

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

## **May 24, 2004**

The Billings City Council met in regular session in the Council Chambers located on the second floor of the Police Facility, 220 North 27<sup>th</sup> Street, Billings, Montana. Mayor Charles F. Tooley called the meeting to order and served as the meeting's presiding officer. The Pledge of Allegiance was led by the Mayor, followed by the Invocation, which was given by Councilmember Dave Brown.

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

**MINUTES – May 10, 2004.** APPROVED as amended.

**COURTESIES** – None

**PROCLAMATIONS – Mayor Tooley.** None

### **BOARD & COMMISSION REPORTS**

- **Human Relations Board** – Gail Tompkins of 4265 Laredo Place said she is the chair of the Human Relations Board, a 9-member commission appointed by the Mayor and confirmed by the City Council. The purpose of the Board is to promote understanding and respect, inform itself of matters concerning human relations, review and study complaints, build collaborative relationships, aid in seeing that individuals have a voice and inform and report to the Mayor, Council and Police Commission as appropriate. During the past year, they have met with community groups to see how each group deals with diversity; worked to develop a directory or data base that would give contact information for groups working toward acceptance of diversity; held brown bag lunches to discuss diversity in general and religious diversity in the workplace; held a board retreat and developed study circles in the community to study racism in the community. In the future, the board hopes to utilize the media and other sources to let the community know about the board, its goals, and to work with other governmental agencies on the issue of diversity and to be a resource for referrals for those agencies.

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

- Mr. Bauer reminded the Council of the Montana League of Cities and Towns meeting tomorrow morning at 9:00 AM in the City Hall Conference Room with Alec Hansen. Upcoming legislative issues will be discussed.
- The next budget work session will be on June 3<sup>rd</sup> with a concluding session on June 7<sup>th</sup>.
- Mr. Bauer asked the Council to separate Items J and K on the Consent Agenda for further information.

**PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: #1, 9, 10, and #11 ONLY. Speaker sign-in required.** (Comments offered here are limited to 1 minute per speaker. Comment on items listed as public hearing items will be heard ONLY during the designated public hearing time for each respective item.)

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

- DAN WELLS OF 4241 CEDAR WOOD LANE spoke on Item M. Mr. Wells clarified his statement regarding the Zoning Commission vote. The Zoning Commission actually recommended denial of the zone change so that the developer and residents would get together to resolve the issues of concern to the neighborhood. The Zoning Commission had not recommended approval, as he had previously stated. He noted two meetings with residents have been held.
- PETER LIGHT OF 2904 BITTERROOT spoke on Item 9. He said he was not notified of Zone Change #731 and just found out about it. He added that he was also not notified of the neighborhood meetings. Mr. Light said he went door-to-door in the neighborhood with petitions opposing the zone change and found 95% of the “bordering” homeowners oppose the proposed subdivision.
- RICHARD OPP OF 2631 BITTERROOT spoke on Item 9. Mr. Opp stated that the proposed change from R9600 to R7000 is not consistent with the surrounding area. He said his main concern was traffic congestion and speeds, noting people do not drive 35 mph on Bitterroot. Mr. Opp said the proposal is unsafe.
- EILEEN MORRIS OF 1323 JANIE STREET said she is a member of the Northern Plains Resource Council. She urged the Council to approve Item #10 – the sale of property to NPRC so they could proceed with the renovation of the former Food Bank grocery property. The lots would provide parking and green space for the building and along with the renovation, enhance property values.
- NICOLE STOKKE OF 1914 MARY STREET said she and her husband purchased their home last year. They understand that they will now be part of urban sprawl. Ms. Stokke said she is not opposed to development, but is opposed to the zone change, which will allow for construction of duplexes and ultimately a more populous development.
- BOB DILLON OF 1626 OLD SORREL TRAIL spoke on Item 9. Mr. Dillon said he opposes the zone change because of the traffic congestion this proposal will bring to the area and Main Street.
- JOANN DUKART OF 2735 BITTERROOT said she has repeatedly called both the City and the County to address the traffic problems on Bitterroot. Ms. Dukart said the police rarely patrol the street. She added this area in the county has a lot of livestock in the area and is not an appropriate area for urban sprawl.
- MARIE LIGHT OF 2904 BITTERROOT said she is opposed to the zone change in Item 9, noting that it proposes inappropriate transitional housing. The zoning should match that of the surrounding area.
- PATRICK THEMIG OF 1415 OKLAHOMA STAR TRAIL spoke on Item 9, noting that currently he can look over a field with horses and pheasants, but that would change with the proposed development, so that he would be looking out on rooftops. Mr. Themig urged the Council to keep the zoning at R9600 and keep the

lots at 1 acre or more in size. He suggested also incorporating park land in to the development.

- TERRY HARDY OF 719 LAMBERT LANE spoke on Item Q. Mr. Hardy said that some of conditions staff is recommending are still unacceptable to him. He noted he would like an opportunity to address the Council regarding the conditions. He asked the Council to deny the preliminary plat application if his concerns could not be met.
- PAT OLIVER OF 2585 BITTERROOT DRIVE spoke on Item 9. Ms. Oliver said she lives on 20 acres and enjoys the area immensely. The proposed zone change to R7000 is not consistent with the area. She said she is concerned about what lies under the property and urged the Council to delay action for 30 days so that further study of the area can be done.
- JOE WHITE OF 926 N. 30<sup>TH</sup> STREET spoke in opposition of cutting the Parks Dept budget for parks maintenance. (NOTE: This is NOT an agenda item).
- BRADLEY GUNNIS OF 4310 ZEPHYR LANE spoke on Item 9. He asked the Council to deny the zone change for Ironwood Subdivision. Mr. Gunnis noted that developer Dan Wells did meet with the local property owners, but the overall effect of the proposed development extends beyond just Ironwood Subdivision. He added that commercial establishments are not compatible with the area.
- GARY WEITZ OF 1841 OLD SORREL TRAIL spoke in opposition to Item 9. He said the proposed development will increase the population in the area and congestion on Mary Street. The new zoning will not conserve land values because most of the properties in the area are greater than 1 acre in size. Mr. Weitz said the zoning in that area should actually be increased rather than reduced.
- KATHY FUCHS OF 1615 OLD SORREL TRAIL spoke on Item 9, stating that she agreed with all of the previous speakers' comments. Ms. Fuchs said that the school situation in the area has also not been addressed. She reminded the Council that Bench School remains closed.
- DAVID STOCKMAN OF 1704 THREE BARS TRAIL spoke on Item 9. He said traffic will increase substantially in the area with the proposed development. He urged the Council to keep the zoning at R9600 at a minimum.
- RICK PENTLAND OF 1651 OKLAHOMA START TRAIL said he also opposed the zone change in Item 9. The proposed development does not belong among the large lots.
- DEB MURTAGH OF 3848 QUARTER CIRCLE spoke on Item 9. She said she opposes the zone change, noting her concerns mirror those of the Zoning Commission. Her concerns center on the traffic congestion and reduction in property values.
- TRACY THORESON OF 1835 MARY STREET spoke on Item 9. She said she was also opposed to the zone change. Ms. Thoreson said the area has so much wildlife. The area needs to remain R9600 or larger.
- DENNIS DUNN OF 305 S. 35<sup>TH</sup> STREET spoke on Item 10. He said he supports the sale of the property to Northern Plains Resource Council and added if the sale fell through he would consider purchasing the property.

