

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

## **September 13, 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 Peggie Gaghen.

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

**MINUTES – August 23, 2004.** Approved as printed.

### **COURTESIES – Lynne Fitzgerald.**

- Channel 7 Executive Director Lynn Fitzgerald, Dr. Jan Boden, President of the Board of Directors of Channel 7 and Jim Corcoran, Board Member presented a plaque to the Council that the station received for excellence in public access for stations with a particular size of budget. Ms. Fitzgerald thanked the Council for their continued support of the public access channel and the community service it provides.
- Councilmember Ruegamer noted that at an upcoming banquet, Councilmember Doris Poppler will receive the Distinguished Alumnus Award from the University Of Montana School Of Law at homecoming on October 8th for her work toward furthering opportunities for women in the legal profession. He described her distinguished 22-year legal career and numerous legal accomplishments.

### **PROCLAMATIONS – Mayor Tooley.**

- September: Library Card Sign-up Month
- September 16: Stepfamily Day
- September 18: Community Food Day
- September 18: Kids' Day America/International

### **BOARD & COMMISSION REPORTS – Parks, Recreation & Cemetery Board**

- Donna Hirt, Chair of the Parks, Recreation & Cemetery Board said the Board will be discussing the Stewart Park Master Plan in the coming months and an update will be forthcoming. It will address the expansion and management plan of the trail system. The Veterans Park shelter relocation is also being discussed. The upgrade in the tennis courts has been discussed in regard to recognition of the contributions of the Billings Tennis Association. An ongoing Board discussion has been Amend Park and the request to place two skating rinks at the undeveloped east end of the park. Those facilities do not fit into the present Amend Park Master Plan, she noted. A public meeting will be held this Wednesday – Sept 15 at Newman Elementary School at 7:00 p.m. to discuss the request and potential changes to the master plan. She encouraged the community to attend the meeting and offer their input. She invited the Council to

attend as well. Ms. Hirt also noted that the Cobb Field/Heights Pool project is being revised by the Parks Dept. and will be a subject for future consideration.

**ADMINISTRATOR REPORTS – Kristoff Bauer.**

- City Administrator Kristoff Bauer asked that ITEMS O AND P be separated from the Consent Agenda for discussion of amendments. Proposed language for the amendments was prepared this afternoon and has been placed on Council desks this evening. He noted if the Council took action on revised Item O with the suggested amendments, the public hearing for Item 6 would not be necessary. Mr. Bauer suggested then that anyone wishing to speak on Item 6 should speak during the public comment period for Item 1 instead.

Councilmember Brewster moved to separate Item O from the Consent Agenda and consider it after the public hearing on Item 6, seconded by Councilmember Clark. On a voice vote, the motion was approved with Councilmember Brown voting “no”.

**PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Item: #1, #8, and #9 ONLY. Speaker sign-in required.** (Comments offered here are limited to 1 minute per speaker. )

- JANET DAVIS JONES OF 1728 NATALIE STREET said she intended to speak on the arterial construction fee. Given the direction during Administrator Reports, she said she will reserve her comments until Item 6.
- TOM ZURBUCHEN OF 1746 WICKS LANE spoke on Item O. He asked the Council to table the ordinance because as it is written it would be the only mechanism to fund arterial construction. The SID policy review needs to be finalized and incorporated with the arterial construction policy. An SID mechanism must also be available to construct arterials. He requested that a public hearing be held on both items.
- KEVIN NELSON OF 4235 BRUCE AVENUE asked that Item O be tabled. He noted he was surprised that the Mayor didn’t know that the ordinance would be setting fees. Mr. Nelson said he feels this is a discriminatory tax that is set by zoning. Mayor Tooley responded that he was aware there would be a vote on setting a fee, but thought that vote would be separate from the ordinance. It is a procedural confusion and not a confusion of facts, he added.
- LEON PATTYN OF 453 NEWMAN LANE asked to table Item O and go back to the drawing board. Based on the current proposal of a rate/zoning district and lot square footage his cost would be over \$200/year – in addition to the street maintenance fees already imposed. In addition he could be responsible for an SID for his street, he said.
- MARK FERGUSON, 1708 ST. JOHN’S AVENUE said he is a property owner at 222 and 226 Moore Lane. Moore Lane is a commercially used street in need of a water main, curb, gutter, sanitary sewer and storm drainage. He said he would like to have this street designated as an arterial to get these improvements underway.
- MIKE TEHLE, NO ADDRESS GIVEN, said he is also a property owner on Moore Lane. He started an SID petition in 2002 for full street improvements and water & sewer on Moore Lane, but the project seems to have died. He agreed with Mr. Ferguson’s request to designate Moore Lane an arterial street and to move the project

forward. Mr. Tehle said Moore Lane is in terrible condition and heavily used. Public Works Director Dave Mumford said the SID for Moore Lane is in process. He added the arterial designation is set through the Metropolitan Transportation Planning and the Policy Committee.

- RON HILL OF 2202 W. SKOKIE said street designation is based on the amount of traffic on the street. He noted he thought the arterial construction fee was a good idea, but the proposal needed some amendments, which he would address during the public hearing.

