said this zone change concerns the preliminary plat for Bishop Fox Subdivision on the consent agenda this evening. It is a proposed five-lot minor subdivision. The zone change has four different classifications. The public zone would be for the proposed fire station. The Community Commercial zone is consistent with the North West Shiloh Plan that the Council just adopted. She said the Residential 9,600 and 7,000 are showing sensitivity to the neighborhood. She said the Zoning Commission is recommending approval of the zone change based on the 12 review criteria. It meets several goals of the 2003 Growth Policy, is bounded by two arterial streets and City water and sewer lines are adjacent in 54th Street West. She confirmed there is a park dedication.

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

8. PUBLIC HEARING AND SPECIAL REVIEW #780: a special review to allow the construction of a 14-bed assisted living facility in Howard Heights Subdivision, Block 2, Lots 26-27, located on Lily Valley Circle, north of Hilltop Road and west of

Garnet Avenue. Gayle M. Laufer, applicant; Michael and Janet White, agents. Zoning Commission makes no recommendation. Planning Staff recommends conditional approval. (Action: approval or disapproval of Staff recommendation.)

Planner Lora Mattox said this special review is to allow construction of a 14-bed assisted living facility on Lily Valley Circle. She said there are two other facilities adjoining this property. The proposed facility will be constructed similar to the current facilities. She said the Zoning Commission could not reach a consensus of a majority vote so they did not make a recommendation. Ms. Mattox noted there was one property owner that opposes this development having concerns about traffic and declining property values. She said the current assisted living facility has three shift changes a week and the staff consists of one manager and one nurse per facility. One delivery truck makes deliveries once per week, she added.

Ms. Mattox said the Staff has reviewed the proposal and is recommending conditional approval with the following conditions:

1. The special review approval shall be limited to Lots 26 & 27, Block 2, Howard Heights Subdivision.
2. The total number of living units is limited to 14.
3. The applicant shall comply with all other requirements of Section 27-613(C) of the BMCC limiting the floor area, maximum occupancy and increases in parking spaces for this application.

Councilmember Brewster noted there were conditions placed on the other two facilities, one being a requirement that the garage areas be fenced because of concerns about medical wastes. He asked why this condition was not included with the review. Ms. Mattox said that was not a condition of the original special review but is part of the site development requirements.

The public hearing was opened. JANET WHITE, 1515 CLARERIDGE TRAIL, INDIANA, said she is one of the owners of the project. She said the facilities offer a home-like setting rather than a large institutional setting. Each resident has their own bathroom and private bedroom, with a common kitchen, dining room and family room. She said the facility will be constructed by the same contractor as the other facilities assuring quality and appearance consistency. The facilities appear to be just larger homes. She said the lots behind the proposed assisted living are owned by churches and the facility would be a good buffer between open lots and the residential area. Ms. White confirmed there was opposition to the proposal at the public hearing regarding the additional traffic. She said the hope is that the shift change times will occur during lighter traffic hours. There have currently been no complaints about traffic problems, she added. She said there are two employees, a manager and cook in each facility. She said the food delivery truck currently delivers once a week and that schedule will remain the same with the additional facility. Ms. White said there is a need for this additional facility in the Heights and this is the last facility planned for that area. She said these facilities have been built especially for assisted living rather than homes that have been converted, so she feels they are offering a choice to potential residents. Councilmember Boyer asked why the facilities have been placed in a cluster design. Ms. White said the closeness allows easy access between the facilities, the location is very quiet and the only traffic is from the staff or family member visits. Most residents are classified "do not resuscitate" so emergency vehicles are only called when a patient falls or to transport a patient to the hospital, she noted.

STEVE HOKANSON, 83 LILY VALLEY CIRCLE, said allowing this assisted living facility would hurt his property values and reduce the potential for him to sell his property at fair market value as his is the only other residence on that street. He did not think he would be in the middle of an assisted living community when he bought his home in 2003. It was his understanding that the lots would be for single-family dwellings. He asked the Council to adhere to that zoning policy.

