

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

August 25, 2003

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

ROLL CALL - Councilmembers present on roll call were: McDermott, Gaghen, Brown, Brewster, Poppler, Ohnstad, Jones and Larson. Councilmembers Iverson and Kennedy were excused.

MINUTES – August 11, 2003. APPROVED AS PRINTED.

COURTESIES – NONE

PROCLAMATIONS – Mayor Tooley. NONE

BOARD & COMMISSION REPORTS

- Jennifer Henry of the Downtown Billings Partnership said Greg Krueger was unable to attend the meeting this evening but noted she was available to answer any questions regarding downtown projects. Councilmember Jones requested that she be available for questions during the Consent Agenda portion of the meeting.

ADMINISTRATOR REPORTS – Kristoff Bauer.

- Mr. Bauer said that a new customer service initiative would be piloted this week, whereby customer comment cards will appear at select customer counters in several departments. Customers will be encouraged to submit comments or questions regarding customer service. The results will be communicated to the Council. If this initiative proves useful, the comment card system will be expanded to all of the City's customer counters.
- Mr. Bauer noted that a memo regarding the key points of the proposed police union contract was placed in each of the Councilmember mailboxes this afternoon. The contract will be prepared for action at the Council's next regular meeting on Sept. 8th.

CONSENT AGENDA

1. A. **Bid Awards:**
 - (1) **W.O. 02-04: 13th & Poly Intersection Reconstruction.** (Opened 8/19/03). Bid opening cancelled and project will be re-bid at a later date.
 - (2) **W.O. 02-05: 8th Street West & Central Avenue Reconstruction.** (Opened 8/12/03). Recommend JTL Group Inc., Alternate A,

\$415,794.00, 60 calendar days and transferring \$90,000 from CIP project ENG99 to this project.

- (3) **W.O. 02-19: City Animal Shelter – Phase III: Crematorium Equipment.** (Opened 8/12/03). Recommend Crawford Industrial Group, \$35,230.00.
- (4) **Airfield Lighting Control System, Equipment Supply Contract.** (Opened 8/12/03). Recommend Crouse-Hinds Airport Lighting Systems, \$320,885.00.
- (5) **4 x 4 Snow Plow Vehicle with Dump Body and Displacement Snow Plow Blade.** (Opened 8/12/03). Recommend Western Plains Machinery, \$244,896.35.
- (6) **Refuse Compactor Bodies, Solid Waste Division.** (Opened 8/12/03). Recommend Kois Brothers Equipment, Schedule I: \$133,398.00; Solid Waste Systems, Schedules II and III: \$102,088.00.
- (7) **Truck Chassis, Tilt Cabs, Solid Waste Division.** (Opened 8/12/03). Recommend Tri State Truck & Equipment, Schedules I, II and III: \$463,840.00.
- (8) **Restripe Airfield Markings (Runways and Taxiways) –3-Year Contract.** (Opened 8/12/03). Recommend United Rentals, \$80,235.00.
- (9) **Sale and Removal of House and Garage from Public Works Dept.** (Opened 8/12/03). No bids received; structures will be demolished.

B. W.O. 03-21: Contract for Professional Services, Communication Arts, Inc., \$144,618.00.

C. Contract for Municipal Court Collection Services, Municipal Services Bureau, 22.5% commission rate on amount collected.

D. Acceptance and Finalization of Grant, Enforcing Underage Drinking Laws, #01-U01-81555, \$2,950.54.

E. Bills and Payroll.

(Action: approval or disapproval of Consent Agenda.)

Councilmember Jones separated Item B from the Consent Agenda. Councilmember McDermott separated Items A1 and A2 from the Consent Agenda. Councilmember Gaghen moved for approval of the Consent Agenda with the exceptions of Items A1, A2 and B, seconded by Councilmember Brewster. On a voice vote the motion, was unanimously approved.

Councilmember Gaghen moved for approval of Item A1 of the Consent Agenda, seconded by Councilmember Brewster. Councilmember McDermott asked how the decision was made to move funding from one project to the other concerning Items A1 and

A2. City Engineer Vern Heisler said the intersection at 8th Street West and Central Avenue was in the worst condition and the City staff and City Administrator Kristoff Bauer decided to apply the funding to this project first. He added that if funding becomes available this year the project at 13th and Poly Drive would go forward. Councilmember McDermott asked if the funding is found would 13th and Poly Drive be given the highest priority. Mr. Heisler replied "yes" and said if funding does not become available this year, this project will be included in the CIP process for next year and funding will be requested at that time.

Councilmember Poppler asked what construction was to be performed at 13th and Poly Drive. Mr. Heisler said 13th and Poly Drive was to be constructed in the same manner as 8th Street West and Central Avenue, reconstructing the intersection and replacing utilities. He noted that the work at 13th and Poly Drive is not critical, however replacing the water main would extend the life of the intersection. Councilmember Gaghen asked if the intersection at 13th and Poly Drive would be widened. Mr. Heisler replied "no". Mr. Bauer added that the policy with surface improvements now includes determining the condition of services under the surface for possible repair or replacement. He said the desire is to match the life span for underground services to the surface improvements. During the process of coordinating these improvements costs could increase for the surface improvements. By coordinating with other projects in the area it is hoped that money will ultimately be saved. On a voice vote the motion was approved with Councilmember Poppler voting "no".

