

# REGULAR MEETING OF THE BILLINGS CITY COUNCIL

## September 12, 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 Dave Brown.

**ROLL CALL** – Councilmembers present on roll call were: Gaghen, McDermott, Brewster, Brown, Ruegamer, Veis, Boyer, Clark and Jones. Mayor Tooley noted that Councilmember Ulledalen would be arriving late. Councilmember Ulledalen joined the meeting later in the evening at 6:55 p.m.

**MINUTES – August 18, 2005 and August 22, 2005.** Approved as printed – with note that comments from Mike Dockery in the 8/22/05 minutes regarding square footage need to be verified. (Note: Square footage was verified from tape and corrected.)

**COURTESIES** – None

### **PROCLAMATIONS**

- **Sept 17: COMMUNITY P.R.I.D.E (Personal Readiness in Disasters and Emergencies) Day**
- **Sept 16: STEPFAMILY Day**
- **Sept 17: KIDS DAY AMERICA/INTERNATIONAL**
- **Sept 14: NATIONAL ANTHEM PROJECT Day**
- **September: LIBRARY CARD SIGN-UP Month**
- **September: NATIONAL ALCOHOL AND DRUG ADDICTION RECOVERY Month**

### **BOARD & COMMISSION REPORTS – Housing Authority**

- Lucy Brown, Executive Director of the Billings Housing Authority presented the Board's annual report. The Housing Authority (HA) is currently serving about 1550 low-income families (30% below area median income) in the Billings area. The organization has a variety of programs for these families. Ms. Brown said the wait for Section 8 housing has decreased to a little over a year. Housing is available, but clients often have a difficult time saving for the deposit required and meeting credit check requirements. Some of the other programs are profiled below.
- The HA has 274 public housing units throughout the community, helping public housing clients blend into the community. The Capital Fund program augments the public housing program. It has a total of \$514,201.00 this year but will receive about \$493,000 next year.
- The Drug Elimination program no longer exists since Congress cut funding for this program in 1992. The last grant for officers ran out in November 2003. It is hoped that the City can assist with funding the benefits for the officer position in the coming year as it helps the entire community.

- The Section 8 Rental Assistance program has 553 units for which the HA receives federal assistance and about 529 units that receive state assistance. This program will be receiving a \$13,000 budget cut in the contract with the State.
- The Section 8 Homeownership Program is in its 2<sup>nd</sup> operating year. This program allows a current eligible Section 8 voucher holder to use their voucher assistance for a mortgage payment instead of a rental payment. To date, the program has assisted seven (7) new homeowners with four of the seven being disabled.
- The Section 8 New Construction refers to Pleasantview Apartments, an elderly housing project on 8<sup>th</sup> and Avenue D. It services 100 elderly and disabled individuals.
- The Family Self-Sufficiency program serves 83 participants in a voluntary program. This program helps individuals become self-sufficient. Forty-one percent of the graduates of the program have become homeowners and no longer need any type of assistance.
- The HAB Development Corp. administers the Spring Garden Apartments, built in the mid-90s. The Old Town Square Apartments were completed in Spring 2003 and remain full in the second year of operation.
- The Shelter Plus Care program operates as a program for the mentally ill homeless who receive case management services through the PATH program. About 25 individuals are currently being assisted under this program. The program helps these people with daily needs and with finding homes.
- Ms. Brown concluded her presentation with some legislative concerns that are about to change the public housing operating system, such as full funding for the Section 8 program, a housing production program to build properties for the very low income population, and the costs of health insurance for personnel.

#### **ADMINISTRATOR REPORTS – Tina Volek**

- Interim City Administrator Tina Volek said the Interlocal Library Agreement as amended by the Council in June of 2005 was not voted on by the Yellowstone County Commissioners. There are three options for the Council: 1) to do nothing and ultimately revert to the prior agreement (which the Library “can live with”), 2) reconsider adopting the language as originally proposed by the Ad Hoc Committee, or 3) attempt to meet with the County Commissioners to reconsider discussion of the agreement. Staff is requesting direction from the Council as to how to proceed.
- Ms. Volek noted the following changes to the agenda: ITEM 1A has been updated, ITEM B5 has a letter from I-State Truck Center on council desks this evening, ITEM G is to be separated from the Consent Agenda for an alternative proposal for consideration, ITEM Q is to be separated from the Consent Agenda because the City has yet to receive a satisfactory insurance certificate, and for ITEM Y, the Council should note that there are TWO lots in the subdivision, while the written documentation shows only one lot and the map shows two lots.
- Ms. Volek noted that an item needs to be added to the agenda this evening concerning the GSA building.
- Other revisions on the council desk this evening concern ITEM 7 and ITEM 11.

- ITEM 12 has a letter from the Al Bedoo Shrine on the council desks this evening relating to the emergency RV parking ordinance. The dates of the events should be changed to October 6 through October 9.
- ITEM 8: no bids were received from Bannum, the party initially interested in the property. These two items should be postponed indefinitely.

**LATE ADDITION:** RESOLUTION authorizing City Staff to further investigate construction of a courts/office facility for short-term lease to the U.S. Government Services Administration (GSA). Staff recommends approval. (ACTION: approval or disapproval of Staff recommendation.)

