

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

May 13, 2002

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 Brewster.

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

MINUTES – April 22, 2002. APPROVED AS PRINTED.

COURTESIES –

- **Public Works Department:** Public Works Staff Engineer John Nowak presented Empire Sand and Gravel with the Rocky Mountain Chapter of American Public Works Association "Contractor of the Year" award for their outstanding work on the Grand Avenue project. He presented a plaque to Steve Studer, Project Manager and Bob Kober, Vice President in Charge of Operations of Empire Sand and Gravel.
- **Police Department:** Police Chief Ron Tussing spoke on behalf of Police Officer Jason Dewitt whose confirmation is on this evening's Consent Agenda. He said Officer Dewitt was unable to attend the meeting.
- **Horse of Course Committee:** Public Works Director Dave Mumford introduced Mary Peet who spoke about the Public Arts Project "Horse of Course", a fundraising effort in support of the renovation of the Billings Depot Passenger Station. Ms. Peet noted that the horse was chosen for this project because it was the forerunner of the Iron Horse. She noted the many sponsors and volunteers, including the City who will be helping place the horses, that worked together to accomplish this project. She said there are a total of 34 life-sized horses and 5 colts that will be placed in various locations throughout the City from June 1st through September 7th, and then will be auctioned in support of the Depot project.

PROCLAMATIONS – Mayor Tooley.

- May 18, 2002 as POPPY DAY. The Mayor offered a memorial Poppy Day symbol to all persons present.
- May 12-18, 2002 as POLICE WEEK

BOARD & COMMISSION REPORTS – NONE

ADMINISTRATOR REPORTS – Dennis Taylor.

Mr. Taylor noted the Montana League of Cities and Towns legislative briefing that would be held Tuesday, May 14, 2002 at the Public Utilities Conference Room. Alex Hanson, Executive Director of Montana League of Cities and Towns will begin the process of reviewing ideas that will ultimately become resolutions by the Montana League of Cities and Towns and will be presented for action in the 2003 legislature.

CONSENT AGENDA:

1. **A. Bid Awards:**
 - (1) **AIP 23.** (Opened 4/30/02). Recommend Empire Sand and Gravel, \$2,332,780.10.
 - (2) **Terminal Duct Cleaning.** (Opened 4/30/02). Recommend Air Solutions, \$23,581.00.
 - (3) **High-Speed Rotary Snow Blower Vehicle.** (Opened 4/30/02). Recommend delaying award to 5/28/02.
 - (4) **4 x 4 Snow Plow Vehicle with Dump body and displacement SnowPlow Blade.** (Opened 4/30/02). Recommend delaying award to 5/28/02.
 - (5) **Airfield Tractor with Rear Blade, Front Mounted Broom and Pull-Type Field Mower.** (Opened 4/30/02). Recommend delaying award to 5/28/02.
 - (6) **Airfield Dump Truck/Sander.** (Opened 5/7/02). Recommend delaying award to 5/28/02.

- B. C.O. #1, South Billings Boulevard Project,** COP Construction, \$6,363.98.

- C. C.O. #1, Grand Avenue Transmission Water Main and Trunk Sanitary Sewer Project,** COP Construction Co., \$3,550.99.

- D. Contract for Professional Services** with HKM Engineering, Inc., for extension of water service to Rehberg Ranch and Zimmerman, elimination of existing sanitary sewer lift station in spring Creek park and replacement of the existing water line in a portion of Lewis Avenue, \$435,725.00.

- E. Contract for Animal Control Services** with Yellowstone County for FY 2002-03, \$50,000.

- F. Contract for Animal Housing** with City of Laurel for FY 2002-03.

- G. Amendment to FAA Master Ground Lease** adding a parcel for the construction of a new radar facility, \$0.00.

- H. Authorization to purchase:** S1/2 of Lot 7, Sandra Subdivision, located at 63 Charlene St for expansion of the water treatment facility, \$103,000.

- I. Authorization to purchase:** C/S 646, Amended Tract 4-A for Cedar Park/Briarwood Pump Station, \$77,000.00.

- J. Housing Rehabilitation Loan Agreement** with Wells Fargo Bank to fund loans for substantial home repairs, \$100,000.00.

- K. Subordination of Housing Rehab. Loan:** Joseph & Gail Reiersen, 321 S.

39th St., \$8500.00.

L. Subordination of Housing Rehab. Loan: Todd Wambach, 1504 7th St. W., \$8500.00.

M. Confirmation of Police Officer: Jason Dewitt.

N. First reading ordinance amending the Billings Montana City Code by ADDING a section to be numbered 2-202, providing that the office of the Mayor or Councilmember shall be forfeited under certain circumstances and setting a public hearing date for 5/28/02.

O. First reading ordinance repealing Section 2-226, 2-227 and 2-228 of the Billings Montana City Code, that deal with defense and indemnification for alleged violation of CI – 75 and declaring same to be null and void and setting a public hearing for 5/28/02.

P. First reading ordinance amending Ord 01-5172 dated 9/10/01 correcting the legal description of the property annexed via Annex #01-12, generally described as a tract of land located in the S1/2 of Government Lot 3, Section 11, Township 1 South, Range 26 E, more particularly in C/S 2373 and setting a public hearing for 5/28/02.

Q. Resolution 02-17837 relating to \$1,341,000 Special Improvement District No. 1356 Bonds; authorizing the issuance and calling for the public sale thereof.

R. Resolution 02-17838 relating to \$1,578,000 Pooled Special Improvement District Bonds, Series 2002A (SID 1353, SID 1357 and SID 1359); authorizing the issuance and calling for the public sale thereof.

S. Resolutions correcting annexation descriptions:

1. RESOLUTION 02-17839 correcting Annexation 01-01 approved 5/29/01 via Res 01-17702
2. RESOLUTION 02-17840 correcting Annexation 01-02 approved 5/29/01 via Res 01-17703
3. RESOLUTION 02-17841 correcting Annexation 01-12 approved 8/13/01 via Res 01-17731

T. Authorizing sale of surplus property at City Auction on 6/1/02.

U. Special Events:

- (1) Closure of the North 24th St between 1st and 2nd Avenues North from 6:00 PM on May 30 to 7:00 PM on June 1, 2002 for Whalen Tire Sales Event.
- (2) St. Vincent's Heart and Sole Run in Downtown area on June 8, 2002.

V. Approval of grant application for Renewable Resource Grant from Dept. of Natural Resources and Conservation for the culvert under Main Street, \$100,000.

W. Final plat of Moose Lodge Subdivision.

X. Bills and payroll.

(Action: approval or disapproval of Consent Agenda.)

Councilmember Brewster separated Item N from the Consent Agenda. Councilmember Bradley moved for approval of the Consent Agenda with the exception of Item N, seconded by Councilmember Larson. On a voice vote, the motion was unanimously approved.

Councilmember Bradley moved for approval of Item N, seconded by Councilmember Larson. Councilmember Brewster asked that there be a procedure put in place that would require a Council vote before activation of any of the occurrences stated in the ordinance. Councilmember McDermott offered a substitute motion to remove Item N from the Consent Agenda to further study and establish a Council Committee to review the ordinance and bring a recommendation back to the Council, seconded by Councilmember Brewster. On a voice vote, the substitute motion was passed with Councilmember Jones voting “no”.

REGULAR AGENDA:

2. FY 2002-03 CDBG & HOME Programs Funding Allocation. Public hearing held 4/22/02. Community Development Board recommends approval. (Action: approval or disapproval of Community Development Board recommendations).

Councilmember Brewster moved for approval of the Community Development Board recommendations, seconded by Councilmember Larson. Councilmember McDermott moved to amend the motion by removing the requirement of matching funds for the Police Department’s \$25,000.00 allocation, seconded by Councilmember Bradley. Councilmember McDermott stated her understanding is that if their requirement for matching funds remains, the Police Department will be unable to utilize the money. She noted the Task Forces were very much in support of this funding. On a voice vote, the amended motion was unanimously approved.

Councilmember Kennedy moved to amend the allocation for the Community Housing Resource Board from \$10,000.00 to \$15,000.00 with the funds coming from the un-programmed contingency funds, seconded by Councilmember Brown. Councilmember Kennedy said he has sat on this board and watch them work and grow toward fair housing in our community. He noted this board has been recognized nationally for its fair housing practices and it is important to support their efforts. On a voice vote, the amended motion was approved with Councilmember McDermott voting “no”.