Councilmember Gaghen moved for approval of Item A2 of the Consent Agenda, seconded by Councilmember Larson. On a voice vote, the motion was approved with Councilmembers Poppler and McDermott voting "no".

Councilmember Gaghen moved for approval of Item B of the Consent Agenda, seconded by Councilmember Brewster. Councilmember Jones asked for a presentation from the Downtown Billings Partnership. Jennifer Henry of the Downtown Billings Partnership said this request involves a research project to develop a plan to make 27th Street from 1st Avenue South to 6th Avenue North a more user friendly place for vehicles and pedestrians and to provide a "gateway" with informational and directional signage for the downtown area.

Councilmember McDermott noted that there is a \$100,000 study coming before the Council for the railroad tracks. She said she thinks the railroad tracks relocation issue must be resolved before a master plan for 27th Street can be implemented. Ms. Henry noted that the Partnership has stipulated that Communication Arts, Inc. include the results of the railroad study and any other reports affecting the 27th Street area in their master plan. Councilmember McDermott noted that the results of the railroad study could vastly change the complexities of 27th Street. The railroad tracks study is the primary study at this point. Ms. Henry said the DBP project is not time sensitive and the proposed contractor is aware that issues from the railroad study must be incorporated in the final master plan. Councilmember McDermott asked about the bidding process and how many bidders participated in the bidding process. Ms. Henry said a committee was formed including several downtown groups and City staff members. There were six bids on the request for proposal from both local and national companies. A committee with City representation reviewed the bids and the company selected received a high recommendation from the committee.

Councilmember Brown asked if Communications Arts, Inc. is a sign company. Ms. Henry said the company deals in urban signage and atmosphere designs. He asked where the "gateway element" would be placed. Ms. Henry said there is space reserved in the Skatepark for that signage.

Councilmember Jones asked if the \$144,618.00 includes the cost of signs. Ms. Henry said the amount includes the comprehensive study and some signage. It does not include the finished product of the "gateway element". Councilmember Jones stated that this is a lot of money and he said he does not quite understand the scope of the project.

Councilmember Larson made a substitute motion to postpone Item B to the September 22, 2003 Council Meeting, seconded by Councilmember Brewster. Councilmember Larson said the Council has not had an opportunity to review this issue from the Downtown Billings Partnership. He said there are many unanswered questions and this delay would allow the Partnership to meet with the Council during a work session and provide additional information and answers to questions. Councilmember McDermott agreed that she would like to see additional information on the scope of the study. On a voice vote, the substitute motion was unanimously approved.

REGULAR AGENDA:

2. PUBLIC HEARING AND RESOLUTION 03-18012 vacating 5 feet of right-of-way on both sides of Rangeview Court, Westfield Drive south of Rangeview Drive and Rangeview Drive east of Westfield Drive, located in proposed Rush Subdivision, 8th filing. 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 Brown moved for approval of the Staff recommendation, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

3. PUBLIC HEARING AND RESOLUTION 03-18013 annexing a portion of Tract 3A, C/S 2317, Annex #03-05, George Rosenfeld and Eugene A. Brosovich, owners. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

Planning Staff Member Candi Beaudry said this petition for annexation concerns the old Empire Sand and Gravel pit located on Mary Street between Hawthorne Lane and Bitterroot Drive. She said this property is wholly surrounded by City property. The parcel is 80 acres in size and is currently zoned Agricultural-Open Space that will convert to Residential 9,600 zoning with a pending zone change. Ms. Beaudry said the land is vacant and the proposed use is for mixed residential. There were no significant impacts noted from the public service report, but future resources would be required, such as Fire and Police. There are existing utilities including sewer and water within the rights-of-way surrounding the property. She noted that the cost of serving the properties will be slightly higher than the tax revenues.

Ms. Beaudry said the property complies with the Annexation Policy and the Comprehensive Plan and is considered urban infill. The surrounding uses are residential. She said the staff is recommending conditional approval with the conditions being:

1. That prior to development of the site the following shall occur:
 - a. A Development Agreement shall be executed between the owners and the City that shall stipulate specific infrastructure improvements and provide guarantees for said improvements; or
 - b. A Subdivision Improvements Agreement (S.I.A.) and Waiver of Protest to SID shall be approved and filed that will stipulate specific infrastructure improvements and provide guarantees for such infrastructure improvements.
2. The petitioner shall add a statement to the Annexation Agreement or SIA that they will not protest the creation of a future Park Maintenance District.

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

4. VENDING ORDINANCE/CONCESSIONS POLICY :

A. PUBLIC HEARING AND FIRST READING ORDINANCE adding BMCC Sections 19-401 through 19-409 providing for vending by permit in certain parks and recreation facilities; establishing the conditions for application and issuance of permits; and requiring a permit for certain sports camps or services. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

B. ADOPTION of Parks, Recreation and Public Lands Department CONCESSIONS POLICY. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

Parks and Recreation Staff Member Kory Thomson said the Parks Department started in May of 2002 to plan and draft a policy addressing how concessions would be allowed to operate in City parks. The goal of the policy is to prevent unauthorized sale of concessions in the City parks and provide opportunities to form partnerships with private businesses and individuals. The Parks, Recreation and Cemetery Advisory Board assisted in the original draft. There were three (3) public meetings in October of 2002 with a follow-up meeting in March of 2003. The major outcomes and concerns were from: 1) youth and adult sports organizations, 2) special events organizers, 3) catering businesses, and 4) an exclusive soft drink vendor.

