

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

## **December 8, 2003**

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 Mike Larson.

**ROLL CALL** – Councilmembers present on roll call were: McDermott, Gaghen, Brown, Brewster, Kennedy, Ohnstad, Jones and Larson. Councilmembers Iverson and Poppler were excused.

**MINUTES – November 24, 2003.** APPROVED as printed.

**COURTESIES** -- Mayor Tooley welcomed Councilmembers Elect: Nancy Boyer, Vince Ruegamer and Richard Clark in the audience this evening. Councilmember Kennedy introduced his wife and son, also in the audience this evening to witness the last council meeting of his term.

**PROCLAMATIONS – Mayor Tooley.** None

### **BOARD & COMMISSION REPORTS**

- **Planning Board** – Planning Director Ramona Mattix said the Planning Board would undergo quite a membership transition at the end of this year. A comprehensive report of its activities and work program will be prepared early in 2004.
- Greg Krueger of the Downtown Billings Partnership thanked outgoing Councilmembers Kennedy, Ohnstad and Larson for their support of Downtown activities during their terms on the Council.

### **ADMINISTRATOR REPORTS – Kristoff Bauer.**

- Mr. Bauer noted that a corrected staff report for Item V was provided to the Council in the Friday packet to correct the year of the event to 2004.
- Mr. Bauer also noted the amended staff recommendation on Item #6, which is for conditional approval of the annexation.

Mayor Tooley noted there had been a request for a late addition to the agenda. Councilmember McDermott moved to ADD the **Final Plat of Goodman Subdivision, 2<sup>nd</sup> filing, Amended Lot 5A, Block 1** to the Consent Agenda as ITEM KK, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved and the Item was added as ITEM KK.

### **CONSENT AGENDA:**

1. A. **Bid Awards:**

(1) **Removal of City-Owned House and Barn located at 3410 Poly Drive.** (Opened 11/18/03). Delayed from 11/24/03. Recommend advertising for removal of the horse barn and scheduling demolition of the house.

(2) **Gasoline Powered Sweeper Scrubber for MET Transit.** (Opened 11/25/03). Recommend K.B. Chemical, \$32,411.55.

(3) **New Rooftop HVAC Unit for Logan International Airport.** (Opened 11/25/03). Recommend delaying award to 1/12/04.

(4) **New Current Model 2004 Truck Mounted 120-gallon Paint Striper.** (Opened 12/2/03). Recommend delaying bid award to 1/12/04.

B. **Amendment #1 to Automobile Parking Concession Agreement** with Standard Parking to lower performance bond requirements.

C. **Contract** for design and construction administration of the Highland Park Sprayground/Playground Project, Peaks to Plains Design, \$30,650.00.

D. **Urban Highway City-State Agreement** with Montana Dept. of Transportation for pilot project on Rimrock Road.

E. **Cure Stipulation Agreement** with United Airlines accepting Option A of \$16,420 as payment in full for outstanding December 2002 lease rental.

F. **Annual Memorandum of Understanding** with Beartooth RC&D Economic Development District for economic development activities in Yellowstone County, \$8380.00 for City's share.

G. **Vehicle Lease Agreement** with Laurel Ford for Laurel Police Dept participation in the HIDTA Task Force, \$3,250.00; AND Interlocal Agreement between City of Billings and City of Laurel for vehicle liability.

H. **Agreement with Downtown Billings Association (DBA)** for installation and maintenance of street furniture and holiday decorations in the downtown area, \$0.00.

I. **Letter Agreement** with Montana Public Employees Association – Billings Police Unit regarding School Resource Officers, \$750.00/year.

J. **Housing Development LOAN** for Securities Building Renovation, William D. Honaker, owner; \$2 Million.

K. **Donation of Useable Items** from City property known as the Veeder/McBride Building and Yellowstone Shopper Buildings at the corner of 4<sup>th</sup> Avenue North and North Broadway.

L. **Allocation of CDBG funding** for Cobb Field Revitalization Neighborhood

Study, \$5,000.00.

**M. Approval of GAP Financing** for Rocky Mountain Professional Building, Rocky Mountain Professional Building LLC, applicant, \$530,000.000.

**N. Approval of GAP Funding Grant** for Smith's Funeral Chapel Project for relocation to the former Bungalow Building on S. 27<sup>th</sup> St., \$450,900.00.

