

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

## **August 23, 2004**

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

**ROLL CALL** - Councilmembers present on roll call were: Gaghen, McDermott, Brewster, Brown, Ruegamer, Iverson, Boyer, Poppler, Clark and Jones. Councilmember Poppler was excused at 10:20 P.M.

**MINUTES – August 9, 2004.** Approved as printed.

**COURTESIES** - NONE

**PROCLAMATIONS – Mayor Tooley.** NONE

### **BOARD & COMMISSION REPORTS – Parking Advisory Board**

Brenda Burkhartsmeier, Chairman of the Parking Advisory Board said the members of this board serve as advisors to the City Council on all aspects of parking within the Central Business District. She said the primary responsibility of the board is to provide input on: 1) the policy decisions of the Council, 2) all aspects of public parking in the Central Business District including on-street parking, parking meters, parking fees and fines, and parking garages, 3) long range financial plans for parking, annual budgeting, and operation of the City's Capital Project Plan, and 4) all other existing and proposed parking policies. The board also reports any shortcomings regarding public parking issues and makes recommendations to the Council for their disposition.

She said there are eight (8) members on the board, each serving four-year terms. She noted there is currently one vacancy on the board. She said the board meets the second Monday of each month at 4 P.M. and all meetings are open to the public. She added that specific public requests can be brought before the Parking Advisory Board through a special application that is available at the City's Parking office and on the City's website.

Ms. Burkhartsmeier said there have recently been four (4) "feedback" sessions and forums regarding the Park II garage expansion. There was a survey conducted in 2003 of the downtown business property owners and Downtown Business Association members. This survey identified the top priority as the expansion of the Park II garage. Biannually the board meets to review and set new goals. Formal goal planning sessions were held in 2001 and 2003. The goals set, listed by priority were: 1) Park II garage expansion, 2) development of additional parking at 4<sup>th</sup> & Broadway, 3) study of the parking supply and demand in the downtown area and implementation of new rates, rules and strategies, 4) study of parking needs east of North 26<sup>th</sup> Street and North 29<sup>th</sup> and First Avenue North, and 5) study of all projects for incorporation of condominiums and multi-use facilities.

She said the Board's continuing projects are: 1) creating surface lots within the downtown, 2) expanding the diagonal parking in the Medical Corridor, 3) creating surface lots in the core outside of the downtown area, 4) focusing on the visual appeal of the parking garages and landscape needs, 5) more consistent signage, 6) pricing of meters, and 7) guidance to long-term diagonal parking expansion.

The goals achieved to date include: 1) implementation of a "green meter" program, 2) completion of a paved lot by the Arcade Bar, 3) completion of the expansion of diagonal parking within the Central Business District, 4) implementation of a new rate and fee schedule specifically addressing habitual offenders, 5) acquisition of the property at 4<sup>th</sup> & Broadway and the property that allows for the Park II expansion, 6) installation of 10-hour meters, 7) implementation of a specific permit program, 8) installation of 172 new electronic meter heads in the downtown area, 9) completion of a condition audit of the four (4) City garages and maintenance schedules for the next five (5) years, and 10) upgrade of all garages for ADA requirements. Projects that are currently underway are: 1) preparation of "feedback" forum on the Park II expansion to be presented to the Council at an upcoming work session, 2) determination of demolition costs at 4<sup>th</sup> & Broadway and establishing a surface lot and landscaping plan, 3) determination of the intention to dispose of property at 6<sup>th</sup> and Division, and 4) continuation of the training and education of parking enforcement personnel to improve the relationship between enforcement and the public.

**ADMINISTRATOR REPORTS – Kristoff Bauer.**

- Mr. Bauer said there would be a public hearing regarding tax exemptions in the Yellowstone County Commissioners Chambers, Tuesday, August 24<sup>th</sup> at 9:45 A.M. He said the discussion could involve a number of projects that are being completed in the Central Business District as part of the TIF Financing District and how they would bring new revenue to the district. He said revenues could be sidelined due to tax exemptions provide by the County. Mr. Bauer noted the City would not have a voice in whether the tax exemptions would be provided.
- He noted Final Budget Books were delivered to the Councilmembers in their Friday Packets. The FY 2005 budget is now available for review by the community.
- Mr. Bauer also noted the replacement documents provided in the Friday packet for the bid award items on this evening's agenda as Item 18.

**PUBLIC COMMENT on "NON-PUBLIC HEARING" Agenda Item: #1, #13 - #18 ONLY. Speaker sign-in required.** (Comments offered here are limited to 1 minute per speaker.

- DEBRA REGER, 2708 PALM DRIVE, spoke on Item 13 – Shiloh Corridor Overlay District. She said the property owners have not been a part of this process and therefore the entire document is flawed. She suggested the proposal be abandoned or started over completely to include input from all affected property owners. She said not including the property owners in the committee developing the proposal leaves them at a disadvantage as to the use and development of their properties. Ms. Reger said when the use is changed, it changes the zoning. It should be treated as a zone change. In four (4) meetings with the County many changes were made, but more

changes are needed. She urged the Council not to pass the item concerning the Shiloh Corridor Overlay District.

- MARK BLATTER, 250 NORRIS ROAD, HELENA, MT., spoke on Item 17. He said he represents Security Armored Express and would be available for questions. He noted the intent of the purchaser is to build a regional office and terminal for their business which would add jobs to the local economy and add to the tax base.
- STEVE FROST, 2107 38<sup>TH</sup> STREET WEST, spoke on the Water Vending Station lease. He urged the Council to adopt alternative #2 - rejecting the proposal and not activating the dispensing equipment. He said he believes in free enterprise and noted that the equipment could be sold to allow the City to recoup their investment. He said there are private vendors that operate in the area providing this service.
- JOHN KORTRIGHT, RELIABLE WATER SERVICE, 29 ORCHARD LANE, spoke on the Water Vending Station lease. He said he purchases water from the City, selling 90% of it to Blue Creek residents. He said he invested a great deal of money in his water service operation in 1999 based on information that a water vending station would not be opened in this area. He said he was told his payment of System Development and Franchise Fees would insure against this, adding this vending station is unfair competition with his business. Mr. Kortright said this is a direct threat from the City of Billings to put him out of business. He noted he is not interested in leasing this station.
- DOUG FRENCH, 2143 PUEBLO DRIVE, said he works for Reliable Water Service and agrees that the vending station is taking business away from this company. He noted this station would also serve customers living outside of the city limits. Mr. French said these are the customers Reliable Water Service serves. He asked the Council to close the station and not compete with private enterprise.
- GLENN OPPEL, GOVERNMENT AFFAIRS DIRECTOR FOR BILLINGS ASSOCIATION OF REALTORS, 1643 LEWIS STREET #12, spoke on Item 13. He said the association supports the overlay district concept. He said legal research shows that moving forward with this as a text amendment would be susceptible to a legal challenge. He said questions about it amending the zoning map and therefore making it a zone change have not been addressed. The proposal should extend due process to the affected property owners to make sure the right decisions are made. He asked the Council to consider proceeding with this as a zone change.
- AARON MEYER, BLUE CREEK ROAD, spoke in favor of the Water Vending Station lease. He said he lives near the water station and wants to see it opened. He said he has obtained 175 signatures of surrounding area residents who want the station opened and operated as a private enterprise. He said the water service companies that do not want this station opened have said they have no objection to a private enterprise running the station. Mr. Meyer added there are safety issues with traffic that make this water vending station a safer place to obtain water.
- MIKE GEDDES, 4309 VANDEVEER ROAD, said he is the party that has submitted the proposal to operate the water vending service at Blue Creek. He noted the City's mission statement which promises to deliver cost effective services to enhance the community's quality of life. This water station fulfills this statement. He said the facility cost \$26,000 for construction and urged the Council not to waste the money it has invested in this facility. There are approximately 100 people that haul their own

water and this facility could serve them and assist with the additional expense of driving farther to obtain the same thing three (3) miles away. In regard to the statement about the users being County residents, he noted the City is growing and could eventually encompass those residents. Mr. Geddes said he is paying a premium price, above the price from water vendors for water that would help pay for the cost of the equipment. He added that he is interested in operating this water station as a service to the community of Blue Creek.