Mr. Thomson said the following are included in the policy before the Council: 1) Section 1 – Swimming Pools, providing concessions at the swimming pools. A multi-year contract would be considered for any vendor interested in making capital improvements, 2) Section 2 – City Parks, providing a list of prices and appropriate parks where concessions would be appropriate and not conflict with special events. 3) Section 3 – Sale of Service/Sports Camps, this is similar to the current park use permitting system, superceded by park use permits for sport camps, 4) Section 4 – Exclusive Soft Drink Vendor – includes a draft Request for Proposal for Council review to explore the opportunity and potential of an exclusive contract

Mr. Thomson said the following is not included in the policy: 1) special events, 2) youth sports organizations, 3) adult sports organizations, 4) catering businesses, and 5) facilities covered under separate agreements (i.e. Amend Park or Cobb Field).

Mr. Thomson said the revenue potential for Sections 1-3 (Pools, Parks, Sale of Service) is difficult to determine as there is no way to know the potential interest. He said the Staff does think there are excellent opportunities for private businesses at Rose Pool and several regional parks. The revenue estimate is a range between \$2,000 to \$8,000 per year. He said there is an excellent potential for revenue in Section 4 (Exclusive Soft Drink Vendor). He noted the Amend Park Development Council accepted \$110,000 over ten years for an exclusive contract. From a poll of other cities the estimated revenue is from \$25,000 to \$50,000 per year.

Mr. Thomson noted this policy provides partnership opportunities for the City and private businesses. It will provide a more enjoyable park and recreation experience for citizens with the availability of concessions. It will also set some standards and rules for vendor operators and give consistency to park policies.

He said the ordinance provides enforcement and limits the unauthorized sale of goods and services at City parks and recreation facilities. It identifies prohibited conduct for selling concessions and states the criteria for obtaining a permit.

Mr. Thomson reiterated that the potential for an exclusive soft drink vendor is unknown. The Request for Proposal is being formulated and the outcome of what would be in the City's best interest would be evaluated later. He noted the City is not obligated to accept or enter into any contract and the Council would need to approve any contract with a vendor. This exclusive contract would not apply to any facilities covered under separate agreements.

He noted that the public hearing and first reading of the ordinance is scheduled for tonight and the second reading and adoption is contingent on approval of the first reading. He said the Staff recommends approval of the ordinance and Concession Policy. He said the Council may request specific changes to the policy and/or ordinance or take no further action.

Councilmember McDermott asked where the revenues would be allocated - to the individual parks or into the General Fund. Mr. Thomson said the funds would be General Fund dollars used for Capital Improvement Program projects.

Councilmember Brown asked if the potential vendors would be using provided facilities. Mr. Thomson said there are no spaces for concessionaires at any of the pools. He said if the vendors were interested in that they would have to look at making a capital investment. He noted that Rose Park does have vending machine space that could be retrofitted to accommodate a concession facility. Councilmember Brown asked who would pay for the enforcement of the ordinance. Mr. Bauer said this is the responsibility of the City. He said the City is not proposing at this time to add resources to enforce the ordinance, but would use existing Parks and Police staff. Councilmember Brown asked if the criteria to obtain a permit is concrete. Mr. Thomson said the model of the Finance Department regarding their peddler permit policy was used to formulate the vendor policy. He noted that the Legal Department was also involved in formulating the policy.

Councilmember Poppler asked about the language that allows exchange of "things", such as signs and scoreboards, from the vendor for a contract. Mr. Bauer said

the City is allowing the opportunity for a private enterprise to utilize the space to generate a revenue and have a profit. He said the Council would be involved in every step of the process.

Councilmember Brewster said he thought the City was looking to vendors that would make facility improvements in conjunction with the contract. Mr. Bauer said capital improvements would be a key element of the remuneration to the City. He said it is not appropriate for the City to build and operate the concession facilities. It would be more appropriate to offer that to individuals or businesses that do this professionally. Councilmember Brewster said this issue needs to be clearer, to have a better understanding of what the City's expectations are, so it doesn't look as if the City is "fishing".

Councilmember Jones asked what other fees are set by the City Administrator rather than the Council, as is contained in the permit requirements. Administrative Services Director Robert Keefe noted there are a number of areas where the City Administrator has set the fees. Mr. Bauer noted that setting a fee is a customary responsibility for administration, whereas setting a rate is more a Council responsibility. Councilmember Jones noted that it is not clearly defined when the \$500 damage deposit would be returned. Mr. Thomson said the City would make every effort to return the deposit as soon as possible.

Councilmember Gaghen expressed concern for the exclusive vendor policy. She suggested that the both community members and the City could benefit from a sharing of the two main vendors, rather than a standoff between them. She also asked how the small vendors that run mobile carts would be handled and controlled. Mr. Thomson noted that any small vendor would have to have the permission of the property owner if they are operating off-site in the parks. He added that on-site small operators have not been considered at this time.

The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Poppler moved for approval of the Staff recommendation for the first reading of the ordinance, seconded by Councilmember Larson. Councilmember Brewster requested that the staff define in the ordinance the time required to return the deposit before the second reading comes before the Council.

