

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

February 14, 2005

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

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

ELECTION OF DEPUTY MAYOR PRO TEMPORE – Councilmember Clark nominated Councilmember Don Jones, seconded by Councilmember Brown. On a voice vote, the nomination was unanimously approved. Councilmember Don Jones was selected as Deputy Mayor Pro Tempore.

MINUTES – January 24, 2005 – Approved as printed.

COURTESIES – Police Dept. Police Chief Ron Tussing introduced new officers Darcy Dahle (a former Sgt. with the Bozeman Police Department) and Brad Ross (an award recipient at the Hero's Award Breakfast in December 2004) and asked the Council to approve confirmation of the officers this evening. (See Item H on Consent Agenda)

PROCLAMATIONS – Mayor Tooley. None

BOARD & COMMISSION REPORTS – Historic Preservation Board

- Jolene Reick, chair of the Yellowstone Historic Preservation Board said three positions on the board are currently open, the Laurel representative, the At-Large representative and the Crow Tribe representative. She noted members must be members of the Historical Society, own historical property or have some type of background in historic preservation. Ms. Reick said the Annual Roundtable (where members talk about their projects) would be on March 15th at the Billings Depot and is open to the public. She introduced Ann and Kevin Koistra-Manning, consultants at the Western Heritage Center. Mr. Koistra-Manning reported on projects the board has completed or are underway: the *Bricks and Boards* project, the Walking Tour booklet update, building reviews and architectural surveys in Billings and the surrounding communities, a Walking Tour booklet for Laurel, survey of architectural styles in neighborhoods – beginning with the South Side first, numerous public programs and films, and expansion of the Billings Townsite Historic District to the 2900 block of Montana and Minnesota Avenues. This district is included in the National Historic Register and provides tax breaks for those property owners. Mr. Koistra-Manning also noted May 2005 is Historic Preservation Month.

ADMINISTRATOR REPORTS – Kristoff Bauer.

- Mr. Bauer noted there were two changes in information regarding items on tonight's agenda. A revised memo for Item 1A1 was sent in the Friday packet with a revised bid recommendation. Addendums for Item 4 for Zone Change #750 were also included. One addendum was sent in the Friday packet and the other was on the Councilmember's desks this evening.

LEGISLATIVE REPORT – Kristoff Bauer.

- Mr. Bauer reported briefly on several bills affecting the City: HB 551, Local Option Tax bill had a public hearing last week and is still in the House Taxation Committee waiting executive action. SB184, another Local Option Tax bill, was amended twice on the floor and passed on second reading. No information on the text amendment was available. HB480, a bill revising the law governing annexation will have a public hearing tomorrow; SB309, a bill eliminating the distance restriction on an organizing municipality will also be heard tomorrow. Mayor Tooley will travel to Helena tomorrow to give testimony as to direction the Council would prefer the City to take on these bills. These two bills have the same impact, allowing an urbanized area to incorporate into a municipality without permission. SB237, a bill to allow fee structures and projected fees to be used in selecting certain services will be heard later this week. He noted the transmittal date is February 23rd and any bills with no action at that point will die.

LATE ADDITIONS:

Councilmember Brewster moved to add discussion on HB480, SB309 and SB237 to the agenda as ITEM 6 of the Regular Agenda, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved. (See Item 6 of the Regular Agenda).

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Item: #1, and #4 ONLY. Speaker sign-in required. (Comments offered here are limited to 1 minute per speaker.)

THERE WAS NO PUBLIC COMMENT.

CONSENT AGENDA:

1. A. **Bid Awards:**
 - (1) **W.O. 04-14: Billings Wastewater Treatment Plant Headworks Replacement.** (Opened 1/11/05). (Delayed from 1/24/05). Recommend Williams Brother Construction LLC, \$5,089,708.00. \$4,960,000 (Revised recommendation)
 - (2) **SID 1358 – Lake Hills Subdivision.** (Opened 2/1/05). Recommend H. L. Ostermiller, \$1,433,122.15.
 - (3) **W.O. 05-03: 2005 Street Maintenance, Contract #1.** (Opened 2/1/05). Recommend JTL Group, Inc. \$478,156.50.
 - (4) **Detroit Diesel Engine Overhauls for 6V92, Series 40 and Series 50 Diesel Engines.** (Opened 2/8/05). Recommend delaying award to 2/28/05.

(5) Three (3) Year Mowing Contract for Billings Logan International Airport. (Opened 2/8/05). Recommend delaying award to 2/28/05.

(6) Wastewater Plant Chemicals – Dry Polymer for Public Works Department. (Opened 2/1/05). Recommend Polydyne Inc., \$1,905.00/1500-lb bag.

B. C.O. #8, W.O. 02-15: Billings Operations Center, Hardy Construction, \$24,021.00.

C. C.O. #10, W.O. 03-01: 2003 Schedule II Water and Sewer Line Replacement, Chief Construction, \$33,044.06.

D. Street Closures:

(1) HRDC St. Patrick's Day Celtic Celebration: N. 28th between 1st Ave N and 3rd Ave N on March 12, 2005.

(2) HRDC St. Patrick's Day Parade: established downtown parade route on March 12, 2005.

