

# REGULAR MEETING OF THE BILLINGS CITY COUNCIL

## November 22, 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 Nancy Boyer.

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

**MINUTES – November 8, 2004.** Approved as printed.

**COURTESIES** – None

**PROCLAMATIONS – Mayor Tooley.**

- December 3, 2004: *Montana State University-Billings Downtown Campus Day*

**BOARD & COMMISSION REPORTS – Emergency Medical Service Advisory Board**

Ed Ulledalen, Chair of the EMS Advisory Board said the committee has not met since the last report to the Council. There are vacancies on the board at this time. The board has suggested that the committee be disbanded. Mr. Ulledalen said he had several other suggestions for potential use of this board: (1) empowering a task force to investigate the creation of a detox center in the City and (2) broadening the scope of the committee to a “public safety” committee, looking at police and fire safety issues in the community, in terms of annexation, etc.

**ADMINISTRATOR REPORTS – Kristoff Bauer.**

- Mr. Bauer asked that Item H be separated from the Consent Agenda for information on a substitute motion.
- Mr. Bauer also noted that the staff report on Item 13 was handed to the councilmembers at the work session last week. Events have changed since the Council received their packet last week and there is additional information available on the item this evening, including a new recommendation from staff.

**PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Item: #1, 11, 12 AND 13 ONLY. Speaker sign-in required.** (Comments offered here are limited to 1 minute per speaker. Comment on items listed as public hearing items will be heard ONLY during the designated public hearing time for each respective item.)

- JULIE MORRIS, 1938 ST. ANDREW'S DRIVE, speaking on Item 12, said the City's recreation centers could be an important part of early childhood programs like the Billings' Community Playgroup. She reminded the Council of the City's mission statement, and that keeping the recreation centers open is a responsibility of the City. It would serve a community need and benefit children by providing a location for such

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programs. Early childhood programs also have the potential to increase revenue for the recreation dept. through increased interest in other recreational programs. The return on investment for the play group's use of Zimmerman Center has the potential to be huge and for every dollar spent, \$4 to \$7 can be saved on remedial education, the justice system, welfare, unemployment and healthcare. She urged the Council to approve keeping the two recreation centers open.

- BRENNAN YEGEN, 1715 2<sup>ND</sup> ST. WEST spoke on Item 13. She noted the property has been in her family for generations. The Yegen family supports the Arlene Corridor Project and only seeks fair compensation for the right-of-way they are being asked to sell. She said the City has not made such an offer.
- PETER YEGEN IV, PO BOX 959, BILLINGS, MT spoke on Item 13, noting he is a 4<sup>th</sup> generation Yegen. Mr. Yegen said the family has been working with the Public Works Dept for the past 18 months regarding the right-of-way for the Arlene Corridor project. He noted the process however has changed recently and they no longer have access to that process. He said the City has stated they would be pursuing another option and noted that condemnation has been mentioned as an option. The Yegens do not feel this is necessary or fair. Mr. Yegen said they are seeking fair market value for the property and hope the Council agrees with that.
- CHARLIE YEGEN, PO BOX 959, BILLINGS, MT spoke on Item 13. Mr. Yegen said the latest offer presented to them is significantly less than fair market value. Comparable sales indicate a value of \$1.74/sf and the offer by the City was \$1.23/sf. He said they are only asking for fair market value and asked the Council to reject condemnation proceedings. This would only delay the project and increase the cost.
- MAC SOUZA, 1506 MARY STREET spoke on Item G, noting the residents have serious concerns about proposed development in the Bitterroot Subdivision. During the Zoning Commission hearings, residents were assured that no duplexes or multi-family units would be built, but because this was stated only in covenants which are not enforceable by the Planning Dept, the residents would like to have an ordinance or something in the Subdivision Improvements Agreement to protect them.
- PHIL OLIVER, 2585 BITTERROOT DRIVE spoke on Item G, noted that one of the conditions of the Planning Board was that the covenants should be referenced in any deeds to the property and that is being done. The land is also now in the name of the corporation that applied for the plat. He also noted there are several environmental concerns that he would be monitoring.

### **APPOINTMENT/SWEARING IN of WARD IV Councilmember**

Mayor Tooley moved for approval of the appointment of Ed Ulledalen as the replacement for Ward IV Councilmember Doris Poppler who resigned in October, seconded by Councilmember Boyer. On a voice vote, the motion was unanimously approved.

Mayor Tooley administered the Oath of Office to newly appointed Councilmember Ulledalen. Councilmember Ulledalen then took his seat as a Ward IV representative and introduced his wife and two sons in the audience this evening.