### **RECONSIDERATION:**

Councilmember Poppler moved for the reconsideration of Special Review #766: a special review to allow the location of a beer and wine license with gaming in a Community Commercial Zone on Lots 3-4, Block 2, Circle Subdivision, located at 1431/1451 Country Manor Boulevard, seconded by Councilmember Brown. Zoning Commission makes no recommendation. (NOTE: On 8/23/04 Council approved the special review with the four conditions recommended by the Planning Dept.) On a roll call vote, the motion for reconsideration failed 4-7 with Councilmembers McDermott, Brown, Iverson and Boyer voting "yes" and Councilmembers Gaghen, Brewster, Ruegamer, Poppler, Clark and Jones and Mayor Tooley voting "no". The previous Council action is affirmed.

### **CONSENT AGENDA:**

1. A. C.O.s #5 & #6, SID 1360: Gabel Road, JTL Group Inc., C.O. #5: \$151,484.73, C.O. #6: \$75,142.57.

B. C.O. #3, W.O. 03-11, Schedule I: 1<sup>st</sup> Avenue N. Accessibility Ramps, \$69,487.15 and 37 days.

C. Street Lighting Agreement with Northwestern Energy for SILMD #288, initial term: 2 years + 11 months, renewed automatically unless terminated by written notice.

D. Renewal of Non-Commercial Aviation Ground Lease with Montana Dept. of Fish, Wildlife & Parks, \$4803.73 for first year, adjusted annually by CPI-U, term: 10 years.

E. Extension of Airport Automobile Parking Concession Agreement with Standard Parking to 10/31/04.

F. Acceptance of Agreements for Public Bikeway/Walkway Trail in Midland Sub.:

(1) Lot 5A of Amended Plat of Lot 5, Block 3, Midland Sub., 3<sup>rd</sup> filing, Scott C. McRae and Audrey L. McRae, grantors.

(2) Lots 13A, 13B, 13C and 13D, Block 3 of Amended Plat of Lot 13, Block 3, Midland Sub., 5<sup>th</sup> filing, Scott C. McRae, Audrey L. McRae, David A. Veeder and Linnea J. Veeder, grantors.

**G. Acceptance of Easement** on a portion of Lot 23, Blk 26, Yellowstone Addition, 2<sup>nd</sup> filing, Albertson's Inc., grantor.

**H. Shiloh Road Right-of-Way Acquisition (Delayed from 8/09/04):**

(1) Acceptance of Warranty Deed from Gladys Anderson, Lot 2 of Blue Meadow Acreage Tracts, 2724 Shiloh Rd., \$644.49.

(2) Acceptance of Warranty Deed from Sharon Harvey and Colleen Krause, Lot 10, Block 1, Monty's Place Sub., 3959 Rimrock Rd., \$445.80.

(3) **Delay to 9/27/04** acceptance of Warranty Deeds and Agreements for ROW Acquisition from Lutheran Retirement Home, Inc., Lots 2-5 of Amended Lot 1, Blue Meadow Acreage Tracts and Tracts A, A-1, A-2, C/S 369 Amended, \$0.00. (Property exchange in lieu of payment).

**I. Suspend Action of Acceptance of Quitclaim Deed** and approval of Right-of-Way Agreement from Shiloh United Methodist Church for ROW Acquisition along Shiloh Road. (Delayed from 7/12/04).

**J. Street Closure requests for special events:**

(1) Downtown Billings Association request for the Harvest Festival, portions of N. 28<sup>th</sup> St., 2<sup>nd</sup> Ave. N and N. 29<sup>th</sup> St., October 9, 2004

(2) YMCA request for the 2004 Montana Marathon, portions of Molt Rd., Rimrock Rd., 38<sup>th</sup> St. W, Poly Drive, Virginia Ln., and Pioneer Park, September 19, 2004

**K. Resolution 04-18183** authorizing construction bids for SID 1358: Lake Hills Subdivision.

**L. Second/Final Reading Ordinance 04-5297 for Zone Change #737:** a zone change from Agricultural-Open Space and Residential Multi-Family Restricted to Residential 7,000 on a 5.93 acre parcel described as a portion of Tract 4B-2, C/S 1876 and a portion of Lot 11, Block 5 and all of Lot 12, Block 5, Goodman Subdivision, 3<sup>rd</sup> filing, and generally located on the west side of 41<sup>st</sup> Street West, between Avenues B & D.

**M. Second/Final Reading Ordinance 04-5298 for Zone Change #738:** a zone change from Residential 9,600 to Residential 8,000, Residential 7,000 and Residential Multi-Family on a portion of Tract 7A, C/S 2465 (to become a portion of Golden Acres Subdivision, 1<sup>st</sup> Filing) and generally located north of Rimrock Road and on the west side of Molt Road.

**N. Second/Final Reading Ordinance 04-5299 granting** Montana Dakota Utilities Co. an extension of their existing franchise to April 24, 2005 to operate a gas distribution system within the City of Billings.