E. Semi-Annual Investment Report.

F. Pledged Collateral on Certificates of Deposits, US Bank Repurchase Account and US Bank Municipal Investor Account.

G. Proposed adjustment of water and wastewater rates, setting a public hearing date for 3/28/05.

H. Confirmation of Officers:

(1) Darcy Dahle

(2) Brad Ross

I. Contract with Yellowstone County for animal control services; term: 7/1/05 to 6/30/06, \$55,000.00.

J. 2005 Cobb Field Stadium Turn Key Agreement.

K. Acknowledging receipt of petition to vacate right-of-way in Country Club Heights Subdivision described as: a portion of alley between Lots 1 and 28, Block 1, Country Club Heights Subdivision, and setting a public hearing date for 2/28/05.

L. Second/final reading of ordinance 05-5315 expanding the boundaries of Ward V to include the recently annexed properties of Annex #04-13, described as a portion of the NW4 of Section 4, T1S, R25E, C/S 1877, Tracts 1 & 2. Jack and Robert Sukin, petitioners.

M. Second/final reading ordinance 05-5316 for Zone Change #749: a Planned Development zone change changing the underlying Residential Multi-Family zoning to Neighborhood Commercial in the Parkland West PUD, on a tract described as Lot 5, Block 10, Parkland West Subdivision, 6th Filing and located on the west side of

32nd St West. Central Capital LLC, owner, Engineering, Inc. agent. Zoning Commission recommends approval and adoption of the determinations of the 12 criteria.

N. Second/final reading ordinance 05-5317 for Zone Change #751: a zone change Residential-7000 to Residential-7000-Restricted on a 100-acre parcel described as Tract 3A, C/S 3217 Amended, generally located on the north side of Mary Street between Hawthorne Lane and Bitterroot Drive. BRV Development, LLC, owner. City of Billings, petitioner. Zoning Commission recommends approval and adoption of the determinations of the 12 criteria.

O. Second/final reading ordinance 05-5318 for Zone Change #752: a zone change amending the official Zoning Map to show the extent of the Shiloh Corridor Overlay District, generally located 500 feet east and west from the centerline of Shiloh Road north from King Ave West to Rimrock Road. City of Billings, petitioner. Zoning Commission recommends approval and adoption of the determinations of the 12 criteria.

P. Second/final reading ordinance 05-5319 for Zone Change #753: a zone change from Residential-7000 and Residential-6000 to Public zoning, described as Lot 1, Block 27, Lake Hills Subdivision, 6th filing. Rocky Mountain College & Billings Heights Water District, owners, Engineering, Inc. agent. Zoning Commission recommends approval and adoption of the determinations of the 12 criteria.

Q. Preliminary Plat of Amended Lot 1, Block 17 of Daniel's Subdivision, Second Filing, generally located at the southeast corner of the intersection of Hawthorne Lane and Mary Street.

R. Bills and Payroll.

- (1) January 7, 2005
- (2) January 14, 2005
- (3) January 21, 2005

(Action: approval or disapproval of Consent Agenda.)

Councilmember Brown separated Item A1 of the Consent Agenda. Councilmember Ruegamer moved for approval of the Consent Agenda with the exception of Item A1, seconded by Councilmember Brewster. Councilmember Brown expressed concern about the contract with Yellowstone County for animal control. He noted the estimated cost to administer the program exceeds the revenues by approximately \$40,000. He asked what could be done about this. City Administrator Kristoff Bauer said he is currently in discussions with the County to renegotiate an increase in the contract price. On a voice vote, the motion was unanimously approved.

Councilmember Ruegamer moved for approval of Item A1 of the Consent Agenda, seconded by Councilmember Boyer. Councilmember Brown asked about the price difference (decrease) and what it represents. City Engineer Vern Heisler said the alternate portion of the bid that added flow meters to the project were considered unnecessary at this

time. That represents the decrease in the price. Mr. Heisler said the item was clearly identified as an alternate that may or may not be awarded and did not require a new bid request. On a voice vote, the motion was unanimously approved.

REGULAR AGENDA:

2. PUBLIC HEARING ON REALLOCATION OF CDBG FUNDS. Staff recommends reallocation of CDBG funds and the transfer of \$100,000.00 from the CDBG Affordable Housing Development Fund to the First Time Homebuyers Program. (Action: approval or disapproval of Staff recommendation.)

Community Development Manager John Walsh said all of the funds in the First Time Homebuyers Program are currently obligated and there are 13 additional applications for this program. There is sufficient funding currently available in the Affordable Housing Development Fund to meet those obligations between now and June 30th when new funding will become available. He said the City has assisted 28 first time homebuyers in the program and 10 additional homebuyers through the American Dreams Downpayment Initiative Program. Mr. Walsh added, since inception (1994), the program has assisted 388 households to achieve home ownership. It has been much more difficult to assist homebuyers because the average home costs have increased from \$70,500 to \$90,000. He asked the Council to approve the allocation.

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

3. PUBLIC HEARING FOR MET TRANSIT DOWNTOWN TRANSFER CENTER. Staff recommends approval of the use of City-owned property located at 4th Avenue North and North Broadway for the construction of a transit center. (Action: approval or disapproval of Staff recommendation.)

Aviation and Transportation Director Bruce Putnam said there have been many presentations on the selection of the 4th and Broadway City-owned property site, including a public forum sponsored by the Mayor last Tuesday evening. He said the MET Downtown Transfer Center is an important project for the citizens of Billings and customers of the MET Transit. The Staff has been working on this project for over three years and the Site Selection Committee has been involved for over two years. A great deal of input was sought and received from the Aviation and Transit Commission. This information along with Staff and Site Selection Committee input has been reviewed by the City Council on multiple occasions. Mr. Putnam said the Staff has endorsed the recommendation of the 4th and Broadway site by the Site Selection Committee. It has also been formally endorsed by the Aviation and Transit Commission, the Library Board and in the beginning by the Downtown Billings Partnership Board.