**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 and 5/10/04). Recommend WCS Telecom, \$22,998.42 for City and \$40,956.28 for County.

**B. W.O. 03-19: East End Industrial Area, Phase I Storm Drain Trunk Main Design,** Contract for Professional Services, Morrison-Maierle, Inc., not to exceed \$80,000.00.

**C. Contract with Montana Dept. of Transportation** for vehicle storage at the state maintenance facility (formerly the Armory site on Highway 3).

**D. Vehicle Lease Agreement** with Underriner Motors for City/County Special Investigations Unit (CCSIU) vehicles, \$25,200.00.

**E. Professional Services Contract** for Parking Structure Condition Audit, Walker Parking Consultants, \$53,000.00.

**F. Acknowledge receipt of petition to vacate:** rights-of-way in Goodman Subdivision, 2<sup>nd</sup> filing, consisting of all rights-of-way of Julaura lane, Thresa Drive, Thresa Place, Vanessa lane, Avenue D, and portions of Avenue C), Jerry Goodman, etal petitioners, and setting a public hearing date for 6/14/04.

**G. Acknowledge receipt of petition to vacate:** 2<sup>nd</sup> Avenue South between South 26<sup>th</sup> Street and South 27<sup>th</sup> Street, Yellowstone Health Partnership, petitioner, and setting a public hearing date for 6/14/04.

**H. Acknowledge receipt of petition #04-06 to annex:** a vacant 38.6 acre parcel located on the west side of 54<sup>th</sup> Street West between Colton Boulevard and Grand Avenue, Mary Kramer, petitioner, and setting a public hearing date for 6/14/04.

**I. Approval** of Bill of Sale and Agreement to Move Abandoned House and Barn for two structures at 3410 Poly Drive, Mike Adkins Construction, \$1.00.

**J. Acceptance of Quit Claim Deed** for right-of-way acquisition in T1N-R25E-S33: SE4, Shiloh United Methodist Church, \$35,718.10. (Delayed from 4/26/04).

**K. Resolution 04-18124** providing for park areas for public use by persons accompanied by pets.

**L. Resolution of Intent 04-18125 to Create PMD #4025** in Rehberg Ranch Subdivision, and setting a public hearing date for 6/28/04.

**M. Second/final reading ordinance 04-5281 for Zone Change #732:** A zone change from Residential-9,600 to Residential Professional, Residential-7,000 and Public on portions of Ironwood Subdivision 1<sup>st</sup> and 2<sup>nd</sup> 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.

**N. Second/final reading ordinance 04-5282 amending** and superceding BMCC Section 15-104(a)-(e); and 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.

**O. Second/final reading ordinance 04-5283 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.

**P. Second/final reading ordinance 04-5284 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.

**Q. Preliminary Minor Plat** of Hardy Subdivision, Amended Lot 5, Block 1, generally located in Billings Heights at the northwest corner of the intersection of Bench Boulevard and Lambrecht Lane.

**R. Final Plat** of Lake Hills Subdivision, 29<sup>th</sup> filing.

**S. Final Plat** of Lake Hills Subdivision, 30<sup>th</sup> filing.

**T. Final Plat** of Midland Subdivision, 3<sup>rd</sup> Filing, Amended Lot 5, Block 3.

- U. Bills and Payroll.**
- (1) April 23, 2004
- (2) April 30, 2004
- (3) May 7, 2004

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

Councilmember Boyer separated Item M of the Consent Agenda. Councilmember Clark separated Items J & K of the Consent Agenda. Councilmember Jones separated Items Q & N of the Consent Agenda. Councilmember Brown separated Item G of the Consent Agenda. Councilmember Ruegamer moved for approval of the Consent Agenda with the exception of Items G, J, K, M, N and Q,

seconded by Councilmember Iverson. On a voice vote, the motion was unanimously approved.

Councilmember Ruegamer moved for approval of Item G of the Consent Agenda, seconded by Councilmember Iverson. Councilmember Brown asked why the City would “give” the right-of-way to the Yellowstone Health Partnership/Yellowstone City-County Health Department for \$1.00 per square foot when they are willing to pay \$2.50 per square foot. City Administrator Kristoff Bauer said this is for the expansion of Deering Clinic and they are aware that the value of the land is \$2.50 per square foot, but have requested the City sell it a \$1.00 per square foot. The purpose would be to support the expansion of the Clinic in which the City has a partnership with the County regarding the City/County Health Department. This would allow expansion of the parking area to the south.

Councilmember McDermott asked what price other parcels on South 27<sup>th</sup> Street have previously sold for. Community Development Manager John Walsh said the most recent sales were \$2.50 per square foot. Councilmember Jones asked what portions the City and the County contributed to this sale. Mr. Bauer said there has been a transaction where the City and County “swapped” land that involved “very favorable terms” for the County. The vacation of this land was discussed at the time of the land swap, but price was not discussed at that time. He noted the Deering Clinic is supported by tax dollars from the County and the City. Councilmember Brewster said this is a good investment because those citizens that utilize the Deering Clinic would alternately be using the hospital services at a higher cost to the City. On a voice vote, the motion was approved with Councilmember Brown voting “no”.

