

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

May 10, 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. Deputy Mayor Larry Brewster called the meeting to order and served as the meeting's presiding officer. The Pledge of Allegiance was led by Deputy Mayor Brewster, followed by the Invocation, which was given by Councilmember Peggie Gaghen.

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

MINUTES – April 26, 2004. Approved as printed.

COURTESIES – Library, Community Services

- Library Director Bill Cochran introduced Outreach Librarian Gene Robson, a member of the library staff who recently received the Librarian of the Year Award for the State of Montana. Ms. Robson has been involved in nearly all library initiatives that take library services outside of the library building, including services to the homebound. This is another milestone in her career, as she also recently received recognition for her 30 years of service to the City.
- City Administrator Kristoff Bauer recognized John Walsh, Kim Palmieri and Brenda Beckett-Martinez from the Community Services and Planning Dept. These three individuals were recognized with the “Right Thing to Do” Award from Montana Fair Housing (MFH) for their work on promoting fair housing in the city.

PROCLAMATIONS – Deputy Mayor Brewster.

- **May 16-22: National Public Works Week**
- **May 10-16: Blind and Vision Impaired Awareness Week**
- **May 15th: Poppy Day**
- **May 16-22: Small Business Week**
- **May 9-15: Police Week**

BOARD & COMMISSION REPORTS

- **Public Utilities Board** -- Eric Coombs, chair of the Public Utilities Board, said the board has met twice this year. The board has reviewed and discussed the various construction projects around the community, as well as the water mediation settlement the Council recently considered. Mr. Coombs said the board has also discussed the contract with Lockwood Water District, the water service repair surcharge, and the levels of water in the Yellowstone River. He added, due to low levels of the Yellowstone River, the City may want to consider a new pumping station and storage facility to insure a good water supply.
- Jeff Mrchak of the Downtown Exchange Club said the management board has declared a dividend of \$48,000, of which the City is to receive \$32,000. The

remaining \$16,000 will go to the Downtown Exchange Club for various recreation projects in the community.

ADMINISTRATOR REPORTS – Kristoff Bauer.

- City Administrator Kristoff Bauer noted that revised reports for agenda items T and V were sent out in the Friday packet.
- Mr. Bauer also asked that Item R be separated and a separate motion made to delay the item for 2 weeks due to concerns raised by the potential buyer.

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: #1, and #9 ONLY. Speaker sign-in required. (Comments offered here are limited to 1 minute per speaker. Comment on public hearing items will be heard ONLY during the designated public hearing time on each respective item.)

- WALLACE MCLEAN, 2923 BEECH, co-chair of the Black Otter Trail/Swords Park Steering Committee, said the committee spent a lot of time studying the issues and taking public input. Mr. McLean said the plan they are proposing attempts to protect the historic significance of the park and to prevent further degradation of the natural features of the park. He urged the Council to approve Alternative A.
- FRANCES HARRIS, THE TERRACE, BOX 30172, said people have been disrespectful of this natural park, the wishes of the late Mr. Swords and Chief Black Otter. Ms. Harris said she did not think either of them would have supported closing Black Otter Trail, as is being proposed.
- JEFF MEIDE, 419 BURLINGTON AVENUE, said he supports “non-closure” of Black Otter Trail as it exists today, stating that it should be developed and made accessible for all to use and enjoy, whether by auto, bike or on foot. He said he was disappointed to see the recommendation was to close the trail.
- DWIGHT GILLILAND, 1141 WICKS LANE, said he represents the Black Otter Hill Climb organization. They have hosted an event each August in this area and do not want to see the trail closed to vehicular use.

COUNCILMEMBER REQUEST FOR RECONSIDERATION:

Councilmember Clark moved to RECONSIDER the final action of April 26th regarding SID 1361 – Shiloh Road. Motion failed due to lack of a second. Previous action stands.

CONSENT AGENDA:

1. A. Bid Awards:

(1) Long Distance Service for the City of Billings and Yellowstone County. (Opened 4/20/04; delayed on 4/26/04). Recommend delaying to 5/24/04.

B. Amendment #7, Professional Services Contract, HDR Engineering, Inc., (\$180,288.34) and an extension of contract termination date to 6/30/04.

C. Suburban Ditch Right-of-Way Agreement, Billings Operations Center, \$0.00.

D. West End Hangar Ground Lease, B & J Properties Limited LLC, \$937 for first year; adjusted annually by CPI; term: 20 years.

E. Airport Business Park Building and Ground Lease, Amendment #1, State of Montana Dept of Natural Resources and Conservation, \$1,893.24 additional for first year, adjusted annually by CPI.