Councilmember McDermott expressed her concern for the revenues going into and becoming co-mingled with the General Fund dollars. She said she feels the money should go back into the Parks buildings as they are in need of repairs. She also noted that deposits have been returned without checking the condition of the buildings being used. The City needs to be alert to this consideration and hold deposit refunds when damage has occurred. Mr. Bauer said the City has endeavored to clear out dedicated revenue funds that made the budget process extremely complex. The City is recommending that the revenues generated from the concession process be placed in the General Fund and during the budget process the accounting for this particular revenue can be reported to the Council so that they may allocate those funds to the Parks system. He said the City is resisting creating a specific dedicated revenue fund that requires additional accounting work for an already complex accounting system. On a voice vote, the motion was approved with Councilmember Brown voting "no".

Councilmember Poppler moved for approval of the staff recommendation to adopt a concession policy, seconded by Councilmember Larson. Councilmember

Jones expressed concern for the vending proposal with regard to the price of soft drinks. Mr. Thomson noted that the wording Councilmember Jones referred to is for Park and Recreation activities only, such as during a swim night at Rose Pool. Councilmember Poppler asked if the policy for soft drinks, as now stated, would be a requirement of the exclusive vendor for soft drinks. Mr. Bauer said the policy does not give direction in that area. He suggested that Staff could explore the options, review the response and bring it back to Council for direction. He said the City would like to “put out” the information and see what response there is. He added that the Staff is asking for authority to investigate the possibilities. Councilmember Poppler noted that the policy decision the Staff is asking the Council to adopt appears to have already been made. On a voice vote, the motion was approved with Councilmembers Brown and Poppler voting “no”.

5. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #719: A zone change from Residential-9,600 to Residential-7,000 on Lot 1, Block 1 of High Sierra Subdivision, 2nd Filing. The subject property is generally located on the northeast corner of Wicks Lane and Sierra Grande Boulevard. Gary Oakland, owner; Engineering, Inc., agent. Zoning Commission recommends approval. (Action: approval or disapproval of Zoning Commission recommendation.)

Planning Staff Member Candi Beaudry said this zone change from Residential 9,600 to Residential 7,000 is located between the proposed extension of High Sierra Boulevard and Wicks Lane. It is known as Lot 1, Block 1 of the High Sierra Subdivision, a subdivision that the City created. She said it is approximately 34 acres with a proposed land use as residential. She noted property to the east was recently rezoned from Residential 9,600 to Residential 7,000, and is owned by the same property owner as this zone change. Property to the south is zoned Residential 9,600 and Agricultural-Open Space to the north. Two churches own two lots and the City still owns a lot in the surrounding area. Ms. Beaudry said the Zoning Commission is recommending approval, noting that the design is in accordance with the Comprehensive Plan. The Residential 7,000 zoning would allow for 56 more units than Residential 9,600 zoning would allow.

The public hearing was opened. MAC FOGELSONG, ENGINEERING, INC., 1001 SOUTH 24TH STREET WEST, said he represents the owner. He said the zone change complies with all 12 of the zoning criteria. He reminded the Council that this was a City tract sold for development purposes. He said existing City water and sewer services are adjacent to the project. It is an infill project and will provide affordable housing consistent with the existing residential use.

There were no other speakers. The public hearing was closed. Councilmember Ohnstad moved for approval of the Zoning Commission recommendation, seconded by Councilmember Gaghen. Councilmember Brewster noted this is a problem area coming to a successful conclusion. On a voice vote, the motion was unanimously approved.

6. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #720: A zone change from Residential Multi-Family-Restricted to Community

Commercial on Lot 14 and the West 73' and East 27' of Lot 13, Block 171 of Billings Original Town. The subject property is located at 301 South 26th Street. Samuel and Diane Rankin, owners. Zoning Commission recommends approval. (Action: approval or disapproval of Zoning Commission recommendation.)

Planning Staff Member Bruce McCandless said this property is on the southeast corner of the intersection of 3rd Avenue South and South 26th Street. The property size is approximately 6,000 square feet with a church and single family home on the property. To continue to retain the church use would require a special review, so a zone change was requested where the church would be an allowed use in a commercial zone. He noted there is a 40 by 25 foot section of land in the middle of Lot 13 that is not included in the zone change because it has a different owner. This property owner has chosen not to be included in the zone change request.

Mr. McCandless said the Zoning Commission is recommending approval of the zone change as it is consistent with the Comprehensive Plan and has no impact on local services. The surrounding neighborhood is transitioning from residential to more of a commercial and industrial area. The new zoning will conform to the future Gateway Triangle Plan.

The public hearing was opened. SAM RANKIN, 2210 22ND STREET WEST, said the owner of the former Arcade Bar is the owner of the 40 by 25 foot piece of property, and it is a legal property. He said he has attempted to purchase the property but the asking price was exorbitant. He said he hopes the church will eventually acquire that property. There were no other speakers. The public hearing was closed.

Councilmember Jones moved for approval of the Zoning Commission recommendation, seconded by Councilmember Gaghen. Councilmember Poppler asked if the Council could initiate a zone change on the small parcel owned by another party without that owners consent. City Attorney Brent Brooks said the Council could initiate the zone change in the same fashion as the zone change before the Council this evening. On a voice vote, the motion was unanimously approved.

7. PUBLIC HEARING AND SPECIAL REVIEW #742: A special review to allow the location of a Miscellaneous Manufacturing Industry in a Highway Commercial zone on Lots 6-7 of Hammond Subdivision. The subject property is located at 2237 Main Street. A.V. Properties, owner. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)

Zoning Coordinator Jeff Bollman said this is a special review to allow the location of a miscellaneous manufacturing industry (a chrome plating operation) in a Highway Commercial zone. He said the property is located at 2237 Main Street in the Billings Heights. The surrounding zoning is Highway Commercial on the east side of Main Street with some Residential Manufactured Housing zoning on the west side of Main. There are other commercial and office uses to the north and south. He noted there are two drive approaches to the property.