**O. Approval of Downtown Revolving Loans** to Touch of Sante Fe (\$203,860), Rocky Mountain Professional Building LLC (\$250,000), and Royer Properties LLC (\$250,000).

**P. Declaring airport snow removal equipment as surplus** and authorizing Airport to donate this equipment to Essential Air Service (EAS) airports within the State of Montana.

**Q. Authorizing changes** to CDBG Rental Rehabilitation Program.

**R. Allocation of CDBG funding** for demolition of properties located at: 612 N. 25<sup>th</sup> St., 612 ½ N. 25<sup>th</sup> St., and 616 N. 25<sup>th</sup> St, Thomas E. Towe and Court E. Ball, owners, \$5,000.00.

**S. Allocation of CDBG funds** to Habitat for Humanity for construction of five (5) affordable housing sites located at: 3223 3<sup>rd</sup> Ave S., 3215 3<sup>rd</sup> Ave S, 3024 9<sup>th</sup> Ave S., 3016 9<sup>th</sup> Ave. S., and 3117 7<sup>th</sup> Ave. S., \$50,000.00.

**T. Subordination of First Time Homebuyer Loan**, Susanne T. Kallen, 614 North 22<sup>nd</sup> Street, \$5,000.

**U. Resolution 03-18053 adopting the Walden Grove Park Master Plan** as the governing plan for the development of the park.

**V. Street Closure request** from Magic City Blues Festival on August 13-14, 2004.

**W. Approval** of 2004 Exchange City Golf Course (ECGC) budget, including a 9-hole fee increase of \$1.00.

**X. Confirmation of Officer:** Brett Lapham.

**Y. Approval** of FY2003-2004 Fair Housing Action Plan.

**Z. Resolution of Intent 03-18046** to create Park Maintenance District #4024 and setting a public hearing for 1/12/2004.

**AA. Resolution of Support 03-18052** for Rocky Mountain College to show the City's solidarity with RMC.

**BB. Resolution 03-18047** relating to a project on behalf of HW Billings/Western View Limited Partnership and the issuance of revenue bonds to finance the costs, confirming and amending Res. 03-18044, confirming preliminary approval of the project and setting a new public hearing date for 1/12/04. **AMENDMENT APPROVED** to ADD language that Staff negotiate a condition of payment in lieu of taxes.

**CC. Second/final reading ordinance 03-5260** expanding the boundaries of Ward II to include recently annexed properties described as: Lot 4, Block 2, Barry Acreage Tracts, 3<sup>rd</sup> Filing, (Annex #03-08).

**DD. Second/final reading ordinance 03-5261 for Zone Change #721:** a zone change from Residential 9600 to Residential 9600, Residential 7000 and Residential Multi-Family – Restricted on property described as Township 1 South, Range 25 East, Section 12: NWNW Less Emerick Subdivision and C/S 1702 and generally located southeast of the intersection of Central Avenue and 32<sup>nd</sup> Street West.

**EE. Authorization for Partial Release of Escrow Funds**, reducing escrow account for SID #1360: Gable Sub., 2<sup>nd</sup> filing, C/J Land and Livestock, LP, for excess funds greater than \$15,019.33.

**FF. Final Plat** of Bedrock Subdivision.

**GG. Final Plat** of Circle Fifty Subdivision, Amended Lot 18A, Block 14 and acceptance of the street dedication.

**HH. Final Plat** of Southgate Subdivision, 2<sup>nd</sup> Filing, Amended Lot 2B-1, Block 2.

**II. Final Plat** of Ridgewood Estates, 2<sup>nd</sup> filing.

**JJ. Bills and Payroll.**

(Action: approval or disapproval of Consent Agenda.)

**LATE ADDITION:**

**KK. Final Plat** of Goodman Subdivision, 2<sup>nd</sup> filing, Amended Lot 5A, Block 1.

Councilmember Brewster separated Item Z of the Consent Agenda. Councilmember Jones separated Item BB of the Consent Agenda. Councilmember Jones moved for approval of the Consent Agenda with the exceptions of Items Z and BB, seconded by Councilmember Kennedy. On a voice vote, the motion was unanimously approved.

Councilmember Jones moved for approval of Item Z of the Consent Agenda, seconded by Councilmember Kennedy. Councilmember Brewster asked for clarification of the procedure related to the Resolution of Intent. He asked if this resolution does not allow the Council to approve the actual Park Maintenance District that it relates to, and if the resolution of intent is the procedure that sets the public hearing for creating the district. Mr. Bauer said that was correct; it is the first step of the process. On a voice vote, the motion was unanimously approved.

