

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

June 27, 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 Vince Ruegamer.

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

MINUTES – June 13, 2005. APPROVED as printed.

COURTESIES – None

PROCLAMATIONS

- Homeownership Month: June
- American Guild of Organists Week: June 27 – July 1, 2005

BOARD & COMMISSION REPORTS – Development Process Advisory Review Bd.

Bob Glasgow, Chair of the Development Process Advisory Review Board (DPARB) said the group came into existence via a Mayor's task force and was designed to be an advisory committee to the City Administrator relating to the entire development process including policy and procedure development. He said the committee acts as a review and appeals board for issues not addressed by the existing procedures, rules and regulations. Mr. Glasgow said the board consists of seven (7) members from the community and members from the City Staff and has been in existence for seven years. During that time it has issued twelve recommendations to the Administrator and processed seven appeals. He said the board is a vital service to the community.

ADMINISTRATOR REPORTS – Kristoff Bauer

- Mr. Bauer noted there were two revised agenda items on the Councilmember's desks this evening. One item is a revised memo relating to the Board and Commission appointments.
- He noted that revised items provided in the Friday packet were: Items B9 and B10 with new information relating to the recommendations, Items W & X with corrected date information and Item 17A1-3 that includes an opinion from the City Attorney relating to the concern raised at the last meeting about conflicting language between ordinances and resolutions for annual assessments.

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: #1, #17 & #18 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.)

RON HILL, 2202 WEST SKOKIE, said the opinion on Item 17 by the City Attorney still does not address his concern raised at the last meeting relating to the conflicting language in the ordinances and resolutions for the annual assessments. He said the resolutions have been revised but still do not comply with the intent of the ordinances. He said it should not be the intent of a resolution to override the language in the ordinance. He asked the Council to be cautious when they take action on the resolution for the annual assessments; that they uphold the intent of the ordinances. Mr. Hill restated that “premise” is very specific and does not have a separate definition for assessment purposes. He said premise does not include land without buildings. He said the City Attorney’s “fairer” definition does not correct his concerns.

RECONSIDERATION:

Councilmember Brewster moved to reconsider Zone Change #757: a zone change from R 7,000 to R 6,000 on Lot 6, Block 1, Burnstead Subdivision located at 945 N 19th Street, seconded by Councilmember Brown. Councilmember Brewster noted there was new information from the applicant on this item on the councilmember’s desks this evening and he would propose to delay action on this zone change to allow for review of the new material. On a voice vote, the motion was approved with Councilmembers McDermott and Gaghan voting “no”. The item was added to the agenda as Item 19.

CONSENT AGENDA:

1. A. Mayor’s Appointments:

Action delayed from 6/13/05.

	Name	Board/Commission	Term	
			Begins	Ends
1.	Linda Parker	Human Relations	07/01/05	12/31/09
2.	Delay to 7/11/05	Human Relations	07/01/05	12/31/06
3.	Delay to 7/11/05	Animal Control	07/01/05	12/31/09
4.	Michael Paterson	Board of Adjustments	07/01/05	12/31/09
5.	Delay to 7/11/05	Board of Adjustments	07/01/05	12/31/09
6.	Lloyd Michelson	Library Board	07/01/05	12/31/09
7.	Leonard Dailey Jr.	Zoning Commission	06/27/05	12/31/07
8.	Sandy Weiss	Community Development	6/27/05	12/31/07
9.	Lyn McKinney	Board of Adjustments	06/27/05	12/31/05
10.	Rachel Cox	Parks/Rec/Cemetery	06/27/05	12/31/08

- 2. Unexpired term of Gayle Tompkins.
- 7. Unexpired term of David Gelder
- 8. Unexpired term of Aldo Rowe
- 9. Unexpired term of Danny Graves
- 10. Unexpired term of Sandy Graves

B. Bid Awards:

(1) Wastewater Treatment Plant Administration Building Electrical Improvements. (Opened 6/07/05). (Delayed from 6/13/05). Recommend Ace Electric

for Schedules I through VI, \$132,405.00 plus a 10% contingency of \$13,240.00 for a total of \$145,645.00.

(2) Airport Terminal Kitchen Floor Replacement. (Opened 6/14/05). Recommend no action at this time.

(3) Airfield Lighting Control. (Opened 6/14/05). Recommend rejecting all bids and rebidding at a later date.

(4) Airfield Tractor with Pull-Type Field Mower. (Opened 6/14/05). Recommend Yellowstone Implement, \$83,591.00.

(5) Lower Level Airport Terminal Restroom Upgrades. (Opened 6/14/05). Recommend rejecting the sole bid.

(6) Covert Alarm System Replacement for Billings Logan International Airport. (Opened 6/14/05). Recommend Industrial Communication and Electrical, \$27,711.54.

(7) 2005 Castlerock Park Sidewalk Improvements. (Opened 6/14/05). Recommend CMG Construction Inc., \$64,766.00.

(8) Parking Control System for Park 4 Garage. (Opened 6/14/05). Recommend Ace Electric, Inc., \$79,850.00.

(9) W.O. 05-01: 2005 Water and Sewer Line Replacement Project – Schedules 1 & 2. (Opened 6/21/05). ~~Recommendation to be made at meeting.~~ COP Construction, \$3,328,315.00 for Schedule I and Chief Construction Specialties, \$1,787,605.00 for Schedule II.

(10) 2005 Water Leak Restoration Project. (Opened 6/21/05). ~~Recommendation to be made at meeting.~~ Hardrives Construction, \$52,548.46.

C. Amendment #7, Professional Services Agreement, Airport Business Park Master Plan and Airport Fuel Study, Morrison-Maierle, Inc., \$55,153.00.

D. Professional Services Agreement, W.O. 05-04: Terrace Estates Storm Water Mitigation, Interstate Engineering, Inc., \$19,900.00.

E. Professional Services Agreement, SID 1365: Lake Heights Drive Extension, Engineering, Inc., \$19,453.00.

F. Veterinarian Services Contracts for spay/neuter and minor veterinary services at the Billings Animal Shelter, with: (1) Victoria C. Hamer, DVM, (2) Mark Francis, DVM, (3) Amy Lamm, DVM, and (4) Diane L. Scollard, DVM, term: 7/1/05 to 6/30/06.

G. Lease Agreement for Park I garage ground level space, Associated Employers of Montana, \$32,028.00 revenue, term: 1 year with three one-year options to renew.

H. Approval of Landlord's Consent and Estoppel Certificate for transfer of Stewart Park Antenna Site Lease from 3 Rivers PCS Inc. to MTPCS, LLC, \$2,500 annual rent and \$2,500 use fee for each antenna installed.

I. Memorandum of Understanding with Billings School District #2 for three (3) High School Resource Officers, \$60,000.00 to defray salary and benefits for officers.

J. Memorandum of Understanding with Billings School District #2 for two (2) Middle School Resource Officers, \$50,000.00 to defray salary and benefits for officers.

K. Approval of Right-of-Way Agreements for Grand Avenue Widening:

(1) W.O. 00-15, Parcel 126: Nielsen Enterprises, LLC, a tract of land located in Lot 11, Block 2, Sunset Subdivision, 2nd filing, \$28,100.00.

(2) W.O. 00-15, Parcel 127: Nielsen Enterprises, LLC, a tract of land located in the west 50 feet of Lot 12, Block 2, Sunset Subdivision, 2nd filing, \$13,800.00.

L. Approval of Department of Housing and Urban Development, Economic Development Initiative Grant for West Billings Flood Hazard Assessment, \$297,600.00.

M. Affordable Housing Fund, request from Community Development, Inc. (CDI) for \$300,000.00 HOME funds and \$50,000.00 CDBG funds for a 49-unit, multi-family rental complex known as Lincoln Springs Apartments on Lincoln Lane, terms: 3%, 40-year loan with payback beginning in year 6 after project completion.

N. Affordable Housing Fund, request from Katie Schwend for an additional \$73,195.00 to rebuild the substandard 6-plex property located at 2202-2212 2nd Ave. N., terms: 0% interest, 20-year loan.

O. Acknowledging receipt of petition to vacate Holfeld Lane Right-of-Way, Blake Laughlin, petitioner, and setting a public hearing date for 7/25/05.

P. Street Closures:

(1) Yellowstone County "Captain Clark Signature Days", Yellowstone County Lewis and Clark Bicentennial Commission, N. Broadway between 2nd & 3rd Aves. N (leaving 2nd & 3rd Aves. N open to traffic), July 22, 2005.

(2) YMCA 2005 Montana Marathon, Molt Rd. to Rimrock Rd., Rimrock Rd to 38th St. W, 38th St. W to Poly Dr., Poly Dr. to Virginia Ln., Virginia Ln. to Parkhill Dr., around Pioneer Park to 3rd St. W and disbanding at Daylis Stadium, September 18, 2005.

(3) Deaconess Billings Clinic Classic Street Party, N. Broadway between 3rd & 4th Aves. N, and alley between 3rd and 4th Aves. N, August 25-28.

Q. W.O. 04-12: Alkali Creek Road Right-of-Way acquisition, Tract 2B of Amended Tract 2, C/S 727, Kenneth J. Rolle, Trustee, \$11,264.00.

R. Resolution of Intent 05-18291 to dispose of City-owned property described as Lots 1-8, Block 226, O.T., located on the northwest corner of 8th Avenue South and South 27th Street and setting a public hearing date for 7/25/05.

S. Resolution of Intent 05-18292 to dispose of City-owned property described as Lots 13-19, Block 231, O.T., located on the southeast corner of 8th Avenue South and South 28th Street and setting a public hearing date for 7/25/05.

T. Resolution of Intent 05-18293 to create Park Maintenance District #4029 in Cottonwood Grove Subdivision and setting a public hearing for 7/25/05.

U. Resolution 05-18294 authorizing Commitment Agreements with the Dept. of Natural Resources and Conservation regarding the Sale of \$12,176,000.00 Water System Revenue Bonds, Series 2005 and \$5,650,000.00 Wastewater Revenue Bonds, Series 2005.

V. Second/final reading ordinance 05-5328 amending BMCC Sections 14-301- 14-307, 14-310 and 14-311, providing for the adoption of the 2003 edition of the NFPA1/Uniform Fire Code and updating references to the fire code.

W. Second/final reading ordinance 05-5329 for Zone Change #758: a zone change from R-6,000 to R-Multi-Family Restricted on property described as Lot 1, Robinson Subdivision and located at 416 Orchard Lane. T.J. Van Winkle, owner; Eric Van Winkle, agent.

X. Second/final reading ordinance 05-5330 for Zone Change #759: providing that the BMCC be amended by revising Section 27-305 and 27-306; setting standards for all utility and pipeline transmission and distribution systems, adopting the revisions as an interim zoning regulation and setting a time period for the regulation to be effective. Zoning Commission recommends approval of the zone change and allowing the interim zoning regulation to be effective for a period not to exceed six (6) months.

Y. Bills and Payroll.

- (1) May 27, 2005
- (2) June 3, 2005

(Action: approval or disapproval of Consent Agenda.)

Councilmember Brown separated Items F, G, M and N from the Consent Agenda. Councilmember McDermott separated Item D from the Consent Agenda. Councilmember Clark moved for approval of the Consent Agenda with the exceptions of Items D, F, G, M and N, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

Councilmember Clark moved for approval of Item D of the Consent Agenda, seconded by Councilmember Brewster. Councilmember McDermott asked why the City is financially responsible for this problem. She stated there are flooding problems all over town and public funds are not used to remediate them. Public Works Director Dave Mumford said the current flood problem has jumped the curb, preventing the catch basins from handling the flow of water and eroded the street causing damage to the lot property. It is part of the street system that is causing the flooding and erosion on a hillside that is

occurring. Mr. Mumford said there have been previous storm drain issues that have been corrected by City funds, such as drainage issues in King's Green Subdivision last year. Councilmember McDermott noted that residents in her Ward were told that the flooding problems they experience must be corrected through an SID. On a voice vote, the motion was unanimously approved.