F. W.O. 03-10: Contract for Professional Services, Marvin & Associates, \$14,517.80.

G. Amendment #1, Quiet Zone Study Contract, (W.O. 03-17), S.E.H., Inc., \$19,050.00.

H. Authorizing attorney Rodd Hamman to execute Settlement Agreement for water rights. (Delayed from 4/26/04).

I. Grant application submittal and finalization of Underage Drinking Grant, Montana Board of Crime Control, \$12,650.00.

J. Confirmation of Police Officer: Harley Cagle.

K. Pledged Collateral on Certificates of Deposits, US Bank repurchase Account and US Bank Municipal Investor Account.

L. Resolution 04-18123 adopting Swords Park and Black Otter Trail Master Plan.

M. Second/final reading ordinance 04-5276 expanding the boundaries of Ward I to included 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.

N. Second/final reading ordinance 04-5277 expanding 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.

O. Second/final reading ordinance 04-5278 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.

P. Second/final reading ordinance 04-5279 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.

Q. Second/final reading ordinance 04-5280 amending BMCC Sections 18-301 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.

R. Acceptance of Quit Claim Deed for right-of-way acquisition in T1N-R25E-S33: SE4, Shiloh United Methodist Church, \$35,718.10.

S. Preliminary Minor Plat of Cenex Park Subdivision, Amended Lot 4, Block 4, generally located at the SW corner of the intersection of S. 24th St. W, Overland Ave. and Gabel Rd.

T. Preliminary Plat of Foxtail Village Subdivision, generally located at the intersection of Grand Avenue and 58th Street W.

U. Preliminary Plat of Hunter's Ridge Subdivision, generally located south of Central Avenue, east of S. 32nd. St. W and north of Terra West Subdivision.

V. Preliminary Plat of The Village Subdivision, generally located at the NW corner of Shiloh Road and King Avenue West.

W. Bills and Payroll.

- (1) April 9, 2004
- (2) April 16, 2004

(Action: approval or disapproval of Consent Agenda.)

Councilmember McDermott separated Item L of the Consent Agenda. Councilmember Brown separated Items H and R of the Consent Agenda. Councilmember Ruegamer moved for approval of the Consent Agenda with the exception of Items H, L and R, seconded by Councilmember Brown. On a voice vote, the motion was unanimously approved.

Councilmember Ruegamer moved for approval of Item H of the Consent Agenda, seconded by Councilmember Gaghen. Councilmember Brown said he has not received adequate answers to how the City could have water rights in 1895, but none today and are currently trying to re-establish water rights. He said he understands that the constitution in 1972 brought the water rights under the jurisdiction of the State and the City must negotiate those rights back. He added that the City of Billings needs to "keep their eyes open and make sure we know what's going on" in our governments. Councilmember Brown said he is concerned that "things will happen" making it difficult for citizens to water lawns. On a voice vote, the motion was unanimously approved.

Councilmember Ruegamer moved for approval of Item L with Alternative A, seconded by Councilmember Iverson. Councilmember McDermott said she appreciates the efforts that have gone into this master plan. She noted she was involved with the plan

in the beginning and the concept was a “low-overhead”, natural public park that would stop the degradation of the park by the four-wheel vehicles. Instead, the plan has turned into a “theme park” that will cost the taxpayers \$2.2 Million. She asked for an accounting of this and where the money is coming from. City Administrator Kristoff Bauer said the master plan identifies the improvements that are desired, most of which are not funded at the planning stage. He said there is money for some improvements, and there is hope over time those other projects would be completed through other funding or volunteer efforts. Parks and Recreation Director Don Kearney said the City has \$800,000 to complete the west end of the trail from the Northwestern Energy Substation. The balance of the funds is not currently in place. He said 90% of Black Otter Trail would remain open with both Alternatives A & B. The portion that is subject to closure is the Skeleton Cliffs area, with Alternative B proposing to leave it open to vehicle traffic and Alternative A closing the area and developing interpretive sites and signage and only open to hiking or foot traffic. Councilmember McDermott said the Council voted several months ago to keep the Skeleton Cliffs portion of Black Otter Trail open and not consider the proposed interpretive center. Mr. Kearney said at a recent work session the Council indicated they would like two proposals to consider. Councilmember Poppler made a substitute motion to approve the plan with Alternative B, seconded by Councilmember McDermott. On a voice vote, the substitute motion was approved.

Councilmember Ruegamer moved to delay Item R to 5/24/04, seconded by Councilmember Iverson. On a voice vote, the motion was unanimously approved.

REGULAR AGENDA:

2. PUBLIC HEARING AND RESOLUTION disposing of City-owned property described as Lots 1-2, and fraction of Lots 3-10, Block 245, Sugar Factory Subdivision AND Lots 11-12, 20-21, and fraction of Lots 3-10, Block 245, Billings Second Addition. Final action and recommendation on the sale scheduled for 5/24/04. (Action: public hearing.)

Community Development Manager John Walsh said this property is located in the South 27th Street Zoning District. It was property donated to the City in 1996 for redevelopment purposes. In March of 2004 Security Armored Express, Inc. (SAE) expressed interest in purchasing the property and the Council has approved a resolution of intent to dispose of the property. He said bids were opened on April 27th and Security Armored Express, Inc. submitted the only bid. This firm has been in business in Montana for 23 years and in Billings for 20 years. They provide armored car and money processing services. Mr. Walsh said SAE’s offer is time sensitive to assure construction will begin this fall. They are offering \$121,800 for Lots 1-12 and \$20,800 for Lots 20-21. SAE intends to build a 7,500 – 10,000 square foot facility on the site. The building and site plan must comply with the South 27th Street Zoning District requirements, he noted.