Councilmember Jones moved for approval of Item BB of the Consent Agenda, seconded by Councilmember Kennedy. Councilmember Jones amended the motion to add the condition to negotiate payment in lieu of taxes, seconded by Councilmember Kennedy. Councilmember Jones said he was concerned that this would become a non-taxable entity and preferred to have payment in lieu of taxes negotiated before approval of this item. On a voice vote, the amendment was unanimously approved. On a voice vote, the motion as amended was unanimously approved.

## **REGULAR AGENDA:**

**2. PUBLIC HEARING AND RESOLUTION 03-18048 vacating a portion of 38<sup>th</sup> Street West along Lot 18A, Block 14, Circle Fifty Subdivision Amended. B. E. Lane, ETAL, petitioners. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

Public Works Director Dave Mumford said there was an agreement with the property owner to adjust the location of the bike trail route due to the canal location. This is a swap of the vacated right-of-way that is not needed for property that the trail is built on.

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

**3. PUBLIC HEARING AND RESOLUTION 03-18049 annexing Tracts 1-4, C/S 2064 and Tract 1, C/S 3125, generally located northwest of the intersection of King Avenue West and Shiloh Road, St. Vincent Healthcare Foundation, Inc., petitioner, (Annex #03-07). Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

Planning Staff Member Bruce McCandless said this property is located at the northwest corner of King Avenue West and Shiloh Road. He said the area is 119.22 acres and is currently zoned Agricultural Open-Space and is to the north and west of the property. South of the property the zoning is Entryway Light Industrial and to the east is the Olympic Park Planned Unit Development with mostly multi-family residential uses. Mr. McCandless said the owner of the property is St. Vincent Healthcare Foundation, Inc. and the future land use of the acreage is for mixed use. There are concurrent applications for zoning and subdivision that should be before the Council in February or March of 2004.

Mr. McCandless said the public services reports were generally favorable to the annexation with no significant impacts on City services. Interior City facilities would be the responsibility of the developer. He said the taxes and fees generated as the property

develops should pay for the water and sewer transmission and trunk installations. He noted that the developer said the property is not likely to be developed until the Shiloh Road Improvement Project is completed, projected to be around 2007 or 2008.

Mr. McCandless said the annexation conforms to several land use goals of the Growth Policy and the West Billings Plan. It conforms to the Annexation Policy as it is in the Sphere of Influence, over 10 acres in size and is contiguous to the City. It also places a higher density development closer to the arterial streets.

Mr. McCandless said the Staff recommendation is for approval of the annexation. He noted that the resolution contains the items that are typically listed as conditions. The conditions are:

- An Annexation Agreement, attached as Exhibit A, shall be executed by the petitioner and the City.
- That prior to development of the site, including the issuance of any building permits, the following shall occur:
  1. A Development Agreement be executed between the owner(s) and the City which shall stipulate specific infrastructure improvements and provide guarantees for said improvements; or
  2. A Subdivision Improvements Agreement (S.I.A.) and Waiver of Protest to SID shall be approved and filed that will stipulate specific infrastructure improvements and provide guarantees for such infrastructure improvements.
- That all of the adjacent King Avenue West and Shiloh Road rights of way shall be included in the annexation.

The public hearing was opened. DAVID IRION, 4314 PINE COVE ROAD, EXECUTIVE DIRECTOR OF ST. VINCENT HEALTHCARE FOUNDATION, said the proposed village development would be a mixed-use housing development integrated with and surrounding a healthcare village campus. Well-being and healthcare would be the essence of the village's character to provide a healthy work environment to meet the health and medical needs of the community. He said the affiliated businesses and services would be complementary to the activities and the mission of healthcare. There would be a well-landscaped environment throughout the village. Mr. Irion said the hope is that the village would be a notable Billings landmark. He noted that St. Vincent Healthcare Foundation acquired the property in anticipation of significant changes in future needs of the community and healthcare, and added that St. Vincent Healthcare Foundation is not moving to this new site.

JOSEPH WHITE, 1403 1<sup>ST</sup> AVENUE NORTH, said he opposes expansion in West Billings as it affects the air quality. He said he proposes that St. Vincent Healthcare Foundation acquire more property and build a first class sanitarium or rest facility.