Councilmember Kennedy moved to amend the funding for the Tumbleweed program to last year’s level of \$16,000.00 with the funding coming from the Police Department allocation, reducing their funding to \$19,000.00, seconded by Councilmember Brewster. Councilmember Jones agreed with the additional funding for the Tumbleweed program but asked if the funds could come from the \$1.4 Million Public Safety Reserve Fund in the proposed budget rather than taking it from the Police

Department allocation of the CBDG funding. He said he feels this needs to be addressed before he can vote on the Tumbleweed amendment. Councilmember Kennedy noted that if Councilmember Jones voted in the affirmative on Councilmember McDermott's amendment, he could ask for a reconsideration of that issue right now. City Administrator Dennis Taylor noted that the Council has the ability to appropriate money from the Police Reserve for expenses of FY 2003 and advised that be done when the Council considers the FY 2003 budget on June 24th. He said that could be done with a motion this evening to add this appropriation to the draft budget. He reiterated that the Council does have the ability to commit funds at anytime during the year according to State budget laws, however he noted that it is a bad practice. Mayor Tooley reminded the Council that the motion on the floor is concerning the CDBG Budget, which is a separate issue from the annual budget, and an amendment is currently pending. Deputy City Attorney Kelly Addy confirmed that it would be best to keep these two issues separate. Councilmember Jones said that he agrees on the separation of issues but added he feels the CDBG is not the proper place for funding the Police Department, but rather it should be done through the reserve fund. Councilmember McDermott offered a substitute motion to take the \$6,000.00 from Family Services rather than the Police Department allocation to fund the Tumbleweed program, seconded by Councilmember Bradley. On a roll call vote the substitute motion failed 4 to 7 with Councilmembers Brewster, Iverson, Kennedy, Ohnstad, Jones, Larson and Mayor Tooley voting "no" and Councilmembers McDermott, Bradley, Brown and Poppler voting "yes".

Councilmember McDermott offered another substitute motion to take an equal assessment from each of the 18 other projects that will total the \$6,000.00 to fund the Tumbleweed program, seconded by Bradley. On a roll call vote, the substitute motion passed 7 to 4 with Councilmembers McDermott, Bradley, Brown, Kennedy, Poppler, Jones and Mayor Tooley voting "yes" and Councilmembers Brewster, Iverson, Ohnstad and Larson voting "no".

Councilmember Brewster moved that the \$25,000.00 allocated in item 4 to the Police Department be placed into the Unprogrammed Contingency allocation and be allocated during the budget approval process, seconded by Councilmember Kennedy. Councilmember Larson asked, if the motion is successful, would the Community Development Board be involved in the reallocation. Councilmember Brewster said he envisions that the Council would re-allocate these monies if the motion that Councilmember Jones is considering proposing for the FY 2003 budget fails. Councilmember McDermott asked for an assurance that the money will safely go to the Police Department. She asked, if there is no money allocated from the reserve, how protected is this money and when could the Police Department begin to use this money. Mr. Taylor said the intention of Councilmember Brewster's motion to place the \$25,000.00 funds in the Unprogrammed Contingency reserve was so the Council can wait until June 24th to vote on the question of changing the Police Budget. Should the motion to take the money from the Public Safety Fund to fund the special Police Department task force related projects fail, a motion could be offered to fund the Police Department projects from the Unprogrammed Contingency allocation. Councilmember Larson noted that the Community Development Board has spent considerable time deliberating on the allocations for the CDBG and HOME Funding grants and is very

hesitant to make adjustments to their recommendations. He urged the Council to bring the Community Development Board back into the process with regard to this motion. Councilmember Poppler said the Community Development Board's recommendations basically remain the same, even with the additional amendments. She noted the Police Department money hasn't been removed from them and therefore at the future budget meetings these motions could be made at that time. Councilmember Brewster said his intention for this motion is to determine whether this allocation is an appropriate resource for the Police Department, or whether these monies should come from the General Fund. In any case the fund would not be allocated until the start of FY 2003, he added. Councilmember Jones agreed that it forces the Council to take a look at this issue and allows the Council to examine it as an appropriate policy discussion to fund the Police at budget time. City Administrator Taylor noted that one of the goals of the Public Safety Fund is to try to increase the number of officers in the Police Department and if the Council erodes this fund at a time when there are future Fire Station relocations and additional FTE's desired, the monies associated with the amendment will deplete the ability to fund these items. He added it would not be the Police Chief's, the Fire Chief's nor his recommendation to use that money in this way when those departments have requested items that are not recommended for inclusion in the budget. Councilmember Kennedy said that the reserves issue is for another discussion and urged that the Council defeat this amendment and call for the question. Mayor Tooley called for a voice vote on stopping the debate. The voice vote was unanimously in favor of stopping the debate. On a voice vote on the substitute amendment, the motion failed with only Councilmember Brewster and Jones voting "yes".

On a voice vote for the motion to approve the Community Development Board recommendations with amendments, the motion was unanimously approved.

3. PAYMENT APPROVAL/BID AWARD for construction of a bicycle/pedestrian trail from Coulson Park to Downtown Billings, JTL Group Inc., \$642,733.90 for Schedule A—Concrete OR \$524,642.50 for Schedule B – Asphalt and 90 calendar days. Staff recommends concurrence with the award of the construction contract as stated, authorization of the expenditure of budget allocations for construction of this project and authorization for the City Administrator to administer the construction contract and execute all change orders up to 10% of the original bid amount. (Action: approval or disapproval of staff recommendation.)

Planning Department Director Ramona Mattix said there are programs in the four phases of a trail system that would go from Coulson Park to Mystic Park to the Downtown Historic District. This bid award relates to phase one and three of this project, phase two is funded by a combination of several grants and a Conoco contribution and phase four is funded by GO Bonds. She noted the alternative bids included two different surface materials - concrete and asphalt, with the asphalt surface as the lesser amount with the low bidder being JTL Group, Inc. and a difference of \$118,000.00 in the two surface prices. The maintenance cost differences over a 30-year period are approximately \$34,000.00 more for the asphalt surface requiring crack sealing, fog sealing and a one-time asphalt overlay when the trail reaches an age of 20 years. She noted that repair costs for concrete are 48% higher than asphalt based on recent bids received by the City Public Works Department, adding that 48% more lineal

feet of asphalt trail can be repaired. She said that the following conditions are likely to create a need for repair: water drainage, erosion, soil conditions, freezing and thawing cycles, weeds and tree root damages.

Ms. Mattix said in summary that concrete costs more to construct, however construction dollars come mainly from the federal government for these two phases. Maintenance costs are direct City costs, she added. The largest unknown factor is the repair costs; asphalt can be repaired in-house whereas concrete must be contracted. Other budgetary implications are amenities for the trail such as lighting, irrigation and landscaping.

At their May 7th meeting the Board of County Commissioners voted to recommend the Council support the concrete surface and voted to support the City Administrator's ability to approve change orders up to 10%.

Councilmember Bradley asked why the Council has been given this choice. Ms. Mattix said it was the significant differences in cost. Councilmember Bradley asked how much concrete and asphalt trails there currently are. Planning Staff Member Darlene Tussing said there are approximately 4 plus miles of concrete trails and she was not aware of the amount of asphalt trails.

Councilmember Iverson moved for approval of Schedule A of the staff recommendation, seconded by Councilmember Larson. Councilmember Poppler said the 10% authorization by the City Administrator for change orders is a very big amount of money. She is concerned about this setting a precedent for change orders of this magnitude being approved without Council discussion and approval. Councilmember Kennedy asked Assistant City Administrator Kristoff Bauer to clarify why this latitude was given to the City Administrator. Mr. Bauer said the specific concern is that this is a dual agency project and when change orders might arise there would be numerous processes to follow in both agencies that can cause significant delays. He noted that the County is involved and has approved the 10% change order authorization for the City Administrator. Councilmember McDermott asked if the Council could be kept informed with a status report of any change orders that take place. Mr. Taylor said "yes". Councilmember Larson noted that the lowest bidder was \$200,000.00 under the engineer's estimate and next bidder and said he feels this is a "good deal". On a voice vote, the motion was unanimously approved.

