

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

## **February 28, 2005**

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 Ulledalen.

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

**MINUTES – February 14, 2005.** APPROVED AS PRINTED

### **COURTESIES – Public Works, Mayor**

- Roger Thomas from the Wastewater Treatment Plant was recognized for his 30+ years of service with the City. Mr. Thomas will be going to work for Engineering Inc. as an inspector. Mr. Thomas was instrumental in implementing many changes at the City's wastewater treatment plant.
- Debbie Magilky has been with the City for 34 years as a laboratory technician in the lab in the wastewater treatment plant. Debbie is an important volunteer in the community and will be retiring in the next week.
- Mitchell Nelson is a 25-year employee, retiring from the wastewater treatment plant. He is one of two plant mechanics using his skills to save the City significant money over the course of his employment.
- Mayor Tooley recognized former councilmembers Marion Dozier and Jack Johnson in the audience.
- Mayor Tooley recognized John Brewer, the new director of the Chamber, also in the audience.

**PROCLAMATIONS – Mayor Tooley.** NONE

### **BOARD & COMMISSION REPORTS – Aviation & Transit Board**

- Leo Wohler, chair of the Aviation & Transit Board, said the Airport and Transit operations contribute significantly to the community. Approximately 412,000 passengers boarded and deplaned commercial flights in Billings, a record for Billings. Staff has maintained tight cost controls to maintain levels of service at the Airport as well as adding new services to remain a self-supporting enterprise fund. This month a new flight to Portland, OR begins via Big Sky Airlines and service to Sheridan, WY via a route to Denver will begin next month. Air freight movement in and out of the city remains strong. The airport is served by three major air freight carriers making Billings Logan Airport one of the busier general aviation airports in our region. New corporate and private hangar developments took place at the airport in 2004. Concession and public access tenants provide

excellent service to the airport customers. Over 700 people are employed at the airport.

- On the transit side of operations, MET continues to provide an efficient and effective fixed route service and an on-demand Paratransit service. The core group of riders is diverse, including senior citizens, school children, private and public employees and the disabled. Nearly 750,000 rides were provided last years. Over 857,000 miles were logged last year.
- Several major projects for the future include: additional upgrades to the aviation security program, a front-burner issue. The security master plan was completed last year; now implementation must begin. The new air traffic control tower is nearing completion. The aging loading bridges will be addressed in a multi-year effort.
- Staff will also be involved in the upgrade of Airport Road and the “malfunction junction” intersection at the airport. An aggressive fleet replacement program in the MET program, begun several years ago, will continue. The Board will also assist staff and the Council in locating a site for the new MET Transfer Center.

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

- Mr. Bauer noted a letter was provided in the Friday packet regarding a grant application that will allow the Police Department and the Sheriff’s Department to purchase technology for their respective departments.
- A potential addition has been prepared for tonight’s agenda – the resolution creating an ad-hoc transfer center advisory committee. The first meeting is scheduled for March 2<sup>nd</sup>.

#### **LEGISLATIVE REPORT – Kristoff Bauer**

- There has been no additional action since the legislative report given at last week’s work session. He referred the Council to that report.
- Two bills will be heard on March 3rd: SB32, a minor sidewalk repair bill that will allow cities to add minor sidewalk repair in street maintenance districts and SB175 allowing the use of zoning classifications as another method for assessing costs with a street maintenance district. Both bills are supported by the City. He encouraged the Council to testify at these hearings.

#### **LATE ADDITIONS:**

- Councilmember Boyer moved to add the Resolution creating an Ad-Hoc Transfer Center Advisory Committee to the agenda, as Item #13, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.
- Councilmember Brown moved to add discussion of City Administrator Bauer’s employment to the agenda, seconded by Councilmember Jones. Councilmember Brown said this would give the citizens of Billings a chance to hear the Council’s ideas of what should be done. Councilmember Brewster noted that adding this to the agenda would limit the 3-minute public comment period to a 1-minute comment period. Mayor Tooley noted eight votes would be required to place this item on this evening’s agenda. On a roll call vote the motion failed 3-7 with Councilmembers

Brewster, Brown and Jones voting “yes” and Councilmembers Gaghen, McDermott, Ruegamer, Veis, Boyer, Ulledalen and Mayor Tooley voting “no”.

**PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Item: #1, #7, #11, #12 and #13 ONLY. Speaker sign-in required.** (Comments offered here are limited to 1 minute per speaker. Comment on items listed as public hearing items will be heard ONLY during the designated public hearing time for each respective item.)

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

- CONNIE WARDELL, 1302 24<sup>th</sup> St W, #168: asked the Council to add to their Council Goals three items: (1) termination of City Administrator Kristoff Bauer; (2) reinstatement of Police Chief Ron Tussing and (3) an item for the November ballot calling for a review of the charter.
- MICHAEL ERICKSON, 990 B S Heights Lane: said he agrees with Ms. Wardell. Mr. Erickson noted the Tussing/Bauer dispute has gone too far, adding that the survey of 97%/3% (97% in favor of Tussing) should tell the Council something.
- TOM ZURBUCHEN, 1747 Wicks Lane: said he also agreed with Ms. Wardell’s comments except for #2; under the Charter, the Council cannot reinstate Chief Tussing.

**CONSENT AGENDA:**

1. A. **Mayor’s Appointments:**

	Name	Board/Commission	Term	
			Begins	Ends
1.	Lynn Davis	EMS Commission	01/01/05	12/31/08
2.	Charles Hamwey	EMS Commission	01/01/05	12/31/08

B. **Bid Awards:**

(1) **Detroit Diesel Engine Overhauls for 6V92, Series 40 and Series 50 Diesel Engines.** (Opened 2/8/05; Delayed from 2/14/05). Recommend Interstate Detroit Diesel, Schedules 1-3, \$64,231.50.

(2) **Three (3) Year Mowing Contract for Billings Logan International Airport.** (Opened 2/8/05; Delayed from 2/14/05). Recommend Kofflers Lawn and Landscape, \$71,398.32.

(3) **One New Current Model 2005 800 KW Skid-Mounted Diesel Generator Set and a 2,000 Gallon Above-Ground Storage Tank with 250-Gallon Base-Mounted Diesel Day Tank.** (Opened 2/22/05). Recommend delaying award to 3/14/05.

(4) **Rose Park Recreation Building.** (Opened 2/15/05). Recommend Rocky Mountain Builders, \$89,300.00.