Councilmember Clark moved for approval of Item F of the Consent Agenda, seconded by Councilmember Brewster. Councilmember Brown said he did not see anything in the agreement that stated adoption must occur before spay and neuter procedures. He asked if spaying and neutering is being performed and then animals are "put down". Animal Shelter Manager Dave Klein said adoption generally occurs before the spay and neuter procedure. If there are animals that are classified as "very adoptable", the procedure is done prior to adoption as it is a benefit to folks who do not want to wait for the procedure to be performed. Occasionally a spayed or neutered animal is "put down". Mr. Klein said this may have happened two times in the past year, and that happened because of an illness to the animals that created the need to provide a refund to the adoptee. On a voice vote, the motion was unanimously approved.

Councilmember Clark moved for approval of Item G of the Consent Agenda, seconded by Councilmember Brewster. Councilmember Brown said it appears that the City is interfering with the market by offering rental property at a lower than market price. He asked about the justification for this. Parking Division Manager Liz Kampa-Weatherwax said, according to several realtors and agencies in the City, the market rates for parking range between \$5 and \$12 a square foot. She said the lease rates prior to her tenure were substantially lower and she was directed to bring them up to the \$7 per square foot rate and adjust them accordingly by the CPIU each year. Ms. Kampa-Weatherwax said that for this particular property, its age and location, the \$10 per square foot rate that Councilmember Brown suggested is a little high. The rates are in the middle of the suggested range for the downtown area. Councilmember Clark said he would abstain from voting on this because he is involved in the payment of this rental. City Attorney Brent Brooks advised that the motion is also more appropriately made by someone other than Councilmember Clark. Councilmember Jones moved for approval of Item G of the Consent Agenda, seconded by Councilmember McDermott. On a voice vote, the motion was unanimously approved. Councilmember Clark abstained.

Councilmember Clark moved for approval of Item M of the Consent Agenda, seconded by Councilmember Brewster. Councilmember Brown said a 3% interest rate on a 40 year loan seems very low and would upset the housing market because the City is allowing rentals and lending money at below market value. There are other ways of accomplishing fair market, he added. Mr. Bauer said the purpose of the program is to provide leases at below market value. Community Development Manager John Walsh said this program is trying to target lower income persons by providing home funds to this project at affordable interest rate allowing the applicant to reach a lower income level participant. The target level for the units is for persons at or below 55% of median income. He said it is difficult for lower income persons to achieve new affordable housing without these types of subsidies. Councilmember Brown said subsidizing the renter, such as through the Section 8 program, would be a better idea and would be less upsetting to the housing market. Mr. Walsh said the theory is that these types of units would not be competing with the market rate units because it is available only to the lower income

persons. A recent housing needs analysis revealed a large demand for rental housing for lower income persons and this project meets that need. He added that Section 8 is a very popular program that is usually reserved for existing housing and this project will expand the supply of affordable housing. Councilmember Brewster clarified that the people who benefit from this type of housing really cannot afford what the rental market rate is currently. Mr. Walsh agreed. Councilmember Gaghen noted that developers are generally not interested in developing housing that is for persons in this range of income. This would guarantee, for a longer period of time, that there will be affordable housing for lower income persons. She said this is a valuable program. Mr. Bauer added that this program is also more administratively efficient for the grantor and the grantee side because it does not require the grantor to track an individual person. The contract is created with an entity that enforces the requirements for the housing grant. Councilmember McDermott asked if Community Development, Inc. is a locally owned company. Mr. Walsh said they are a Boise, Idaho based agency that specializes in tax credit and affordable housing type of projects. They have a greater expertise in these areas and have come into the Montana market in the last couple of years. Councilmember Brewster noted this type of development avoids the problem of groups of two or three lower income families inhabiting a single-family residence. On a voice vote, the motion was approved with Councilmember Brown voting "no".

Councilmember Clark moved for approval of Item N of the Consent Agenda, seconded by Councilmember Brewster. Councilmember Brown said 0% interest on a 20 year loan upsets the market even though the previous principle probably applies. He said he does not support this item. Councilmember McDermott noted this project is located in a very distressed area and will vastly improve the entire neighborhood. She said she hopes to see the redevelopment continue there. On a voice vote, the motion was approved with Councilmember Brown voting "no".

REGULAR AGENDA:

2. PUBLIC HEARING AND RESOLUTION 05-18295 approving the filing of an annual Federal Transit Administration (FTA) Section 5307 grant application with the U.S. Department of Transportation for \$1,172,329.00. 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 Jones moved for approval of the Staff recommendation, seconded by Councilmember Brewster. Councilmember Brown asked if the average rider ship for the transit system is low. Assistant Airport Director Tom Binford said the rider ship varies during the day, but during the school year some buses are completely full and additional buses are sometimes required. Councilmember Ruegamer said the bus system must be consistent, even when it may not be cost effective at times. Mr. Binford noted that he has ridden on transit systems in other major cities and has found the same principle to be true as it is in Billings. On a voice vote, the motion was unanimously approved. On a voice vote, the motion was unanimously approved.

3. PUBLIC HEARING AND VARIANCE #CC05-01: a site variance from the Site Development Ordinance, BMCC Sections 6-1203(h)(3), Section 6-1203(i)(4) and 6-1203(i)(7) regarding curb cuts of 77.25 feet and to be 4' 10" from the radius, and backing maneuvers within the right-of-way. Subject property is located on Lots 1-11, 34-46 and the east 10' of Lot 12, Block 26, Yellowstone Addition, 2nd filing being generally located between Central & St. Johns Avenues and between 5th and 6th Streets West. Albertsons, Inc., applicant. Staff recommends approval of the variances. (Action: approval or disapproval of Staff recommendation.)

There was no staff report. The public hearing was opened. DAVID BOVEE, 424 LEWIS, said he generally opposes variances as they are usually granted to the more affluent. He said the best idea is to stick to the rules.

There were no other speakers. The public hearing was closed. Councilmember Gaghen moved for approval of the Staff recommendation, seconded by Councilmember McDermott. Councilmember Veis said this appears to be a complete demolition and redesign of the building and he asked why it could not be built to follow the codes. Public Works Director Dave Mumford said the reason for the variance on the large driveway entrance is to allow semi-trucks to have access to the building without maneuvering in 5th Street. The variance accommodates this design concern. He added that the variance relating to backing up concerns City garbage pickup and safety issues. Mr. Bauer noted that one of the challenges was to allow the existing building to remain in operation while the new one is being built. Without the variances this restricted the area that could be utilized to construct the new building. Councilmember McDermott said this new construction would be a great improvement to the area and she supports the variances. On a voice vote, the motion was approved with Councilmember Veis voting "no".

4. PUBLIC HEARING AND VARIANCE #OP05-02: a variance from the Site Development Ordinance, BMCC Section 6-1203(r) regarding limited access through the alley. Subject property is located on Lot 3, Block 2, Arrowhead Subdivision, 1st filing and generally located at 1442 Main Street. Park's Martial Arts, applicant. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

There was no staff report. The public hearing was opened. LARRY RIDLE, 121 19TH STREET, said he supports the variance for reasons of safety for the students of the academy and the general public. He said the Park's Martial Arts Center is a training center for adults and children of all ages, some as young as five. The parking lot is narrow and the alley access allows cars to exit at peak evening hours without backing onto Main Street which could create a safety problem for the students and a negative impact on the traffic flow of Main Street. He said allowing the students to exit using the alley will aid in avoiding potential accidents and the flow of traffic on a very busy street.

SHAWN COSGROVE, 2508 58th STREET WEST, said he also supports the variance. He said his ten-year old son has trained at the academy for the last five years. He said there is nearly hourly drop off and pick up at the academy allowing a greater potential for an accident if the only entrance and exit is located on Main Street. He added that a fence blocking the alley would also create an impossible maneuvering situation for vehicles.

There were no other 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.

5. PUBLIC HEARING AND RESOLUTION 05-18296 approving a Council Contingency Appropriation for joining the Big Sky Economic Development Corporation for \$1,000.00. 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. Councilmember Brown asked why the City need to be a member of this agency and what are the benefits. He said this looks more like a donation and he is opposed to donating taxpayer's money to this agency. Councilmember Ruegamer said the Big Sky Economic Development Corporation is an offshoot of Big Sky Economic Authority and is a private group of businesses involved in economic development assisting new businesses to relocate in the Billings area. He said they are funded through their own donations and the benefits include being instrumental in retaining businesses like Sysco and bringing Bresnan Communications and Krispy Creme to the Billings area. He said it is important that the City be a part of an organization that assists current businesses to remain in Billings or to expand. On a voice vote, the motion was approved with Councilmember Brown voting "no".

6. PUBLIC HEARING AND FIRST READING ORDINANCE amending the BMCC by adding Sections 18-1101 – 18-1116; prohibiting graffiti, defining terms, providing for a procedure whereby graffiti can be remediated, establishing an effective date and providing a severability clause. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

Zoning Coordinator Nicole Cromwell said the Code Enforcement Division and the Planning Department have been working with the Police Department and Legal Staff to devise an anti-graffiti ordinance for the City. This has taken six year of work to accomplish this. She said the major points of the ordinance are:

- 1) Similar to the City's Nuisance Weed Ordinance, with notice to property owner
- 2) Defines graffiti and prohibits graffiti defacement
- 3) Requires property owner to remove graffiti after notification from Code Enforcement
- 4) Can require perpetrator to remove graffiti within 24 hours
- 5) City can remove graffiti if property owner refuses to remove
- 6) City can charge cost of removal to property owner
- 7) Provides for appeal of cost of removal
- 8) Establishes a reward fund
- 9) Locations of chronic graffiti vandalism may require retrofitting property to reduce vandalism

Ms. Cromwell said Deputy City Attorney Kelly Addy worked with the Planning Department to draft the ordinance and would be able to answer questions. She said graffiti is usually the result of young adults working in groups that are tagging properties as their territory. It may sometimes be gang related. The Police Department does collect this information to track gang activity. She noted that no area is inaccessible to some graffiti artists and graffiti attracts graffiti.

Councilmember Jones asked what measures can be taken to reduce graffiti vandalism. Ms. Cromwell said the City can require that the area be fenced so it is not accessible from the public right-of-way. There are materials that can be placed on surfaces that do not allow paints to adhere and that make the finishes easy to clean. It can also be required that the property owners provide the City with the paint color of the surface so that City crews can remove the graffiti.

Councilmember Jones said he likes the idea of establishing a fund that would help property owners remove the graffiti.

Councilmember Boyer expressed concern for the property owner that is a victim of the graffiti and will be held accountable and fined for not removing the graffiti within a certain timeframe. This hits the property owners twice, she noted. Ms. Cromwell said that is true, but noted that maintenance of property is a basic social contract and in some cases property owners have control over prevention of graffiti via access to their property, better surveillance of their property after hours, security fencing, and guard dogs. She noted there are some cities that provide for prosecution of the property owners that don't follow the regulations regarding graffiti removal. The City does not currently have a mechanism that requires a property owner to remediate a graffiti situation in a short timeframe. Ms. Cromwell agreed they are victims of a property crime, but they also have a duty to maintain that property. Councilmember Ruegamer asked who decides what the punishment would be for the perpetrator of a graffiti crime. Ms. Cromwell said they would go before the Municipal Court Judge. Because there is no mechanism for requiring removal of the graffiti, paying restitution for the remediation, or to be fined and sentenced to community service it is unclear how many graffiti perpetrators are caught. Mr. Addy said graffiti attracts graffiti and to the extent that the City can rid itself of the graffiti there will be less graffiti. This ordinance also gives the property owners the incentive to discover and report who is vandalizing their property increasing the opportunity for more perpetrators to be caught.