Mr. Walsh stated the bid proposal includes a land swap as partial payment. The City has been interested in purchasing this particular land as a connection between the riverfront and downtown bike trails. He noted this land is south and east of the property to be disposed of and would be appraised prior to the trade. The current County

property value is \$97,000. He added the agreement would be conditioned upon the results of the appraisal.

The public hearing was opened. There were no speakers. The public hearing was closed. Final action on 5/24/04.

3. PUBLIC HEARING AND RESOLUTION disposing of City-owned property described as Lots 8-10, Block 164 O.T. Final action and recommendation on the sale scheduled for 5/24/04. (Action: public hearing.)

Community Development Manager John Walsh said this property is on the 200 block of South 27th Street and is in the South 27th Street Permit Zoning District. The building and site plan must comply with the requirements of this district. The property was acquired during the mid 1980s for development purposes at a cost of \$61,300. In March of 2004 Northern Plains Resource Council (NPRC) expressed written interest in purchasing the property. Bids were received on April 27th with NPRC submitting the only bid. NPRC is currently located at 2415 Montana Avenue and has operated in Billings since the late 1970s. It is a non-profit company addressing conservation issues. They are proposing to remodel the 8,300 square foot Food Bank Grocery building, with the City land and adjacent lots to be used for parking and landscaping.

Mr. Walsh said NPRC hopes to begin construction by this fall. They are proposing to pay \$26,250 for the land with the revenue going back into the CDBG Program. He noted there was no appraisal on the property, but land in the area has been selling for \$2.50 per square foot, equal to the NPRC bid. Councilmember Brown expressed concern for the sale of City property to a non-profit agency, creating a property that would "come off the tax rolls". Councilmember Clark suggested the City require a fee in lieu of taxes in the case of land sale to non-profits. City Attorney Brent Brooks said this could be researched, but would have to be a separate issue. Councilmember Gaghen asked if this would be a policy for all similar situations. Councilmember Clark said that was his intention.

The public hearing was opened. MARY FITZPATRICK, 631 CLARK AVENUE, said she is chair of the Northern Plains Resource Council. She noted NPRC paid \$156,000 for the 7 lots and the Food Bank Grocery Building property. She urged the Council to approve the sale of the three City lots adjacent to their property. She said the Resource Council looks forward to the revitalization of this building, property and the Southside community. Ms. Fitzpatrick said the NPRC "organizes Montana's citizens to protect the water quality, family farms and ranches and unique quality of life". She said they represent 3,000 Montana citizens, 250 living in Billings. She noted the proposed building would house 25 employees and NPRC expects to invest \$1 Million in the community though this purchase and renovation. Ms. Fitzpatrick assured the Council the project would conform to all the appropriate zoning conditions. She added that this proposal would transform a space that has long been vacant into a carefully planned and maintained landscape enhancing the Southside community. She asked the Council to approve this sale and support their endeavor. There were no other speakers. The public hearing was closed. Final action on 5/24/04.

4. PUBLIC HEARING AND FIRST READING ORDINANCE amending and superceding BMCC Section 15-104(a)-(e); approving the Interlocal Agreement between the City of Laurel, City of Billings, and Yellowstone County creating a

multi-jurisdictional service district named Yellowstone City-County Health Department and creating the Air Pollution Control Program. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

City Administrator Kristoff Bauer said this is the culmination of efforts during last year's budget process where concerns were raised about the Air Pollution Control Board currently operating under an interlocal agreement between the City of Billings, City of Laurel and Yellowstone County. The current agreement does not allow for accountability of the Air Pollution program. He noted the Council withheld funding for the program and directed the staff to develop a new interlocal agreement. Mr. Bauer said the methodology was to integrate this program into the existing Yellowstone City/County Health Board. This required a new interlocal agreement that addresses control and integration with the Health Board. He noted there are a number of features in the interlocal agreement that are meant to address the concerns of the Council, such as the ability of one party to terminate the agreement if the conditions are not being met. A new budget process is also included, where operation costs are allocated based on the programs and services provided. This process will be reviewed on an annual basis.

The public hearing was opened. STEWART KIRKPATRICK, 2202 LOCUST STREET, said he is the attorney representing the Yellowstone City/County Health Department. He said he has participated in drafting this agreement. Mr. Kirkpatrick said the team that developed the agreement tried to address the concerns of the Council and the County regarding the administration of the Air Pollution Control program. He said the agreement updated Health Department operations under the current Interlocal Agreement. He said the Health Department is seeking the Council's approval of this agreement. There were no other speakers. The public hearing was closed.