CHARLES GOLDY, 2127 LYNDAL LANE, said he spent 4-1/2 years in a nursing home with a father-in-law and mother-in-law, looking for a facility like this to take care of them. He said this type of facility has a private and peaceful setting and smaller patient base for better care. He said nursing homes are expensive and most residents want the homelike setting. This type of facility is necessary and urged the Council to consider the needs of the older generation.

MARJORIE HUMPHREY, 1203 JUNO DRIVE, said she has a mother-in-law in Butterfly Homes, one of the assisted living facilities. She was formerly in a larger facility in a community setting on the West End. Ms. Humphrey said her mother-in-law prefers the smaller setting and is happier at Butterfly Homes. It is more of a family setting and more family oriented. She said there is a definite need for these facilities. She urged the Council to consider this in their decision.

ROXANNE HOKANSON, 83 LILY VALLEY CIRCLE, said these assisted living homes are good neighbors and she doesn't object to that. Her objection is that her home is the only residence on that cul-de-sac and her home is 1,500 square feet where they are 5,000 square feet. She said she does not want to be the only single-family home in a complex of assisted living homes.

There were no other speakers. The public hearing was closed. Councilmember Jones moved for approval of the Staff recommendation, seconded by Councilmember Brown. Councilmember McDermott asked how many bedrooms would be allowed in these units with the Residential 9,600 zoning. Ms. Mattix said it is limited to twelve units, but this project would not be considered fourteen separate units. Councilmember Brewster said he was very supportive of this project when there was no other residential development nearby because there is a need for these facilities. He said he is a little surprised at the cluster configuration. He said the intent was that they would blend into the residential community. With the addition of the third unit it becomes different than what was originally envisioned and changes the nature of the community. He said there should be more consideration for how these types of facilities are grouped in residential areas in the future. Councilmember Boyer expressed concern for three facilities on one street. On a voice vote, the motion was approved with Councilmembers Gaghen, McDermott and Boyer voting "no".

9. PUBLIC HEARING AND SPECIAL REVIEW #781: a special review to permit an all-beverage liquor license within an existing structure and on an outdoor patio within the City's right-of-way in the Central Business District on Lot 12, Block 107, O.T. and located at 2923 Montana Avenue. Brad Anderson, owner; Chuck Goldy, agent. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)

Planning Department Director Ramona Mattix said this special review is located on Montana Avenue and is currently operating as Montana Avenue Hockey Bar wishing to

add beverage service. The Zoning Commission is recommending conditional approval with the following conditions:

1. The special review approval shall be limited to the south 36 feet of Lot 12 of Block 107 of the Billings Original Town and the public right-of-way adjacent to the business on N. 30th St., as shown on the submitted site and floor plans.
2. The applicant shall obtain an encroachment permit for the street-side patio area from City Engineering, prior to construction of the fence or wall barrier. The final design and layout of the patio shall be at the discretion of City Engineering.
3. There shall be no amplified or live music on the proposed outdoor patio. Only background music from stereo speakers shall be allowed.
4. The patio area shall remain 'open air' (except for fencing and awning) and shall not be enclosed. Additionally, the approval of this patio is for a sidewalk level outdoor patio only.
5. Due to the serving of alcohol within the public right-of-way, the patio shall be separated from the "open" sidewalk area by a wall, fence, or railing a minimum of 3'-6" high, but not over 5'-0" high. The fence or railing style and material shall be consistent with the specifications contained the Downtown Framework Plan and a fence permit shall be secured from the Planning Division prior to installation. All egress from the buildings and patio area must comply with Fire and Building Codes and any required gates shall be used for exit only from the patio.
6. Operation of the patio shall be allowed only during normal business hours.
7. This Special Review approval shall only be valid as long as there is a valid encroachment permit issued by the City Engineers' Office.
8. The operator of the patio shall indemnify and hold the City harmless for the activity that takes place within the public right-of-way. The Permittee or operator of the patio shall provide proof of an insurance policy, issued by a company licensed to do business in the state of Montana, in the amount of one and one-half million dollars (\$1,500,000.00) combined single limit, protecting the Permittee and the city from all claims for damages to property and bodily injury, including death, which may arise from products liability and operations under or in connection with the encroachment permit. Such insurance shall name the City as an additional insured and shall provide that the policy shall not terminate or be cancelled prior to the expiration date without thirty-(30) days' advance written notice to the City. In addition, the Permittee shall indemnify the City against any and all liability, loss or damage that the City may suffer as a result of claims, demands, costs or judgments resulting from activities related to use of the patio area within the public right-of-way.
9. No signage shall be allowed to be placed on or hung from the fence or railing that encloses the patio.
10. All limitations on expansion of the alcohol service area shall be in accordance with Section 27-613 of the Billings Montana City Code.