Mr. Putnam noted the use of the First United Methodist Church parking lot as part of this project is not required to complete the mixed use facility. He said there is a potential developing dilemma that if this project cannot be placed on City property, then any operationally appropriate privately-owned site will be difficult to purchase and may require the use of eminent domain. Mr. Putnam said all funds are currently available to

acquire the site and construct the facility.

Councilmember Jones asked where the entrance to the transfer center would be if the Church parking lot is not used. Mr. Putnam said it could be accomplished by taking the current Library parking stalls to the north of the Dude Rancher and utilizing that site. Replacement parking would be provided in the first or second level of the parking portion of the facility.

Councilmember Ruegamer asked who was on the Site Selection Committee. Mr. Putnam said Greg Krueger and Lisa Woods of the Billings Downtown Partnership, Councilmember Iverson, Aviation and Transit Commissioner Bobby Roberts, Consultants Jerry Pegnata from Developmentally Disabled SRS, Ardis Ollin from the Mayor's Mobility Task Force and several Staff members, himself, Transit Manager Ron Wenger, the Transit Planner and a bus driver were part of the committee. He noted the 15 sites selected by the committee met a specific set of operational criteria for location of the facility in the downtown area. Remote sites for many reasons are not conducive to this type of facility.

Councilmember Brewster asked Mr. Putnam to address the issue of notification of the Church of the City's intentions for their parking lot. He said it was his understanding that the Church has been aware of the City's desire for the parking lot in this project and other downtown development projects. Mr. Bauer said the City did not contact the Church recently specific to this project. There have been conversations with a number of the members of the Church about their willingness to participate or not participate in a number of proposals that have come forward for the 4th and Broadway site over the last few years. He said the City has not talked with them this time as it was thought to be premature as the Council had not approved the site. Mr. Bauer said a member of the congregation at the public forum confirmed ongoing conversations about the potential for the property. Mr. Putnam added there are specific rules through the Federal Transit Administration (FTA), regarding contact with property owners of potential sites. Therefore, it is the view of the City Staff that it is inappropriate to initiate formal discussions at this point. Mr. Bauer noted the 15 property owners of the potential sites have not been contacted.

Councilmember Ulledalen asked how big of an area is needed for the facility. Mr. Putnam said 40,000 to 45,000 square feet is needed for the project. Many of the sites mentioned as alternatives do not meet that basic criteria. The four lots included in the 4th and Broadway are a little more than 40,000 square feet.

The public hearing was opened. ANN MILLER, 3112 RADCLIFF DRIVE, said she is speaking as President of the Downtown Billings Partnership Board. She said the Partnership requests that the City take the two months recommended by the private developers before proceeding with the Transfer Center. She said this would give more time for the successful development of two projects, the Bus Transfer Center and a private development that generates tax revenue. She said it is hoped that a different site for the Bus Transfer Center is found. Since last Tuesday's public forum, several board members have asked the Partnership to reconsider their conditional endorsement. The three conditions were: 1) there must a multi-purpose use with a potential for tax revenues for the Center, 2) all displaced parking must be replaced, and 3) there must be enhancement to the Library. She said the Partnership is not in favor of a project without the multi-use component. Ms. Miller said the downtown property owners met last week and reversed their qualified support for the 4th and Broadway site for the Transfer Center. In fact all of the property owners at the public forum that are in the immediate area of this site were

opposed to the placement of the center at this site. She asked the Council to consider the concerns of these significant investors. She suggested the Council consider the public/private offers to assist in a new site selection process.

WAYNE HIRSCH, 1161 AMENDMENT CIRCLE, said he is a Billings' business man and a third generation Montanan. He is the President of US Bank and Regional President of US Bank in Montana and Wyoming. He said he is opposed to building the MET Transit Center at 4th and Broadway. He is NOT in opposition to the project. Mr. Hirsch said the 4th and Broadway site is a prime location for future development in the most important corridor in Billings that will ultimately define the future of our City. As a resident and a downtown employee of Billings for the past 13 years, he has witnessed more progress in this corridor in the last 5 years and it is just beginning. He asked about the other destination areas such as the West End or the Heights where there is tremendous growth. He said those areas are just as suitable for this type of facility. "It doesn't matter where the transfer takes place, only that there are convenient stops for disembarking and boarding," he added. Mr. Hirsch suggested the City consider building the transfer center on property east of 27th Street and west of MetraPark as that area needs more urban renewal than any other area in our community.