**O. Second/Final Reading Ordinance** amending the BMCC, adopting an arterial construction fee to be assessed on each property in the City for the sole use of constructing/reconstructing the City's arterial roadway system. **CONSIDERATION MOVED TO AFTER PUBLIC HEARING ON ITEM 6. SEE ITEM 6.**

**P. 2005 Unified Planning Work Program** and recommendations for the Policy Coordinating Committee.

**Q. Preliminary Plat** of Golden Acres Subdivision, 1<sup>st</sup> Filing, generally located north of Rimrock Road and west of Molt Road.

**R. Preliminary Plat** of Menholt Subdivision, Amended Lot 1, Block 1, generally located at 3000 King Avenue West, (and granting a variance from BMCC Section 23-602).

**S. Final Plat** of Hancock-Grand Subdivision, Amended Lots 1A & 2.

**T. Bills and Payroll.**

- (1) August 6, 2004
- (2) August 13, 2004
- (3) August 20, 2004

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

Councilmember Jones separated Items A, E and F from the Consent Agenda. Councilmember Brown separated Item P from the Consent Agenda. Councilmember Iverson moved for approval of the Consent Agenda with the exceptions of Items A, E, F and P, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

Councilmember Iverson moved for approval of Item A of the Consent Agenda, seconded by Councilmember Gaghen. Councilmember Jones said this change order is rather expensive just to move a telephone pole. He said this should be the contractor's responsibility and asked staff to address this issue. Public Works Director Dave Mumford said there was an extreme delay from Northwestern Energy for moving the power poles on Gabel Road and 32<sup>nd</sup> Street West. The contractor tried to work around the delay but noted the excessive delay was outside of their control. He noted the original request was four times the amount of the change order. Because the delay was excessive and created by a third party a negotiated price was reached. Mr. Mumford confirmed that coordination of utility requests is the responsibility of the contractor. He added there is no mechanism to require the third party to cooperate with these requests. City Administrator Kristoff Bauer noted that Northwestern Energy is not a party to this contract and not regulated by the City. This can only be effectively managed through a franchise agreement, which the City does not have in place with Northwestern Energy. Mr. Mumford said this change order would be paid through assessment to the property owners via the SID. On a voice vote, the motion was approved with Councilmembers Brown, McDermott, Clark and Jones voting "no".

Councilmember Iverson moved for approval of Item E of the Consent Agenda, seconded by Councilmember Gaghen. Councilmember Jones said the Staff is working on another contract for the future. He said there are many complaints about the delays exiting the parking area when flights come in simultaneously. He suggested the staff consider a prepay method to relieve the bottleneck at the exit point. Mr. Bauer said the staff is well aware of this problem and are looking at three different alternatives to relieve this concern. For the short term, lifting the gates and emptying the parking lot is currently employed, however this does cause a loss of revenue. On a voice vote, the motion was unanimously approved.

Councilmember Iverson moved for approval of Item F of the Consent Agenda, seconded by Councilmember Gaghen. Councilmember Brown asked if the City is pressuring the subdividers to provide land for the bikeway/walkway trails. Mr. Bauer said in this specific case there were tax advantages for property owners to agree to the easements. Councilmember Jones said he applauds the property owners for their contributions. He expressed concern that the agreement has no term and the City could be liable for maintenance and repairs if the bikeway/walkway is abandoned. Mr. Bauer said the City can abandon an easement when it is no longer needed. On a voice vote, the motion was approved with Councilmember Brown voting “no”.

Councilmember Iverson moved for approval of Item P of the Consent Agenda, seconded by Councilmember Boyer. Councilmember Boyer amended the motion to include the amendment to include the Land Use and Circulation Study encompassing the Hospital Corridor and the MSU-Billings Campus in North Central Billings as part of the Unified Planning Work Program, seconded by Councilmember McDermott. 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”

**REGULAR AGENDA:**

**2. PUBLIC HEARING AND RESOLUTION 04-18184 establishing City property tax mill levy rates for the General Obligation debt service funds for Parks, Recreation & Public Lands and Streets. 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 Boyer moved for approval of the Staff recommendation, seconded by Councilmember Poppler. Councilmember Brown asked for clarification that these General Obligation debt service funds are already established and approval is required. Mr. Bauer confirmed that was the case. Councilmember Brewster said the importance of doing this yearly is because changes in the valuation of the mills changes the amount of money required for the debt. Mr. Bauer confirmed the calculation is the same as when the debt was issued. On a voice vote, the motion was unanimously approved.

**3. PUBLIC HEARING AND RESOLUTION 04-18185 for SID 3005, assessing tree removal costs. 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 Iverson. On a voice vote, the motion was unanimously approved.

**4. PUBLIC HEARING AND RESOLUTIONS CREATING LIGHTING MAINTENANCE DISTRICTS:**

**(A) Res 04-18186 for SILMD #280: Gabel Road & S. 29<sup>th</sup> St. West**

**(B) Res 04-18187 for SILMD #281: Grand Avenue**

**(C) Res 04-18188 for SILMD #283: King Avenue East**

**(D) Res 04-18189 for SILMD #287: Midland Road**

**(E) Res 04-18190 for SILMD #289: Gabel Road & Pierce Parkway. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

There was no staff report. The public hearing for all districts was opened. There were no speakers. The public hearing was closed. Councilmember Clark moved for approval of the Staff recommendation, seconded by Councilmember McDermott. On a voice vote, the motion was unanimously approved.