Councilmember Veis asked if graffiti in the downtown area would be removed by the Business Improvement District. Greg Krueger, Downtown Billings Partnership, said graffiti within the footprint of the BID would be removed by the BID. The property owners assess themselves to cover the costs of graffiti removal. He stated that City funds are not used for this purpose. Mr. Bauer said the City does expect property owners to maintain their properties and there are similar ordinances relating to snow removal.

Councilmember Brewster asked how the process would work to have a consistent approach to the enforcement of the requirement that property owners remove the graffiti. Ms. Cromwell said all of the forms and protocols are not currently in place, but there are several sections in the ordinance that would assist property owners such as providing financial assistance. Information will be provided to the property owner that helps them find companies that provide the services required to remove the graffiti and the steps that are involved in the process. There will be an information and education program of what is

involved in property maintenance responsibility. Councilmember Gaghen noted that Community Development block grant funds in the amount of \$10,000 were earmarked for graffiti removal several years ago and the entities at the Garfield School will be pleased to see Council action on the graffiti problem.

The public hearing was opened. CHARLES GOLDY, 2127 LYNDALE LANE, suggested funding the graffiti removal with an assessment of \$1.00 per month to property owners who have difficulty cleaning up the graffiti on their property.

MATT BROSOVICH, 845 AVENUE F, said most property owners have insurance to protect them from this type of vandalism. He said this shouldn't be this complicated.

GREG KRUEGER, DOWNTOWN BILLINGS PARTNERSHIP, 2906 3RD AVENUE N., said this is an important ordinance. He said the Business Improvement District (BID) must get permission from the property owners to go onto their property to remove the graffiti from their buildings. If the property owners says "leave it alone" the graffiti would have to stay there. He said an ordinance stating the graffiti must be removed would allow the BID to remove the graffiti as removal is already assessed to the property owners in the BID. He also noted Boy Scout troops are always looking for opportunities to do these types of community services while they are working on their Eagle Scout projects. He said it may be very rare that a property would have to pay for the graffiti removal, but acknowledged it is a low priority for many.

LINDA THOMPSON, 110 YELLOWSTONE AVENUE, said her neighbor across the alley from her residence was the unfortunate victim of graffiti on May 1st. The graffiti consisted of red vulgarities on a light background which her family is continually subjected to because it is a low priority on her neighbor's list. She asked the Council to support this ordinance as this particular graffiti is very distressing and discouraging to her family, especially her children who view this at every meal. Ms. Thompson said she has offered to help her neighbor, thinking it could easily be corrected with one hour's time and a twenty dollar can of paint. She said if the Council does not pass the ordinance, their family will be forced to continue to look at the graffiti which sends the wrong message to the children in the neighborhood.

There were no other speakers. The public hearing was closed. Councilmember Brown moved for approval of the Staff recommendation, seconded by Councilmember Brewster. Councilmember Ruegamer noted that most homeowners repair vandalism damages and don't call the City for assistance. He also noted that most property damage that is extensive can be covered by insurance. He suggested changing the word "can" to "will" require perpetrator to remove that graffiti and any other graffiti the judge deems acceptable. It would be a great punishment for the perpetrators, along with a required fine and additional community service.

Councilmember McDermott said the North Park Task Force reviewed the ordinance with Code Enforcement and particularly liked the portion that establishes a reward fund.

Councilmember Brown expressed concern for the definition of graffiti because some could be considered art and are completely harmless. Councilmember Gaghen said there is a big difference between graffiti (gang related tagging) and murals which are works of art. Councilmember Ruegamer noted the Council is making this more difficult that it needs to be as there is a good definition of graffiti on page five item (a) and said he would support the ordinance.

Councilmember Clark said he is still concerned about making someone a criminal who has been the victim of a crime and had no control over it. He agreed that property owners should be responsible for cleaning up the graffiti, but it should not be considered a crime.

Councilmember Jones asked Deputy City Attorney Kelly Addy if the wording change that Councilmember Ruegamer suggested would make sense. Mr. Addy noted on page seven under Section 4, an item does allow "the court shall order any violator to make restitution to the victim for damages or loss caused directly or indirectly by the violator's offense in the amount or manner determined by the court".

Mr. Bauer said the City needs this ordinance because there are no good definitions for graffiti and that makes it difficult for Code Enforcement to enforce the vandalism created by graffiti. This ordinance allows the act to be defined and includes penalties.

Councilmember Jones agreed with the public speaker whose family looks out on the graffiti each day and that it would be very disturbing. He said this is a reasonable law that can be refined at a later date if needed.

On a voice vote, the motion was unanimously approved.

Mayor Tooley called for a recess at 8:00 P.M.

Mayor Tooley reconvened the meeting at 8:07 P.M.

7. PUBLIC HEARING AND RESOLUTION approving the *Frank Property Urban Planning Study* and expanding the Urban Planning Area to include Tracts 1 and 2, C/S 3139; Tract 1, C/S 2379; and two unplatted tracts containing 50 acres, located near the intersection of Grand Avenue and 58th St. W. Douglas and Ronald Frank, owners. Planning Board recommends denial. (Action: approval or disapproval of Planning Board recommendation.)

Planning Manager Candi Beaudry said this is the first of three applications to expand the Urban Planning Area. She said she would explain some general information that applies to all three. The Urban Planning Area is an area that the City has established to determine where the City can serve the community safely and effectively. The Urban Planning Area must be expanded before annexation and extension of services can occur. She said the Planning Board has reviewed these three requests and have made recommendations. The Council must hold a public hearing and act on these requests.

Ms. Beaudry said the Frank property is located on Grand Avenue, but not exactly at 58th Street West. She noted the terminus of the water and sewer lines in the area. She said the parcel is approximately 50 acres and the owner plans to rezone the area from Agricultural Open-Space and Agricultural Suburban to Residential 9,600, Residential 7,000 and Residential Multi-Family making it a fairly dense development once it has been annexed into the City and completed. Because there is currently no conceptual plan, it is unknown what the demands would be on the City services. The Urban Planning Study does state that 598 units are planned.

Ms. Beaudry noted that this planning study is partially inside of the existing Urban Planning Area and also partially inside of the limits of annexation based on the Annexation Policy approved by Council in November 2004. She noted the "limits of annexation" do not necessarily mean the City cannot extend City services outside of

that particular area, but it helps to define an area that the City can plan for future extension of infrastructure, personnel and equipment. Based on the existing resources, the City can service properties within the "limit of annexation" without affecting the existing taxpayers in the other parts of Billings. An area lying outside of the limit of annexation is more uncertain, because the City does not know the timeframe that services can be provided to the area. Factors that affect annexation in those areas have to do with the revenues, build up of resources over a certain amount of time and the feasibility of constructing infrastructure such as water and sewer facilities. The area outside of the limit of annexation, but to the south is an area that can be more readily served in approximately 2011-2026. Ms. Beaudry said the limits of annexation are tied to the Capital Improvement Plan.

Mr. Beaudry said the exact population (quantity of single-family and multi-family housing) and the configuration of land use is unknown because a site plan was not submitted. Access would be from Grand Avenue and probably 56th Street West as both are arterials and can handle the increase traffic load that is expected to be 1,630 daily trips from the area. Impacts on the transportation network and what off-site improvements would be required are unknown. She said the stormwater may be discharged into the Birely Drain that runs through the property. Water and sewer services must be extended from 58th Street West and Grand Avenue. She noted this property is 300 feet from the terminus of the water and sewer lines. The City could allow for the developer to pay for the extension of the lines, but the City would have to pay for upsizing these lines to provide service farther west. It is the City's policy to upsize the pipe in situations where services may be extended beyond to future residents. Ms. Beaudry also noted there is concern about getting sewer into the line on Grand Avenue as the drainage on the south of property would gravity flow to the south so a lift station would be required. Councilmember Brewster asked why the City would have to pay for the upsizing if the developer agrees to pay for it. Ms. Beaudry said the problem is not so much the infrastructure costs as it is the continuing cost of operation and maintenance to provide services to the area. She added that revenue from the City taxpayers does not cover the cost of providing services to those residents. Currently there is not a study that defines what those costs are and what the shortfall in revenues will be, but a recent draft Fiscal Impact Analysis Feasibility Study prepared by an experienced firm stated the City currently has insufficient revenues for its capital costs and the situation is likely to be exacerbated with additional residential development within annexed areas. It is likely this new development is not paying its way from a fiscal perspective, she added. Ms. Beaudry reiterated that the limits of annexation were developed to ensure that the level of services would not be reduced to existing taxpayers until enough revenue is generated to increase the capital improvements, personnel and the equipment.

Ms. Beaudry said the property is within the influence of Cottonwood Park and would contribute cash-in-lieu toward the development of the park. She said the elementary and middle schools have capacity for additional students, but the high school (West High) has no capacity currently. The property is currently cultivated cropland mostly outside of the annexation limits and services cannot be provided without additional costs, she noted. She said the City may not have to pay for water and sewer costs right now, but would have to compensate the developer at some time.

It is a policy of the City to compensate the developer for costs that involve future developments. She noted the developer can be quickly out of the picture and an agreement would not be practical.

Councilmember Brewster asked if the small portion of this property that is within the limit of annexation were to apply for annexation, would that request be recommended for approval. Ms. Beaudry replied "yes", because of the development of the Annexation Policy and that the area is within the limits of annexation. Councilmember McDermott said the Council struggled a long time with the Annexation Policy and it would be wrong to "throw it out so soon"; it would not be appropriate. Mr. Bauer reminded the Council that serving the future residents does not just involve extending the pipe, but having the capacity to carry the water from the water plant source to the pipes. Potential infill development could use the capacity of the existing system faster than the newly developed area creating the need for upsizing that pipe and increase infrastructure cost. Adding customers will add pressure on capacity and create a situation where demand is higher than designed to serve. Ms. Beaudry noted the Planning Department is currently using the limits of annexation to base the City's water and sewer Master Plan. There must be a boundary to base limits upon to determine the capacity needs within that area.

Ms. Beaudry said the property has problematic soils that exhibit low to moderate stability. The terrain is flat and the study area potentially lies within a 100-year floodplain, however there are no historic sites identified. She reiterated that the financial analysis anticipates higher cost of service than revenue generated.

Ms. Beaudry said the Planning Board recommendation is to deny expansion of the Urban Planning Area.

Councilmember Ruegamer expressed concern that there is a trunk line at 58th and Grand Avenue and no one is going to be able to hook onto it and assist the City in recouping its infrastructure expenditures. Public Works Director Dave Mumford said the Utilities Department is currently in the process of updating the City's Water and Sewer Master Plan because the current plan states that water will never cross Shiloh Road. When the Council approved the annexations of Rehberg Estates, Ironwood and Briarwood, he stated that the Council questioned all of the ramifications of those annexations and what would need to be built to serve those areas, such as reservoirs and pump stations. It is the City's desire to have future customers hook onto the lines and reimburse the City, but there is a great concern that water resources will not be available for emergency situations and manual operation that trip pumps would be required to supply water to meet that need. He said this is a good potential development, but the concern at this point is that the Public Works Department can't confirm whether the system has the correct sized infrastructure to continue annexation in this direction. He agreed that this expansion area is within 500 feet of the trunk line, but the limit of annexation is the area that all departments have agreed the City can serve without additional infrastructure costs beyond what the five-year Capital Improvement Program contains. Ms. Beaudry said there are other concerns as far as the ability to serve this expansion area, such as services provided by the Fire dept., the Police dept., Code Enforcement and Transit. Councilmember Boyer said the Staff has done exactly what the Council has asked regarding the concerns about annexation. She stated she does not support this expansion.