- RANDY REGER, 2708 PALM DRIVE, spoke on Item 13. He said there are 600 acres of land where the owners are protesting the Shiloh Overlay District proposal. He said there were 17 changes presented by those landowners for discussion in the County forum on this issue and there are over 100 changes made or recommended. He urged the Council to take this back to the committee and work out the differences with the County before proceeding.
- MATT BROSOVICH, 1550 POLY DRIVE, spoke on Item 13. He said more time is needed to work on the Shiloh Overlay District issue. He urged the Council to direct the Staff to restart the process with another public hearing to gather additional public comment and allow the issues to be further identified and discussed.
- J.R. REGER, 725 HIGHLAND PARK DRIVE, spoke on Item 13. As the son of an affected landowner, he said there is concern whether this is a text amendment or a zone change. He said the affected landowners and private attorneys think this is a zone change. The City should err on the safe side and treat this as a zone change. He said this should be a collaborative effort between the landowners, the County and the City with the process starting over at the beginning.

### **CONSENT AGENDA:**

1. **A. Antenna Tower Space Lease** with KTVQ, \$3500 in advertising time in lieu of payment, term: 5 years.
  - B. Recreational Trails Program** Grant Agreement for Stewart Park Trail.
  - C. Section 202 Elderly Housing Project**, allocation of \$50,000 in federal HOME grant funding to Volunteers of America to support construction of 85 units of affordable elderly housing in Billings Heights.
  - D. Contract for Library Services** with Golden Valley County for FY 2004/2005.
  - E. Approval of CTEP Project Application** for purchase of eight (8) bicycle lockers for the Downtown Transfer Center, \$11,125.53, (local match: \$1,724.47).
  - F. Second/final reading Ordinance 04-5294** expanding the boundaries of Ward IV to include recently annexed property described as C/S 1876 Amended, Tr. 4B-2 of Amended Tr. 4B, Jerry Goodman, petitioner. (Annex #04-08).

**G. Second/final reading Ordinance 04-5295** expanding the boundaries of Ward V to include recently annexed property described as: Tract C of C/S 1011 Amended, including all adjacent right-of-way of 34<sup>th</sup> Street West, Robert and Cynthia Cover, petitioners, (Annex #04-07).

**H. Resolution 04-18172** relating to a project on behalf of Rose Park Plaza Partners Ltd., and the issuance of revenue bonds or notes to finance the costs thereof under MCA Title 90, Chapter 5, Part 1, as amended; granting preliminary approval thereto and calling a public hearing on 9/27/04.

**I. Resolution 04-18173** declaring an emergency and waiving the competitive bidding requirement to purchase replacement electrical equipment for the Belknap Utilities Service Center.

**J. Intent to Create SILMDs:**

**(1) Resolution of Intent 04-18174 to create SILMD 280: Gabel Road & S. 29<sup>th</sup> St. West** and setting a public hearing date for 9/13/04.

**(2) Resolution of Intent 04-18175 to create SILMD 281: Grand Avenue** and setting a public hearing date for 9/13/04.

**(3) Resolution of Intent 04-18176 to create SILMD 283: King Avenue East** and setting a public hearing date for 9/13/04.

**(4) Resolution of Intent 04-18177 to create SILMD 287: Midland Road** and setting a public hearing date for 9/13/04.

**(5) Resolution of Intent 04-18178 to create SILMD 289: Gabel Road & Pierce Parkway** and setting a public hearing date for 9/13/04.

**K. Bills and Payroll.**

**(1)** July 23, 2004

**(2)** July 30, 2004

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

Councilmember Clark separated Item A from the Consent Agenda. Councilmember Brown separated Item B from the Consent Agenda. Councilmember Boyer moved for approval of the Consent Agenda with the exceptions of Items A and B, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

Councilmember Boyer moved for approval of Item A of the Consent Agenda, seconded by Councilmember Ruegamer. Councilmember Clark asked why the lease amount was accepted in lieu of advertising time when the City does not require the air time. City Administrator Kristoff Bauer said this tower space lease has a benefit to the City for the use of the towercam and would have some positive tradeoffs. It was also difficult to quantify the dollar value of the lease for the camera space. This was considered the best approach. Councilmember Brown expressed concern for the length of the lease and why the camera would be there. Mr. Bauer said the camera would provide live shots for the weather reports. This would use a space that the City currently does not use on the tower and would give the City a view that could assist in many areas. Councilmember McDermott

asked if this lease amount is comparable to other commercial tower leases. Mr. Bauer said the research done did not find any comparable commercial leases.

Councilmember Gaghen asked if there is a total yearly amount that is spent on advertising notices on TV stations. Mr. Bauer said the City does not currently use this resource. Councilmember Gaghen asked if the TV station quantified the minutes that represents \$3,500 per year. Mr. Bauer said that different air times would have different value. Mayor Tooley noted a similar situation where the City was able to monitor a train wreck that involved hazardous materials by going on-line with a TV station and connecting to their camera. This assisted emergency operations and evacuation of the downtown from a safe and secure distance. He said this affiliation may have the same useful purpose in the future. Councilmember Poppler noted that this could be useful with a homeland security problem. On a voice vote, the motion was approved with Councilmembers Clark and Brown voting "no".

Councilmember Boyer moved for approval of Item B of the Consent Agenda, seconded by Councilmember Gaghen. Councilmember Brown noted the City's portion of this grant originally was \$17,300 and has been reduced to \$8,750. He asked if this savings goes back into the General Fund. Mr. Bauer said if the money was budgeted as \$17,300 and not expended, it would go back into the ending fund balance for reallocation next year. On a voice vote, the motion was unanimously approved.

## **REGULAR AGENDA:**

### **2. PUBLIC HEARING FOR SPECIAL REVIEW #765: a special review to allow the construction of assisted living facilities on Lot 4 of Summer Ridge Subdivision, located at 145 South 32<sup>nd</sup> St. West – Primrose Retirement Community, with a total of 76 dwelling units. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

Planning Staff Member Nicole Cromwell said this special review request would allow the construction of an assisted living facility at 145 South 32<sup>nd</sup> Street West on Lot 4 of the Summer Ridge Subdivision. Terra West Subdivision is to the south and Parkland West Subdivision is to the west of this request. The main building will house 68 units of assisted living in a two-story multi-wing building. She said there will be 8 units to the east that would be duplex housing units with off-street parking.

Ms. Cromwell said the Zoning Commission is recommending conditional approval with the following conditions:

1. The special review approval shall be limited to Lot 4 of Summer Ridge Subdivision as shown on the site plans submitted with this application.
2. Any expansion of the buildings, parking area or number of living units greater than 10 percent will require an additional special review approval {BMCC 27-613(c)}
3. The landscaping, parking, buffering and screening shall be as shown as submitted on the site plan. No chain link or wire fencing will be allowed on this site.
4. Any neighborhood identification signs shall submit for a sign permit from the Planning and Community Services Department and be no greater than 32 square feet in sign area. {BMCC-27-705(a)(6)}

Ms. Cromwell stated there was no opposition to the application at the Zoning Commission hearing or by writing.

The public hearing was opened. MYLES EGAN, BEST REALTY, 2690 SOUTHRIDGE DRIVE, said he represents the Primrose Group and is available for questions. He said this is a nice addition to the area. He asked the Council to approve the special review.

JOSEPH WHITE, 926 NORTH 30<sup>TH</sup> STREET, said he is concerned about the sufficiency of the air supply for the assisted living facility. He noted the presence of poison gases in the air from the refineries, causing the leaves to fall off the trees.

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

**3. PUBLIC HEARING FOR SPECIAL REVIEW #766: a special review to allow the location of a beer and wine license with gaming in a Community Commercial Zone on Lots 3-4, Block 2, Circle Subdivision, located at 1431/1451 Country Manor Boulevard. Zoning Commission makes no recommendation. (Action: approval or disapproval of Special Review.)**

Planning Staff Member Nicole Cromwell said this is a special review request for a beer and wine license with gaming at 1431/1451 Country Manor Boulevard. The Zoning Commission held a hearing on August 3, 2004, but was unable to reach consensus on a favorable recommendation to the Council. She said the Planning Department had recommended conditional approval to the Zoning Commission. The conditions were:

1. The special review approval shall be limited to Lots 3 & 4, Block 2 of Circle Fifty Subdivision as shown on the site plans submitted with this application.
2. The site shall be landscaped according to the proposed plan provided with the Special Review application.
3. The building space to accommodate the beer and wine license with gaming shall be no greater than 2,500 square feet. Any expansion shall require an additional special review approval.
4. Trash enclosures shall be screened with an approved material and provide a closing gate on one side. No chain link or wire material is allowed for this enclosure.

Ms. Cromwell said the subject property is surrounded by Community Commercial zoning. Residential Multi-Family zoning is located across Avenue B from the site with developed lots containing duplexes and multi-plexes. The proposal for the site is a casino of 2,300 square feet with two (2) small retail shops on each side. She noted it would not be located directly adjacent to residential lots.