Councilmember Iverson moved for approval of the staff recommendation, seconded by Councilmember Gaghen. Councilmember Gaghen asked where the Air Pollution Control offices would be located. Mr. Kirkpatrick said space has been reserved in the Yellowstone County Courthouse for this program. Mr. Bauer noted the agreement is being reviewed by the State and must be approved by them before final adoption. If there are corrections from the State, those corrections will be incorporated into the agreement before the second and final reading of the ordinance. On a voice vote, the motion was approved with Councilmember Brown voting "no".

5. PUBLIC HEARING AND FIRST READING ORDINANCE expanding the boundaries of Ward IV to include recently annexed properties described as an unplatted portion of T1N-R25E-S32: NE4, Annex #04-04, Zimmerman Family LTD Partnership, owners. 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 Poppler moved for approval of the staff recommendation, seconded by Councilmember Gaghen. On a voice vote, the motion was approved.

6. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #722: a zone change from Residential-9600 to Planned Development, (with underlying zones of Commercial Neighborhood, The Campus and The Village

Neighborhood). The subject property is generally located on the northwest corner of King Avenue West and Shiloh Road and described as C/S 3125, Tract 1 and C/S 2064, Tracts 1-4. Zoning Commission recommends approval. (Action: approval or disapproval of Zoning Commission recommendation.)

Planning Staff Manager Candi Beaudry said this zone change is located at the northwest corner of King Avenue and Shiloh Road. The subdivision preliminary plat was previously approved. She said the Planned Development zoning district is a flexible zoning district that allows the developer to set standards for items such as landscaping, setbacks, signage and the allowed use for underlying zoning. This property is subdivided into four different underlying zones: Village Neighborhood, The Campus, commercial neighborhood and common areas. The commercial neighborhood (16.828 acres) would allow for retail and services, the Village Neighborhood (20.635 acres) is primarily the residential portion of the planned development allowing for small retail and some services, The Campus (52.1445 acres) is primarily medical related but allows for some small retail and the common area (12.5804 acres) is the park land (to be maintained through a park maintenance district) adjacent to Shiloh Road along the Shiloh drain. She noted the developer would be responsible for all the improvements in the development itself and their portions of improvements on Shiloh Road and King Avenue West.

Ms. Beaudry said the Development Review Committee held a preliminary review meeting to discuss this zone change in November of 2003 and make a recommendation of approval to the Zoning Commission. The application was delayed to allow the developer time to make modifications to the Planned Development Agreement to address concerns raised by the City staff. The Zoning Commission held a public hearing on the 6th of April 2004 and recommends approval of the Planned Development Agreement and zone change.

The public hearing was opened. BOB SANDERSON, ENGINEERING, INC., 1260 SOUTH 32ND STREET WEST, said this project has been in the planning stages for 18 months. The intent is to create a satellite medical campus for St. Vincent's Foundation. He said the medical campus would contain medical and healthcare services that are not provided in the downtown area. It would become more specialized as time goes on. Mr. Sanderson said the idea is to develop a medical campus atmosphere supported by specific commercial uses and specific residential uses. The planned development zoning is the best tool available to design this type of project, he added. This development would be controlled by an owner's association and meets the criteria in the West Billings Plan. Mr. Sanderson said this development will not sell any lots until either the completion or contracting of the Shiloh Road reconstruction project. He said, "you will not see anything happen here for several years", and added it is a great project.

DOUG JAMES, NO ADDRESS GIVEN, said this property is currently on the tax rolls and St. Vincent's would continue to pay taxes. Depending on future development, there is a possibility that there may be some tax-exempt uses. Currently the property is and will remain on the tax rolls.

JOE WHITE, 926 NORTH 30TH STREET, said he would suggest conditional approval for the plan and move critical facilities from the downtown to the "countryside". This would relieve congestion downtown and get away from air pollution.

There were no other speakers. The public hearing was closed. Councilmember Clark moved for approval of the Zoning Commission recommendation, seconded by

Councilmember Brown. Councilmember McDermott said she expects the approximately 52 acres to be tax-exempt due to the medical nature of The Campus. On a voice vote, the motion was unanimously approved.

Deputy Mayor Brewster called for a recess at 7:50 P.M.

Deputy Mayor Brewster reconvened the council meeting at 7:55 P.M.

7. 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. (Public hearing and action continued from 4/26/04). (Action: approval or disapproval of Zoning Commission recommendation.)

The public hearing was continued from April 26, 2004. RICK LEUTHOLD, ENGINEERING INC., 1260 SOUTH 32ND STREET WEST, said the recommendation of denial does not accurately reflect the feelings of the Zoning Commission for the land use. The Commission supported the appropriateness of the land use, but expressed concern about the understanding of the landowners concerning the parcels that were being changed. He noted the Residential Professional proposal would include offices such as medical/dental offices that are compatible to the Molt Road area, and not retail sales. He stated the developer held a neighborhood meeting to discuss their understanding of the proposal. Mr. Leuthold asked the Council to approve the zone change in accordance with the Master Plan adopted with the 1st filing. Councilmember Poppler asked if a good representation of property owners attended the neighborhood meeting. Mr. Leuthold said there were 16-20 people, representing almost all of the homes that are currently occupied. Two-thirds of the 1st filing lots have been sold, some to other developers, he added.