**C. W.O. 04-36: Briarwood Sanitary Sewer Main Extension**, Professional Services Contract for Engineering and Right-of-Way Services, Morrison-Maierle, Inc., \$496,860.00.

**D. Additional Software License Agreement** with New World Systems to provide in-car Vehicle Accident Report Writing., \$81,456.00.

**E. HOME Affordable Housing Fund** allocation to Rimrock Foundation to rehabilitate the second half of the sober living house at 1721 8<sup>th</sup> Avenue North, \$20,902.00, 0% interest, deferred loan.

**F. HOME/CHDO Fund** allocation for *IRMA House II* project at 502 South 33<sup>rd</sup> St., \$98,966.00.

**G. Approval of Grant Application submission/receipt** to U.S. Department of Justice for a Technology Grant for an indoor firing range, \$197,328.00.

**H. Second/Final Reading Ordinance 05-5320 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.

**I. Preliminary Plat** of Rimrock Auto Subdivision, generally located on the southwest corner of Holiday Avenue and S. 12<sup>th</sup> Street West. Approval of the requested variance, conditional approval of the preliminary plat and adoption of the findings of fact.

**J. Final Plat** of Cottonwood Grove Subdivision, 1<sup>st</sup> Filing.

**K. Final Plat** of Interstate Subdivision.

**L. Final Plat** of The Village Subdivision.

**M. Final Plat** of Village West Subdivision, 2<sup>nd</sup> Filing.

**N. Bills and Payroll.**

(1) January 28, 2005

(2) February 4, 2005

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

Councilmember Ruegamer separated Item B4 from the Consent Agenda. Councilmember Brewster moved for approval of the Consent Agenda with the exception of

Item B4, seconded by Councilmember McDermott. On a voice vote, the motion was unanimously approved.

Councilmember Brewster moved for approval of Item B4 of the Consent Agenda, seconded by Councilmember McDermott. Councilmember Ruegamer said the bid amount seems like a lot of money for a bathroom in the park. He noted two self-contained approved bathrooms were placed by the Forest Service in a park for \$11,000. Parks and Recreation Director Don Kearney said both Rose and Pioneer Parks are traditionally areas where shelter reservations and summer lunch programs necessitate the need to have an area to wash hands in a sanitary manner. He added there is also a small storage area in the proposed building that would be available for cleaning equipment. He noted the bid is not considered a high amount for the design and plan. Councilmember Jones said ADA requirements for handicapped access to the bathrooms also drive up the cost. On a voice vote, the motion was unanimously approved.

## **REGULAR AGENDA:**

**2. PUBLIC HEARING AND RESOLUTION 05-18238 disposing of City owned property described as Lots 44-46, Block 7, Amended Westside Addition and located at the southwest corner of 6<sup>th</sup> Avenue North and Division Street. Staff recommends approval of the resolution, rejecting all bids received on 2/15/05 and re-advertising the call for sealed bids for the sale of the property. (Action: approval or disapproval of Staff recommendation.)**

There was no staff report. The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Brown moved for approval of the Staff recommendation, seconded by Councilmember Brewster. Councilmember Gaghen asked for clarification of the size of the lot. City Administrator Kristoff Bauer said the vacant lot is approximately 15,000 square feet. Councilmember Boyer asked why the bids were rejected. Mr. Bauer said one bid did not comply with the requirements and the other bids were considered too low according to the estimated value of the land. On a voice vote, the motion was unanimously approved.

**3. PUBLIC HEARING REGARDING MET TRANSIT OPERATORS CARRYING CASH/CHANGE BAGS. Staff recommends that MET Operators no longer carry cash/change bags to make change for its passengers and that cash fares and pass sales will be for exact change only, payable by check or cash. (Action: approval or disapproval of Staff recommendation.)**

There was no staff report. The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Ruegamer moved for approval of the Staff recommendation, seconded by Councilmember Brewster. Councilmember Brown asked what would happen if someone wanting to ride the bus does not have the correct change. MET Transit Manager Ron Wenger said there will be a grace period for implementation of the new procedures. He noted checks would be accepted, but bus tokens are not accepted. He said this was initiated at the request of the bus drivers. Councilmember McDermott said the past practice of carrying cash/change bags is placing the drivers in danger. On a voice vote, the motion was unanimously approved.

**4. PUBLIC HEARING AND RESOLUTION 05-18239 vacating the alley between Lots 1 and 28, Block 1, Country Club Heights Subdivision. Staff recommends approval of the resolution and acceptance of the dedication of new right-of-way as shown on the amended subdivision plat. (Action: approval or disapproval of Staff recommendation.)**

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

**5. PUBLIC HEARING AND RESOLUTION de-annexing a recently annexed parcel described as T1N-R26E-S27: S2N2SW4NE4NE4 located at 637 Lincoln Lane, Bill Dunlap, petitioner. (Annex #04-14). Staff recommends denial of the de-annexation request. (Action: approval or disapproval of Staff recommendation.)**

Planner Aura Lindstrand distributed a letter to the City Administrator from the petitioner. The petitioner, Mr. Dunlap states in the letter the reason for the de-annexation request is the arterial fee tax assessment. Ms. Lindstrand said the 2-acre property is located at 637 Lincoln Lane and is zoned Neighborhood Commercial. The existing use is a single-family residence. She noted the future use is proposed for that as well.

Ms. Lindstrand said the subject property was annexed into the city in 2001 per the petitioner's request. He now requests de-annexation because of the higher fees for the arterial street assessment due to the Neighborhood Commercial designation. The property is served by the Billings Heights Water District and contains a septic system for sanitary sewage disposal. Because of this, the petitioner asserts that he has not been provided with the City services for which he is being assessed. He also stated that his request to protest the fee assessment has been denied. The Public Works Department said the fee assessment was not improper or inequitable, stating that the property could be developed further to regain the fees.

She said the petition was reviewed using the criteria contained in the Annexation Policy. The Staff is recommending denial of the de-annexation as the property is located within the 5-year annexation boundary. City services can easily be provided to the subject property, including Police and Fire service and sanitary sewer through Lincoln Lane. The sewer hook up fee would be \$13,800. She said there is a potential for commercial uses or multi-family residential on the property as the property complies with several of the goals of the 2003 Growth Policy.

Councilmember Brewster asked if allowing the appeal of the arterial fees based on the new ordinance would substantially reduce the fees on this property if the owner applies for the exemption. Mr. Bauer said the proposal that is forthcoming would allow this type of situation to take advantage of the cap and potentially reduce the assessment to \$35.00.