Councilmember Ruegamer moved for approval of Item J of the Consent Agenda, seconded by Councilmember Iverson. Mr. Bauer requested the Council delay this item to the July 12<sup>th</sup> meeting to allow further discussions with the property owner. Councilmember Ruegamer withdrew his motion and offered a substitute motion to delay approval of the Quitclaim Deed to July 12<sup>th</sup>, seconded by Councilmember Brewster. On a voice vote, the substitute motion was unanimously approved.

Councilmember Ruegamer moved for approval of Item K of the Consent Agenda, seconded by Councilmember Iverson. Mr. Bauer noted that the Master Plan for Meadowlark Park recommended the park not be used as a pet park and he requested the Council remove item “i” - all of Meadowlark Park on Cody Drive and Covert Lane from the proposed resolution. Councilmember Brewster amended the motion to accept the resolution, but strike item “i” regarding Meadowlark Park from the resolution, seconded by Councilmember Boyer. On a voice vote, the amendment was unanimously approved.

Councilmember McDermott asked if the City needs 90 signs for a cost of \$9,000. She asked if the City could “get by with fewer signs” regarding the notations of the pet area. She said she is also concerned with the \$8,000 expense for pet waste removal containers. Mr. Bauer said this cost is the amount estimated it would take to adequately inform the public of these uses. Councilmember McDermott said she is not willing to spend this much money until the budget is balanced. Mr. Bauer recommended a reduction in signage or removing the signage requirement (Item 2). Councilmember Brewster amended the resolution to strike the requirement for signage and for the pet waste dispensers, seconded by Councilmember Jones. Councilmember Boyer said she

is concerned about removing the signage requirements which may cause ambiguity. Councilmember Gaghen suggested including a mailer in the public utilities bill to inform citizens of the designated areas where pets are allowed in the parks. Councilmember Iverson suggested notification via the City Link or the newspaper as the cost of mailers in the PUD bills is approximately \$2400.

Parks and Recreation Director Don Kearney noted there have been people cited for having animals in the park illegally. He said the Parks Department gets a lot of calls asking where citizens can take their dogs, so there is a need for this communication. The dog waste dispensers are proposed because of the large volume of dogs in the parks and concern for sanitation control. On a voice vote, the amendment was approved with Councilmember Boyer voting "no".

Councilmember Poppler suggested a public service announcement and notification in the newspaper that certain parks are being opened for pet use. This would "go a long way to informing the public". Mr. Bauer clarified the motion as only removing paragraph #2 in the resolution as there is no mention of the pet waste disposal materials in the resolution. On a voice vote, the motion as amended was unanimously approved.

Councilmember Ruegamer moved for approval of Item M of the Consent Agenda, seconded by Councilmember Brown. Councilmember Boyer said she has concerns about the Zoning Commission denial due to the impact on traffic and the zoning not fitting with the character of the surrounding area. She said changing the zoning to Residential 7,000 is not appropriate for that area. Councilmember McDermott said she understood that the Zoning Commission denial was reversed, but the delay in this item was to allow the developer to meet with the concerned neighbors to resolve issues. Mr. Bauer said it is hard for the City to judge whether all the concerns of the neighbors have been addressed. He noted there were several efforts on the part of the developer to meet with those concerned residents and the result of that process was addressed at the last council meeting. Councilmember Brown said he is sure the developer would not do anything to denigrate the area because he owns a house in that area. He added many of the protesters live outside of the area. He suggested delaying this item until the results of the neighborhood discussions have been reviewed. Councilmember Boyer said there are serious issues on this request, as the Council rarely gets the input they have received from the Zoning Commission. Councilmember Jones noted the staff recommendation was for approval, the Zoning Commission recommended denial, so there are conflicting reports. He agreed with Councilmember Brown - the developer has property in the subdivision and would not be inclined to devalue his own property. On a voice vote, the motion was approved with Councilmembers Poppler, Boyer and Gaghen voting "no".

Councilmember Ruegamer moved for approval of Item N of the Consent Agenda, seconded by Councilmember Iverson. Councilmember Jones said he is concerned with the City's \$47,800 contribution to the Air Pollution Control Board, which is a 20% increase. Mr. Bauer said in the past the amount was based on an arbitrary share. There was an audit of the services provided by the agency to each of the entities. From this audit, the costs were divided according to proportionate share, to be reviewed on an annual basis. He noted the services have not increased in price; there has been an adjustment in the division of the costs of the programs based on the service being

provided. Air Pollution Control Board Director Russ Boschee said last year's request was for \$49,000 but the funding was frozen at the prior year's \$40,000 level. This level has been frozen at \$40,000 for the last three years.

Councilmember Brown asked if this is a duplication of a federal program. Mr. Bauer replied "no".

Councilmember Brewster noted there are different time allowances for each participant to back out of the contract. Mr. Bauer noted there are three cities and the City/County Board of Health that are part of this process. The cities' clause requires a year termination period, but the City/County Board of Health can withdraw with limited notice. It is assumed the City/County Board of Health would not take action that is inconsistent with the stakeholders, the City being one of those stakeholders. Another purpose is to protect the City/County Board of Health in the event that one of the other participant withdraws from the agreement and funding requirements would fall to the City/County Board of Health. Mr. Bauer noted the Council would be approving funds for this board for the next two years with this agreement. There is an arbitration process that is available when the budget is disputed. Councilmember Gaghen noted the City could opt out of the agreement and this program would be administered by the State where by the City could be billed at a higher cost. This agreement affords the City some local control, she added. Councilmember Brewster explained that required funding does not give local control; what the City has is an unfunded mandate that the City funds locally or are billed and the City funds locally. He said he does not see this as local control.