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### **RECONSIDERATIONS:**

Councilmember Jones moved to RECONSIDER Item P from the 11/8/04 agenda – “*Second and final reading Ordinance 04-5305 amending Section 27-614 BMCC, setting standards for all temporary uses in nonresidential zoning districts, eliminating performance bond requirements for certain temporary uses, extending time periods for groups of temporary uses and setting allowable advertising signs for temporary uses.*”, seconded by Councilmember Brown. Councilmember Jones said the banner sign location requirements should be revised to accommodate the uses that do not have structures which to attach the signs. On a voice vote, the motion was unanimously approved.

Councilmember Jones moved to exempt temporary structures from the present banner sign provisions in Section 27-707(b)(1b), seconded by Councilmember Clark. Councilmember Boyer said she would not support this motion because the code should be consistent and the potential danger for the signs becoming detached in the wind. City Administrator Kristoff Bauer said there is no other option to keep the banners in place. Councilmember Jones said plywood signs are far more dangerous than a plastic banner in windy conditions. The banners can be successfully secured to fences. Councilmember Brewster noted the uses are short term and usually not located near a building. It is in their best interest to securely fasten the signs or they will not retain them. He said the less restrictive language is appropriate. On a voice vote, the motion was approved with Councilmember Boyer voting “no”.

Councilmember Ruegamer moved to RECONSIDER Item 4 from the 11/8/04 agenda – “*MONTANA LEAGUE OF CITIES AND TOWNS’ AMENDMENTS to 2005 Legislative Agenda.*”, seconded by Councilmember Iverson. Councilmember Brewster said he would abstain due to a conflict of interest. On a roll call vote, the motion was approved 6-4 with Councilmembers Gaghen, Ruegamer, Iverson, Boyer, Ulledalen, and Mayor Tooley voting “yes” and Councilmembers McDermott, Brown, Clark and Jones voting “no”. Councilmember Brewster abstained.

Councilmember Boyer made a substitute motion to accept the Montana League of Cities and Towns’ Amendments to 2005 Legislative Agenda, seconded by Councilmember Iverson. Councilmember Brewster made a substitute motion to divide the resolutions for voting purposes, seconded by Councilmember Clark. On a voice vote, the substitute motion to divide was approved with Councilmembers Iverson and Ruegamer voting “no”.

Councilmember McDermott moved to separate Resolution #2 to make a change in the second to the last paragraph, seconded by Councilmember Brown. Mayor Tooley noted that Councilmember Brewster would prefer not to vote on the resolution concerning the Montana Public Power Authority. Councilmember Iverson made a substitute motion for approval of the League Amendments except Resolutions #2 and #7, seconded by Councilmember Ruegamer. Councilmember Ruegamer said the agenda is a blueprint for the legislature and should remain as they are stated. He said some items would change many times before they are brought forward in the form of bills. On a roll call vote, the substitute motion was approved 7-4 with Councilmembers McDermott, Brewster, Brown, Iverson, Ulledalen, Clark and Jones voting “yes” and Councilmembers Gaghen, Ruegamer, Boyer and Mayor Tooley voting “no”.

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Councilmember Iverson moved for approval of League Resolution #2, seconded by Councilmember Ruegamer. Councilmember McDermott amended the motion to change the second to the last paragraph to include “and local city councils”, seconded by Councilmember Brown. Mayor Tooley said items move so quickly in the legislature that it is sometimes not possible to consult with the local city councils before a piece of legislation moves forward. This amendment may be impractical. Councilmember Brewster said the City has a lobbyist who can respond on behalf of the Council. On a roll call vote, the amendment failed 5-6 with Councilmembers McDermott, Brown, Ulledalen, Clark and Jones voting “yes” and Councilmembers Gaghen, Brewster, Ruegamer, Iverson, Boyer and Mayor Tooley voting “no”. On a vote on the main motion to approve Resolution #2, the motion was approved with Councilmember Brown voting “no”.

Councilmember Iverson moved for approval of League Resolution #7, seconded by Councilmember Ruegamer. Councilmember Brewster noted he would abstain. Councilmember Ulledalen asked why this item is contentious. Mayor Tooley said the five other large cities in Montana created a separate entity called the Montana Public Power Authority. The Billings City Council chose not to participate in the creation and is not represented on the Board nor affected by this vote. The Power Authority was formed to bid on the assets of Northwestern Energy that may be offered for sale and if successful may require legislation to allow it to operate to provide service to the citizens of Montana. Mayor Tooley said it is a matter of showing a tendency of cooperation with the five cities so that they would be inclined to cooperate with us in pursuing the City’s agenda. It is essentially a diplomatic measure to show support for their endeavor. Councilmember Gaghen said she sees little danger in supporting this measure as there is no financial responsibility to the City. Councilmember Jones said he would not support this motion because he feels this is a vote to ultimately allow power rates to rise. The rates for the citizens of Billings are contingent on how the Power Authority operates. If there is mismanagement the rate payers will be substantially affected. On a roll call vote, the motion was approved 6-4 with Councilmembers Gaghen, Ruegamer, Iverson, Boyer, Ulledalen, and Mayor Tooley voting “yes” and Councilmembers McDermott, Brown, Clark and Jones voting “no”. Councilmember Brewster abstained.