4. PUBLIC HEARING AND RESOLUTION 02-17829 creating SID 1354 for the construction of curb and gutter, sidewalks, sanitary sewer mains, street widening, streetlights, median placement and traffic signal improvements to King Avenue East and Simpson Street. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Public Works Director Dave Mumford described proposed SID 1354 as improvements in storm drain, sanitary sewer, water main, sidewalk, streetlights, signal work and street widening to King Avenue East between South Billings Boulevard and Parkway Lane. He noted there was only one protest. He said the cost of the project would be paid as followed: 1) a \$50,000 contribution from the Montana Department of Transportation, 2) a \$58,000 contribution from a Community Development Block Grant, 3) a \$600,000 contribution from the City of Billings that comes from the Gas Tax Funds and Storm Drain Funds, 4) a \$123,436.08 contribution from the Public Utilities

Department and 5) \$1,248,000 recovered through direct assessments to property owners within the district boundary. Councilmember McDermott asked if the \$58,000 contribution from the Community Development Block Grant qualified as low-moderate income. Mr. Mumford said “yes”.

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

5. PUBLIC HEARING AND RESOLUTION 02-17830 creating PMD #4017 for park maintenance in Southgate Subdivision, 1st 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 Poppler moved for approval of the staff recommendation, seconded by Councilmember Larson. On a voice vote, the motion was unanimously approved.

6. PUBLIC HEARING AND RESOLUTION 02-17831 authorizing the sale of Lot 9, Block 1, Lake Hills Subdivision, First Filing AND Lot 14, Block 1, Lake Hills Subdivision, Third 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 Ohnstad moved for approval of the staff recommendation, seconded by Councilmember Kennedy. On a voice vote, the motion was unanimously approved.

7. PUBLIC HEARING AND SECOND READING ORDINANCE 02-5199 FOR ZONE CHANGE #693: a zone change from Residential 9600 to Planned Development with underlying zoning of single-family and duplex, on Tract 3B, C/S 2991, generally located on the north side of Monad Road, between 29th and 30th Streets West. Mary Kramer, owner; Engineering, Inc., agent. Zoning Commission recommends approval. (Action: approval or disapproval of ordinance on second reading.)

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

8. PUBLIC HEARING AND SECOND READING ORDINANCE 02-5200 FOR ZONE CHANGE #694: a zone change from Controlled Industrial to Community Commercial on Lot 12, Block 1, Gabel Subdivision, 2nd Filing, generally located on the south side of Gabel Road, north and east of Hesper Road. C/J Land and Livestock LP, owner; Collaborative Design Architects, agents. Zoning Commission recommends approval. (Action: approval or disapproval of ordinance on second reading.)

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

9. PUBLIC HEARING AND SECOND READING ORDINANCE 02-5201 FOR ZONE CHANGE #695: a zone change from Residential 7000 to Residential Professional on Lot 22, Block 1, Happy Hollow Subdivision, located at 349 Wicks Lane. U.S. Dept. of Housing & Urban Development, owner; De Ann Watson, agent. Zoning Commission recommends approval. (Action: approval or disapproval of ordinance on second reading.)

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

10. PUBLIC HEARING AND RESOLUTION 02-17832 annexing #02-08 for Tract 1, C/S 828, located in T1N-R25E-S30: SW4, Aviara, Inc., owner and petitioner. Staff recommends approval of the public services report and conditional approval of the annexation. (Action: approval or disapproval of staff recommendation.)

Planning Staff Member Bruce McCandless said he would combine the next four items into one presentation as these annexations are in close proximity of one another. He said the property in annexation #02-08 is 20 acres in size and is located between the Yellowstone County Club and Molt Road, approximately ¼ mile north of Rimrock Road. He said 100% of the petitioners are asking for annexation to obtain city utilities and services. It is currently zoned R9600 and is vacant pasture, with a proposed single-family residence. City department comments include: 1) creation of SID or PMD for park development and maintenance, 2) fire department access to on-site municipal water be available before housing construction begins, and 3) the city should consider annexing the Yellowstone Country Club so that a county island is not created. Mr. McCandless said the developer will pay the truck extension fees that finance the water and sewer trunk lines, will build the collection/distribution systems within the subdivision and will pay the System Development Fees. He noted that the taxes and fees that the future lot owners will pay would help to support the services that they need. He said the anticipated value of the developed property should pay real property taxes that are slightly below the estimated cost of providing General and Public Safety Fund services.

The public hearing was opened. JOHN STEWART OF ENGINEERING INC., 1001 S 24TH STREET WEST, said the north half of the project was annexed last year and this is the south half. The south portion is where the sanitary sewer would be located that would serve both halves. He said that the entire project should be retained together with a common design and urged the Council to approve the annexation. There were no other speakers. The public hearing was closed. Councilmember Bradley moved for conditional approval of the annexation, seconded by Councilmember McDermott. On a voice vote, the motion was unanimously approved.

11. PUBLIC HEARING AND RESOLUTION 02-17833 annexing #02-09 for Tracts 3A, 4, 5A, 6A and 7A, C/S 2465, located in T1N-R24E-S25: S2, Golden Acres Partnership, owner and petitioner. Staff recommends approval of the public services report, the proposed annexation agreement and conditional approval of the annexation. (Action: approval or disapproval of staff recommendation.)

Planning Staff Member Bruce McCandless continued his presentation from the previous item with annexation #02-09 located west of Molt Road and north of Rimrock Road. He said it consists of 248.446 acres and is currently zoned as R-15000. He noted that basically the same conditions that were described previously, exist with this annexation. He noted that Rimrock Road should not be annexed at this time because no owners on the south side of the road are requesting annexation. The purpose of the annexation is to obtain city utilities and the existing land use is a vacant pasture and dry land farming with probable residential in the future. Due to the close location to annexation #02-08, the departmental comments are the same and the developer will pay the same fees. He noted that while the real property tax ratio to the cost of services is the same as the previous annexation, this property might include some commercial development that tends to pay more in taxes than it demands in services.

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

12. PUBLIC HEARING AND RESOLUTION 02-17834 annexing #02-10 for Tract 6B-1 of Amended Tract 7, C/S 1261 and Amended Tract 6B of Amended Tract 6, C/S 1261, located in T1N-R24E-S25: NE4, Ronald and Jean Jacobson, owners and petitioners. Staff recommends approval of the public services report and conditional approval of the annexation. (Action: approval or disapproval of staff recommendation.)

Planning Staff Member Bruce McCandless said this property is located northwest of the Yellowstone County Club on Molt Road and 62nd Street West. It is 1.36 acres in size and owned by Ronald and Jeanne Jacobson who are requesting annexation to obtain city utility services. The current zoning is R-15000 and a single-family home exists on the property. The owner will pay for the extension fees and System Development fees.

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

13. PUBLIC HEARING AND RESOLUTION 02-17835 annexing #02-11 for Tract 2, C/S 3030, located in T1N-R24E-S24: SE4 and T1N-R25E-S19: SW4, Shane and Stephanie Gundlach Woodridge LLC, owners and petitioners. Staff recommends approval of the public services report and conditional approval of the annexation. (Action: approval or disapproval of staff recommendation.)