Mr. Bauer asked the Council to amend the ordinance to correct a typographical error on page four in the "Now therefore" section, where The City of Laurel should read "The City of Billings". Mr. Bauer noted there is the opportunity to have local control by placing representatives on the Air Pollution Control Board to administer the program. This mechanism will give the City and the Council a closer oversight of the program over time. There is also the option to change the composition of the services in the program affording an enhanced level of program management as opposed to the mechanism in the current agreement.

Councilmember Jones noted there are 2 of 15 positions on the Board of Health that are City positions, which does not afford a lot of control. Councilmember Jones amended the motion to change the contract on page fourteen, item two regarding "the parties proportionate share....shall not increase more than" to be changed from 25% to 10% and the correction of the City of Laurel wording to the City of Billings as noted by Mr. Bauer, seconded by Councilmember Brewster. Stewart Kirkpatrick, attorney for the City/County Health Department said he is the principal drafter of the agreement document. He said many people are involved in the creation and negotiation of this contract. There are four ordinances pending, so the amendment change would require amendments to those ordinances to recreate the document. The State meeting for the Air Pollution Control Board is scheduled for June 4<sup>th</sup> to approve the entire program. Mr. Kirkpatrick said if the agreement is not able to fund the program and operate the Air Pollution Control Board program, then ultimately the City/County Health Department and the program are compromised. It would be a significant and lengthy process to restart this ordinance approval process.



Councilmember McDermott asked if the percentage could be re-evaluated during the next budget process. Mr. Bauer said amending the agreement would always require adopting ordinances approving a new interlocal agreement. Mr. Kirkpatrick said an amendment provision has been included in the interlocal agreement under miscellaneous provisions that the agreement may be amended by written modification by the parties without an ordinance approving the amendment except for the matters described in MCA Section 7-11-1106 (re: multi-jurisdictional service agreements).

Councilmember Poppler said this has been created and negotiated by a competent attorney and reviewed by the City's legal department. It would be inappropriate for the Council to change the terms of the agreement at this point. Councilmember Jones noted that all parties would have to agree to future changes in the amendment, but if the Council wants to change the percentage, the time to do it is now. It is not in the best interests of the City to allow the 25% with the status of the current budget. Councilmember McDermott asked what the timeframe is for Yellowstone County to change their ordinance (which has been adopted). Mr. Kirkpatrick said that could take 30 to 60 days, which would interfere with the June 4<sup>th</sup> State deadline and complicate adoption of the agreement. On a voice vote, the amendment failed with Councilmembers Brewster, Clark, Jones and Brown voting "yes".

Councilmember Iverson amended the motion to change the word Laurel to Billings on page four of the ordinance, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.

Councilmember Jones said he was concerned that the Council did not see prior versions of the agreement and ordinance during this process. Mr. Bauer reminded the Council that this is the second reading of this ordinance, having been a public hearing on May 10<sup>th</sup>. This draft agreement and ordinance were provided to the Council three weeks prior to the first reading. On a voice vote, the motion as amended was approved with Councilmembers Clark, Jones, Brewster and Brown voting "no".

Councilmember Ruegamer moved for approval of Item Q of the Consent Agenda as revised, seconded by Councilmember Brewster. Councilmember Clark asked what the status of this plat is with regard to the comments of the speaker who noted that if the conditions are not changed the plat should be denied. Mr. Bauer said if the Council denies the preliminary plat, the subdivision cannot progress forward and the platting process would have to start again. Mayor Tooley asked if the revised document contains the conditions the applicant is willing to accept. Mr. Hardy stated that the conditions have not been changed to his satisfaction. Mr. Bauer said the Staff is not aware of the communication between the developer and the Council, but said the key issue is the requirement that improvements be part of the project. The developer desired to have waivers of protest utilized, Mr. Bauer noted. He said the Staff is trying to comply with the Council's desire to have improvements required as part of the platting process rather than allow waivers of protest to be executed.

Councilmember McDermott stated she did not know there was an official policy that waivers of protest were not going to be acceptable. Mr. Bauer said the Staff has been trying to follow the growing consensus of the Council with regard to Waivers of Protest. Councilmember Brewster made a substitute motion to delay action to the end of the agenda to allow discussion between the City Attorney and the developer for a

delay, seconded by Councilmember Ruegamer. On a voice vote, the substitute motion was unanimously approved.

Mayor Tooley called for a recess at 8:05 P.M.  
Mayor Tooley reconvened the meeting at 8:15 P.M.

## **REGULAR AGENDA:**

### **2. PUBLIC HEARING AND RESOLUTION 04-18126 amending the FY2004 budget to provide funding for the Air Quality Control Board. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

There was no staff report. The public hearing was opened. RUSSELL BOSCHEE, 214 PUEBLO DRIVE said he is the director of the Air Pollution Control Board and supports the budget amendment. He said the agency has been effective in improving the air quality in Billings and the resolution warrants the Council's support.

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

### **3. PUBLIC HEARING AND RESOLUTION OF INTENT 04-18127 TO ADOPT the Yellowstone County and City of Billings' 2004 Heritage Trail Plan, aka the Greater Billings Non-Motorized Trail System. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

BikeNet Coordinator Darlene Tussing gave an update of the BikeNet plan originally adopted in 1995. She said it is a multi-user trail system, not just for bikes but all forms of non-vehicular traffic. This is also an opportunity to achieve a stronger policy, vision and celebration of heritage linking historical and cultural sites with an interpretive component. This update relates to other City plans such as the Transportation Plan and the 2003 Growth Policy, updating classifications so it is consistent with national standards and also an opportunity to include funding and development opportunities.

Ms. Tussing said there was public participation in the planning process when the project was introduced at the Joint City/County meeting in Laurel. There were three public meetings held and an Internal Steering Committee comprised of Staff, City Administration and Council representation. The consulting firm also sought input from various user groups. Part of the study included an inventory of existing facilities including current easements and right-of-way preservation.

She stated the inventory of non-motorized facilities includes 10.2 miles of hard surface trails and 9 miles of soft surface trails (off-street facilities). There are 3 miles of on-street bikeways. She noted the totals from the trail census conducted on Thursday, May 29<sup>th</sup> and Sunday, June 1<sup>st</sup> of 2003 on both the Kiwanis/Metra/Coulson Trail and the Descro Park Trail were 1047 bikers, 37 runners, 738 walkers, 64 skater/scooter users, and 50 passengers.