Mr. Bollman said the Zoning Commission held a public hearing and is recommending conditional approval with the following conditions:

1. A six-(6) foot sight-obscuring wood or vinyl fence shall be erected on the east property line of the subject property to screen the residential use to the east.

2. Work with staff to negotiate the percentage of lot to be paved, including the need to provide proper storm drainage. This percentage will be determined prior to the City Council meeting. He noted that the City Staff will ask the Council to remove this condition.
3. The site shall be landscaped in accordance with the landscaping regulations in the zoning regulations.
4. There shall be no sandblasting conducted on the property.
5. There shall be no outside storage of materials, merchandise or items to be plated.

Councilmember Brown asked if this operation involved industrial or decorative chrome plating. Mr. Bollman said the operation chrome plates car parts and stained glass pieces. Any required sandblasting during the plating process would have to be taken to an operation that is approved for sandblasting. Councilmember Brown asked if there would be a large power consumption by the operation. Mr. Bollman said he is not aware of any unusual request for a large amount of power for the operation.

Councilmember Brewster said he visited the site with the property owner. He said it is in the vicinity of the former K-Mart Store, in the Heights noting this area is slowly transitioning from commercial storefront to industrial operations. He said most of the businesses in the area typically have gravel parking lots and are positioned below street grade making paving a significant problem.

The public hearing was opened. ALAN BARTEL, NO ADDRESS GIVEN, said this operation is a chrome plating company. The operation does not include industrial jobs, just small parts only, such as bumpers. The operation does have small chemical tanks that require 220 or 440 voltage. He said the only portion of the recommendation that creates a problem is the paving condition. The cost of \$22,000 to \$23,000 for paving the lot is prohibitive and help from the other lessors is not an option. He asked the Council to remove the paving condition. Councilmember Gaghen asked how many employees are involved in the operation. Mr. Bartel replied "three".

There were no other speakers. The public hearing was closed. Councilmember Larson moved for approval of the Zoning Commission recommendation including conditions #1, #3, #4 and #5, seconded by Councilmember Brewster. Councilmember Ohnstad suggested that the paving condition concerns tracking materials, such as mud, onto the highway. Councilmember Brewster noted that the suggestion of the owner to improve the approaches with road mix, which is a ground up surface material that compacts well, would solve the problem. He added that this is not a high traffic business. On a voice vote, the motion was unanimously approved.

8. PUBLIC HEARING AND SPECIAL REVIEW #743: A special review to allow the location of an all beverage liquor license in a Highway Commercial zone on a portion of Lot 2B-1, Block 2 of Southgate Subdivision, 2nd Filing. The subject property is located at 5110 Southgate Drive. Billings Lodging Investors, dba Hampton Inn, owners; Darryl Wilson, agent. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)

Zoning Coordinator Jeff Bollman said this special review allows the location of a full beverage liquor license with gaming in a Highway Commercial zone. The property

is located on Southgate Drive and is entirely owned by the Hampton Inn at 5110 Southgate Drive. The lot size is 24,000 square feet and currently vacant.

Mr. Bollman said the Zoning Commission held a public hearing and is recommending conditional approval with the following conditions:

1. The Special Review approval is for this location only and may not be transferred without a further special review from the City Council.
2. All right of way improvements, utility extensions and associated permits and fees are the responsibility of the property developer.
3. The property developer shall provide a minimum of 1,700 square feet of onsite landscaping, 850 square feet of which will be along the Southgate Drive frontage. There shall be a minimum of one (1) tree for every ten (10) parking spaces and minimum landscaped areas as required by BMCC 27-1106. Seventy-five percent of the landscaping shall be living organic material and be irrigated. The installed landscaping must be maintained and kept free of weeds and litter and dead vegetation must be replaced as necessary.
4. Any solid waste dumpster or storage area must have a sight-obscuring fence installed with a closing gate on one side. Sight-obscuring fences must be constructed from normal fencing materials including brick, block, stone, wood or vinyl. Chain link is not an allowed fencing material where a sight-obscuring fence is required.
5. On site parking shall be provided as required by the Building Division and the Engineering Division of the City of Billings.

The public hearing was opened. DARRYL WILSON, 490 NORTH 31ST STREET, said he represents the owner and the buyers of the Hampton Inn. He said the Billings Sports Club is relocating on this property because their downtown property has been purchased by Walker's Grill. It will benefit the area with the type of service it offers. He asked the Council to approve the special review request.

There were no other speakers. The public hearing was closed. Councilmember McDermott moved for approval of the Zoning Commission recommendation with conditions, seconded by Councilmember Larson. Councilmember McDermott said she looked at the area with Leon Pattyn of the Southside Task Force. She said the neighborhood is very interested in having another restaurant in the area. On a voice vote, the motion was unanimously approved.

9. RESOLUTION expanding the North Broadway Streetscape Maintenance District #4013. ACTION DELAYED FROM 8/11/03. Staff recommends approval of the resolution. (Action: approval or disapproval of Staff recommendation.)