## **CONSENT AGENDA:**

### **1. A. Bid Awards:**

**(1) Janitorial Services for Four (4) Parking Garages.** (Opened 11/09/04). Recommend ABC Maintenance, \$86,100.00, 3-year contract.

**(2) Vehicles – City of Billings.** (Opened 11/16/04). Recommend delaying award to 12/13/04.

**B. Lease Agreement** with Mann Mortgage, lease retail/office space in Park 1 garage, \$22,459.80 for first year adjusted annually by CPI-U, term: 3 years

**C. Acceptance** of \$75,000 in *American Dream Downpayment Initiative* grant funding through the Montana Dept of Commerce for the First-Time Homebuyer’s Program.

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**D. Acknowledging receipt of petition to annex #04-09:** Tract 3 of C/S 90, Gauger Acres, including all adjacent right-of-way on Main Street, Paul Dennehy, petitioner, Lamar Outdoor Advertising, owner and setting a public hearing date for 12/13/04.

**E. Acknowledging receipt of petition to vacate** a portion of alley described as: the north-south alley in the N2 of Block 114, O.T. between North 22<sup>nd</sup> and North 23<sup>rd</sup> Streets and Montana Avenue and 1<sup>st</sup> Avenue North, CTA Architects, petitioner and setting a public hearing date for 12/13/04.

**F. DENIAL of Amended Plat** of Lots 3-5 of Amended Lot 1, Blue Meadow Acreage Tracts, boundary relocation, City of Billings, owner, (Delayed from 10/25/04).

**G. Preliminary Plat** of Bitterroot Heights Subdivision, First Filing, generally located west of Bitterroot Drive, north of the intersection of Bitterroot Drive and Mary Street. Conditional approval of plat and approval of the requested variances.

**H. Preliminary Plat** of Wildwood Subdivision, First Filing, generally located on the west side of Blue Creek Road, west of Briarwood. Conditional approval of the plat, acceptance of the findings of fact and approval of the requested variances.

**I. Bills and Payroll.**

- (1) October 22, 2004
- (2) October 29, 2004

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

Councilmember Brewster separated Items G and H from the Consent Agenda. Councilmember Brown separated Items E and F from the Consent Agenda. Councilmember Boyer moved for approval of the Consent Agenda with the exception of Items E, F, G and H, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

Councilmember Boyer moved for approval of Item E of the Consent Agenda, seconded by Councilmember Ruegamer. Councilmember Brown said the City should expect to get the full appraised value for property. Councilmember McDermott asked if the Council is determining the value of the right-of-way this evening. Mr. Bauer said the Council would only be acknowledging the receipt of petition for the vacation this evening. Information on the value of the right-of-way will be presented at the public hearing on December 13<sup>th</sup>. On a voice vote, the motion was unanimously approved.

Councilmember Boyer moved for approval of Item F of the Consent Agenda, seconded by Councilmember Brewster. Councilmember Brown asked about the City receiving property in lieu of payment with this item. Mr. Bauer said the motion is not specific to the property transaction, it is concerning the change of ownership that now requires a revised plat. There is a revised plat that will be brought to the Council; this plat needs to be denied first. He noted the revised plat will allow the opportunity to answer

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Councilmember Brown's question. On a voice vote, the motion was unanimously approved.

Councilmember Boyer moved for approval of Item G of the Consent Agenda, seconded by Councilmember McDermott. Councilmember Brewster made a substitute motion to move this item to the end of the regular agenda, seconded by Councilmember Brown. Councilmember Brewster said he has questions that he would like the Staff to address. On a voice vote, the motion was unanimously approved.

Councilmember Boyer moved for approval of Item H of the Consent Agenda, seconded by Councilmember Brewster. Mr. Bauer noted there is already an existing Wildwood Subdivision, so an additional requirement must be added before the final plat approval. Councilmember Boyer made a substitute motion for conditional approval of the preliminary plat of Wildwood Subdivision, 1<sup>st</sup> filing, with the addition of a condition that requires the subdivider to change the name of the subdivision prior to final plat approval and approval of the variances as recommended by the Staff and the findings of fact as presented in the staff report, seconded by Councilmember Iverson. Planning Manager Candi Beaudry said the variances are from the road width requirements and the total width of right-of-way. On a voice vote, the motion was unanimously approved.