Councilmember Ruegamer MOVED to add the resolution to the Agenda, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved. The Item was added as Item #13.

**PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: #1, #9-11, & 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.)

THERE WERE NO SPEAKERS.

**CONSENT AGENDA:**

1. **A. Board & Commission Appointments:**

	Name	Board/Commission	Term	
			Begins	Ends
1.	Brent Nelson	Human Relations Commission	09/12/05	12/31/05
2	Stanley Hill	Aviation & Transit Board	09/12/05	12/31/08

1. Unexpired term of John Shuck
2. Unexpired term of William Huppert

**B. Bid Awards:**

**(1) Medium Voltage Isolation Transformer Replacement for Water Treatment Plant.** (Opened 8/23/05). Recommend ACE Electric, Inc., \$46,426.00.

**(2) One (1) New 2006 Model ¾ Ton 2-Wheel Drive Pickup with Service Body.** (Opened 8/23/05). Recommend Archie Cochran Ford, \$22,095.00.

**(3) Laboratory Atomic Absorption Spectrometer with Zeeman Background Correction.** (Opened 8/23/05). Recommend Teledyne Leeman Labs, \$46,470.00.

**(4) Refuse Compactor Bodies, Solid Waste Division.** (Opened 8/23/05). Recommend Kois Brothers Equipment, Schedule I, \$87,333.00; Solid Waste Systems, Schedule II, \$33,751.00; and Kois Brothers Equipment, Schedule III, \$47,829.00.

**(5) Truck Chassis, Tilt Cabs for the Solid Waste Division.** (Opened 8/23/05). Recommend Tri-State Truck & Equipment for Schedules I – III; Schedule I: \$109,141.00, Schedule II: \$107,353.00 and Schedule III: \$106,198.00.

**(6) W.O. 04-13: Gerald D. Underwood Water Treatment Facility Filter Building Expansion and Improvements.** (Opened 7/26/05). Delayed from 8/22/05. Recommend COP Construction, Schedule 1: \$16,400,000.00 and 790 calendar days; Williams Brother Construction, Schedule 2: \$922,200.00 and 365 calendar days.

**(7) W.O. 05-03, Contract #3: 2005 Street Maintenance.** (Opened 8/23/05). Recommend Hardrives Construction, Inc., \$97,118.90.

**(8) W.O. 04-09: Parmly Billings Library Code Compliance Renovation.** (Opened 8/30/05). Recommend Fisher Construction, \$358,200.00 and 70 calendar days.

**(9) W.O. 04-18: Condition Audit Repair Park I, III & IV Garages.** (Opened 8/30/05). Recommend Western Waterproofing, Inc., \$496,287.50 and 70 calendar days.

**(10) Terminal Window Cleaning Services for Billings Logan International Airport.** (Opened 8/23/05). Recommend rejecting all bids and rebidding at a later date.

**C. W.O. 05-01: Amendment #3, Professional Services Contract,** Morrison-Maierle, Inc., and HKM Engineering, \$972,600.00.

**D. Professional Services Contract** with Peaks to Plains Design P.C. for Castle Rock Park Spray Ground Facility, \$32,382.00.

**E. Reimbursement Agreement** for Private Contract #P-543: Cel Avenue, Tract 3 of Studer Acreage Tracts Sub., with Ted P. Godwin for water and sanitary sewer service, \$31,814.78.

**F. Perpetual Right-of-Way Easements** for Popelka Commerce Center Subdivision and Shiloh Business Park.

**G. Williston Basin Interstate Pipeline Company Easements:**

- (1) C/S 1031, Tract 3: Easement and Memorandum of Understanding
- (2) C/S 2649, Tract 2: Easement and Memorandum of Understanding
- (3) C/S 2648: Easement only

**H. Allocation of HOME/CDBG Funds** and a Housing Development Agreement with Real Estate Dynamics, Inc., for King's Green, Phase II, \$40,000.00 additional funds.

**I. ADA Settlement Agreement** with U.S. Dept. of Justice – Civil Rights Division, Disability Rights Section. (Delayed from 8/8/05).

**J. Acknowledging receipt of Annexation petition #05-09:** described as Grand Acre Park, an undeveloped parcel located on Broadwater Avenue, west of 52<sup>nd</sup>

St. W, DC Capital Real Estate, LLC petitioner, and setting a public hearing date for 9/26/05.

**K. Acceptance of Grant Award** from the Montana Board of Crime Control for Domestic Violence training, \$11,600.00.

**L. Declaration of Surplus Property** and authorizing Staff to sell at a public auction on 9/24/05.

**M. Subordination** of First Time Homebuyer Loan (Kama Morast) to a First Interstate Bank loan to Jesse Arstein, 4228 Vaughn Lane, #2, \$5,000.00.

**N. Approval** of pledged collateral on Wells Fargo Bank Certificates of Deposits, US Bank Repurchase Account and US Bank Municipal Investor Account.

**O. Approval** of semi-annual Investment Report.

**P. Authorization** for a loan from the Solid Waste Fund for W.O. 03-02, #1 and W.O. 02-14, \$278,058.00.

**Q. Street Closure:** Bikenet's 5<sup>th</sup> Annual *Ales For Trails* Event, first lane of Montana Ave in front of Billings Depot, September 30, 2005.