Parks and Recreation Director Don Kearney reminded the Council that they asked the Staff to come back to the Council with some different alternatives for assessment methods on the Broadway Streetscape Maintenance District. He introduced Craig Canfield from Interstate Engineering who presented the alternatives. Mr. Canfield outlined the process to expand the Park Maintenance District #4013. He said the district was formed when the Streetscape project was established. The district was formed to maintain the improvements after construction and was based on total area of each property in the district. He said it was the most equitable at the time as all

properties fronted those improvements. Midway through the Streetscape project additional funding was obtained and additional improvements were constructed on 2nd Avenue North and 4th Avenue North, that being construction outside of the original Streetscape boundaries. He said the concern now is how to expand the district to address the cost of the maintenance for those improvements built outside of the streetscape project and adding those properties to the maintenance district.

Mr. Canfield said the original Park Maintenance District contained 288,750 square feet. The expanded area is 72,500 square feet making a total of 361,250 square feet. The length of the improvements constructed is in relationship to the frontage. The existing Park Maintenance District has 3,233 lineal feet of improvements. The expanded area includes 900 lineal feet for a total of 4,233 lineal feet of improvements. He noted there are numerous businesses in each of the buildings in the improvement district. The improvements differ in different areas of the district, he explained. He said when the maintenance costs were assessed the process was taken from Montana Code Annotated (state law). The code said that maintenance costs will be assessed like a special improvement district, based on area of the property, on frontage of the property, or a combination of both. Mr. Canfield stated if the assessments are based on property area, it must include the benefited (by the improvements) area and could be less than the total area.

Mr. Canfield said three (3) methods for calculating assessments were studied. The first was to take the total area of the entire parcel and spread the maintenance cost based on the total area. He said it was discovered that the properties being added to the district would be paying 45% of the Park Maintenance District with that method, yet the lineal footage in front of those parcels represented only 22% of the improvements. This was not appropriate so an adjustment was devised to make the assessment more equal. The adjustment was based on the Rockman Building which is 7,000 square feet because the benefit to that building was the same as larger properties such as the Gazette, City Hall and other properties added to the Park Maintenance District. He said 7,000 square feet was used as the base unit to spread the costs. Spreading the cost on the length of property represents 21.9% of the improvements and the maintenance cost is about the same, making that a good way to spread those costs also. However, Park Maintenance District #4013 was established using the square foot method. If there is to be a change in the assessment method, the park maintenance district must be dissolved and re-created. He said, rather than re-create the district, the square footage has been adjusted to reflect the "benefited" square footage of the properties being added.

Councilmember McDermott said the Montana Code Annotated differs from the Staff report, which states that the method can only be based on total square footage, noting that park maintenance districts can be assessed by the area, frontage, lot and taxable valuation or any combination. She said the committee suggestion is to add a fifth designation that would be based on zoning. She said if the Council approves the resolution as it stands, the City would be setting a new policy that differs from the square footage method. She said it is not a fair or appropriate way to assess this park maintenance district.

Councilmember Jones asked what the obstacle to dissolving the PMD and re-creating a new one. Mr. Bauer said it is possible that the district may not be reformed.

He said the lineal foot method is comparable to the method that is proposed, but it does penalize corner lots. He noted that both methods have pluses and minuses. The City has tried to create a method that strikes a balance between the two and doesn't require the additional administrative process of dissolving one existing PMD and forming a new district. Mayor Tooley summarized the Staff recommendation to keep the existing district, add the petitioned properties based on the first 7,000 square feet of property for those that don't front onto North Broadway. Councilmember McDermott noted several inequities with the proposed assessment method. Mr. Canfield said the difference is in how the different properties benefit from the improvements on North Broadway. Councilmember McDermott asked if certain properties with higher assessments are satisfied with their assessments. Mr. Kearney noted that there have been no responses to the notifications sent to the property owners regarding assessment rates based on their square footage. He said he did not know if they are aware that others in the district were given limited benefits.

Councilmember Gaghen moved for approval of the Staff recommendation using assessment Method #3, seconded by Councilmember Brown. Mayor Tooley noted that the First Methodist Church is the only property in the expanded district that fronts North Broadway. He asked if this property would receive more of a benefit from the Park Maintenance District. Mr. Bauer replied "yes". He said the City is trying to be consistent between the areas identified as where the maintenance obligation is and the area being assessed.

Councilmember McDermott made a substitute motion that the Park Maintenance District be approved using assessment Method #1, seconded by Councilmember Brewster. Councilmember McDermott said a committee should be formed to review all of the assessments based on square footage for equity and consistency. She said this PMD should not be a special exception, but should be approved based on the policy already established and then begin to pursue new methods. Councilmember Brewster said he thinks the administration could be more supportive of efforts to change the legislation to allow the zoning issue to be considered as part of the process. He agreed that Councilmember McDermott is correct in continuing to raise the issue of equitable assessment methods.

Councilmember Jones said he is concerned that the additional properties have received benefits of the improvements while not sharing in the original expense of them. He agrees with Councilmember McDermott that we will be creating a new policy with the approval of the proposed PMD. Councilmember Larson agreed that Councilmember McDermott brings up a good point about the assessments. He said he is not as concerned about the precedent setting decision. He said this is a Park Maintenance District that is maintaining improvements directly in front of specific businesses – a unique Park Maintenance District. It is not inappropriate to look at a method that assesses benefits from improvements and keeps it from becoming a major precedent. Mr. Bauer noted that the substitute motion would require the City to re-notify the property owners and give them an opportunity to respond.

