

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

April 26, 2004

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 Dick Clark.

ROLL CALL - Councilmembers present on roll call were: Gaghen, McDermott, Brewster, Brown, Ruegamer, Boyer, Poppler, Clark, and Jones. Councilmember Iverson was excused.

MINUTES – April 12, 2004. APPROVED AS PRINTED

COURTESIES - Police Department

Police Chief Ron Tussing presented the following awards:

- Citizen's Award – Mariah and Alice Zeeb aided in the recovery of a stolen wallet with clues that ultimately ended in the apprehension of the burglar.
- Medal of Valor – Officer Shane Winden intervened in a domestic disturbance, saving the lives of three people.
- Medal of Valor – Sgt. T. J. Vladic (not present) and Officer Randy Minkoff coordinated an effort to take an armed and dangerous escapee into custody. After continued refusals to cooperate, the escapee attempted to draw his gun. The officers tasered, disarmed and handcuffed the escapee.
- Distinguished Service Medal – Detectives Kent Ewalt and Ken Paharik were recognized by their peers and commanders as being outstanding team players.
- Distinguished Service Medal – Detective Mike Moreni is recognized for his efforts in developing and coordinating the Pawn Program, enlisting the aid of various community resources. Chief Tussing noted that Detective Moreni would be returning to active duty in Iraq.
- Medal of Merit – Officers Pete Lehman and Tim Hawkins saved the life of a truck driver who attempted suicide by carbon monoxide poisoning.
- Supervisor of the Year – Dave Klein was the one person most responsible for making the new Animal Shelter building a reality.
- 2003 Employee of the Year – Sue Loomis was nominated for her exemplary performance while taking care of the many "backbone" functions of the department. She manages many active grants and is very involved in the budget process.
- Meritorious Service Medal – Volunteer Coordinator Penni Reed, for her three years service to the department in maintaining a staff of 65 volunteers that assist the department at many levels, allowing officers to respond to the more critical aspects that require their technical training. Chief Tussing noted she was responsible for collecting \$37,000 in outstanding warrants.

PROCLAMATIONS – Mayor Tooley.

- April 28: Law Day
- April 30: Arbor Day

BOARD & COMMISSION REPORTS

- Animal Control Board – Kevin Walsh

Kevin Walsh, chairman of the Animal Control Board said the board has met once a month for the past several months. Recently, the board reviewed the new animal control ordinance for revisions and hopes to bring proposed revisions to the Council soon. He added that the fee schedule is also being reviewed as many of the current fees were set years ago and are not economically feasible for today's Animal Shelter.

ADMINISTRATOR REPORTS – Kristoff Bauer.

- Mr. Bauer noted a revised council memo and additional documents have been placed on the Councilmember's desks for Items M1 – a revised dollar amount for the SoPo grant award, and two documents for Item 5 - a revised Council Memo and suggested language for the motion regarding future fees for water and wastewater transmission and system development fees.

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: #1, and #14, 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.)

- RICHARD ROSSIGNOL, 3981 AVENUE D #4, said he lives in Circle 50 Subdivision and noted his waiver of protest does not include Shiloh Road. He asked the City Attorney and the Council to review this. He said he was informed the SID on Swanson was included in the recent purchase of his home.
- LINDA RIDER, 3981 AVENUE D #14, said she was not aware of a waiver of protest on her property and Shiloh Road was not included in that waiver. She asked the Council to delay SID #1361 for one year and to consider a bond issue to fund the construction.
- BONNIE KELLISON, 2076 SWANSON LANE, asked the Council to reconsider their vote and look at the other alternatives to equitably fund construction of Shiloh Road.

RECONSIDERATION:

15. Creating SID #1361 to construct public improvements generally consisting of water, sanitary sewer, storm drain and street improvements on Shiloh Road from Avenue B to and including Rimrock Road.

Councilmember Jones moved to reconsider the Shiloh Road SID #1361, seconded by Councilmember Boyer. Councilmember Jones noted the Staff did an excellent job presenting several alternatives to decrease the cost of the SID to the homeowners. Even

with this effort, he said he was consistently informed by many residents that Shiloh Road is different and should be funded in a different manner because it is a major arterial. He added that every resident said they were willing to participate in funding this SID. He said the Council "should take a serious look at other alternatives and potentially start a new course in funding methods for arterial streets." On a roll call vote, the motion passed 6-3. Councilmembers Gaghen, Ruegamer, Boyer, Poppler, Clark and Jones voting "yes" and Councilmembers McDermott, Brewster, and Brown voting "no". Mayor Tooley abstained due to a personal financial conflict of interest.

CONSENT AGENDA:

1. A. Bid Awards:

(1) 2004 Water Service Replacement Project. (Opened 4/06/04). Recommend AME, Inc., \$124,000.00.

(2) Point-to-Point Wireless System. (Opened 4/06/04). Recommend Transaria/Cutthroat Communications for the DragonWave System, \$136,500.00.

(3) Long Distance Service for the City of Billings and Yellowstone County. (Opened 4/20/04). Recommend delaying award to 5/10/04.

(4) W.O. 03-11, Schedule I & II. (Opened 4/13/04). Recommend CMG Construction, Inc., \$275,501.00.

(5) W.O. 04-03, Contract #1, 2004 Street Maintenance. (Opened 4/13/04). Recommend JTL Group, Inc., \$509,450.16.

B. Swimming Pool Concession Operator Proposal, rejecting the proposal with Automatic Vending Service.

C. W.O. 03-22: Intersection Design Study, West Wicks Lane and Governors/Gleneagles Blvd, Interstate Engineering, Inc, \$1,900.00.

D. W.O. 04-12: Professional Services Contract for Alkali Creek Road Reconstruction, Kadrmas, Lee & Jackson, \$210,860.00.

E. W.O. 04-16: Professional Services Contract for Construction Materials Testing, Rimrock Engineering, Inc., \$50,000.00.

F. Pipeline Easement for Billings Operations Center, (W.O. 02-15), Montana-Dakota Utilities, \$0.00.

G. Professional Services Agreement for Federal Affairs Program Assistance, Van Scoyoc Associates, \$20,000 maximum.

H. Temporary Terminal Building Space Lease with Frontier Airlines, \$556.00/month.

I. Agreement with State of Montana Dept. of Military Affairs, Disaster and Emergency Services for assignment of title and use of equipment for regional hazardous material responses.

J. Subordination of Housing Rehab Loan, Renee Tucker, 1051 Winemiller Lane, \$10,000.00.

K. Recreational Trails Program Grant application for Gabel Road Connector, \$35,000 maximum.

L. GAP Financing for CTA Building, \$625,000.00.

M. Tax Increment Fund grant awards:

(1) SoPo, 2608 Montana Ave, ~~\$69,950.00~~ \$71,107.50

(2) SoNoMa Lofts, \$97,400.00.

N. Street closure requests:

(1) Yellowstone Rimrunners, Montana Women's Run, May 28, 2004

(2) St. Vincent Health Care, Heart and Sole Race, June 12, 2004

(3) Downtown Billings Association, Food Fairs, Alive After 5, Strawberry Festival, Farmers' Market, Big Skyfest Parade, Burn the Point/Chili Cook-Off, Holiday Parade, Christmas Stroll.

(4) Alberta Bair Theater, Street Dance, May 7, 2004.

(5) Yellowstone Valley Cycling, Mountain Bike Race, May 23, 2004.

O. Resolution 04-18118 adopting Ironwood Park Master Plan.

P. Resolution authorizing construction bids for SID 1361: water, sanitary sewer, storm drain and street improvements to Shiloh Road from Avenue B to and including Rimrock Road. (See Item 15 for discussion and outcome).

Q. Second/final reading ordinance 04-5274 expanding the boundaries of Ward II to include the recently annexed properties of Annex #04-03: C/S 680 Amended including Tract A-2.

R. Second/final reading ordinance 04-5275 for Zone Change #725: A zone change to modify an existing Planned Development to increase the density by two housing units on Tract 3B, C/S 2991, located on the north side of Monad Road between S. 29th Street West and S. 30th Street West

S. Authorizing attorney Rodd Hamman to execute Settlement Agreement for water rights.

T. Preliminary Plat of Culver Subdivision, generally located in Billings Heights east of Lake Elmo Road between McKenney Road and Shinn Road.

U. Preliminary Plat of Studer Acreage Tracts Subdivision, Amended Tract 3, generally located on the south side of King Avenue West, just east of 31st St. West.

V. Preliminary Plat of Summerhill Subdivision, amending Lots 21-30, Block 4, generally located south of Hilltop Road at Nutter Boulevard.

W. Bills and Payroll.

(Action: approval or disapproval of Consent Agenda.)