****NOTE**** Approval of this Special Review does not constitute approval of a building permit, sign permit or fence permit. Compliance with all applicable local codes will be reviewed at the building permit level. This application is for a Special Review as noted above and no other request is being considered

with this application. The Planning Department points out that the use and development of the property must be in accordance with the submitted site plan.

Ms. Mattix said the special review is not within 300 feet of any park, church or school. Councilmember McDermott asked if there would be any gambling connected with the license. Ms. Mattix confirmed that was her understanding.

The public hearing was opened. CHARLES GOLDY, 2127 LYNDAL LANE, said this is a destination point for coffee and a good place to relax. The purpose of moving the beverage license is to relocate the license at Pratt's so the owner can start a new development at the Pratt's location. The license does have the privilege for gambling but it has been made very clear that the gambling does not go with the license. Another special review process would be needed to allow gambling. He said the outside area is fenced and the site plan is according to City requirements. Councilmember Gaghen asked what the hours of operation would be. Mr. Goldy said they would be normal business hours and maybe a little later in the evening, but not a 2 A.M closing.

There were no other speakers. The public hearing was closed. Councilmember Gaghen moved for approval of the Zoning Commission recommendation, seconded by Councilmember McDermott. Mayor Tooley asked for confirmation that gambling would need another special review. City Attorney Brent Brooks said there is an additional separate special review that would be required under the zoning code. Councilmember McDermott said this appears to be a temporary place for the beverage license. On a voice vote, the motion was approved with Councilmember Brown voting "no".

10. PUBLIC HEARING AND FIRST READING ORDINANCE granting to Montana Dakota Utilities Co., a non-exclusive franchise to construct, maintain, operate, replace and repair a gas distribution system within public rights-of-way of the City of Billings. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

City Administrator Kristoff Bauer reminded the Council of the extension that was granted to MDU last fall for their franchise. Most issues that were a concern were resolved a number of months ago, but discussions on insurance issues were not resolved. Some small changes in the insurance language may occur before the final reading of the ordinance. He said positive discussions with MDU on operational language were successful. He asked the Council to adopt the ordinance on first reading with the understanding that Staff will continue to clear up language concerns before the second reading.

The public hearing was opened. RICK REED, 2205 TREASURE, said he is the Regional Manager for Montana Dakota Utilities. He agreed with the comments by Mr. Bauer. He said this ordinance is more in depth than other agreements in other cities, but additional language includes nothing onerous to MDU. He said the rates are governed by the Public Service Commission and would not be affected by this ordinance. This is just a non-exclusive franchise to operate within the City of Billings.

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

Mayor Tooley called for a recess at 9:45 P.M.

Mayor Tooley reconvened the meeting at 9:55 P.M.

Councilmember McDermott moved for approval of the ordinance on first reading, seconded by Councilmember Boyer. On a voice vote, the motion was unanimously approved.

11. PUBLIC HEARING CONTINUED AND RESOLUTION 05-18259 specifying Water and Wastewater Rate Schedule Adjustments. (PH held 4/11/05). Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

Public Works Director Dave Mumford said the full staff report was presented at the last council meeting for this item. The Friday packet contained information to answer questions that have arisen. He noted that rates in Great Falls are the only ones less than Billings, but added they just had a rate increase. He said Billings is at the bottom of the scale for the state. Mr. Mumford addressed the issue of zoning for billing purposes. He said the rate would remain the same, but distribution would be different. The Staff would ask the Council to make that two separate issues if possible.