ALLYN CALTON, MARKETING MANAGER FOR THE BILLINGS GAZETTE, said she speaks on behalf of the Billings Gazette. She quoted a consultant who stated "Billings is a planner's dream, not for what it is but for what it could be." She said when developments pass tough scrutiny, cities become more than just like every other city with enormous value and a vibrant, economically competitive and highly desirable place to live and do business. Ms. Calton said the decision on the Transfer Center project will have a critical impact on the downtown district and should undergo tough scrutiny. She said the facility at 4th and Broadway would not generate the highest economic return, and noted the review committee did not even consider this site originally because of its potential and interest as a downtown entertainment complex. This site is highly suited for private development such as offices, retail, hotel or condominiums, putting money into City tax coffers that would not be realized by a City transfer facility. Ms. Calton said the present proposal will have the first three levels acting as a "turnstile, people in, people out" and constant bus, auto and people traffic will add congestion to a high traffic intersection. The congestion, noise and traffic fumes will likely diminish the appeal of locating offices and condos on the upper levels. Also the high traffic movement is not in character with the renovated streetscape that extends both north and south of the proposed facility. Ms. Calton said retail or office space on the lower levels and condos or suites above would change the development into a consumer destination with uses more congruent with adjacent properties supporting desired pedestrian traffic. She also said the transfer center does not align with the character of the downtown district. The vision for the redevelopment of the downtown area was to include a destination for shopping, entertainment, fine arts and continuing education. She said placing the transfer center in one of the last remaining premier development sites is not the right choice and would seriously diminish the flow of a continuing revitalization effort. She asked the Council to delay construction until a more appropriate development site is found.

TERESA HARRINGTON, 3114 LOHOF DRIVE, said she speaks in opposition of the proposal on behalf of the First United Methodist Church. She read from a letter from the Church Council chairperson that urges the Council to vote against the use of City-

owned property located at 4th and Broadway for the construction of a transit center, or at least postpone the decision for two months. The letter states that the City has “picked this site because the City owns it and it is easy.” The letter notes that Steve Corning, a developer said the City selected the site by default and not by design. She goes on to state the proposal has been consistently misrepresented because the land is not all City-owned. A portion of the proposal includes the Church’s parking lot and the Church has not been approached about the placement of the facility across the street or purchase of their parking lot. The next steps in the proposal do not include consulting or negotiating with the Church, the letter further states. She said First United Methodist Church is not interested in selling its parking lot to the City, nor trading the lot for other upper level parking spaces. She said the Church wants to retain their safe and convenient surface level parking. Ms. Harrington said the admission by City Staff that another transfer center the City has been operating has a loitering problem concerns her. The Church has a safety and security concern for their staff and this would jeopardize their efforts to overcome that issue.

BRUCE SIMON, 217 CLARK, said he is a downtown property owner. He said the City can have a transfer center in the downtown area and still preserve the 4th and Broadway site for future private development. He said there is a need for more residential housing in the downtown area to continue to grow the vitality of the City. He suggested another site to consider for the transfer center is the half block at the MDU property that is close to the downtown area and has easy access. Mr. Simon asked the Council to take time and redouble efforts to find a transfer center site that will “do the job”. He said the proposed transfer center is nothing more than a \$6 Million parking garage and the downtown property owners previously said “no” to a parking lot at that site.

JOSI WILGUS, 2010 VIRGINIA LANE, said she is an architect and a member of the First United Methodist Church. She urged the Council to vote no on this site. She said the downtown area already has barriers including the train tracks and 27th Street. This site as a transfer center would provide another barrier. Ms. Wilgus said this site is too important and has better uses for it. She asked the Council to look for another site, perhaps on the periphery and closer to 27th Street.

CONNIE WARDELL, 1302 24th STREET WEST, said she has 35 years experience as a realtor and is the chairman for the Downtown Housing Committee for the Downtown Billings Partnership. She said housing above the transfer center would “not happen” because the environmental assessment would show a good chance for significant liability from the potential lung problems that could be caused from the transit fumes. It is also not an attractive site to place premier housing. She said this is a premier site and is the launching pad for high-end housing. Ms. Wardell noted the committee did not select this site originally. She also stated the City is making this a difficult situation for the United First Methodist Church who made the decision to stay in the downtown when many other churches moved to the suburbs. The Dude Rancher is known nationally and the City would be surrounding it with an unattractive facility that would devalue their property and force them to “claim a taking”, which incurs further liability for the City. Ms. Wardell said availability of federal funds does not “make for good planning”. Many times a development has been hurried because funds would not be available and the result is damaging to the community. She asked the Council to defeat this proposal and go back to the drawing board. She added that the City should use a realtor to assist with development of this

prime piece of property.

MARSHA CASIANO, 1301 INDUSTRIAL #G-55, said she does not want the Church to lose it parking.

JOSEPH WHITE, 926 NORTH 30TH STREET, said he opposed to the placement of a transit depot at 4th and Broadway. He said there is not sufficient air supply. Transit Center users would be trapped in the middle of downtown buildings and subject to pollution from the buses. He said the site is a prime development site. The federal funds deadline of September 30th won't be achieved because of the need for an environmental review. Mr. White said the property should be used for a museum that would fit with the character of the area.

STEVE CORNING, 315 WYATT CIRCLE, said he is a real estate developer but does not have a development agenda for the 4th and Broadway site. He said his objections to a transfer center at this site is taking a high value site and using it for a facility that would be better placed on a lower priced site. He said the current site is worth \$18-\$20 per square foot and with what is invested there, the cost is \$30 a square foot. A recent appraisal of another site that was considered was \$9 per square foot. Mr. Corning noted that he has appeared before this Council with development issues and has been advised many times to "work it out with the neighbors". He asked the Council to do what they advise the development community to do – work it out with the neighbors. He proposed that the City allow the business persons present, neighbors and other interested parties to form a public/private partnership to help foster a solution and find a suitable site.