Planning Staff Member Bruce McCandless said this property is 288 acres in size and is sometimes know as the proposed Ironwood Subdivision, located northwest of the

Yellowstone Country Club between the Rimrocks and Molt Road. The owners are seeking annexation in order to obtain city utilities and services. It is currently zoned R-15000 and is vacant, dry land farming with a proposed residential and professional office use. He said that most of the comments, including financial and departmental from the previous annexation items, also apply to this annexation. He said the conditions for approval are: 1) prior to issuance of any building permits a Development Agreement shall be executed between the owner and the City stipulating improvements and guarantees for improvements and a Subdivision Improvements Agreement and Waiver of Protest to SID be approved and filed, 2) all of Molt Road that is adjacent to the subject property be annexed, substitute condition 3) if a roadway connection between Highway 3 and Molt Road is approved in the future, the owner(s) will not object to a residential collector street that uses Ironwood Drive within the Ironwood Subdivision, 1st filing or a residential collector street alignment that is west and north of the 1st filing, and substitute condition 4) the owners will prepare and implement a Park Development Plan detailing level, type and timing of improvements contemplated for each subdivision filing, to be submitted to the City for approval prior to filing the final plat. Councilmember Brewster asked if the City is abandoning the outer belt loop concept with regard to the by-pass road. Mr. McCandless said he doesn't think that is what is meant, rather the present transportation plan shows a connection between Highway 3 and Molt Road and condition #3 says there may be a connection made between Highway 3 and Molt Road but if it goes through this property it would be a collector street. Any other type of street that is designed for higher speed and higher volume of traffic would not be placed on this property, he added. Councilmember Brewster asked if we are running out of places to put this road. Mr. McCandless said that is what the alignment study should advise which would be completed sometime in August. Public Works Director Dave Mumford commented that if an arterial came through this area it would be dumping traffic into a residential area that is not capable of handling it at this time. One of the concerns is to find an alignment that would be more effective for a by-pass or exiting road. Councilmember Brewster asked if all the trails and pathways in this area would be accessible to the public. Mr. McCandless said they would be public park dedications. Councilmember Jones asked about the sensitive historical areas with regard to the inner belt loop. Mr. Mumford acknowledged the areas to the east of this property are sensitive in regard to Indian artifacts and drawings and must be considered. The alignment study will consider what is feasible regarding those issues. He said there are three or four plans at present. Councilmember McDermott asked if there are any County islands being created with these annexations. Mr. McCandless said that no genuine islands are being created, with the exception of the Yellowstone County Club. Councilmember Jones asked how the City would finance the public service extensions that are necessary to service the annexed land. Mr. McCandless said capital facilities are the most expensive public services and in all of the cases where facilities need to be extended there are financing sources identified for them.

The public hearing was opened. SHANE GUNDLACH, 3433 CLEARWATER DRIVE, said he would be available for any questions the Council may have. There were no questions. The public hearing was closed. Councilmember Iverson moved for approval of staff recommendation with substitute conditions of annexation, seconded by

Councilmember Brewster. Councilmember Jones expressed concern about the need to annex the Yellowstone Country Club. He also asked for a report regarding the remaining balance of the \$20 Million dollars slated for sewer and water expansion. Mr. Taylor said a report could be produced to show what has been improved from the Capital Improvement Plan and what additional requirements will come as a result of the annexations. Councilmember McDermott asked what the time line is for annexing the Yellowstone Country Club. Mr. Taylor noted that when City water was extended in the 1980's the Council requested and received waivers of protest of annexation for 60% of property in the Yellowstone County Club Estates. He said that the Council could at any time exercise those options and recommend to move forward with that type of annexation before December of 2002. He said that meetings with the homeowners of this area have indicated that the petition to annex, initiated by 50% of the owners, could come this fall. In either case this property should be annexed before the first of next year so those anticipated revenues could be available for FY 2004. Councilmember Jones asked if there could be a challenge of the waivers if the petitioners don't succeed. Mr. Taylor said the Montana District Court offered a decision that affirms the ability of the City to exercise those waivers in the event that it was challenged. On a voice vote, the motion was unanimously approved.

The Mayor announced a five-minute break at 9:05 P.M. The Mayor reconvened the meeting at 9:10 P. M.

14. PUBLIC HEARING AND RESOLUTION 02-17836 authorizing the introduction of fluoride into the City's water system. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

A staff report was heard at the Committee of the Whole meeting earlier this evening. The public hearing was opened. STEVEN BUTLER, M.D., 4526 LOMA VISTA DRIVE, said he is a physician and surgeon in Billings. He has spent his life in Billings with the exception of medical training and 9 years in the Navy. He spoke in favor of arranging for the correct amount of fluoride in the Billings water system. He noted two letters that the Council received from him and a published letter to the Billings Gazette that he promoted and arranged for, that included a number of physicians and dentist's signatures. He corrected the impression that has been circulated by e-mail that these physicians and dentists are dupes. He encouraged the opponents of fluoride to speak out, however he would not engage in name-calling. This is a hot topic and what is at the bottom of this issue is that many Montanans are anti-government, he noted. He said he represents at least 60 of the Primary Care Physicians here in Billings (i.e. Internal Medicine doctors, Obstetricians, Pediatricians, and Family Practice doctors) and has encouraged the Council, in letters, to contact their personal physicians and ask what should be done regarding this issue. He said the answer to that is to vote to fluoridate Billings' City water. He offered the following advice given to him early in his medical career, "Don't be the first person to try a new medicine or surgery, but surely don't be the last." He noted that 47 out of 50 major cities in the United States have fluoride. He said we are "certainly not the first, we shouldn't be the last." He said it is the Council's job to vote for fluoridation.

MICHAEL DOWNING, 2454 TETON AVENUE, spoke in reference to his dentistry practice experience in Hardin, Montana. He said he has been practicing in Hardin, Montana for 33 years and now practices at the Community Health Center on South 27th Street. His training admonished him to practice preventive dentistry. He said the effects of adding fluoride to the Hardin City water supply 32 years ago, after his campaign to the Hardin City Council, were profound. It was not uncommon for him to see 10-15 children per classroom with severe decay and infection, prior to the addition of fluoride. In the late 70's and early 80's he began to see only 1 or 2 children per classroom with severe dental needs. These compromised children were invariably from out of town and drinking un-fluoridated water from ranch or farm wells. He said the Council should observe the overwhelming problems that the City of Billings' residents face, both children and adults, with little or no access to dental treatment. He urged the Council to vote in favor of the fluoride issue.

CLAIRE KENAMORE, M.D., 3632 TOMMY ARMOUR CIRCLE, said she is a pediatrician who is speaking on behalf of the eleven other pediatricians in town. She said they are all in favor of adding fluoride and adjusting the level that we now have in the Billings' City water. She noted there are greater than 100 million people in the United States that are safely drinking fluoridated water at this time. She said fluoridating the Billings' City water could save 49% dental health costs.

HARRY MILLER, 3111 CACTUS DRIVE, spoke in favor of the resolution to fluoridate the Billings' City water. He spoke about his family's struggles with dental problems and wished they could have been prevented with the addition of fluoride to the water at that time.

KRISTIANNE WILSON, OF DEACONESS BILLINGS CLINIC AND CO-CHAIR OF CELEBRATE BILLINGS HEALTH AND PUBLIC SAFETY COMMITTEE, 6531 BENGSTON ROAD, SHEPHERD, MT, said Deaconess Billings Clinic supports optimizing the level of fluoride in the Billings' City water. This evidence based health initiative is a cost effective means to improve dental health for children and adults. Fluoridating water to reduce tooth decay in children and to enhance the ability of older citizens to keep their teeth is supported by medical science and the practice experience of countless dentists across the country. She noted "incorporating this evidence based measure into public approaches is similar to the introduction of Vitamin D into milk and Vitamin C into orange juice". Fluoridating water is a cost effective approach as the cost per person for a lifetime is less than the cost of one cavity. Because many Montanans do not have the financial resources to access dental care, or the cost is not covered by insurance, fluoridating water is sound public policy, she said. She added that Deaconess Billings Clinic is finding increasing emergency department visits precipitated by dental decay, systemic infection, pain and related medical problems. This is a frustrating and poor use of finite resources in a community that boasts of its medical services. She said that fluoride may not prevent all of these emergency room visits, but eliminating a few can ease the pain and suffering for some and relieve an unnecessary expense in our health care system. She said a Gallop poll stated 70% of persons support fluoridation of public water.

JIM HANNA, D.D.S., 2740 NORTH GREGORY DRIVE, said he has been in the practice of children's dentistry for 50 years. He now practices in foreign countries through Rotary International. He stated that he sees rampant decay in foreign

countries, with nothing to compare to the dental problems of the Billings' area. However, the dental concerns here are very serious at this time, he added. He is a member of the Dental Task Force that agreed that fluoridation of the Billings' City water would be one of the best ways to prevent these dental problems. He acknowledged other problems that contribute to tooth decay, such as pop and candy machines. After his 35 years of practice in Billings he said, without a doubt, the cities that have children with little or no cavities are Laurel and Hardin, Montana and Thermopolis, Wyoming, -all cities that fluoridate their water. He urged the Council to vote for fluoridation.

SISTER DANIEL STEPHANY, 1241 NO 30TH STREET, said she works at St. Vincent Healthcare. She said she lived in a city that had water fluoridation for a number of years. In her work in the healthcare dental program for the homeless, she sees many people in intense pain. She said she feels comfortable in recommending to the Council that they approve the fluoridation proposal in an effort to prevent tooth decay early on for children and improve the oral healthcare of the citizens of Billings.