The public hearing was opened. STEVE BROWN, 4525 PALIMAR CIRCLE, said he is a Public Utilities Board member. He said the reason for this resolution is to give engineers enough money to keep water flowing uphill greater and greater distances. The cost to provide service to the recently annexed areas is outrageously expensive and should not be passed on to existing rate payers. New facilities are system development and should be paid for by System Development fees. If the fees are not enough, let's increase them, he said. He said he feels the Staff, with the methods of requiring annexation to hook up to utilities, is promoting more annexation. This places more pressure on City services. He said the money for new lines is coming from money set aside for replacement of older lines. Replacement has been behind and now needs to catch up. This makes ratepayers "stuck for paying the price of building the lines".

ERIC COOBS, 535 YELLOWSTONE AVENUE, said Public Utilities does a fantastic job for the citizens of Billings. There is an unlimited supply of water cleaner than the state standards. The sewer system also is an efficient twenty-four hours a day operation. Mr. Coobs said there are some big increases in the proposed rates and much of these expenses are because of growth and annexations. The idea of zoned water rates is directly linked to these recent annexations. He noted Social Security is not keeping up with these increases. He said he would like the Council to direct the Staff to propose a fairer rate system, such as zoned rate increases.

JERRY HANSON, 2323 32ND AVENUE WEST, said the Water District has generated \$40 million in five year of operations. He said \$27 million is designated for reoccurring projects, leaving \$13 million for non-reoccurring capital projects. These projects total \$61 million. He said, if he has interpreted correctly, the amounts must be funded with water rate funds, Briarwood would be funded with special revenue funds. This would result in \$13 million in funds to fund \$23 million worth of projects. At the beginning of 2004 there was \$9.8 million available in cash and investments in the Water Fund. He said it appears the City is "not too far short if no changes are considered". He presented a formula that he felt would generate \$10 million for non-capital projects. With a two month cash reserve, it would cost the City \$375,000 annually after 2010 to fund \$6 million in

bonds without having to raise rates. He said he has made reasonable assumptions and feels the City has enough money to do the projects and not increase rates at this time.

KEVIN NELSON, 4235 BRUCE AVENUE, said he had to bear the entire project cost when his water district came in. He said he had to pay lateral costs, main costs – the entire cost of the entire project for the SID. An area that is annexed and has growth potential has some rate adjustment so they don't have to bear the entire cost of the entire project. He said he would like to see some rate adjustment for property owners that don't have growth potential and are in unique situations so they don't have to bear the entire cost of projects.

MARY WESTWOOD, 2808 MONTANA AVENUE, said she believes the rate increases are a symptom of longstanding problems in Billings – not properly managing growth and having continuously “picked up the pieces when developers have created subdivisions that were not adequate to serve their citizens”. This leaves everyone in the community paying for these problems. She is also opposed to running main lines into farms land where the investment is not recouped for a long time. Ms. Westwood said she is concerned there will not be funds for replacement unless reserves are replenished through rate increases. She said growth needs to be controlled by requiring people to pay the actual cost of development and not spread the cost to all ratepayers. Expecting folks on Social Security to “pick up the tab” for someone in a \$500,000 home on the West End is unfair. Political courage is needed to accomplish this.

There were no other speakers. The public hearing was closed. Councilmember Brewster moved for approval of the Staff recommendation, seconded by Councilmember Boyer. Councilmember McDermott made a substitute motion to approve the rate increase for this year only and arrange for a study to determine the feasibility of zone pricing, seconded by Councilmember Gaghen. Councilmember Ulledalen suggested separating the water from the wastewater, because it has been noted that there are no concerns with the wastewater rate increases. Mr. Brooks said it is within the Council rules of procedure to separate the items. Councilmember Brewster withdrew his motion, Councilmember Boyer withdrew her second. Councilmember McDermott withdrew her substitute motion, Councilmember Gaghen withdrew her second. Councilmember Brewster moved for approval of the wastewater rate adjustment as recommended by Staff, seconded by Councilmember Boyer. On a voice vote, the motion was approved with Councilmembers Brown and Jones voting “no”.