Councilmember Poppler expressed her concern for the proposed high assessment of \$1,000 for the First Methodist Church. Mr. Kearney said the notice was properly sent on February 28th to the property address of 2800 4th Avenue North and was not returned as undeliverable. On a voice vote the substitute motion failed.

Mr. Bauer noted that the original motion could include a revised resolution that was not included in the packet, but placed on the Councilmember's desks this evening. This would depend on the intent Councilmember Gaghen's original motion. The scope of the PMD would include all original improvements and any new improvements in the area.

Councilmember Poppler made a substitute motion to continue consideration of this item until the September 8th Council Meeting to work out the details, seconded by Councilmember Brown. Mr. Bauer reminded the Council that the decision must be made by the next Council meeting in order to levy the assessment in the current assessment cycle. He noted that the option that has already been noticed is the only option available to stay within that timeframe. Any re-creation and re-notification of the PMD would postpone assessment collection for a year. Councilmember McDermott asked that Staff be directed to contact the pastor at the First Methodist Church to explain the proposed assessment to make sure they understand their responsibility as part of the PMD and report any response back to the Council. On a voice vote, the substitute motion was unanimously approved.

10. GOODMAN SUBDIVISION:

A. FIRST READING ORDINANCE FOR ZONE CHANGE #718: A zone change from Residential 9,600, Residential 6,000 and Residential Professional to Residential 7,000, Residential Multi-Family-Restricted and Community Commercial on 27 acres of land located northwest of the intersection of Shiloh Road and Grand Avenue, Goodman, Inc., owners, Engineering, Inc., agent. VALID PROTEST received. ACTION DELAYED FROM 7/28/03. Staff recommends tabling this item until the September 22nd meeting. (Action: approval or disapproval of Staff recommendation.)

Councilmember Brown moved for approval of the Staff recommendation to delay to 9/22/03, seconded by Councilmember Brewster. Councilmember McDermott asked for assurance that this delay would be the final one. Staff responded that it would unless the Council took other action. On a voice vote, the motion was unanimously approved.

B. PRELIMINARY PLAT OF GOODMAN SUBDIVISION, 3RD FILING. Staff recommends tabling this item until the September 22nd meeting. (Action: approval or disapproval of Staff recommendation.)

Councilmember Brown moved for approval of the staff recommendation to delay to 9/22/03, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

11. 2003 CTEP PROJECT APPLICATIONS. Staff recommends approval of submission of CTEP project applications. (Action: approval or disapproval of Staff recommendation.)

Planning Director Ramona Mattix said Vern Heisler, City Engineer would review the projects submitted to the Montana Department of Transportation (MDOT) for funding from the Community Transportation Enhancement Project (CTEP) program. Mr. Heisler said the Montana Department of Transportation administers this program that allocates

federal aid for local transportation related projects. He said Ms. Mattix is the CTEP manager for Yellowstone County. The CTEP applications are due in September of each year. He noted previous City CTEP projects included: 1) School Route Improvements for years 1998 to 2003, 2) Lake Elmo Drive for 1998 and 2003 and 3) BikeNet for 1997, 1999, 2002 and 2003.

Mr. Heisler said the process begins with the Public Works and Planning Departments assembling a preliminary list of projects followed by a Work Session with the Council to prioritize the projects. The next step is a Council meeting directing staff to apply for the funding. He noted that the assembly of a preliminary list and a Work Session with the Council are new to the process and will begin with next year's application. The Public Works and Planning Departments complete the CTEP applications. The Planning Department summarizes the projects and the aid available and forwards this with the application as a CTEP package to Helena. Montana Department of Transportation reviews the projects for CTEP eligibility and the Transportation Advisory Committee (TAC) and the Planning Board recommend the project funding. The recommended project funding is sent to the County Commissioners and the City Council for funding and approval.

Mr. Heisler said the MDOT creates the project agreements and the City Council approves those project agreements prior to the Montana Highway Commission approval. He outlined the project development steps as 1) design plans and specifications, 2) construction, and 3) acceptance and use.

Mr. Heisler said the recommended CTEP projects for this year are: 1) Alkali Creek Road, 2) Heritage Trail (King Avenue to ZooMontana), 3) School Route Improvements (a decision must be made on funding Jackson Street or Rimrock Road). He noted School District #2 recommended going forward with the Jackson Street school route improvements.

Councilmember McDermott asked for an accounting of expenditures on BikeNet and how much CTEP funds were used, as well as and what is predicted to be spent in the future. She noted that a lot of CTEP funds have gone into this project. Councilmember Jones asked about the number of children affected in the two proposed school route projects. Mr. Heisler said there is no count of the children impacted at the two improvement sites. Councilmembers McDermott and Gaghen both commented that the school route at Jackson Street is extremely hazardous. Councilmember Poppler agreed that the Jackson Street route is more hazardous than the Rimrock Road route.

Councilmember Brewster moved for approval of the Staff recommendation including the Jackson Street alternative, seconded by Councilmember Brown. On a voice vote, the motion was unanimously approved.

12. DISCUSSION AND APPROVAL OF EMPLOYMENT AGREEMENT FOR NEWLY APPOINTED CITY ADMINISTRATOR, KRISTOFF BAUER.

Councilmember Poppler moved for approval of the negotiated contract for City Administrator Kristoff Bauer, seconded by Councilmember Larson. Councilmember Jones amended the motion to change Section 4A re: termination and severance pay from 5 months to 3 months, seconded by Councilmember McDermott. Councilmember Jones said he feels that 3 months termination and severance pay is adequate. On a voice vote, the motion failed.