She said the adjacent Red Door facility is currently undergoing an expansion including a new parking area. This was one of the concerns by area residents at the Zoning Commission hearing – the traffic and parking issues. It was noted there were on-street parking and “parking in the vacant lot” issues especially during the weekends with the operation of the Red Door facility.

Ms. Cromwell said the Zoning Commission did not make a recommendation as there were only three members present and a consensus was not reached. She said the Commission members did not second the favorable motion and there was no motion for

denial of the special review. There were three (3) people who spoke against the proposal at the Zoning Commission hearing, and five (5) letters of opposition were received by the Planning Department. She said four of the five letters were from co-owners of one (1) lot adjacent to the property. Ms. Cromwell said she received a petition in favor of the proposal presented to her by the applicant. She said she was able to verify all but two (2) of the 33 signatures on the petition, adding that five (5) of the signatures were residents but not owners of property within the area. Because this is not a zone change there is no valid protest to consider.

Councilmember Boyer asked why there was not a condition regarding parking. Ms. Cromwell said the applicant is providing more parking on the site plan than is required. Councilmember McDermott asked where the properties were that protested the proposal. Ms. Cromwell said the two lots were to the northeast of the subject property and are zoned Community Commercial with no residences on them.

The public hearing was opened. MARK VULETICH, 1713 LENHARDT LANE, said he has been in business in Billings for 17 years and currently owns Lucky's Grand Casino. He said he purchased the property on Country Manor Boulevard five years ago with a vision to eventually move there. He asked the Council to approve the special review.

CATHY VULETICH, 1713 LENHARDT LANE, said she and her husband spoke with the community about their proposal and site plan. She said the response was overwhelmingly positive.

BRAD SIMPSON, 1891 COUNTRY MANOR BOULEVARD, said he is opposed to this proposal. He said there was no recommendation from the Zoning Commission because of no second on the favorable motion, but contends there was a motion to deny which also was not seconded. He said he has a petition from the Circle 50 property owners with 71 signatures opposing the proposal. Mr. Simpson said the applicants did not speak with him or anyone in his neighborhood about their plans nor did they inform the community about the plans for the retail stores. He noted there are already two (2) casinos in the area and asked the Council to "quit stacking them up in our neighborhood". Traffic occurring at all hours and parking issues are a large concern. He noted Avenue B is being used as a thoroughfare, with vehicles driving 60 miles an hour at all times. He asked the Council to "do what is right".

ART LAGALY, 2026 KOBER PLACE, said he supports the proposal by Mark and Cathy Vuletich. He said he is acquainted with them on both a personal and business level. They have been valuable community members that are community minded and supportive. He said they have cultivated many friends in the casino business providing excellent customer service and a friendly atmosphere with one of the cleanest businesses in town. This plan is well thought out and financed with a plan that is aesthetically pleasing and has more than adequate parking and landscaping. Mr. Lagaly said he lives in this area and is pleased to see the tasteful planning that has gone into this site plan. He said the owners live less than a quarter mile from their business and are on the premises most of the time. It is a pure casino operation with no dancing and only beer and wine service. He asked the Council to support this project.

There were no other speakers. The public hearing was closed. Councilmember Clark moved for approval of Special Review #766 with the four (4) conditions proposed by the Planning Department, seconded by Councilmember Brown. Councilmember Brewster asked the owner why he wants to build another casino in this area. Mr. Vuletich said



casino businesses help each other. He said his plan is to specialize in service and noted there would be no hard liquor.

Councilmember Poppler said Lucky's Casino is in her neighborhood and has always been very quiet. She said the protesters are probably "upset because the Red Door is so popular" with music, dancing and hard liquor. Mr. Vuletich's plan is a very attractive plan and is situated among undeveloped commercial lots. The only residential is across the street and facing the opposite direction. She said she supports this application.

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

**4. PUBLIC HEARING FOR SPECIAL REVIEW #767: a special review to allow two 10-plex apartment buildings in a Residential 6000 zone on Tract 2, C/S 193, located at 1432 Bench Boulevard. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

Planning Staff Member Nicole Cromwell said this special review request is to allow construction of 2 ten-plex apartment buildings in a Residential 6,000 zone at 1432 Bench Boulevard. The lot is approximately one acre in size and currently has a single family home and garage that would be removed if this application is approved. There is Residential 7,000 to the north, east and south and Highway Commercial zoning is to the west. She said the proposal includes two buildings, one fronting on Bench Boulevard that will have a small architectural face toward the street and would include access to the interior where the second ten-plex would be situated. A small park area of approximately 6,000 square feet is a separate parcel and has been previously dedicated. It is located at the western end of the site plan.

Ms. Cromwell said the Zoning Commission recommended conditional approval on a 3-0 vote. She noted the conditions include a very detailed description of how the property would be screened from the adjacent Residential 7,000 properties, including the street frontage. The conditions are:

1. Install a 6' sight obscuring fence or wall along the south and north property lines beginning 20 feet west of the Bench Boulevard property line. A continuous evergreen hedge may be substituted for the required fence if the evergreen trees or shrubs are at least 4 feet in height when planted, reach a mature height of at least 8 feet, a mature width of at least 6 feet and are planted no greater than 7 feet on center. Any sight obscuring fence must be constructed of wood, stone, vinyl, brick or block. No chain-link or wire fencing is allowed in this application. This screening must be installed at the time of construction of the first ten-plex building and be completed before occupancy of the structure.
2. Maintain the existing trees within the front yard. If such trees must be removed then the applicant must install at least four (4) canopy trees, 2" caliper and 8' tall minimum, evenly spaced within the front yard setback to break the outline of the front building face and reduce the visual impact of the building on surrounding single family homes.

Councilmember Clark noted the condition concerning the right-of-way for Bench Boulevard was needed and may need to be wider.

Councilmember Gaghen asked if the structures would be conducive to families or single residents. She asked if the park area was developed for the use of families. Ms. Cromwell said the park is not developed and the buildings would be 2-bedroom units primarily. Councilmember Gaghen suggested a play area be provided that could be used for children as this is near a busy commercially developed area. Councilmember Boyer asked about the impact on the schools in the area. Ms. Cromwell said it would add residents to the school district, but she noted there were no negative comments received from the School District.

The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Jones moved for approval of the Zoning Commission recommendation, seconded by Councilmember Gaghen. Councilmember Jones asked where the right-of-way concern is specified. Ms. Cromwell said it does not appear in the conditions or the recommendation, but noted the applicant has been made aware of the possibility of the dedication. Mr. Bauer said this would be part of the next process which is the site review plan. Access points and adequacy of access is determined at that time.

Councilmember Brewster said there is a requirement to place fencing on the north and south property lines. He asked if there was a ditch at the west end of the property. Ms. Cromwell said there was and noted that a fence was not required on the west property line because of the adjacent zones and the park area. The screen is for the benefit of the Residential 7,000 properties that would not be developed as multi-family densities. Councilmember Brewster amended the motion to require a fence on the west property line, seconded by Councilmember Jones. In answer to Councilmember Brown's question, Councilmember Brewster said the fence would have to be constructed so that access to the ditch would be allowed, but should provide security for the ditch. Planning Director Ramona Mattix said if the area dedicated as a park is developed as a park, then the children would have to go around the fence to access the park. She noted the park area is not part of the applicant's property and is one of the reasons why the Planning Department could not condition the play area. Mr. Bauer confirmed it is not part of the City's park system and the City has not taken any action to use it as part of the system. Councilmember Boyer said it is an issue when children are occupying those buildings and have access to the ditch. Councilmember Poppler said it has not been determined whether children would be occupying the buildings. On a roll call vote, the amendment was approved 6-5 with Councilmembers Gaghen, Brewster, Ruegamer, Iverson, Boyer, and Jones voting "yes" and Councilmembers McDermott, Brown, Poppler, Clark and Mayor Tooley voting "no". On a voice vote, the motion as amended was unanimously approved.

**5. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #737: a zone change from Agricultural-Open Space and Residential Multi-Family Restricted to Residential 7,000 on a 5.93 acre parcel described as a portion of Tract 4B-2, C/S 1876 and a portion of Lot 11, Block 5 and all of Lot 12, Block 5, Goodman Subdivision, 3<sup>rd</sup> filing, and generally located on the west side of 41<sup>st</sup> Street West, between Avenues B & D. Zoning Commission recommends approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

Planning Manager Candi Beaudry said this zone change request is from Agricultural-Open Space and Residential Multi-Family Restricted to Residential 7,000 located north of Grand Avenue on the west side of 41<sup>st</sup> Street West between Avenues B & D. The property was recently approved as the 4<sup>th</sup> filing of Goodman Subdivision. The purpose of the zone change is to allow for duplex development that would be a transitional zoning between the Residential Multi-Family to the east and the Residential 9,600 to the north.