ERNIE RANDOLPHI, 1250 KOOTENAI AVENUE, said he is a professor at MSU-Billings in the area of health promotion. He said thorough studies on the subject of fluoridation of public water should eliminate any debate on its scientific validity. There are no questions about the health effects of this proposal. Over 90 public professional health organizations speak in favor of fluoridation. He said if you look at the research, the health issues are not debatable and tell what we should be doing as community members in the area of health measures. As a taxpayer he is concerned about the cost effectiveness of this proposal from a public health perspective and he said there is very little we can do as a community that could have this profound of an effect on the population as this measure. His only regret is that this was not done sooner and his own children would have been able to benefit from this. He said he grew up in a community that did have fluoridation and has never had a cavity in his life, his children growing up in Billings have and that is unfortunate. He asked the Council to vote for the measure.

FRANK DEISZ, 2315 SUNNYVIEW LANE, said that he was chairman of the opposition group that defeated the fluoride issue the last two times it has been before the Council. He noted that the fluoride issue first came to a referendum and the voters of Billings defeated it by a 2 to 1 margin. The Mayor then went to Helena to garner support for a statewide measure, which was turned down. The measure was brought to Great Falls where it died because it was found the water already had fluoride at more than 1 part per million naturally. A few years later the same issue was brought back to Billings and put to the voters, where the issue was defeated by a much smaller margin. He said he is against fluoride in the water because his wife almost died from a fluoride treatment by her dentist. She gets very ill from drinking water with fluoride in it as does their daughter and granddaughter. He said there are people who are very allergic to fluoride. The question then becomes, should the Water Department be providing safe water or treating it, he said.

LORI CAMPBELL, HARLOWTON, MT, said she is here to talk to the Council about this issue because her grandbaby will be born here in a few months. She is a schoolteacher, educated in Billings, with a Bachelor of Science degree with a major in Biology and a minor in Chemistry from Rocky Mountain College. She said she is upset that the fluoride issue has come up when the pop and candy policy issue that exists in

our schools has not been addressed. She said the City of Missoula had a panel of physicians, dentists and dental hygienists, a dietician and environmental health activists that decided fluoride was “not the way to go that it would not answer the dental health crisis that they are seeing in their city”. She stated an average child consumes 7 cups of sugar a week and no amount of fluoride will counteract that amount.

VONDA LANCASTER, AMERICAN CANCER SOCIETY, 550 NO 31ST STREET, SUITE 103, addressed the Council regarding the information booklets she handed out to them with regard to the American Cancer Society’s commitment to prevention of cancer. The American Cancer Society is the second leading organization dedicated to eradicating cancer. She said the booklet from the American Cancer Society stated that extensive research has examined the effects of fluoride given as dental treatments or added to toothpaste, public water supplies or foods and states fluoride does not increase cancer risks. She said that the American Cancer Society, as well as the American Medical and Dental Associations have not been coerced into not commenting on support for the fluoride issue as has been widely rumored. She noted the medical professionals are encouraging fluoride because they sincerely believe it will benefit the health of our community.

RICHARD GOEN, NO ADDRESS GIVEN, said he is a native of Billings. He noted the earlier comments by the Mayor about the freedoms that the citizens of the United States enjoy due to the efforts of veterans that are being honored this Memorial Day. He said one of those freedoms include the right to drink the cleanest water. He hopes the citizens of Billings will be given the cleanest water supply possible without extra toxins added to it. He left a guarantee for the Councilmembers and healthcare professionals to sign stating, in essence, that fluoride will not harm the community if they intend to vote for the proposed resolution.

JODIE FERESTAD, 346 WYOMING AVENUE, said she is the Dental Coordinator for the Volunteer Dental Program at the Yellowstone City-County Health Department. She said the department has seen 552 persons that have needed dental health care last year. Most of those persons do not have dental insurance, or the ability to obtain it. Fluoride is not an access issue, but an emotional issue, she said. She told the Council about a 22-year-old woman that had no insurance or Medicaid coverage with third molars that had been hurting her for over two years. When Ms. Ferestad said she could help her with the pain, her reaction was very emotional. This is the emotional impact that the Council will have when they vote for fluoride, she added.

ROBERT ORLANDO, 2309 AVENUE B, said he is an average citizen and the only research he did was to look on the back of a toothpaste tube and in a dictionary. The toothpaste tube says “Fluorine keep out of the reach of children under six years of age and if you accidentally swallow more than used for brushing seek professional help or contact the Poison Control Center immediately”. He said fluoride, according to the dictionary, is a compound of fluorine, which is a pale yellow, highly corrosive, poisonous, halogen element. The City of Billings’ water supply now has fluoride in it and does not need any more, he said. He asked the Council to vote against putting more fluoride in our drinking water.

LUCINDA BUTLER, 4526 LOMA VISTA DRIVE, said she is a registered nurse and a member of the Billings Gazette Editorial Board and noted she is not paid by any outside interest groups to form an opinion about fluoride. She said there is no

conspiracy regarding this issue. She urged the Council, as a parent whose first three children were born in a city that had fluoride in the water and have a slight case of fluorosis and no decay in their teeth, to vote for stabilization and optimal levels of fluoride in the Billings' City water supply. She also noted elderly persons in nursing homes that don't have access to dental care are also in need of this benefit. We can trust our chemists in the Water Department to be capable of providing this service for our community.

SARAH ROLLINS, 2519 SILVERTON, said she is standing up for the rights of each individual citizen that should be able to decide for themselves what they put in their bodies. She also said that none of the Councilmembers are doctors, to her knowledge, and aren't qualified to go over any scientific studies. Therefore, the issue the Council should be addressing is the citizens' rights. Ms. Rollins added that the Council has no right to make her take fluoride, or any other medication, or to send it to a vote where someone can take away her rights. She noted that she would leave a petition with 362 signers that were against fluoridation. She reiterated that the Council's responsibility is the citizens' rights and their clean water. Ms. Rollins said that fluoride is readily available to persons in the form of toothpaste, fluoridated water that can be purchased, or mouthwash and drops administered by the hospital that are covered by Medicaid. We don't need the Council to put it in our water, she said.

DESMA PLUMB, STILLWATER COUNTY, said this issue would affect her even though she does not live in Billings. She is opposed to fluoridation, buying toothpaste without fluoride for a long time. She has to come to Billings for her household and business water and will no longer be able to do this. She added that she will no longer be able to go to the restaurants in town that use the water to cook food and make beverages. It is unfortunate that some people will not be able to afford to have alternatives, such as buying bottled water to drink. She said that it should be her choice as to what is put in her body and it is a violation of her rights to fluoridate the water. She asked the Council to vote no.

MARY PLUMB, STILLWATER COUNTY, said she is speaking for the people that are scarcely able to buy food for their families and yet the Council would force them to buy bottled water. She said that would leave the choice of poisoning themselves and their children or dehydrating themselves. She said she believes this is morally wrong and would force people already in poverty into greater debt. She said she has never nor will she ever drink fluoridated water, does not use fluoridated toothpaste and has perfect teeth, with no cavities or dental work done on her teeth. Ms. Plumb said she feels fluoride makes little difference if you brush your teeth. She said she hopes the Council will vote no.

SCOTT PROCTOR, 624 NO 32ND STREET, said he is the coordinator of both Yellowstone County and Montana Green Parties, but more importantly is a Christian Scientist. He said there is a healthy and thriving population of this faith community that are part of the history of this City as most of the Moss family were of the same faith. He noted the Bill of Rights that our country is founded on, protects his rights as an American to practice his faith and the country's laws protect his right to informed consent, which is to refuse any and all medical treatments. He said he does not give the Council his consent to medicate with systemic fluoride by introducing it into the City's water supply. His withdrawal of consent is based on the legal grounds of freedom

of religion. He also said the right to informed consent cannot be breached by a majority vote of the City Council, State legislature, the US Congress, or the majority vote of the people of the City of Billings. He said that stating fluoride is a mineral or vitamin is not valid because the only systemic fluoride given is by prescription only and to be taken under the care of a physician. Mr. Proctor said he is a low-income person and he has a right to drink the water without the expense of a reverse osmosis system that he cannot afford.