**R. Agreement** with Yellowstone County to provide Law Enforcement data processing services, \$78,562.00; term: 7/1 05 to 6/30/06.

**S. Resolution 05-18329** relating to \$17,300,000.00 Water System Revenue Bonds (DNRC Drinking Water Revolving Loan Program), Series 2005, authorizing the issuance and fixing the terms and conditions thereof.

**T. Second/Final reading ordinance 05-5339** expanding the boundaries of Ward IV to include recently annexed properties in Annexation #05-07: an undeveloped 172-acre parcel located east of the Ironwood Subdivision along Molt Road between the Yellowstone Country Club and the Rims, described as Tract 1, C/S 3030, GSK Partners, LLC petitioner

**U. Second/Final reading ordinance 05-5340 for Zone Change #761:** a zone change from Residential 7,000 to Residential 5,000 on Tract 1A of C/S 1335, located at 1545 Hawthorne Lane and adoption of the 12 criteria. First Free Will Baptist Church, owner; Wesley Prouse, agent.

**V. Second/Final reading ordinance 05-5341 for Zone Change #762:** a zone change from Residential 9,600 to Neighborhood Commercial on Lots 3A and 4, Block 1, Missions United Subdivision, located at 2117 and 2223 Shiloh Rd. and adoption of the 12 criteria. St. Vincent's Healthcare, owner; Jim Shepard of CTA Architects and Engineers, agent.

**W. Second/Final reading ordinance 05-5342 for Zone Change #763:** a zone change from Community Commercial to Highway Commercial on Lot 4, Block 1, North Pointe Square Subdivision, located at 2376 Main St., (former K-mart retail center site) and adoption of the 12 criteria. KMT DIL, LLC, owner; Michael Dockery, agent.

**X. Preliminary Plat** of Foxtail Subdivision, 2<sup>nd</sup> Filing, generally located at the northeast corner of 60<sup>th</sup> St. W and Grand Avenue. Planning Board recommends conditional approval of the preliminary plat, approval of the variances and adoption of the Findings of Fact.

**Y. Preliminary Plat** of Amended Lots 1-7 and 8-A, Block 1, Spring Valley Subdivision, generally located at the northeast corner of the intersection of Alkali Creek Road and Indian Trail, north of Alkali Creek Elementary School. Staff recommends conditional approval of the preliminary plat and adoption of the Findings of Fact.

**Z. Preliminary Plat** of Tierra Yellowstone Industrial Park Subdivision, 2<sup>nd</sup> filing, generally located adjacent to the north of Hesper Rd between S. 30<sup>th</sup> St. W and s. 32<sup>nd</sup> St. W. Staff recommends conditional approval of the preliminary plat and adoption of the Findings of Fact.

**AA. Final Plat** of Copper Ridge Subdivision, 1<sup>st</sup> filing.

**BB. Final Plat** of Falcon Ridge Subdivision (fka Golden Acres Subdivision).

**CC. Final Plat** of Amended Lot 11, Weidler Acres Subdivision.

**DD. Bills and Payroll.**

- (1) August 5, 2005
- (2) August 12, 2005
- (3) August 19, 2005.

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

Councilmember Jones separated Item B5 from the Consent Agenda. Councilmember Clark separated Item D from the Consent Agenda. Councilmember Veis separated Items B8 and B9. Mayor Tooley separated Item G & Q from the Consent Agenda. Councilmember Jones separated Item I from the Consent Agenda.

Councilmember Ruegamer moved for approval of the Consent Agenda with the exception of Items B5, B8, B9, D, G, I and Q, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

Councilmember Ruegamer moved for approval of Item B5 of the Consent Agenda, seconded by Councilmember Brewster. Councilmember Jones made a substitute motion to delay Item B5 to 9/26/05, seconded by Councilmember McDermott. Councilmember Jones asked that the Public Works Staff confirm some of the

information relating to the recommendation to accept the higher bid. On a voice vote, the substitute motion was unanimously approved.

Councilmember Ruegamer moved for approval of Item B8 of the Consent Agenda, seconded by Councilmember Brewster. Councilmember Veis said the dollar amount in the Capital Improvement Plan (CIP) and the cash reserve contribution are more than the low bid and asked why reserve dollars will still be used to pay for this renovation. Library Director Bill Cochran said increasing costs related to escalating steel and fuel costs requires the use of the reserve funds for this project. The bid does not include contingencies, bidding and construction administration, plan review and building review and permit fees. That total cost comes to \$394,000.00. The increase in the cost of construction is what is driving the total project cost. Public Works Director Dave Mumford said the contingencies and the construction fees have increased the price. Mr. Cochran noted the Library has no choice in completing the code compliance renovation due to the citations. On a voice vote, the motion was unanimously approved.

Councilmember Ruegamer moved for approval of Item B9 of the Consent Agenda, seconded by Councilmember Brewster. Councilmember Veis noted that the low bid indicates that the City will be saving \$150,000.00 on this project according to dollars allotted in the 2006 and 2007 CIP. He asked if this would be bid again in 2007. Deputy City Administrator Bruce McCandless said the project was estimated to take place over two fiscal years. Currently the City will be able to complete the project in this fiscal year and there is enough money available to fund this construction contract in 2005. This is all of the restorative work that will occur on Garages I, III and IV. Remediation work on Park II will be delayed until the Park II expansion occurs. On a voice vote, the motion was unanimously approved.