Councilmember Brewster separated Item D. Councilmember Ruegamer separated Item P. Councilmember Boyer separated Item O. Councilmember Brown separated Item G. Councilmember Jones separated Item S. Councilmember Gaghen moved for approval of the Consent Agenda with the exceptions of Items D, G, O, P and S, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

Councilmember Gaghen moved for approval Item D of the Consent Agenda, seconded by Councilmember Ruegamer. Councilmember Brewster made a substitute motion to delay action on Item D until after the discussion and action on Item 15 – Reconsideration of SID #1361, seconded by Councilmember McDermott. Councilmember Brewster said if the Council elects to change the policy through what is done with SID #1361, it would affect this item and needs to be discussed in that context. Councilmember McDermott noted that same thing should be considered for the South Billings Boulevard project. On a voice vote, the substitute motion was unanimously approved.

Councilmember Gaghen moved for approval Item G of the Consent Agenda, seconded by Councilmember McDermott. Councilmember Brown asked how the results of this agreement would be measured. City Administrator Kristoff Bauer noted the contract includes a “not to exceed” stipulation. This would allow payment for time spent assisting the City with projects and points of view to the City’s congressional delegation. Councilmember Gaghen asked if this is a common practice to employ lobbyists in Washington, D.C. for congressional assistance in furthering projects. She said this is a worthy expenditure. Councilmember McDermott asked how the City arrived at the selection of Mr. Popelka as the party to assist the City. Airport Director Bruce Putnam said Mr. Popelka has served as a senior staff member for Senator Burns and has worked with the Airport to successfully assist the City of Billings on fiscal and regulatory matters and transportation issues. Mr. Popelka has roots in Billings and is currently employed by VanScoyoc Associates, a well-known firm with expertise and knowledge of the Federal Affairs system. Councilmember Gaghen said Mr. Popelka is a wise choice and the City is fortunate that he is available. On a voice vote, the motion was unanimously approved.

Councilmember Gaghen moved for approval of Item O of the Consent Agenda, seconded by Councilmember Ruegamer. Councilmember Boyer asked if approving the Ironwood Park Master Plan would conflict with the zone change request on the Regular Agenda. Parks and Recreation Director Don Kearney replied “no”, noting the items are not related. On a voice vote, the motion was unanimously approved.

Councilmember Gaghen moved to defer Item P until discussion of Item 15 – Reconsideration of SID #1361, seconded by Councilmember Boyer. On a voice vote, the motion was unanimously approved.

Councilmember Gaghen moved for approval of Item S of the Consent Agenda, seconded by Councilmember Ruegamer. Councilmember Brown said it would be a good idea to find out what kind of settlements the water judge has made. He is concerned about the City retaining the right amount of water rights. This is important because it concerns the future of Billings' water supply. Councilmember Brown made a substitute motion to postpone this item to 5/10/04 for more discussion, seconded by Councilmember Ruegamer. Councilmember Jones amended the substitute motion to postpone this item for at least two months (6/28/04), seconded by Councilmember Gaghen. Councilmember Jones said he wants to make sure this is the "right deal for Billings". He said he is not comfortable with the agreement that lowers the annual volume to 62 cfs. Councilmember Brewster offered a substitute motion to delay to 6/28/04, approval of this negotiation pending a meeting with the attorney to discuss the settlement, seconded by Councilmember Boyer.

Mr. Bauer asked Rodd Hamman to explain what this delay could mean to the agreement. Councilmember Poppler said she is concerned that the delay would cause Billings' water rights claim to come second behind another claim. Councilmember Jones clarified that 72 cfs is the City's first claim and Huntley Project could claim 500 cfs leaving the City with the possibility of no water rather than the option of a second and third claim of 162 cfs. Councilmember Boyer said she is concerned about the effect of postponing this decision, and the effect a delay would have on negotiations. Mr. Hamman said mediation with the Crow Tribe and the United States has been ongoing for 1-1/2 years. This agreement is the result of those negotiations. He said there is no specific deadline to report back on the agreement, but the water master involved has been urging acceptance of the agreement. He said sooner is better than later. On a roll call vote, the substitute motion failed 2-8 with Councilmembers Brown and Jones voting "yes" and Councilmembers Gaghen, McDermott, Brewster, Ruegamer, Boyer, Poppler, Clark and Mayor Tooley voting "no".

Councilmember Poppler said time is a concern and a discussion with Mr. Hamman is essential. She said the Council should vote at the most convenient meeting that would not jeopardize the City's position but after a discussion with the attorney. On a voice vote for the amendment, the motion failed with Councilmembers Gaghen, McDermott, Brewster, Ruegamer, Boyer, Poppler, Clark and Mayor Tooley voting "no".

Councilmember Clark made a substitute motion to delay approval to the 5/10/04 meeting to allow discussion of the agreement with Attorney Rodd Hamman at the Work Session on 5/3/04, seconded by Councilmember Ruegamer. Councilmember Poppler asked Mr. Hamman to provide the Council with statistics of what other cities are requesting and how the water court is ruling. On a voice vote, the substitute motion was approved with Councilmember Brewster voting "no".

REGULAR AGENDA:

2. PUBLIC HEARING AND RESOLUTION 04-18119 approving the Planning Budget (TIF) budget amendment for FY 2003/04 for contract planning services to develop a land use neighborhood plan for the West Shiloh Neighborhood; total estimated cost not to exceed \$50,000. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

Planning Staff Manager Candi Beaudry said this request is to select a planning consultant or consulting firm to prepare land use plans for the area west of Shiloh Road and north of Broadwater Avenue to the Rims. This area is experiencing rapid growth with several land use applications pending. She said the plan would not address decisions on existing land use applications. It would serve as a guide for future land use and development. Staff is currently undertaking two additional neighborhood plans, therefore this plan would experience a significant delay without the assistance requested. That delay could be at least 18 months. Ms. Beaudry said the Staff is recommending the Council approve the budget amendment to undertake this plan without delay. She noted the land in this plan is split 50-50 between the City and the County. Councilmember Brewster asked why this is to be approved now when the regular budget will be approved in two months. Mr. Bauer said this is a timing issue about future annexation the Council desires and the preferred land use. It has been difficult to accomplish this part of the planning process without additional resources. He noted there are federal funds available this year, therefore this request is included in this year's budget. Councilmember Boyer asked if this would give Councilmembers information more expediently in order to make better annexation policy decisions. Ms. Beaudry replied "yes". Councilmember Brewster asked if this is more of a development plan than a neighborhood plan. Ms. Beaudry said it is and it would deal more specifically with where land use and recommended zoning would be located as opposed to policy plans.

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

3. PUBLIC HEARING AND RESOLUTION 04-18120 approving the Building Division budget amendment for FY 2003/04 for a plan reviewer and 2 building inspectors to reduce commercial plan review time; cost is approximately \$50,000.00. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

Building Official Kim Palmieri said the Building Division issues permits, conducts plan reviews and performs inspections. He said the Building Division is an important part of a team that includes builders, developers and designers. The department enforces building codes that are required by State law. Mr. Palmieri said the average citizen spends most of their time in buildings and everything in a building is tied to building codes. Because the department is charged with enforcing these codes, the time consuming process can cause delays. The reasons for requesting this budget amendment are: to comply with the adoption of the International Building Codes - additional changes to the code, buildings that are becoming more complex in order to meet the new codes that take the review process longer, and an increase in building activity (due to an increase in annexations) in the last 5 years.

Councilmember Brewster asked if plans signed by a professional engineer help to decrease the amount of review time. Mr. Palmieri said that was not the case as a professional designer cannot accept that liability. He said the Building Division of the City is charged by State law to review the plans no matter who designs them, taking into

account that a professional designer, architect or engineer has produced them. Councilmember Brown asked if there are other agencies that would review plans faster. Mr. Palmieri said there are several agencies that are available for reviewing plans. A recent inquiry by the Building Department to one of those agencies produced a completion date of three weeks. There are agencies that can do reviews faster, but the price is four times the amount charged by the Building Department, he said. He noted one problem with negotiating with other agencies is with the mandatory insurance requirements of the City.

Councilmember Brewster asked how two inspectors would help to reduce the plan review process. Mr. Palmieri said the inspectors would assist in the inspection function only. The current status of the inspection process has been "drawn down" to a level that some inspections may not happen or are requiring several days notice before inspections are performed. Councilmember Jones asked if the plan review process for the City is different for properties in the County that are reviewed through the State. Mr. Palmieri said the review process is the same in theory, however the State does not perform the inspections at the same level as the City. Councilmember McDermott asked about the qualifications for plan reviewers. Mr. Palmieri said plan reviewers do not have to be licensed but they must be specifically trained and able to verify calculations. Councilmember Clark asked how long it takes to get a plan reviewer ready to work. Mr. Palmieri said it takes some time to instruct and inform the plan reviewer of the necessary codes. If the plan reviewer has no prior experience, it can take longer. He said the newer reviewer would be assigned to the non-structural, commercial remodels, freeing up the experienced reviewer to do the more complicated projects.