LYNN SMITH, 15 SADDLETREE PLACE, said that in nature fluorine is always bonded with some other element, and then it is called fluoride, usually bonding with sodium or calcium. He said it is an accumulative poison of which only 50% is excreted by the kidneys. The fluoride used in water systems is sodium silica fluoride, salt, silicon and fluorine, and that is a toxic industrial waste, not the medical grade fluoride used in toothpaste or by dentists and in all known tests, he said. The natural fluoride found in some waters is not of this composition either, he added. He said he sees this as forced medication and he does not want fluoride in the water that he or his family uses.

ANGELA GRIMSTAD, 2939 LEWIS AVENUE, said that a statement regarding fluoride says that some people may be unusually susceptible to the toxic effects of fluoride. She said this population could include the elderly, persons with calcium, magnesium or Vitamin C deficiencies, persons with cardio-vascular and kidney problems. She added that other studies show that some persons may have allergic reactions to fluoride. Ms. Grimstad said in 1990, Dr. John Colquhoun was forced into early retirement after he conducted a study on 60,000 school children and found no difference in tooth decay between fluoridated and un-fluoridated areas. She said he did find that the children from fluoridated areas suffered from dental fluorosis. She said it is not safe for children to have fluoride. She questions whether the costs associated with manpower to administer and monitor the fluoride levels are included in the proposed costs. Ms. Grimstad said fluoride is derived from a waste by-product of fertilizer manufacturing, which also contains heavy metals such as lead and arsenic. She asked the Council to vote against putting fluoride in the water.

RICHARD VANDEVEEGAETE, 3470 MASTERSON CIRCLE, said he is a chiropractic physician in Billings. He said that 50 years ago it was thought that for fluoride to have any effect it must be ingested making the enamel on teeth stronger. This is not the informed view of the dental establishment that generally concedes fluoride benefits are derived primarily by topical application. He quoted from the CDC in its Mortality and Weekly Review of August 17, 2001 of laboratory and epidemiological research that suggests fluoride prevents dental caries primarily after eruption of the tooth into the mouth and its actions are primarily topical for both adults and children. He said that putting it in the water is not going to help unless it gets swished around in the mouth. He also added that while fluoride benefits are topical, its risks are primarily systemic when swallowed. It hardens the bones, causes gingivitis of the mouth and if 99% of it is going down the drain, the fish are more susceptible to the benefits or the disadvantages of the fluoride. Once fluoride is put in the water it is impossible to control the dose that each individual will receive, because some people drink more water than others and people receive fluoride from other sources such as dental products, food, beverages and pesticide residue. He said that one physician stated that "no physician in his right sense would prescribe a substance which is intended to create bodily

change for a person he has never met, who's medical history he does not know and then have the courage to give the advice: take as much as you like for the rest of your life because some children in our community suffer from tooth decay."

CLAYTON FISCUS, 1111 MAIN STREET IN BILLINGS HEIGHTS, asked the Council to oppose fluoridation of the City's drinking water. He said he called several cities in Montana to verify citizens' claims of the benefits of fluoride only to find that those cities do not have fluoride in their drinking water. He noted that Missoula is not going ahead with their fluoridation program as he said they have more cost effective ways to spend their money. He said the Internet stated that fluoric acid is accumulated using wet scrubbers in fertilizer manufacturing plants before it escapes in the atmosphere. He said this acid is toxic according to the EPA and it is a felony to allow it to seep into the air. Mr. Fiscus said it is not sensible for humans to drink it in their water. He noted that vendors selling to Public Utilities Departments have a disclaimer on their product that says "no responsibility for damage or injury resulting from hazards inherent to the product". The State constitution has a Health Environment Statute, Section 9, and he said he thinks fluoridating the water would be in violation of that. He said this is a bad idea.

ERVIN HANKS, 3404 2ND AVENUE NORTH, said he has been drinking distilled water for 27 years. He said he was in the water business for 8 years in the mid 70's to early 80's. During that time he learned that each individual has a different body chemistry. Many times health problems were solved when his customers started drinking distilled water. He said he thinks the City of Billings is taking on another liability. He said fluoride is readily available to anyone who wants to get it.

VICKI OLSON JOHNSON, 2301 SOUTH 45TH STREET WEST, said she is a nurse with Yellowstone City-County Health Department for the past 25 years. She represents many school nurses, working with school children, pregnant women, and families with children up to the age of 5. She worked for the last fluoride campaign, handing out rinse and swish cups. This program in the schools only operated for two years, and she clarified that none of the children in this City are receiving fluoride rinse and swish at this time. This process is very time consuming and not as effective as fluoridation in the drinking water. She said she is promoting fluoride for the children that cannot speak for themselves. The dental needs are immense. She said the studies show that fluoride is also good for good bone health and nutrition in adults. She urged the Council to stay focused on the true facts and take a stand to promote a healthy community by providing fluoridated water to infants, children, adults and the elderly. She said the Council would find this very cost effective.

GARY HOUSER, 1738 AVENUE F, said the fluoride decision is a very tough issue and sympathizes with the Council over the final outcome. His question to the Council was "how many of you are doctors and scientists and have done research on fluoride yourself?" He asked "if you are not, how can you order this material into our drinking water without knowing the harmful result to some?". Fluoride can be applied topically through the dentist, ingesting fruit juice or with the use of toothpaste and is a personal choice. He said he resents having no choice regarding the addition of fluoride to his drinking water. He asked the Council if they know where this material comes from. He said a description from a scientific magazine describes it as an unpurified waste product of a phosphate fertilizer industrial contaminant with hazardous

substances such as lead, arsenic and mercury. Mr. Houser said not everyone's immune system is the same, so he asked, "How much is too much?" He noted that the toothpaste labels say to call the poison control center if too much toothpaste is ingested by children under 6, and said "now we know that fluoride is a poison even in small amounts". He also said that studies he has read relate that cancer rates are higher in cities that have fluoride in their water than those cities without.

MICHELLE REED, 1039 CEDAR CANYON ROAD, said she has a Master's Degree in Children and Health Nursing and is the Chief of Community Services at Yellowstone City-County Health Department. She is also a member of the Dental Task Force and Celebrate Billings 2002. This is a very serious public health measure that could help the children in our community and people of all ages. She strongly urged the Council to support the introduction of a therapeutic level of fluoride in the Billings City Water.

DICK MONETTE, 1724 NATALIE STREET, said he is thoroughly against fluoride. He said the supporters of fluoride have a lot of money to fund their campaigns. He stated, from a CDC announcement in 2001, that topical fluoride application is better than systemic. He said the last large study with school children ages 5-17 years was done in 1990. In those 84 communities the results were evenly divided and "considered a draw". He said 50 years ago two cities, Newberg and Kingston, New York, were used to test the effects of fluoride. He noted that the ADA has withdrawn these test cases as the results show little or no difference between fluoridated and non-fluoridated water effects with respect to dental caries. He added that 64% of the children in the fluoridated community tested did develop fluorosis, which he says is the first sign of fluoride poisoning. He noted the AMA is not prepared to state that no harm will be done to any person by water fluoridation. He said the AMA has not carried out any long or short-term studies on fluoride or the possibility of side effects. He said the following agencies have withdrawn their endorsements of fluoride: American Cancer Society, American Heart Association, National Kidney Foundation, Society of Toxicology, and the American Psychiatric Association. Mr. Monette stated that fluoride binds with calcium so when children are given milk they must not consume fluoride.

CAROL TASSET, 231 TERRY AVENUE, said the websites for the top medical schools do not state that they offer courses in toxicology. She said there are 40 symptoms of fluoride poisoning in a book available at the local library regarding clinical toxicology of commercial products. She said her physicians have stated that this field does not exist in Billings and very few physicians in the country specialize in Environmental Medicine. She said she has documentation from a toxicologist, who is the head of the EPA Union for Professionals, that encouraged further investigations into fluoride.

GEORGE SCHUYLER, D.D.S., NO ADDRESS GIVEN, said he is a dentist in town. He stated that the topical application of fluoride is not as effective as systemic. He explained the growth of a tooth starts with the crown (outer layer) first. He said the most critical time for the benefits of fluoride to take place is while the inner "bud" is forming. This would be in the early years of children ages 1-5 years. He urged the Council to vote in favor of the beneficial effects of fluoridation.