Councilmember Ruegamer moved for approval of Item D of the Consent Agenda, seconded by Councilmember Brewster. Councilmember Clark asked about the retention of documents with Peaks to Plains and why the consultant contract is needed. Acting Parks and Recreation Director Gene Blackwell said the original tracings and stamped documents remain with the consultant and the plans and specifications needed for bidding becomes the property of the City. The City cannot take the original documents and "sell" them to another agency. Interim City Administrator Tina Volek said there is a split between the engineering and architectural communities in this area. The engineering community expects that the contractor will be providing the City with the ownership of the documents and there is some concern with the architects relating to the contract language that the City has imposed.

Councilmember Jones amended the motion to change the termination clause language to not less than seven (7) days, seconded by Councilmember Brown. Mr. Blackwell said the thirty-day (30) language is standard in all contracts. Councilmember Boyer said it is appropriate to stay with the standard 30-day language; 7 days is much too short. Councilmember Jones said the Legal Staff needs to take a hard look at contract language and provide a standard document for the City. City Attorney Brent Brooks noted that time constrains on certain projects require that the City make use of the contract documents provided by the contractors. He said he shares Councilmember Jones' concern that the City provide a standard document on all contracts.

Councilmember Brewster said he would rather delay this item to the next council meeting to allow Staff the opportunity to negotiate with the contractor regarding the issues that have been voiced rather than negotiate a contract during council proceedings. Councilmember Brewster made a substitute motion to delay this item to 9/26/05 to negotiate ownership and term changes, seconded by Councilmember Brown. On a voice vote, the substitute motion was unanimously approved.

Councilmember Ruegamer moved for approval of Item G of the Consent Agenda, seconded by Councilmember Veis. Mr. Mumford said in negotiating easements with Williston Basin Interstate Pipeline (bringing the new line into Conoco) one change should be made. He stated that they wish to place the pipeline in the exact location of two existing easements. If that is the case they need permission from the two existing easement owners and he recommended the following language be included with the approval: *“realizing that the Williston Basin Pipeline easement would be “on top of” existing easements, the City will require a Memorandum of Understanding between the holders of the existing easements and Williston Basin Pipelines stating that they grant the right for Williston Basin to be located within their easements. This MOU must be notarized and will be recorded at the County Clerk and Recorder. You indicated that Williston Basin has approval from the existing pipelines. The net effect is the easement for the Williston Basin pipeline will be junior to the other easements.”* Mr. Mumford said this language has been approved by the Legal Staff.

Councilmember Veis amended the motion to include the language provided by Mr. Mumford, seconded by Councilmember Boyer. On a voice vote, the amendment was unanimously approved. On a voice vote, the motion as amended, the motion was unanimously approved.

Councilmember Ruegamer moved for approval of Item I of the Consent Agenda, seconded by Councilmember Brewster. Councilmember Jones asked what this entire settlement agreement is estimated to cost. Mr. McCandless said the final exhibit of the council memo does contain some cost estimates. The primary concern is the financial impact on the Parks and Recreation Department. In the cost estimate, the City has identified some of the larger and smaller neighborhood parks that have been identified that some corrections are needed. Many other areas will involve the Public Works Department, such as sidewalk repairs. That department has six months to prepare a preliminary plan and a year to prepare a final plan that identifies the locations that must be changed or reworked. At that time a better cost estimate will be available. He said these estimates are only indicators and he reminded the Council that the City has a number of years to complete this work. On a voice vote, the motion was unanimously approved.

Councilmember Ruegamer moved for approval of the Item Q of the Consent Agenda, seconded by Councilmember Boyer. Ms. Volek said there is no acceptable certificate of insurance for this street closure. She said the Council may approve the closure contingent on the receipt of an adequate certificate of insurance that has been approved by the Legal Department or postpone the item until the 9/26/05 agenda. Councilmember Boyer expressed her concern about the looming date of the street closure and the urgency in obtaining the appropriate document. Councilmember Veis amended the motion for approval of the street closure to be contingent upon the satisfactory insurance documents being provided to the City, seconded by



Councilmember Brewster. Mr. Brooks said he has spoken with the insured's agent and is confident that within the next day or two the certificate of insurance with appropriate coverage issue will be resolved. He noted that the certificate that was originally presented had some exclusions that caused concerns. On a voice vote, the amendment was unanimously approved. On a voice vote, the motion as amended was unanimously approved.

## **REGULAR AGENDA:**

**2. PUBLIC HEARING AND RESOLUTION 05-18330 creating SID 1372 for water, sanitary sewer, storm drain, curb, gutter and street improvements within Summerhill Sub. on Winter Green Dr., W. Antelope Tr. and Antelope Pl. 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 Veis moved for approval of the Staff recommendation, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

**3. PUBLIC HEARING AND RESOLUTION 05-18331 vacating a portion of Conrad Rd. between S. 30<sup>th</sup> St. W and S. 32<sup>nd</sup> St. W. Staff recommends approval of the vacation and the Council setting a price for the vacated land. (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 Boyer moved for approval of the vacation at a price of \$1.18 per square foot for a total of \$115,710.80 to the petitioner, seconded by Councilmember McDermott. On a voice vote, the motion was unanimously approved.