The public hearing was opened. RICK LEUTHOLD, ENGINEERING, INC., 1300 N. TRANSTECH WAY, said he represents the owners. He noted the 80 acres that the Franks own and the nearby 40 acres of school property have had discussions about relocating the school property and fitting it into the subdivision. He said the entire 120 acres would be included in the expansion area. He said the Franks are compelled by the State to request connection to the City services because of the 500 foot rule. Mr. Leuthold said his client is just focusing on the expansion of the Urban Planning Area and not the associated annexation or service connection because the expansion simply determines whether the City can serve the area within the next ten years which his client feels is reasonable. He referred to the minutes of the November 2004 meeting relating to the Annexation Policy. He said Planning Director Ramona Mattix indicated the current policy gives preference for annexation to areas that are within the Urban Services Planning Area and confirmed the policies and goals. Rationale was added to the policy at that time concerning the distance from existing City services and response times. He noted the property is within the 500 feet of existing City services and the Foxtail Subdivision across the way has paid cash-in-lieu toward their proportional share of the extension of service. The Frank property is contiguous to the City and even though it is known that residential properties do not "pay their own way" it does not mean that properties located in this contiguous fashion should not help to pay for the trunk line services. He said the limit of annexation is a guideline statement that needs further review. Mr. Leuthold said the City should consider the fact that it is better to annex the area and be able to control and mitigate the subdividing and platting processes. He asked the Council to consider the Annexation Policy as guidelines and approve the expansion area.

MATT BROSOVICH, 845 AVENUE F, said he is a member of the 20-Year Facilities Planning Group for the School District. He said no school is planned in that area. He noted the City of Billings has water rights for 250,000 people for a number of years and the sewer system can also be expanded to handle a capacity of 250,000 people. The urban planning lines were developed from that criteria and were developed to accommodate 250,000 citizens inside the existing limits. If the City will not be able to adequately serve infill development with water and sewer and continues to expand outward, a big "donut" will be created with developed land surrounding both sides of undeveloped land. He asked the Council to consider this theory and apply the principles set forth in the Annexation Policy.

DOUG FRANK, OWNER OF THE SUBJECT PROPERTY, said his family has owned this property since 1942. He said he has attended many West End planning sessions and worked with City Staff to process his application. He noted that he has met with Jim Carter from Bear-West who was hired to work on the Northwest Shiloh Plan. Mr. Carter states that the maps and lines are drawn as preliminary guidelines and should not be "set in concrete". Mr. Carter further states that each individual tract or proposal must be examined separately and not held to an exact line. Mr. Frank noted that his property contains two (2) different zones. He said his desire is to create a development that is done right that he and the City can be proud of and leave a legacy for his family. Progress is moving to the west and it is hard to stop if that is where people want to live. Councilmember Jones asked if Mr. Frank would proceed with

County development standards if he is unable to obtain water and sewer from the City. Mr. Frank said that was very possible.

ROD WILSON, 422 SHAMROCK LANE, said he has been working with his partner Rick Dorn and with the Frank Family on developing this property. He expressed his enthusiasm for the project because the owners want to be proactive about their proposal. He noted the School District property covers two arterials along Grand Avenue and 56th Street and in discussions with his client it was concluded that the project does not necessarily need to be along those arterials. The Franks do have enough property to work with the School District to change the configuration of the property. In order to develop the property in an orderly fashion the development must originate from Grand Avenue where the services are located. He said the Urban Planning Area must be extended first before they spend a lot of time, effort and money to develop a plan for the property. Preliminary ideas include a compliment of multi-family (Residential 7,000, Residential 6,000 and Residential 9,600) residences. That concept fits well around a school district property. Mr. Wilson said the owners have had many discussions with City Staff to ensure that a good development will be created that will be a great contribution to the City. He asked the Council to give them a chance to do just that.

RICK DORN, 4425 RIO VISTA, said he echoes what all of the previous speakers have said. He pointed out that this is an opportunity for the City to embrace the development that has begun on the West End. He said the City has, by the same time, made it difficult for the Frank family by placing part of their property inside of the Planning Area and part of it outside. The potential for orderly development is the concern of this owner and it involves shifting the guideline to encompass all of their property. He noted that many cities develop from the outside inward. Many of the lands that are closer to the City are not available for development, but this property has willing participants. Discussions with the School District indicate that they are willing to accommodate the plans of the owner. Mr. Dorn said he is the developer of the Vintage Estates to the east that is building the lift station that could accommodate other developments. He asked the Council to assist the Franks by allowing the expansion of the Urban Planning Area to include their property.

JOSEPH WHITE, 926 30TH STREET N., urged the City to continue with the containment policy until a full and complete environmental impact statement relating to water, soil, air and wildlife is received. In the past he has urged an emphasis on concerns for an outbreak of airborne contagious diseases concentrated in the Billings area.

LORALEE ANDERSON, 2530 66TH STREET WEST, asked what the blue area north of Rimrock Road signifies. Ms. Beaudry said the blue area represents property inside of the City and the red area represents property currently outside of the City but within the limit of annexation.

There were no other speakers. The public hearing was closed. Councilmember Ruegamer moved for approval of the expansion of the Urban Planning Area to include the Frank property, seconded by Councilmember Brown. Councilmember Ruegamer said the Council is not approving the annexation at this time, just the planning area. He said it makes sense to include the entire Frank property and not a portion of it; to expand the planning area is not too insidious. He would certainly want to review the

potential annexation portion for cost effectiveness and give that a greater amount of consideration.

Councilmember Jones said anything within 500 feet of the trunk line should be considered as part of the planning area. It makes sense to have the entire parcel in the planning area.

Councilmember Boyer said it does make a huge difference if the Council were to expand the Urban Planning Area. She said she does not support the motion.

Councilmember Clark said the boundary has only been in effect for six months and it doesn't make sense for the Council to consider changing the boundary this soon.

Councilmember McDermott said this is the first step toward annexation. She said this is leap-frog development and it costs the existing City residents a lot of money. The City is annexing without regard to what the costs are and she will not support the expansion.

On a roll call vote, the motion failed 4-7 with Councilmembers Brewster, Brown, Ruegamer and Jones voting "yes" and Councilmembers Gaghen, McDermott, Veis, Boyer, Ulledalen, Clark and Mayor Tooley voting "no".

8. STALEY/WESTWARD HO PROPERTY:

A. PUBLIC HEARING AND RESOLUTION approving the *Staley/Westward Ho Property Urban Planning Study* and expanding the Urban Planning Area to include Tract 1, C/S 1871 and Tract 2A, C/S 2465, 115 acres located at the intersection of Rimrock Rd. and 70th St. W. Larry Staley and Westward Ho, owners. Planning Board recommends denial. (Action: approval or disapproval of Planning Board recommendation.)

Planning Manager Candi Beaudry said this property is a request to expand the Urban Planning Area located on Rimrock Road beyond 70th Street West. She noted that portions of Rimrock Road in the area are not developed. The request includes two properties owned by two separate applicants. The property includes 115 acres and there is no conceptual plan for the future development, but the owners desire to develop the area as single-family restricted (Residential 7,000-Restricted) anticipating 938 units. Both properties lie outside the Urban Planning Area, the limits of annexation, the zoning jurisdiction and the transportation urban planning area. The City basically has no established plans for this area, she added.

Ms. Beaudry said access to the property would be from Rimrock Road at 70th Street West. With 938 units the trips per day generated from the property would be significant. She said the typical stormwater management plan for this type of development would be to retain stormwater on-site because there are no stormwater facilities available. Sewer and water is immediately adjacent in the Copper Ridge Subdivision and if extended to the Staley/Westward Ho property would need to be upsized to serve the properties south of Rimrock Road. She noted there is a modular/manufactured home court that is currently proceeding through the County subdivision process south of Rimrock Road. Ms. Beaudry said serving the property with water and sewer would create a negative impact on existing City residents. She noted a parkland dedication or cash-in-lieu would be required during the subdivision process. The capacity is limited for the elementary and middle school and non-existent for the high school.

Ms. Beaudry said the property is currently being used as cultivated cropland. She said services to this area cannot be extended for many of the same reasons stated relating to the Frank property. The soils are problematic, but the terrain is flat. The residential services would demand a higher cost than the revenue can generate, she reiterated. She said the Planning Board is recommending denial of expansion of the Urban Planning Area for this property.

RICK LEUTHOLD, ENGINEERING, INC., 1300 TRANSTECH WAY N., said the Northwest Shiloh Plan talks about encouraging development contiguous to the existing population centers and the Council must decide what they consider to be existing population centers. The entire area is available to promote residential population development. He said the easterly portion of this property is included in the West Billings Plan identified as a residential development area. Mr. Leuthold said the Planning Board was extremely conflicted about the issues concerning this particular property. He noted that the owners have tried to permit water systems in the area and found it virtually impossible. Now these owners want to be part of the municipality that they are contiguous to and take advantage of the services available. Mr. Leuthold asked the Council to approve the expansion of the Urban Planning Area for the Staley/Westward Ho property.

JOSEPH WHITE, 926 30TH STREET, said his previous remarks apply to this council item.

LARRY STALEY, NO ADDRESS GIVEN, said he and his dad purchased this land in 1948. He said he bought it from his dad in 1976 and has farmed it since that time. He said his family is not land developers or speculators trying to make a quick buck, but just farmers. Expanding the planning area would give the City full control of what is eventually developed on this land and if the expansion is denied he fears bad economic conditions in agriculture would force this property to be sold. He is also concerned that the new owner would develop something that is much less desirable and attractive than what they envision.

There were no other speakers. The public hearing was closed. Councilmember Veis moved for approval of the extension of the Urban Planning Area to include the Staley-Westward Ho property, seconded by Councilmember Brown. Councilmember Veis clarified that he made this motion to be consistent with the last item but does not plan to support the motion. Councilmember Clark made a substitute motion to approve the Planning Board recommendation for denial, seconded by Councilmember McDermott. On a voice vote, the substitute motion was approved with Councilmembers Brown, Ruegamer and Jones voting "no".

B. ACKNOWLEDGING RECEIPT OF PETITION TO ANNEX #05-06: a 115-acre property located at the intersection of Rimrock Road and 70th Street West, described as Tract 1, C/S 1871 and Tract 2A, C/S 2465. Larry Staley and Westward Ho, Inc., petitioners and setting a public hearing for 7/11/05. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

Councilmember Clark asked if the Council needed to address this item as the Urban Planning Area expansion was denied. Mr. Bauer said it is appropriate to address this item as the Council must acknowledge the receipt of the petition to annex because the City has in fact received it from the applicant and they must have the opportunity to be heard. Because the expansion of the Urban Planning Area was not approved the Council

would have no authority to approve the annexation. Councilmember Veis moved to approve the Staff recommendation, seconded by Councilmember Boyer. Councilmember Jones asked if the petitioner would be refunded their application fee because of the denial of the expansion. Mr. Bauer said the fee supports the Staff analysis that has been completed. On a voice vote, the motion was approved with Councilmembers Brewster, Clark and Jones voting “no”.