Ms. Tussing said the plan includes policy implementation, program implementation, facility implementation and historical/cultural opportunities. This plan allows for an evaluation criteria for off-road and on-street connectors. The criteria includes safety,

connectivity, accessibility, route continuity, aesthetics, recreation value, travel demand, a (BCI) bicycle compatibility index for on-street riding and public opinion. Ms. Tussing noted the maps show potential corridors for connections.

The public hearing was opened. SUZANNE MCKIERNAN, 2931 TARTAN ROAD, said she is the chair of the BikeNet Board. She said BikeNet is an independent 501(c)(3) non-profit community organization with 110 members. Their mission is advocacy for trails and the acquisition and development of a countywide trail system. She urged the Council to adopt the Heritage Trail Plan. The plan and the vision of BikeNet are a good fit with the vision of being a community connected by multi-use trails. She applauded the thoughtfulness of the plan and the opportunity for community input. Ms. McKiernan said this plan gives the needed and critical direction for a community framework of recreational activities. She said the Council's adoption of the Heritage Trail Plan would show support for a healthier lifestyle, address quality of life issues and provide alternative modes of transportation. This plan looks ahead and shows the community what is possible.

KIM PRILL, 2115 PARK RIDGE DRIVE SOUTH, asked the Council to approve the Heritage Trail Plan. She said the plan is a vision that requires gumption. She said without a plan it is difficult to ascertain funding and look for potential partners to provide easements and rights-of-way. In the past transportation plans have been layered upon each other and this does not work. This plan provides for all types of traffic and enjoyment without the interference of motor vehicles. Ms. Prill said greenways and bike paths ultimately lead to healthier communities. She asked the Council to support the Heritage Trail Plan.

JONAH MICHAEL PRILL, 2115 PARK RIDGE LANE SOUTH, said his family uses the bike trail. He asked the Council to approve the Heritage Trail Plan.

JOHN SPENCER, 1001 SENORA AVENUE, said he is the president of the Yellowstone River Parks Association. He said the Heritage Trail Plan fits within the Billings Greenway Plan and provides greenway access along the river. He noted YRPA has built many of the gravel trails. He urged the Council to approve the Heritage Trail Plan.

EMILY CARTER, 2401 SUNNYVIEW LANE, said she is a board member of the BikeNet Board. She said she supports the Heritage Trail Plan as a blueprint for the citywide trail network. Ms. Carter said she looks forward to the expansion of a linked trail network throughout the city because they promote a healthy lifestyle, community vitality, and a safe route for commuters and children separate from vehicular traffic. She urged the Council to approve the proposed plan and continue support of this positive element.

JEFF HANDLIN, 821 N 31<sup>ST</sup> STREET, said he is a member of BikeNet and the Yellowstone Valley Cycling Club. He said he supports the Heritage Trail Plan. This plan will have a significantly positive social impact on the community. He noted that people are reluctant to cycle or walk because of the abundance of speeding cars with which they must share the road. Our dependence on cars for transportation has increased social problems, urban sprawl, obesity, traffic congestion, pollution, unsafe streets and road rage. These problems could be greatly reduced with more use of walking, cycling and other non-vehicle modes of transportation. He noted the dilemma is that Billings has a small infrastructure to support the non-motorized transit as a feasible choice. Mr. Handlin said the approval of the Heritage Trail Plan would give Billings' residents a safe, cost effective, non-motorized transportation choice. He asked the Council to approve the plan.

SHELLY HARRIS (WITH DAUGHTER KENNEDY HARRIS), 412 NORMANDY DRIVE, said she is on the board of BikeNet, a member of the Yellowstone Valley Cycling Club and a board member of the Montana Bikers' Association. She noted Missoula has a great bike trail system that makes it safe to ride on the streets and is user friendly. The City of Billings is not bike user friendly as she has been hit by a car while riding. A nice trail system where her daughter Kennedy can ride with the family will add value to the community and is what their family envisions. She urged adoption of the Heritage Trail Plan.

GRANT HARRIS, 412 NORMANDY DRIVE, said he is a member of the Yellowstone Valley Cycling Club. He said he supports the Heritage Trail Plan. He said he often races and travels by bicycle and having an organized and well established trail system in this community is very important. He noted that he has had several close calls with vehicles and having a good trail system would eliminate this problem. He urged adoption of the plan.

DONNA HIMMELBERGER, 233 SWORDS LANE, said the Heritage Trail Plan is good for the community, but she encouraged the Council to be aware of personal property rights that are associated with the trail system.

JOE WHITE, 926 N. 30<sup>TH</sup> STREET, said he supports the Heritage Trail Plan as it provides a healthy outlet for people to enjoy nature.

LOIS SCHROEDER, 204 EMERALD DRIVE, said she echoes Ms. Himmelberger's comments. She said most of the trail completed to this point is on public property and new subdivisions are encouraged to include trails in their planning, but some trails will go through areas that are long established neighborhoods. Some of the plan appears to cross private property and those affected have a problem with the "blanket" approval of the Heritage Trail Plan. Ms. Schroeder encouraged the Council to be aware of those private property owners' concerns also.

There were no other speakers. The public hearing was closed. Councilmember Boyer moved for approval of the Staff recommendation, seconded by Councilmember Gaghen. Councilmember Brown suggested adding a caveat about respecting private property. He said he would not support the plan if it involves the condemnation or taking of private property. Ms. Tussing reminded the Council that the plan is only a suggested alignment for connections. It identifies areas that are only a potential for trails. She noted the staff would still have to work with private property owners and neighborhoods for actual individual trail segments. She said the plan follows many drainage ways because individual connections must be made while avoiding vehicular traffic. Easements are another avenue to pursue for trail access. Ms. Tussing said the Staff would always try to create a win-win situation where citizens are pleased with the results. She noted in twenty miles of trails there are presently no lawsuits regarding private property issues.