There were no other speakers. The public hearing was closed. Councilmember McDermott moved for approval of the Staff recommendation, seconded by Councilmember Kennedy. Councilmember Brewster asked if the property would become tax exempt under the ownership of St. Vincent Healthcare Foundation. City Attorney Brent Brooks said annexation itself does not affect the tax status. Doug James, Attorney for St. Vincent said ownership by the Foundation does not make this property tax exempt. He added that the taxes would increase upon annexation. He said certain parcels may be used for tax-exempt purposes and those parcels may change status in the future. At

present the entire property would remain taxable. On a voice vote, the motion was unanimously approved.

**4. PUBLIC HEARING AND RESOLUTION 03-18050 annexing C/S 1648, 3<sup>rd</sup> Amendment, Tracts 5A1 and 5A2, Emmanuel Baptist Church, petitioners, (Annex #03-09). Staff recommends conditional approval. (Action: approval or disapproval of Staff recommendation.)**

Planning Staff Member Wyeth Friday said this property is located on the northwest corner of Shiloh Road and Monad Road. The area is 24.39 acres in size including the adjacent street and ditch right-of-way. The current zoning is Agricultural Open-Space with the existing land use as church facilities with some vacant land on the tract adjacent to Shiloh Road. The proposed use is for church facilities.

Mr. Friday said there were no objections to the public services report regarding City services, but the Fire Department would need resources in the future as annexations continue. There are no significant impacts to City services and there are existing utilities and a water line in Shiloh Road that can be extended to the development. The main interest of the petitioners is connecting to City water; the property will remain on septic for the present. City services costs may be offset by the taxes and fees paid on the non-exempt property. He noted that the front portion of the lot is subject to taxes and is currently undeveloped. The rear lot is exempt because of the church's non-profit status. Mr. Friday said the landowner would pay the utility construction fees.

Mr. Friday added the annexation meets the high priority criteria for conformance to the Annexation Policy as the property's eastern boundary is contiguous to the City limits; the property is larger than 10 acres; and the property contains regular boundaries and should not cause a decline in City services to existing residents. He said the annexation conforms to the Growth Policy goals as it is within the Sphere of Influence and appears to have a deficient public infrastructure. The annexation does not meet certain goals for annexation in that it is not a wholly surrounded county island; it does not currently receive City services; and it has limited tax benefit to the City and does not contain affordable housing or an employment center.

Mr. Friday said the Staff recommends approval with the following conditions: 1) that the City annex all of the adjacent Shiloh Road right-of-way and 2) that an Annexation Agreement and Wavier of Rights to Protest Special Improvement District(s) and Park Maintenance District(s) shall be executed between the owners and the City stipulating specific infrastructure improvements. These conditions are included the resolution.

The public hearing was opened. JOSEPH WHITE, 1403 1<sup>ST</sup> AVENUE NORTH, said this is a better use of annexed property and should be declared church use. There were no other speakers. The public hearing was closed. Councilmember Gaghen 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 03-- adopting the water and wastewater rate schedule adjustments: Schedule VI, Water System Development Fees; Schedule VI, Wastewater System Development Fees; Schedule VII, Water-Interior and Local Mains Construction Fee; and Schedule VII, Wastewater-Interior and Local**

**Mains Construction Fees. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

Public Works Director Dave Mumford said these are the adjustments of the system development fees/construction fees for the Water and Wastewater System extensions. These rates were last adjusted in the mid 1980's. He said this action was begun over a year ago. The development community raised concerns during the process about the requirements and costs. He said the Council requested that a committee be formed representing realtors, developers, engineers, the Utility Board and other concerned citizens. The committee helped in the selection of FCS Consultants that worked on the development of these fees. The final resolution from that committee is being presented to the Council this evening.

Mr. Mumford said the recommendation is that the fees be raised by 67% with the water construction fees decreasing 11% and the construction fees for wastewater increasing approximately 60%. The members of the committee and interested parties agreed that this increase is legitimate based on the actual cost of service. The proposed increase is over a four-year period to assist developers that have projects committed to the current fees.

Councilmember Brewster asked the Staff to explain the purpose of these fees. Mr. Mumford said the object of these fees is to pay for the existing infrastructure such as the mains, the truck lines, the extension of lines and the upgrades of the plant that are required to meet the added capacity needs. Councilmember Brewster asked if these funds are held separate. Public Works Deputy Director Al Towleron said these fees are receipted into the construction fund and are tracked. Councilmember Brewster asked how these projects were developed before the City had these fees. City Administrator Kristoff Bauer said they were funded by part of the rate base and from significant grants. Councilmember Brewster asked if a franchise fee is added to these fees. Mr. Towleron said a franchise fee is collected on all revenue.

