

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

March 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 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 Ed Ulledalen.

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

MINUTES – March 14, 2005. Approved as printed.

COURTESIES – Councilmember Brewster said his wife Vonda would be viewing the council meeting this evening and because it is her birthday he wished her a Happy Birthday.

PROCLAMATIONS – Mayor Tooley

- April: Fair Housing Month

BOARD & COMMISSION REPORTS – NONE

ADMINISTRATOR REPORTS – Kristoff Bauer

- Mr. Bauer noted there were several items on the councilmember's desks this evening. He said Item A4 concerns the bid award for the self-contained breathing apparatus. He said the Fire Department is recommending awarding the bid to Wheatland Fire Equipment in the amount of \$276,693.16.
- Mr. Bauer said a resolution relating to a bond issue for Item I was also available for review.
- He stated that the applicant in Item 6 – Special Review #779 has submitted a letter requesting withdrawal of the application.
- He said a revised ordinance relating to Item 7 – Zone Change #754 for South Shiloh Corridor Overlay District was also available for review.
- Mr. Bauer said a proposed Item #10 concerning a resolution authorizing constructions bids for SID 1373 should be considered if the Council approves Item 9 – the resolution to create SID 1373. Adding Item #10 to the agenda would allow the project to move forward immediately and avoid complications with an irrigation ditch that will be activated shortly.

LEGISLATIVE REPORT – Kristoff Bauer

- Mr. Bauer said he provided to the Council a listing of the some of the hearings that are scheduled this week. He noted the Senate Local Government Committee is holding hearings that are available through video conferencing and allow testimony to be provided on those hearings at the Mansfield Center. He urged Councilmembers to

consider testifying regarding HB794 that is currently in the House Judiciary Committee. This bill concerns civil and criminal penalties for government officials that withhold information or documents in response to a Freedom of Information request. This bill would also not allow the agencies that employ those individuals to be indemnified or defended by their employers. He said there are significant concerns about the bill and noted testimony would be taken in Helena on Thursday, March 31st at 8 A.M. He noted the full text of the bill is available on the website. Mr. Bauer said there was no other significant legislative activity to report.

LATE ADDITION:

Councilmember Veis moved to add Item 10 to the agenda, a resolution to authorize Staff to advertise and receive bids for construction of SID 1373, seconded by Councilmember Boyer. On a voice vote, the motion was unanimously approved.

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Item: #1 and #3 ONLY.

Speaker sign-in required. (Comments offered here are limited to 1 minute per speaker.)

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

- GREG KRUEGER, EXECUTIVE DIRECTOR OF THE DOWNTOWN BILLINGS PARTNERSHIP, 2906 3RD AVENUE NORTH, asked the Council to approve Item J, authorizing the Mayor to sign the downtown Business Improvement District petition. He noted the completed petition will come before the Council showing at least 60% or more of the property owners having signed the petition. He said the City of Billings is a significant property owner in the district and the petition requires the City's signature to move forward. Mayor Tooley noted the Downtown Billings Property Owners are looking to the City for leadership on this issue, to know if this Business District is a good idea. Mr. Krueger confirmed that many of the downtown property owners are waiting for the City to take the lead. He said the size of the district was determined by the Partnership's ability to serve the properties on a seven (7) days per week basis with a budget of \$150,000. Mr. Krueger said there is a plan to develop a second BID in the “outer” area with a different assessment level and Board of Directors to eventually work with the “inside” BID and form a new partnership for maintaining the downtown area.
- JERRY THOMAS, NO ADDRESS GIVEN, said he represents the Bottrell Family Partnership that has 40% interest in the Shiloh Business Park Subdivision. He asked the Council to approve Item 3 concerning the amendments to the escrow agreement in the Subdivision Improvement Agreements for the three named subdivisions.
- MATT BROSOVICH, 845 AVENUE F, spoke concerning Item 3. He said his properties are already being taxed through SID 1360 and are essentially being taxed twice with the new arterial fee. He asked the Council to keep this in mind and asked for the Council's approval of the amendments.
- GARY TEMPLE, 118 NORTH 29TH STREET, spoke concerning Item J. He said the business district would create pride of ownership for the downtown property owners. He said it is very economical and noted the annual cost to him would be approximately \$450.

- KEVIN BRYAN, CFO OF PIERCE FAMILY COMPANIES, said he supports Item 3 and encouraged the Council to approve the staff recommendation. He agreed with Mr. Brosovich that the arterial fee is a tax upon a tax that they are already paying. He noted Pierce Homes and RVs will be paying about \$11,000 a year to the arterial fee structure.
- DON BOTTRELL, 1906 CHELSEA LANE, said he is the principal in the Bottrell Family Investments. He asked for the Council's support of Item 3.

CONSENT AGENDA:

1. A. Bid Awards:

(1) Willett Reservoir Painting. (Opened 3/1/05). Recommend Maguire Iron, Inc., \$462,447.00 (and provide a 10% project contingency of \$46,245.00)

(2) 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; Delayed from 2/28/05 and 3/14/05). Recommend rejecting the sole bid of Cummins Rocky Mountain LLC as non-responsive.