The public hearing was opened. TOM ZURBUCHEN, 1747 WICKS LANE, said this property is the same as other lots in Happy Hollow Subdivision. These lots are all paying an exorbitant fee for what their uses are. These lots are connected to City sewer and are unable to be de-annexed. He said there needs to be a way to reasonably re-zone property that is similar to the use of the property other than through a \$650 zone change fee.

BONNIE CURAN, SPEAKING FOR BILL DUNLAP, said Mr. Dunlap's concern is the taxes. She said the problem lies in charging high fees before the property is developed.

The subject property has no City water, sewer, storm sewer, curbs, gutters, sidewalks and is being taxed \$2,800 a year. She stated the City/County Planning Department reported there are no immediate plans for improvements to the street, yet the property is being taxed \$502 for street maintenance. Storm sewer is not available, but the property is being taxed \$662 for storm sewer. The property is being taxed \$717 for the arterial street fees. Ms. Curan said Mr. Dunlap would like to stay within the City limits but feels the property should not be taxed as high as it is until the land is developed. She asked that some resolution to the situation be made available.

WADE MAURER, 1732 WICKS LANE, said he has a buy/sell agreement on this property and would like to see the property stay in the City limits for future development. He said he also would like to see a fee reduction.

MARGE KOHM, NO ADDRESS GIVEN, said she is a realtor representing the buyer in the agreement and confirms there is a buy/sell agreement on the property.

There were no other speakers. The public hearing was closed. Councilmember Boyer moved to deny the de-annexation request, seconded by Councilmember Ulledalen. Councilmember McDermott asked if Staff would have any idea how much the street maintenance fees would be reduced on this property if the bill in the legislature is passed. Public Works Director Dave Mumford said he did not know the amount but said it would help to decrease the assessment on the property. Councilmember Brewster said this is a good example of why we need to adjust the policy relating to arterial fees because there are a large number of lots in this same situation.

Councilmember Ruegamer asked for clarification from the petitioner or his representative regarding de-annexation now that he has a buy/sell agreement in place. Ms. Curan said petitioning for de-annexation was the advice he received before the buy/sell agreement and she agrees that the potential new owner would like to remain in the City. She again noted the taxes should be adjusted until the property is actually developed. Ms. Curan said the buy/sell is not finalized, so the problem still exists for Mr. Dunlap.

Councilmember McDermott said the Council is trying to reduce some of the fees through the legislature. Councilmember Ruegamer made a substitute motion to continue action to May 23, 2005, seconded by Councilmember Brewster. On a voice vote, the substitute motion was unanimously approved.

**6. PUBLIC HEARING AND RESOLUTION 05-18240 annexing five (5) wholly surrounded properties along South Billings Boulevard described as:**

- **Tract 1, Popelka Industrial Tracts Subdivision, First Filing**
- **Tract A, C/S 289 in Sugar Subdivision, Lot 20**
- **Tract A, C/S 289 in Sugar Subdivision, Lot 19**
- **Tract 19B-1, C/S 289 in Sugar Subdivision, Lot 19**
- **Tract 19B-2, C/S 289 in Sugar Subdivision, Lot 19.**

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

Planning Manager Candi Beaudry said this is a Staff initiated annexation of wholly surrounded property located on South Billings Boulevard. The purpose of the annexation is to facilitate the reconstruction of South Billings Boulevard in conjunction with SID 1373. Four of the affected properties would be within the boundaries of the Special Improvement

District and the fifth property lies outside the district boundaries. The estimated tax comparison relating to City versus County taxation for the properties is as follows:

OWNER	County Tax	City Tax	Difference
Duwanne E. & Susan Carner (under contract for deed) – a commercial property	\$2,460.00	\$3,172.50	\$711.70
Dale & Lillian Steinbrink – not within the SID boundaries	\$1,107.07	\$1,596.70	\$489.62
Westley Wayne & Elvira Wilcox	\$1,151.71	\$1,636.99	\$485.28
Patrick & Michael Kenney	\$722.30	\$942.30	\$220.00
Patrick & Michael Kenney	\$698.04	\$934.52	\$236.48

Ms. Beaudry said all of the properties are currently served by City water. The City can provide the remaining services without any impacts to existing City services and facilities. The City will provide sewer connection to all properties – this would be a stub only and the owners would have to pay for the cost of connecting and extending their service line. She noted the contiguous City properties would improve the ability to deliver services to the entire neighborhood. Ms. Beaudry said there would only be one property subject to an SID assessment estimated at \$7,699.43 over fifteen years. She said this annexation of a wholly surrounding County island would be in complete compliance with the recently adopted Annexation Policy and Growth Policy.

Ms. Beaudry said the Staff is recommending approval of the resolution of annexation to annex the wholly surrounded County properties located on South Billings Boulevard.

Councilmember Brewster asked why the annexation is being considered when only four properties are part of the SID. Ms. Beaudry said the City needs the additional distance to complete the reconstruction and replace the utilities within South Billings Boulevard. Public Works Director Dave Mumford said the City needs the right-of-way annexed from the County into the City in order to expend City funds on the right-of-way. He said in conversations with the County Public Works Department it was recommended by the County that it was more appropriate for the properties to be in the City because they were wholly surrounded. Ms. Beaudry added that a program to annex wholly surrounded County islands was begun in 2002.

The public hearing was opened. DEBBIE BRAUNSTADTER, 4412 JANSMA, SPEAKING FOR DALE STEINBRINCK, 723 SOUTH BILLINGS BOULEVARD, said they oppose the annexation and Mr. Steinbrinck’s property is the property that is not included in the SID. She said the notice Mr. Steinbrinck received was not sufficient. She added that residents should be notified at least three years in advance of possible annexation. She said her father (Mr. Steinbrinck) has lived at his present location for 44 years and in declining health, cannot afford the costs imposed upon him by the annexation. She asked the Council to postpone the annexation for two to three years. She said the City should not annex wholly surrounded County islands “just because you can.” She said the project can be completed without annexing these properties.



There were no other speakers. The public hearing was closed. Councilmember Ulledalen moved for approval of the Staff recommendation, seconded by Councilmember Boyer. Councilmember McDermott said she is aware that these County islands eventually must be annexed into the City, but agrees with the previous speakers that 60 days notice is not enough time for property owners to prepare for the additional fees and taxes that will be assessed after annexation. She agreed that two to three years is the appropriate notification period.