The public hearing was opened. CLAYTON FISCUS, 1236 GRUBSTAKE CIRCLE, said he is speaking against the fees. He said this was wrong in the 1980's and it is still wrong. This is an 85% increase on water over seven years and 33% increase on sewer over three years. He said the Public Utilities Department does not need the money. He said it is wrong to attach fees to affordable housing and new construction. He added that the Supreme Court said the 4% franchise fee on utilities is illegal. Mr. Fiscus stated the system development fees were unfair. He asked if the Council is going to ask the Lockwood community to pay \$3,500 for every person connecting to the City water system. He said the fee of \$1,500 for affordable housing is punitive and illegal. He asked the Council to deny this rate increase.

JERRY HARKINS, OWNER 6<sup>TH</sup> AVENUE PLAZA, 3021 6<sup>TH</sup> AVENUE NORTH, said he is opposed to any rate hikes. He said he pays a lot for water in their building during the summer because of air conditioning. He said he thinks the attitude is that if the rates continue to rise, the City passes that increase on to the businesses. He said the businesses really don't need that.

JEFF ESSMAN, 3130 MCMASTER ROAD, said he speaks as a matter of clarification of the interpretation of when the frontage fees apply to interior main construction fees. He read from the resolution "the Interior Main Construction Fee will be calculated by using the total lot frontage abutting public rights-of-way containing public



water mains.” He said he is aware of situations in the past where City staff has attempted to apply those fees to public rights-of-way that did not contain public water mains or wastewater sewer lines. He gave examples as dedicated streets where no improvements exist or bike paths. Those fees should not apply where lines do not exist. He asked Council to ascertain from City staff if that is the intention of the fee structure.

There were no other speakers. The public hearing was closed. Councilmember Brown moved to disapprove all of the schedules of the Water and Wastewater System Development fees, seconded by Councilmember Jones. Councilmember Brewster asked that the Staff reply to Mr. Essman’s concerns. City Administrator Kristoff Bauer said there has not been an articulated policy to address Mr. Essman’s concerns. This resolution does present an articulated policy contained within and the City would abide by the conditions that fees are charged only on right-of-way that does contain mains.

Councilmember Jones asked the Staff to address Mr. Fiscus’ concerns about the 4% franchise fee. Mr. Bauer said the Supreme Court action that Mr. Fiscus referred to is not relevant to this fee. City Attorney Brent Brooks said the public right-of-way litigation does not involve the same statutes of the franchise fee that is involved in the System Development Fees. They do not apply to water and sewer franchise fees.

Councilmember Larson made a substitute motion to continue the public hearing to January 12<sup>th</sup> and take action at that time, seconded by Councilmember Kennedy. Mayor Tooley noted that the public hearing has been closed. Councilmember Larson corrected the substitute motion to conduct a new public hearing on January 12<sup>th</sup> and make a decision at that time, seconded by Councilmember Kennedy. Councilmember Larson said he is concerned that none of the stakeholders and persons involved in developing this proposal for System Development Fees came to testify at tonight’s public hearing. The only persons to speak had serious concerns about the fees. He said he is concerned that the Council would make a decision without hearing whether the proposed increases reflect the stakeholders thinking and that this is an appropriate policy. After hearing the testimony this evening the only conclusion he can see is to vote against approval.

Mayor Tooley noted there were citizens very familiar with the policy in the audience who chose not to come forward and testify. He said the Council has received letters from the DPARB (the committee that advises the City Administrator on development issues) that support the rate schedule adjustments. Mr. Bauer clarified that Mr. Harkins commented about the adjustments raising commercial rates. He said these adjustments would not raise those rates. Mr. Bauer said Mr. Essman asked for clarification and was provided an answer. Mr. Bauer noted Mr. Fiscus was the only individual that actually expressed concern about the fee adjustment proposal, believing that it is illegal and inappropriate. He said there are a number of individuals who support these adjustments and are not timid about coming before the Council and expressing any concerns they may have. On a roll call vote on the corrected substitute motion, the motion was approved 5 – 4 with Councilmembers Brown, Brewster, Kennedy, Jones and Larson voting “yes” and Councilmembers McDermott, Gaghen, Ohnstad and Mayor Tooley voting “no”. Mr. Bauer noted that the public notice requirements might require the new public hearing and action be scheduled for a date later than January 12th.