MANNY COSIANO, 113 NORTH 23RD STREET, said he has not heard a word from anyone on this issue. He said it looks like it is being "swept under the rug".

JIM DUNCAN, 2711 GREGORY DRIVE NORTH, said he represents the Community Development Committee of Celebrate Billings, a community partnership. He encouraged the Council to postpone the decision for many of the reasons that have been previously mentioned. He said he would be willing to offer any additional assistance from the Celebrate Billings Committee to find alternative solutions to placement of the MET Transfer Center. It is time to all "pull together", use the local expertise, take advantage of the momentum and plan for this 50-year decision.

TOM BOOS, 3604 HAYDEN DRIVE, said he is the Vice President of the Billings Federal Credit Union. He had hoped the issue of using their site would not come up and wanted to express their appreciation that the City has chosen not to exercise the right of eminent domain to remove them from their property. He said the Credit Union has worked with a realtor to examine possibilities for relocation of their facility. This effort has not produced a satisfactory location that is nearly as good as their current facility. He said the Credit Union has been at that site for 35 years and is quite happy with the location.

TIM HATHAWAY, 301 QUIET WATER, said he is the Pastor of First United Methodist Church. He noted the Church parking lot has been the subject of various projects without first-hand knowledge. He said this pattern concerns him. He asked the Council to consider the noise factor to the Church from all of the diesel engines running outside of the Church building that would seriously impact the Church. The pollution from the buses is another significant concern. Pastor Hathaway said another concern is safety of the children that attend programs at the Church everyday. He noted there are better places for this facility and asked the Council to vote no on the use of 4th and Broadway for the Transfer Center. He added that any development has the potential to impact the

Church's parking lot, but a housing development that leaves the parking lot intact but utilizes the air rights would be the most desirable. Any project that would develop there would need to be scrutinized by the Church for impact on their facility.

BILL UNDERRINER, 2605 WEST FIELD DRIVE, said he owns Underriner Motors in Downtown Billings and some property adjacent to the dealership. It is his feeling that whatever is good for Billings, Underriner/Selover Motors is for it. They have even entertained talks with the City about the use of their properties. He said the placement of the transfer center at 4th and Broadway is not good for Billings. This property is too valuable for that use and there are other properties that have not even been on the radar screen, he added. Mr. Underriner said he is not saying the City doesn't need a transfer center, but "let's leave the prime property in the downtown corridor for housing, restaurants or a theater and take time to make a different decision."

JIM ALEXANDER, 1940 GLEN EAGLE BLVD., said he has lived in Billings for 2-1/2 years. When he and his wife decided to retire and relocate in Billings it was because of the viability and growth of the downtown and the medical facilities. He said they are very happy and enjoy living in Billings. He said he is also gratified to see so many concerned citizens speaking out about the relocation of the transfer center and offer their abilities to find a better solution. He noted that he also opposes the proposal. As a member of First United Methodist Church, he uses the Church parking lot quite frequently. Mr. Alexander said that site is more appropriate for a multi-use development that would produce greater revenue to the City. He urged the Council to vote "no" on this issue.

TOM ZURBUCHEN, 1747 WICK LANE, said the City would be joining many other businesses and churches that maintain parking lots on "super high priced land". He said this site does make some sense for a bus transfer site as it is within walking distance of both the Medical and Downtown Corridors. There is no other site that is as close to these two important areas. He said this site has been off the tax rolls for many years and several developers have "studied" it but were reluctant for one reason or another to pursue development. Mr. Zurbuchen said no matter where the transit facility is placed that property would be off the tax rolls.

MARY WESTWOOD, 2808 MONTANA AVENUE, said she supports the 4th and Broadway site for the MET Transfer Center. She said this is not a transit terminal or the Greyhound Bus Depot, but a place where transit riders (including the disabled) can transfer from one bus to another. She said a good multi-use facility can include a bus transfer center and she would live above one that is next to a library. Ms. Westwood said the pollution from cars in that busy intersection already creates a problem and if more persons rode the bus there would be less pollution and traffic throughout the City. She also noted that she is on the Billings Downtown Partnership mailing list and attends the meetings. At the last meeting she attended, the Partnership was in support of the transfer center at this site. She is also a member of the Downtown Property Owners group and stated to her knowledge their position has not changed with regard to support of the 4th and Broadway site.

SHANNON GREER, 42 MARSHALL DRIVE, said she is a member of First United Method Church since 1992. She said the church is blossoming and has been doing so for 100 years. The church members are concerned about the pollution and the dangers that would come with the transfer center located across the street. She said she is against the location of the transfer center at 4th and Broadway because it is unsafe for the children that

use the church facility.

There were no other speakers. The public hearing was closed. Councilmember Boyer moved to request a two-month delay and use the resources offered for a public/private partnership to find a solution for placement of the MET Transfer Center, seconded by Councilmember Ulledalen. Councilmember Brewster polled the speakers to see how many actually use the buses. He asked the speakers to ride the MET to understand the problems that MET riders face. He said he has ridden the bus and knows the difficulties that riders have transferring around the Federal Building during inclement and below zero weather. There is a great need for the transfer center close to the downtown area. He asked the members of the audience that have offered their support, to follow through with their commitment to find a suitable site.

Councilmember Gaghen said she favors doing the best for the most and sees the need for a central location with easy access to the riders of the MET. She expressed concern that two months would not be enough time to find a solution that has been 5 years in the making.