Councilmember McDermott made a substitute motion to annex only the right-of-way and put the properties on a timetable to be annexed, seconded by Councilmember Gaghen. Councilmember McDermott said a timetable should be established within the Annexation Policy. A plan should be in place to prepare the residents for annexation. Mr. Bauer noted the properties in the annexation would not be assessed for the SID until January of 2006 and would not have taxation liabilities until November of 2006.

Councilmember Brewster asked what the impact would be on the other properties in the SID if these properties are not annexed. Mr. Mumford said the City would have to absorb the \$7,000 assessment on that property through arterial fees or gas taxes. There currently is no system to assess that fee onto the property if it should be annexed at a later date, he added. Councilmember Jones asked if the four other property owners are against the annexation. Ms. Beaudry said all of the property owners on the east side are against the annexation and the property owner on the west side has not taken a position either for or against.

Councilmember McDermott amended the substitute motion to annex only the right-of-way and the Popelka Industrial Tract property and place the other four (4) properties on an annexation timetable, seconded by Councilmember Gaghen. Councilmember Brown asked what the additional cost to the City would be to annex these properties. Mr. Bauer said there would not be additional cost as City services are already available. It would provide additional revenue to the City, however.

On a roll call vote on the amendment to the substitute motion, the motion failed 4-6 with Councilmembers Gaghen, McDermott, Ruegamer and Ulledalen voting, "yes" and Councilmembers Brewster, Brown, Veis, Boyer, Jones and Mayor Tooley voting "no".

On a roll call vote on the substitute motion, the motion failed 5-5 with Councilmembers Gaghen, McDermott, Brown, Ruegamer, Ullendalen voting "yes" and Councilmembers Brewster, Veis, Boyer, Jones and Mayor Tooley voting "no".

On a roll call vote on the original motion for approval of the annexation, the motion was approved 6-4 with Councilmembers Brewster, Brown, Veis, Boyer, Jones and Mayor Tooley voting "yes" and Councilmembers Gaghen, McDermott, Ruegamer and Ulledalen voting "no".

**7. RESOLUTION OF INTENT 05-18241 TO CREATE SID 1373: a special improvement district for public improvements along South Billings Boulevard between King Avenue and Underpass Avenue and consisting of curb, gutter, sidewalk and street improvements. Staff recommends approval of the resolution and setting a public hearing date for 3/28/05. (Action: approval or disapproval of Staff recommendation.)**

Public Works Director Dave Mumford said the Staff did not know the outcome of the previous item, so two alternatives were prepared for the intent to create the SID 1373. He

asked the Council to approve option B that includes the newly annexed parcels into the Special Improvement District. Mr. Bauer noted the action this evening is to only set a public hearing date for the SID.

Councilmember Jones moved for approval of the Staff recommendation of Option B, seconded by Councilmember Brewster. Councilmember McDermott make a substitute motion to approve the resolution and leave open the decision of Option A or Option B until the public hearing has been held, seconded by Councilmember Gaghen. Mr. Bauer said the effect of the substitute motion would be to require the City to notify property owners on both options. Mr. Mumford said "going forward with Option A" that excludes the annexed properties would not be in accordance with the SID Policy as those properties are now considered part of the City.

On a voice vote for the substitute motion, the motion failed. Mr. Bauer noted some protests to the SID have been received and will be considered at the public hearing scheduled for March 28<sup>th</sup> if the Council approves this motion. On a voice vote on the original motion, the motion was unanimously approved.

**8. PUBLIC HEARING AND SPECIAL REVIEW #775: a special review to permit a 6-plex apartment building in a Residential 6000 zone described as Lots 25-28, Block 3, Billings Heights Subdivision and located at 740 Avenue D. Gordon Bernhart, owner and agent. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

Planner Aura Lindstrand said the applicant is requesting a special review to permit 6 residential units on a property zoned Residential 6,000. The subject property is located on the southeast corner of 8<sup>th</sup> Street West and Avenue D and is bordered on the north, south and east by single-family residences and on the west by multi-family residential units and on the northwest by low income senior and handicapped housing. She said the applicant is proposing to construct affordable housing on the site and is working with Community Development to obtain funding. She noted the site plan includes access and parking in the front of the building facing 8<sup>th</sup> Street West.

Ms. Lindstrand said the conditions of approval are:

1. The Special Review approval shall be limited to Lots 25-28, Block 3, Billings Heights Subdivision.
2. As indicated on the submitted site plan, dated December 31, 2005, the alley along the south property line and the parking spaces along the southern boundary shall be paved.
3. The applicant shall provide a minimum of 575 square feet of landscaping along 8<sup>th</sup> Street West and Avenue D. *(Required by Section 27-1105.A.1 of the BMCC)*
4. A site obscuring fence at least 6-feet in height shall be installed between the proposed parking spaces along the southern property line and the proposed structure. Said fence shall be constructed of wood, stone, vinyl, brick or block; wire or chain link fencing is not permitted. A continuous hedge may be substituted for the required fence, provided that the proposed hedge bushes are at least 3 feet tall when planted and reach a mature height of 6 feet. A 5-foot gated break in the fence or hedge is permitted to accommodate pedestrian traffic from the proposed parking area to the proposed residential structure; a fence

permit shall be obtained prior to the construction of a fence on the property.  
(Required by Section 27-1105.A.2 of the BMCC)

She said the Staff is recommending conditional approval; noting that any impacts to the neighboring properties can be mitigated with the proposed conditions.

The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Gaghen moved for approval of the Zoning Commission recommendation, seconded by Councilmember McDermott. Councilmember Jones asked if there were any comments from the previously concerned neighbor to the north. Ms. Lindstrand said they were notified and no comments were received. On a voice vote, the motion was unanimously approved.

The Mayor call for a recess at 8:15 P.M.

The Mayor reconvened the meeting at 8:25 P.M.

**9. PUBLIC HEARING AND SPECIAL REVIEW #776: a special review to permit the sale of alcohol (full beverage license) without gaming in a Highway Commercial zone described as Lot 10A1A1, Hogan Homestead Subdivision and located at 2010 Overland Avenue for the existing Denny's Restaurant. William O Ryan, owner; Tim Ballou, agent. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

Zoning Coordinator Nicole Cromwell said this is a special review request for a full beverage license at the existing Denny's Restaurant at 2010 Overland Avenue in a Highway Commercial zone. The Zoning Commission held a public hearing on February 1<sup>st</sup> and is recommending conditional approval on a 4-0 vote. The conditions are:

1. The special review approval shall be limited to Lot 10A1A1 of Block 1, Hogan Homestead Subdivision.
2. The addition of any gaming facilities, an outdoor patio lounge or expansion of the gross floor area by more than 10% of the existing area will require additional special review approval.
3. All other limitations on expansion shall apply in accordance with Section 27-613 of the Billings Montana City Code (BMCC).