Councilmember Boyer asked if this budget amendment would improve customer service. Mr. Palmieri said "yes" adding that this is a "proactive stance". Councilmember Gaghen asked for a cost breakdown of other agencies that can do plan reviews. Mr. Palmieri said the agency recently contacted would charge approximately 30% - 40% more and the agency that promises faster reviews could be as much as five times more than the current City review fees. Those additional costs could be passed on to the property owner. Councilmember Jones asked what kind of increases in review fees would be required to cover the costs of the additional personnel. Mr. Palmieri said he expects the fees to be increased 10% to 15%, which would be back to the 1999 levels.

The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Brewster moved to approve the Staff recommendation, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

4. PUBLIC HEARING on the allocation of the FY2004/05 CDGB and HOME funds. Council action scheduled for 5/10/04. (Action: public hearing only.)

Community Development Manager John Walsh said the CDBG & HOME programs are federal funds designed to: 1) promote economic opportunities for lower income persons, 2) preserve and revitalize older residential neighborhoods, and 3) provide affordable housing activities on a Citywide basis. These funds are targeted to benefit lower income households that are defined as households with incomes at or below 80% of the median income - \$34,300 for a family of two, or areas where at least 59% of the households are lower income according to the Census.

The total 2004-2005 budget for allocation includes \$1.1 Million for CDBG and \$728,000 for HOME funds, both decreases from last year. Mr. Walsh said this is the fifth year of the five-year strategy plan. The five strategies of the plan are: 1) improve the economic conditions of lower income households in Billings by working with non-profit organizations and economic development to address the needs of lower income residents, and aid in job training and employment opportunities, 2) promote affordable and fair housing Citywide, 3) promote the preservation of the existing supply of affordable housing in the community, 4) promote the preservation and revitalization of the communities' older neighborhoods where the affordable housing stock is located, and 5) work as an active partner with non-profits, neighborhood groups, and others to address housing and neighborhood needs.

Mr. Walsh said the public process included an application period that started December 10, 2003, task force input in February and March of 2004, the Community Development Board's Budget Hearing on March 25th and 26th, City Council Public Hearing this evening, City Council action on May 10th with the program year beginning July 1, 2004. He thanked the Community Development Board for their efforts during the busy time from January through April. He noted that board members interview each applicant in person. Mr. Walsh said most of the requests for economic opportunities are similar to those of last year. They are:

	<i>Organizations</i>	<i>2003-2004</i>	<i>Amount Requested</i>	<i>CD Board Recommend</i>	
Public Service Activities	PS-1	Billings Chapter Prevention of Elder Abuse	\$9,500	\$10,000	\$9,500
	PS-2	Billings Food Bank	\$16,000	\$11,560	\$10,000
	PS-3	Billings Healthy Community Coalition	\$9,500	\$15,000	\$9,500
	PS-4	Boys & Girls Club of Billings & Yellowstone County	\$4,000	\$5,000	\$4,000
	PS-5	Child & Family Intervention Center		\$12,000	\$6,000
	PS-6	Family Service, Inc.	\$17,000	\$25,000	\$20,000
	PS-7	Friendship House - Summer Enrichment	\$9,000	\$15,000	\$10,000
	PS-8	HRDC - Growth Thru Art	\$10,000	\$17,500	\$10,000
	PS-9	HRDC - Mortgage / Rent Funds		\$10,000	\$5,000
	PS-10	Parents Let's Unite for Kids (PLUK)	\$2,500	\$7,500	\$2,500
	PS-11	Senior Helping Hands Program, Inc.	\$18,000	\$25,000	\$20,000
	PS-12	Southgate COP Shop	\$6,000	\$6,000	\$6,000
	PS-13	Tree Trimming, Planting & Removal	\$15,000	\$15,000	\$10,000
	PS-14	Tumbleweed Runaway Program, Inc.	\$15,050	\$20,000	\$15,050
	PS-15	Young Families Early Head Start	\$10,000	\$32,000	\$11,000
	PS-16	YWCA of Billings Children's/Women's Services	\$2,000	\$2,100	\$2,100
	PS-17	YWCA Gateway House	\$10,000	\$12,500	\$8,000
	PS-18	Temporary Teens, Inc.	\$2,000	\$3,500	\$2,350
Totals		\$155,550	\$254,660	\$161,000	

The requests for affordable housing activities and neighborhood projects are as follows:

<i>ADMINISTRATION / PLANNING</i>		
HN-1	<p><i>CDBG Administration</i></p> <p>Funds are requested for general administration expenditures, salaries, and wages for Community Development Manager, CD Grants Coordinator, and half of Senior Office Assistant position. CDBG also provides the resources for administration of other grant programs related to community development received by the City.</p>	\$175,000
HN-2	<p><i>HOME Administration</i></p> <p>Funds are requested for general HOME administration expenditures, salary and benefits for HOME Program Coordinator.</p>	\$65,000
HN-3	<p><i>Professional Services</i></p> <p>Funds are used to contract for professional services on an as-needed basis. These funds will be available to assist the Community Development (CD) Office to meet CDBG / HOME requirements when staff time is limited and to assist the CD Office, its sub-recipients, and lower-income neighborhoods to undertake planning and feasibility analysis to pursue needed projects and maximize the impact of CDBG and HOME resources in the community.</p>	\$15,000
HN-4	<p><i>Yellowstone Historic Preservation Board</i></p> <p>Funds will be used to match \$5,500 in grant funding made available to Certified Local Governments for historic preservation activities through the Montana State Historic Preservation Office. This funding is used to carry out historic preservation activities in Billings and Yellowstone County.</p>	\$7,500
<i>FAIR HOUSING ACTIVITIES</i>		
HN-5	<p><i>Community Housing Resource Board (CHRB)</i></p> <p>Funds are requested to further Fair Housing opportunity in Billings through community education and outreach. To enable the City of Billings to fulfill its proposed activities under the adopted Fair Housing Action Plan which is a requirement to be eligible for all CDBG funds. The CHRB's approach is to bring diverse populations of the Billings community together to work toward the common goal of fair and affordable housing.</p>	\$20,000
<i>AFFORDABLE HOUSING ACTIVITIES</i>		
HN-6	<p><i>Housing Rehabilitation Loan Program</i></p> <p>Funds are requested to rehabilitate approximately 20 homes throughout the City of Billings. The program is intended to provide affordable financing to low / moderate income applicants to provide substantial improvements that help preserve the City's affordable housing stock and revitalize older neighborhoods. Funds will be used to partially fund the CD Grants Coordinator and Loan Processor positions.</p>	\$300,000
HN-7	<p><i>Minor Home Repair Program</i></p> <p>Funds are requested to assist approximately 40 low-income homeowners with emergency repairs related to basic systems or accessibility for a physically disabled occupant. The program is available for mobile / manufactured mobile homes and for owner / occupied homes that are not appropriate for the Housing Rehabilitation Loan Program.</p>	\$100,000

HN-8	<p>Rental Rehabilitation Program</p> <p>Funds are requested to rehabilitate approximately 12 rental properties located throughout the City of Billings. Program funds will provide matching grant funds of up to \$5,000 per unit for the rehabilitation of substandard properties to be occupied by low-income renters. This program also includes the Overcoming Hurdles Program which is a grant of up to \$5,000 per unit to help pay for historic preservation requirements and lead-based paint remediation.</p>	\$60,000
HN-9	<p>HOME / CDBG Affordable Housing Support Program</p> <p>Funds are requested to encourage the development of affordable housing for lower-income households in the City of Billings. Applicants for this program can be for-profit developers or non-profit agencies.</p>	\$500,000
HN-10	<p>HOME First Time Home Buyer Program</p> <p>Funds are requested to assist approximately 40 low-income families in the purchase of their first home. The program is designed to provide financial assistance to help qualify for traditional housing financial programs to purchase a home. Funds will be used to provide down payment assistance, closing costs, and minor repairs.</p>	\$200,000
HN-11	<p>HOME Set-Aside Community Development Organizations (CHDO)</p> <p>As a recipient of HOME funds, the City of Billings must provide at least 15% of its funding for CHDO activities. This funding is requested for CHDOs to develop affordable housing in the community.</p>	\$80,000
HN-12	<p>Living Independently for Today & Tomorrow (LIFTT) - Ramps Project</p> <p>Funds are requested to construct or provide maintenance work on ramps for low-income persons with disabilities to access their homes. Approximately 10 households would be assisted.</p>	\$18,000
HN-13	<p>Yellowstone County Council on Aging - Minor Home Repair Program</p> <p>Funds are requested for this Minor Home Repair program that assists low-income persons over the age of 60 with safety-related repairs.</p>	\$5,000
HN-14	<p>Rebuilding Together - Home Rehabilitation</p> <p>Funds are requested to rebuild, revitalize, and / or renew 3 - 5 homes for low-income homeowners. Volunteers paint, clean, weatherize, and do carpentry, plumbing, roofing, and electrical work.</p>	\$5,000
NEIGHBORHOOD PROJECTS		
HN-15	<p>CDBG Demolition Program</p> <p>Funds are requested to demolish properties that are burned out or blighted and dangerous to the community. All buildings demolished are not feasible to rehabilitate. Funds would also be used to pay the costs of demolition-related expenses such as board-ups and asbestos inspections and abatement.</p>	\$20,000
HN-16	<p>Property Management</p> <p>Funds are requested to pay existing SIDs and maintain weeds and snow on property previously acquired through the CDBG program. These properties are primarily located along South 27th Street.</p>	\$12,000
HN-17	<p>Special Assessment Grants</p> <p>Funds are requested to provide grant funds to lower-income households impacted by Special Improvement District assessments for public improvements such as curb, gutter, and sidewalk projects in lower income areas.</p>	\$50,000