**6. RESOLUTION 03-18051 annexing Blocks 2 & 3 and portion of Block 1 of Golden West Estates, Jerry Olson ETAL, owners. (Annex #03-06). Staff**

**recommends conditional approval of the annexation. (Action delayed from 10/27/03). (Action: approval or disapproval of Staff recommendation.)**

Planning Staff Member Juliet Spaulding said the location of the proposed annexation is on the west side of Molt Road approximately one mile north of Rimrock Road. The area is 22.6 acres including adjacent street right-of-way of Molt Road and interior streets. There are 13 lots that are currently zoned Residential 15,000 that would change to Residential 9,600 upon annexation. The current and proposed land use is residential.

Ms. Spaulding said the staff report was presented at a previous meeting. She noted that the Annexation Policy that was adopted in May of 2002 had the intent to promote orderly growth, controlling the type, quality and location of the developments outside of the City that are likely to develop to urban density. She noted this annexation meets some of the priorities established in the Annexation Policy in that it is 10 acres or greater, should not cause a decline in City services to existing residents, and their existing infrastructure is insufficient (i.e. water). However, it is not in the Sphere of Influence, not a wholly surrounded county island, but is contiguous to the City limits and is not an urban density development. On November 24, 2003 the Council adopted new annexation criteria that pertain to this annexation, those requirements and the status are as follows.

- 1) The requirement that specific commitments for the timing of phased improvements (re: road) or services in the annexation agreement has not been accomplished.
- 2) The required Master Plan to be submitted showing possible future subdivision so that an increase in density potential can be evaluated has been agreed to, but not received as yet.
- 3) It was agreed to submit plans prior to water extension to meet the requirement that when underground utilities are constructed a street and pedestrian facilities design be submitted and paid for by the petitioners so that the utilities would be installed consistent with the street and right-of-way improvements needed.
- 4) The required right-of-way dedication on lots to be annexed where the right-of-way is not to City standards is not applicable.
- 5) Petitioners agreed to form a maintenance district or incur a service surcharge for those items (i.e. sub-standard streets) or services not to City standards.
- 6) The requirement that large area annexations of developed property be treated the same as vacant property was not applicable.
- 7) The requirement that any subdivision created in the county have all existing water and/or sewer systems improved to current City standards and allow for phasing of the improvements would be specified in the Annexation Agreement as the petitioners want water first and sewer later. They do not want to sign a waiver.

Ms. Spaulding said in light of the responses to the recent Annexation Policy changes the Staff recommendation is for conditional approval with the following conditions:

1. An Annexation Agreement shall be executed between the owners and the City, which shall stipulate specific infrastructure improvements (within a 10 year period) and provide guarantees for said improvements. Part of this agreement shall state that the petitioners will not protest their inclusion into a Park Maintenance District.
2. Waivers of right to protest creation of one or more Special Improvement Districts (SIDs) for future water, sanitary sewer, storm water, street and other improvements shall be signed by all owners of record within the area of annexation.

Ms. Spaulding said the other option for the Council is to deny the annexation based on her latest discussion with the homeowners that they are not agreeable to completing street improvements within 10 years. Staff is not supportive of waiting 15 years before creation of an SID for street improvements. The reasons for this are that staff will likely have changed in 15 years, the property owners will likely have changed, the valve boxes for water lines are susceptible to damage from grading of gravel roads, the cost of paving increases over time and there is little incentive for infill development and development at urban densities.

Councilmember Kennedy asked if the Council approves the annexation are they bound by the Annexation Agreement and the 10-year condition. City Attorney Brent Brooks said it is a condition of the annexation and if the property owners do not sign the agreement, the Council has the right to not sign the agreement as well. He suggested that the Council could make that a condition of the annexation, that the document must be signed. Ms. Spaulding said the Planning Department is willing to work out the details pertaining to the agreement and the timeline.