**4. PUBLIC HEARING AND RESOLUTION 05-18332 creating PMD #4030 for park land maintenance in King's Green Subdivision, Second and Third Filings. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

Interim City Administrator Tina Volek said there were no comments or protests received relating to the creation of this district. The public hearing was opened. There were no speakers. The public hearing was closed.

Councilmember Ulledalen moved for approval of the Staff recommendation, seconded by Councilmember Brewster. Councilmember McDermott said this is a low-to-moderate income housing subdivision and expressed concern for future homeowners who will be "stuck" with escalating park maintenance district fees. She suggested the developers review this to make the plan more "maintenance-free". It is really not a park at all, but a berm that separates the subdivision from the Interstate, she noted. Councilmember Boyer said she has some of the same concerns, noting that the City is owner of many of the lots.

Councilmember Brewster asked if there is a master plan for this park. Mr. Blackwell said there is a plan that shows the landscape buffer and its location in the subdivision. The maintenance district would be for maintenance of that buffer strip, but

the precise landscape configuration is yet to be determined. Councilmember Brewster asked if it would be in the best interest of the City to delay the park development until there is a certain percentage of the subdivision developed. This would limit cost to the City. Councilmember Brewster amended the motion to delay implementation of the park maintenance district until 60% of the subdivision is developed with notice of impending implementation to be sent, seconded by Councilmember Boyer. Ms. Volek noted that the berm is not only a buffer from the Interstate but a buffer of the main route for school children. On a voice vote, the amendment was unanimously approved. On a voice vote, the motion as amended was unanimously approved.

5. **C/S 3190, Tracts 1 and 2:**

**(A) PUBLIC HEARING AND RESOLUTION 05-18333 annexing a 33.71 acre parcel described as Tracts 1 and 2, C/S 3190, located at 120 Wicks Lane, Ernest and Francisca Shaw, petitioners. (#05-08). Staff recommends conditional approval. (Action: approval or disapproval of Staff recommendation.)**

**(B) SECOND/FINAL READING ORDINANCE 05-5343 FOR ZONE CHANGE #765: a zone change from Residential 7,000 to Residential 5,000 on Tracts 1 and 2 of C/S 3190, located at 120 Wicks Lane. Ernest and Francisca Shaw, owners; Engineering, Inc., agent. Zoning Commission recommends approval and adoption of the 12 criteria. (Action: approval or disapproval of Zoning Commission recommendation.)**

Ms. Volek reminded the Council that the public hearing and first reading of the ordinance for the zone change was conducted at the last meeting (8/22/05). At that time it was discovered that the annexation had not yet occurred, therefore this item contains portion A that considers the annexation and portion B that considers the second and final reading of the ordinance for the zone change and must be considered by the Council in that order.

The public hearing was opened. MAC FOGELSANG, ENGINEERING, INC., 1300 N. TRANSTECH WAY, said he represents the current owner of the property, Mr. Gary Oaklund of Twin Oaks Development. He said the property is currently a county island wholly surrounded by the City and adjacent to Wicks Lane. That arterial can handle any impacts from the property. It is served by water lines to the north and south via Billings Heights Water infrastructure that is adjacent to the property. Sanitary sewer exists on three sides of the property and actually runs through the property. Mr. Fogelsang said this annexation would promote in-fill development consistent with the Growth Policy. Councilmember Brewster asked about the property owner who commented at the last meeting that he owned two lots adjacent to the canal that would be "stranded" and would deny access to the property. Mr. Fogelsang said the property in question is west of the proposed annexation, was previously platted and has a platted right-of-way currently to the property, with existing sewer and water services available. This aspect will be discussed during the subdivision plat process. The plat was submitted on 9/1/2005.

ROBB FOSTER, 330 STILLWATER LANE, BILLINGS HEIGHTS, said he is the owner of the property that was just in question. He said there has never been any reasonable access to his property. He said he has sought relief of this situation for the past eight (8) years. The deeded road to his property does not have a bridge across the canal and to build that bridge would cost \$500,000.00. Mr. Foster said that would not be

reasonable access to the property. His concern is not to stand in the way of the future subdivision because development is needed. He said his lots are already in the City and he has paid taxes on this property for many years so it is reasonable that his rights be addressed before the rights of the petitioner are addressed. Councilmember Brewster noted that the Council cannot address his issues until the property is annexed into the City. He said they may be addressed during the subdivision process.

JOHN STEWART, 1300 N. TRANSTECH WAY, said he is a part-time consultant with Engineering, Inc. He said Mr. Foster's property has the right to access and water and sewer availability, but only through the subdivision platting process. Annexation is not the appropriate time to address this issue.

There were no other speakers. The public hearing was closed. Councilmember Clark moved for approval of the Staff recommendation for Item 5A, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

Councilmember Clark moved for approval of the Zoning Commission recommendation for Item 5B, seconded by Councilmember Boyer. On a voice vote, the motion was unanimously approved.