CHRIS DECKER, 2635 TERRY AVENUE, stated that fluoride is a medicine. She said she does not feel the water supply is the place to put any sort of medicine. She

said she feels that by putting the fluoride into the water we will be destroying more of our earth. She noted the people in Europe have chosen not to fluoridate and their rate of dental decay is either comparable or better than in the United States. She said if only 1% of the fluoridated water is consumed, the money spent could be put to a better use.

DR. MAE WOO, 517 LAVENDER STREET, said she is a retired dentist who moved to Montana after practicing in Los Angeles, California. She said she was taught in medical school that fluoride was good and accepted the position of her dental association on fluoridation. Two months ago she said she did some research on fluoridation and found a lot of information about the hazards and ethical concerns that she did not know before. She said she thinks many other dentists don't have all the information. She said she thinks it would be a terrible mistake for Billings to fluoridate its water as it is unnecessary and an unreasonable health risk. She quoted a recent report recently written by a dentist who is the head of dentistry in Toronto, Canada that states, "more teeth are lost and more oral cancers occur where there is more fluoridation in the United States".

DENNIS BRIGGS, 13 MONROE STREET, said he is opposed to fluoridation. He said he was a scientist for 22 years and stated the research on fluoridation "is very sloppy research". He cautioned the Council that there is room for a lot of doubt on this issue. He said the Council should err on the safe side and vote against this measure. He noted several of the cities that have voted against fluoride and wonders what they know that we don't know. He said he doesn't think the City can control the dosage of fluoride.

WALLY RUBICK, 2320 POLY DRIVE, said the Council is considering forced medication. He said fluoride is a hazardous waste product that includes phosphates and carcinogens. He said the FDA has not approved fluoridation. He said one of the largest studies between children living with and without fluoridation found no differences. He noted the Sierra Club has valid concerns about the adverse impact of fluoridation on human health. He said to the Council, "if in doubt, leave it out".

DUANE SCHULTZ, 4808 DUCK CREEK ROAD, said he is a pathologist at St. Vincent Healthcare. He said he grew up in Omaha where the water is fluoridated and he has no cavities at all and his younger years of being exposed to the fluoride has helped him in his later years living in this community that does not fluoridate the water supply. He said as a pathologist he looks at tissue, runs clinical labs and has never seen anything remotely related to fluoride in Billings or the surrounding areas which include the fluoridated areas of Laurel and Hardin. He added there is no difference in cancer rates between those communities. He said the bottom line is he has not seen anything bad relating to fluoride other than a very positive effect on dental health and wellbeing. He noted that the AMA, contrary to claims made earlier this evening, does not do studies, as it is a trade organization reviewing articles that others have written. He said fluoride is an element, like iodine or chlorine, and is a halogen in the chemical periodic table and no one is allergic to those elements. They may be allergic to medications or substances that have those elements in them, he added. He strongly urged the Council to support fluoride in the water.

KEVIN BREWER, D.D.S., 2675 CENTRAL AVENUE, said he is a local dentist. He said as a dentist he has nothing to gain by this measure and plenty to lose as he makes his living fixing cavities and taking care of the problems that fluoride can prevent.

He said to the Council that they may lose a friend over this issue but it is right to fluoridate the water. He said as a dentist of twenty years he has learned to recognize a tooth that has developed with fluoride. It is a superior looking tooth and typically whiter, he noted. Dr. Brewer said his support system has found public fluoridation to be legal and has won at every level of the court. He added that the courts have classified fluoride as a nutrient and not a medication. The best benefits of fluoride are taken systemically and it is un-debatable in the scientific community, he said. He said it is safe, beneficial and the right thing to do.

LORA SCHULTZ, 4808 DUCK CREEK ROAD, said she and her family all drink City water. She noted that during the last 50 years the legality of fluoridation has been upheld numerous times, being thoroughly tested in our court system. She said the courts have viewed it as a proper means of furthering public health and welfare. No court has ever rendered an opinion against fluoridation, she added. She asked the Council to dismiss the threats of litigation that have been brought forward tonight. Ms. Schultz stated it is the position of the American courts that significant government interest in health and welfare of the public generally overrides individual objections to public health regulations. Consequently the courts have rejected the contention that fluoridation ordinances are deprivations of religious or individual freedoms guaranteed under the constitution, she noted. She added, the courts have stated that fluoride is a nutrient and not a medication and therefore the FDA does not regulate it, rather it has an RDA like a food. She urged the Council to be responsible public officials and vote for fluoridation.

CHRIS FRASER, 42 WASHINGTON STREET, said the Gazette had an on-line poll for or against fluoridation and the result were 57% against and 43% were in favor. She reminded the Council that they are elected officials and if they vote to put fluoride in the water she will certainly remind everybody when they are up for re-election.

KATHLEEN PLUMB, MOLT, said she lives outside of the City of Billings, but she will have grandchildren that will be drinking the water in Billings. She said her dad had great teeth and at his death he only had one cavity and he lived in an area where there was no fluoride in the water.

BOB BERGESON, D.D.S., 3404 BEN HOGAN LANE, said he is a dentist in Billings. He said the fluoride issue is being raised this time because of a task force report on access to dental health care and the dental health crisis. He noted that the task force said the first and most obvious step would be to fluoridate the water, which will reach everyone. He quoted the former Surgeon General C. Edward Koop who said a few years ago "fluoridation is the single most effective step a community can take to ensure optimal oral health for its citizens". He said the members of the Council have the opportunity to take that first step and he encouraged them to do it.

KENDRA ROLLINS, 2532 STERLING STREET, asked why the Council would force people to take medications they don't want to take.

JAQ QUANBECK, 1446 NORMAN PARK DRIVE, said she is concerned about an entire City water system delivering fluoridated water for several reasons. She said there is an increase in hyper and hypo activity in children and lower IQ scores. She said she is a retired teacher from Illinois and has dealt with these issues. She noted that research implicates fluoride in the climbing infertility rates, hypothyroidism, arthritis and osteoporosis. She noted that the Agency for Toxic Substances and Disease

Registry stated existing data indicates that subsets of populations may be unusually susceptible to the toxic effects of fluoride. Those populations are the elderly, people with calcium, magnesium and vitamin C deficiencies and persons with cardio-vascular and kidney problems, she added. She said another study on rats given low doses of fluoride noted that they were found to have analyte deposits (associated with Alzheimer's disease) in their brains. She asked the Council to think about the persons, for health reasons, that will not be able to drink the water if it is fluoridated. She asked the Council to "first do no harm".

DAVID COLVILLE, 7222 RIMROCK ROAD, said there is a lack of communication in the areas that have not been studied concerning fluoride. He said he has an electronic background and has done 55 years of research (which he said is not the sole answer). He said he knows what doctors are not taught because he has four doctors in his family that he has discussions with. He explained that the brain records any substance introduced into the body, likening it to a cassette tape. He said when the brain is full of the "recorded substance" the reaction is immediate stress. He said every tooth is connected to a different organ, which he described as a non-ferrous communication system.

DOUG CARPENTER, 1149 TOOLE COURT, said he has become more perplexed with each additional comment on fluoride. He said some or all of the information might be outdated and suggested the Council reject the staff recommendation to fluoridate and study it further with a panel of unbiased experts. He is in favor of a topical application of fluoride where it is needed. He said he is concerned about the long-term effects. He encouraged the Council to be cautious and only agree to fluoridation after a lot more information and data has been gathered.

LASCHEL MIENA, 3101 GEORGINA DRIVE, said she has lived in Billings for her entire life with the exception of one year. She said she is strongly against fluoridating the water. She said her reasons are: 1) her constitutional right to drink water without fluoridation, 2) her concern for the accumulative and side effects of fluoride that are not known, and 3) she is being given no choice in the matter.

TOM SCHAUER, 5542 DEADWOOD DRIVE, he said he doesn't think there is any debate about fluoride being a poison. He said he doesn't want it in his water supply.

ANDREW JOHNSON, 223 SOUTH 39TH STREET, said the constitution states, "the government is there to protect the citizens". He said if the Council sees the need to protect those citizens that need dental help, "then go ahead and fluoridate".