Councilmember Jones amended the motion to change Section 4B verbiage to read "or the employee resigns following a formal suggestion by the Council that he resign for no just cause" seconded by Councilmember McDermott. Mayor Tooley noted that the word "suggestion" would undermine the effectiveness of the City Administrator and decrease his authority with the Staff and the community. Mr. Bauer noted that this wording is a standard clause from the International City Managers Association (ICMA) contract and is their recommended language based on Mayor Tooley's comments that actions on behalf of the Council and its members can make it difficult for managers to accomplish their tasks. Councilmember Larson said the term "formal suggestion" maintains the integrity of that paragraph, but the word "informal" is a concern. He said an example of a situation that would lead to a formal suggestion could be that the administrator and the Council were going in different directions and a suggestion would be made to look for another position where the administrator's ideas were embraced. Councilmember Poppler noted that an informal suggestion would not go on the administrator's record and not follow him from job to job. Councilmember Jones said the severance pay is a lot of money for an informal suggestion. Mayor Tooley noted that the standard severance pay period in this type of situation is 6 months to a year and maybe 5 months is not unreasonable. On a voice vote the amendment was approved 8 - 1 with Mayor Tooley voting "no".

Mr. Bauer offered an explanation of the purposes of Sections 4 A & B of the contract. He said the amended language, in his belief, regarding the formal action is the same as firing someone without just cause but changing the language to frustrate the provision that provides for severance in that situation. He stated that he is uncomfortable with that change. Mayor Tooley re-read the sections of the contract in question and concluded that the formal suggestion would trigger the severance pay. Mr. Bauer replied "yes" and stated that any contract is a mixture between both parties to mediate what is appropriate behavior for both parties. He said this language has been developed over a long practice of trying to inform all parties that this relationship is a partnership. He said when he no longer has the support of the Council, he would consider moving on, but would expect some assistance in doing so.

Councilmember Brewster asked if the situation could occur that the administrator would become frustrated with the relationship with the Council and through no formal Council action could trigger that provision in the contract, gaining severance not at the desire of the Council. Mr. Bauer said he understands that there must be an overt action by one or more of the Council to trigger the provision. Councilmember Larson said there should be clarification of this paragraph for a clearer understanding. He suggested that the City Attorney contact ICMA for clarification of what the Council is agreeing to, if the language is left as it is, before finalizing the contract.

Councilmember Jones asked if the action on merit wage adjustment of 5% must be a formal action by the Council. Mayor Tooley said the Council must evaluate the administrator every year on or before December 1st. He said this action must be a formal action on the agenda. Councilmember Jones expressed his concern that the Council be responsible to bring this action before Council in a formal manner.

Mayor Tooley stated that the amendment concerning the "formal suggestion" verbiage needs to be resolved. Mr. Bauer recommended that the Council approve the contract as amended and request the City Attorney give an interpretation of the clause

in question and if there is an issue it would be brought to Council at that time. Councilmember Larson agreed with that assessment and added that if Mr. Bauer has a concern he (Councilmember Larson) would bring this back to Council in two weeks on his behalf.

On a voice vote for the contract as amended, the motion was unanimously approved.

Councilmember Larson requested that the City Attorney research the intent of Section 4B of the contract with regard to “formal and informal triggers” to the severance provision and to contact ICMA for their rationale behind the wording.

13. PUBLIC COMMENT. (Non-Agenda Items; comments limited to 3 minutes per speaker.) NO SPEAKERS.

Council Initiatives

- **COUNCILMEMBER BROWN:** Councilmember Brown moved to direct staff to look into the problem on Yellowstone River Road re: the leaking canal that is creating a dangerous situation on the road and resolve the denial of water access problem, seconded by Councilmember Brewster. Mayor Tooley noted that it may be impossible to resolve the problem until the Council gets information that can direct Staff to take a certain action. Mr. Bauer said this will require a policy direction from Council. He noted that he has received a letter from the attorney representing the individual whose property is being denied water access and is reluctant to proceed until the City Attorney has time to research and respond to that letter. He added this may lead to litigation. He said the Staff could come back to Council with more information on a process to resolve the situation. Councilmember Brown said annexing the property has brought the responsibility of providing water to the complainant’s property to the City. Councilmember Poppler said she is concerned about setting a policy regarding ditches that cross the City in various areas. On a voice vote, the motion failed.
- **MAYOR TOOLEY ON BEHALF OF COUNCILMEMBER KENNEDY:** Mayor Tooley moved to direct Staff to get information that Great Falls is gathering regarding a potential new default power provider and the possibility of forming a public power utility and bring the information to the Council for review/discussion, seconded by Councilmember Larson. Councilmember Brewster noted that the article regarding Great Falls involves significantly more than finding a default provider and would welcome more information and an in-depth discussion. On a voice vote, the motion was approved.
- **COUNCILMEMBER JONES:** Councilmember Jones moved to direct Staff to research issues and alternatives and prepare a report for Council at its next work session regarding ownership and maintenance responsibilities of ditch/canal properties located within the City, seconded by Councilmember Larson. On a voice vote, the motion was unanimously approved.

MINUTES: 08/25/2003

ADJOURN —With all business complete, the Mayor adjourned the meeting at 9:45 P.M.

THE CITY OF BILLINGS:

By: _____
Charles F. Tooley MAYOR

ATTEST:

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