Ms. Beaudry said the Zoning Commission recommended approval on a 3-0 vote. There were no opponents at the Zoning Commission meeting.

The public hearing was opened. JOSEPH WHITE, 926 NORTH 30<sup>TH</sup> STREET, said he is opposed to changing the Agricultural Open Space zoning.

ROD WILSON, 422 SHAMROCK LANE, said he is one of the owners of the Shiloh Point Subdivision just north of this property. He said the Goodman family has done a good job of buffering this subdivision and including several options for future residents. He said the residents of Shiloh Point Subdivision are in favor of this development.

PERRY MOLER, 716 NORTH 32<sup>ND</sup> STREET, said most everything north of this subdivision is Residential 9,600 and he assumes to the south is the same. He said it seems odd to put Residential 7,000 there.

There were no other speakers. The public hearing was closed. Councilmember Gaghen moved for approval of the Zoning Commission recommendation, seconded by Councilmember Ruegamer. Councilmember McDermott noted the change to Residential 7,000 is much more compatible with the Residential 9,600. On a voice vote, the motion was unanimously approved.

**6. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #738: a zone change from Residential 9,600 to Residential 8,000, Residential 7,000 and Residential Multi-Family on a portion of Tract 7A, C/S 2465 (to become a portion of Golden Acres Subdivision, 1<sup>st</sup> Filing) and generally located north of Rimrock Road and on the west side of Molt Road. Zoning Commission recommends approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

Planning Manager Candi Beaudry said the subject property was annexed and converted to Residential 9,600 in 2002. The zone change only concerns a portion of the property. The zone change request is for three different districts. The area to the west would be changed to Residential 8,000, the central portion would be changed to Residential Multi-Family and the area to the east would be changed to Residential 7,000.

Ms. Beaudry said the Zoning Commission recommended approval on a 3-0 vote. There were no speakers in opposition at the Zoning Commission meeting.

Councilmember Boyer asked how many people were notified about the zone change request. Ms. Beaudry said all residents within a 300 foot radius were notified, however there are very few properties in the area so it is unlikely that there were very many. She noted it was advertised and the site was posted as required.

The public hearing was opened. JOHN STEWART, ENGINEERING, INC., 1260 SOUTH 32<sup>ND</sup> STREET WEST, said he represents the owner and developer on this property. The zone change proposed would provide a variety of housing types that is promoted by the Comprehensive Plan, the 12 zoning criteria and the Growth Policy. He

said the proposed zoning is compatible with the adjacent zoning and the land use plans that have been currently developed in that area. It reduces sprawl by providing higher density housing and an opportunity for affordable housing while making efficient use of the existing water and sewer facilities. He added that the existing arterials and streets are appropriate to serve this density. Mr. Stewart asked the Council to concur with the Zoning Commission recommendation.

JOSEPH WHITE, 926 NORTH 30<sup>TH</sup> STREET, said there is no proof that air quality compliance has been achieved.

DENNIE BUSCHER, 3671 SPAULDING AVENUE, said he is one of the owners and developers of this property. He also is involved with Augusta Ranch across the street. He said this type of development is seen in many areas such as Missoula, Kalispell and Bozeman where there are higher end duplexes and condos along with larger lot housing developments.

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

**7. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #739: a zone change from Residential 7,000 to Residential 6,000 on the north fractional 100 feet by 150 feet of Block 305, Billings First Addition and Sunnyside Subdivision, 3<sup>rd</sup> filing and generally located on the southwest corner of N. 22<sup>nd</sup> Street and 10<sup>th</sup> Avenue North. David Roe, agent. Zoning Commission makes no recommendation. (Action: approval or disapproval of first reading ordinance for Zone Change #739).**

Planning Staff Member Nicole Cromwell said this zone change request is for a change from Residential 7,000 to Residential 6,000 on a lot at the intersection of North 22<sup>nd</sup> Street and 10<sup>th</sup> Avenue North. The properties to the east, south, north and west are primarily zoned Residential 7,000 and the primary uses are single-family residential with some duplex units. She noted there are a couple of non-conforming uses that are outside the 300-foot radius – a trailer court and a duplex unit under development.

Ms. Cromwell said the Zoning Commission did not make a recommendation. The Planning Department recommended denial to the Zoning Commission. The Zoning Commission could not reach a consensus because there was no second to either motion to approve or deny. She said the Planning Department has received a valid protest petition from 25% of the lots within 150 feet of the proposed zone change. This requires a 2/3 majority approval from the Councilmembers present. She added there was an additional three (3) signatures of protest outside of the 150 foot radius, which does not constitute the valid protest area. Ms. Cromwell said the property could support a single-family home or a duplex with its current zoning. The proposal was to develop a four (4) plex property that would require a special review if the zone change was approved. She said some surrounding properties may have similar density per square footage of the dwelling unit, but the number of units per structure are primarily duplex units or single-family on small lots.

Councilmember Brown asked the actual number of protesters. Ms. Cromwell said the number of protesters was over 50% or 10 of 19 lot owners in the original petition. In protest petitions only lots are counted.

Councilmember Iverson asked why the Staff recommended denial. Ms. Cromwell said this was based on the 12 criteria and the nature of this particular neighborhood. The 2003 Growth Policy requires zoning to be compatible with the neighborhood. A survey of the neighborhood showed this was primarily a single-family residential area. She said a review of the North Park Neighborhood Plan approved in 1993 designated this area to remain single-family or two-family residential. Areas to the north and east could be multi-family residential.

Councilmember Ruegamer asked how many Zoning Commission members were present at the hearing and why couldn't they reach a determination. Ms. Cromwell said there were three (3) members present and she was not sure why a determination was not made, but there was no second for either the favorable motion or a motion to deny.

Councilmember Gaghen noted there were 31 signatures on the petition that denotes a valid protest. The density in the area and the traffic on 10<sup>th</sup> Avenue North is becoming difficult to contend with for the residents.

The public hearing was opened. DUKE MCDERMOTT, 2110 10<sup>TH</sup> AVENUE NORTH, said he is against the zone change. He said in the 300 foot area there were 100% of the owner/occupying residents who signed the petition against the zone change.

PERRY MOLER, 716 NORTH 32<sup>ND</sup> STREET, said this is close to his residence. He said this zone change would impact the area greatly. There would be too many people. He asked the Council to deny this request.

There were no other speakers. The public hearing is closed. Councilmember McDermott noted that her home is within the 150-foot radius of this property and she would abstain from voting on this zone change. Councilmember Brewster moved for denial of Zone Change #739, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved. Councilmember McDermott abstained.

Mayor Tooley called for a recess at 8:25 P.M.

Mayor Tooley reconvened the meeting at 8:35 P.M.

**8. PUBLIC HEARING AND RESOLUTION 04-18179 ordering the construction of improvements identified in W.O. 04-02, #1: 2004 Miscellaneous/Developer-Related Improvements. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

Public Works Director Dave Mumford said the 2004 Miscellaneous/Developer Related Program was created to address construction issues with sidewalks, curbs and gutters that have not been completed by the developers. At the July meeting, in-depth information about the program and the specific areas that were involved were reported. He said the City allows the owners to complete the work at their expense before adding them to the 2004 Improvements list, then performing the work and assessing the property owners for the cost.

Councilmember Ruegamer asked if there was any legal recourse to require the developers to complete the work. City Administrator Kristoff Bauer said there is no legal recourse. The City requests that they complete the work and if they do not, the City performs the work and assesses the developers. Mr. Mumford noted that owners are assessed when the repairs involve broken sidewalks.

Councilmember Clark asked who is assessed in a new subdivision where the

developer does not complete the improvements and has already sold the lots. Mr. Mumford said the sidewalk is the one improvement that is generally not completed. Sidewalks are an obligation that is covered through the building permit process.

The public hearing was opened. PAT JENSEN, 4101 MORGAN AVENUE, said the corner of Morgan and Jackson Avenues has been flooding for 18 years and in the winter this turns into ice. The ice has damaged her fence and mailbox several times. She said she is "real happy to get this notice about the work" to be done. She noted that she has been approved for a grant to assist her with the assessment. She said she hopes the work is done soon.

MARK RUMPH, 506 HOWARD AVENUE, spoke for his mother, June Rumph who lives at 1331 Concord. He said he has been in the construction business for 22 years and oversees most of his mother's repair issues. He said there is a ¾ inch deviation in the sidewalk and he would like the opportunity to fix and pay for the repairs himself. He said his mother is on a fixed income and cannot afford the assessment. Mr. Rumph said there has only been one accident involving this sidewalk.