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

Mayor Tooley reconvened the meeting at 8:03 P.M.

**6. PUBLIC HEARING AND RESOLUTION 05-18334 determining and fixing the methods of assessment in each district, fixing the rate of assessment for costs of Street Maintenance within the City of Billings, providing for notice, hearing and adoption. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

Public Works Director Dave Mumford said a citizen group; several Councilmembers, Legal and Public Works Staff members began to review street maintenance fees prior to his coming to the City. This group has worked very hard to devise language that could be presented to the legislature to provide some equity to those fees, which do not assess the same amount regardless of what exists on the property, unless it is vacant.

This year the legislature did approve the language that based the fees on zoning, he noted. Unfortunately, it was found that there were properties that would not be appropriate for this criteria, such as commercial properties in industrial zoning which creates lower "trip" rates than other commercial properties. For that reason, the Staff is recommending the assessment for the costs of Street Maintenance remain the same as last year. It is hoped that changes can be made for next year to incorporate the new language approved by the legislature.

The public hearing was opened. JANET DAVIS JONES, 1728 NATALIE STREET, said she has been working on this street maintenance fee issue for seven (7) years. She said a great effort was made by the City in the legislature to make equity possible. She thanked everyone for that effort.

TOM ZURBUCHEN, 1747 WICKS LANE, said the City should not try to liken the street maintenance fees to the arterial fees because there are inequities there. There are numerous lots in the City that have something on them that is not zoned for the use. He said none of the non-conforming uses pay according to what they do and this is not fair.

It is also unfair for different lot sizes of Residential 9,600 with the same type of house to pay hugely different fees. Mr. Zurbuchen said there has to be a way that the fees can be fair for all businesses and all residents. Actual use makes sense and should be applied for everyone. He asked the City to fix this problem for everyone and not arbitrarily for certain situations.

There were no other speakers. The public hearing was closed. Councilmember Jones moved for approval of the Staff recommendation, seconded by Councilmember Clark. Councilmember Brewster noted that the language relating to the street maintenance fees was far more fair than the arterial fees and had it been workable would have been more appropriate. On a voice vote, the motion was approved with Councilmember McDermott voting "no".

**7. PUBLIC HEARING AND RESOLUTION 05-18335 declaring an emergency, waiving competitive bidding requirements for replacement of the centrifuges at the Wastewater Treatment plant digester and authorizing use of a "three-quote" system. Staff recommends approval of the resolution, approval of the purchase from Trimax Residual and approval of the change order with Walker Centrifuge Services. (Action: approval or disapproval of Staff recommendation.)**

Public Works Director Dave Mumford said this is a very critical issue and that is why the Staff is requesting emergency authority. During the cleaning of the digesters, sludge was rerouted into the centrifuge. The thickness of the sludge was not anticipated and both centrifuges became plugged and damaged beyond repair. The centrifuges are used to de-water 40,000 gallons of sludge a day from the Wastewater Treatment Plant, making this replacement a critical problem. He said there was only 5 days of storage as of the 23<sup>rd</sup> of August, so a verbal approval was obtained to use a contractor on-site to start de-watering sludge. The treatment plant has no choice but to de-water the sludge that is placed in the landfill after processing. The damaged parts were sent out for repair. The manufacturer has determined that both centrifuges are damaged beyond repair and will take four months to replace them.

Mr. Mumford said Walker Centrifuge Services who was the low bidder for the digester cleaning and is being used in the de-watering process seem to be expensive, charging \$40,000.00 for three weeks of work. The Staff obtained four quotes and a firm called Trimax Residual from Canada can mobilize within four weeks and do the work at a cost of \$36,000.00 for four months. Repair of the centrifuges will be approximately \$77,000.00 so it is estimated to fix the entire problem will cost approximately \$167,000.00. Staff is recommending approval of the change order to Walker Centrifuge Services, approval of the purchase of services from Trimax Residual and authority to waive the competitive bidding requirements for replacement of the centrifuges. Ms. Volek said this action requires a ¾ majority vote of the Council.

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

**8. DISPOSAL OF CITY-OWNED LAND:**

**(A) PUBLIC HEARING AND RESOLUTION authorizing the sale of City-owned land described as Lots 4-6 and the E2 of Lots 1-3, Block 184, O.T. and located on the northwest corner of South 26<sup>th</sup>. St. and 6<sup>th</sup> Ave. S. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

**(B) BID AWARD ON PURCHASE OF SOUTH 27<sup>TH</sup> STREET LAND – 2005-3, for City-owned land described as Lots 4-6 and the E2 of Lots 1-3, Block 184, O.T. and located on the northwest corner of South 26<sup>th</sup>. St. and 6<sup>th</sup> Ave. S. Recommendation to be made at meeting. (Action: approval or disapproval of Staff recommendation.)**

Interim City Administrator Tina Volek said no bids were received for the subject property. There is no need for a public hearing and the Staff is recommending that the Council postpone these items indefinitely which would have the effect of killing them.

Councilmember McDermott moved to postpone Item 8A indefinitely, seconded by Councilmember Boyer. Ms. Mattix noted that Bannum, the prospective interested buyer, learned about the sale of City-owned property while meeting earlier with Staff. On a voice vote, the motion was unanimously approved.