## **REGULAR AGENDA:**

**2. PUBLIC HEARING AND RESOLUTION creating SID 1369: Moore Lane improvements consisting of water, sanitary sewer, storm drain, curb and gutter, sidewalk, streetlights and street improvements to the Moore Lane frontage. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

Public Works Director Dave Mumford said this SID concerns Moore Lane from Monad Road to Central Avenue and was requested by some of the property owners. He said there is a 69% protest including the waivers, which constitutes a valid protest. The City utilized the new SID Policy making the City's contribution \$175,000 to the project. He said before the protests were due, there was discussion between the property owners about how the arterial fee would affect this project. It was explained that it would not affect this project because this is a collector street and not an arterial street. Mr. Mumford said the Staff is recommending the Council consider delaying the creation of the district to January to allow the Staff to meet with the property owners to explain the process and determine if they still desire to move forward with the project. He said there have been some misunderstandings that need to be clarified. Mr. Bauer noted that the Council cannot take action to form the SID due to the valid protest. The options are to deny or delay to a future date. City Attorney Brent Brooks said that 51% of the property owners protesting the creation of the SID prevents the Council from creating the district.

The public hearing was opened. MIKE TEHLE, 306 MOORE LANE, asked the Council to continue the SID to a later date, in order to meet with the property owners and resolve issues on this district. He noted there were no protests until the final moments of the SID.

DAVE HEINE, NO ADDRESS GIVEN, said the remaining portion of Moore Lane would like to have sewer improvements, but the other improvements are not necessary right now. He said he feels this is an arterial and should be treated as such. Moore Lane serves as one of three accesses to the area north of the railroad tracks in West Billings.

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Councilmember Gaghen noted the arterial designation is from the Montana Department of Transportation.

There were no other speakers. Mr. Bauer recommended the public hearing be continued to January 24<sup>th</sup>. Councilmember Clark moved to continue the public hearing and to postpone action to January 24, 2005, seconded by Councilmember Gaghen. On a voice vote, the motion was approved with Councilmember Brown voting "no".

**3. PUBLIC HEARING AND RESOLUTION 04-18224 approving Annexation #04-12: the north 10-acres of an unplatted parcel in T1S-R26E-S16: NW4 aka proposed Lot 1, Block 1, Interstate Subdivision, Joseph J. and Mary E. Miller, petitioners. Staff recommends approval of the resolution with conditions. (Action: approval or disapproval of Staff recommendation.)**

Planning Manager Candi Beaudry said this request is to annex 10 acres of property along Frontage Road, with the entire South Frontage Road from the Interchange east to the Manufactured Home Park. The Council approved the expansion of the Urban Planning Area on November 8<sup>th</sup>, opening the door for this annexation. She said the property is going through a concurrent subdivision preliminary plat review including Lot 1, Block 1 of Interstate Subdivision. The current land use is agricultural-open space and is proposed to be used for commercial truck sales. Ms. Beaudry said the City departments had favorable responses for the annexation. City services are available to the property. Fire services are available within three and one-half miles. Stormwater drainage is not available, so stormwater will be retained on site and eventually discharged to the Yellowstone River. The developers will be required to acquire the right-of-way needed to allow for the discharge or retain it on-site. The stormwater plan will be reviewed during the subdivision phases. She said the developers will be responsible for all of the fees and all the on-site and off-site development required in the subdivision.

Ms. Beaudry said the annexation conforms to most of the land use goals of the Growth Policy and the South Billings Boulevard Interchange Master Plan. The annexation conforms to the existing Annexation Policy and the proposed revision to the Annexation Policy. She said the staff is recommending approval with the following conditions:

1. That prior to development of the site the following shall occur:
  - a. A Development Agreement shall be executed between the owner(s) and the City that shall stipulate specific infrastructure improvements and provide guarantees for said improvements; or
  - b. A Subdivision Improvements Agreement (SIA) and Waiver of Right to Protest the Creation of an SID shall be approved and filed that will stipulate specific infrastructure improvements and provide guarantees for such infrastructure improvements.

The public hearing was opened. RICK LEUTHHOLD, ENGINEERING, INC., said the I-State Truck Center is proposed for this site and would provide sixty new jobs to the community. The proposed Center has a softer more aesthetic look. He asked the Council to approve the annexation. He noted a stormwater management plan will be brought to the Council during the platting process.

JOE WHITE, 926 NORTH 30<sup>TH</sup> STREET, said there is a need to provide a place for truck sales and stops off of the Interstate. He commended the Millers for keeping land in

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agriculture. Mr. White said the development should be submitted to the Department of Agriculture for review of the impacts to the environment.