CHARLES GOLDY, 2127 LYNDALE LANE, said this program works well for many people. In the case of the treatment center near his home, the program allowed the residents to occupy the facility until the work was finished. He added the City has the ability to keep the costs low and complete the repairs correctly.

PAT GARRISON, 3748 BLUE CREEK ROAD, said he owns a home on Avenue C that is listed for repairs. His assessment was \$340 for alley way improvements and it is not very specific or clear what needs to be done.

SCOTT LYNCH, 900 GOLD DUST, said he received a notice for tree removal on the corner of the boulevard east of his residence. He said he is concerned because it is one of the largest trees in the valley and very aesthetically pleasing. He noted one of the roots has raised the sidewalk, which he agrees needs to be repaired. He just wants some time to discuss options on how the repair is done so that the tree does not have to be removed.

There were no other speakers. The public hearing was closed. Councilmember Brown moved for approval of the Staff recommendation, seconded by Councilmember Brewster. Councilmember Brewster asked if the properties on Interlachen Drive that are listed in the 2004 Miscellaneous/Developer Related Improvements and wish to remain on the list if the SID is not approved would be allowed to do so. Mr. Mumford said they are still listed and if the SID is approved they would be removed from the list. Councilmember McDermott asked for confirmation that there is flexibility for those public hearing speakers who expressed concerns this evening. Mr. Mumford replied "yes".

On a voice vote, the motion was unanimously approved.

**9. PUBLIC HEARING AND RESOLUTION creating SID 1370: public improvements to Interlachen Drive and Lakewood Drive. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

Public Works Director Dave Mumford said this SID was developed to assist with significant drainage problems that several property owners have experienced over the years. There is a significant valid protest of 31% on this SID. He said 85% of the property owners who protested have an assessment of \$1,200 for drainage and are not on Interlachen Drive, but their drainage contributes to erosion of Interlachen.

He said the BBWA Canal Company is allowing modifications that would let drainage water dump into the canal, which has reduced the cost of the project by \$800,000 and ultimately lowered assessments to property owners to generally \$4,000. Councilmember McDermott asked if it is usual to assess property owners that are not directly affected but contribute to problems such as the drainage issue. Mr. Mumford said the storm water drainage fees are assessed to property owners who contribute to the drainage problems. He noted that Interlachen is a collection point and properties that drain toward collection points are usually included in the assessments. Councilmember Boyer asked how many property owners are being assessed the \$13,000 assessment. Mr. Mumford said there is only one. Councilmember McDermott said the \$4,000 assessments are a fairly average and reasonable cost.

The public hearing was opened. MARGARET REITER, 2153 INTERLACHEN DRIVE, said she has lived there for 22 years. In that time there have been three SIDs including City street, sewer, storm sewer and curbs and gutters. She said she has paid for her storm sewer and does not think she should pay for people who live in a different subdivision below her and several blocks away. She added that she pays taxes of \$45 per year to maintain the storm sewer. She asked the Council to disapprove this SID.

JOHN VON ROHR, 2335 INTERLACHEN DRIVE, asked that his name be removed from the petition, because the reasons why he signed it are no longer valid.

JOHN KADERAVEK, 2143 INTERLACHEN DRIVE, said he agrees with speaker #1. He said there is an area that contributes water flow from Constellation Trail that was not considered. He said there is a crown in the road that keeps a considerable amount of water on the west side of the road. He said he is against this SID because he has "paid his dues many times in the past".

SYBIL KENNEDY, 2511 INTERLACHEN DRIVE, said she is opposed to this SID. She said her house sits on a hill and the water drains in the opposite direction toward River Oaks. She is mostly concerned about the cost of the improvements for her home noting that there are a large number of residents that are being assessed \$12,915.70 for sidewalks, curbs and gutters. Ms. Kennedy said her neighbor is in a "special group" and her assessment for the same improvements is \$8,718. She said she has called several area contractors and received an estimate of \$7,507 for the same improvements she is being assessed \$13,000. In a call to the engineer on the project, she said he was "comfortable" with the estimates of the assessments. She requested a review of the charges to examine them more closely and another public hearing of all the impacted residents conducted.

STEVE EWEN, 2435 INTERLACHEN DRIVE, said he is severely impacted by the water drainage. In the last two years his basement has flooded costing \$22,000 in repairs. He asked the Council to approve the SID because there are several water drainage problems in the Heights that need to be addressed. The terrace system in place contributes greatly to this problem.

PEGGY WINSTON, 2518 INTERLACHEN DRIVE, asked why builders are allowed to continue to build houses or are not held accountable if there are such severe drainage problems in this area. She said she should not be required to pay for someone's basement being flooded because of the drainage issues. She also asked why her taxes don't cover this drainage problem. Councilmember Brewster explained because of the "patchwork" building in the past there is no comprehensive way to deal with the storm

water. Houses are not currently allowed to be built without curb and gutter improvements. Ms. Winston said this process needs more scrutiny.

SYBIL KENNEDY RETURNED, and said the speaker with the flooding problem in his basement has had that problem since the house was built, not because of the rain but because he is on a creek that rises during the rain. Providing curbs, gutters and sidewalks will not solve his problem, she added.

SANDRA HERT, CORNER OF INTERLACHEN AND LAKEWOOD DRIVES, said she did not support the first improvements that were approved, but does support this SID. The rain washes out their corner lot undermining the sidewalks on the property below. She said there is a definite drainage problem and these improvements would solve those problems.

There were no other speakers. The public hearing was closed. Councilmember Ruegamer moved for approval of the Staff recommendation, seconded by Councilmember McDermott. Councilmember Brewster suggested this SID be delayed so that meetings with concerned property owners can be held to address all questions and concerns. Councilmember Brewster made a substitute motion to delay SID 1370 to 9/13/04, seconded by Councilmember Gaghen. On a voice vote, the substitute motion was unanimously approved.

**10. RIMROCK WEST PARK DISTRICTS:**

**A. PUBLIC HEARING AND RESOLUTION 04-18180 creating SID 1366 for improvements in Rimrock West Park. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

**B. PUBLIC HEARING AND RESOLUTION 04-18181 creating PMD 4023 for park maintenance costs. Staff recommends approval. (Action: approval or disapproval of Staff recommendation).**

Craig Canfield of Interstate Engineering said his firm was responsible for the design of the park improvements for SID 1366. In June of 2004 a presentation was given at a work session about this 10-acre park called Rimrock West Park. The improvements include grading and contouring, construction of a small playground, installation of a park irrigation system and landscaping with turf grass, trees and shrubs. He said the storm drain system for the subdivision would also be completed. The project involves 247 property owners in Rimrock West Subdivision.

Mr. Canfield said a mid 1980's development agreement provided for development of the park through a Special Improvement District (SID), completion of the storm drain and maintenance of the park improvements through a Parks Maintenance District (PMD). He said waivers of protest are in place in the 2<sup>nd</sup> through 5<sup>th</sup> filings of the Rimrock West Subdivision. The 1<sup>st</sup> filing is also included in the proposed SID and are generally the properties on Loma Vista Drive and Palomar Circle (28 property owners). There are no waivers from the 1<sup>st</sup> filing property owners but they should be included in the SID because the 1.5-acre park that was originally platted has been aggregated into the larger 10-acre park. The park will benefit the residents in the 1<sup>st</sup> filing similarly to the property owners in the 2<sup>nd</sup> through 5<sup>th</sup> filings.

Mr. Canfield said the park master plan has been submitted to the property owners at several informational meetings. In June 2004 a survey from the Parks Department was sent to the property owners for the proposed SID with 85% of the respondents supporting



the park improvements that were being proposed. Councilmember Brewster asked if 10 acres was a rather large park for this area. Mr. Canfield said the size of the park was determined through the subdivision regulations and is consistent with those requirements. Councilmember Brewster asked if there was another park in the area. Mr. Bauer said there is another park in the adjacent Rush Subdivision that satisfies the subdivision requirements for Rush Subdivision. He also clarified that there are 28 valid protests in the 1<sup>st</sup> filing that represent 11.3% of the total property owners in the SID.

The public hearing for both the SID 1366 and PMD 4023 was opened. CHARLENE BROWN, 4525 PALOMAR CIRCLE, said she lives in the 1<sup>st</sup> filing and has the legal right to protest SID 1366. She said 96% of the residents in the 1<sup>st</sup> filing have protested. Legally if 51% of residents in the district protest, the SID cannot be formed, however the district as drawn by the Parks Department combines the 1<sup>st</sup> filing with the 2<sup>nd</sup> through 5<sup>th</sup> filings resulting in the 1<sup>st</sup> filing's protests representing only 10% of the district. This negates the property owners in the 1<sup>st</sup> filing's legal rights. She said the restoration of their legal rights rests with the Council and she requested that SID 1366 be amended to exclude the property owners in the 1<sup>st</sup> filing.