Councilmember Brown said he does not think the City should be maintaining gravel roads. Councilmember Jones asked if the Street Maintenance District that would be formed would be responsible for the maintenance of the roads. Mr. Bauer said that is one of the proposed conditions of the annexation. If the Council approves this condition of the annexation, it would be expected that the property owners would pay the expense required to maintain the streets. Councilmember Jones expressed his concern about the 15-year time limit and that people will forget what they have signed or that the land has changed owners and the new owners are not aware of this stipulation. He said he would like the 10-year time limit to remain. Mr. Bauer said there was a suggestion that an "overlooking" SID be formed that would allow property owners to begin payment in advance of the street improvements, spreading the cost of the streets over a longer period of time. This would have allowed money to be in place when the costs of the job moved forward. He said the Staff has researched the strict SID process for authority to allow this to occur. At this point the research does not support this as a viable option.

Councilmember Kennedy asked about the property owner's request not to sign waivers of protest for installation of the sewer. Ms. Spaulding said in the initial discussion they stated they would sign, but the owners said they did not want the sewers to be installed unless they were environmentally necessary. She said they would probably sign waivers if it is spelled out that the sewers would not be installed immediately or unless necessary.

Councilmember Kennedy asked what is in place to notify new landowners that there are "guarantees" in place for the future cost and construction of the improvements. Mr. Bauer said the waiver would run with the title and the City Code requires that the seller provide information to the purchaser of pending costs of this nature.

Councilmember Brown said that waivers are becoming a problem and asked if there is another avenue to accomplish the same thing. Mr. Bauer said this is the only avenue that is available when development is to be done in the future.

Councilmember Gaghen expressed her concern for extending the street improvements for 15 years and leaving a "cloud of uncertainty". Councilmember Brewster said there is not a clear answer for providing guarantees for the improvements. He noted

that there are letters of credit, financial guarantees or a bond on developer-related subdivision improvements. With a long-term agreement such as this, how does one provide for guarantees as stated in the staff memo? Mr. Bauer said the only way to provide those guarantees is through the waiver process.

Councilmember Ohnstad said the eleven existing properties have been there for a long time. He said ten (10) years should be a long enough time to decide about street improvements and sewers. He said he did not think they really intend to do the street improvements.

Councilmember Kennedy said the Annexation Policy changes are a way to “retrofit” some areas that are already developed. He said he is not ready to say “no” to this annexation because there is time to accomplish what needs to be done and avoid the loss of the fees involved in starting this annexation process. Councilmember Jones asked how long the Council could continue to delay an item. Mr. Bauer said there is no limit.

Councilmember Brewster asked for clarification of the staff recommendation. The recommendation as stated in the staff presentation was repeated as:

1. An Annexation Agreement shall be executed between the owners and the City, which shall stipulate specific infrastructure improvements (within a 10 year period) and provide guarantees for said improvements. Part of this agreement shall state that the petitioners will not protest their inclusion into a Park Maintenance District.
2. Waivers of right to protest creation of one or more Special Improvement Districts (SIDs) for future water, sanitary sewer, storm water, street and other improvements shall be signed by all owners of record within the area of annexation.

Mr. Bauer said the improvements mentioned in item 1 concern the road improvements, as the sewer improvements would be in the future, probably past the 10-year period. He said the waivers in item 2 actually allow the City to enforce the conditions and require installation.

Councilmember Brewster moved for approval of Staff recommendation, seconded by Councilmember Ohnstad. Councilmember Larson said he agrees with Councilmember Kennedy that this is a new policy, a test case, and that Staff has assembled a reasonable proposal. He said he is concerned about extending the time limit to 15 years and the issue of guaranteeing. The turnover of homes in this area in ten (10) years is highly possible. New landowners could be very surprised in ten (10) years to find City street improvements beginning in five years. He said his experience on the Council has been via several “very ugly” public hearings revolving around waivers of protest of promises made that new property owners were not aware of. This makes the issue of waivers difficult and contentious. He said to go beyond ten (10) years is asking a lot. He noted he is also concerned about the fact that this annexation is outside of the Sphere of Influence. The Council is being asked to bend the recently restructured rules for a subdivision that is unwilling to meet most of the criteria that are being asked for properties outside of that Sphere of Influence. He said he thinks the petitioners need to regroup, revise and re-apply at a later date.