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

**4. PUBLIC HEARING AND SPECIAL REVIEW #772: a special review to locate a restaurant with a bar and gaming in a Controlled Industrial zone described as: Unit 12, Block 1, Transtech Center Subdivision, and located at 1305 S 35<sup>th</sup> St West. Bottrell Family Limited Partnership owners, Engineering, Inc, agent. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

Zoning Coordinator Nicole Cromwell said the Zoning Commission recommends approval with the following conditions:

1. The special review approval shall be limited to Unit 12, Block 1 of the Transtech Center Subdivision as shown on the site plans submitted with this application. The liquor license with gaming shall be limited to no more than 7,690 square feet in floor area.
2. The site shall be landscaped according to the Transtech Center Building Restrictions and Covenants provided with the Special Review application.
3. Changes in floor plans or interior remodeling may occur. Increases of floor area beyond 7,690 square feet or the addition of an outdoor patio will require another Special Review application (BMCC 27-613).
4. Trash enclosures shall be constructed of wood, vinyl, brick, stone or concrete block or other building materials and provide a closing gate on one side. No chain link or wire material is allowed for this enclosure.

Ms. Cromwell noted this is the first of many future restaurants in the Transtech Center and will provide lunch and dinner opportunities to the workers in the Center.

The public hearing was opened. JIM BENNETT, OWNER OF BOTTRELL FAMILY INVESTMENTS, said by February of 2005 the Transtech Center Subdivision will have 300-400 employees working there. He said he hopes to provide them with a quality lunch and dinner facility that would seat about 125 people. He asked the Council to approve the special review.

JERRY THOMAS, 2010 PLAZA DRIVE, said he works with the Bottrell Family Trust on developing the Transtech Center. He said he supports this necessary eating facility. Many of the larger establishments that have been interested in locating at the Center have expressed their desire for adequate restaurant facilities to locate in the area. He noted there are none in the proximity. He urged the Council to support the special review.

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

**5. PUBLIC HEARING AND SPECIAL REVIEW #773: a special review to allow a liquor license without gaming at a deli restaurant in a Community Commercial zone described as: Lot 11 of Block 2, Sunset Subdivision, 2<sup>nd</sup> Filing and located at 926 Grand Avenue. Nielsen Enterprises, owner. Zoning Commission recommends**



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**conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

Planner II Aura Lindstrand said the applicant is requesting a special review to permit the sale of alcohol without gaming in an existing structure on a property located at 926 Grand Avenue that is the former Lock Shop. During the review, the Building Department expressed concerns regarding the property’s ability to accommodate the required parking for a restaurant use. The applicant has negotiated with the Big Sky Federal Credit Union located adjacent to the west of the property providing 15-16 shared parking spaces. She noted a verbal agreement has been achieved, but a signed contract has not been executed at this time. Additionally, the applicant has made a purchase agreement with the eastern property, a title loan company, and will eventually remove the building and construct additional parking and landscaping on the site.

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

1. The special review approval shall be limited to Lot 11 of Block 2 of the Sunset Subdivision, Second Filing.
2. The applicant shall provide a 4 ft x 25 ft. (100 square feet) landscape strip located 20 feet south of the north property line along the east boundary of the property and a 5 ft. x 65 ft. (325 square foot) along the west boundary of the property abutting the existing structure. These landscape strips shall include four (4) trees.
3. The applicant shall work with the Building and Engineering Departments to stripe the existing parking lot and provide two (2) handicapped spaces.

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

**6. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #744: a zone change from Residential 9600 to Residential-7000-Restricted on Tracts 3A & 4, Certificate of Survey 2465. The property is 96.87 acres in size and is generally located north of Rimrock Road, west of 66<sup>th</sup> St. West. Golden Acres Partners, owner; Engineering, Inc., Oakland Companies, agents. Zoning Commission recommends approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

Zoning Coordinator Nicole Cromwell said prior to the zone change request this was a large parcel of property that was approximately 98 acres. This parcel came before the Zoning Commission for a zone change for duplex units and raised some concerns, so the applicant withdrew that application and decided on the Residential 7,000-Restricted designation. She said the Zoning Commission concurred with that decision. A 21-acre property to the east of this parcel was the subject of a recently approved zone change from Residential 9,600 to a combination of Residential 8,000, Residential 7,000 and Residential Multi-Family. It is a developing subdivision with the first filing approved by the Council. There will be two more filings of the Golden Acres Subdivision.

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The public hearing was opened. RICK LEUTHHOLD, ENGINEERING, INC., said the area north of the Cove Ditch is dry land farming with no irrigation. The areas south of Rimrock are where irrigated land begins.