RICHARD OKSNESS, 4535 PALOMAR CIRCLE, said he lives in the 1<sup>st</sup> filing. He said the original 1.5-acre park was aggregated into the 10-acre proposed park without any input or vote of the members of the 1<sup>st</sup> filing. He suggested this park be financed through a city-wide assessment.

STEVE BROWN, 4525 PALOMAR CIRCLE, said he has lived in the 1<sup>st</sup> filing of Rimrock West Subdivision since 1990 and has paid taxes to the City of Billings to fund the Parks Department. He said the 10-acre proposed park is ½ mile from their residence. The cost of the park has been scaled down but is only shared by a small number of property owners. He said this park is too expensive and he does not want to pay for it. He said 96% of his neighbors agree with him. Mr. Brown said this is not a "neighborhood park" for the people in the 1<sup>st</sup> filing.

SHANNON BRATSKY, 4381 HI LINE DRIVE, said she supports the creation of SID 1366 and PMD 4023 for Rimrock West Subdivision. She asked the Council to support it as well. She said she spent many hours working on surveys and plans with the neighborhood to submit to the Parks Department that would be acceptable to the majority of the residents. The majority of the residents support the current plan as the best compromise and the current proposal would achieve the goals of the property owners who have participated in the planning and surveys. Ms. Bratsky said the 1<sup>st</sup> filing property owners need to be included in the SID for the support of the remaining property owners to be forthcoming. She suggested a better method of negotiation with developers and builders when subdivisions are annexed to avoid situations like this one in Rimrock West.

JENNIFER NIELSON, 4321 LOMA VISTA DRIVE, said she protests SID 1366 and PMD 4023. She said her lot is located as far north and east from the park as possible. When they purchased their home 4 years ago there was no mention of the future development of a park, particularly one that is not centrally located to all the residents of the subdivision. She said her children are too young to walk the distance to the park. It is unfair to include the 1<sup>st</sup> filing residents in the SID and negate their right to protest. Ms. Nielson said she signed the protest petition and feels this is a legal issue that could be pursued. She said if the SID is approved she and her husband would legally challenge it. She said she disagrees with the process that lumps the 1<sup>st</sup> filing with the other filings and

ignores the legal issues. The cost of the park is another obstacle for approval. She said she does not disapprove of the concept of the park, but it should be more centralized to all the residents. Ms. Neilson said the people who equally share in the cost of parks should equally benefit from them as well. She said her home does not equally benefit from this park and asked the Council to disapprove this SID and PMD.

There were no other speakers. The public hearing was closed. Councilmember Iverson moved for approval of the Staff recommendation to create SID 1366, seconded by Councilmember Boyer. Councilmember Boyer said many of the property owners at the informational meeting are not here tonight. She said there has been a lot of work and good Staff input into this issue and she would like to see it go forward this evening.

Councilmember Brown said it seems unfair that 28 residents' right to protest in the 1<sup>st</sup> filing is nullified by the residents of the 2<sup>nd</sup> through 5<sup>th</sup> filings. He said he does not support this action. Councilmember Poppler said she agrees with Councilmember Brown and is concerned about the fairness. Mr. Bauer said many SIDs include residents with waivers and without waivers and this is not an unusual circumstance. In answer to Councilmember Jones' question, he said the cost estimates for the proposed park include all of the filings and removing any properties would require recalculations of the cost and reforming the district. He added this is not just about a park, it is correcting a drainage issue as well. Councilmember Boyer noted this park is part of the 2020 Master Plan and starting over could hinder this park from ever being constructed. On a voice vote, the motion was approved with Councilmembers Brown, Poppler and Jones voting "no".

Councilmember Iverson moved for approval of the Staff recommendation to create PMD 4023, seconded by Councilmember Boyer. On a voice vote, the motion was approved with Councilmembers Brown and Poppler voting "no".

**11. PUBLIC HEARING AND FIRST READING ORDINANCE amending the BMCC, adopting an arterial construction fee to be assessed on each property in the City for the sole use of constructing/reconstructing the City's arterial roadway system. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

City Administrator Kristoff Bauer noted the supplemental items for this agenda item were provided to the Council in their Friday packet and included a revised ordinance and a map that denotes the arterial streets. Public Works Director Dave Mumford said this is a proposal of an arterial construction fee to offset the cost of improvements that are normally borne by SIDs. A special SID Committee was formed to research, discuss and make proposals for alternatives to the SID issues. Members of the committee included Councilmembers, the Assistant City Administrator, members of DPARB, members of the Legal Department and Staff. He said the premise of the committee was to consider funding for arterials that are city-wide roads, whose design and function is to carry large amounts of vehicles from one end of the City to the other. Assessing the adjacent properties owners has come into question recently, especially with the Shiloh Road project, he noted. He said the Arterial Construction Fee attempts to address this issue.

Mr. Mumford said there are 459 miles of roads within the City of Billings and 93 miles are arterials, about 20% of the road system. The City has \$4.4 Million in funding in many forms to address the construction and reconstruction of these roads. He said \$700,000 is taken from those funds for the PAVER Program for constructing roads,

milling and chipsealing. This leaves \$3.7 Million. It costs \$1.5 to \$2 Million to construct one mile of road. In order to offset some costs, SIDs have previously been used to generate funds for these improvements.

He said the committee is proposing a program similar to one that was developed in the 1960's that assessed stormwater fees. This has merit because the fees are based on square footage and zoning. This categorizes user properties and how they contribute to traffic, with commercial and multi-family properties paying more because they generate more traffic. Residences would pay the least because they would have the opposite effect. Undeveloped properties would be capped at a lower set fee because they are not contributing to use of the roads but are benefiting because the arterial system brings value to their properties.

Mr. Mumford said this program is new and has not been utilized elsewhere in the State. He said the Legal Department has reviewed the proposal and feels it is a viable program. He noted this proposal would assess everyone including non-profits. On a Residential 9,600 lot the assessment per year would be approximately \$35.61. This would generate approximately \$3 Million per year funding for arterial construction.

Councilmember Brown said there is the potential that this assessment fee would be viewed as a tax. It is his opinion there will be a court case and would certainly be illegal to the tax exempts, such as the State of Montana. He expressed concern for how this would work. Deputy City Attorney Kelly Addy said there are no legal precedents or any case law that gives clear guidance on how the court would rule. There is an Attorney General's ruling in 1995 that focuses on the direct correlation between the benefit conferred upon and the assessment made on the property. He said if the correlation is direct enough it is considered a fee, if not it would be viewed as a general fund for tax charges. He noted this is closer to a fee than the Helena Fire Service Fee and the City of Billings has a much better argument for that. By assessing the fee on square footage and zoning, the correlation between benefit conferred and the assessment is as close as possible. Mr. Mumford added the stormwater fees have been in effect for years and have survived several challenges. Ninety percent of the funds would go to constructing and designing roads. Mr. Addy said the ordinance would provide for an appeal process for those residents who feel they are not being benefited commensurate with their assessments. He added that all the arguments are in place to argue this case.

Councilmember Brown asked if this proposal would be better put before the voters for approval. Mr. Addy said the voters have the right to make it a referendum, with two different ways the issue could be placed on the ballot. Councilmember McDermott asked if the fees could be increased by the Council if this were placed on the ballot. Mr. Addy said the fees would remain set according to the scope of approval given by the voters if it were a ballot issue.

Councilmember Ruegamer asked how the Staff arrived at the formula for assessment. Mr. Mumford said the same formula for calculating the stormwater assessments was used based on square footage and zoning. Each zoning district would have its own fee structure and traffic was a criterion for consideration. In this way, the properties using the roads the most would be assessed at the highest rate.

The public hearing was opened. CHARLES GOLDY, 2127 LYNDAL LANE, said this is a great idea. It resolves the issue of who pays for roads that are traveled by all residents of the City. He said he supports the arterial construction fee.

DAVID RUMPH, 2211 MILES AVENUE, said there are City residents on one side and County residents on the other side of Shiloh Road. The tax would be placed on the City residents only. He said Shiloh Road should qualify for Gas Tax funds and Federal money. He said it was supposed to be a four-lane road and something has happened to the money that was to fund it. Shiloh Road should not be paid for by the taxpayers of the City. He said the City residents shouldn't have to pay for a road the county residents use.