Councilmember Kennedy said he did not think the Council has enough information to approve this annexation. Councilmember Brown said he is still concerned about the maintenance of the gravel road. Councilmember Jones clarified that a street maintenance district to maintain the gravel roads is part of the annexation agreement. Mr. Bauer said they must pay the additional cost of maintaining non-standard infrastructure, which would

be a gravel road. Councilmember Jones said he is concerned about the property owners rejecting the 10-year timeline for the street improvements. Councilmember McDermott said that she was surprised to see the change to 15 years. She said she agrees with Councilmember Jones that 10 years is an appropriate timeline. She noted that waivers of protest would be a continual problem as growth continues. Mayor Tooley noted using waivers is not a good way to guarantee improvements. He said he had hoped there was another legal mechanism to make those guarantees. In ten (10) years there will very likely be a different Council, policymakers and Staff with different residents in the subdivision that will be “blind-sided” by this agreement and the costs involved. Councilmember Brown asked for assurance that the City would not have to maintain the gravel road. Mr. Bauer said the City would have to maintain the road, but it would be at the cost of the Street Maintenance District formed by the property owners. On a roll call vote, the motion was approved 5-4 with Councilmembers McDermott, Gaghen, Brewster, Ohnstad, and Jones voting “yes” and Councilmembers Brown, Kennedy, Larson and Mayor Tooley voting “no”.

**7. PUBLIC COMMENT. (Restricted to Non-Agenda Items; comments limited to 3 minutes per speaker. Please sign up on the clipboard located at the back of the Council Chambers.)**

- CLAYTON FISCUS, 1236 Grubstake Road commented on delaying special improvements, citing his experience where improvements that had been delayed ended up costing 300% more because of rising costs and changing interest rates.
- MIKE ATKINSON, 6326 Golden West Terrace, Golden West Estates, thanked the Council for their support of the Golden West Estates annexation. He noted he believed that the property owners in the area would be able to come to an agreement on the future improvements required with annexation.

**Council Initiatives**

- **COUNCILMEMBER BREWSTER:** Councilmember Brewster asked about the status on the comments made by Tom Zurbuchen (on Nov 10<sup>th</sup>) regarding concerns about the Subdivision Improvement Agreement that was contained in the final plat approval for the Cherry Creek Development. He noted that the agreement stated that no building permits would be issued until all requirements in the SIA were met. Councilmember Brewster also noted that the developer had been using the emergency entrance to bring all of his equipment into the subdivision. He asked if that entrance could be gated and the developer made to use the other entrance to the subdivision. Mr. Bauer said the SIA guarantees will be researched and the emergency entrance issue will be turned over to code enforcement.
- **COUNCILMEMBER LARSON:** Councilmember Larson moved to direct staff to prepare a presentation for the January 20th work session on the intent and process of the study being conducted by A & E Architects on the proposed Multi-Use parking facility next to the Library, seconded by Councilmember Jones. Councilmember McDermott suggested that invitations to the work session be sent out to interested parties such as the Downtown Billings

Partnership and the property owners. Mr. Bauer noted that he would provide specific notice to identified stakeholders of this discussion. Greg Krueger from the Downtown Billings Partnership said he would inform the Downtown property owners. On a voice vote, the motion was unanimously approved.

YEAR END CLOSING REMARKS:

- MAYOR TOOLEY noted this would not only be the last meeting of the Council for 2003, but the last meeting for Councilmembers Mark Kennedy, Mick Ohnstad and Mike Larson who are completing their terms of office.
- COUNCILMEMBER LARSON noted that the thing he is most proud of during his time in office is the revitalization of the Downtown. He noted that a lot of work and effort went into reaching out to property owners, making connections, getting people involved and proving that they were being heard. He urged the Council to continue its support of the Downtown.
- COUNCILMEMBER OHNSTAD said it has been a privilege to serve the community, noting it has been a great learning experience. He said he learned that the City is "big business" that happens to be government rather than private; he learned a lot about taxes -- they are not the enemy and actually make sense; and lastly he learned about how the quality of life issues and expectations of quality of life have changed.
- COUNCILMEMBER KENNEDY: noted he has served with 19 councilmembers, two mayors, four city administrators, and numerous staff during his time on the Council. He thanked each member of the present Council individually for their commitment and the energy they devote to their elected positions. He also urged the Council to continue to work with the Downtown interests to continue the revitalization that is underway.

NOTE: This was the last Council meeting for 2003. The next regular meeting of the City Council will be on January 12, 2004.

**ADJOURN** —With all business complete, the Mayor adjourned the meeting at 8:15 P.M.

THE CITY OF BILLINGS:

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

*MINUTES: 12/08/03*

ATTEST:

BY: \_\_\_\_\_  
Marita Herold, CMC/AAE, City Clerk