HN-18	<p>Paint Program</p> <p>Funds are requested to assist approximately 10 Billings homeowners to purchase paint and painting materials in order to paint the exterior of their owner-occupied homes. This program would be available to both stick-built and mobile / manufactured homes who meet total household income of 60% median income or less.</p>	\$5,000
<i>PARK IMPROVEMENT PROJECTS</i>		
HN-19	<p>PRPL - Central Park - Playground</p> <p>Funding is requested to remove and replace wooden play structures that do not meet current playground and accessibility standards, upgrade swings and stand alone equipment, and provide accessible safety surfacing in 2 playground areas.</p>	\$45,000
HN-20	<p>PRPL - North Park - Spraypad Expansion</p> <p>Funding is requested to add controls and 4 more water play events at the spraypad in North Park.</p>	\$24,000
HN-21	<p>PRPL - Central Park - Resurface Tennis Courts</p> <p>Funding is requested to repair cracks, resurface, and re-line the tennis courts at Central Park. This request is provisional depending on the supplemental request for the City portion being approved.</p>	\$12,000
<i>ECONOMIC DEVELOPMENT</i>		
HN-22	<p>Big Sky Economic Development Authority (BSEDA) - Small Business Development Center</p> <p>Funding is requested to provide technical assistance, counseling, and Pre-Business Workshops to low and moderate-income persons in the City of Billings interested in starting or expanding a business.</p>	\$10,000

Mr. Walsh noted there is \$5,000 in the unprogrammed funds of \$18,424 reserved to address Task Force insurance issues, subject to further review. Councilmember Brewster asked if this reserved money is for all the task forces or only when one has a qualifying event. Mr. Walsh said the intent would be that each request would come to Council for approval on a case-by-case basis and would only be used for low-income task forces. Councilmember McDermott asked if the \$10,000 in General Fund money could be used for non-qualifying task forces that require insurance. Mr. Walsh noted that \$8,000 of that money is normally utilized elsewhere.

Paul DeLorenzo said he is the chairman of the Community Development Board and is in his sixth year on the board. He said the board meets monthly for two hours and includes Councilmember Gaghen as the Council liaison. The board members divide the funding requests (from 23 groups) and visit each applicant to understand their programs better. He said the board members survey the task forces and their requests. He noted a few of the low to moderate-income housing activities the board is involved in are Chrysalis Acres and King's Green Subdivisions. Mr. DeLorenzo noted several of the agencies helped with the funding concentrate on youth organizations such as Boys' and Girls' Club, Tumbleweed Runaway Program, Temporary Teens, Friendship House, Young Families Early Head Start, and Child and Family Intervention Center. Elderly and basic needs are also supported through Senior Helping Hands, HRDC, YWCA and the Billings Food Bank.

The public hearing was opened. GREY VERSTRAETE, TEMPORARY TEENS, said Temporary Teens is in its sixth year of operation and hires low-income and at-risk

youths to work on Southside projects, helping elderly and disabled citizens and families. Several of the Southside businesses support this organization. He asked for approval of the CDBG recommendation for allocation of funds to Temporary Teens this year.

MARIE KELLY, DEVELOPMENT DIRECTOR FOR FAMILY SERVICE, INC., thanked the Council, the Staff of Community Development and Community Development Board members for their past support. She said the monies allocated in 2003 helped 55% of new Billings-based families that were excluded from Health and Human Service funding. These families live from check to check and any family emergency creates a crisis situation for them. The money from CDBG helps many families stay in their homes and keeps families intact during these crises.

There were no other speakers. The public hearing was closed. Council action will be taken on May 10, 2004.

Mayor Tooley called for a recess at 8:10 P.M.

Mayor Tooley reconvened the meeting at 8:17 P.M.

5. PUBLIC HEARING AND RESOLUTION 04-18121 annexing an unplatted portion of T1N-R25E-S32: NE4, Annex #04-04, Zimmerman Family LTD Partnership, owners. Staff recommends approval of the public services report and the resolution. (Action: approval or disapproval of Staff recommendation.)

Planning Staff Member Nicole Cromwell said this annexation was petitioned in January of 2004. It is generally located west of 46th Street West, south of Rimrock Road and includes 41.22 acres. The current zoning is Residential 9,600 and Agricultural Open-Space. She said the owner is choosing to keep the default Residential 9,600 zoning. The land use is vacant and proposed for single-family residential. She noted that 20 adjacent acres were annexed in 2000 by the same property owner.

Ms. Cromwell said there were no objections to the annexation from the City departments, however Fire and Police noted continuing annexations in the area would require more resources in the future. There are no significant impacts on City services. The developer will extend water, sewer, and storm drain at the time of development with fees for service to be determined in the future agreement. She noted the revised staff memo eliminated the draft annexation agreement. The City prefers not to have these agreements at the time of the petitions so that all issues can be worked out with the developer and property owner at the time of development, she said. Fiscal analysis indicates City service costs would not likely be offset by taxes and fees paid. The developer would pay utility construction fees.

Ms. Cromwell said this annexation complies with the Growth Policy in compatibility with the neighborhood, contiguous development around existing populations separated by open space (Cottonwood Park - that this development will participate in) and development of municipal water and sewer facilities to support growth in West Billings. It complies with the Annexation Policy in that it is in the Sphere of Influence, the Northwest Billings Planning area and the West Billings Plan, is contiguous to the City limits, creates regular City boundaries and is larger than 10 acres.

Ms. Cromwell said the Planning Staff is recommending conditional approval with the condition that prior to development of the parcel, a Development Agreement or Subdivision Improvement Agreement be executed between the owners and the City.

Councilmember Boyer asked why this property would not be a part of the Rimrock West Park rather than Cottonwood Park. Ms. Cromwell said this information was a recommendation by the Parks Department. She said the park district for Cottonwood Park included all of the area West of 46th Street West. Councilmember Boyer asked how the property would be included in the park maintenance district. Ms. Cromwell said it would be included in the either the Development Agreement or a Subdivision Improvement Agreement placing park money “up front” or with signed waivers. Mr. Bauer noted the donor of Cottonwood Park required the condition of a cash contribution from adjacent property owners and developers for development of the park.

The public hearing was opened. RICK LEUTHOLD, ENGINEERING, INC., said he represents the developer. He said the property meets the policies well. He confirmed the area (including this parcel) is property requiring a cash contribution for development of Cottonwood Park. Mr. Leuthold said this property owner recognizes and will comply with that requirement in the form of cash in lieu of parkland. He offered to answer other questions from the Council. He asked for the Council’s support of this annexation.

There were no other speakers. The public hearing was closed. Councilmember Brown moved for approval of the Staff recommendation, seconded by Councilmember Poppler. Mr. Bauer noted a concern from the City Attorney that involves commitments to the developer regarding future development fees. He said that language has been removed and the Council needs to address this through a recommended motion that includes language that states this annexation does not have a bearing on the development fees that will be charged to the developer in the development process. Councilmember Brown withdrew his motion, Councilmember Poppler withdrew her second. Councilmember Brown moved for approval of the Staff recommendation with the understanding that this approval does not affect future fees for water and wastewater transmission, trunk and lateral construction or any type of system development fees – the fees in effect at the time of obtaining these services shall be imposed, seconded by Councilmember Clark. Councilmember McDermott clarified that the one-acre tracts to the north are in the County, and would create a situation where those tracts are bordered on three sides by the City and will be considered for annexation in the future. Ms. Cromwell replied “yes”. On a voice vote, the motion was unanimously approved.

6. PUBLIC HEARING AND SPECIAL REVIEW #752: A special review to allow the location of a public parking lot in a Residential Multi-Family-Restricted zone on Lots 9-11 and 18-23, Block 12 of Suburban Subdivision. The subject property is located at 317 and 345 Howard Avenue. Mike D. Dimich & Sons, owner; Dan Dimich, Jr., agent. Staff recommends conditional approval. (Action: approval or disapproval of Staff recommendation.)

Zoning Coordinator Jeff Bollman said this request is to allow the location of public parking lots in a Residential Multi-Family Restricted zone. The two properties involved are located on the north side of 300 block of Howard Avenue – 317 and 345 Howard. The properties are currently vacant and have been used for parking for Pepsi Bottling Co. This special review formalizes and legalizes the parking that has been occurring on these two lots. He explained the property layout for proposed parking with landscaping buffers on the edges of each lot. The Central/Terry task force has approved these site plans, he added.