(3) City Property Sale at Southwest Corner of 6th Avenue North and Division Street, Lots 44-46, Block 7, Amended West Side Addition, 2nd filing. (Opened 3/15/05). Recommend sale of property to Phil Taylor, \$80,000.00.

(4) Self-Contained Breathing Apparatus for the Fire Department. (Opened 3/22/05). ~~Recommendation to be made at meeting.~~ Recommend Wheatland Fire Equipment, \$276,693.16.

B. C.O. #1, AIP 28 Project: East Ramp Rehabilitation and Runway 7 Earthwork, Donnes Inc., Deduct \$29,134.60.

C. Amendment #1, W.O. 04-11: South Billings Boulevard Phase 1 Design, Professional Services Contract, Morrison-Maierle, Inc., \$18,960.00.

D. Amendment #2, W.O. 04-12: Alkali Creek Road Reconstruction, Professional Services Contract, Kadrmass, Lee & Jackson, Inc., \$2,071.00.

E. W.O. 04-34: Canyon Creek Ditch Evaluation, Professional Services Contract, Morrison-Maierle, Inc., \$34,968.00.

F. Hazardous Waste Collection Events, Professional Services Contract, Philip Services Corporation, \$37,175.00.

G. W.O. 04-29: Trans Tech Trail, Amendment to Easement with Bottrell Family Investments, to amend the location of the trail, \$0.00.

H. Resolution 05-18248 amending Res 02-17849 establishing fees for services at the Billings Animal Shelter.

I. Resolution 05-18249 relating to financing of certain proposed projects (SID 1366); establishing compliance with reimbursement bond regulations under the Internal Revenue Code.

J. Authorization for Mayor to sign the downtown Business Improvement District petition.

K. Approval of *Amend Park* Naming requests as proposed by the Amend Park Development Council.

L. Street Closure request from Yellowstone Rimrunners for the Montana Women's Run on Saturday, May 7, 2005. Closures are: 2nd Ave N from N. 20th St. to Division St., Division St. between 2nd and 3rd Aves N., 3rd Ave N between Division St and N. 20th St., and N. 20th St. between 3rd and 2nd Aves N.

M. Riverfront Park Irrigation Runoff Repairs, Application for proposed work in Montana's Streams, Wetlands, Floodplains and other water bodies, authorizing Mayor to sign the application.

N. Acknowledging receipt of petition to vacate a street bulb portion of Indian Trail south of Alkali Creek School and setting a public hearing for 4/25/05. .

O. Final Plat of Hardy Subdivision, Amended Lot 5, Block 1.

P. Bills and Payroll.

- (1) February 25, 2005
- (2) March 4, 2005
- (3) March 11, 2005

(Action: approval or disapproval of Consent Agenda.)

Councilmember McDermott separated Item K from the Consent Agenda. Councilmember Veis separated Item I from the Consent Agenda. Councilmember Jones separated Item H from the Consent Agenda. Councilmember Brown separated Item N from the Consent Agenda.

Councilmember Boyer moved for approval of the Consent Agenda with the exception of Items H, I, K and N, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

Councilmember Boyer moved for approval of Item H of the Consent Agenda, seconded by Councilmember Ruegamer. Councilmember Jones asked why the annual registration fee for "irresponsible" owners of dogs and cats has been increased so dramatically. Animal Shelter Manager Dave Klein said the "unaltered" fee for those animals was increased because those are the animals that are contributing to the pet over-population problem. These are the owners that should be responsible for paying more of the fees and costs of running the animal shelter. Unaltered pets are also the ones most likely to be running loose. City Administrator Kristoff Bauer noted there is a separate line

for registration of spayed and neutered pets for the 1 year and 3 year periods that is a lower fee. He noted the resolution could be amended to include the word “unaltered” for the increased fees that would clarify the intent. Councilmember Jones amended the increased fees for 1 year and 3 years for dogs and cats to include the word “unaltered”, seconded by Councilmember Clark. On a voice vote, the amendment was unanimously approved. On a voice vote for the motion as amended, the motion was unanimously approved.

Councilmember Boyer moved for approval of Item I of the Consent Agenda, seconded by Councilmember Ruegamer. Councilmember Veis asked that the intent of the resolution be explained. Deputy City Administrator Bruce McCandless said the purpose of the resolution is to allow the costs to finance the construction improvements incurred prior to the bond sale to be included in the bond sale. This resolution only applies to the bond sale for the project at Rimrock West Park. On a voice vote, the motion was unanimously approved.

Councilmember Boyer moved for approval of Item K of the Consent Agenda, seconded by Councilmember Brewster. Councilmember McDermott asked what the estimated costs would be pertaining to Item #6 City’s Rights and Duties of the agreement and is it the same as the previous agreement. Parks Department Director Don Kearney said this references the agreement only as it applies to the naming opportunities and the lease remains the same. Councilmember McDermott said her concern was the scaling back of the mowing portion of the maintenance and asked if the mowing of Amend Park will be scaled back again this year. Mr. Kearney said the Parks Department is currently only mowing once a week. The second mowing would be “charged out” or can be performed by the users.