9. FOXTAIL VILLAGE SUBDIVISION, 2ND FILING:

A. PUBLIC HEARING AND RESOLUTION 05-18297 approving the *Foxtail Village Subdivision, 2nd filing Urban Planning Study* and expanding the Urban Planning Area to include Tract 123 of the Sunny Cove Fruit Farms property, a 9.32-acre parcel located near the northeast corner of Grand Ave. and 60th St. W intersection. Kenmark Corporation, owner; Mark Kennedy, agent. Planning Board recommends approval. (Action: approval or disapproval of Planning Board recommendation.)

Planning Manager Candi Beaudry said this request for expansion of the Urban Planning Area is located on Grand Avenue and 60th Street West and is an extension of an existing City subdivision, Foxtail Village Subdivision, 1st filing. She said the property is slightly under 10 acres and is currently zoned Agricultural Open-Space and would be developed in the same pattern as Foxtail Village Subdivision, 1st filing. A conceptual plan has been submitted for the development with Residential 9,600 on the perimeter (creating a buffer zone) and Residential 7,000 in the interior. She said 90 units (23 single-family units and 16 duplex units) are proposed and this property that is currently outside of the Urban Planning Area, but is entirely inside of the limits of annexation. Access would be from Grand Avenue and via 58th Street through the 1st filing subdivision. It is expected that 400 trips per day will result from the development.

Ms. Beaudry said the stormwater would be discharge into the Bierly Drain and the property owner has permission to do so. There is a plan to widen the drain and increase the storage area to handle what may potentially be the 100-year floodplain. Water and sewer construction, paid by the developer, would come via the 1st filing so there will be no additional cost to the City to provide City services. The City anticipates a higher cost of service than the revenues can generate, however. She said Solid Waste, Parks and Recreation and Public Safety services and requirements would be dealt with during the subdivision process. She noted there is still a problem with school capacity. The land is currently vacant and is within the annexation limits. Ms. Beaudry said the Planning Board is recommending approval of the expansion of the Urban Planning Area to include the Foxtail Village Subdivision, 2nd filing. Councilmember Clark asked if the water and sewer pipes only have to serve the two subdivisions. Ms. Beaudry replied “yes” and noted that any developments further west would require re-evaluation of the capacity of the existing lines. Councilmember Brewster expressed concern that future pressure would be drawn down. Assistant City Administrator Tina Volek noted that inclusion of this property into the City was previously anticipated and this is why the limits of annexation included this property. Property owners below the Foxtail Subdivisions have not been anticipated for inclusion and the City has not built to accommodate them. Mr. Bauer said the City must have a planning boundary on which to plan and he understands that boundaries create confusing arguments. If the boundaries are not intact, the Staff would not be able to

develop information that would have a rational basis to guide the Council in their decision process. He added that this boundary was developed to be used to make recommendations to the Council relating to the Capital Improvement Plan, the budget and planning processes.

The public hearing was opened. RICK LEUTHOLD, ENGINEERING, INC., 1300 TRANSTECH WAY N., said he represents the developers of the Foxtail Village Subdivision. He said this is within the limits of annexation and he asked the Council to support the expansion. He appreciates what has been said about design volumes and capacity; however those are generalization of how we look at water and sewer lines. He said the City would not want to undersize service to these areas because of the possibility of extending the limits of annexation in the future. He noted there are occasions when the lines have been re-sized and residential development has failed to occur, such as in the area of the Yegen Golf Course and the LDS Church. Historically an area does not develop 100% uniformly as residential properties, so there are capacity reserves in line as the City goes forward. He said the boundaries should be viewed as a guideline and not as a "hard and fast line".

There were no other speakers. The public hearing was closed. Councilmember Boyer moved for approval of the Planning Board recommendation for item 9A, seconded by Councilmember Ruegamer. Councilmember McDermott said there are now City islands in the County because of the leap-frog development. To rectify this problem, the Council must only approve properties within the limits of annexation. She said she will support this motion, only because the property is within those limits. Councilmember Brewster reiterated that residential development does not pay its own way. Quantifying it will show that more expensive homes may pay their way and the less expensive one will not. The only way to come close to paying for it is through dense development, he added. On a voice vote, the motion was unanimously approved.

B. ACKNOWLEDGING RECEIPT OF PETITION TO ANNEX #05-04: a 9.32-acre parcel located at the northeast corner of the intersection of Grand Ave. and 60th Street West, Tract 123, Sunny Cove Fruit Farms, Kenmark Corporation, petitioner, and setting a public hearing for 7/11/05. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

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

Mayor Tooley called for a recess at 9:40 P.M.

Mayor Tooley reconvened the meeting at 9:47 P.M.

10. PUBLIC HEARING AND SPECIAL REVIEW #784: a special review to permit an all-beverage liquor license with gaming at a proposed new Town Pump gas station/convenience store/casino located at 3150 King Ave. W in a Controlled Industrial zone described as Tracts 1C-2 and 10, C/S 1479 Amended. Town Pump and Affiliates, LLC, owner; Engineering, Inc., agent. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)

Zoning Coordinator Nicole Cromwell said this special review is located at the southeast corner of 32nd Street West and King Avenue and currently has a car dealership and a mini-storage on-site. Two adjacent property owners have reached a written agreement with Town Pump and Affiliates, LLC concerning issues that the Zoning Commission did not feel they had the authority to deal with under the special review approval. Those issues concerned lighting for the growing season for the Village Garden Greenhouse and screening for properties that are across the arterial such as the manufactured home park. She said the Zoning Commission is recommending conditional approval with the following conditions:

1. The special review approval shall be limited to the proposed convenient store/casino building located on Tracts 1C-2 and 1-D, Certificate of Survey 1479 Amended as shown on the site plan submitted with the application.
2. Any lighting on the building or within the parking lot shall have full cut-off shields so light is directed to the ground and not onto adjacent property. Lighting of signs shall be as allowed within the City Sign Code (Section 27-701 BMCC).
3. Access onto King Avenue West and 32nd Street West shall be restricted as follows:
 - Access to King Ave. W. shall be limited to a single driveway, not to exceed 40 feet in width, except that an additional shared access with the property to the east would be allowed.
 - The King Ave. W. driveway closest to the intersection with 32nd St. West shall be located a minimum of 50 feet from the end of radius (future curb) at the intersection.
 - If an additional shared driveway is used, spacing between driveways must meet the minimum City requirements of 25 feet of full height curb.
 - King Ave. W. driveway(s) (including any joint use driveway) will become right-in/right-out when King Avenue is reconstructed and median is installed.
 - A single driveway onto 32nd St. West is permitted as shown. The driveway shall not be located any closer to King Avenue.
4. All limitations on expansion of the alcohol service area shall be in accordance with Section 27-613 of the Billings Montana City Code.

Ms. Cromwell said curb, gutter and sidewalk will not be installed at the new facility, but the owners have agreed to participate in any SID for those improvements. The site has been designed in anticipation of the street improvements, but the City has not finalized the street design. She noted that a waiver of protest is on file.

The public hearing was opened. KURT THOMSON, ENGINEERING, INC., said the intersection is currently 2-3 feet high creating the need to rebuild the intersection before the street improvements can be installed. He said Town Pump has worked well with the neighbors to resolve concerns.

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

11. PUBLIC HEARING AND SPECIAL REVIEW #785: a special review to permit an all-beverage liquor license with gaming to an existing beer and wine license located on Lots 10-18, Block 103, O.T. and generally located at 3324 1st Avenue North in a Community Commercial zone. Greg and Becky Pekovich, owners. Zoning Commission recommends conditional approval and waiver of the 600' separation requirement. (Action: approval or disapproval of Zoning Commission recommendation.)

Zoning Coordinator Nicole Cromwell said this special review relates to Beck's Bourbon Street Casino located at 3324 1st Avenue North. This review would upgrade their existing beer and wine with gaming license to allow an all beverage liquor license with gaming. A previous special review approved the beer and wine license with conditions in 2003. She noted those conditions have been met and no complaints have been received relating to this facility. The casino is associated with the Esquire Motel that is entirely separate but located nearby. She said the Zoning Commission is recommending conditional approval on a 4-0 vote with the following conditions:

1. The special review is limited to the building as shown on the submitted site plan and includes a basement area. An increase in the size or location of the building is limited by Section 27-613 BMCC.
2. All limitations in Section 27-613 BMCC shall apply.

Ms. Cromwell said there are three church properties within the vicinity. The view of the casino is blocked from two of the churches. The third church is on the edge of the 600 foot boundary and 1st Avenue North separates the casino from that church. She noted there have been no negative comments from the surrounding church properties at the Zoning Commission public hearing for the special review.

Councilmember McDermott asked if Central Catholic High School is outside of the 600 foot boundary. Ms. Cromwell replied "yes". Councilmember Jones noted the previous review in 2003 created some concern from several churches. He asked for clarification that the churches are not opposing this special review. Ms. Cromwell said there was no opposition voiced or written from the churches only a few informational calls. Councilmember Gaghen asked if the facility is still serving food. Ms. Cromwell said she was under the impression that had been discontinued.

The public hearing was opened. JOSEPH WHITE, 926 NORTH 30TH STREET, said he is opposed to the special review because it is close to the Central Catholic High School. He also noted that he attends one of the churches in the area. He said this facility is a minor nuisance and the City should maintain the 600 foot separation regulation.

GREG PEKOVICH, NO ADDRESS GIVEN, said he is the owner of Beck's Bourbon Street Casino. He said they are requesting special review approval to move an existing liquor license to a facility that currently has a beer and wine license. He said the main concern of a church during the prior special review was the possibility that the license would draw a negative element to the area. Mr. Pekovich noted that he would not want to jeopardize the motel facility that he owns located nearby by operating a business that could be detrimental to his other business. He said the plans for food service are currently in limbo so they have made fast food available for now. The lounge area will be expanded to 1st Avenue North for greater visibility and room to offer additional services that encourage greater traffic. He said the second phase will be to change the theme of the

motel that ties it to the casino to promote activity from one business to the other. Councilmember Ulledalen asked if the former owners had an all beverage liquor license at one time. Mr. Pekovich said there was a beverage license there for thirty years, but the reason is unknown as to why they sold the license.

There were no other speakers. The public hearing was closed. Councilmember Clark moved for approval of the Zoning Commission recommendation with conditions and the waiver of the 600 foot separation requirement, seconded by Councilmember Ruegamer. On a voice vote, the motion was approved with Councilmembers McDermott and Gaghen voting "no".

12. PUBLIC HEARING AND SPECIAL REVIEW #786: a special review to have a fenced outdoor storage yard for scaffolding and other construction material on Lot 2, Block 2, Holiday Business Park Subdivision and generally located at 1348 Holiday Circle in a Highway Commercial zone. Optima Venture, LP, owner/agent. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)

Zoning Coordinator Nicole Cromwell said this special review is to permit a fenced area for the storage of construction materials on property located at 1348 Holiday Circle. She said the Staff is recommending the following conditions:

1. The special review approval shall be limited to the Lot 2, Block 2, Holiday Business Park Subdivision.
2. A site obscuring fence, constructed of permitted materials as specified in Section 27-604(e), shall be placed around the perimeter of the storage area. The fence shall comply with the clear vision standards set forth by Figure 3 of Section 27-618, BMCC.
3. A building permit shall be obtained for the proposed fence, as it is greater than 6-feet in height. A site plan clearly depicting the clear vision triangle and setbacks shall be reviewed by the Planning Department prior to submittal for a building permit. The site shall comply with Section 6-1200. Site Development and Section 27-1100. Landscaping, BMCC.