Mr. Bollman said the Zoning Commission recommends conditional approval with the following conditions:

- 1. At the property located at 345 Howard Avenue, a 6' sight-obscuring wood or vinyl fence shall be located on the north property line.
- 2. The areas labeled as "landscaped buffer" as shown on the submitted site plan shall be landscaped with at least 75% living material and at least two canopy trees shall be planted in each landscape area.

Mr. Bollman noted there are two or three residences that are between the lots.

The public hearing was opened. WILLIAM M. DIMICH, 2917 MOHAWK DRIVE, said he is an officer in the Mike V. Dimich Corporation that met with the Central/Terry Task Force to frame and meet the conditions of the Zoning Commission. He asked the Council to approval this special review.

WELDON BIRDWELL, 44 YELLOWSTONE AVENUE, said he is the Vice-Chairman of the Central/Terry Task Force. He said the Dimich family met with the task force and was very receptive and worked to satisfy the task force's concerns. He noted no houses are being demolished to accommodate the parking lots and extra steps are being made to ensure the adjacent homeowners have better surroundings. Mr. Birdwell thanked the Dimich family for their efforts in working with the task force. He asked the Council to support this request.

JIM HARTUNG, 620 BURLINGTON AVENUE, said he is the secretary of the Central/Terry Task Force and their Housing and Land Use Committee. He said this is a "win-win" situation. He said the task force wanted the parking lot to have landscaping and look like the one at Holy Rosary Church at 5th and Broadwater. Mr. Hartung said the Pepsi Bottling Company agreed and the project will satisfy everyone. He asked the Council to approve the special review.

There were no other speakers. The public hearing was closed. Councilmember Ruegamer moved for approval of the Zoning Commission recommendation, seconded by Councilmember Gaghen. Councilmember Poppler said the Dimich family has been extremely civil minded for many years and is pleased there is something the City can do to accommodate them. On a voice vote, the motion was unanimously approved.

7. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #729: A zone change from Agricultural-Open Space (County) to Residential-9,600 and Residential-7,000 on Tracts 101 and 124 of Sunny Cove Fruit Farms. The subject property is generally located on the northwest corner of 58th Street West and Grand Avenue. Kenmark Corporation, owner; Engineering, Inc., agent. Zoning Commission recommends approval. (Action: approval or disapproval of Zoning Commission recommendation.)

Zoning Coordinator Jeff Bollman said this is a zone change from Agricultural-Open Space (in the County) to Residential 9,600 and Residential 7,000 on recently annexed property – i.e. the proposed Foxtail Village. It is a 20-acre parcel located on northwest corner of 58th Street West and Grand Avenue. He noted that if the Council denies the zone change all of the lots would default to Residential 9,600. He said the perimeter lots would remain Residential 9,600 and the interior lots and those on 58th Street West and Grand Avenue would be changed to Residential 7,000. The same owner also owns the

10-acre tract to the west. The zoning in the surrounding area is Agricultural Suburban to the south, Residential 15,000, Agricultural Open-Space and Residential 9,600. Because of the amount of Agricultural Open-Space zoning, there is a need for future zoning in this corridor that has City services. Mr. Bollman said the Zoning Commission is recommending approval.

The public hearing was opened. RICK LEUTHOLD, ENGINEERING, INC., said he represents the developer on this property. He noted the developer had extensive discussions with the surrounding neighbors and developed the property layout that is proposed. He has mitigated most of their issues. He asked the Council to approve the zone change. He said he would answer any questions. Councilmember Clark asked what else besides patio homes can be built in the Residential 7,000 zoning. Mr. Leuthold said Residential 7,000 zoning allows for a unit to be built on not less than 7,000 square feet or a twin home, duplex unit on Residential 9,600. There will be twin home development in the patio home development area requiring not more than one per 7,000 square feet. Councilmember McDermott said there would be 133 units on 19 acres of land and asked what the expected population would be. Mr. Leuthold said the units would be family units and intended to be a standard residential type of development. There were no other speakers. The public hearing was closed. Councilmember Boyer moved for approval of the Zoning Commission recommendation, seconded by Councilmember Clark. On a voice vote, the motion was unanimously approved.

8. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #730: A request to expand the Billings Townsite Historic District on property generally located in the 2600 and 2500 blocks on the south side of Montana Avenue. Michael Schaer, Randy Hafer and St. Vincent DePaul, owners; John Walsh, agent. Zoning Commission recommends approval. (Action: approval or disapproval of Zoning Commission recommendation.)

Zoning Coordinator Jeff Bollman said this zone change is different from the standard zone change in that the BMCC sets a certain process for expanding historic districts. This is accomplished through the zone change process, therefore this is not necessarily a zone change, but an expansion of the historic district along Montana Avenue. He said the area includes 27th Street to the middle of North 25th and North 26th Street on the south side of Montana Avenue. He said the properties have signed a request to expand the district.

Mr. Bollman said the Zoning Commission is recommending approval. Councilmember Brown asked if these properties would be tax exempt if they are included in the historic district. Mr. Bollman said he was not aware of any tax exemption only tax credits for being contained in the historic register. John Walsh confirmed that there is no affect on their property taxes.

The public hearing was opened. RANDY HAFER, HIGH PLAINS ARCHITECTS, said he is one of the property owners in this area. He said the historic designation does not affect property taxes, but does allow historic preservation tax credits. This tax credit would encourage development and ultimately increase the property value and property taxes. He urged the Council to approve the zone change. There were no other speakers. The public hearing was closed. Councilmember Poppler moved for approval of the Zoning

Commission recommendation, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

9. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #731: A zone change from Residential-9,600 to Residential-7,000 on the south 1732' of Tract 3A of Certificate of Survey No. 3217 Amended. The subject property is generally located on the north side of Mary Street between Bitterroot Drive and Hawthorne Lane. B & R Development, owner. Zoning Commission recommends approval. (Action: approval or disapproval of Zoning Commission recommendation.)

Planning Staff Member Juliet Spaulding said this zone change from Residential 9,600 to Residential 7,000 on the south 1732' of Tract 3A, C/S 3217 Amended is located on the north side of Mary Street, between Hawthorne Lane and Bitterroot Drive. The proposed zone change is 80 acres and the current land use is vacant pastureland. The annexation for this property was approved in August on 2003. The site is currently Residential 9,600, which it defaulted to upon annexation. Property to the north was annexed in 1991 and became Residential 9,600 at that time. Property to the east and west is zoned Agricultural Open-Space and Agricultural Suburban in the County and to the south is a mixture of Residential 7,000 with portions in the County that are larger lot sizes. She noted the developers have prepared a Master Plan for future development. There are 126 acres in the Master Plan to be divided into 391 lots. The first phase includes 50 lots. Ms. Spaulding said 15 acres of parkland would be dedicated as well as 5 acres of drainage ways that can be used as walking paths and could make a good connection to the BikeNet. The average lot size is 8,050 square feet. Street improvements to the principal arterials - Mary Street and Bitterroot Drive would be addressed at the time of the subdivision.

Ms. Spaulding said the Zoning Commission held a public hearing where 6 opponents spoke against the zone change. The reasons for their opposition were: increased traffic, impacts on schools, decrease in property values and compatibility with the area. A protest petition was submitted at that time and the review indicates 63% of the directly adjacent property within 150' are valid and necessitates a 2/3 vote of the Council for approval. She said the Zoning Commission recommends approval because of consistency with the Growth Policy and any potential negative impacts raised would be addressed through a Transportation Accessibility Study and Environmental Assessment at the time of the subdivision.

The public hearing was opened. PHIL OLIVER, 2585 BITTERROOT DRIVE, said he lives in the County and can look in any direction from his property and not find land that is compatible to this proposed zone change. It is all large acre properties and either "horse land" or Agriculture Suburban. He said changing the zoning from Residential 9,600 to 7,000 would increase the population by 1-1/2 times. He said the developer promises there would not be duplexes, but he noted that it could legally be developed that way with 1,000 cars, 500 homes and 1,500 people – a miniature city in the county. He said there was no notice to the surrounding residents during the annexation process and therefore no opportunity for those residents to be heard. He added the developers have not met with area residents for discussions about the proposal. Mr. Oliver said he is concerned about

the congestion that Bitterroot Drive is not equipped to handle. There are water rights to consider and wetlands to preserve, he added.

MIKE BROWN, 2341 COLUMBINE DRIVE, said he protests the change in the zoning. He said he was one of 31 residents that received notice of this zone change on March 19th. He noted 21 of those residents protested. He said the congestion will increase with the addition of 380 new homes. He expressed his concern about the addition of duplexes, creating 1000 potential cars to add to the congestion. It does not give consideration to the character of the district because it is surrounded by agriculture – with 5 and 10-acre tracts. Mr. Brown said adding more homes would force children to be bused to schools not in the immediate area. He asked the Council to deny the zone change.