**5. PUBLIC HEARING AND RESOLUTIONS making annual assessments for:**

**(A) Res 04-18191 for Encroachments, encumbrances, obstructions**

**(B) Res 04-18192 for Weed Cutting and Removal**

**(C) Res 04-18193 for Park Maintenance District #4025: Rehberg Ranch Sub.**

**(D) Res 04-18194 for Street Light Maintenance Districts #280, #281, #283, #287 and #289. 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 Jones moved for approval of the Staff recommendation, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

**6. PUBLIC HEARING AND RESOLUTION levying and assessing an arterial street construction fee on all of the property within the City limits of the City of Billings, Montana for the purpose of paying the cost of construction and/or reconstruction of arterial roadways and depreciation and replacement of arterial roadways to provide safe facilities on which citizens and visitors may travel, including the principal and interest on all revenue bonds to be issued for that purpose. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

Councilmember Brewster moved to lay Item 6 on the table, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.

**ITEM O (MOVED FROM CONSENT AGENDA FOR CONSIDERATION AFTER PUBLIC HEARING FOR ITEM 6).**

**ITEM O:**

**SECOND/FINAL READING ORDINANCE 04-5300 amending the BMCC, adopting an arterial construction fee to be assessed on each property in the City for the sole use of constructing/reconstructing the City's arterial roadway system.**

Public Works Director Dave Mumford said this item is the follow up to Item O on the Consent Agenda – the arterial street construction ordinance which had a public hearing at the last Council meeting. He said the formula used for calculating storm water maintenance fees (i.e. using zoning and square footage together) has been used for this assessment. This is based on the lowest square footage paying the lowest assessment with commercial properties paying a higher amount according to the traffic generated at each residential/commercial facility. Mr. Bauer asked if adoption of Item O or Item 6 restricts the City's ability to use SIDs as additional funding for arterial streets. Mr. Mumford said the SID Committee drafted a policy that states all residences whether on arterial, collector or residential streets would pay for the equivalent of residential street sections, paying only on the street on which the residence fronts. The arterial fee in conjunction with the policy would only assess for the missing sidewalk, curb and gutter, recognizing the resident has paid in the past for the street in front of their property. He stated SIDs would not go away as residents would still be required to pay for access to their property.

Councilmember Brewster noted the ordinance by itself states all arterial work is paid for through the fund it establishes. Mr. Mumford said that was correct and that the policy does need to work in conjunction with the ordinance. The intent is not to give "free rides" to residents on arterials, but to work with SIDs. The policy amends the ordinance on how to deal with SIDs. The ordinance is a methodology of assessing the funding for arterials. Mr. Bauer said the intent of the ordinance is that all the costs of the construction for arterials are eligible for this funding and not limiting what other sources can be used for arterials such as an SID funding source.

Councilmember Brown said he is trying to be sure this is a fee and not a tax. He said the arterial fee on the square footage of this property does not benefit his property. He said it seems more like a tax. Mr. Mumford said the arterial fee is the cost to the "community" for construction of arterials based on the traffic generated at each residence for the use of the arterials. That makes it a fee not a tax. Mr. Bauer said a fee is a specific amount for a specific benefit. He said the key to identify this as a fee is the link of the fee to a benefit. This is accomplished by setting an assessment to be based on criteria that are meant to be a proxy for the amount of benefit conferred on a property. Commercial property is assessed at a higher degree because they benefit more from arterials that provide access to their services. Larger lots developed to a higher density also benefit from arterials and are assessed accordingly. Mr. Bauer said this is not a perfect system, but it is one that can be implemented for the benefit of construction of arterial streets without high administration costs.

The public hearing was opened. TOM ZURBUCHEN, 1747 WICKS LANE, said the resolution is appropriate. He noted the amendment was not yet available when he visited the Clerk's Office this morning. He said this is a great way to construct arterial streets, but said it should be done right by assessing a set rate per residence/family unit and commercial facilities per number of parking spaces.

GLENN OPPEL, 1643 LEWIS AVENUE, said the Billings Association of Realtors supports this ordinance. This association wants to create a framework for development which will assist economic development. The economy will slow down if funding



mechanisms for development are not in place. If the City does not put into place fair and equitable fees, the City will end up like Bozeman or Missoula where there are onerous impact fees. He said a supermajority vote of the Council to change the fee would protect property owners from frequent changes in the fee. Mr. Oppel said this is a good policy and urged the Council to support this ordinance that supports economic growth and accommodates development.

JANET DAVIS JONES, 1728 NATALIE STREET, said she is not opposed to the arterial fee as it seems a good way to assess it. She would like to see it capped as many lots in the Heights are large and would cost \$200+ in fees versus a 9,600 square foot lot that would be assessed about \$40. This cap would be more equitable and more in line with other single-family residences.