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

13. PUBLIC HEARING AND SPECIAL REVIEW #787: a special review to locate an all beverage liquor license for on-premise consumption with gaming in a new building on Lot 5-B, Block 3, Midland Subdivision, 3rd filing and generally located at 920 S. 24th Street West in a Controlled Industrial zone. Cape France Enterprises, Joann Cape, owner; Engineering, Inc., agent. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)

Zoning Coordinator Nicole Cromwell said this is a request to locate an all beverage liquor license with gaming at a proposed Old Chicago Restaurant at 920 S. 24th Street West, across the street from Shopco. She noted the site plan with the outdoor patio

located on the west side of the building away from the street. She said the Zoning Commission is recommending the following conditions:

1. The special review approval shall be limited to the Lot 5-B of Lot 3, Midland Subdivision, as shown on the submitted site plan.
2. There shall be no amplified or live music on the proposed outdoor patio. Only background music from stereo speakers shall be allowed.
3. The patio area shall remain 'open air' and shall not be enclosed. Additionally, the approval of this patio is for a sidewalk level outdoor patio only.
4. Operation of the patio shall be allowed only during normal business hours.
5. No signage shall be allowed to be placed on or hung from the fence or railing that encloses the patio.
6. All limitations on expansion of the alcohol service area shall be in accordance with Section 27-613 of the Billings Montana City Code.
7. Trash enclosures shall be constructed of wood, vinyl, brick, stone or concrete block or other building materials and provide a closing gate on one side. No chain link or wire material is allowed for this enclosure.
8. The site must comply with BMCC 27-1100 for landscaping requirements.
9. The site must comply with BMCC 6-1200 for site development requirements.

The public hearing was opened. MARSHALL PHIL, ENGINEERING, INC., 1300 N. TRANSTECH WAY, said he represents the developer. He said the developer is now proposing to place the patio on the east side of the building. The concern that the Zoning Commission had relating to patios adjacent to arterials is access to the patio. The patio will be designed to be completely enclosed with access only from the interior of the building and no access to the street. He noted the property owner to the south is supportive of the change as this pushes the building to the west giving more visibility to that property owner.

DON CAPE, 2020 CHARLOTTE STREET, BOZEMAN, MT, said the bar and enclosed portion of the restaurant will serve 260 people. He said placing the patio on the east side of the building would be better for the patrons as this will afford more shade from the summer sun. Concerning the music, he said it is an outside possibility that there would be a live band on the patio.

ERNIE DUTTON, NO ADDRESS GIVEN, said he is the property owner to the south and is very excited about the Old Chicago Pizza business that will be at that location. He said this appears to be a quality development. Regarding condition #1, he said he would like to see the patio on the east side of the building as it would not be impacting any property owners. Mr. Dutton said he hope that condition #1 would be loosely interpreted to allow any changes that may need to be adjusted such as reciprocal parking and access. He said a live band would not impact his property.

There were no other speakers. The public hearing was closed. Councilmember Gaghen moved for approval of the Zoning Commission recommendation with conditions and deletion of the wording "as shown on the submitted site plan", seconded by Councilmember McDermott. Councilmember Clark asked if they could change anything on the site plan with this motion. Mr. Bauer said they could change anything within the site development regulations. Councilmember Jones amended the motion to eliminate "or live" and "only" in condition #2, seconded by Councilmember Ruegamer. Councilmember

Jones said it is reasonable to eliminate those words because they are not located in a neighborhood. On a voice vote, the amendment was unanimously approved. On a voice vote for the motion as amended, the motion was unanimously approved.

14. PUBLIC HEARING AND SPECIAL REVIEW #788: a special review to permit a beer and wine license with gaming in a new building on Tract 4D, Studer Acreage Tracts and generally located at 1251 S. 32nd Street West in a Controlled Industrial zone. Doc & Eddy's, George Frank, owner; Charles B. Goldy, Jr. of cbg architects, agent. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)

Zoning Coordinator Nicole Cromwell said this is a new casino proposal in a multi-tenant building to be constructed at 1251 S. 32nd Street West directly adjacent to the Food Services America warehouse. She noted the applicant has submitted two site plans options orienting the building facing both south and north.

The Zoning Commission is recommending approval with the following conditions:

1. The special review approval shall be limited to Tract 4D of Studer Acreage Tracts.
2. No outdoor seating, outdoor music or outdoor public announcement systems will be allowed with this application.
3. Any lighting on the building or within the parking lot shall have full cut-off shields so light is directed to the ground and not onto adjacent property. Lighting of signs shall be as allowed within the City Sign Code (Section 27-701 BMCC).
4. All other limitations on expansion shall apply in accordance with Section 27-613 of the Billings Montana City Code.

The public hearing was opened. CHARLES GOLDY, CBG ARCHITECTS, 1616 BROADWATER AVENUE, said he is representing the project owners. He said this is a small casino that must relocate due to a change in state law.

TOM WILLIAMS, OPERATIONS MANAGER FOR DOC & EDDY'S, said this is the third casino that must relocate due to state law.

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

15. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #755: a zone change from Public to R-7,000 on a 14,673 square foot tract of land formerly known as Holfeld Park and located in the SW4 of Section 27, T1N, R26E, north of Swords Lane and south of Alkali Creek and the Billings Bench Water Association canal. Blake Laughlin and PRPL, owners, 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.)

Zoning Coordinator Nicole Cromwell said this is the Blake Laughlin development south of Alkali Creek. The parkland swap was approved on June 13th that traded this 14,673 square foot property for a larger parcel that was donated to the City by Mr.

Laughlin that borders Alkali Creek and includes a critical connection for the Heritage Trail. The proposal is to change the zoning from Public to Residential 7,000 so that Mr. Laughlin can proceed with the Brookside development that is planned for this parcel. The surrounding property is Residential 7,000.

Ms. Cromwell said the zone change meets several goals of the 2003 Growth Policy, allows cohesive development outside of the floodplain of Alkali Creek and adds the critical connection for the Heritage Trail plan.

The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Brewster moved for approval of the Zoning Commission recommendation, seconded by Councilmember Ruegamer. Councilmember Boyer said she would abstain from the vote as this property belongs to her secretary. On a voice vote, the motion was unanimously approved. Councilmember Boyer abstained.

16. SANDSTONE DOWNTOWN REDEVELOPMENT DISTRICT:

A. PUBLIC HEARING AND FIRST READING ORDINANCE relating to the Downtown Redevelopment District and the creation of a new Urban Renewal Area; authorizing the removal of certain property from the Downtown Redevelopment District, establishing such property as a new 27th Street Urban Renewal Area, adopting an Urban Renewal Plan, therefore including a Tax Increment provision, approving an Urban Renewal Project therein and authorizing the issuance of Tax Increment Urban Renewal Revenue Bonds. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

Deputy City Administrator Bruce McCandless said there are public policy decisions the Council must make relating to the Sandstone project. He said the Staff has reviewed both the ordinance and Development Agreement numerous times and think that they are both in final form. The policy decision is "should the City be participating with a private developer in this development, and if so what forms of and how much assistance (in funding) should be given." The property is described as Lots 5-10, Block 92, Original Townsite and is in the 100 block of N. 27th Street. Of the six lots, the City owns 5 and the Fagg Family Properties, LLC owns the sixth lot in between the City's lots. He said the current improvements on the property consists of surface parking lots (City) that are a combination of leased or month-to-month spaces as well as metered parking (a total of 60 spaces) and a 25' X 140' vacant building owned by the Fagg Family.

Mr. McCandless said the project would cover a 21,000 square foot footprint, 12-15 stories high. The concept is to condo the entire project with establishment of the Condo Association and the associated documents occurring after the Development Agreement is approved. He stated the association and the documents would be subject to the City's approval. The first floor would consist of retail space, with the next four floors of parking (215 spaces), two floors of office space and 30-40 single-family residential units on the remaining upper floors. The total estimated cost is \$17 Million which includes all costs, both construction costs and soft costs of financing, permits and traffic control during construction.

Mr. McCandless said the project financing only states the major sources of financing and are rough numbers. Private funding will include a bank loan of \$8.1 Million and a developer contribution of \$400,000 to \$500,000 if the value of the land is included. Public funding will include the formation of a Tax Increment District that would support \$2

Million in bonds, a Fannie Mae loan (available because of the housing component of the project) for \$2 Million, \$1,725,000 in Parking Funds from the City for the public portion of the proposed parking and \$450,000 (City land contribution) in land value.

He said the City's role is: 1) in the land valued at \$450,000 that would be transferred to the developer at no charge after the Development Agreement is approved, 2) the Tax Increment District formation (withdrawing the property from the present district and forming a new district containing these six lots whereby the future value of the structure would create a tax increment of approximately \$200,000 per year) and issue the bonds (the increment would pay the debt service on the bonds estimated at \$2 Million over a 20-year term), 3) acting as the Fannie Mae loan conduit (a short term loan with all of the costs paid by the developer) and 4) participating in the parking element (half of the spaces are designed to be for public use operated on a month-to-month lease basis or hourly rate). The parking would be totally automated on entry and exit so no additional parking personnel would be needed. Private parking spaces would be dedicated to the tenant or housing owners. He noted the Fannie Mae loan fits very well with this project because of the condo aspect and that the developer is not anticipated to retain ownership for a long period of time. Councilmember McDermott asked how many spaces would be dedicated to public parking. Mr. McCandless said the Development Agreement identified 106 spaces for public parking and 106 for "private" parking. The cost of the public spaces is valued at \$16,000 per space. The private parking would be sold to the condo unit owners or leased to them on a long-term basis.

Mr. McCandless said there are a number of risks and rewards for the City in this project. Concerning the land there would be no compensation to the City with a limited right of reversion where the City could get the land back in the event that the project should fail up to the point that the bank issues the loan and a mortgage is created. The City must comply with state law and that is why the land will be offered for disposition at the July 11th council meeting. This is the only way the City can continue to work with the developer, by following state law. He noted the Development Agreement is before the Council this evening anticipates the City property would transfer free of charge.

Councilmember Ulledalen asked why this project requires so much public money. Mr. McCandless said this is common in all areas, both nationally and internationally, because the cost of downtown redevelopment is very high in comparison to greenfield development, making it very common for public subsidy to be required for downtown redevelopment. Whether it is the right amount of subsidy is a decision of a public policy body such as the Council. Councilmember Ulledalen expressed concern for the high amount required from the City when there are private funds at low interest rates available. He also asked how the \$500,000 that the City would have to commit to the Fannie Mae loan would affect reserves. Mr. McCandless said it takes the \$500,000 out of circulation affecting cash flow levels. One of the risks of the Fannie Mae loan is that \$2 Million is loaned to the City, who in turn re-lends it to the developer and as one of the conditions of the loan the City has to commit \$500,000 in order to secure the loan. In the event that the project gets partially built and the developer does not repay the City, the City would still be liable for the repayment of the loan.

Councilmember Boyer asked if this project would expend all of the Parking Division reserves. Mr. McCandless said the City will have to bond \$5.5 Million for the Park II expansion that will require the use of \$2 Million of the City's reserves. He noted the

Downtown Billings Partnership has committed funds from the present Tax Increment District to the Park II expansion if the City proceeds with Sandstone project. That would alleviate some of the burden on the \$2 Million in reserves, leaving about \$1.7 Million in reserves after the Park II expansion. All of that money is projected to be put into the Sandstone project and would leave no immediate funds available for other Parking Division projects. He said the Parking Division generates an annual income that could support additional debt to assist other projects. Councilmember Boyer noted the additional parking provided in the Park II expansion and asked why the City needs to participate in the 106 spaces of public parking in the Sandstone project. Mr. McCandless said Park II currently has 500 spaces and the expansion will add 400 spaces. The 200 spaces in the Sandstone structure would provide 1,100 spaces in this two square block area. The developer feels that the additional spaces are needed to accommodate the uses of the proposed Sandstone structure; the retail on the first floor and the employee and customer parking for the office space.