Ms. Cromwell said there are no specific uses within 600 feet that require separation from this license.

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

**10. PUBLIC HEARING AND SPECIAL REVIEW #777: a special review to permit the sale of alcohol (full beverage license) with gaming in a Community Commercial zone described as Lots 8-12, Block 2, Arnold Subdivision, 1<sup>st</sup> Amended and located at 2248 Grand Avenue for an existing structure behind the Rainbow Run Fly Shop. Nash Brothers, owners; Roger Tuhy, agent. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

Zoning Coordinator Nicole Cromwell said this special review request is for a full beverage license with gaming on property at 2248 Grand Avenue in a Community Commercial zone. A portion of an existing building will be renovated for the proposed business called Boomtown Casino. The subject property is directly adjacent to residential zoning so the Zoning Commission is recommending the following conditions:

1. The special review approval shall be limited to Lots 8-12 of Block 2, Arnold Subdivision 1<sup>st</sup> Amended.
2. An evergreen hedge consisting of shrubs at least 5 feet in height and spaced 4 feet apart shall be planted along the entire southern property line of Lots 8-12 in order to provide an adequate buffer to the adjacent residential properties. This hedge shall be installed no later than July 1, 2005 and be continuously maintained.
3. No outdoor seating, outdoor music or outdoor public announcement systems will be allowed with this application.
4. Any new lighting on the building or within the parking lot shall have full cut-off shields so light is directed to the ground and not onto adjacent property. Lighting of signs shall be as allowed within the City Sign Code (Section 27-701 BMCC).
5. All other limitations on expansion shall apply in accordance with Section 27-613 of the Billings Montana City Code (BMCC).

Ms. Cromwell noted Rose Park and Burlington Park are just beyond the 600-foot separation requirement. She said there was one objection at the Zoning Commission meeting – the Nashes had ongoing issues with the previous tenants and owners of the property. She said these issues have been resolved to the Zoning Commission's satisfaction. One of the issues was the current lighting. The owners will be contracting with an electrician to retrofit the lighting to correct that concern.

The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Brewster moved for approval of the Zoning Commission recommendation, seconded by Councilmember Ruegamer. Councilmember Ulledalen abstained from voting due to a previous relationship with the property owner. On a voice vote, the motion was approved with Councilmember Gaghen voting "no" and Councilmember Ulledalen abstaining.

**11. RESOLUTION 05-18242 ADOPTING THE 2006-2011 CAPITAL IMPROVEMENTS PLAN (CIP). Public hearing held 2/14/04. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

Assistant City Administrator Tina Volek said this resolution is the culmination of an eight-month process to formulate the 2006-2011 Capital Improvements Plan. She noted the potential amendments discussed at the work session and the public hearing. She said these amendments must be added to Exhibit 1 by the Council and are as follows:

- a) Move the Castle Rock spray pad, now scheduled in 2008 for \$218,000, forward to 200\_.
- b) Add a Hawthorne Park spray pad, estimated at \$175,000, to 200\_.
- c) Move the Athletic and South Park pool heaters, now scheduled in 2011, forward to 200\_ and add pool blankets for both facilities for a total estimated cost of \$200,000.
- d) Move the Heights Aquatic Facility, now scheduled in 2007 for \$4.75 million, back to 20\_\_.

- e) Add a Cobb Field Stadium Replacement feasibility study, estimated at \$60,000, to 2006.
- f) Add a traffic signal at Shiloh and Central, estimated at \$260,000, to 200\_.
- g) Restore Annandale Road, deleted from 2007, and add the completion of Glen Eagle Road, for a total cost of \$1.8 million.
- h) Move construction of a fire station at 54<sup>th</sup> and Grand, now scheduled in 2009 for \$1.5 million, forward to 2007.
- i) Move a Downtown Railroad Relocation Study, now scheduled in 2006 for \$7 million, to Planning in 2006 as a feasibility study, federally funded at \$300,000.

Ms. Volek said if any one of the above amendments is adopted, Section 1 of the resolution needs to be amended to read: "The 2006-11 Capital Improvement Plan, Equipment Replacement Plan and Technology Replacement Plan are hereby adopted as presented by the staff on January 3, 2005, amended by the City Council on February 28, 2005, and shown as Exhibit 1."

Councilmember McDermott asked about the Cobb Field Stadium Replacement for the bond request for 2006. Ms. Volek said it is scheduled for construction in 2006 at a total cost of \$10 Million with \$3 Million from the private sector. Mr. Bauer spoke about the amendment concerning moving the construction of the fire station at 54<sup>th</sup> and Grand Avenue. He said there was concern about operations costs for that fire station impacting the ability to invest in public safety services in the Police Department. He said the analysis has been reviewed and the Staff feels this project can be accomplished earlier without impact to Police services.

Councilmember Brown moved for approval of the Capital Improvement Plan with amendments, seconded by Councilmember McDermott. Councilmember Brewster amended the motion to amend the CIP to approve amendments (a), (b) and (c) in 2006, seconded by Councilmember McDermott. Councilmember Brewster said the funding could be accomplished by adequately amending the Park Department budget and using some loan programs and paying them out of the Parks Department budget over a five or six-year period. He noted each of these items will come before the Council for approval and if the amounts seem excessive, they can be adjusted at that time. This is just a planning document, he noted. On a voice vote, the amendment was unanimously approved.

Councilmember Veis amended the CIP to add (f) a temporary signal at Shiloh Road and Central Avenue estimated at \$260,000 to 2006, seconded by Councilmember Jones. Councilmember Veis noted this intersection is failing and needs attention now. City Administrator Bauer said he wanted to make the Council aware that there is an effort currently being made to speed up the federal funding of this project and to accomplish it in 2008. Councilmember Jones said the travel on Shiloh Road is getting worse every day. The City needs something better than a four-way stop. He said this amendment is a good investment at that intersection. On a voice vote, the amendment was unanimously approved.