Councilmember McDermott moved to postpone Item 8B indefinitely, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.

**9. 2006 UNIFIED PLANNING WORK PROGRAM (UPWP). Staff recommends approval of the draft program and authorizing the Mayor to take the recommendation to the Policy Coordinating Committee (PCC). (Action: approval or disapproval of Staff recommendation.)**

Transportation Planner Scott Walker said this work program is basically an annual budget document representing the Federal Purchase Order Funding Program and the accompanying County and City matches. He said this is tied to the transportation planning process in which the Mayor brings the Council's recommendation to the Policy Coordinating Committee (PCC) on September 21, 2005 for adoption. The Technical Advisory Committee (TAC) has previously approved the recommendations before the Council this evening.

Mr. Walker said the funding sources for the program include the City, the County and federal funding. The City's portion is \$330,000.00 representing the Planning Department and the local fees that are generated from the Planning Department and Community Development's Building Department. He said the Unified Planning Work Program (UPWP) runs from October 1, 2005 and September 30, 2006 and is updated annually. All work elements in the UPWP must be related to Transportation and/or Transportation Planning.

He said the priority projects of the transportation planning that are in process or have been completed were the Inner Belt Loop Study, Shiloh Overlay District, the Heights, Lockwood and Blue Creek Neighborhood Plans, N.W. Shiloh Land Use Plan, update of the Subdivision Regulations and revision of the Zoning Regulations. The priorities for next year are to:

- 1) update Public Involvement Program
- 2) update Memorandum of Agreements (outdated agreements)
- 3) finalize the Heights, Lockwood and Blue Creek Neighborhood Plans
- 4) initiate a Garden Avenue Plan

- 5) continue update of the Subdivision Regulations
- 6) partially fund the Shiloh Road Corridor Coordinator/Liaison Position
- 7) add a fifth member to the PCC (possibly someone from FTA)

Councilmember Brewster moved for approval of the 2006 UPWP, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.

**10. PETITIONS FOR REDUCTIONS of the Arterial Construction Fee Assessments.**

**Staff recommends approval of a reduction of the fee on eight (8) commercially zoned parcels by capping the parcel square footage at 9,600 square feet and calculating the assessment based on R-9600 zoning instead of commercial zoning rates. (Action: approval or disapproval of Staff recommendation.)**

Public Works Director Dave Mumford said Ordinance 05-5322 was adopted to alleviate the burdensome fees for the single-family occupied residences that are located within commercial zoning. Staff received eleven (11) petition/requests for reduction of the fee. Three (3) were denied based on the criteria in the ordinance that states the request must involve a single-family occupied residence. He asked the Council to approve the remaining eight (8) petitions for a reduction in the fees.

Councilmember Brown asked if the zoning is being changed. Mr. Mumford verified the zoning is not being changed, however the property may apply for a zone change. That may lower the value of the property however. Many of the residences that are in commercial zoning were victims of mass zoning such as in the Heights where some homes still remain on Main Street.

Councilmember Brown moved for approval of the Staff recommendation, seconded by Councilmember Brewster. Councilmember Veis amended the motion to require two attachments, Attachment A – properties approved for the reduction and Attachment B – properties not approved, seconded by Councilmember Jones. On a voice vote, the amendment was unanimously approved. On a voice vote, the motion as amended was unanimously approved.

**11. W.O. 05-01A: MICHIGAN STREET RECONSTRUCTION (WATER AND SEWER REPLACEMENT) PROJECT. (Opened 9/6/05). ~~Recommendation to be made at meeting.~~ Recommend delaying award to 9/26/05.**

Public Works Director Dave Mumford said Staff is asking the Council to delay this bid award to 9/26/05 because bids were not opened until late and the decision process seems to be rushed. Councilmember Ruegamer moved to delay the bid award to 9/26/05, seconded by Councilmember McDermott. On a voice vote, the motion was unanimously approved.

**12. PUBLIC HEARING AND EMERGENCY ORDINANCE 05-5344 relating to RV and camper parking for the Shrine Polka Festival and Moose State Convention. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

Interim City Administrator Tina Volek reminded the Council of the date changes and noted the ordinance should be amended accordingly.

The public hearing was opened. TOM ZURBUCHEN, 1747 WICKS LANE, said this is arbitrary and all because of recent events outside of the City that forced visiting RVs and campers to camp outside of town. This item will now allow these same groups to camp within the City. He said this is an arbitrary emergency ordinance.

There were no other speakers. The public hearing was closed. Councilmember Veis moved to approve the emergency ordinance with amended dates of October 6-9 for the Shriner event, seconded by Councilmember McDermott. Councilmember Boyer said this is a wonderful opportunity to re-write this ordinance, get all the players to the table and form a task force to resolve the dilemma. It is time to address the unfavorable press that Billings has received. City Attorney Brent Brooks noted this ordinance would require a 2/3 vote of the Council. On a voice vote, the motion was approved with Councilmembers Gahen and Brown voting "no".