Councilmember Brewster said the City has a long tradition of negotiation and not condemnation especially when a compelling public interest is involved. For those concerned about this issue, they may take some assurance in past practices. Ms. Tussing said the idea of the plan is that as the community develops and grows the trail system identified via the plan can be preserved when changes in land ownership are made.

Councilmember Boyer said the Heritage Trail Plan would serve to attract more businesses and people to this community because of what the City has to offer. Councilmember Gaghen noted this is a long-range plan with the hope that in ten or twenty

years the plan would be achieved. Ms. Tussing agreed and said the plan is a vision to work toward with thoughtful consideration.

Mr. Bauer noted the resolution should be amended to say "as amended by Attachment A" in the last paragraph. Councilmember Gaghen amended the motion to include Attachment A, seconded by Councilmember Ruegamer. On a voice vote, the amendment was approved with Councilmember Brown voting "no". On a voice vote, the motion as amended was approved with Councilmember Brown voting "no".

**4. PUBLIC HEARING AND FIRST READING ORDINANCE amending the BMCC by revising Section 27-713 to expand the Montana Avenue Sign District. 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 as revised, seconded by Councilmember Boyer. Councilmember McDermott clarified the revision as being from 30<sup>th</sup> Street to 22<sup>nd</sup> Street. On a voice vote, the motion was unanimously approved.

**5. PUBLIC HEARING AND SPECIAL REVIEW #754: A special review to allow a townhouse in a Residential 7,000 zone on Lot 8, Block 3, Meadowlark Subdivision, and located at 1954 Lake Elmo Drive. Thomas C. Koelzer, owner. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

Planning Department Staff Member Juliet Spaulding said this special review, located on the southwest corner of Lake Elmo Drive and Kathy Lane, is to allow a townhouse in a Residential 7,000 zone. The surrounding zoning to the north and west is Residential 7,000, and to the east Residential 6,000. The subject property is 11,908 square feet and currently vacant with a building permit in process. She noted a subdivision must be done to allow two owners on this property. In Residential 7,000 zoning a duplex or a similar structure is allowed.

She said the Zoning Commission is recommending approval with two conditions:

1. The two-unit townhouse shall be built according to the proposed site plan submitted with the Special Review application.
2. The final plat of the subdivision of this lot shall be filed prior to building permit issuance by the Planning Department.

Councilmember Brewster asked if street improvements would be made on Kathy Lane to correct significant flooding problems in the alley. Ms. Spaulding said she is not aware of any plans, but the developer may be required to maintain stormwater drainage through the subdivision.

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

**6. PUBLIC HEARING AND SPECIAL REVIEW #755: A special review to allow outside storage in the South 27<sup>th</sup> Street Corridor Zoning District on Lots 1-12, Block**

**26, Sugar Factory Addition #1, and located at 1120 South 27<sup>th</sup> Street. Energy Laboratories Inc., owner; Jerry Jones/Jones Construction, agent. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

Zoning Coordinator Jeff Bollman said this request for outside storage must go through the special review process. The property is a portion of the Energy Laboratories' property located west of South 27<sup>th</sup> Street. The specific area for the proposed argon (an inert gas) tank storage is a small area along the alley. This tank would allow for a reduction in deliveries of this gas to the lab. The tank is approximately 15 feet in height. He noted the Fire Department had no concerns about this storage facility.

Mr. Bollman said the Zoning Commission held a public hearing on May 4<sup>th</sup> and is recommending approval with the following conditions:

1. Approval for outside storage shall only apply to the proposed argon tank.
2. The storage area shall be developed as shown on the submitted site plan, including the 6' ornamental iron fence.

The public hearing was opened. JERRY JONES, 2225 BRIARWOOD, said he works for the contractor doing work for Energy Laboratories. Argon is used for many different procedures, all of which are non-hazardous. He noted there are multiple deliveries four or five times a week to keep up with their demand. The delivery frequency would decrease to once every five weeks with use of the proposed storage tank. Currently these deliveries are a traffic nuisance for the neighborhood. The storage tank would hold 1500 gallons and decrease costs for them also. Mr. Jones said the product is a cryogenic used to freeze things quickly. He noted there would be an ornamental fence around the storage tank covering most of it, especially the portion where all the connections and less attractive features are. Visually it would be difficult to see the tank from 27<sup>th</sup> Street. The argon would be piped underground fifteen feet to the building where it is used.

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

**7. PUBLIC HEARING AND SPECIAL REVIEW #756: A special review to allow outside storage of supplies for a construction company and limited truck assembly in a Highway Commercial zone on Tract 1, C/S 1798 and Lots 1-3, 10-11, Block 1, Superior Homes Subdivision, and located at 536 Kathy Lane and 525 Jerrie Lane. Northwest Development LLC, owner. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

Zoning Coordinator Jeff Bollman said the property for this special review was previously before the Council for a zone change in March of 2004. The entire property is zoned Highway Commercial, the area to the south is zoned Commercial, and the area to the west and north is Residential with some Commercial along and across Main Street. The type of assembly this business would be doing is adding a tanker to a truck or other limited assembly. No fabrication would be involved.

Mr. Bollman said the Zoning Commission held a public hearing on May 4<sup>th</sup> and is recommending approval with the following conditions:

1. A 6' sight-obscuring wood or vinyl fence or sight-obscuring evergreen vegetation (shrubs and/or trees) that are at least 4' in height at the time of planting shall be located on the north property lines of Lots 10 and 11 to obscure the view of the open storage from the properties on Kathy Lane.
2. Any type of limited truck assembly shall take place only in the existing buildings or immediately around the existing buildings.

The public hearing was opened. RON RUBY, 3226 ROSEMONT WAY, said he is the agent for Northwest Development. He said he would answer any questions. In answer to Councilmember Brown's question, he said the hours of operation would be during the day, generally 7 or 8 AM to 5PM.