ERWIN SMITH, 2082 SWANSON LANE, said he wants to thank the SID Committee for their work on the arterial proposal. He noted that no matter what the Council decides, not every resident will agree with the end result. The study of the arterials and their costs is a positive step and a constant evaluation on how arterials are funded is essential. Mr. Smith said this is a very fair proposal and urged the Council to adopt the committee's recommendation.

RON HILL, 2202 W. SKOKIE, said the methodology for the current policy should be revised as it is over forty years old. He said he is in favor of an arterial construction fee assessment as long as it is proportionately fair citywide for all properties. He said the proposed resolution is not fair, however. He said he wants to pay his fair share and currently owns several properties with various zoning. He is concerned about property that does not have a City street, stating that it should be assessed with a zero proportionate share because it gets zero use. The resolution should also address future years including the process to raise rates and the process to administer funds collected. Mr. Hill said he objects to the proposed resolution because road closed or undeveloped areas (road closed = no benefit) should be exempt and it should address future years and the process to raise rates.

ROD WILSON, 422 SHAMROCK LANE, said he is an ex-officio member of the SID Committee. He said there is no such thing as a perfect plan, but there is a fair plan and this is a very fair plan citywide. The fees generated from this proposal are not too much to pay if it generates \$3 Million for over 100 miles of arterial streets. Streets last at best 20 years, meaning that 5 miles of streets must be constructed or reconstructed every year. One mile of street costs \$1 Million to construct requiring \$5 Million per year. He said this is also a way to unite and improve the community.

KEVIN NELSON, 4235 BRUCE AVENUE, said the policy generates a great discrimination fee; there is no justification for this policy. He said the Council needs to address this equitably, based on a residential unit and not square footage. Mr. Nelson said a fair and equitable approach to levying the fee must be addressed.

LEON PATTYN, 453 NEWMAN LANE, said he called Mr. Mumford to get some of the rates. He said some residents on the Southside have Residential 6,000 lots where the rate per square foot would be twice as much as Residential 9,600. He said there is no potential for higher density if an owner has only one house on a Residential 6,000 lot. He said this is not a fair assessment as square footage should have nothing to do with the method of assessment. He said it would be fairer to assess the arterial fee the way garbage collection fees are assessed, by basing them on the number of units, not the

square footage of the property. Mr. Pattyn said the Council would be enacting a “poor tax”.

Mayor Tooley clarified that zoning is designated by usage, by using a number such as 6,000 that includes multi-family units and 7,000 for duplex units. Councilmember McDermott said there are Residential 6,000 lots that have single-family homes on them and no potential for additional units.

There were no other speakers. The public hearing was closed.

Mayor Tooley called for a recess at 8:00 P.M.

Mayor Tooley reconvened the meeting at 8:10 P.M.

Councilmember Gaghen moved for approval Item O, seconded by Councilmember Poppler. Councilmember Brewster amended the ordinance to state that rates could only be changed with a resolution by a supermajority vote of no less than 2/3 of the Council, seconded by Councilmember Brown. Councilmember Brown asked how many times a year the Council could take that action. Mr. Bauer said annual assessments are set once a year. Councilmember McDermott noted the recommended ordinance states that the rates could only be changed with a vote of no less than 8 Councilmembers, which is more stringent than the amendment offered by Councilmember Brewster. Councilmember Iverson asked if any other fees require a supermajority vote. Mr. Bauer said this requirement would be new to the City. Councilmember Iverson said she is concerned about imposing restrictions on a future Council and does not support the amendment. Councilmember Clark said future Councils could change the requirement to a simple majority.

Councilmember Ruegamer asked if the assessments are voted on every year. Mr. Bauer replied “yes”, but clarified that a supermajority vote would only be required if the rates were to be changed. Councilmember Ruegamer said he does not see what the supermajority requirement accomplishes. Councilmember McDermott noted that the Street Maintenance Fees have increased close to 300% in the last five years due to a simple majority vote. A supermajority requirement makes it more difficult to increase fees. Councilmember Boyer said the majority of the citizens are saying this is a good method of addressing arterial street construction. She said she does not support the amendment. On a roll call vote, the amendment was approved 7-4 with Councilmembers Gaghen, McDermott, Brewster, Brown, Poppler, Clark and Jones voting “yes” and Councilmembers Ruegamer, Iverson, Boyer and Mayor Tooley voting “no”.

Councilmember Brewster amended the motion to cap residential property assessment at a maximum of 9,600 square feet and based on its zoning classification, seconded by Councilmember Jones. Councilmember Brewster said it becomes punitive if the City assess more than a couple hundred dollars on a single-family residential property. Mayor Tooley asked the Staff to address the suggestions by tonight’s public speakers for assessing on the living units for residential and parking spaces for commercial properties. Mr. Bauer said if the City assesses the arterial fee based on parking, it would create a disincentive for creating parking. It is also cumbersome to actually count the parking spaces for the assessment. He also noted there are a number of commercial buildings that rely on public parking and would not be paying their fair share according to traffic generated to their properties. Mr. Bauer said the verification process is a problem for the