Councilmember Veis expressed his concern about the naming rights to Pepsi and noted that a provision in the user agreement states that naming rights can’t be products that are detrimental to the health and welfare of children. He asked if there were discussions that soda products can be detrimental to children’s health. Mr. Kearney said Pepsi is a sponsor of Amend Park through the concession operations and has a 10-year agreement with the Amend Park Development Council. There were no discussions about the detrimental aspects of soda products in this recent naming process. Councilmember Veis asked what the complications would be if the naming process were to be changed from Pepsi and would a new agreement be required. Mr. Kearney said there would be funding issues involved. Councilmember Veis moved to amend the motion to find an alternative name for the Amend Park flag pole other than Pepsi, seconded by Councilmember Jones. Councilmember Veis said he thinks soft drinks have become detrimental to the health and welfare of children and the City should endeavor to find a better name for the flag pole. Councilmember Brewster said the intent of the detrimental aspect is to exclude products that are illegal for children to use, such as tobacco and alcohol products. Councilmember Veis said the agreement states detrimental not illegal. Mayor Tooley noted that the flag pole naming is not going to be as detrimental as the concession stand that is actually selling the product. Mr. Kearney said Pepsi has a 10-year contract at Amend Park to sell their product and in exchange the City was able to receive dollars donated on behalf of Pepsi to make field improvements and continue fundraising at Amend Park. Mr. Bauer noted the naming rights are a fundraising opportunity for the Parks Department. Councilmember Veis noted that naming the Amend Park flag pole will continue the name forever, but the concession agreement can be changed in the future. If

we find out that 20 years from now soda products are a key to triggering health problems in young people, the City would not want that type of name associated with the park. On a voice vote, the amendment failed with only Councilmember Veis voting "yes". On a voice vote for the original motion, the motion was unanimously approved.

Councilmember Boyer moved for approval of Item N of the Consent Agenda, seconded by Councilmember Ruegamer. Councilmember Brown asked what the cost would be for vacating the street bulb. Public Works Director Dave Mumford said the City did not appraise that because there is a \$70,000 savings to construction of the storm drain that the City would have by being able to use the easement. The cost of an appraisal on the property in the vacated right-of-way the City will never use would not be appropriate because the City is benefiting from the easement. On a voice vote, the motion was unanimously approved.

REGULAR AGENDA:

2. PUBLIC HEARING AND RESOLUTION 05-18250 approving tax benefits for the building located at 1106 S. 29th St. W, Northland Automotive Bldg, Myriad Properties, LLC , owner. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

Deputy City Administrator Bruce McCandless said this tax abatement application is authorized under 15-24-1501 MCA and City of Billings Resolution 89-16126. This abates a portion of the property tax on properties that are remodeled, reconstructed or expanded and only on that portion of the property. He said the abatement lasts for 5 years; during a 1-year construction period and four (4) additional years. During the construction year 0% of the improvements are taxed. The improvements are then taxed as follows:

- First year - 20%
- Second year - 40%
- Third year – 60%
- Fourth year – 80%
- Fifth and ensuing years – 100%

Mr. McCandless said this abatement applies only to the school district and city tax levies and reduces the tax as previously stated. He said the property is Lot 3A, Block 1, Parkco Industrial Subdivision located at 1106 S. 29th Street West. The property owner is Myriad Properties, LLC and the primary occupant of the building is Northland Automotive, Greg Kemmis. He said the addition to the existing building is 22,000 square feet and the market value increase is up to \$1.5 million. Mr. McCandless said the Staff recommendation is to approve the resolution and grant the abatement per Res. #89-16126. Mayor Tooley asked if the guidelines have requirements as to number of employees. Mr. McCandless said "no"; it is discretionary and not required by the State code. Councilmember Clark asked if the School District is involved in the decision to abate a portion of their taxes. Mr. McCandless said the School District does not have input into this.

Councilmember Brown asked if the abatement stays with the property. Mr. McCandless said the application applies to the property, not the business or the occupant. Councilmember Brown asked if the County is the agency that should be processing the abatement. Mr. McCandless said the State code states that if the improvement occurs

within the incorporated city, the City Council of that city shall consider the tax abatement. He added that the County runs a similar program for County properties.

Councilmember Clark asked if the improvements have already been built. Mr. McCandless said the application was made at the time the building permit was applied for, but due to confusion as to which jurisdiction should act on the application there was a delay in acting on the request.

The public hearing was opened. GREG KEMMIS, NO ADDRESS GIVEN, said he would be available for questions from the Council. He said he originally started his application by contacting BSEDA who presented a couple of programs that were available. After verifying that his request met all of the criteria, the County toured the site and the Commissioners approved the request and then Mr. McCandless toured the facility. Mr. Kemmis said there were 10 employees when the business started and he currently has 13, anticipating 60 employees in the future.

Councilmember Brown asked if Mr. Kemmis exports product outside of Montana. Mr. Kemmis said he sells and delivers throughout the State of Montana, Wyoming, Idaho and Washington. The majority of his business is in Montana and to anyone who requires a part for a vehicle. Councilmember Brown asked if the tax abatement would give him a competitive edge. Mr. Kemmis said "yes".