Councilmember Gaghen amended the CIP to add (i) a Downtown Railroad Relocation Study now scheduled in 2006 for \$7 million, to Planning in 2006 as a feasibility study, federally funded at \$300,000, seconded by Councilmember McDermott. On a voice vote, the amendment was unanimously approved.

Councilmember Jones amended the CIP to move construction of a fire station at 54<sup>th</sup> and Grand (h), now scheduled in 2009 for \$1.5 million, forward to 2007, seconded by

Councilmember Gaghen. Councilmember Brewster said he would support that motion as long as it does not impact the number of police officers. Councilmember Ulledalen said the upgrading of Grand Avenue is another necessary component of this project. City Administrator Bauer said that portion of Grand Avenue is still in the County and as development occurs on that corridor, upgrading would take place. On a voice vote, the amendment was unanimously approved.

Councilmember McDermott amended the CIP to add (e) Add a Cobb Field Stadium Replacement feasibility study, estimated at \$60,000, to 2006, seconded by Councilmember Gaghen. On a voice vote, the amendment was unanimously approved.

Councilmember Jones amended the CIP to move add the election for Cobb Field to FY 2007, seconded by Councilmember McDermott. Councilmember Brewster said this would delay construction as it is projected in the CIP. Councilmember Boyer asked how that impacts the Heights Pool project. Councilmember Brewster said that project is dependent on what happens with the Harvest Church pool project. Councilmember Jones said his reason for this amendment is the City will have money to start the feasibility study in July of 2006. The feasibility study will take some time and there is not enough time to respond and incorporate that into the November 2006 election.

Councilmember Ruegamer said he would hope the Council remains flexible because his intention is to get this project completed and not wait two years for studies. Ms. Volek noted the CIP is a plan and there is no guarantee that there will be funding for all the projects listed in the plan. General Fund budget items are less certain than other projects. The CIP will be reviewed on an annual basis and can be amended from time to time. On a voice vote, the amendment was approved with Councilmember Ruegamer voting "no". On a voice vote on the motion as cumulatively amended, the main motion was unanimously approved.

**12. APPROVAL OF THE 2005 COUNCIL GOALS. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

Councilmember Ruegamer moved for approval of the 2005 Council Goals, seconded by Councilmember Brown. Councilmember Ulledalen suggested dropping goal #1 as it has become quite "watered down". Councilmember Boyer disagreed with dropping goal #1.

Councilmember Brown said goal #2 has also become "watered down". He said the Council should have financial reports like those generated in the business community. Councilmember Ulledalen said goal #2 should be dropped as well. Councilmember Brewster said goal #2 is acceptable as it stands because the Council can request further information if the financial reports that are supplied are not sufficient. It is worth keeping in and working within the goal to achieve the kind of document the Council wants. Councilmember Ulledalen suggested forming an ad hoc committee to assist the City Staff on potential software that would make financial reporting less complicated. On a voice vote, the motion was unanimously approved.

**13. RESOLUTION 05-18243 creating an Ad-Hoc Transfer Center Advisory Committee. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

Councilmember Veis moved for approval of the resolution creating an Ad-Hoc Transfer Center Advisory Committee, seconded by Councilmember Boyer. Councilmember Jones asked about the wording in Section 2c. Mayor Tooley said the idea was that some people would assemble certain parcels and bring them to the committee for consideration. Mr. Bauer suggested adding the wording "reviewing submissions or proposals identifying or assembling potential parcels or groups of parcels that meet the minimum requirements for a Transit Center in terms of size, suitability for use, accessibility, availability, cost and potential for public/private partnership development".

Councilmember McDermott said the Council should review all of the proposed sites. Mayor Tooley suggested re-wording Section 2d to read "reporting to the City Council on the sites considered and making a recommendation to the City Council on a preferred site or sites". Councilmember Brewster moved to amend the resolution with the suggested wording changes, seconded by Councilmember Gaghen. On a voice vote, the amendment was unanimously approved. On a voice vote on the motion as amended, the motion was unanimously approved.

**14. ~~13~~. PUBLIC COMMENT on Non-Agenda Items -- (Restricted to ONLY items not on the printed agenda; comments limited to 3 minutes per speaker. )**

PUBLIC COMMENT FOCUSED PRIMARILY ON THE DISPUTE BETWEEN THE POLICE CHIEF AND CITY ADMINISTRATOR AND THE DUTY OF THE CITY COUNCIL IN THIS MATTER.

- TOM ZURBUCHEN, 1747 WICKS LANE, spoke on the responsibility of the City Council in this matter in regard to the Charter. He said the Charter delegates authority to the Council to pass laws regulating employees. He said the Charter does not "tie the hands" of the Council as was reported in the Gazette. The Council has the obligation to pass a resolution requiring the City Administrator do his job and administer to the City Police Department. Mr. Zurbuchen asked where in the Charter is the authority for the City Administrator to expend tax dollars to pay for an independent investigator. The result won't be independent because it is tied to his paycheck. This should be the Council's authority.

- ANN CLANCY, 111 WYOMING, spoke on her observations of the dispute, adding that an objective resolution process must be established. She said the core of the dispute started with a morale issue in the Police Department and evolved into an issue of insubordination. Insubordination in an organizational context consists of: 1) personality conflict and 2) power struggle between a superior and a subordinate. She said organizations usually provide some kind of resolution process for this. When it occurs at the leadership level, the governing body needs to step in. The resolution process usually includes mediation, skillbuilding training and coaching. She said the resolution process of the governing body is necessary because it is the only check and balance system that exists.

Ms. Clancy said the governing body is the Council's responsibility and their duty is to provide an objective process and recourse for the individuals. This is especially important because the Council is accountable for the performance of the City Administrator. She said it appears neither Mr. Bauer nor Chief Tussing have received the support, guidance and accountability they need to resolve this conflict. It is not too late for the Council to take on its role of leadership and provide an objective process. She urged the Council to move forward with the resolution process.

- RICHARD MCFADDEN, 619 TERRY AVE, said the power of government comes from the people. He said the process of democracy has been diluted when the people hand over to the Council and Mayor the process of government. He said he is concerned that the Council has given a large block of their power to the City Administrator who does not have to stand for re-election. Mr. McFadden said this steals from the voters their votes and their democratic process. He said the political process of hiring and firing a department head should be the responsibility of elected officials. He said the Council is straddling the fence and hiding behind the Charter. He said the voters will have to take back their City Hall and government via the vote. He said “all the voters are asking for is that things are done in a democratic manner”.