AMY HERMAN, 3333 CLEARWATER DRIVE, and ESTELA KAUFMANN, 3441 PEBBLE BROOK DRIVE, said they are both registered nurses in Billings who want to build a 15-bed assisted living home in Ironwood Subdivision. The home would be called Willowbrook Home (home environment in a country setting) and they require the zone change in order to build this home. Their desire is to provide each resident independence and a better quality of life. She said they would be able to "abide" with the Residential 9,600 and Residential 7,000 zoning regulations.

RICK STORDAHL, 4892 CEDAR RIDGE CIRCLE, said he recently purchased a lot in Ironwood Subdivision. His backyard would be adjacent to the Residential Professional zoning and he has no concerns about this. It would be an asset to Ironwood and the community. He urged the Council to approve the zone change.

BRYCE HOLZHEIM, 4067 WOOD CREEK DRIVE, said he purchased a lot and built a home in July of 2003. He said he was made aware of the proposed development plan and supports the zone change.

JIM NIEBUR, 4931 DOVETAIL DRIVE, said he recently purchased a lot in Ironwood Subdivision and was made aware of the potential Residential Professional and Residential 7,000 zoning, that was part of a bigger plan for the subdivision. He supports the diversity and the opportunity for office space at the Molt Road and Ironwood Drive

intersection. He noted the Residential 7,000 would afford the opportunity for his aging parents to live closer to the family. He asked the Council to approve the zone change.

DAN WELLS, 4241 CEDAR WOOD DRIVE, said the City Planning Department has supported this zone change. He said it was his intention to propose the zone change from the beginning and the residents he dealt directly with were alerted to that fact. He said the majority of the residents that attended the neighborhood meeting were concerned with the Residential Professional zoning. Mr. Wells said he clarified what is allowed in Residential Professional and feels he has mitigated most of their concerns. He noted the Willowbrook facility would "fit nicely" in this area. He said he has met almost all of the concerns of the residents. He asked for the Council's support. Councilmember Ruegamer asked why this was not done in the beginning. Mr. Wells said the master plan was not finalized at the time of annexation. Councilmember Gaghen asked for information on the Zoning Commission vote. Mr. Wells said it was 4 to 1 in favor and the concerns of the 6 people that spoke have been mitigated.

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

8. PUBLIC HEARING regarding Spring Creek. Staff recommends Council direct staff to poll property owners potentially impacted by a PID/PMD to determine the feasibility of funding a new water amenity for Spring Creek. (Action: approval or disapproval of Staff recommendation.)

City Administrator Kristoff Bauer said the scope of the project is the diversion and area around Spring Creek Park that is located between 15th and 18th Streets West between Lewis and Burlington Avenues. The diversion was constructed in 1967 along with Arnold Drain. There is no documentation as to why it was built and there is only one line on a set of plans that identifies the project. Mr. Bauer noted that the neighbors raised concerns about low flow in 1993. He said the Engineering Department at that time was not able to find significant documents pertaining to the original project but did document concerns about the dams and constructions placed by the adjacent property owners. This is a significant contributor to the reduction in flow. He noted concerns were raised again in 2000 with the same documentation recovered and with the same findings. He said the City has taken steps to get the diversion to function better, by jetting the pipe to clear the sediment, but it is a reoccurring problem.

Mr. Bauer said there are two groups of people with two concerns. Residents in Area #1 are concerned about not enough water from mid block between 15th Street and 16th Street through the park to 14th Street. Residents in Area #2 are concerned about adequacy of water or too much water and maintenance – downstream from 14th Street. He explained the diversion issues as: 1) the main section (18th Street to 16th Street) has less than 1 foot drop in over 1,300 feet resulting in a velocity of less than 1 foot per second (he said 2.5 feet per second is needed to keep the pipe clean of sediment and debris), 2) the number of manholes is inadequate making it hard to perform maintenance, 3) the manhole spacing is too broad – the pipe was not well designed, 4) the pipe has collapsed in several locations and 5) concerns about diminished Arnold Drain flows.

Mr. Bauer said the City "jetted" the pipe in both directions this year. A blockage was discovered that disrupted water flow. Jetting the pipe in other areas resulted in

discovering a pipe failure. These efforts to clear the pipe were unsuccessful similar to previous efforts. Flows were improved but the pipe was not entirely cleared still resulting in diminished flows.

He said there have been many creative ideas to clear the pipe. Those ideas are: 1) divert the flow at a new location, but the situation requires a pump to aid the flow (located in the alley mid block between 16th Street and 15th Street) or diverting the flow where Arnold Drain crosses (underneath the Spring Creek pipe in 15th Street), or 2) “burst” the pipe and draw in a replacement pipe (this is a metal pipe and cannot be “burst”).