residential properties as well. In moving toward more fairness by these other methods, the City would be liable for higher transaction and administration costs in the process. In answer to Councilmember Boyer's question, Mr. Bauer said an apartment complex would be assessed at the rate according to its zoning on the first 9,600 square feet. Councilmember Boyer said the original proposal from the committee seems to be "watered down" with these amendments. Mr. Mumford noted the difficulties with formulating a method to capture and calculate the properties that would be affected by the amendment. He emphasized that delaying this ordinance would miss the cycle deadline for assessments. Councilmember Ruegamer said the amendment was meant to bring equity to the assessment and delaying the process until verifying the amount that would be generated due to the cap is not consistent with the intent of the amendment. Mr. Mumford said the cap would cause a minor change for a majority of the residential properties, but a major change for the larger lot properties that are in the minority. Mr. Bauer said the revenue to the City would be significantly reduced in the area of the multi-family units. Councilmember Boyer said those are the properties that would be generating the most traffic, but benefiting a small minority of the population. Mayor Tooley suggested that the amendment pertain only to single-family dwellings on a Residential 9,600 lot. Councilmember Gaghen supported this suggestion as more equitable and practical, because the commercial developments should not be subsidized, while those citizens that have larger lots who are not developing them beyond a single-family dwelling are protected and not penalized. Councilmember Brewster noted his Ward is predominately multi-family. He said if multi-family is excluded from the cap, then the zoning penalty should be removed. He said he thought the impact on the revenues is being overstated.

Councilmember Brown called for the question, seconded by Councilmember Ruegamer. On a roll call vote, the motion to stop debate failed 5-6 with Councilmembers McDermott, Brewster, Brown, Ruegamer, and Poppler voting "yes" and Councilmembers Gaghen, Iverson, Boyer, Clark, Jones and Mayor Tooley voting "no"

Councilmember Clark asked that the amendment be clarified. Mr. Bauer said each residential zone would be assigned a maximum assessment. An example would be for Residential Multi-Family the maximum assessment would be \$72.00 per lot. The identified rate is multiplied by 9,600 to ascertain the maximum assessment for all residential lots. Councilmember Brewster made a substitute amendment to cap the assessed square footage of all the residential zoning classifications at 9,600 square feet with the exclusion of Residential Multi-Family, Residential Manufactured Home, Residential Professional, Residential Multi-Family-Restricted and Planned Development zoning, seconded by Councilmember Ruegamer.

Councilmember Iverson made a substitute amendment that the cap only applies to single-family and duplexes, seconded by Councilmember Ruegamer. Mr. Bauer said the more complex this becomes, the more it is susceptible to challenge as inequitable. He added there is an appeals process in the ordinance that allows for individuals who feel they are being inequitably treated to appeal the assessment. If the Council finds there are too many appeals an adjustment can be made to the method of the assessments. Councilmember Iverson withdrew her motion and Councilmember Ruegamer withdrew his second.

Councilmember Boyer said the Council has taken something that was proposed with equality in mind and made it inequitable. Mr. Bauer noted that residential is a

permitted use in any zone except industrial. On a roll call vote for the substitute amendment, the amendment was approved 6-5 with Councilmembers McDermott, Brewster, Ruegamer, Poppler, Clark, and Jones voting “yes” and Councilmembers Gaghen, Brown, Iverson, Boyer and Mayor Tooley voting “no”.

Councilmember Brewster amended the motion to move the proposed arterial construction fees and other clarification language in the attachment received and proposed this evening into the ordinance, seconded by Councilmember Clark. On a voice vote, the amendment was approved with Councilmember Iverson voting “no”.

Councilmember Jones said he is concerned about all the changes the Council has made tonight. He said the Council is letting the tax assessment deadline drive this action. He said the Council should be very sure of what is being enacted before proceeding. On a roll call vote for the motion as amended, the amended motion was approved 8-3 with Councilmembers Gaghen, McDermott, Brewster, Ruegamer, Boyer, Poppler, Clark and Mayor Tooley voting “yes” and Councilmembers Brown, Iverson and Jones voting “no”.

**7. PUBLIC HEARING FOR W.O. 03-14: MONTANA AVENUE TRAFFIC CALMING STUDY and adopting the study recommendations. Staff recommends approval of Alternative 1 as modified by the Project Guidance Committee. (Action: approval or disapproval of Staff recommendation.)**

Traffic Engineer Terry Smith said this study was initiated by the merchants along Montana Avenue and the Downtown Billings Partnership. He said the Staff is asking only for approval of the study and not for construction at this point. The area concerns Montana Avenue between North 27<sup>th</sup> and North 21<sup>st</sup> Streets because it is a rapidly redeveloping area with much activity. He noted most of the businesses in that area are on the north side of the street and off-street parking is on the south side. Additionally, east of 27<sup>th</sup> Street there are no traffic signals to aid pedestrian crossings.