Councilmember Jones asked if Mr. Kemmis understood that he had County approval before the project began. Mr. Kemmis said he understood that he met all of the criteria. He said as a business person he took the risk that the abatement would work out in time.

There were no other speakers. The public hearing was closed. Councilmember Ulledalen moved for approval of the Staff recommendation, seconded by Councilmember Brewster. Councilmember Brewster noted the School District is not a taxing entity and that is why they do not have input into the tax abatement; the County Commissioners levy the taxes. On a voice vote, the motion was unanimously approved.

- 3. **APPROVAL of Amendments to Subdivision Improvement Agreements for:**
 - (1) Broso Valley Subdivision**
 - (2) Shiloh Park Subdivision**
 - (3) William D. Pierce Subdivision**

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

Public Works Director Dave Mumford said the three developers for the three subdivisions previously mentioned came to the Public Works Department to ask for a review of their 2002 Subdivision Improvement Agreements. The original agreements contained an escrow clause for improvements to Zoo Drive and the eastbound access road to the Shiloh interchange, all of which have been built to full City standards. He said they asked for the review on the grounds that a new SID policy in place that dictates the responsibilities of a developer and the creation of the arterial fee that is an additional tax for the improvements. The escrow agreements do state that the cost of these improvements should be shared by a much larger influence area. In reviewing their request and through discussions with the City Administrator, it was decided that it was appropriate to bring forward these amendment agreements for reconsideration by the Council, he said. It is understood that these properties are paying arterial assessments for a larger area and did

make improvements beyond what was required by the City's SID policy. Mr. Mumford noted one correction that was stated in the financial impact that one lot had an escrow amount of \$75,000. He said that amount actually was for several lots. He said this request is to bring equity to those properties.

Councilmember Brewster asked if in the event that the arterial fees were to be reduced the agreements would be revised accordingly. Mr. Bauer said the agreement could not be revised without the approval of the developers. Mr. Mumford said the SID policy would also need to be amended before the agreements could be revised.

Councilmember Jones asked if there were monies in the escrow fund. Mr. Mumford said there is \$75,000 currently in the escrow fund. Councilmember Jones asked what would happen to that money. Mr. Bauer said the money would be held according to the terms of the agreement for the purpose it was provided to the City. There is no requirement in the amendments to refund the money. Mr. Mumford said there was a discussion with the developers about the escrow fund, but a consensus was never reached.

Councilmember Ruegamer said the \$75,000 escrow money is money the City should not be keeping. Councilmember Clark moved to delay action to 4/25/05 to allow time to work out the escrow fund issue, seconded by Councilmember Jones. Councilmember Clark said the Council needs to know the disposition of this fund before taking action. Mr. Mumford noted that this delay would negatively affect any future land sales for the developers. Mr. Bauer said the Council could take action on the amendments tonight and direct Staff to develop options for refunding the money in the escrow account at a later date. Councilmember Clark withdrew his motion and Councilmember Jones withdrew his second. Councilmember Brewster made a substitute motion to approve the amendments and place the \$75,000 escrow fund issue on the 4/25/05 agenda to consider refunding the money, seconded by Councilmember Boyer. On a voice vote, the substitute motion was unanimously approved.

4. PUBLIC HEARING AND FIRST READING ORDINANCE amending BMCC Section 22-1003 providing for an arterial construction fee, providing for a procedure whereby fees can be determined, imposed and appealed, establishing an effective date and providing a severability clause be amended for clarification. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

Public Works Director Dave Mumford said there are two areas of concern in the arterial fee assessments. One is related to property that had been rezoned to Commercial by the City but are still single-family residences. The property owners felt they should have the equality as other single-family residences in the community even though the property was rezoned. Mr. Mumford said the other area of concern was in the Planned Unit Development zoning that have a higher rate because they include everything from residential to commercial properties. He said the amendment permits commercial properties that still have just a single-family residence to petition the Public Works Department each year to remain classified as single-family for the purposes of the arterial fee assessment until the property is used as commercial. The amendment allows the underlying zoning, if a single-family residence, in the Planned Unit Development to be used. He said this amendment would establish equity for those affected property owners and would accomplish the desire of the Council that all residential properties are treated the

same. Mr. Mumford said if approved this change would be available for assessment in the fall of 2005.

Councilmember Boyer asked if there were examples of Planned Unit Developments that had commercial within them. Mr. Mumford noted Wal-Mart and the commercial park on Overland Drive as examples.

Councilmember Brown asked how this would affect mobile homes. Mr. Mumford said mobile home parks would not be included in the amendment, but it would affect mobile homes or modular homes that are on a single-family tract.