LEO RADIKE, 2301 BITTERROOT DRIVE, said he did not receive notification of the pending Residential 7,000 zoning. He said the roads are terrible now and the increased traffic would make them worse. He is against this zone change and asked the Council not to approve it.

LEON SCHEELER, 1144 MARY STREET, has lived in the area for 5 years and thought most of the area was zoned as Residential 9,600. He said the homes to the north are spacious and this zone change is not compatible with them. He said his area is Residential 9,600 and duplexes would create additional traffic and impact schools. He noted the zoning would add to the City's tax base but it would not add to their property values. He is concerned the duplexes would "balloon into a lot more than they are admitting". Mr. Scheeler said the park land is undevelopable because it is wetland and should be preserved for wildlife. He asked the Council to deny the zone change.

WINNIE HANSON, 2340 COLUMBINE DRIVE, said there would be too much traffic in the area and Mary Street won't be able to handle it. She said she bought the property because it was rural. She asked the Council to disapprove the zone change.

CHUCK STRUM, INTERSTATE ENGINEERING, said he has been retained by the owners to develop this property. The intent of the developers is to build a compatible neighborhood with no plans for any multi-family housing – no duplexes. The master plan has an average lot size of 8,000 square feet, allowing 60 fewer lots than the Residential 7,000 zoning. He noted Residential 7,000 would allow development of affordable housing and provide for several landscape buffers along Mary Street and Bitterroot Drive. The park tract to the north would be retained in its natural condition to support the wildlife habitat and add an additional buffer to the surrounding homes. He said the development would improve property values in the area through construction of infrastructure and additional amenities. The streets would be widened to accommodate the added traffic. The hiking and biking paths would be complementary to the residents of this development and the adjacent residents. The habitat and the retention of natural areas and buffers would serve to handle subdivision drainage and improve water quality. The irrigation ditch would be maintained, he added. Councilmember Brewster asked if the developers considered a zoning buffer between the Residential 7,000 and the large acre lots. Mr. Strum said most of the lots adjacent to the street are Residential 9,600 or larger as currently shown. He said the natural layout of the land necessitates larger lots along the streets. Councilmember Brewster said actual zoning buffers give actual assurance on how those lots would be developed. Councilmember Boyer asked if the developer has

had meetings with the concerned neighbors. Mr. Strum said he had not had meetings with the neighbors. Councilmember Boyer encouraged holding some meetings.

GEORGE ROSENFELD, 2316 AZALEA, said he is the developer of the subject property. He said he has developed two other subdivisions in the area that are Residential 7,000 and all single-family homes, no duplexes. This is the plan for this development – no duplexes. It would be quality affordable housing for first time homebuyers. He said he is proud of the master plan utilizing the natural features. He said he is a good neighbor and a good developer of quality affordable homes with a good record of working with the City. Mr. Rosenfeld said this is a well thought out plan and asked the Council to approve the zone change. Councilmember Gaghen asked what the price range is for the affordable homes that he builds. Mr. Rosenfeld said they range from \$118,000 to \$200,000. In response to Councilmember Ruegamer's question, he said Phase I would include 50 lots with five or six phases encompassing a 10-year period.

There were no other speakers. The public hearing was closed. Councilmember Clark moved for approval of the Zoning Commission recommendation, seconded by Councilmember Ruegamer. Councilmember McDermott noted that a successful zone change to Residential 7,000 would prevent the Council from stopping the construction of duplexes regardless of the verbal promises. Councilmember Brewster made a substitute motion to delay approval of the zone change to 5/24/04, seconded by Councilmember Gaghen. Councilmember Brewster said this delay would allow the developer time to meet with the protesters and mitigate their concerns. On a voice vote, the substitute motion was unanimously approved.

10. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #732: A zone change from Residential-9,600 to Residential Professional, Residential-7,000 and Public on portions of Ironwood Subdivision 1st and 2nd filings and portions of C/S 3030 Tract 2. The subject property is generally located on the north and south sides of Ironwood Drive, east of Molt Road. Regal Land Development, Inc., owner; Engineering, Inc., agent. Zoning Commission recommends denial. (Action: approval or disapproval of Zoning Commission recommendation.)

Planning Staff Member Nicole Cromwell noted there is a written request from the developer and the agent to postpone action on this zone change to allow the owner to speak at the public hearing. She said this zone change contains three parts. Part one of the request is a Residential 7,000 zoning for a portion of the undeveloped and undivided lots in the northwest corner of Ironwood Subdivision. Part two rezones two separate parcels on Molt Road to Residential Professional from Residential 9,600 – a 12-acre and a 10-acre tract having access onto Ironwood Drive and not Molt Road. Part three involves a rezone of the park areas in Ironwood Subdivision, 1st and 2nd filings from Residential 9,600 to Public allowing the public parks and their associated uses to be more compatible with the zoning. She noted a small utility lot in Ironwood Subdivision, 2nd filing that has a non-conforming building on it. This rezone would bring it into conformance and meet a condition of the subdivision requirements.

Ms. Cromwell said the area of greatest concern is near Molt Road, south of Ironwood Drive and adjacent to County Special Zoning District #12. This county zoning district is primarily agricultural and contains large lots known as Echo Canyon. The

adjacent residential to the west, north and south is zoned at the County Residential 15,000 designation.

Generally the zone change covers 67 acres, 28 acres of Residential 7,000, 22 acres Residential Professional and 17 acres of Public zoning. Currently the uses are vacant or under development in the Ironwood Subdivision. She said the proposed uses are single-family residential with some duplex units in the Residential 7,000 zoning. There would be professional offices on Molt Road in the Residential Professional zoning. She noted most of the development is occurring quite far from Molt Road, which is an arterial highway. Ms. Cromwell said a Zoning Commission hearing was held on April 6th and resulted in recommendation of denial on a 4-1 vote based on the 12 criteria to assess zone change requests.

The public hearing was opened. RICK LEUTHOLD, ENGINEERING, INC., said he represents the developer, Dan Wells. He noted Mr. Wells was unable to be at the council meeting this evening. Because of the issues raised at the Zoning Commission meeting it is important that he have a chance to address the Council. He asked for a continuance of the public hearing to May 10th. Mr. Leuthold said the Zoning Commission stated the land use was appropriate but at the meeting the buyers voiced concerned about the manner the land use was represented to them. He noted that Mr. Wells held a neighborhood meeting to inform the residents of the proposal and explain the contents of the Master Plan. A Development Agreement that would address the residents' concerns, mainly with the Residential Professional designation, is being formulated.

STEVE VANDELINDER, 4168 CEDARWOOD, said he is a resident of Ironwood Subdivision. He said there is a potential legal issue of a direct conflict with the Declarations of Covenants that are on file for this subdivision. It is a 54-page document describing what is allowed in the subdivision. He noted the Residential Professional zoning is not allowed. Mr. Vandelinder commented that a compromise could be worked out, however he is concerned about the zone change preceding a change in the covenants that would put the residents in a precarious legal position. He said it is his understanding that covenants must be enforced in their entirety. The covenants are in place to control the type of development. Through the process of amending the covenants, the future zoning could then be a consideration. Mr. Vandelinder noted the residents of Ironwood had to drop their legal right to protest any changes in the subdivision upon adoption of the covenants.

DR. CORBY FREITAG, 5986 IRONWOOD, noted the Master Plan that is on the Ironwood website does not mention Residential Professional buildings. He said in talks with Mr. Wells he asked why the Residential Professional zoning was being considered at this point and Mr. Wells replied "for purely financial reasons".

There were no other speakers. Councilmember Jones moved to continue the Public Hearing to 5/10/04, seconded by Councilmember Clark. On a voice vote, the motion was unanimously approved.

11. PUBLIC HEARING AND FIRST READNG ORDINANCE amending BMCC Sections 18-300 through 18-306, by adding sections to be numbered 18-307 through 18-308; prohibiting public nuisances, defining terms, providing for a procedure whereby the existence of a public nuisance can be determined and remediated, establishing an effective date, and providing a severability clause. Staff

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

Planning Staff Member Nicole Cromwell said this proposed ordinance change would revamp the entire Section 18-300. She said the Council had charged the Planning Department with revising sections of the nuisance ordinance in the fall of 2002 due to the tremendous amount of complaints that were consuming a large amount of the Code Enforcement Division's time, resources and efforts. The County Community Decay Ordinance was used as a model. The City Attorney, the task forces and Staff worked to develop the ordinance that is being presented tonight.

Ms. Cromwell said the revisions include: expansion of definitions (the existing code has no definitions), adding procedures for enforcement, giving the City the ability to abate a nuisance after Municipal Court order and allowing for a cost recovery system including additional staff resources and administrative fees. The new definitions include dangerous structures (burned or abandoned properties), junk – from the Zoning Code definition (salvaged or cast-off materials), junk vehicle (conforms with Zoning definitions – including wrecked, missing parts, damaged, inoperable and not currently licensed.). Other definitions include nuisance (with specific terms) and responsible party (owner and tenant). She noted the procedures for enforcement would be primarily as they are for zoning complaints. A complaint is received, there is an officer response and determination of compliance with City Code. If a nuisance exists, there is notification and ten (10) days to bring the property into compliance. A citation is issued if compliance has not been attained and ultimately taken to Municipal Court 21 days later. At this point the Municipal Judge decides the case and declares a nuisance and orders an involuntary cleanup.