- MICHAEL ERICKSON, 990 B.S. HEIGHTS LANE, said it is clearly the Council’s job to deal with this matter and get the dispute resolved. He said there is something wrong with the system when the Chief is put on paid leave and not the City Administrator. He said it is time to “put this thing to bed”. He said the Council owes the voters the opportunity to know what their stance is on this issue. Mr. Erickson said the Council can dismiss the City Administrator without cause. If the Council continues to “sit on their hands” they will pay the price at the next election.

- SANDRA WEST KROWELL, 2920 OAKLAND DR., said she was disgusted by the Council’s unprofessionalism and by the manner in which the Police Chief was humiliated when suspended. She stated that the Chief should be reinstated immediately or the City Administrator also placed on paid administrative leave. She said she resents the fact that an outside investigator will be charged with investigating a very transparently personal dispute. Ms. Krowell said the City Administration and the Council have intimidated and humiliated someone she believes the City should be proud of.

- JIM SULLIVAN, 353 PARKHILL DR., said he had contact with the Police Dept and the Police Chief several times about the speeding problem on Parkhill Dr. Nothing was done until he contacted the City Administrator, after which speed limit signs were installed at both ends of the street.

- VI LEIKAM, 2719 WYOMING AVE., said the community is upset by what has been going on for over a year. Ms. Leikam stated this dispute is hurting the community and the community deserves to know the facts. This dispute is a disgrace to the community. She said she is concerned about the escalating costs connected to this situation. She said this has to stop; the citizens are not getting results from the taxes they pay.

- SKIP GODFREY, 4146 CLEVENGER, said Billings has changed from a City to an education institution for an inexperienced City Administrator. He said he has a hard time seeing an inexperienced man judging and trying to terminate the career of a 36-year well regarded veteran law enforcement officer. He said the community is “up in arms” about this situation and urged the Council to take control and get the City back on its feet.

- FRANCIS HARRIS, THE TERRACE, said the Mayor and Council are taking quite a beating tonight over this matter and she is not sure it is justified. She reminded everyone that the voters had the opportunity to review the City Charter form of government at the last election and chose not to support the review.

- CONNIE WARDELL, 1302 24<sup>TH</sup> ST W, #168, said she is tired of the Council hiding behind the charter as a reason for not doing anything. Ms. Wardell said inquiries and investigations are the prerogative of the Council, not the City Administrator. She said the investigation should be done through the International Association of Police Chiefs to



obtain something on which the community can rely. She also said the community doesn't need to pay out-of-state attorneys to settle this dispute. Ms. Wardell said both parties should be suspended until the issue is resolved.

- VONNIE FRIESE, 450 MORNING GLORY DR., said she believes the City Administrator should not have anything to do with the Police Chief investigation. She noted she spoke with the Mayor several months ago and he assured her that the Mayor and the Council would be working with the City Administrator to improve his personal skills. She said it is her opinion that the Council has failed.

- FRANCIS HARRIS, THE TERRACE, said an outside investigator is needed because the matter has become too polarized.

- SANDY OIUM, 430 19<sup>TH</sup> ST. W., said she supports the Police Chief and believes the City Administrator has been on a witch hunt for a long time. She said she does not want to see any more taxpayer money being spent on out-of-state agents to investigate this dispute. She also referred to the recent Teamsters' strike and said the Council needs to listen to the citizens of Billings and say goodbye to the City Administrator.

- JACK JOHNSON, 2303 VIRGINIA LANE, said he is a previous member of the City Council and speaks for his wife Vera and himself. Mr. Johnson said this is not the time to remove the City Administrator, who is doing only what the Council hired him to do. This is a personnel matter and it is being handled in the proper way.

- MARION DOZIER, 3923 3<sup>RD</sup> AVE. S., said she appreciates the public safety in the City and very much respects City Administrator, Kristoff Bauer. She said everyone is a "first" at some time in their life, learning on the job. She said Mr. Bauer is doing a fine job, having attended many meeting with him. Ms. Dozier said she believes people are basing their opinions on gossip and innuendos and do not really know what the issues are. What is needed is to step back and let the professionals do what they need to do.

- PAT EMERSON, 3307 CENTRAL AVE., thanked the Councilmembers for their civic duties. She asked what goal is to be accomplished from all of this, noting that citizens don't really know what this goal is. She said the citizens should know what the goal is and the Council should inform the public of it. As an accountant, she is concerned about the money that is going to outside contractors. Ms. Emerson said it appears the Council needs to work more with the City Administrator on his people skills.

- VICTOR LEIKAM, 2719 WYOMING AVE., said he is ashamed to live in this community after reading the paper. Mr. Leikam asked the Council to consider what the 93%/7% survey told them. He said something has to be done.

- MICHAEL MYERS, 1550 COUNTRY MANOR BLVD., said any junior manager knows there is much to learn from senior subordinates. This issue is shrouded with generalities and innuendos. He noted he was concerned that the leave was instituted with extreme embarrassment, humiliation and intimidation. When a personality conflict exists, it is the supervisor's task to set the tone.

- FRAN OUELLETTE, BOX 802, BILLINGS, said she supports the Police Chief and agrees with everything said in his support this evening.

- JANNA MYERS, 1550 COUNTRY MANOR BLVD., said the City Administrator manages by intimidation and should also be placed on administrative leave. The Council should call for a complete investigation of both officials. She said she has past experience in many areas of government. She said she believes the current City

Administrator's style has alienated many who work with and for him. She also believes the Chief of Police is grounded by a solid moral and ethical compass, standing up for his department and his position. Ms. Meyers said she thinks the Chief has been undermined by the City Administrator on numerous occasions. This is an occasion for the Council to exercise Section 3.08 to use the inquiries and investigations portion of the Charter. She said both parties should be placed on administrative leave and the Council should initiate an unbiased third-party investigation of both officials.

- ROB HUNTER, 2215 24<sup>TH</sup> ST. W., said the City is "stuck" right now with this dispute. He referred to Section 3.08 of the charter as a chance to "shift into 4-wheel drive", urging the Council to get going on the investigation. He said he was unsure of what the investigation would involve. Mr. Hunter urged the Council to "get after it".

- BRUCE LARSEN, 316 BENCH BLVD., said something needs to change because the City is going in the wrong direction. He said he felt the Police Chief had accomplished a lot where he came from and it doesn't make sense what is happening now. He asked the Council to put personal differences aside and listen to the speakers.