Councilmember Brewster moved for approval of the water rate adjustment as recommended by Staff, seconded by Councilmember Boyer. Councilmember McDermott made a substitute motion to approve the water rate increase for this year only and arrange for a study to determine the feasibility of zone pricing, seconded by Councilmember Gaghen. Councilmember Brewster said it is important to consider what the City is actually buying as consumers of this particular product or service. Citizens are actually paying for water and the suggestion is that the water is more valuable for the citizens who live a certain distance from the treatment plant. He said that doesn't make sense. All citizens are ratepayers in the system and pay a fixed price that relates to the cost of providing that service and gives value to what the users receive. Water at one house should not be worth twice what it would be at another house. He said some of the City's public services are communal services and are accomplished as a community. He noted that Heights residents already pay more because they have no other options. A zoned rate structure

would suggest that Heights residents would pay even more. Councilmember Ulledalen asked what would be accomplished if the rates are increased for only one year. Councilmember McDermott said she does not want to stop any of the projects and this would keep the filter plant project moving ahead. She said there may still be increases after the first year, but a study of how to apply the rates should be done. Fairness and equity are hard to achieve, but she would like to see if it is feasible to change the policy to achieve fairness.

Councilmember Boyer noted it is not a pre-condition of annexation that the water rate structure would need to be changed to accommodate the growth. Councilmember Ulledalen said, as the policy body, at some point the Council is going to have to set policy on issues like this. He said the City is at a point where projects like the filtration system must be financed through an increase in rates. Mr. Bauer said the Staff has endeavored to bring to the Council a more detailed analysis of the need for increases in the water rates. He also noted that a zoned system usually focuses on distance and could result in a lower distribution cost for areas such as Briarwood and Cedar Park as they are closer to the source and higher for the West End areas and the Heights. This is really a rate design issue and not a revenue requirement issue.

He reminded the Council that some deferred maintenance obligations on a larger scale and service to new portions of the community that need to be addressed and capital investment have the biggest effect on rates. Mr. Mumford confirmed that the City does not have enough money in cash flow and reserves to accomplish the projects that need to be done. Mr. Weber noted that cash figures cannot be taken at face value because of the encumbrances of payments to contracts on past projects and equipment replacement costs. Mr. Bauer said based on the Capital Improvement Plan, the City would have a protracted payback or would have to cut back on the operational maintenance and replacement programs if the rate increase is not extended through the next three years. On a voice vote, the substitute motion failed. On a voice vote on the original motion, the motion was approved with Councilmembers Gaghen, McDermott, Brown and Jones voting "no".

12. REPORT from the Mayor's Ad Hoc Transit Center Study Committee. Staff recommends postponing the report to 4/27/05. (Action: approval or disapproval of Staff recommendation.)

Councilmember Brown moved to approve the Staff recommendation to delay the report to 4/27/05, seconded by Councilmember McDermott. On a voice vote, the motion was unanimously approved.

13. PUBLIC COMMENT on Non-Agenda Items. (Restricted to ONLY items not on the printed agenda; comments limited to 3 minutes per speaker.)

- MICHAEL ERICKSON, NO ADDRESS STATED, said it appears that the reports commissioned by the Council from Stacey and Reiter (concerning the Police Chief) have been "thrown aside". He said certain other reports that Mr. Bauer is using for the due process letter should be made public. Mr. Bauer's panel appointments of Asst. City Administrator Tina Volek, the City Attorney and the HR Director are perceived as anything but fair and impartial.