PERRY MOLER, 716 NORTH 32<sup>ST</sup> STREET, said this is clearly the wrong way to do this. Shiloh Road was planned as an arterial years ago. He said the people who moved out to that part of town want citizens who have already paid for roads to pay for theirs as well. He said he does not support that. Mr. Moler said the voters should make the decision to approve this proposal. He asked the Council to disapprove this fee proposal.

ROD WILSON, 422 SHAMROCK LANE, said he is a representative from DPARB that served on the SID Committee. He said he learned much about SIDs and arterials and feels the best method of making a business decision like this is to look at the facts, problems, and opportunities and come to a conclusion. The facts are: 1) all residents use these arterial streets, 2) this is a fair method that would bind the community together instead of pitting Heights residents against West End residents, 3) all residents have cars no matter what size lot they live on, and 4) arterials compose 20% of the road in the community and last only 15 to 17 years. The residents of Billings have to take care of their streets and their infrastructure. He asked the Council to make their decision based on the facts, problems and opportunities.

JOSEPH WHITE, 926 NORTH 30<sup>TH</sup> STREET, said he supports Federal funding for Shiloh Road. He said has no disagreement with the proposal to fund the arterials with a fee. He said there should be a greater effort required to obtain State and Federal funding for the arterials, particularly the ones that serve highways. He suggested contacting the congressional delegation for assistance in this matter.

ARNOLD JANSEK, 832 LAKE ELMO DRIVE, asked what streets are included in the City's arterial road system. Mayor Tooley said they are the major streets that carry traffic across town from one part of the City to another. He asked if Lake Elmo Drive would become an arterial when it is improved as it is heavily traveled now. Mr. Mumford said it is limited and it is not anticipated to be classified as an arterial.

RANDY REGER, 2708 PALM DRIVE, said this is a good idea and supports this plan. He said he has been fighting SIDs for years. He also said Gas Tax is a good source of funding for roads and noted that using a different method could possibly get more funds. He said we need about \$10 Million to fund the roads properly.

JERRY GOODMAN, NO ADDRESS GIVEN, said his family has owned land along Shiloh Road for 62 years, and remembers when it was a "farm to market road". Now there are very few farming trucks traveling this road so he supports the City-wide arterial construction fee method of funding the arterial roads.

There were no other speakers. The public hearing was closed. Councilmember Boyer moved for approval of the Staff recommendation, seconded by Councilmember Iverson. Mr. Bauer noted that Shiloh Road is now a Federal project being constructed through Montana Department of Transportation. Therefore this arterial construction fee would not apply to Shiloh Road, but would be focused on other arterial streets. He noted the Leadership Team expressed their support of this proposal but voiced concerns about

the timing and its possible conflict with other important issues in the community. He said this is a very difficult question considering the number of SIDs that would need to be formed in the next year if the Council does not approve this arterial construction fee proposal. Councilmember Jones asked for clarification that Shiloh Road north of Grand Avenue is not being funded in the same manner as just noted. Mr. Mumford said there are very limited funds for any part of Shiloh Road, but the State has agreed to work with the City on the section north of Grand Avenue with a possibility of working with the City for the portion to Poly Drive. The section south of Grand Avenue is \$3 Million short of funding.

Councilmember McDermott said this proposal is extremely unfair to the non-arterial streets residents. Residents on the arterials get a "free ride", but collector street residents have to pay their SIDs and this arterial construction fee in addition. She said the method that required residents living on an arterial to pay only the cost of a collector street was the fairest method. She said she prefers that this issue go before the voters. She said she does not support this in its present form. Councilmember Iverson said the City has to start somewhere to solve this problem. She said she lives in the Broadwater Subdivision where she is currently paying on SIDs and still feels \$35.00 per year is better than being assessed \$5,000 to \$15,000 for street improvements to arterials. Residing on an arterial devalues one's property, she added. She said she supports the proposal.

Councilmember Brewster said he initially felt this was not a fair method to fund arterials. He said most of the arterial work is reconstruction on existing roads where the community has been built up around them. He said he will support the proposal.

Councilmember Boyer said this has to be reviewed with the benefit to the whole City, not just competing portions of the City. She said the responsibility of the Council is to take a leadership role and make the decisions that need to be made. This proposal would give the City a set amount every year to fund reconstruction and not have to count on SIDs being approved.

Councilmember Brown made a substitute motion to allow this issue to go before the voters, seconded by Councilmember McDermott. Councilmember Clark asked when the City could start collecting the fee if it goes to the voters. Mr. Bauer said the assessments would be in 2006 and construction could begin in 2007 if it is placed on the 2005 primary. He said the dilemma is there are projects that are slated for 2005 that currently have SIDs as a financing component. The hard question would be what to do with those projects. Additionally, the bond obligation in 2005 could run into trouble. He noted a special election could be considered, but that is expensive. On a voice vote, the substitute motion failed with Councilmembers Brown, McDermott and Jones voting "yes".

Councilmember Jones said that streets are important. He said this is a good method, equitable and the right way to proceed. He said his preference is a vote of the residents to decide this issue. Passage of the bond issue tells the Council that streets are important to the community. On a voice vote, the original motion was approved with Councilmembers Brown, McDermott and Jones voting "no".

Mayor Tooley called a recess at 10:15 P.M.

Mayor Tooley reconvened the meeting at 10:21 P.M.

Mayor Tooley excused Councilmember Poppler at 10:20 P.M.

**12. PUBLIC HEARING AND FIRST READING ORDINANCE granting Montana Dakota Utilities Co. an extension of their existing franchise to April 24, 2005 to operate a gas distribution system within the City of Billings. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

City Administrator Kristoff Bauer said MDU has approached the City regarding a new franchise. The City does not issue franchises often and it has taken more time than expected to prepare the draft for MDU to review. This request is for a six-month extension of the existing franchise to allow a review and final document that both parties are comfortable with.

The public hearing was opened. FRANK DURANT, REGIONAL MANAGER OF MDU, 2603 2<sup>ND</sup> AVENUE NORTH, said he echoed Mr. Bauer's comments. With other pressing matters before the City lately, an extension to allow more time for review was needed. He said the six-month extension is agreeable to MDU because it is an important issue that requires thorough review.

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

**13. SECOND/FINAL READING ORDINANCE amending BMCC by adding Section 27-1400: establishing a zoning overlay district to extend 1,000 feet from the center line of Shiloh Road north of Hesper Road; regulating development standards, landscaping standards, building design standards and other site development standards, and sign standards for commercial, industrial and multifamily developments. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

City Administrator Kristoff Bauer clarified that there are two different pieces to the scope of the Shiloh Overlay District, north of Hesper Road for which a public hearing has been held and was adopted on first reading and is before the Council on second reading tonight and south of Hesper Road for which a public hearing and first reading are still required. He said the recommendation is to schedule this for a date certain toward the end of September. This would allow the Council to benefit from testimony and discussion from the public speakers this evening and discussions with the County regarding their desire for changes. If the Council schedules this for September 27<sup>th</sup> it is hoped the County would have held all their sessions and determined what they consider appropriate so that a public hearing and adoption on first reading can be accomplished by the Council. In summary, Mr. Bauer said the recommendation tonight is to adopt the portion that is ready for approval on second reading (i.e. north of Hesper Road) and direct staff to schedule the portion south of Hesper Road for a public hearing and first reading on September 27<sup>th</sup>.

Councilmember Jones asked if there is County property on the west side of Shiloh Road north of Hesper Road. Mr. Bauer said there is, but the ordinance if adopted this evening would not apply to County property until they are annexed into the City. Councilmember Jones moved to delay action on the district north of Hesper Road to 9/27/04, seconded by Councilmember Brewster. Councilmember Brewster said the postponement is a good idea as it allows the City to review and discuss the County's perspective before action to keep consistency between the two entities. Mayor Tooley said he understood that property owners north of Hesper Road would like to proceed with

the development standards due to projects that are waiting to proceed, whereas the property owners south of Hesper Road did not. Ms. Beaudry said there are a couple of projects where the owners are striving to adhere to the regulations voluntarily, such as The Village on King Avenue and Shiloh Road and Shiloh Corner on Central Avenue and Shiloh Road. Mr. Bauer said the City wishes to provide certainty to property owners who want to comply with the regulations. Councilmember Clark said he is reluctant to proceed with the portion north of Hesper Road and have the portion south of Hesper Road under a different set of regulations. He said both issues should be postponed to the 27<sup>th</sup> and considered together.

Councilmember Brown said he thinks this should be handled as a zone change, which is the common practice.

Councilmember Jones said the County could develop their portion of the road in a totally different way from the City’s proposals. It is unfair to the City residents to require them to develop the road in a manner different from the County. On a voice vote, the motion to delay was unanimously approved.