The public hearing was opened. JOHN VAN NORMAN, 2501 KEEL DRIVE, said he compared taxation of the councilmembers' properties with property he owns on 510 Roxy Lane. He said he listed the market value, the base tax and the added fees. He then computed the percentage of the added fees against the levied tax. He said most of the councilmembers' properties averaged about 22%, but his property on Roxy Lane averaged 69% of the base tax for the added fees. Mr. Van Norman said this is unreasonable. He asked that the Council include mobile home residential in this amendment for adjustment in the arterial fees. He said he is also representing members of the Ryan's Road Association that are also affected by the inequitable arterial fees. He said he is not looking to evade the tax, but receive equality with similar residential mobile homes. Mr. Van Norman confirmed that he has a single-family home and a mobile home on the subject property.

HARFIELD HOLE, SOUTH BILLINGS BOULEVARD, said he has 2-1/2 acres on South Billings Boulevard that is zoned commercial and has a single-family home on it with the remainder of the area being vacant pasture land. He said his arterial fee charges are \$1,200. Mr. Hole said he has paid this since he was annexed into the City. He said amending this arterial fee would help him.

DICK PAASCH, 2060 RIMROCK ROAD, said property taxes in his Planned Unit Development in Briarwood increased from \$7,880 to \$11,677 due to the arterial fee. This is a large increase on property that has no roads, sewer or other improvements. He said he has appealed his tax increase and was told that will be considered after action on this amendment.

There were no other speakers. The public hearing was closed. Councilmember Jones moved for approval of the Staff recommendation, seconded by Councilmember Boyer. Mr. Bauer responded to the comments by two of the public speakers. He said Mr. Van Norman's property is currently zoned Residential Manufactured Home with two houses and would not be impacted by this change. Mr. Van Norman's zoning creates the assessment. Capping Residential Manufactured Home zoning would apply to all mobile home parks. He said the properties in the Briarwood Planned Unit Development that Mr. Paasch discussed would be affected by this change as the residential properties would be capped. Mr. Bauer said it will be difficult to find a mechanism that will give perfect equity to every situation. The proposed change will address a significant majority of the issues that have been raised by the Council.

Councilmember Brewster said this is a good first step. The Council has identified a number of issues and has tried to resolve them. He said there will be other situations that can be dealt with at a later date. He said the Council should move forward at this point because it is necessary. Councilmember Ruegamer said he recalled that a super majority would be required to change the rates of the arterial fees. He asked if the arterial fee can be amended without a super majority. Mr. Bauer said the super majority requirement

applied only to changing the assessment rate and the Council is not considering a rate change, only a change in the terms of how the assessment is applied. On a voice vote, the motion was approved with only Councilmember Brown voting "no".

Mayor Tooley called for a recess at 7:57 P.M.

Mayor Tooley reconvened the meeting at 8:05 P.M.

5. PUBLIC HEARING AND SPECIAL REVIEW #778: a special review to modify a condition of approval of Special Review #771 to allow a building more than 10% larger than previously approved on Lots 1-6 & 19-24, Block 1, Houser Sub., located at 1425 Broadwater Ave. (Maverick Club). CNJ Distributing, owner; Charles B. Goldy, agent. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)

Zoning Coordinator Nicole Cromwell said this was a special review request to modify a condition of a previous special review #771 completed in July of 2004. The applicant is requesting this modification because of on-site storage requirements from the Department of Revenue for their liquor license and accommodating the area for the casino to move from 1425 Broadwater into a new building on the northwest corner of 14th Street and Wyoming Avenue. This request would develop a small portion of the Doc & Eddy's Plaza parking lot.

Mr. Cromwell said the Zoning Commission held a public hearing and is recommending conditional approval with the conditions as follows:

1. The Special Review approval shall be limited to a beer & wine license with gaming and applies only to Lots 1-6 & 19-24 of Block 1, Houser Subdivision.
2. The proposed building location and landscaping shall be as shown on the site plans as modified by the Zoning Commission on March 1, 2005 (eliminate the parking lot north of Wyoming Avenue). The proposed building may be up to 1,449 square feet in gross floor area. This square foot maximum represents the requested square footage of 1,317 square feet plus a 10 percent increase as allowed by Section 27-613(a) of the BMCC.
3. The applicant shall comply with all other requirements of Section 27-613(a) of the BMCC limiting the floor area, maximum occupancy and increases in parking spaces for this application. It was determined by the City Engineer that there is adequate parking onsite with the additional shared parking agreement with the College of Coiffure Arts to use their parking lot after hours.
4. The building and landscaping shall be developed at the same time.
5. The parking lot north of Wyoming Avenue is eliminated from the proposed project and will not be developed at this time.
6. Additional lighting in the existing parking lot shall use full cutoff fixtures and no light shall trespass on adjacent properties.

The public hearing was opened. CHARLES GOLDY, 2127 LYNDAL LANE, addressed the parking issue. He said a review study of the parking indicated the deed contained language concerning available parking for Doc & Eddy's from 5 P.M. to the following morning. It was the determination of the City Engineer that there was adequate parking. He said the building was re-oriented to comply with the Fire Department requirements which changed the setbacks. By changing the orientation of the three

entrances the additional area to build a storage space was made available. He said the building is still a 1,500 square foot facility.

TOM WILLIAMS, 2221 CONSTELLATION DRIVE, said he is the operations manager of CNJ Distributing. He said this special review is important to the ease of operation of the Maverick Casino. He said the parking issue has been satisfied and asked the Council to approve the special review.