- JACKIE SULLIVAN, 353 PARKHILL DR., said she and her husband have dealt with the Police Chief about the speeding problem on Parkhill Dr. The Chief offered no help and believes he needs to go. Ms. Sullivan said she supports the City Administrator.

- MERRYANN PETERS, 10 ALMADIN LN., said she has been gathering signatures and passing out buttons in support of the Police Chief. Only one person has turned her down so far. Ms. Peters said they are asking the Council to intervene and conduct an investigation without any involvement from the City Administrator. This should be a completely unbiased opinion.

- DAN BANAKER, COUNTY RESIDENT, noted he did a ride-a-long with a police officer in October. Mr. Banaker said during patrol, the Parkhill Drive area was patrolled three times and people were driving slowly. He also said it appears the City Administrator has a problem with the Police Chief's sarcasm and style, but there has been no dereliction of duty.

- JOE DWYER, SECRETARY-TREASURER OF TEAMSTERS, asked the Council to do their job – take control and not bury their heads in the sand regarding this matter.

The public comment period was closed. Mayor Tooley said he and every Councilmember care about this community. They are all committed to doing the right thing in this situation. He said there were many conflicting thoughts and ideas presented this evening. It will be the job of the policy body to sort through these issues and ideas. He added, the concerns expressed this evening have been expressed by the Councilmembers themselves. It is the Council's desire to have an impartial investigation.

The following press release and department head letter were read into the minutes by the Mayor.

## LETTER FROM DEPARTMENT HEADS

February 28, 2005

MINUTES: 02/28/05

Hon. Mayor and Council  
City of Billings

Ladies and Gentlemen:

Like you and most people of Billings, we are concerned about the tension throughout the community created by the situation between the City Administrator and Police Chief, personnel actions associated with it, and increasing public debate of this personnel matter.

Some of us have been asked by some of you, the media, our employees and neighbors for our views on the situation. We will not take a position on the performance or suspension of the Police Chief. It has never been, and is not a part of, our responsibility to evaluate each other. That responsibility rests with the City Administrator.

The City of Billings is structured like many other organizations or businesses. The City Administrator reports to you, and we report to the City Administrator. In our business, as many others, the professional standard is that disputes will be handled privately, not through public debate. All supervisor/employee relationships have their ups and downs, and ours is no exception. We would like you to know that all of us continue to work effectively with Kristoff Bauer, and believe the organization is moving forward to serve the Mayor, Council and residents of our community to the best of our abilities.

The City Council can be very proud of the dedication and professionalism of the City employees they oversee. As you evaluate the ongoing performance of the City Administrator, we urge you to be mindful of the impact of your decisions on the 700 City employees and the citizens of Billings.

Thank you for your consideration of our comments.

Respectfully signed by: Fire Chief Marv Jochems, Assistant City Administrator Tina Volek, Airport Director Bruce Putnam, Deputy City Administrator Bruce McCandless, Planning Director Ramona Mattix, City Attorney Brent Brooks, Public Works Director Dave Mumford, Library Director Bill Cochran and Parks and Recreation Director Don Kearney.

## NEWS RELEASE

### BILLINGS HIRES NATIONALLY RECOGNIZED POLICE EXPERT & LOCAL ATTORNEY TO CONDUCT STUDY

The City of Billings has hired Lou Reiter, a nationally recognized expert in law enforcement agency audits, training and litigation services and attorney Cal Stacey of Billings to conduct an independent investigation of Police Chief Ron Tussing's administrative activities as department head.

Reiter is a retired Los Angeles Deputy Chief of Police who has been the principal consultant with Lou Reiter & Associates since 1983. He has conducted three to five law enforcement agency audits per year in 21 states, including Colorado and Washington.

Reiter has acted as a consultant since 1996 for the U.S. Department of Justice's Special Litigation Section, Civil Rights Division in six pattern and practice investigations of

police departments. He also has worked for the cities of Cincinnati and Schenectady when they were being investigated by the division.

He is the author of "Law Enforcement Administrative Investigations Guide: A Manual for Citizen Complaints, Administrative Investigations and Internal Affairs," which has been used as a textbook in criminal justice courses. In addition, he conducts 15 to 20 training seminars a year for about 1,000 police practitioners from federal, state, county and municipal law enforcement agencies in areas including managing of internal affairs, police discipline, personnel practices, policy and procedure development and management effectiveness.

Stacey has practiced law in Billings for about 28 years. He served as a contract Public Defender in the late 1970s, and currently practices privately in the areas of civil plaintiff and defense litigation. His firm is AV-rated by Martindale-Hubbell, the highest rating from peers in the legal community for legal ability and adherence to ethical standards.

"It is essential that this process be impartial. That is why we are bringing in an outside consultant. Mr. Reiter's credentials are impeccable and his integrity is unquestioned. He and Mr. Stacey will provide the City with an honest report," Mayor Chuck Tooley said.

The investigation will concentrate in four areas: insubordination, internal investigation/complaint response, communication and management/decision making.

Stacey will begin work immediately on assembling and reviewing documents in an independent analysis. Reiter will arrive March 24 to review the documents and conduct private interviews, with Stacey's assistance as needed.

The investigation is expected to be completed in early April.

Mayor Tooley called for a recess at 10:25 P.M.

Mayor Tooley reconvened the meeting at 10:30 P.M.

## **COUNCIL INITIATIVES**

- **COUNCILMEMBER VEIS:** Councilmember Veis moved to direct staff to prepare a plan to supplement the flow of Spring Creek with groundwater, prepare an agreement outlining the responsibilities of the City and the adjacent residents relating to maintenance of the creek, and estimate a cost, seconded by Councilmember Ruegamer. Councilmember Ulledalen asked if City water could be used as part of the flow. Director of Public Works Dave Mumford said under stormwater regulations, chlorinated water violates federal guidelines for discharge. On a voice vote, the motion was unanimously approved.
- **COUNCILMEMBER BOYER:** Councilmember Boyer asked for an Executive Session to be scheduled. After discussion the Council consented to calling a special meeting after the Work Session on March 7<sup>th</sup>. Council will meet in executive session at this time.
- **COUNCILMEMBER BROWN:** Councilmember Brown moved to terminate the employment of City Administrator Kristoff Bauer. Motion failed due to lack of a second to the motion.

MINUTES: 02/28/05

**ADJOURN** —With all business complete, the Mayor adjourned the meeting at 10:35 P.M.

THE CITY OF BILLINGS:

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

ATTEST:

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