Councilmember Clark asked how much the environmental study would cost. Mr. Putnam said the study at the Billings Federal Credit Union was under \$10,000. Councilmember Clark amended the motion to allow the Transit Division to proceed with the environmental study at the 4th and Broadway site and that all parties involved in the public/private partnership and staff report back to the Council at the April 25th meeting, seconded by Councilmember Ruegamer. Councilmember Gaghen asked if the Council is asking for a site specific Environmental Impact Statement. Mr. Putnam noted that the requirement is for an environmental assessment and not an EIS. An environmental assessment is significantly less, doesn't take as long nor cost as much, but does make some reasonable assessments of any environmental issues that might cause the Federal Transit Administration to hesitate to agree to fund the project. It would be specific to the 4th and Broadway site.

Transit Manager Ron Wenger noted that the environmental assessment is what is known as a Level 1 assessment, which is a history search of what has been on the site to identify if any problems may exist. If problems are found, a Level 2 assessment would be required that may include core sampling. Any problems found can then be mitigated to obtain a categorical exclusion as long as the federal government approves the mitigation. He noted it is only when there are problems that cannot be overcome at that level that an EIS is required.

Councilmember Boyer asked if this study would assess the result of the emissions generated by the MET buses. Mr. Wenger said the design phase would be the time when discussions are held regarding the generation of emissions. He added there would be solutions for what is generated. Mr. Putnam said it is already known that there are ways to mitigate both the noise and the emissions issues that have been accepted by the federal government in many other areas. Mr. Bauer added that the whole point of using mass transit is to reduce traffic and the impact on the environment. The designs of parking structures that include frequent vehicle use are built to be safe for human use both inside and outside of the facility. Councilmember Boyer noted there are issues and lawsuits on the Internet about this very problem and she is greatly concerned.

Councilmember Ruegamer said it makes good sense to sell the property at 4th and Broadway if it is so high priced and buy cheaper land east of town to use for the transit

facility. Mr. Bauer noted two or three of the lots at 4th and Broadway were purchased with parking funds and revenues generated from their sale would not be available for anything but parking purposes. A mixed-use facility that involves parking on the site would be acceptable. Another feature of using the 4th and Broadway property is the possible enhancement to the Library. He also said it is unclear how the City would move forward to identify an alternate site with such a diverse group as the one proposed. It is prudent to use professional assistance when evaluating possible locations to determine their suitability for the desired function. He recommends the City continue to use that type of expertise to select an alternative site. If a broader public involvement process is implemented, some parameters to accomplish the objectives should be in place. Councilmember Ulledalen said an important issue is that enough public input is gathered before the final selection. Councilmember Boyer noted this would be a community project and not a Staff driven project.

Councilmember McDermott expressed concern for some comments made about the Downtown Billings Partnership's support. She asked if there was another meeting after the one she attended that was not publicly announced where the Partnership changed their position. She also noted that she attended the Downtown Property Owners' meeting and did not recall a reversal of their decision to support the project at 4th and Broadway.

Councilmember Jones asked if the buses in Spokane, Washington have engines and exhaust system similar to the ones in Billings. Mr. Wenger said he believed they were similar. He added the Spokane terminal parks their buses around the perimeter of the terminal with development on the first and second floors. Councilmember Jones stated that he spoke with the Spokane Transit Authority and the President of the Spokane City Council. Both stated there were no pollution problems at the Spokane terminal.

On a voice vote on the amendment, the motion was unanimously approved. On a voice vote on the motion as amended, the motion was unanimously approved.

Mayor Tooley called for a recess at 8:44 P. M.

Mayor Tooley reconvened the meeting at 8:56 P.M.

4. FIRST READING ORDINANCE FOR ZONE CHANGE #750: a zone change from Residential-7000 to Residential Multi-Family Restricted and Neighborhood Commercial on Tract B2-A of C/S 1056 Amended, generally located at the southeast corner of the intersection of Wicks Lane and Bench Boulevard in the proposed King Place Subdivision. King Place LLC, Richard Dorn, owner, Engineering, Inc., agent. Zoning Commission recommends approval and adoption of the determinations of the 12 criteria. (Action delayed from 1/24/05). (Action: approval or disapproval of Zoning Commission recommendation.)

Planner Aura Lindstrand said a neighborhood meeting regarding the zone change request was held since the January 24th Council Meeting. She noted a summary of the meeting and a letter from the applicants was included in the addendums for the Council's review. She said the proposed Neighborhood Commercial zoning is for the north portion and the Residential Multi-Family Restricted zoning is for the south portion of the site. Ms. Lindstrand said the protest petition has not been withdrawn for this application, therefore a 2/3 majority vote of the Council is necessary.

Councilmember Brewster said most of the citizens that attended the meeting came to an agreement and the next step was for the developer to review that agreement and accept the conditions. Because several residents are out of town, there was no opportunity for a withdrawal of the petition.

Councilmember Brewster moved for approval of the Staff recommendation, seconded by Councilmember Boyer. Councilmember Brewster said he attended the neighborhood meeting that included some of the residents (4) protesting the petition. Discussions included the way zoning and “rainbowing” works. He said their desire was that the existing zoning remain in place. After the zoning discussion it was understood that the appropriate zoning of Agricultural Open Space was not allowed during the “blanket” zoning of the Heights. It became further understood that the area is not desirable for residential zoning particularly with the future changes for Bench Boulevard. He said the traffic is proposed to increase four times the current rate in the next ten years. Councilmember Brewster noted the site would remain a weed and trash collector if this zoning application was not approved. He said it is really desirable as a commercial development site. The residents then identified what was unacceptable, which was forwarded to the developers. Among the conditions it was requested that no outlets be allowed onto Wicks Lane except what would be required by the Fire Department. The opinion of the residents at the meeting was that they could live with the development if the conditions were implemented.