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

**8. PUBLIC HEARING AND SPECIAL REVIEW #757: A special review to allow the location of a beer and wine license with gaming in a Controlled Industrial zone on Tract 3, Studer Acreage Tracts Subdivision (proposed Lot 3A, Amended Tract 3, Studer Acreage Tracts Sub.), and located at 3042 King Avenue West. Ted Godwin, owner; Paul Ward, agent. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

Planning Staff Member Juliet Spaulding said this special review is located on the south side of King Avenue West just east of 31<sup>st</sup> Street West and is for a beer and wine license with gaming in a Controlled Industrial zone. The surrounding properties are the Menholt Car dealership, Liberty Motors and Dave's Famous BBQ, which has a similar beer and wine license. Currently an auto dealer is on the property. She said there are no uses within 600 feet that require the waiver of separation.

Ms. Spaulding noted the Council approved the preliminary plat to subdivide this tract into four parcels. This special review concerns one of the four parcels, Tract 3A. The parcel is 6,633 square feet in size.

Ms. Spaulding said the Zoning Commission is recommending approval with the following conditions:

1. The special review approval shall be limited to proposed Lot 3A of Tract 3 Amended, Studer Acreage Tracts Subdivision as shown on the site plans submitted with this application.
2. The site shall be landscaped according to the proposed plan provided with the Special Review application.

Councilmember Poppler asked what access would be used for the facility. Ms. Spaulding said there are two access points, a left hand turn across King Avenue West at the median break and right hand only turn onto King Avenue West. She noted there is another access point along Stella Avenue. She said during the review of the building permit, it is likely there would be a traffic accessibility study to address any traffic issues.

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

**9. FIRST READING ORDINANCE FOR ZONE CHANGE #731: A zone change from Residential 9,600 to Residential 7,000 on a 80-acre parcel described as the south 1728' of Tract 3A, C/S 3217 Amended, and generally located on the north side of Mary Street between Hawthorne Lane and Bitterroot Drive. B & R Development, owners. Zoning Commission recommends approval. (Public hearing held 4/26/04). (Action: approval or disapproval of Zoning Commission recommendation.)**

Planning Staff Member Juliet Spaulding said this is the second time this zone change has been before the Council. The request is to change an 80-acre parcel from Residential 9,600 to Residential 7,000 zoning. The surrounding zoning to the north and south are Residential 7,000 (with pockets of City and County to the south with some larger lots), to the east and west are Agricultural Open Space and Agricultural Suburban. The agriculturally zoned areas are in the County.

Ms. Spaulding noted the property was annexed on August 25, 2003 and was zoned Residential 9,600 by default at that time. On April 6, 2004 the Zoning Commission held a public hearing and voted 3-2 to recommend approval of the zone change. On April 26, 2004 the Council held a public hearing and delayed the decision to this evening. She noted the developers held a neighborhood meeting on May 5, 2004 to discuss the project and address the concerns of the neighbors. Notice was sent to all property owners within 300 feet of the zone change and eighteen citizens attended the neighborhood meeting. She noted the neighbors concerns included: impacts to Mary Street and Bitterroot Drive (access points and construction of improvements), impacts to the ditch along Mary Street and Bitterroot Drive, potential hazardous materials buried at the site, concern about duplex housing, concerns about quality of life being diminished, and impacts on neighborhood wells. Ms. Spaulding said the developer and engineers responded with the following:

- A Traffic Accessibility Study will address the widening/access needs for Bitterroot and Mary St. and the timing/funding of the improvements.
- The Ditch along Mary and Bitterroot will be maintained, and moved or piped if necessary due to street improvements
- An Environmental Assessment (during the subdivision review process) will be done, including core sampling to identify subsurface features. Anything hazardous would be mitigated.
- No duplexes are proposed.
- Access onto Bitterroot would be evaluated carefully based on site distance needs.

Ms. Spaulding said other discussions for possible solutions to neighborhood concerns led the developers to file with the Clerk and Recorder's office covenants and restrictions to ensure three points that were agreed upon at the neighborhood meeting:

- Duplexes or multi-family dwellings are prohibited.
- Residential lots along Bitterroot Dr. and Mary St. along the property's East and South boundaries shall be 9,600 square feet or more.
- No new water wells are allowed.

Covenants and restrictions cannot be amended except by at least 75% of the property owners within 150 feet to the south and east of the subject property. Ms. Spaulding noted this zone change has a valid protest petition filed. A protest petition was submitted on April 5<sup>th</sup> that was reported to the Council at the previous meeting,



signed by 63% of the property owners within 150 feet. This necessitates a 2/3 approval vote of the Council this evening. A second protest petition submitted on May 21<sup>st</sup> was signed by 66 people and involved 45 properties. There were 4 repeat signatures from the previous petition and the signatures were primarily from properties in Quarter House Acres Subdivision, Whitetail Subdivision and properties four blocks away in both directions on Mary Street. She noted only 3 of the 18 citizens that attended the neighborhood meeting signed the new petition. She said the new petition contains signatures of property owners that are not within the 150-foot radius.

Ms. Spaulding said the Zoning Commission is recommending approval as it is consistent with the Growth Policy and potential negative impacts would be reviewed and mitigated at the time of the subdivision process.

Councilmember Brewster asked if there is a time limit on the covenants and restrictions before they can be amended. Ms. Spaulding said the covenants are in effect for 25 years. She said "the declarations may be amended during the 25 year period by an instrument signed by the owners of the real property described herein and not less than 75% of the real property described herein and not less than 75% of the owners of the real property within 150 feet south and east of the above described property". She noted the covenants are enforced privately (in civil court) and not through the City.

Councilmember Brown moved for approval of the Zoning Commission recommendation, seconded by Councilmember Ruegamer. Councilmember Brewster said buffers should be created when developments like this are placed near the County and large acreage lots.

Councilmember Poppler asked if the second protest superceded the first valid protest. Mr. Bauer noted the second protest was informational and the first valid protest is still in effect. Councilmember Boyer said she was concerned about the protesting comments during the public comment period. Councilmember Brewster said these comments result from media attention to non-noticed property owners who are outside of the required notification area. Mr. Bauer suggested the Council should be aware that many of the protesters are a significantly greater distance away from the zone change than 300 feet. Councilmember Brewster noted that buffering and traffic issues could be addressed during the subdivision process. On a voice vote, the motion was approved with Councilmembers Poppler, Gaghen and McDermott voting "no".