Mr. Bauer said the staff has spent considerable time on analyzing the City’s legal and policy position for this issue. He noted an assertion that in the 1960s the City guaranteed a certain amount of flow in Spring Creek. There has been research by City staff and community members of the Council minutes that has yielded no documentation of that assertion. It was also asserted that past action creates future obligation. Mr. Bauer said the City has not been able to identify a set of facts that would lead the City to believe that was the case in this situation. Attorney Rodd Hamman also researched assertions about protection of water rights. It was discovered that “claims” for water rights along the Spring Creek area are appropriations on drainage water and not appropriations on natural water, therefore the City does not have the obligation to act to continue to provide that water. He said the City must not arbitrarily interfere with the drainage water, but failing to act would not be creating any legal liability for the Council with regard to water rights. Mr. Bauer noted concerns raised regarding inverse condemnation and promissory estoppels but the staff recommendation to the Council regarding the risk in that area for liability is that the risk is low, especially if the Council chooses not to act. Mr. Bauer stated the issues for the Council to consider in their decision are: 1) requests from property owners in the area to require the City to perform maintenance on a regular basis – the administration has not been authorized by the Council to direct the staff to perform that activity, 2) the role of government on private property regarding a significant private asset, 3) setting a precedent or policy – i.e. requests to “take care of aging irrigation infrastructure”, 4) gift of public funds – using funds to benefit a public purpose and what is that purpose, and 5) funding source – this project is not in the Capital Improvement Plan but a Special Improvement District or Park Maintenance District could be formed.

Mr. Bauer outlined the engineering solutions. The first option is replacement of the existing line. The estimated capital cost is \$181,000 to replace the existing pipe, provide additional manholes and surface restoration. He noted this estimate is based on the belief that the pipe is at 8 feet; if deeper the costs would increase. He noted there would be an annual maintenance cost of about \$3,500 to jet the facility and if Arnold Drain diminishes water flow would still be an issue. This option could provide park irrigation water as well.

The second option would be to add a pump station facility from the Arnold Drain to Spring Creek with a capital cost of \$85,000 and an annual cost of \$2,820 including maintenance. This could provide sufficient water to the park for irrigation, assuming there is water in Arnold Drain. He noted there is also concern with this option about downstream capacity contributing to flooding in a high rain event. This was later concluded not to be the case if there was proper maintenance.

Option three is to create a circulating pond type of amenity in the park and adjacent properties to keep the water moving. There is no design or cost estimate on this option, he said. Mr. Bauer noted the focus would be on the park and 9 or 10 adjacent properties.

Mr. Bauer reiterated there is currently no funding for this project and storm water funding is not available because Arnold Drain already meets that function. General Fund monies are the only option and those monies are limited. He stated that funding could come from a parks maintenance district for the initial capital construction and yearly operation and maintenance. He noted the probable boundaries of the special improvement district include private property. The question for the Council is "can you find a public purpose for that amenity?", such as a trail or public access along the amenity. He noted there are too few property owners involved to successfully create this district and the public access would be a detriment to their properties. Another issue is charging the maintenance district to property owners with something that does not benefit their properties. He noted it is a complex issue to identify the property owners that should contribute to improvements and how they would benefit from them.

Mr. Bauer outlined the costs for three options using a Special Improvement District. Option one (rebuilt diversion) includes 19 properties that would be responsible for \$10,000 each of capital costs plus annual maintenance. Option two (pump station) would cost \$4,500 each on a small number of properties plus annual maintenance. For option three (new park amenity) the cost is unknown. There is opportunity for discussions with the residents regarding what their desires are, he added.

The City's recommendations include: 1) focus on a Master Plan on the park with a development of a project that would fit into the Capital Improvement Plan (not a short term solution), 2) funding should be dependent upon Special Improvement District formation and potential contribution for water in the park, and 3) allow Public Works Department to focus on drainage and maintenance issues east of 14th (this portion serves as part of the drainage system for the City of Billings). Mr. Bauer stated the City should take a stronger role in managing that resource to maintain effective operation for that purpose. He noted there are no problems occurring in the park that are associated to water supply and therefore park maintenance monies could not be used.

The public hearing was opened. ROBERT MILLER, 1332 LEWIS AVENUE, said he built his house in Spring Creek in 1966. He said he lives west of 14th Street where the channel is deeper and can accommodate more water in their area. Since 1967 the water supply has been half of the prior flows. He stated the City Council in 1967 voted to have all the water entering the 1503 Lewis Avenue manhole channeled to the Spring Creek portion of that "Y". This was accomplished by placing a curb block in the manhole. He said that flow should be retained. He stated prior generations built this extensive structure for the beauty of Spring Creek Park, the City and future generations. Mr. Miller noted the Street Department would flush the pipe every three years. Maintenance stopped approximately five years ago and Mr. Klingman called the City in 2000 for a pipe flushing. This was not a routine flushing because the maintenance had not been done for 7 or 8 years. This restored the flow for three years. He noted that Mr. Mumford's comments in the council memo state "it is unclear if the blockage is sediment" and "a blocked pipe with sediments will have a trickle flow". He asked the Council to allow a flushing to identify if the blockage is sediment or damage. He said this is a better alternative than a high priced water system, which he feels is premature. He suggested a substitute motion that the Council direct staff to jet flush the Spring Creek diversion pipe.