Ms. Cromwell said the cost recovery system allows the City to clean up the nuisance or arrange a contract to clean the property with reimbursement to the City for costs of clean up from the responsible party. She noted 80% of property complaints do not constitute nuisances as defined in this ordinance. She said single project cars in a backyard are not considered a nuisance under the definitions. She added officers have and will continue to afford property owners additional time to bring property into compliance. The types of properties the ordinance refers to are storage of junk in vehicles, outside storage of garbage and old appliances, and burned and abandoned properties that are nuisance conditions.

Councilmember Brewster asked if legally licensed cars that are being worked on are excluded from the ordinance. Deputy City Attorney Kelly Addy replied "yes". Councilmember Brewster expressed concern about the ability of the Code Enforcement Officers to enter a residence for inspection without a warrant. Mr. Addy said if the condition of the premises presents an imminent danger of serious injury to persons or property, that ability is allowed. He added this is subject to review by the courts. Mr. Addy said an example of imminent danger would be an abandoned burned building that could collapse if children are "exploring" inside.

Councilmember Jones said both "owner of the premises" and the "responsible party" should be notified in the language in Section 18-304 to obtain maximum coverage for notification purposes. Councilmember Gaghen suggested the word "or" be changed to "and". Mr. Addy noted language elsewhere does cover this exposure. Councilmember Brown asked how the notification would be sent. Mr. Addy said personal service by hand would be required.

The public hearing was opened. DR. JOE MICHAELS, 4354 HIGHLINE, said there is a considerable amount of doubt and vague language in this ordinance. He is a member of an antique car club and is concerned there is no specific language to deal with the car restoring issue. He asked the Council to postpone this action to the June 14th meeting to allow the antique car club members and the City Staff to add language that would consider antique and hobby car collectors and restorers. He said there is middle ground to work with this issue.

MIKE BELL, 3832 HERITAGE DRIVE, said he is the President of the Magic City Model A Sports Club and agrees with the postponement of this item. He noted car hobbyists can take many years to restore cars and often do not have garages to work in or places to store parts. He said the members would be available to work with City Staff on proper language to protect the car hobbyist's interests. These old cars are part of our country's history. Mr. Bell said the nuisance ordinance is needed for the nuisance situations.

JIM HARTUNG, 620 BURLINGTON AVENUE, said he is the Secretary of the Central/Terry Task Force and noted this ordinance concerns several situations in the task force area that they have not been able to "deal with", such as burned, abandoned or boarded up houses and open storage in junk vehicles. He noted the ordinance only operates upon complaints and is not aimed at the car hobbyist population. He supported any efforts to add language that would permit their activities. Mr. Hartung urged the Council to approve this ordinance, with amendments if necessary, to deal with nuisances in a more strenuous manner.

CLARENCE KOSTENKO, 310 TERRY AVENUE, said he does not support the way this ordinance is being handled. The ordinance needs revision and updating, but the processes involved are unfair. He said the newspaper article regarding these revisions has scared many senior citizens who feel threatened about mementos stored in their back rooms being in danger. Mr. Kostenko said there is no supervision of the Code Enforcement officers.

DON HOLZHEIMER, 4705 AKALI CREEK ROAD, said he supports what the Council is trying to accomplish through the ordinance. He is concerned about the language pertaining to junk vehicles. He suggested the ordinance include a definition of what a car "project" is.

EMILY SHAFFER, 824 NORTH 25TH STREET, said she is concerned about the language of the ordinance, such as "offensive to the senses". She added there are three (3) typos in the ordinance. Ms. Shaffer asked if a Code Enforcement officer can come onto her property without a signed complaint.

DON CANTRELL, PRESIDENT OF THE ROARING 20'S CAR CLUB, said the 200 members of his car club are concerned about the language of this ordinance. He said they support cleaning up property, but any unlicensed vehicle not inside of a garage or building with four walls and roof are considered junk according to the ordinance. He said the members strongly object to this verbiage. Mr. Cantrell asked the Staff to work with the car club members to address language in the ordinance that protects car collectors and their hobby.

BILL MILLIGAN, 1008 BROADWATER, said he objects to the language on page three referring to junk and junk vehicles. He said "old" has not been clearly defined. He also said he objects to the language of "offensive to the senses" and asked to whose

senses this refers to. Some of the language is too vague to comment on. He noted that anything in someone's backyard could be considered junk. Mr. Milligan said this language needs to be changed before the ordinance is approved. He added there needs to be a reasonable period of time for enforcement. Allowing officers to enter property without judicial papers is getting to be a form of dictatorship, he added.

WELDON BIRDWELL, 44 YELLOWSTONE AVENUE, said he has a great deal of sympathy for Code Enforcement officers. They have the hardest job, constantly meeting resistance and sometimes hostility in the course of their work. The City must give them the tools they need to accomplish their job. He said the City Attorney's office must "walk the razor's edge" between protecting property rights and giving Code Enforcement officers the tools to do their jobs. This ordinance will solve some problems and create others. He suggested this ordinance be revisited in one year after its effective date to review its effectiveness.

CINDY MILLIGAN, 1008 BROADWAY, said she and her husband have sold "junk" at the Broadwater address for 30 years. She said she is concerned about people who do not like the way they are "doing things" and would submit complaints about this. She is also concerned about the Code Enforcement officers deciding what is or is not junk. Ms. Milligan said her husband works 16 hours a day repairing appliances, helping people and provides a good service to the community. Many times issues about the site have come up and they have complied with neighbor's requests, but it "still is not enough". She reiterated that this is a business and a community service. Ms. Milligan said the ordinance language is still vague and there must be a revision and a public viewpoint to reach a "happy medium".

NEIL SCHLAEPPI, 6606 GRAND AVENUE, said he is a car hobbyist who has concerns about the language and definitions in the ordinance. He noted the "enforcement folks have promised they won't go after hobbyists, but we can't always rely on promises". Those promises need to be in writing. He asked the Council to allow more time for public input from the car hobbyist standpoint.

DAVID COLVILLE, NO ADDRESS GIVEN, said he likes the freedom to restore cars. He said the definitions need to be improved.

CRAIG GOULD, 3201 DURLAND DRIVE, said he is the Vice-President of the Yellowstone Roaring 20's Auto Club. He said often the rules focus on the few and tend to penalize the masses. He encouraged the Council to look at this proposal from that standpoint. He said he works with his sons on restoring cars and is concerned he won't have that option if this ordinance passes.

There were no other speakers. The public hearing was closed. Councilmember Gaghen expressed concern there is not enough definition and clarity pertaining to the affect of this ordinance on the car hobby groups. Councilmember Brewster said it would be good to work with the car hobby groups to come up with a plan to define the portion of the ordinance that pertains to vehicles. He noted the Zoning regulations are even more restrictive for vehicles of this type. Ms. Cromwell noted the definition in this Nuisance Ordinance is the same one that is in Zoning Code, therefore both regulations must be revised to remain in agreement. Mr. Bauer suggested the Council "move forward with the ordinance" and propose amendments to both the Zoning Code and Nuisance Code to specifically address the concerns of the car hobbyists. Councilmember McDermott said the ordinance would help Code Enforcement Officers be able to work with the more

serious violations and problems of the nuisance code. She agreed that an amendment to accommodate the old car hobbyists is a good idea, but the ordinance should “move forward”. Councilmember Poppler asked the car hobbyists to supply the City Staff with appropriate language to consider and adopt the ordinance with the provision that the “junk car” portion would be revised. She also asked that Mr. Mulligan’s junk business (which has a business license) be considered in the revisions – his business is junk and that is what he displays and sells. Councilmember Gaghen moved to approve the nuisance ordinance on first reading, seconded by Councilmember Boyer. Councilmember McDermott asked the Legal Staff to incorporate Ms. Shaffer’s proofreading comments into the ordinance. Mr. Bauer noted two potential amendments prior to the public hearing that the Staff will take into consideration in the second reading. On a voice vote, the motion was approved with Councilmembers Brewster, Brown and Jones voting “no”.

Councilmember Gaghen moved to direct staff to work with members of the car collection community to refine the portions of the nuisance and zoning ordinances relating to definition of junk vehicles, seconded by Councilmember Brewster. Councilmember Jones suggested a committee be formed to get an organized group to come to a consensus on what language should be revised. On a voice vote, the motion was unanimously approved.

Councilmember Jones moved to set up a community committee to look at the language and come back to Council with appropriate wording that should be included in both the nuisance and zoning ordinance, seconded by Councilmember Brewster. Mr. Bauer noted this committee should be formed by resolution to define membership, scope and duration of the project. On a voice vote, the motion was unanimously approved.