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

**7. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #746: a zone change from Aq-Open to Entryway General Commercial on an unplatted 10 acre property directly east of S. Billings Boulevard at the intersection with South Frontage Road. Joseph & Mary Miller, owners, Engineering, Inc. agent. Zoning Commission recommends approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

There was no staff report. The public hearing was opened. There were no speakers. The public hearing was closed. Mayor Tooley noted this is the second item addressing the same property this evening, the first being the annexation and this being the zone change request. Councilmember Brown moved for approval of the Zoning Commission recommendation, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

**8. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #747: a zone change from R9600 to Community Commercial on a portion of Certificate of Survey 3106, Tract 3 and Certificate of Survey 2337, Tract 2. Faith Chapel owners, Ed Jorden, agent. Zoning Commission recommends approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

Zoning Coordinator Nicole Cromwell said this zone change allows Faith Chapel and Shiloh Road Veterinary Clinic to exchange parcels to allow the clinic to build a new facility south of their current location. Faith Chapel will also be able to expand their parking facility without surrounding the Shiloh Road Veterinary Clinic. She said this moves the facility closer to the intersection of Central Avenue and Shiloh Road and adjacent to existing Community Commercial zoning and conforms to the required design standards.

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

**9. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #748: a zone change from Residential Multifamily Restricted to Residential Professional on a portion of Lot 4, Block 2, Goodman Subdivision, 3<sup>rd</sup> Filing. JRS, LLC owner, Engineering, Inc. agent. Zoning Commission recommends approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

Planner II Aura Lindstrand said the applicant is requesting a zone change for approximately 38,000 square feet of a Residential Multi-Family Restricted zoned property located at the southwest corner of 41<sup>st</sup> Street and Avenue B, northwest of the intersection of Shiloh Road and Grand Avenue. She said the proposed zoning is Residential

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Professional. The property is currently vacant and the applicant is proposing to subdivide the property in order to place an office complex on the southern portion and possibly multi-family residential units or condominiums on the northern portion.

Ms. Lindstrand said the Zoning Commission is recommending approval.

The public hearing was opened. RICK LEUTHHOLD, ENGINEERING, INC., said the Goodmans have sold this parcel to three individuals that plan to utilize the lower portion for a professional office building site. There is a Development Agreement between the purchasers and sellers in progress addressing specific items in the Residential Professional zoning.

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

### **10. PUBLIC HEARING AND FIRST READING ORDINANCE redistricting city wards. Staff recommends redistricting based on Scenario "A" – expansion of adjacent areas. (Action: approval or disapproval of Staff recommendation.)**

Planning Director Ramona Mattix said the City Of Billings has grown significantly since 1990. The Planning Department reviewed an analysis that looked at redistricting the wards. The process included: 1) comparison of demographic changes in existing Wards from 1990 to 2000 (major changes in population were due to growth and annexation), 2) a request from the Yellowstone County Election Administrator who asked that the review follow the election precincts as closely as possible, 3) give consideration to existing Councilmembers' addresses to allow them to continue to represent their Ward, and 4) attempt to make population as equal as practicable among wards with some consideration for future growth. She noted there are several pages of comments from the Legal Department that addresses the legal requirements for redistricting.

Ms. Mattix said there are two scenarios. Scenario A balances the population more effectively with less than a 10% difference in the proposed wards. Scenario B – Alternative 1 moves Briarwood from Ward I to Ward III and a few precincts that were moved from Ward V to Ward II. This created a larger discrepancy in terms of population; Ward III was reduced to 12,500.

Ms. Mattix said the income levels and minority population were reviewed during the process. She said Scenario A is the recommended scenario. Councilmember Brown asked why Rehberg Ranch is not associated with Ward II. Ms. Mattix said there is a significant amount of vacant property in Ward II available for development. Rehberg Ranch will hold about 1,200 homes at completion and if included into Ward II would far out-pace the balance of the other wards.

Councilmember McDermott would like to see this agenda item delayed for two weeks because there are concerns and issues to discuss and a review of input from public bodies. She said the neighborhood meeting that she attended did not have the population figures. She also noted that this should have been brought to the Planning Board for review and recommendations as it is an extraordinarily important project. Mayor Tooley noted the redistricting needs to be in place well before March and the filings for new City Council representatives.

The public hearing was opened. There were no speakers. Councilmember Boyer moved to continue the public hearing and delay action to 1/10/05, seconded by

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Councilmember Brown. Councilmember Brewster asked what is driving the delay as he said he was happy with the recommendations before the Council this evening. Councilmember McDermott said she would like to review the population figures and ask the Council to consider moving Briarwood from Ward I to Ward III. Briarwood would be better served in Ward III due to common “community interests”. Councilmember McDermott said the population figures were in error and have not been corrected, making the recommendation from the redistricting review not a legitimate option. Councilmember Boyer said she disagrees with the assumption stating there should be diversity in the wards and withdrew her motion. Councilmember Brown withdrew his second.