**10. RESOLUTION 04-18128 AUTHORIZING THE SALE OF CITY-OWNED PROPERTY described as Lots 8-10, Block 164. O.T. and located on the 200 Block of South 27<sup>th</sup>. Street to Northern Plains Resource Council for \$26,250.00. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

There was no staff report. Councilmember Brewster moved for approval of the Staff recommendation, seconded by Councilmember Gaghen. Councilmember Brown said he is still concerned with the sale price of \$26,250. He said the City should be getting more money for this property. He is also concerned that a tax-exempt organization will own the property and not contribute to the tax base or General Obligation bonds. He suggested an appraisal is needed.

Councilmember McDermott asked why there is a difference in the per square footage price in this item and Item #11. Community Development Manager John Walsh said the difference is due to the discount for the 27<sup>th</sup> Street Redevelopment District and the incentive for paying cash. In addition, bids were advertised for this property and that was their bid amount. They were the only bidder, he added. Councilmember Gaghen noted this sale “gets rid of three lots of a seven lot blighted” area and allows for redevelopment of an attractive green space development. She said she supports their efforts. On a voice vote, the motion was approved with Councilmembers Brown, Brewster, Jones, Poppler and Clark voting “no”.

**11. RESOLUTION 04-18129 AUTHORIZING THE SALE OF CITY-OWNED PROPERTY described as Lots 1-2 and fraction of Lots 3-10, Block 245, Sugar Factory Addition and Lots 11, 12, 20-21 and fraction of Lots 3-10, Block 245, Billings Second Addition to RGB Investment LLC for \$142,600. Staff recommends conditional approval. (Action: approval or disapproval of Staff recommendation.)**

Councilmember Ruegamer moved for approval of the Staff recommendation, seconded by Councilmember McDermott. Councilmember Brown asked if the property had been appraised. Mr. Bauer said it had not, but the potential sale went through a bid process, advertised through the Billings Times. Mr. Walsh noted this property was donated to the City in 1997 and the revenues from this sale would go into the General Fund. Councilmember McDermott asked if the \$142,600 is currently in the budget. Mr. Bauer noted this sale involves a property trade of \$93,000 with \$50,000 designated as revenue and it could be included in the budget. On a voice vote, the motion was unanimously approved.

**DELAYED ITEM**

**Q. Preliminary Minor Plat** of Hardy Subdivision, Amended Lot 5, Block 1, generally located in Billings Heights at the northwest corner of the intersection of Bench Boulevard and Lambrecht Lane.

Planning Director Ramona Mattix reported that the developer is willing to delay this item if the Council is willing to consider waivers of protest for future improvements. If the Council is not willing to consider waivers, he would prefer the Council either approve or disapprove the plat tonight. Councilmember Boyer asked for feedback from other cities and Councils as to how they handle waivers of protest. Councilmember Jones said this is a small plat and the Council should not hold up a project because the Council does not have a policy on waivers of protest. Councilmember Brewster moved to delay action to June 14<sup>th</sup>, seconded by Councilmember Jones. City Attorney Brent Brooks suggested that the developer, Mr. Hardy needs to concur and agree to the delay. Mr. Hardy concurred with the two-week delay for deliberation about the use of waivers. On a voice vote, the motion was approved with Councilmember Brown voting “no”. The item was delayed to June 14<sup>th</sup>.

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

NO SPEAKERS.

## **Council Initiatives**

- **COUNCILMEMBER RUEGAMER:** Councilmember Ruegamer moved to direct staff to bring information back to the Council for review of the franchise fees for water, wastewater and solid waste, seconded by Councilmember Boyer. Mr. Bauer noted there are different regulations that apply to the different utilities. The issue on solid waste could come to the Council as soon at the next meeting; the issues on water and wastewater would be delayed while it goes through a state required rate regulation process, most likely in the fall. On a voice vote, the motion was approved with Councilmembers Brown, Poppler, Jones, Clark and McDermott voting “no”.
- **COUNCILMEMBER MCDERMOTT:** Councilmember McDermott moved to direct the legal staff to review the definitions in Section 3-201 of the City Code and bring back recommendations for changes, seconded by Councilmember Gaghen. Councilmember McDermott noted this particular section has not been updated since 1967 and is vague. On a voice vote, the motion was unanimously approved.
- **COUNCILMEMBER JONES:** Councilmember Jones moved to form a committee comprised of staff and councilmembers to draft a policy concerning SIDs and Waivers of Right to Protest, seconded by Councilmember McDermott. On a voice vote, the motion was unanimously approved. (Note: Councilmembers Boyer, Jones, Clark and Brewster volunteered for the Committee)
- **COUNCILMEMBER CLARK:** Councilmember Clark moved to direct staff not to spend any more money on studying the property at 4<sup>th</sup> & Broadway and for the Council to make a decision on what to do with the property, seconded by Councilmember Brown. Councilmember Boyer asked where this leaves the project. Councilmember Clark said it is wrong to spend money on plans when the City is getting nothing in return. Councilmember Boyer said there are still options and citizen discussion opportunities and she would not want to stop the project at this point.

Mr. Bauer said he hoped the results of the citizen survey would identify a scope of alternatives that A & E could then provide the City with information and drawings for review by the property owners and the Downtown Partnership as a point of dialogue to generate information about what the potential could be for this property. Mr. Bauer stated that A & E is providing information that is beyond the expertise of the Staff. Councilmember Gaghen said this needs a little more study before it is “cut off”.

Councilmember McDermott said the City doesn’t have to rush into any big decision, but can use it for surface parking that would not cost a lot at this time. Mr. Bauer noted the timely issue concerns what the Council wants to do with the Library. Councilmember Clark make a substitute motion to **NOT** spend any more money on the A & E study of the 4<sup>th</sup> & Broadway property until the City receives the results from the MSU Survey and the results of the June 8 election concerning the bond issue for Cobb Field and the Heights Pool, seconded by Councilmember Jones. On a voice vote, the substitute motion was approved with Councilmembers Brewster, Iverson and Boyer voting “no”.

MINUTES: 05/24/04

**ADJOURN** – With all business complete, the Mayor adjourned the meeting at 10:45 P.M.

THE CITY OF BILLINGS:

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

ATTEST:

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