TOM NELSON, 2907 BRENTWOOD LANE, said the predominate argument on the pro side of this issue is about the children. He said children today are so sugar dependent that they won't take a drink of water no matter what. He then spoke about the adult population and said studies today show that fluoridation is one of the reasons why bones crystallize, not to mention that it may not be proper nutrition. As we age, we lose our sense of thirst therefore both generations are not drinking enough water for fluoride to be effective, he added. He suggested fluoride be taken topically if it is needed. He noted his dentist is in favor of fluoride but states that the bulk of his practice is dealing with gum disease.

VIRGINIA LINVILLE, 117 AVENUE B, said she has been a resident of Billings most of her life. She said that there are different genetics and environmental effects for

each individual and wonders what will happen to those people who will be affected differently by the fluoride. She stated she has not heard a single Councilmember guarantee that if fluoridation is passed it will “not affect us in any way”. She said without that guarantee, “how can you in all good conscience vote something like this in?”. She stated if the Council could not sign the guarantee that was presented to them then she suggests the Council “should not consider voting this in”. She said her choice is against fluoridation.

JUNE LUPTAK, 4244 PALISADES PARK DRIVE, said she is strongly in favor of having fluoridated water in our community. She said she grew up in Laurel, Montana and noted that three generations of people in our country have been benefiting from fluoride. She added there is a significant reduction in tooth decay nationwide and Billings deserves to have that benefit. She added she is looking forward to the benefit she would derive from fluoride on her aging bones. At the Community Dental Summit held last fall it was proposed that dental education in our schools be improved in the community, she added.

JUSTIN GRAVES, 2930 CHAPMAN LANE, said he is one of the 40,000 medically indigent persons in the City that does not have access to insurance or medical services. However, he said he is against fluoride as he questions the benefits of it. He said he wanted to voice his opinion about putting fluoride in the water.

JUDY HARBRECT, 1614 GOLDEN BLVD., said she has been a dental hygienist for 34 years. She noted that we currently have fluoride in the Billings’ City water supply so she asked the opponents to justify their claims against it and asked what would be the correct level. She said if the opponents don’t want to be drinking or bathing in the water they “should be using some other source right now”.

TERRY HAUGGERT, NO ADDRESS GIVEN, asked the Council why they would consider this measure if there is a risk to even one individual. She said it is an individual choice; parents should be making this choice for their children, not the Council.

SCOTT MANHART, M.D., 981 STRAWBERRY AVENUE, said he is part of the Dental Task Force. He said what makes our nation great is that we approach our problems as a group not as individuals. He said the problem before the Council tonight is how to weigh a hypothetical risk that the opponents raise against the real risk of the dental health crisis. He noted there is good data that says the hypothetical risk will never be achieved and has not been achieved in any city that has fluoridated their water. However, there is a mass of information stating there is a body of persons at risk that can be affected dramatically concerning their current and future dental health problems. He said as elected public officials it is the Council’s job to exercise that decision.

BRAD MOLNAR, LAUREL, MT, said that in America citizens have individual rights and individual liberties and freedoms. He said every member of this Council must protect and defend the Constitution of the United States. The right to individual self-determination is first and foremost, he added. He said the Council does not have the authority or medical background or the legal right to prescribe medication to people in mass. He noted none have signed the guarantee presented by the opponents to the Council and medical community. He said even if fluoride were totally healthy and safe,

he still would not want it. He told the Council this was “not their fight and outside of their scope”.

There were no other speakers. The public hearing was closed. Councilmember Kennedy moved for approval of the resolution introducing fluoride into the City’s water system, seconded by Councilmember Bradley. Councilmember Brown made a substitute motion to send the fluoride resolution decision to the voters of Billings, seconded by Councilmember McDermott. Councilmember Kennedy said it is the Council’s responsibility to decide this issue, having been elected to do so. He noted there have been comments about the Council’s credentials to decide this issue. He said he neither has an engineering nor a legal background yet he makes decisions on those issues every day for this community. Councilmember Kennedy called attention to the mission statement of the City of Billings that appears at the top of the agenda. He quoted it as saying the City should “deliver cost effective public services that enhance our community’s quality of life”. He said he believes the introduction of fluoride will promote public health in this community and it is his responsibility to this community. Councilmember Poppler said it would be a mistake to send this to the vote of the people at this time. She said she was impressed with the testimony of a local pathologist who stated there was no evidence of any harmful effects of fluoride, nor any differences in the pathology of persons from this community and of the citizens of Laurel, where fluoridation is present. She added that had the polio issue been brought to the vote of the people it may very well have not been wiped out. She said the same holds true for small pox. Councilmember Poppler said if the medical community thinks that it is for the welfare of our children and us to fluoridate the water, she would vote for it.

Councilmember McDermott said the Council is only “kidding themselves” that this issue won’t go before the public. She said whether the Council votes yes or no there would be a petition drive that will go to a vote of the people. She urged the Council to let the voters decide.

Councilmember Larson acknowledged that the Council is not an expert in scientific and medical issues, however they have heard from persons who are and said he feels obligated to take a position. This is the process that the Council uses to make informed decisions. He also added that he would no more sign the guarantee of wellness that the opponents brought forward than sign the same type of documents about the air, soil, water, food, housing or any single element existing on this planet guaranteeing against any detrimental health impact to someone under some unknown condition; this can’t be given.

Councilmember Brewster said it is important that the citizens of Billings know how the Council stands on the fluoride issue. He said it would be irresponsible on the Councils’ part to “shove it off onto the voters”.

On a voice vote on the substitute motion (to send the fluoride resolution decision to the voters), the motion failed with only Councilmembers Brown and McDermott voting “yes”.

On a voice vote for the original motion (to approve the resolution for fluoridation), the motion was approved with only Councilmember Brown voting “no”.

Council Initiatives

Councilmember Poppler moved that the Mayor appoint an overview committee to advise the Council regarding the budget, seconded by Councilmember Brown. Councilmember McDermott asked how persons would be appointed to this committee. Councilmember Poppler said a discussion at the next agenda meeting would be a good time to discuss who would be appointed and what type of committee would be helpful to the Council. Councilmember Kennedy asked why there is a need for a committee to tell the Council how to do its job. Councilmember Poppler said there are advisory boards for every subject and the budget is the most complicated thing that the Council must make an informed decision on. Councilmember Jones said he favors soliciting the opinion of independent CPA's with experience in budgeting. Councilmember Kennedy asked if the Council should also solicit the advice of engineers and attorneys before making decisions on land use and legal issues. He said it appears the Councilmembers are looking at the City staff with a bit of mistrust. Councilmember Bradley noted that footnoting the budget would help and could be accomplished by the City's financial staff. Councilmember McDermott reminded the Council that the Charter provides for boards and commissions that assist the Council and make recommendations. Councilmember Brown said the Council is remiss if they think they know all about the finances of the City of Billings. Councilmember Kennedy asked why the audit from Eide Bailey was not sufficient. Councilmember Brewster asked Councilmember Poppler if her initiative was actually to put this issue on another agenda and discuss it. Councilmember Poppler said it would be beneficial to discuss this idea at a work session to assure the Council will make responsible decisions with the budget. Councilmember Iverson asked if the motion was to form the committee or to talk about forming a committee at a work session. Councilmember Poppler said her motion was to consider asking the Mayor to form an oversight budget committee. Councilmember Larson agrees that a discussion would be a good idea, but is concerned that the Mayor be put in the position of making the selections and the persons so chosen would be required to understand the expectations of the end product. He noted that the public hearing process provides the opportunity for persons who have concerns about the budget to state them at that time. Councilmember Iverson said she is not opposed to discussing this issue at an agenda meeting but is not in favor of voting to establish a committee tonight. Councilmember Iverson offered a substitute motion to discuss at an agenda session the idea of forming a Mayor's Oversight Committee to review the budget, seconded by Councilmember Brown. Councilmember McDermott said another topic that needs consideration regarding this issue is should this be a Mayor's committee or an official board that the Mayor would make appointments to and the Council would consent to those appointments. Mayor Tooley said he thinks the purpose and the end product are the key issues on this committee. On a voice vote, the substitute motion to discuss this issue at an agenda session was unanimously approved.

ADJOURN —With all business complete, the Mayor adjourned the meeting at 11:34 P.M.

THE CITY OF BILLINGS:

MINUTES: 05/13/02

By: _____
Charles F. Tooley MAYOR

ATTEST:

BY: _____
Susan Shuhler, Deputy City Clerk