12. PUBLIC HEARING AND FIRST READING ORDINANCE expanding the boundaries of Ward I to include recently annexed property from Annex #04-05, described as a 0.172 acre tract of land situated in T1S-R26E-S9: SE4 and located at 412 Hallowell Lane. Staff recommends approval of the ordinance on first reading. (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 McDermott moved for approval of the Staff recommendation, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.

13. PUBLIC HEARING AND FIRST READING ORDINANCE extending the boundaries of Ward IV to include recently annexed property from Annex #04-02, described as Sunny Cove Fruit Farms, Lots 101 and 124, including all adjacent right-of-way of 58th Street West and Grand Avenue. 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 Brewster moved for approval of the Staff recommendation, seconded by Councilmember Jones. Public Works Director Dave Mumford defined the adjacent right-of-way of 58th Street West and Grand Avenue as the right-of-way adjacent to the annexed property and not all the way into town, in answer to Councilmember Poppler’s question. On a voice vote, the motion was unanimously approved.

14. RESOLUTION 04-18122 creating SILMD 286 in Chrysalis Acres Subdivision. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

Assistant City Administrator Tina Volek said the Council delayed action on creating this light district at the March 22nd meeting to request that Staff provide information on right-of-way tax implications for both a City district and a Northwestern Energy district. The cost of the City owned district would be \$6,627.88 as opposed to a Northwestern Energy district at \$2,749.68 for first year costs. The homeowners in this district would benefit from Northwestern Energy's practice of spreading the cost of the improvements. If the district is reformed, it would create a delay to allow a new petition to be circulated and cost the property owners more due to the capital costs. Ms. Volek said the Staff recommendation is to create the district as a Northwestern Energy district. Councilmember Brewster asked if it is a conflict of interest for him to vote on this issue as it is a regulated cost. Assistant City Attorney Bonnie Sutherland replied "no", because a personal financial interest is not created with his vote. Councilmember Brown moved for approval of the Staff recommendation, seconded by Councilmember Boyer. On a voice vote, the motion was unanimously approved.

RECONSIDERATION:

15. Creating SID #1361 to construct public improvements generally consisting of water, sanitary sewer, storm drain and street improvements on Shiloh Road from Avenue B to and including Rimrock Road.

Mayor Tooley noted the rules of reconsideration demand that an item be brought back at the point it was when it was voted on at the previous meeting. The minutes state SID #1361 Alternative #1 was approved with a vote of 7-3 in favor. Councilmember Boyer said she received many responses from people not living in the Shiloh Road area that think it is time to "step back and look at the way the City is funding major arterials". Councilmember Ruegamer said the current policy is an inequitable way of funding these types of streets. He agreed that people outside of Shiloh Road are telling him it is inequitable. He said they want a different way of funding them. Shiloh Road is unique with people who don't even have access to Shiloh Road being asked to pay for it.

Councilmember Brewster said the City is already doing something different by paying 2/3 of the cost and that is significant. Every person in the City that has a finished road in front of their house has paid for it either through an SID or part of the cost of their home. It is no different than for residents on Alkali Creek Road who will be assessed for the SID, with the City paying for the arterial portion of the street. He said the Shiloh Road residents are paying only what other residents are paying – for a residential portion of the road. It is the fairest solution. If this SID is not created as proposed, the Council is telling residents on all arterials that they get a "free pass" and the only other solution is through a property tax. He said the chances of passing that levy are small, because the people who have streets would vote no. He said the Council should do nothing if Alternative #1 is not approved and spend the money dedicated to this SID where people are willing to contribute to part of the project.

Councilmember McDermott agreed with Councilmember Brewster. She noted that Ward I residents are going to be asked to pay for an SID on South Billings Boulevard – a

major arterial. She said the Council has finally reached some consistency with these types of projects and now Shiloh Road is in jeopardy. South Billings Boulevard and Alkali Creek Road are similar projects and may face the same situation if the Shiloh Road project is defeated. SIDs are a cost of living in the City. She suggested Alternative #1 or doing nothing and move the funds to the next project where residents are willing to pay their fair share. Councilmember Brown said there are exceptions in unique situations and this is one of those unique situations with no simple answer. He said he supports Alternative #1. Councilmember Jones said there are inconsistencies in Shiloh Road and this will happen all over the City. He said this is the time to take a look at the SID policy and different alternatives. He said the different sections of the city could expand SIDs to cover the cost of arterials in their neighborhoods. Councilmember Boyer said the SID process for major arterials needs to be more creative and inventive. This is just a beginning of this type of policy. Councilmember Brewster said a Citywide type of SID would give residents on arterials a "free ride". He said that is unfair. Councilmember Gaghen said this should be considered in a broader sense.

Mr. Bauer clarified the motion on the floor is to approve Alternative #1 for SID #1361. Councilmember McDermott asked if enlarging the SID would open up the valid protest issue. Mr. Mumford said with any Alternative other than #1, #5 or #6, the SID process would have to start over. At that point, the larger area would contain valid protests because that area does not have waivers of protest with the original subdivisions. Councilmember McDermott asked if there is another project that could start soon if Alternative #6 is selected. Mr. Mumford replied "no". Councilmember Ruegamer proposed Alternative #5 so the intersection could be repaired and the funds set aside can be used. Mr. Mumford said the cost of the intersection and transition to Poly Drive would consume all of the funds set aside for this project (\$2 Million). Councilmember Jones said the residents below Poly Drive would have a bigger burden of assessment if Alternative #5 is chosen as there would be no City funds to contribute to that portion of the construction. Mr. Mumford noted that 5 years worth of funding is already allocated. Councilmember Jones said he would like to give the community the option to say "yes or no" to funding the project first. Mr. Bauer noted this is a hard and complex decision, but reminded the Council that 60% (a majority) of the property owners did not protest this SID and look forward to the improvements. The risk the Council runs (according to state statutes) if the district is broadened as Councilmember Jones has suggested, is the amount of the SID must be proportionate to the benefit received by the property owners that are being assessed. In that case, it would only take one individual to protest the assessment. Spreading the assessment out farther is problematic and very risky. He recommended a Citywide tax rather than the SID method to get general dollars from a broader section of the community. Councilmember Boyer said the community is getting frustrated with the current transportation issues and this may be the time to consider a General Obligation Bond to finance these types of projects. Councilmember McDermott said any decision the Council makes tonight has to take into consideration South Billings Boulevard, Alkali Creek Road and possibly Lake Elmo Drive or any other major arterials in the future and assume these changes would affect all of these projects and ultimately set a new policy. Councilmember Ruegamer said making a change in the policy will be painful no matter when it is done. Councilmember Ruegamer made a substitute motion to approve

Alternative #5, seconded by Councilmember Boyer. Mayor Tooley noted a conflict of interest and said he would not be voting on this issue. On a voice vote, the motion failed.

On a roll call vote on the original motion, the motion failed 4-5 with Councilmembers McDermott, Brewster, Brown, and Poppler voting “yes” and Councilmember Gaghen, Ruegamer, Boyer, Clark and Jones voting “no”. The previous Council action of approval is rescinded, the district creation fails. Mr. Bauer noted that Item P is moot with the failure of the reconsideration.

Councilmember McDermott said the other two major arterials (Alkali Creek Road and South Billings Boulevard) should proceed as scheduled to find out if the affected residents are willing to pay their fair share. Mr. Bauer said Item D concerns design services that the City has funding for and forming the SID is dependent upon those design services. There is still good reason to approve this to identify what the scope and cost of the project would be. Councilmember Brewster moved for approval of Item D, seconded by Councilmember McDermott. On a voice vote, the motion was approved with Councilmember Clark voting “no”. Mayor Tooley abstained from voting.

**16. PUBLIC COMMENT on Non-Agenda Items -- Speaker sign-in required.
(Restricted to Non-Agenda Items only; comments limited to 3 minutes per speaker.**

NONE

Council Initiatives:

COUNCILMEMBER JONES: Councilmember Jones moved to direct staff to determine the legally allowable method and area to expand SID #1361 and report back to Council, seconded by Councilmember Gaghen. Mr. Bauer said the Staff would research what they could and give the best information possible, but cautioned that this is a big gray area. Councilmember Jones said if this initiative does not pass, the Council would have to consider voting for the alternative that was previously voted down. On a roll call vote, the motion failed 4-5 with Councilmembers Gaghen, Ruegamer, Boyer, Jones voting “yes” and Councilmembers McDermott, Brewster, Brown, Poppler and Clark voting “no”. Mayor Tooley abstained from voting.

ADJOURN —With all business complete, the Mayor adjourned the meeting at 11:40 P.M.

THE CITY OF BILLINGS:

By: _____
Charles F. Tooley MAYOR

MINUTES: 04/26/04

ATTEST:

BY: _____
Susan Shuhler, Deputy City Clerk