- ROB COVER, 333 QUIET WATER DR. said he is vice-president of JTL Group, Inc. He said he was frustrated by the Council's action on the bid award for the S. Billings Boulevard project earlier on the agenda. He said the bidding procedures and the error in the award by Chief Construction are clear and the award should go to the responsible low bid. He said Council action is contrary to past practices and destroys the integrity of the bidding process. Mr. Cover said it would be hard to "come into a competitive situation now that the numbers are out there."
- MERRY ANN PETERS, 10 ALMADIN LANE said she submitted signed petitions in support of the police chief at the Council's March 14th meeting. It was her understanding that the Council had not seen those petitions. Ms. Peters said she had additional signatures to submit this evening and wanted some assurance that the petitions would be taken seriously. Councilmember Ulledalen offered to receive the petitions and circulate them to the Council. The petitions were given to City Administrator Bauer for Councilmember Ulledalen.
- KEVIN NELSON OF 4235 BRUCE AVENUE spoke on non-enforcement of the noise ordinance. He said there is not a place in the city where you can go and not be bombarded with loud noise from stereos or altered exhaust systems. He asked the Council to be proactive and dedicate an officer to patrol for noise violations.
- CONNIE WARDELL, NO ADDRESS STATED, commented on last week's Council work session. She said she was surprised at the legal opinions of City Attorney Brent Brooks and the HR Director at how personnel policies supersede the City Charter. She stated she would like a response in writing as to when that came about. She said the Charter is the governing document for the City. All policies that are passed should conform to the Charter or include language that where there is conflict the Charter would prevail. Ms. Wardell said this undermines the Council's authority. She also stated that she does not understand why the Council does not think they have the authority nor the responsibility to conduct the hearing of discipline on any firefighter.
- ANDY RIO OF 3037 BARTONIO DR. said the noise ordinance is being abused and acknowledged that it may not be feasible to dedicate a police officer for enforcement of the noise ordinance. Mr. Rio stated he expected that the report from the IACP would confirm understaffing in the police department for the size of this City.
- JERRY HANSEN, NO ADDRESS STATED, said he wanted to end the evening by saying thanks to all the Council for their willingness to serve.

RECONSIDERATION:

COUNCILMEMBER BREWSTER moved to reconsider Item A4: W.O. 04-11: SID 1373: South Billings Boulevard – King Ave East to Underpass Avenue. (Opened 4/14/05). Recommend JTL Group, Inc., \$2,037,141.70, seconded by Councilmember Boyer. Councilmember Brewster said the testimony during the public comment period makes it appropriate to reconsider the Council's decision and move forward with the staff recommendation. Mr. Bauer confirmed that the Staff still endorses their recommendation of awarding the bid to JTL Group, Inc. Delaying for two weeks would not be productive

as there probably would not be a different outcome. Councilmember McDermott said there appears to be a lawsuit no matter which bidder is chosen, so the cleanest way to do this is reject all bids and start the process over. On a voice vote, to reconsider the bid award recommendation, the motion was approved with Councilmember McDermott voting "no". Councilmember Brewster made a substitute motion to approve the staff recommendation of awarding the bid to JTL Group, seconded by Councilmember Boyer. Councilmember Ulledalen reminded the Council of a previous bid with one of the contractors of the bid, where the quantity price created eleven change orders on a particular bid. Mr. Mumford said there have been some issues regarding responsiveness with Chief Construction on a previous contract, but recent work has been positive. He said the Public Works Department has a good working relationship with both firms. Councilmember Boyer said Chief Construction should be held accountable for their error. The bid process has been jeopardized now that the bids have been made public. Councilmember Jones said his previous motion would give the lawyers a chance to review and verify the regulations as they relate to the unit price. On a voice vote, the substitute motion was approved with Councilmembers Jones and McDermott voting "no".

COUNCIL INITIATIVES: -- NONE

ADJOURN — With all business complete, the Mayor adjourned the meeting at 11:15 P.M.

THE CITY OF BILLINGS:

By: _____
Charles F. Tooley MAYOR

ATTEST:

BY: _____
Marita Herold, CMC/AE, City Clerk