Mr. Smith said the process for this study included diverse input. There was a Project Guidance Committee that included representatives of businesses in the corridor, staff from Engineering, Parking, Police, Fire and Planning departments, the Downtown Billings Partnership and the Traffic Control Board. He said the Staff is recommending approval of Alternative #1 with modifications. The modifications include: elimination of the raised intersections at North 24<sup>th</sup> and North 22<sup>nd</sup> Streets, elimination of in-pavement warning lights at North 26<sup>th</sup> Street crosswalk, maintaining the option for parallel parking if back-in angle parking is not approved, and adding pedestrian/cross warning signs throughout the corridor. He noted the key features were raised and textured crosswalks at all intersections, reduction in travel lanes from 3 to 2 (a lane drop to occur at North 25<sup>th</sup> Street rather than North 21<sup>st</sup> Street with a physical barrier), back-in angle parking to increase parking with added parallel parking at the east end, a lateral shift at North 23<sup>rd</sup> Street and crosswalk warning signs. The projected impacts of these key features would be a 5-7 mph reduction in 85% of the traffic with a significant reduction in the highest speeds, reduction of pedestrian crossing distance and complexity which would improve safety, an increase to parking and an estimated 20% traffic diversion to other routes. He asked the Council to approve Alternative #1 as modified. Councilmember Brown asked what part of Montana Avenue is a State Highway. Mr. Smith said all of Montana Avenue is the I-90 business loop, a Federal urban route and is eligible for Federal money. He noted the Montana Department of Transportation would have to approve the back-in angle

parking proposal. Councilmember Boyer asked if the Montana Department of Transportation would have to approve any of the modifications besides the back-in parking. Mr. Smith said that would depend on whether there is an attempt to use their funding for the project.

The public hearing was opened. WYLIE TAYLOR, 2121 MONTANA AVENUE, said "diversion of traffic" is a disturbing comment. He said he has spent a sizable amount of money to get "curb appeal" for his business and traffic diversion would complicate his efforts toward attracting business. He noted the Blues Festival was an example of a deterrent to his business. He asked the Council to consider his comments in their decision. He said slowing the traffic down is the job of the Police Department rather than placing speed bumps in the street.

MIKE SCHAER, 1109 NORTH 32<sup>ND</sup> STREET, said he supports the study and asked the Council to approve it for the safety of his employees who cross the street four times a day and for his customers who cross many times. Speeds of 50 mph are regular on Montana Avenue and are dangerous. He said he does not think the recommendations in this study would negatively affect high traffic counts. Mr. Schaer said the engineers have studied the situation and devised a plan that solves both the traffic and pedestrian safety issues. Additional parking is also a benefit. He said his main concern is reduction in the speed of traffic and increased pedestrian safety.

DANIEL MCCORMICK, 227 CUSTER, said he works at the McCormick Café on Montana Avenue. He said he has watched traffic on Montana Avenue for 4 years and understands the traffic patterns and places where traffic accelerates. As Montana Avenue becomes more popular, pedestrian traffic is more at risk. He noted the pedestrian traffic is what is making the revitalization of the area more possible. It is imperative that traffic be slowed for their safety. As a handicapped person, he knows the difficulty of crossing Montana Avenue and looks forward to the benefits of the study's recommendations.

ALAN ELLIOTT, 4330 PALISADES PARK DRIVE, said he is the new Executive Director of the Billings Depot. He said crossing Montana Avenue is a dangerous endeavor, especially for older people who have problems with depth perception. He said he has witnessed speeding traffic on Montana Avenue constantly and noted that Police enforcement is not the answer. He supports the traffic calming/pedestrian safety study.

GREG KRUEGER, DIRECTOR OF THE DOWNTOWN BILLINGS PARTNERSHIP, 2906 3<sup>RD</sup> AVENUE NORTH, said he was a member of the original selection committee that chose the contractor to do this study and was a part of the focus groups that were an element of the process. He noted that the Montana Department of Transportation was asked to be involved the process. Mr. Krueger said the desire to keep volume as high as possible on Montana Avenue was foremost in discussions. It was not the desire to make this a pedestrian mall as they do not work in downtown areas, but pedestrian safety was an important issue. He said the desire was to slow the traffic speed to 25 mph and also added that Police enforcement is not the answer.

TOM ZURBUCHEN, 1747 WICKS LANE, reminded the Council that this recommendation is only accepting the idea, not implementing it. He said slowing the traffic on 6<sup>th</sup> Avenue North is another area that is worth looking at. He said the reduction in lanes will not eliminate or slow traffic. The third lane is handy but not used past the Billings Depot. He said this study is feasible and worth looking at.

RANDY HAFER, 2910 MORLEDGE STREET, said this whole initiative was started by the property owners on Montana Avenue. He said the area is one of the great success stories of revitalization of a downtown area. The purpose is not to eliminate traffic, but to slow it down to the speed limit and enhance the pedestrian experience to be more friendly and safe. He said this area has helped downtown Billings reach its potential and should be enhanced for the pedestrians. He urged the Council to support the study.