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

6. PUBLIC HEARING AND SPECIAL REVIEW #779: a special review to allow an all beverage liquor license with food service and gaming on C/S 1136, Tract A1, for CJ's Barbeque, Bar & Grill in the former Wild West Theater at 2520 Central Avenue. Macerich Rimrock Limited Partnership owner; Mary Dyre, agent. Zoning Commission recommends conditional approval and waiver of the 600-foot separation requirement. (Action: approval or disapproval of Zoning Commission recommendation.)

Mayor Tooley said this applicant has requested a withdrawal of Council consideration of this special review. The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Brewster moved for approval of the applicant's request for withdrawal, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

7. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #754: a city-initiated zone change for lands affected by the recently adopted South Shiloh Corridor Overlay District regulations established in BMCC Sections 27-1427 thru 27-1453. Zoning Commission recommends approval and adoption of the determinations of the 12 criteria. (Action: approval or disapproval of Zoning Commission recommendation.)

Planning Manager Candi Beaudry said this is the zone change for the South Shiloh Corridor Overlay District. She said the Council approved the text amendment for this district in January of 2005 and advised Staff to proceed with the zone change. It is located 500 feet from either side of the centerline of Shiloh Road and Zoo Drive from King Avenue to Interstate 90. She said there are 34 affected properties, but only 6 property owners. The affected properties are the ones in the City that are zoned or used for commercial, industrial or multi-family purposes. She noted there are 97 surrounding property owners that were notified of the zone change and the results of the Zoning Commission meeting. She said this notification process was more extensive than what was available during the text amendment procedure.

Ms. Beaudry said the Zoning Commission is recommending approval of the zone change based on the 12 review criteria. She said South Shiloh Overlay District accomplishes the following:

1. Implements the Growth Policy and the West Billings Plan.
2. Will promote health and general welfare.
3. Will not affect underlying permitted uses.

4. Will encourage high quality commercial, industrial, multi-family and mixed use development.

She said a valid protest of an existing property owner that owns 29% of the land area has been filed and a 2/3 vote is required for approval. She noted a revised ordinance was submitted to the Councilmembers earlier this evening. Legal advised that the original ordinance containing the text amendments had been approved previously. The ordinance that is required for the zone change is the revised ordinance on the desks of the Council this evening.

Ms. Beaudry stated the difference between the South Shiloh Overlay District and the North Shiloh Overlay District is not great. Concessions were made in this district to address most of the concerns of the property owners who felt their property was different because it attracted customers and business from the Interstate. Many of the changes were made to address their needs. She said the changes are: 1) in landscaping, 2) allowance for massing of the trees in the perimeter of large parking lots that accommodate vehicle sales, 3) parking lot dimensions, 4) accepting the lighting at property boundaries to 1.5 foot candles, 5) developments must earn only 1 point from 6 relative criteria with only 15 points required and not based on lot size, and 6) freestanding signs are allowed to be 40 feet high as measured from the adjacent grade of the centerline of Zoo Drive or Shiloh Road and may be up to 200 square feet.

She said the zoning map shows that the Overlay District zoning is either Controlled Industrial or Entryway Light Industrial and the uses in those zones will not change. Councilmember Brewster said the Council's approval of this zone change will be indicated on the zoning map and that the text amendments are in place. Ms. Beaudry confirmed that was correct. Councilmember Clark asked if the Overlay District would still be in place if the zone change was not approved. Ms. Beaudry said it would be in place but would not be effective as it would not be shown on the zoning map and it could not be implemented. City Attorney Brent Brooks confirmed that the Overlay District would stay in place if the zone change was not approved, and his opinion was that the property owners could be regulated.

Councilmember Jones asked about the request of Mr. Reger, a property owner, to apply the Overlay District to all of the entryways in the City. Ms. Beaudry said Mr. Reger presented three (3) requests to the Zoning Commission meeting. The second request related to a fairness issue of applying this overlay district to all entryways in order to create a level playing field for all land owners around the interchanges. She said her response to the Zoning Commission concluded that the City already has two entryways that were zoned as Entryway Districts. She noted the standards are very similar and in some cases more stringent than the Overlay District especially in the areas of uses, setbacks, and landscaping. Signage is not controlled in the Entryway District, but there are concessions given within the Interstate Corridor. The South 27th entryway is a permit zoning district and not considered an entryway, she added. Ms. Beaudry said the following interchanges are zoned Entryway: 1) South Billings Boulevard, and 2) Lockwood-Johnson Street interchange).

The public hearing was opened. MATT BROSOVICH, 845 AVENUE F, said his family partnership's reason for suggesting the zone change was related to the realty aspect. It is good for realtors to know there is an overlay district in place because a lot of the real estate offices display the zoning map, aiding them in the certainty of the zoning.