Councilmember Brewster noted the Heights is currently forming a Neighborhood Plan that would address how this type of development would move forward. This would be a governing document. He said the task force supported this zone change because they support the bulbing of major arterials with this kind of rainbow-effect development. He said the residents that attended the CIP meeting were also supportive of the zone change.

Councilmember McDermott noted Neighborhood Plans are approved and are strictly adhered to by the Council. This document greatly assists in the planning process, she added.

On a voice vote, the motion was unanimously approved.

5. PUBLIC HEARING ON CAPITAL IMPROVEMENTS PLAN (CIP). Public hearing only tonight. Council action scheduled for 2/28/05. (Action: Public hearing only.)

Assistant City Administrator Tina Volek said the City is at the culmination of an eight month process to solicit public input on the proposed Capital Improvement Plan for 2006-2011. There have been comments from approximately 100 people through a series of focus groups and ward meetings. The public hearing this evening is for the purpose of receiving citizen input and to review with the Council the comments and directions requested at the work session on February 7th.

She said on February 7th the Council asked the Staff to review several items brought forward at the ward meetings and to provide further information. Those items were:

- 1. Move Castle Rock spray pad forward – approximate cost \$218K, requiring upgrade of water and sewer lines.
- 2. Add spray pad at Hawthorne Park - \$175K, water and sewer lines present.

3. Move Athletic and South Park pool heaters forward - \$27K for South Park heater and pool blankets; no estimate for Athletic Pool (4 times as large as South Park). Portable heaters were considered because they can be moved to another facility.

4. Move back Heights Pool – scheduled for \$4.75 Million in 2007.

5. Fund Cobb Field feasibility study in 2006 - \$60K is unbudgeted. Elections were proposed for: Cobb Field in 2007, Heights Pool in 2008 and the Library in 2009.

6. Add traffic signal at 32nd and Monad - \$150K available in the current budget year.

7. Widen Central Avenue – Developer funding available to be used in 2005 for 32nd and Central intersection; Central on south side from 30th to 35th and on 32nd from Central to Banff. There are no other funds identified for Central Avenue.

8. Add traffic signal at Shiloh Road & Central Avenue - \$260K without widening; \$920K with widening for turn lanes. Those funds are unbudgeted.

9. Restore Annandale Road - \$790K for Annandale which would deadend unless \$1.1 Million improvements are completed for Glen Eagle Blvd.

10. Open a fire station at 54th & Grand Avenue earlier – Originally scheduled to be opened in 2011, it can be opened in late 2007 or early 2008 by bonding for land, equipment and building at 4% interest and hiring 12 firefighters over the next two years, possibly delaying police hires from the levy.

11. Move downtown railroad relocation study from Engineering to Planning - \$300K for 2006 feasibility study. This is an unbudgeted amount that would come from federal funds.

Ms. Volek said this plan would come back to the Council for final action on February 28th.

The public hearing was opened. CONNIE WARDELL, 1302 24TH STREET WEST, said a fire station at 54th and Grand Avenue would be nice, but the widening of Grand Avenue should be addressed first. Both Central and Grand Avenue developments are creating a need for widening, but Grand Avenue has the greater amount of traffic and accident risk. She also spoke about the bridge over the railroad tracks at 25th Street. In order to get the grant money for this project, it must be in the CIP. Ms. Wardell said the CIP process gets better every year. Ms. Volek noted a design study for a pedestrian bridge over 25th Street for \$75,000 is in the CIP for the year 2010.

TOM ZURBUCHEN, 1747 WICKS LANE, said the Heights Pool is in the CIP for 2007, but that is not enough time to advertise for the process. The City would need to start now. With the Harvest Church raising money for their pool in the Heights, the City should not be in competition. The Heights Pool should be moved to 2009 in the CIP and only if the Harvest Church project fails. He said the Cobb Field feasibility study should be funded from private money; it does not belong in the CIP. The voters have already voted it down. He cautioned the Council to study the arterial street reconstruction proposals before spending the newly raised arterial street fees.

MARION DOZIER, NO ADDRESS GIVEN, said the Over, Under and Around Committee has worked hard for many years on relocating of the railroad tracks out of the downtown area. She said a telephone survey by SCH Consultants surveyed 402 respondents across Yellowstone County in January of 2004. 83% of the respondents said it was important to very important to have direct access to the downtown, 82% of the respondents said it was a high priority to improve the railroad crossings in the downtown area. 78% of the respondents said they would support a project to improve the downtown

crossings. She noted the consultants did not address moving the tracks out of town. She asked the Council to add to the Planning Section of the CIP a study to relocate the main line of the railroad out of downtown Billings. An adequate study would cost \$300,000 and she asked for it to be funded in the year 2006. Federal appropriations for the study would be considered. Ms. Dozier expressed concern for moving the neighborhood fire station out of the Central Avenue neighborhood. She asked that good input from the neighborhoods be gathered before proceeding with that action. Ms. Volek noted this was not on any list to be brought forward unless there is direction from the Council.