Councilmember McDermott moved for approval of the Montana Avenue traffic study Alternative #1 as modified by the Project Guidance Committee, seconded by Councilmember Gaghen. Councilmember Brewster said he has driven this street everyday for seventeen years. He said he has never witnessed anyone driving 50 mph because there are lights that control the traffic. He suggested installation of another light at 25<sup>th</sup> Street North to slow traffic, but feels the proposal is too expensive for the end result. He said he does not support the study. Councilmember Brown said he drives Montana Avenue often and has found that most people generally drive approximately 5 mph over the speed limit. He said the dangerous situations could be remedied with better signage. He said he did not want to see speed bumps installed as this would divert traffic entirely.

Councilmember Poppler said she agrees with Councilmember Brewster that a traffic light at 25<sup>th</sup> Street North would be a sensible solution. She also noted that the back-in angle parking sounds difficult. Councilmember Jones said if the speed bumps are installed correctly they do not create a big problem. He said the back-in parking will create problems and obstacles. Councilmember McDermott noted that setting up the street for some type of angle parking allows a change from back-in to head-in if one is found to be a problem. Mr. Smith said the proposal provides a landscaping buffer that aids users of the back-in parking. Parallel parking requires the same effort and traffic stoppage as would the back-in parking. The increase in parking with the back-in feature would be an additional 10 spaces in two blocks and 5 more spaces in the parallel parking area. Head-in parking was not recommended because of the traffic volumes, he added. Councilmember Boyer said there was a tremendous amount of professional input into the recommendations and she supports the alternatives that are recommended. Councilmember Jones said the parking plan would only create more congestion and frustration for through-traffic.

Councilmember Jones amended the motion to delete the back-in angle parking, returning to parallel parking, seconded by Councilmember Ruegamer. Councilmember McDermott said the curbs and gutters in that area are made for angle and not parallel parking. On a voice vote, the amendment failed with only Councilmember Jones voting "yes". On a voice vote for the original motion, the motion was approved with Councilmembers Brown, Brewster and Jones voting "no".

**8. RESOLUTION 04-18195 CREATING SID 1370: public improvements to Interlachen Drive and Lakewood Drive. (Public hearing held 8/23/04; action delayed to 9/13/04). Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

Councilmember Brewster moved for approval of the Staff recommendation, seconded by Councilmember Ruegamer. Councilmember Brewster said the meeting of concerned citizens to answer questions was held and it was successful in conveying the

need for the storm drain. Concerns for costs were also addressed. He said this is a timely action and he would support it. On a voice vote, the motion was unanimously approved.

**9. BID AWARD awarding a construction contract for SID 1371: Shiloh Road (Poly Drive to and including Rimrock Rd). (Opened 9/7/04). Staff recommends ~~action to be made at meeting~~, delaying the bid award to 9/27/04. (Action: approval or disapproval of Staff recommendation.)**

City Administrator Kristoff Bauer said the bid opening for this project was delayed to Tuesday, September 14<sup>th</sup>. The Staff recommendation is that the bid award be delayed to Monday, September 27<sup>th</sup>. Councilmember Brown moved to delay the bid award to 9/27/04, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

**10. PUBLIC COMMENT on Non-Agenda Items -- Speaker sign-in required.**

TOM ZURBUCHEN OF 1747 WICKS LANE spoke on the upcoming public safety mill levy election in November. He said Mr. Bauer's statement that the actions of the legislature to keep the tax revenues to the City at the same level has not affected his tax bill; in fact it continues to increase each year. If the methodology keeps the City at the same revenue level and his City tax portion keeps increasing, the City must be collecting more revenue each year. He said there are three possible answers: 1) someone is not stating the situation correctly, 2) tax deductions for businesses make the taxes for residential more severe, or 3) the City is overtaxing citizens and they are due a refund. He said he would not vote for the mill levy, and asked for an explanation of this strange situation.

JOE WHITE OF 926 N. 30<sup>TH</sup> STREET asked for confirmation of creation of a committee to review his claim for damages against his family. He claimed that the Council approved claims for millions of dollars in damages. Mayor Tooley responded that the Council did not approve any claim from Mr. White and no committee has been formed. Mr. White requested tapes of the meetings. Mayor Tooley emphasized that no action on this matter occurred at any Council meeting and hence no tapes from Council meetings were available.

**Council Initiatives**

**COUNCILMEMBER CLARK:** Councilmember Clark moved to direct staff to bring the arterial policy forward to the Council for action at the first meeting in October (10/12/04), seconded by Councilmember Boyer. Assistant City Administrator Tina Volek said the Staff has recommended that the Council consider through an initiative that the procedures should be brought forward to the Council in the form of a resolution so that this may be appropriately tracked. On a voice vote, the motion was unanimously approved.

**COUNCILMEMBER MCDERMOTT:** Councilmember McDermott moved to direct staff to revise the ordinances for street maintenance fees and storm sewer fees to require a supermajority vote of the Council, seconded by Councilmember Gaghen. On a roll call vote, the motion was approved 6-5 with Councilmembers Gaghen, McDermott, Brown, Poppler, Clark, and Jones voting "yes" and Councilmembers Brewster, Ruegamer, Iverson, Boyer and Mayor Tooley voting "no".

MINUTES: 09/13/04

**ADJOURN** – With all business complete, the Mayor adjourned the meeting at 9:47 P.M.

THE CITY OF BILLINGS:

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

ATTEST:

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