**LATE ADDITION:**

- 13. RESOLUTION 05-18336 authorizing City Staff to further investigate construction of a courts/office facility for short-term lease to the U.S. Government Services Administration (GSA). Staff recommends approval. (ACTION: approval or disapproval of Staff recommendation.**

There was no Staff report. Ms. Volek noted that several interested parties are in the audience, the Hon. Sid Thomas, Ninth Circuit Federal Court of Appeals, the Hon. Richard Cebull, United State District Judge – District of Montana, Mike Owens, General Services Administration (GSA), Denver Office and Kim Barnett, GSA, Billings Office. Councilmember Boyer moved for approval of the Staff recommendation, seconded by Councilmember McDermott.

Councilmember Ulledalen asked what the Council is committing to at this point. Ms. Volek said this allows the Staff to send out an RFP for architects to do preliminary site work on the proposed GSA project. The award of the RFP would come back before the Council for approval on September 26<sup>th</sup>. At that time the City will identify the funding source for the architectural contract. A combination of Library and Parking Funds and possibly Tax Increment Funds are being considered. She noted that a better idea of the costs will be available after the GSA issues their SFO stating their specifications. If the architectural contract is approved, a preliminary plan with more specific numbers would be presented to the Council at the first meeting in November. She said that is the point the Council will be asked to approve and proceed with the project.

Councilmember Boyer asked if the City will also be moving forward to assess what other opportunities there are for the 4<sup>th</sup> and Broadway property. Ms. Volek said that was correct, for the remainder of the property including the corner lot.

Councilmember Ulledalen asked if the timetable was acceptable to the GSA. Mike Owens, GSA-Denver said this is a timetable they can live with.

Councilmember Brown said the City is venturing into unfamiliar territory. He suggested this project would be better suited as a private sector project. He said he is uncomfortable with the City funding the federal government. On a voice vote, the motion was approved with Councilmember Brown voting "no".

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

NONE

## **COUNCIL INITIATIVES**

- **COUNCILMEMBER RUEGAMER:** Councilmember Ruegamer moved to have the City in a position to sell any or all lots from the corner of 4<sup>th</sup> and Broadway to the Library, seconded by Councilmember Boyer. City Attorney Brent Brooks said the City currently has the authority to sell those lots pursuant to Section 22-902 of the BMCC. Councilmember McDermott suggested the motion include a discussion with the school district for a partnership for a parking garage on the block west of the Library. Councilmember Boyer said she would still like to encourage private development on the 4<sup>th</sup> and Broadway property. Councilmember Ruegamer said he thinks there is room for both the GSA project and selling lots for private development. Mayor Tooley asked for clarification of the available Lots 1-12. Ms. Volek said the recent Stockman Bank offer was for Lots 1-6 (owned by the Parking Division) and the GSA is interested in Lots 7-12 (owned by the Library). She asked for clarification from the Council of the lots that are included in the motion because some lots currently provide Library Parking. Councilmember Ruegamer said he does not intend to remove Library Parking, but wants to be positioned so that a deal will not “fall through” because one lot was not included in the RFP. Library Director Bill Cochran noted that Library parking is currently inadequate. On a voice vote, the motion was approved with Councilmembers Gaghen and Veis and Mayor Tooley voting “no”.
- **COUNCILMEMBER MCDERMOTT:** Councilmember McDermott moved to have the Planning Dept prepare a report with zoning information on properties with non-conforming uses, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.
- **COUNCILMEMBER BOYER:** Councilmember Boyer moved to direct Staff to bring forward a proposal for creating a task force to review the RV camping/parking ordinance, seconded by Councilmember Ruegamer. Councilmember Brown said the Council should consider modifying the ordinance quickly because the City is getting a tremendous amount of bad press on this issue. Possible task force members were discussed and may include the Chamber of Commerce, City Council, KOA, an RV owner and a campground owner. Ms. Volek said another issue to consider is the different zoning that allows the Heights’ Wal-Mart to apply for a camping permit on their property and the West End Wal-Mart that has covenants attached to the subdivision that do not allow camping in their parking lot. Mayor Tooley said the Council should allow the Staff to come forward with a proposal for task force membership for Council consideration. Councilmember Ulledalen said the City also needs to consider the issue of the impact that removing the ordinance will have on retail establishments that don’t want RV parking in their lots. He said broad-based discussion is needed. On a voice vote, the motion was unanimously approved.
- **COUNCILMEMBER BOYER:** Councilmember Boyer moved to review the Library Interlocal Agreement again at a work session, seconded by Councilmember Clark. Councilmember Jones amended the motion to invite the County Commissioners to the meeting, seconded by Councilmember Brown. On a voice vote, the amendment was



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

- COUNCILMEMBER JONES: Councilmember Jones moved to direct Staff to no longer advertise the name of the potential buyer of a property for purchase from the City in the notice for bids, seconded by Councilmember Boyer. Councilmember Jones said this information can discourage other prospective bidders. Ms. Volek said one of the Council goals is to develop a land acquisition and disposal property listing. An issue of concern is understanding how the City acquired some of the properties, such as through gifting. On a voice vote, the motion was unanimously approved.

**ADJOURN** – With all business complete, the Mayor adjourned the meeting at 9:35 P.M.

THE CITY OF BILLINGS:

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

ATTEST:

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