RUSS BROWN, 1440 LEWIS, said he has paid property taxes for over fifteen years. During that time he has enjoyed a good working relationship with the City of Billings

and the Parks Department. He asked the Council to postpone a decision based on the Staff recommendation to poll property owners prior to setting up a PID or PMD. He applauded the work and resources that have gone into study and analysis of options for this recommendation. Mr. Brown said this recommendation is premature and not appropriate. There is no other neighborhood park that has this type of solution in place. He said he thinks the funding issue is flawed and not helpful in finding a collaborative solution. Mr. Brown said more people than just the 19 identified property owners that have been asked to bear this cost use this neighborhood park. He asked the Council to consider an alternative motion to the staff recommendation.

VERN KLINGMAN, 1020 14TH STREET WEST, said he has lived in this area for 20 years. He suggested a substitute motion that the Council direct the staff to use city-owned equipment to jet flush the Spring Creek diversion pipe. He said Spring Creek follows the gully of a very old waterway that leads to the Yellowstone River. In 1967 the City of Billings created a gravity flow storm sewer with a 15-inch pipe that diverted water back into Spring Creek. For three years a City employee flushed the pipe. This stopped in 1993 for an unknown reason, creating a sediment problem. He said the sediment was cleared again in the year 2000. Mr. Klingman said the residents have asked the City to "work with us", but he senses a "hidden agenda" to discontinue maintenance of the diversionary pipe. He said in February of 2003 he notified Street and Traffic Superintendent Bill Kemp and the City Administrator of the problem. He was told the problem was silt and a bridge barrier below the diversion outlet. He said he did not think anything downstream could cause silting upstream, but was told this was the problem. The residents raised \$2,000 and installed a new 30-inch culvert and bridge. He said the City informed the residents that jet flushing the pipe may cause property damage that would be a liability for the City. He said there is reason to believe there is too much speculation and urged the council to approve a substitute motion to jet flush the pipe, as it is the most economical alternative.

JACQUE QUANBECK, 1446 NORMAN PARK DRIVE, said her house faces Spring Creek Park and is a park that serves many people. She said her family has owned this property since the mid 1950s. She said it is disillusioning to see what has happened to the water flow lately and the many impacts. She asked the Council to protect the property values of all the residents in the neighborhood.

JAMES PHELPS, 2110 BRADBROOK COURT, said he is speaking on behalf of the Yellowstone Valley Audubon. He said the organization opposes the recommendation to the Council. He said cities such as Portland, Oregon and Albuquerque, NM are opening their drains when these sorts of problems develop. The members support Spring Creek Park and are concerned about the wildlife.

CHRIS RAUSCH, 2005 HEWITT DRIVE, and KATHRYN FOSJORD, 407 NELSON DRIVE, said Spring Creek is unsightly and contains poisons. On the 24th of April, Lewis and Clark E-Club cleaned up the empty field near Spring Creek by Wyoming and Broadwater Avenues. This is what they found: three tires, a tent, box springs, license plate frames, two dead ducks, shopping carts, car fenders and bumpers, wood, two chairs, electrical wire wheels, shoes, a christmas tree, Vodka bottles, cardboard boxes, plastic bags, pipes, underwear, cat scratch poles, papers, candy wrappers and cans. The E-club filled 28 bags with these items.

CLARICE SHRUMPF, 1317 YELLOWSTONE AVENUE, said she lives at the Spring Creek Village. She said she is the chairperson for the Spring Creek Condo

Association with 18 units. She said this association is united in working for the preservation of Spring Creek Park and the associated greenbelt that the creek feeds. She presented pictures of a pond depicting the beauty of the area that gives the feeling of living in the country. This stopped when the water stopped flowing and the pond took on a very unpleasant odor, forcing residents to keep their windows closed. She said there are huge scabs of scum forming on the pond that breeds mosquitoes and is becoming a huge public health threat of West Nile Virus. She asked the Council to save the greenbelt and the wetlands.

ROBIN GRINSTEINER, 1308 LEWIS AVENUE, said she grew up in this area and explored every part of the ditch. She said her parents live next door in an original farmhouse in that area. They have the oldest historical water rights dating back to 1890 for the creek and springs that are part of the pond system. She said water rights are important to preserve. Ms. Grinsteiner said many of the residents want to be part of a "win-win" solution, partnering with the City. She asked the Council to increase the communication level concerning this issue, because the neighborhood only wants what is cost effective to them and the City.