He said he understands the reason for the valid protest, but thinks it may be misleading. Several of the affected landowners, included himself, have subdivided their properties and because the lots are smaller they are at a disadvantage for the protest compared to the lands that are not subdivided and are larger. In fact there are six (6) landowners involved and five (5) are in favor of the zone change, he said. Mr. Brosovich asked the Council to keep this in mind during their deliberations. He added that the protective covenants of their subdivisions greatly exceed what is required in the overlay district, therefore the district does not pose a problem as far as the competitive issue. He said out-of-state agencies that are interested in their land do not have any concerns about the overlay district and it's restrictions, rather it has enhanced his ability to attract them because it adds value to the land.

DON BOTTRELL, 1906 CHELSEA LANE, said he is the manager of the Bottrell Family Partnership, who is partnered with Pierce Homes and RV on the Shiloh Business Park. He said the agreement that has been worked out between the City's Staff and his staff has come to a successful conclusion. He asked the Council to support the zone change.

RANDY REGER, NO ADDRESS GIVEN, said he started fighting this overlay district in 2002. He said the Zoning Commission was not informed that the Growth Plan was part of the district. He said he attended every meeting of the West End Plan (that has been changed a number of times) and he said the Zoning Commission was only told that plan was part of the district. He said those meetings never indicated that something as "intense" as the overlay district was going to be "tried" on Shiloh Road. Mr. Reger said he has invested millions of dollars on this issue and thinks it has created an uneven playing field. He said this overlay district is far more intensive than the entryway district with about a 25% additional development cost involved. He said these restrictions should be on every entryway to have equality. Mr. Reger stated the Council has to "make it fair".

KEVIN BYRAN, 2928 PARKHILL DRIVE, said he is representing Pierce Family Companies. He said they support the zone change presented today. He said their development is the standard they would like to see the entire development employ, enticing the right kind of business to move into the area. Many businesses want to move into an area that guarantees a certain standard and would not have to be concerned about the "property next door" having lower standards and not enhancing the entrance of Billings. He noted the other entryways came into being at different times and phases of the City's growth and it is unfair to impose onerous obligations on those properties now. Mr. Bryan noted Pierce has met or exceeded the standards required by the overlay district before they were in place.

J.R. REGER, 725 HIGHLAND PARK DRIVE, said if the overlay district were applied to all entryways it would only apply to new construction. He noted the County portions of the interchanges would not meet these development standards because the County is not participating in the changes. To keep the intent of the quality of development, the requirements should be placed on both sides of the interchange. Mr. Bauer said the overlay district would not apply to portions of the interchange that are currently in the County until they are annexed into the City.

There were no other speakers. The public hearing was closed. Councilmember Ruegamer moved for approval of the Staff recommendation, seconded by Councilmember Brewster. Councilmember Jones noted that he thinks the Regers have a legitimate

concern and he will ask for a comparison of the standards in the entryway district as opposed to those in the overlay district. On a voice vote, the motion was approved with Councilmember Brown voting “no”.

8. PUBLIC HEARING AND FIRST READING ORDINANCE extending the boundaries of Ward I to include the recently annexed properties in Annex #05-01: 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.)

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. On a voice vote, the motion was unanimously approved.

9. PUBLIC HEARING AND RESOLUTION 05-18251 CREATING 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. (Action: approval or disapproval of Staff recommendation.)

Public Works Director Dave Mumford said this SID complies with the recently approved SID Policy. He said there is one valid protest that constitutes 4.7% of the property owners. This SID is part of the bond issue that was approved by the voters in 2004.

The public hearing was opened. HARFIELD HOLE, SOUTH BILLINGS BOULEVARD, said he opposes the creation of this SID as it is an unnecessary expense along a highway that has very few homes on it. It is an extra cost that he said he cannot accept. He said the City’s system of taxation is unfair to property owners with larger lots. Mr. Hole said he will not benefit from sidewalks because his house is several hundred feet from the highway. He said the City is forcing him into a great expense with no benefits using the SID waivers unfairly to get a low protest. He asked the Council to consider this. He added that the only properties that will benefit from this are on Stone Street and they are not included in or will not pay for the SID. Mr. Hole said the method of charging by the square foot is also unfair.

There were no other 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 approved with Councilmember Brown voting “no”.

10. LATE ADDITION: RESOLUTION 05-18252 AUTHORIZING CONSTRUCTION BIDS FOR SID 1373.

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

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

40.11. PUBLIC COMMENT on Non-Agenda Items -- Speaker sign-in required.
(Restricted to ONLY items not on the printed agenda; comments limited to 3 minutes per speaker.

NONE

COUNCIL INITIATIVES

COUNCILMEMBER BOYER: Councilmember Boyer moved to direct Staff to research housing standards as they apply to group homes and what the process would be to mitigate impact those group homes have on the neighborhoods, seconded by Councilmember Brewster. Councilmember Brewster said he raised a similar issue of what the appropriate process would be within the zoning code to address that issue. He said there are no requirements to notify anyone about the potential placement of a group home.

Councilmember Clark noted that part of the initiative would involve changing state law. Councilmember Boyer said discussions with City/County Planning gave the impression that the number of group homes can be regulated by the City. She also noted there are no housing standards for the City. Mr. Bauer said this initiative is actually two different ideas and asked if the Staff could address them separately. Councilmember Brewster noted the zoning code does contain housing standards, such as restricting the number of residents that can live in a home.