Councilmember Boyer moved to approve the Staff recommendation for Scenario A, seconded by Councilmember Iverson. Councilmember Ruegamer said he does not understand the rationale of “common interest” and stated it is unrealistic to think that a ward can escape diversity. He said he supports the motion.

Councilmember Brown amended the motion to approve Scenario A but include Rehberg Ranch as part of Ward II, seconded by Councilmember Brewster. On a roll call vote, the amendment was approved 8-3 with Councilmembers Gaghen, McDermott, Brewster, Brown, Ruegamer, Ulledalen, Clark and Jones voting “yes” and Councilmember Iverson, Boyer and Mayor Tooley voting “no”.

Councilmember McDermott amended the motion to move Briarwood and Cedar Park from Ward I to Ward III, seconded by Councilmember Jones. Councilmember Iverson noted that Ward III has the largest population currently and adding Briarwood and Cedar Park would only add to the disproportion of the wards. Councilmember Ruegamer said moving Briarwood and Cedar Park into Ward III would defeat the original purpose of the redistricting. Councilmember Clark suggested delaying action for further review. Mr. Bauer noted the first amendment dealt with vacant land and the population impact is not immediate whereas the movement of Briarwood and Cedar Park creates a very significant current population imbalance. He said the population figures are believed to be accurate. On a voice vote, the amendment failed.

Councilmember McDermott made a substitute motion to delay the vote to 1/10/05, seconded by Councilmember Gaghen. On a voice vote, the substitute motion was approved with Councilmember Ruegamer, Iverson and Boyer voting “no”.

### **11. RESOLUTION 04-18225 adopting a revised annexation policy and associated map. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

Planning Director Ramona Mattix said the current Annexation Policy gives preference for annexations: 1) that are within the Urban Planning Area, 2) that the City can provide services to, 3) areas where public infrastructure meets City standards, 4) that signed waivers of protest for SID creation are required, 5) where the properties agree to join a Park Maintenance District, 6) where residential units must equal at least 4 units per acres, and 7) that conform to the Growth Policy goals.

Proposed additions to the policy include limits to the Annexation Map that would define the areas to annex in the next five years, fifteen years and long-range or undefined areas that have uncertainties associated with them. The criteria for developing the map included: 1) distance from existing City services and response times, 2) capacity and

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location of existing facilities and future improvements planned, 3) cost of City services, 4) effect on existing residences and 5) conformance with adopted plans.

Ms. Mattix said a group of Staff members, meeting as a committee reviewed these items and made recommendations to the Council regarding the boundaries of the map. Ms. Mattix said the recommendation includes giving the Council the ability to update the map whenever the Capital Improvements Plan is revised. The committee would be formed once again to look at those same areas and provide additional information based on map and annexation criteria. The Council would then determine and approve the appropriate map boundaries and changes to the annexation policy. Councilmember Boyer expressed concern for the confusion regarding the requirement for formation of Park Maintenance Districts. Ms. Mattix said the annexation process includes an annexation agreement that explains the requirement for the formation of a Park Maintenance District. Lot purchases of subdivision lots have the Subdivision Improvements Agreement to better understand the requirements involved in their purchases.

Assistant City Administrator Tina Volek said there were six public meetings with various interested groups including the development community that reviewed the proposed changes to the annexation policy. There was very little public input from those meetings other than the map was acceptable and the basis for it was understood.

Councilmember Jones asked about infrastructure for areas north and south of the City. Public Works Director Dave Mumford said sewer construction between Briarwood and the City is being planned, bringing infrastructure into that area. Mr. Bauer said utility and street infrastructure are not the limit of the service. Other services include police and fire and Briarwood and Rehberg Ranch both present accessibility problems. This model analyzes all of the services.

Councilmember Clark moved for approval of the Annexation Policy, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

Mayor Tooley called for a recess at 9:15 P.M.  
Mayor Tooley reconvened the meeting at 9:25 P.M.

**12. CONSIDERATION of leaving the North Park and Zimmerman Recreation Centers open.** (Staff recommends authorization to keep recreation centers open and submission of a budget amendment if necessary.) (Action: approval or disapproval of Staff recommendation.)

Councilmember Jones moved for approval of the Staff recommendation, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.