HOLLY KRIZEK, 1803 28TH STREET WEST, said Spring Creek is a wonderful asset to the entire City. She said she feels opening up the ditches is a good solution requiring effort on the part of the entire City.

FRANCIS HARRIS, TERRACE APARTMENTS, said the price of freedom is eternal vigilance, relating to property rights and water rights.

VERNA GLASSING, 1420 LEWIS AVENUE, said the Mayor and Council goals for 2003-2004 state "the City envisions a future that includes green spaces and parks" and "yet we are debating the fate of this fabulous park – a green space that draws" wildlife, beauty and nature. She said her deck faces the park where she sees many people enjoying themselves. She said this report downplays that fact that this is a public park. Ms. Glassing said this park is at risk and in jeopardy and envisions in twenty years the need to correct the disregard for what is currently happening.

LYNDA MOSS, 552 HIGHLAND PARK DRIVE, said she is dismayed to see neighbors and City officials at odds over something that is a remarkable asset to the City. She said there is a need for a collaborative spirit because this is an opportunity to work together to find a solution for this problem.

JOE CASTAGNE, 1426 YELLOWSTONE AVENUE, said he just moved from Red Lodge into the area 2 years ago. He said a purpose needs to be accomplished and all members need to get together to do what one cannot do alone.

FRANK JARVENPAA, 1803 28TH STREET WEST, said he lived on Lewis for 10 years. He offered an observation about not seeing the ducks around Spring Creek as he has in the past.

JOE WHITE, 926 N 30TH STREET, said it is important to preserve the park.

JIM CHESSNE, NO ADDRESS GIVEN, said these are temporary engineering solutions and there is a cheaper way to work out this issue. He said it should be researched more thoroughly before making any decisions.

There were no other speakers. The public hearing was closed. Councilmember McDermott moved for approval of the staff recommendation to direct staff to poll property owners impacted by a PID/PMD to determine feasibility of funding, seconded by Councilmember Brown. Councilmember Ruegamer said he has met with the affected

residents several times. He said part of the problem in his view is that the residents of Spring Creek don't accept what the City has been telling them. Councilmember Ruegamer made a substitution motion to delay action to the next meeting or until such time as the pipe can be jetted between Blair Avenue and 18th Street West, seconded by Councilmember Gaghen. Public Works Director Dave Mumford said the City has tried to jet the pipe on several occasions and has encountered silt and debris (large rocks) that has hardened in the bottom of the pipe. He said the efforts have not resulted in getting through the 15 inch pipe due to the buildup and age of the structure.

Mr. Klingman asserted that the City has not properly tried to jet flush the pipe. Mr. Bauer said it is his job to find solutions for issues and bring good information to the Council for their deliberation and decision-making. In this case, the City has spent a significant amount of time exploring several alternatives to understand the real issues at Spring Creek. The Engineering and Administrative staffs have spent a good deal of time trying to understand the history and scope of this problem and identify solutions. The real problem appears to be a lack of credibility. He noted all of the suggestions brought forward have been explored and the City will continue to allow communication to exist between all parties involved. Councilmember Iverson said she does not think there has been any purposeful deceit on the part of the City and believes the City has made great efforts to explore the problems in great detail. She noted the solutions offered are apparently unacceptable to the residents.

Councilmember Ruegamer clarified that the creek is due to runoff from irrigation and a very important asset to the community. Councilmember Gaghen said this is a complex issue that goes beyond any immediate solution and may not be at a point where polling is the correct action to take. On a voice vote on the substitute motion, the motion failed. Councilmember McDermott reminded the Council that the polling of the property owners about financially supporting a solution to the problem in their area would not incur any costs to those owners. Mr. Bauer said there would be costs to the City involved in administering the poll process. Councilmember Clark asked how large the polling area would be. Mr. Bauer said an area of about 200 residents. Councilmember Gaghen asked if the City was ready to poll the residents before quantifying the cost of the third option – a new park amenity. Mr. Bauer said the staff would develop a questionnaire that the Council would be comfortable with and give an opportunity for comment on options that have been identified. On a voice vote on the original motion, the motion was approved with Councilmember Gaghen voting “no”.

Deputy Mayor Brewster called for a recess at 9:40 P.M.

Deputy Mayor Brewster reconvened the council meeting at 9:42 P.M.

9. FY2004/05 CDBG AND HOME BUDGETS. (Public hearing held 4/26/04). CD Board and Staff recommend approval. (Action: approval or disapproval of CD Board and Staff recommendation.)

Councilmember Brown moved for approval of the CD Board and Staff recommendation, seconded by Councilmember McDermott. On a voice vote, the motion was approved with Councilmember Brown voting “no”.

MINUTES: 05/10/2004

10. **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 -- NONE

ADJOURN —With all business complete, the Deputy Mayor adjourned the meeting at 9:52 P.M.

THE CITY OF BILLINGS:

By: _____
Larry Brewster DEPUTY MAYOR

ATTEST:

BY: _____
Marita Herold, CMC/AE, City Clerk