Councilmember Brown noted he has a relative living in a group home and it is regulated by the State. Mr. Bauer said housing standards come into play when housing deteriorates. At that point the Department of Public Health would have the authority to administer the standards. Councilmember Jones made a substitute motion to separate the issues into 1) researching housing standards and 2) the group home issue, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

COUNCILMEMBER BOYER: Councilmember Boyer moved to direct Staff to research the impact of group homes on the neighborhoods in the City and whether the City has the ability to regulate the number of group homes in neighborhoods, seconded by Councilmember McDermott. On a voice vote, the motion was approved with Councilmember Brown voting “no”.

COUNCILMEMBER BOYER: Councilmember Boyer moved to direct Staff to research housing standards, seconded by Councilmember McDermott. Mr. Bauer said this request includes a significant scope of work. Councilmember Jones noted that the cost of the research would be more than the benefit at this time. Councilmember Boyer said the issue of housing standards is becoming a problem in all of the task force areas and she thinks it is very rare that a city of the size of Billings would not have them. Councilmember Brewster made a substitute motion to direct staff to develop a cost for the research before moving forward, seconded by Councilmember Jones. On a voice vote, the motion was approved with Councilmember Brown voting “no”.

COUNCILMEMBER JONES: Councilmember Jones moved to direct Staff to make a comparison of standards for the Shiloh Overlay District as compared to Entryway Districts, seconded by Councilmember Brown. On a voice vote, the motion was unanimously approved.

COUNCILMEMBER BROWN: Councilmember Brown asked for an update of the status of the review on the issue of Mr. Reiter and/or his firm not being licensed in the State of Montana. City Attorney Brent Brooks said Mr. Reiter's contract, as with other professional consultants, contains a provision to comply with all Federal, State, and Local laws and regulations. He said he called the State Department of Commerce regarding this question. A copy of the contract was faxed to that department and they will review it with the administrative rule to ascertain whether what he was engaged to do falls into the category that would require the license. Mr. Brooks said he would report to the Council as soon as he receives word from the Department of Commerce. Councilmember Boyer asked if the signers of the contract knew that Mr. Reiter was bringing Mr. Ryan to assist him. Mr. Bauer said "no". Mayor Tooley said Mr. Ryan's contract is with Mr. Reiter. Councilmember McDermott asked if Mr. Reiter was hired as a "private investigator". Mr. Brooks said this is part of the issue; to see what task he is actually performing. His contract is more of the nature of a human resource audit, rather a private investigation, he noted.

DISCUSSION OF CONCERNS OF THE TRANSIT CENTER COMMITTEE: Mayor Tooley addressed the changes that were made to the resolution adopted by the Council on February 28, 2005 regarding the responsibilities of the Ad-Hoc Transfer Center Advisory Committee members. He read excerpts from the minutes of that meeting relating to the assembling of potential parcels. He stated that leaving out the word "and" in Section 2C would preclude committee members from presenting proposals as well as review them. The concern was there could be a conflict of interest issue for a committee member because of a personal or financial interest in a proposal.

Councilmember Boyer said the committee is concerned about the wording preventing them from bringing all the ideas they have been charged with pursuing. She said the committee was asked to "think outside the box" and bring as many proposals to the Council as they could. She said the wording is "causing them to run into a brick wall". Councilmember Jones said he thinks the committee should not be involved in personally bringing any proposals to the Committee. Assistant City Administrator Tina Volek said she was at the last committee meeting where the co-chair expressed the concern that there is a conflict of interest. She said there was discussion that the capacity for committee members to answer questions or assist with explanations on how to complete the appropriate forms was clearly there and it was not their intent. Also, a potential site property owner has raised the conflict issue. Ms. Volek said there was not the understanding that anyone would have a financial gain, but a concern that someone from the outside with a proposal would receive the same consideration as someone in the same position on the committee.

Councilmember Ruegamer said he had the vision that the committee would be bringing any and every "deal" to the Council and he was not concerned whether they were involved or not. Otherwise the Council will be bogged down in a bureaucratic mess

that will end up back at 4th & Broadway with 100 people complaining about it. Councilmember McDermott said if there is someone on the committee who wants to present a proposal, they should withdraw from the committee. Councilmember Clark noted the committee must submit the proposals to the City Council for their final selection. This should relieve any concerns about conflict of interest because the committee members are not making the final decision. Mr. Bauer said the resolution states that the committee's responsibility is to review submissions and proposals and not to assemble them. If it is the intention of the Council to have the committee put together proposals and bring them to the Council, then a clarification is needed.

Councilmember Brewster moved to inform the Committee that they are allowed to bring forth and review all site proposals within the existing language of Resolution 05-18243 with the Council as the final decision making body, seconded by Councilmember Boyer. On a voice vote, the motion was unanimously approved.

ADJOURN – With all business complete, the Mayor adjourned the meeting at 9:40 P.M.

THE CITY OF BILLINGS:

By: _____
Charles F. Tooley MAYOR

ATTEST:

BY: _____
Susan Shuhler, Deputy City Clerk