**~~13. CONSIDERATION OF W.O. 01-06: ARLENE CORRIDOR RIGHT-OF-WAY ACQUISITION: Tracts 1, 8, 11 & 12, C/S 2702 and Tract 6A of C/S 2314 Amended. (Yegon Family), 6.68 acres, \$358,131.00. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)~~**

**RESOLUTION 04-18226 pursuant to BMCC 12-102, Eminent Domain, declaring public purpose and use, describing the properties to be taken and authorizing City officials to proceed to condemn and acquire right-of-way for the Arlene Corridor street improvements between Grand Avenue and South 32<sup>nd</sup> Street West. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

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Public Works Director Dave Mumford said there is a need to acquire land for the extension of the Arlene Corridor between Broadwater and Grand Avenues that currently runs through the Yegen property. He said the Yegen family has been dealing in good faith for over a year on this project. They recognize the need and the public desire for the road extension and the Yegen Golf Course was designed with that need in mind. The land acquisition includes 6.68 acres. Mr. Mumford said two appraisals were sought to evaluate the property. These appraisals are significantly different. The high appraisal was \$478,000 and the low appraisal was \$237,000. The review appraiser (through review of the methodology) justified the lower appraisal. Mr. Mumford noted that both appraisers felt their methodology was correct. It was also determined that this land is not developable because there is not an access road and could not be valued as such. He also said smaller right-of-way acquisitions command higher unit prices, but larger un-developable land does not.

Mr. Mumford said the City needs to move forward with this acquisition and complete the bond projects approved by the voters. The City has made an offer to the Yegen family to split the difference between the high and low figure. He noted the work must begin this winter to move the ditch and associated projects so that the golf course is not adversely affected. He asked the Council to approve the resolution exercising the right of eminent domain.

Councilmember Brewster asked how the fair market value was determined. Mr. Mumford said the appraisal system should elicit fair market value. There is a discrepancy between how the two appraisers did their work and what the Yegens believe developable land is worth. This resulted in a significant difference in appraised values. He noted the original plan of the golf course shows that the Yegen family has all the intentions of providing for and recognizing the community's needs. They have been supportive of the project. He noted the low appraisal uses the methodology used by the Federal Highway Administration for right-of-way acquisition. The high appraisal uses the value based on developable land, that is where the discrepancy occurs.

He said in the eminent domain process, the judge would review the appraisals and the testimonies from both the City and the Yegen family and determine the fair market value. Mr. Mumford noted that the City has sufficient funds to still acquire the land if the judge rules in favor of the high appraisal. Mr. Bauer said this process allows the project the right of entry and to move forward and still have the opportunity to reach a settlement agreement with the property owners. Councilmember Iverson said the Council must be good stewards of the City's money and move forward in a fiscally sound manner to accomplish the goals that were part of the bond issue approved by the voters. Councilmember Brown asked what the cost of the eminent domain procedure is and would it be more than the difference between the last offer and the high appraisal. City Attorney Brent Brooks said the costs would include filing fees and Staff time in both Legal and Public Works, which is hard to estimate. The City would also have to pay for the appraiser's expert testimony. Mr. Bauer noted that the judge can rule for an amount above the high appraisal. He added that a settlement can come at any time during litigation.

Councilmember McDermott moved for approval of the Staff recommendation for a resolution for eminent domain, seconded by Councilmember Iverson. Councilmember Jones asked if the action would ensure access to the property and the project. Mr. Bauer said there is a good chance that this would happen. Councilmember McDermott said this is

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not a process of “taking the land” because the Yegens have been very cooperative with the project. If we move forward with the action maybe the discrepancy between the property values will be resolved, she added. Councilmember Boyer said it is very important to fulfill the goals of the bond issue. On a voice vote, the motion was approved with Councilmembers Gaghen and Brown voting “no”.

**14. MOVED FROM CONSENT AGENDA:  
PRELIMINARY PLAT OF BITTERROOT HEIGHTS SUBDIVISION, FIRST FILING, generally located west of Bitterroot Drive, north of the intersection of Bitterroot Drive and Mary Street.** Staff recommends conditional approval of plat and approval of the requested variances. (Action: approval or disapproval of Staff recommendation.)

Councilmember Gaghen moved for approval of the Staff recommendation, seconded by Councilmember McDermott. Councilmember Brewster amended the motion to add the condition to add trees to lot lines adjacent to subdivision boundaries and to the drainage areas that run through the subdivision, seconded by Councilmember Jones. Councilmember Brewster said the intent of this amendment is to allow for a barrier between the rural areas and the tract housing. On a voice vote, the amendment was unanimously approved.

Councilmember Brewster amended the motion for a council initiated zone change on the master planned area for Residential 7,000-Restricted, seconded by Councilmember Boyer. Councilmember Brewster said this action would memorialize what is in the covenants and what the developers said they would do. This particular zoning would proceed like every other zone change. On a voice vote, the amendment was unanimously approved. On a voice vote for the motion as amended, the motion was unanimously approved.

**~~14.~~ 15. PUBLIC COMMENT on Non-Agenda Items -- Speaker sign-in required. (Restricted to ONLY items not on the printed agenda; comments limited to 3 minutes per speaker.) NONE**

**Council Initiatives**  
NONE

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

THE CITY OF BILLINGS:

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

ATTEST:

*MINUTES:*

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