Councilmember McDermott asked if there would be any reserves to assist in a future project at 4th and Broadway if the City commits the funds needed for the Sandstone project. Mr. McCandless said the Sandstone project would require the \$1.7 Million in reserves leaving very little or no additional cash reserves in the Parking Fund for additional projects such as 4th and Broadway. The annual income that is generated in the Parking Division may be used to support additional debt to assist with a project there. Mr. Bauer said there would be the ability to form a tax increment district for a proposed 4th and Broadway project. He said the Parking Division funding ability of any future project at 4th and Broadway depends on how the Park II expansion progresses and how the cash flow "plays out". All of the other portions, such as the TID, value of the land, a Fannie Mae loan (if there is housing) would potentially be available for any future project at the 4th and Broadway site. There would be no Parking Funds under the current projections, he reiterated. Mr. McCandless added that the tax increment funding available would also depend on the taxable value of the project. Councilmember Brewster noted that a tax increment district at the 4th and Broadway site could possibly generate more revenue than the Sandstone project because the City would be starting with a parking lot.

Councilmember Boyer said she would like to see a project performance report on the Sandstone project, such as what are the revenues and expenses. Mr. McCandless said there is a gross picture of what the total project costs are, where the cost centers are and where are the sources of funds. The City does not have very detailed information on the project income and expenses, however. He said there is information on construction costs, however. He noted additional information (such as purchase price of the units and the income they will generate) was provided to Administration and the Councilmembers recently, but he did not have time to review it.

Councilmember Ulledalen asked about a traffic study. Mr. McCandless said one would have to be completed because the proposed garage entry and exit would be on 27th Street, which would generate enough traffic to trigger a traffic accessibility study. Part of the design contract of the Park II expansion required a traffic accessibility study and he suspects it would be required at Sandstone as well.

Mr. McCandless said a majority of the property for the proposed Sandstone project is currently not on the tax rolls. It would not be an immediate benefit for the taxing jurisdiction, because of the Tax Increment District, until the bonds are paid off. There is no

tax value in the property currently, so the City is not losing any tax benefits by creating the Tax Increment District. He said the housing component of the project is an attractive asset to the downtown, creating a "24-hour downtown" that the City has desired for several years. The housing is proposed as upscale housing that will attract more disposable income available to purchase other goods and services in the downtown area. He added the construction loan is a short term loan that turns over quickly.

He said the on-site parking would help the project succeed; replacing what will be lost from the existing surface lots. The project will fill a gap in a busy downtown street making the area more attractive and generate more downtown activity. He said the property is ripe for development and having a tax increment district in place certainly benefits any project and its completion. The tax increment funds are designed to assist the project as a general benefit, helping to keep the developers costs low enough so that he can compete with greenfield development. Parking funds would be used to purchase the public parking portion of the project. Mr. McCandless said a conference call with the bond council last week included concerns expressed on the part of the bond council about using tax increment funds for the project. He noted the project may need to be restructured so that the tax increment funds are used for the public parking portion of the project and then use the parking funds to purchase the "private" spaces and either lease or sell them to the condo owners of the project. He added the major components of the project and the Development Agreement would not change. He said the Staff recommendation to the Council is to adopt the ordinance that removes this property from the existing tax increment district and creating a new district and either delay action on the Development Agreement until July 11, 2005 (to allow Staff time to work out the details of the agreement both to the City's and the developer's satisfaction) or conditionally approve the Development Agreement. He noted, if approved, the Tax Increment District ordinance would be on the July 11th agenda for a second reading along with the land disposition issue.

Councilmember Veis asked for more details on the risk/reward issues with the Fannie Mae loan. Mr. McCandless said the City would be the borrower of the funds and would be obligated to repay the funds. The City in turn lends them to the developer. In order to secure the loan the City must put \$500,000 into an escrow account and the funds remain in escrow until the loan is repaid. The loan cannot extend for more than two years, but it could be less than two years and will be used by the developer to subsidize the cost of the housing structure. He noted the primary benefit to the developer is that the interest rate is slightly lower than the market rate. Two or three weeks ago the interest rate was 5-1/2%, he noted. He confirmed that the City could potentially be "on the hook" for \$2 Million. Mr. Bauer said the City does try to protect their interests by asking for a commitment of financing and entering into a Loan Agreement that has some assurances and some private lenders in place to take over if needed. Mr. McCandless reminded the Council that the nature of the project (being a condominium) would provide that all of the units would eventually be sold (retail, office space, housing and even the parking) securing the revenue stream to repay the Fannie Mae loan. He said this kind of loan fits this project very well. As a requirement of the private financing, 50% of the units must be presold, he reiterated; half of the risk is therefore modified.

Councilmember Brown asked if there was an estimated value of the project. Mr. McCandless said the developer has worked with the Department of Revenue to give him

an estimated taxable value in the area \$14 Million and based on that taxable value the annual tax increment is calculated at \$2 Million. Councilmember Brown asked about the value of the five parking lots. Mr. McCandless said a market valuation in the last sixty days gave an estimated value of \$450,000.

Councilmember Gaghen expressed concern about the tight timeframe of the two year Fannie Mae loan. Mr. McCandless said the construction period is anticipated to be 15 to 18 months and with the requirement of 50% presold units, there is some time available to sell enough units to repay the loan.

Councilmember Ulledalen expressed his concern that the City's land will be conveyed to the developer and the City's only right of recision is prior to the land being encumbered by the bank debt. If the deal potentially blows up, the City would lose the land and also be on the hook for \$2 Million. Mr. McCandless said that was the worst case scenario.

Councilmember Veis asked when the \$2 Million in tax increment bonds would be required in the process. Mr. McCandless said the Development Agreement currently states the tax increment dollars would be the first dollars in the project.

Councilmember McDermott asked about the terms of the \$8 Million private loan to the developer. Mr. McCandless said the developer is in the audience and could answer that question.

The public hearing was opened. JOE WHITE, 926 N. 30TH STREET, said this is a beautiful plan but the project needs the necessary air supply and air quality tests. Some of the downtown area is in a state of collapse and he expressed concerns about the electrical charges that emit from the ground causing people to be electrocuted.

BILL COLE, NO ADDRESS GIVEN, said he represents Harrison Fagg, the developer. He said there is a lot of good that can come from this project because the residents would have an investment in the downtown area, bringing vitality in both the residential and commercial aspects. Additional parking that allows street level retail development to the core of the downtown is another great benefit. He encouraged the Council to adopt the Staff recommendation to approve the creation of the Tax Increment District and the Development Agreement subject to the determination by Staff for the best way to invest the proceeds of the tax increment dollars either through the lease arrangement or direct investment in the project itself. Mr. Cole said the parking lots are not a direct subsidy but trading value for parking; the City is getting fair market value in the \$1.7 Million dollar investment. The Fannie Mae loan is a loan secured by the City's own mortgage. Because of the equity, the loan has risks but they are not really that large. He said the tax increment dollars are giving up taxes that don't even exist at this point and only for the term of the bond which is about 20 years. The donation of the land (\$450,000) is a true contribution by the City and is necessary to make this project work. A traffic study has been requested of Engineering, Inc. by Mr. Fagg, he added. He asked for the Council's support for this project that has the potential to transform this part of the downtown.

GREG KRUEGER, EXECUTIVE DIRECTOR OF THE DOWNTOWN BILLINGS PARTNERSHIP, 2815 2ND AVENUE NORTH, said the existing parking lots that will be provided to the developer are usually very busy even though their metered cost is twice what the downtown metered parking is. The lots are substandard lots, being very difficult for ingress and egress and the area is definitely a blighted area. Mr. Krueger said there

are sixteen new retail establishments, a major ad agency and a college campus within close proximity not including the new Montana Avenue businesses. A parking structure would definitely benefit these businesses. He said the Framework Plan included a need for mixed uses and the major goal was a project in the downtown core (2nd Avenue and Broadway). This project is one block from the core. He said the goal including mixed use development with a priority for tax paying entities on top of parking has not been accomplished. The Danford study stated that there should be 30 housing units on the ground by 2004 which has yet to happen. He said this project is an opportunity to reach these goals. He asked the Council to support this project.

HARRISON FAGG, NO ADDRESS GIVEN, said the impact of this project to the downtown area would be 100 new residents into the core of the City, additional office space housing 175 workers bringing shopping to the downtown, 25 workers in the new commercial areas bringing retail dollars into the community. He said the project would bring 300 new people into an area where revitalization is badly needed. He said the tax increment funding is needed to develop this area because the costs of downtown construction are many times more than that of the suburban costs. Suburban construction costs versus downtown construction costs run between 18% and 20% difference due to maximum fire codes, high-rise codes above seven stories and steel, concrete and mortarboard construction materials required in downtown construction. He said he is taking the cost of the construction off of the selling price of the units so the units will be more attractive and can be sold. He added the residents and workers want to park where they live and work and that is why the parking is required. Every purchaser of a unit would have a parking space as part of the sale. Everyone who purchases 1,000 square feet of the building receives 3 parking spaces, which uses up most of the parking requirements for the private parking. The public parking portion will replace the current spaces lost when they are used for the construction site. He reiterated that it is impossible to build this type of a project without subsidies. He noted that Mr. Honaker (Securities Building) and CTA Architects would not have relocated in the downtown area had the Partnership not given them the help that they did. That is the reason for the GAP financing program, because there is a gap between construction costs and what purchasers will expend. Mr. Fagg noted that construction is cheaper in the suburban areas and that is why the Council is constantly faced with urban sprawl. This project will motivate those people into the downtown area, but funding assistance is needed to accomplish this. He agreed that the City is taking some risk, but he also noted that he and his wife have currently invested \$100,000 into the project at this point and at 73 years of age the idea of this development going "flop" is a great concern. He said this project is a viable one that is important to Billings. He said there is risk for the City and risk for him and his wife personally. He noted he would be "signing his name to a \$2 Million loan from Fannie Mae and an \$8 Million loan from Stockman Bank. He noted his profit, if everything works perfect, will be 19.9% and he won't receive any money until 80% of the project is sold. Mr. Fagg said there is a market for this project and he believes it will work. Any dollar that is put into this project is going to the purchasers of the property (condominium or office space) and not one cent of City money will come back to him. That will ensure the purchaser's ability to purchase the property by making them affordable. Councilmember Ulledalen asked if the bank financing requires that 50% of the units must be sold before they will release money for construction. Mr. Fagg said that was correct and he would not consider starting the

project without that requirement. Councilmember Ruegamer asked who the DBI is and will this entity guarantee the loan. Mr. Fagg said he and his wife Darlene are the DBI and they would be guaranteeing the Fannie Mae and the bank loans. He added that partners would be brought in if necessary. Councilmember Gaghen said her chief concern is for the greater infusion of traffic that will be exiting onto 27th Street and noted that the Department of Transportation has stated this street will be at maximum by the year 2020. Mr. Fagg said he has hired Michael Sanderson of Engineering, Inc. to do a study of the traffic concerns. Councilmember Gaghen asked what the price range of the condominiums is. Mr. Fagg said the smaller condos would be \$175,000 and a larger one will be \$750,000. The average price would be \$300,000 to \$325,000, designed to compete with the patio homes on the West End.