MARY WESTWOOD, 2808 MONTANA AVENUE, said she supports adding portable heaters to Athletic Park. She said she did not think adding the heaters would damage the Cobb Field project. It is important to make the best use of the facilities we have and Athletic Park is a cold pool in the mornings, only receiving sun in the later part of the day. Portable heaters are a good solution because there should be a pool in the central area to replace Athletic Pool if it is found to be unusable. Ms. Westwood said she also supports the feasibility study for Cobb Field as it is a very important part of the community.

There were no other speakers. The public hearing was closed. Action on this item will be on February 28, 2005.

**6. LATE ADDITION:
DISCUSSION OF HB 480, SB 309 AND SB 237 AND DIRECTION TO STAFF.**

Public Comment reopened:

CARL ANDERSON, 935 BURLINGTON AVENUE, urged the Council not to support SB237 asking to change the existing law to allow cost to be a part of the consultant selection process. He said the federal government enacted this law to assure that the best engineering or architectural solution could be developed for a particular project. He noted it was also found that the fees were a small component when looking at the overall life cycle cost (capital cost to building and cost of operation and maintenance) of a particular facility. He said forty-four (44) states in the United States have addressed this issue and all have retained qualification-based selection for architects and engineers.

RON BILLSTEIN, 2711 TREASURE DRIVE, said he opposes SB237. For the last 44 years the federal government has retained quality-based selection as a proven procurement process. He said the City of Billings has a competent staff to negotiate fees and establish that the City is receiving services at fair market value. The benefit of the current process is that the City has the most qualified firm to present the most innovative solution and the most economical project.

CONNIE WARDELL, 1302 24th STREET WEST, spoke on SB380, the eminent domain issue. She said there are three projects in the City of Billings that would not have happened without the use of eminent domain. Taxes can be deferred for two years in order to allow replacement property to be found. The bill is worded such that a valuable tool would be lost in the redevelopment portion. She suggested the Council actively oppose this bill.

There were no other speakers. The public comment period was closed.

HOUSE BILL 480: A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT WHOLLY SURROUNDED LAND MAY NOT BE CREATED FOR PURPOSES OF ANNEXATION THROUGH THE EXTENSION AND CONNECTION OF WATER

AND SEWER LINES INTO AN UNINCORPORATED AREA; AND AMENDING SECTION 7-2-4501, MCA."

Councilmember Brewster moved to oppose HB480, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

SENATE BILL 309: A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING THE PROHIBITION AGAINST ORGANIZING A MUNICIPALITY IF THE PROPOSED TERRITORY IS WITHIN 3 MILES OF AN EXISTING MUNICIPALITY; AND AMENDING SECTION 7-2-4103, MCA."

Councilmember Brewster moved to oppose SB309, seconded by Councilmember Ruegamer. On a voice vote, the motion was approved with Councilmember Brown voting "no".

SENATE BILL 237: A BILL FOR AN ACT ENTITLED: "AN ACT PERMITTING STATE AND LOCAL AGENCIES OR SPECIAL DISTRICTS TO ADOPT PROCEDURES ALLOWING FEE STRUCTURES AND PROJECTED FEES TO BE USED UNDER CERTAIN CONDITIONS WHEN SELECTING ARCHITECTURAL, ENGINEERING, AND LAND SURVEYING SERVICES; AND AMENDING SECTION 18-8-204, MCA."

Councilmember Brewster moved the Council remain neutral on SB237, seconded by Councilmember Ruegamer. Councilmember McDermott said this bill does not require the City to accept the low bid, but feels the missing link of RFPs is the cost portion of the project. She said the City should support this bill. Councilmember Veis agreed there are good reasons to support the bill, but this particular bill is too vague on how cost is acquired. He said the City should remain neutral.

Councilmember Jones made a substitute motion to oppose SB237, seconded by Councilmember Ruegamer. Councilmember Jones said the bill is too open and the expertise in the cities is not there to put together a statement of qualifications to follow. He said it is a bad policy; price could overshadow qualifications. It is a bad bill that the City should oppose. He noted the City can choose the next highest qualified person if the City cannot successfully negotiate a reasonable price with the first qualified contractor.

On a roll call vote, the substitute motion was approved 6-5 with Councilmembers Gaghen, Brown, Ruegamer, Boyer, Clark and Jones voting "yes" and Councilmembers McDermott, Brown, Veis, Ulledalen and Mayor Tooley voting "no".

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

(Restricted to ONLY items not on the printed agenda; comments limited to 3 minutes per speaker.)

THERE WAS NO PUBLIC COMMENT.

COUNCIL INITIATIVES:

- **COUNCILMEMBER ULLEDALEN:** Councilmember Ulledalen moved to direct staff to prepare a proposal to reduce fees and loosen sign restrictions for Little Leagues and other non-profit agencies, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.
- **MAYOR TOOLEY:** Mayor Tooley moved to direct staff to research building a reservoir or offline storage for water from the Yellowstone River and bring a report

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back to Council, seconded by Councilmember Jones. Mayor Tooley said the Staff should start the process to consider what should be done to accomplish this. On a voice vote, the motion was unanimously approved.

ADJOURN —With all business complete, the Mayor adjourned the meeting at 10:06 P.M.

THE CITY OF BILLINGS:

By: _____
Charles F. Tooley MAYOR

ATTEST:

BY: _____
Susan Shuhler, Deputy City Clerk