**14. SECOND/FINAL READING ORDINANCE 04-5296 amending BMCC Section 19-202, prohibiting possession of alcoholic beverages in City parks except by permit. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

Councilmember Gaghen moved for approval of the Staff recommendation, seconded by Councilmember McDermott. Councilmember Clark asked for clarification that booster clubs such as those operating at Cobb Field would not need to go through the second permit process to sell beer in the park. City Administrator Kristoff Bauer confirmed that was correct. He added this ordinance would treat closed containers the same way as open containers are currently. On a voice vote, the motion was approved with Councilmembers Brown and Brewster voting “no”.

**15. WATER VENDING STATION LEASE with Water Service Company for lease-operation of the Briarwood Water Vending Station, term: 5 years, with option to renew for 5 years. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

Councilmember McDermott moved for approval of Alternative #2 to reject the proposal and not activate the dispensing equipment, seconded by Councilmember Clark. Councilmember Ruegamer asked what the cost to build the facility was and what the lease amount is. Mr. Bauer said the cost of construction was \$26,000 and the lease rate is a 9% surcharge dependent on the water sales. Councilmember Clark noted the bidders for operation don’t want that contract and dispute the 9%. Deputy Public Works Director Al Towlerton said in lieu of recordkeeping requirements of the lease proposal, the proposal is to pay a flat 9% on top of the rate charged by the City for the water. Councilmember McDermott asked if the City is planning to open more of these types of water stations. Mr. Towlerton said the proposed lease included language that the City reserves the right to consider (not that the City would consider) that and it would not be within three miles of the current facility. In answer to Councilmember Ruegamer’s question, Mr. Towlerton said the rate is currently \$1.25 for 748 gallons and an additional 9% (or \$1.36) would be paid to the City for water. The best estimate is a net of \$3,000 to operate. Councilmember

Ruegamer asked where the two private water suppliers get their water. Mr. Towlerton said one vendor is located on Holiday Avenue and the other is located on Orchard Lane. The City's facility is located south of the river adjacent to the Blue Basket off Blue Creek Road. Mr. Bauer said this facility has never been opened therefore these figures are unknown as there is no basis to calculate the use. A five-year lease was allowed to give time to create history on the facility.

Councilmember Jones asked if the requirement of an annual guaranteed payment would make this a non-complying proposal. Mr. Towlerton said language in the RFP was changed to allow for the ability to negotiate by the Council.

Councilmember Boyer said the area residents are saying they would not receive the service they wish to have and asked what that service was. Mr. Towlerton said the area residents support the water vending facility at this location. A petition of 175 resident signatures supports this position.

Councilmember Gaghen said this is a difficult decision because the two private vendors are feeling threatened by the operation of this vending station. She sees the problem as the City competing with taxpaying entities that have invested larger amounts of money to open and operate their businesses. She said this needs to be resolved and she will support the motion. Councilmember McDermott agreed with Councilmember Gaghen and said the primary responsibility is to the residents of the City. The private businesses should have been involved in this decision. The problem needs to be resolved and the only resolution is to reject the proposal and not activate the equipment. She noted there are no plans to annex the County residents that would use the facility and the City should support the private businesses in this situation. Councilmember Gaghen suggested selling the facility to the County to operate for their residents. Councilmember Jones said he does not like the idea of being in competition with private vendors or giving someone an advantage over private businesses that have made sizeable investments to operate.

Councilmember Clark noted the private vendors could not use the facility as the loading stand is too low. On a voice vote, the motion was approved with Councilmember Brown voting "no".

**16. RATIFICATION of Teamsters Local 190 Contract, term: 7/1/04 to 6/30/07. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

Councilmember Brewster moved for approval of the Staff recommendation, seconded by Councilmember Gaghen. Councilmember Clark thanked City Administration and the Human Resource Division for all their time and efforts to negotiate this contract. Councilmember Brown expressed appreciation for the residents of Billings for living with the situation. Councilmember McDermott said she would like to "set the record straight" that Kristoff Bauer did not go on vacation during negotiations, but delivered his children during a prearranged period of time and immediately returned to Billings. On a voice vote, the motion was unanimously approved. Mayor Tooley recognized Joe Dwyer in the audience and thanked his group for the expression of confidence in the policy body. He said this is a good contract and he hopes the City can move forward to a bright future.

**17. RESOLUTION 04-18182 AUTHORIZING A REDUCED PRICE OF \$128,340.00 ON THE SALE OF CITY-OWNED PROPERTY described as: Lots 1-2 and fraction of**



**Lots 3-10, Block 245, Sugar Factory Addition AND Lots 11, 12, 20-21 and fraction of Lots 3-10, Block 245, Billings Second Addition, Security Armored Express (SAE), purchaser. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

Councilmember Brown moved for approval of the Staff recommendation, seconded by Councilmember McDermott. Councilmember Clark asked why there was a reduced price to the seller after award of the contract. City Administrator Kristoff Bauer said the confusion arose when a similar property in this area had been granted incentives because of the location. There is an adopted policy that grants a number of incentives for the sale of property in this area. Mr. Bauer said this property did qualify for some of those incentives. He said the bidder was under the misunderstanding that the incentives would be retroactive to the bid award with the price reduced at that time. It was agreed that the incentives would be granted even though they were not included in the bid price. He added that they were not eligible for the cash price discount because there was a portion of the sale that included a land trade. On a voice vote, the motion was approved with Councilmembers Brown and Clark voting "no".

**18. Bid Awards:**

**(A) One New, Current Model 2004 Landfill Compactor/Sale of Used 826G Compactor. (Opened 8/17/04). ~~Recommendation to be made at meeting.~~ Recommend Tractor & Equipment Company, \$359,332.00.**

Councilmember Ruegamer moved for approval of Item 18A Bid Award, seconded by Councilmember Iverson. On a voice vote, the motion was unanimously approved.

**(B) Refuse Compactor Bodies, Solid Waste Division. (Opened 8/17/04). ~~Recommendation to be made at meeting.~~ Recommend Kois Brothers Equipment for Schedule I – Three Units, \$263,914.00, Solid Waste Systems for Schedule II – Two Units, \$52,836.00, Solid Waste Systems for Schedule III – Two Units, \$91,590.00.**

Councilmember Ruegamer moved for approval of Item 18B Bid Award, seconded by Councilmember Iverson. On a voice vote, the motion was unanimously approved.

**(C) Truck Chassis, Tilt Cabs for Solid Waste Division. (Opened 8/17/04). ~~Recommendation to be made at meeting.~~ Recommend Tri State Truck & Equipment for Schedule I – Three Units, \$311,535.00, Tri State Truck & Equipment for Schedule II – Two Units, \$200,676.00, Tri State Truck & Equipment for Schedule III – Two Units, \$199,422.00.**

Councilmember Ruegamer moved for approval of Item 18C Bid Award, seconded by Councilmember Iverson. On a voice vote, the motion was unanimously approved.

**(D) Elevator Maintenance. (Opened 8/17/04). ~~Recommendation to be made at meeting.~~ Recommend ThyssenKrupp and entering into a three-year contract for maintenance of the City's elevators.**

Councilmember Ruegamer moved for approval of Item 18D Bid Award, seconded by Councilmember Iverson. On a voice vote, the motion was unanimously approved.

**19. PUBLIC COMMENT on Non-Agenda Items -- Speaker sign-in required.**  
(Restricted to ONLY items not on the printed agenda.)

- DEBBIE ROWE, 202 JACKSON, asked why hate crimes must go through County Attorney Dennis Paxino and why he is still in office. She said his office has discouraged her in her request for help in the recent vandalization of her home. She asked for support in her concerns about the lack of assistance from the County Attorney's office.

**Council Initiatives**

**COUNCILMEMBER BREWSTER:** Councilmember Brewster moved to cancel the last two meetings in December (December 20<sup>th</sup> Work Session and December 27<sup>th</sup> Council Meeting), seconded by Councilmember Jones. On a voice vote, the motion was unanimously approved.

**COUNCILMEMBER JONES:** Councilmember Jones moved to direct Staff to look into the parking concerns of the residents in the area of Item 3 Special Review #766 (1431/1451 Country Manor Blvd) which was approved earlier this evening, seconded by Councilmember Brewster. Mr. Bauer said the parking provision required in the special review was more than adequately met by the applicant. He said the problem stems from traffic generated by the Red Door establishment. On a voice vote, the motion was unanimously approved.

**ADJOURN** —With all business complete, the Mayor adjourned the meeting at 11:24 P.M.

THE CITY OF BILLINGS:

By: \_\_\_\_\_  
Charles F. Tooley MAYOR

ATTEST:

BY: \_\_\_\_\_  
Susan Shuhler, Deputy City Clerk