ERNIE DUTTON, 2026 MIRAPOSA LANE, said his purpose tonight is to encourage the Council to support the Sandstone Condominium project. He said he has witnessed and been a part of many redevelopment projects that have benefited from tax incentives and noted this project won't happen without the incentives. He said the Framework Plan states the number one priority of the downtown revitalization is to have a substantial residential base that will sustain retail and restaurants. Mr. Dutton said he used condos in the Poly Towers to establish market prices for the Sandstone development. Without the subsidy, Mr. Fagg's development would be 10%-15% higher in pricing. Councilmember Ruegamer asked if an absorption rate has been completed. Mr. Dutton said there is currently interest and solid buyers for 10 units without advertising. Councilmember Ruegamer said he would need to see some kind of absorption projection, to see how long it will take to sell the project. Mr. Dutton noted there have been housing studies paid for by the City that show a demand for at least 34-40 units in the downtown area. The fact that there are people excited about the project before ground is broken is unusual and a good indication of the market.

Councilmember Ulledalen asked if there is room for all the projects that are coming into the market. Mr. Dutton said the project that is comparable to Sandstone is the Stapleton Building (12 units) renovation and the differences are substantial in that Sandstone is a new construction and offers more units. This project will establish the market. He added that the first project is always more difficult.

Mr. Bauer addressed the absorption concern. He said the clock doesn't start ticking and the funds aren't committed until 50% of the units are pre-sold, therefore the absorption is only 50% after the project begins. Councilmember Ruegamer said he would like to review the terms of the 50% that are pre-sold. Does that mean the entire sale price is in the bank or is it just an agreement to pay, he asked. He also said he would like to review the terms of the Fannie Mae loan because of the tight timeframe; eighteen months to construct the project and six months to pay back the loan. He said he would like to see the loan agreement, to see how it ties to the Fannie Mae loan and if an extension of the Fannie Mae loan is possible. Councilmember Ruegamer said he needs to verify the bank loan terms which usually require that they are paid first. He said there are a lot of unanswered questions. Mr. Dutton confirmed that the pre-sales would generally just include earnest money (10% of the unit price) as the only funds remitted at that point and then agreements would be prepared that commit the buyer as well as possible.

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

Mayor Tooley called for a recess at 11:45 P.M.
Mayor Tooley reconvened the meeting at 11:50 P.M.

Councilmember Brown moved for approval of the Sandstone Downtown Redevelopment District ordinance, seconded by Councilmember Brewster. On a voice vote, the motion was approved with Councilmembers Brown, Gaghen and McDermott voting "no".

B. RESOLUTION Approving Development Agreement with Downtown Billings Investors, LLC for the redevelopment of Lots 5-10, Block 92 O.T. (Sandstone Downtown Redevelopment Project,) providing a subsidy of \$450,000.00 for land, \$2,000,000.00 in Tax Increment Funds (TIF) and \$1,722,500.00 in Parking Funds and authorizing the mayor to execute said agreement. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

Councilmember Brown moved for approval of the resolution approving the Development Agreement with the Downtown Billings Investors, LLC, seconded by Councilmember Brewster. Councilmember Veis asked if the Development Agreement includes the Fannie Mae loan. Mr. Bauer said it does not include the loan agreement but does include information relating to the process providing the funds. Councilmember Boyer made a substitute motion to delay action on the Development Agreement so that it can be addressed at a Work Session on 7/18/05 and Council action on 7/25/05, seconded by Councilmember Ruegamer. Mr. Bauer noted the Staff will not be able to assure the Council with absolute certainty about the risks. He said the Staff can quantify the risks and identify where they are. Councilmember Ruegamer said he is not concerned that there is risk, but is just concerned about what the risk is. He said he would like the risks precisely identified and be advised what can be done to mitigate them and be assured that provision is in the Development Agreement. Councilmember Brewster said this is the kind of project that will bring real stability and revitalization to the downtown. He said if this one works out there will be many more. On a voice vote, the substitute motion was unanimously approved. This item is delayed to 7/11/05.

17. ANNUAL ASSESSMENTS FOR FY 2006: RESOLUTIONS levying and assessing annual assessments and fees for FY 2006 on properties within the City, providing for notice, hearing and final adoption. Staff recommends approval. (Action delayed from 6/13/05). (Action: approval or disapproval of Staff recommendation.)

- (A)(1) Arterial Construction Fee Res. 05-18298
- (A)(2) Light Maintenance Districts Res. 05-18299
- (A)(3) Storm Sewer Maintenance Res. 05-18300
- (B) Fire Hydrant Maintenance Res. 05-18301

There was no staff report. City Attorney Brent Brooks said a brief that was prepared two or three years ago for the Supreme Court on the Right-of-Way ordinance was placed in the Friday packet to assist the Councilmembers on concerns regarding the difference between a tax and a fee, as it relates to the Arterial Construction Fee. He noted the Supreme Court did not address the issue in the brief.

Councilmember Ruegamer moved for approval of Item 17A1 – Arterial Construction Fee, seconded by Councilmember McDermott. On a voice vote, the motion was approved with Councilmember Jones and Brown voting “no”.

Councilmember Ruegamer moved for approval of Item 17A2 – Light Maintenance Districts, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

Councilmember Ruegamer moved for approval of Item 17A3 – Storm Sewer Maintenance, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

Councilmember Ruegamer moved for approval of Item 17D – Fire Hydrant Maintenance, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

18. APPOINTMENT of Interim City Administrator. Staff recommends the appointment of an interim City Administrator while the search for a permanent Administrator is conducted and authorizing the Mayor to sign a contract with the individual selected. (Action: approval or disapproval of Staff recommendation.)

Councilmember Veis moved for approval of appointment of Tina Volek Interim City Administrator and provide a 15% salary increase for the duration of the appointment, seconded by Councilmember Boyer. Mayor Tooley noted the contract provides that the Interim Administrator would serve until the Council hires a new Administrator; an indefinite term of employment. The contract states “this letter serves as authorization to begin your duties as Acting City Administrator effective the close of business, July 1, 2005. You will be paid your current salary with a commensurate, out of class pay of \$1,053.87 per month, during the time necessary to recruit and hire a City Administrator. The out of class pay equates to a 15% increase or \$6.08 per hour, which will be added to your current salary of \$40.51 per hour for a total hourly compensation of \$46.59. This acting appointment will be in effect until terminated by the Council or until the City hires a new City Administrator, whichever comes first. Upon completion of your acting appointment you will return to your original position of Assistant City Administrator along with any raises which would have occurred during your tenure as Acting City Administrator.” Mayor Tooley said the pay scale represents the lower range of the City Administrator pay scale and does not equal the salary that is being paid to the current Administrator. On a voice vote, the motion was unanimously approved.

19. RECONSIDERATION: Zone Change #757: a zone change from R 7,000 to R 6,000 on Lot 6, Block 1, Burnstead Subdivision located at 945 N 19th Street.

Councilmember Brewster moved to delay consideration of the zone change to 7/11/05, seconded by Councilmember Brown. Councilmember Brewster said the delay is for the Councilmembers to review the new information and the potential public comment speakers that are opposed to the zone change to be heard. He said the speakers could address the issue during the public comment period at the beginning of the meeting. Mr. Bauer clarified that the motion from the previous meeting would be reconsidered, which was the motion to deny the zone change. Councilmember Brewster confirmed that was correct and said the motion could then be approved or amended. On a voice vote, the motion was unanimously approved. This item will be considered on 7/11/05.

20. PUBLIC COMMENT on Non-Agenda Items -- Speaker sign-in required. (Restricted to ONLY items not on the printed agenda; comments limited to 3 minutes per speaker. NONE

COUNCIL INITIATIVES

- **COUNCILMEMBER BREWSTER:** Councilmember Brewster moved to direct staff to initiate an agenda item whereby the Council would discuss the settlement on pipe on Yellowstone River Road and delay assessments to associated property owners, seconded by Councilmember Jones. Councilmember Brewster said the affected property owner's interests were not represented. He said he would like the assessment to those affected delayed until the Council has a chance to discuss the settlement. On a voice vote, the motion was unanimously approved.
- **COUNCILMEMBER RUEGAMER:** Councilmember Ruegamer moved to direct the City Attorney to initiate discussions and resolve issues with the County Attorney's office, including several Councilmembers and Commissioners, relating to the County's involvement in the lawsuit regarding the Yellowstone County Club annexation, seconded by Councilmember Brown. Mr. Brooks said their office has tried to resolve the issue on several occasions and have had trouble understanding the County's position. The County moved to intervene in the lawsuit and the essential issue, in his opinion, is what will happen to the RSID that provides some of the services and infrastructure to owners of the Yellowstone Country Club Estates. Councilmember Boyer said that she and Councilmember Ulledalen would like to be notified of the outcome of these discussions. Councilmember McDermott asked about the status of the lawsuit. Mr. Brooks said cross motions for summary judgment occurred last Monday, which means there is no factual dispute that a jury would have to determine. He said a litigation report would be available in August. He said the lawsuit has been fully briefed and the Judge is extremely well prepared, understood the issue and is scheduled to make a decision later this summer. Councilmembers Boyer, Ulledalen and Ruegamer will be the three members from the City involved in the discussions. On a voice vote, the motion was unanimously approved.

Councilmember Clark noted this is Mr. Bauer's last council meeting and he wanted him to know how much he has appreciated the work that he has done. Mr. Bauer has seen the City through several rocky spots.

Mayor Tooley noted Mr. Bauer's tenure has enjoyed some successes. He said Mr. Bauer completed the following:

- Developed and approved an Updated Transportation model for the City
- Arrange for personnel to be trained on operations of the software
- Oversaw the process to develop the Annexation Policy
- Oversaw the completion of the largest City government building project in the City of Billings, that came in on budget and on time
- Worked with MSU-Billings on the West End Library concept

Played an active role in the Downtown Billings Partnership, Celebrate Billings, the Foundation for Community Vitality to plan Billings On The Move and Montana On The Move

Develop and implement programs to build organizational teamwork, trust and communication

Develop and improve budget projection models to assist the Council in budget decisions

Lead the effort to reorganize the Information Technology function of the City Of Billings

Consolidated Public Utilities into the Public Works Department to improve coordination of street infrastructure projects

Simplify and clarify personnel policies and operational procedures

Mayor Tooley said that he believes everyone on the Council wishes Mr. Bauer the best in his future endeavors.

Councilmember McDermott noted that she and Councilmember Gaghen administer to a very high maintenance Ward with a lot of complaints. Since Mr. Bauer has become Administrator she said she has actually received thank yous from constituents stating that their problems have been taken care of quickly and efficiently. She thanked Mr. Bauer for that.

Councilmember Gaghen said it has been a pleasure to serve with Mr. Bauer because he has done many good things and has been a victim of circumstances not of his making. It saddens her greatly that she will not be able to see Mr. Bauer "bloom all the more" as he has great potential, skills, great maturity and intellect, she added. She wished him well and "gave blessings on your dear head".

Councilmember Brewster said he wished Mr. Bauer well and noted that he has done some remarkable things.

Councilmember Brown said he really has enjoyed Mr. Bauer because of his good sense of humor and noted that he is one of the brightest people he has ever met. He wished him the best.

Councilmember Jones said Mr. Bauer has taken heat on some things that he should not have taken heat on. He said he may not have always agreed with him, but acknowledge that Mr. Bauer is very intelligent and will make a great City Manager for some city.

ADJOURN – With all business complete, the Mayor adjourned the meeting at 12:20 A.M.

THE CITY OF BILLINGS:

By: _____
Charles F. Tooley MAYOR

MINUTES: 06/27/05

ATTEST:

BY: _____
Susan Shuhler, Deputy City Clerk