

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

June 10, 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 Iverson.

ROLL CALL – Councilmembers present on roll call were: McDermott, Brown, Brewster, Iverson, Poppler, Ohnstad, Jones. Councilmembers Bradley, Kennedy and Larson were excused. NOTE: Councilmember Larson joined the meeting later in the evening.

MINUTES – May 28, 2002. APPROVED as printed.

COURTESIES –

- City Administrator Dennis Taylor introduced Officer Shawn Mayo. He noted that Officer Mayo has completed his year of probation and will be confirmed as a Police Officer on tonight's agenda. Officer Mayo spoke briefly about his background and training to become a Police Officer.

PROCLAMATIONS – Mayor Tooley.

- Juneteenth National Freedom Day, also know as "Emancipation Day" is the oldest African-American holiday observance in the United States. Mayor Tooley proclaimed June 19th as a day of reconciliation and healing from the legacy of slavery and support for the National Juneteenth Holiday Observance in Washington, D. C.

BOARD & COMMISSION REPORTS. None

ADMINISTRATOR REPORTS – Dennis Taylor.

- Mr. Taylor reminded the Council that the Downtown Trail Project work began today, with a groundbreaking ceremony scheduled tomorrow at Coulson Park. He invited anyone interested to attend that ceremony for a project that will add about 2 ½ miles to the trail system in Billings.

CONSENT AGENDA:

1. **A. Bid Awards:**
 - (1) **HVAC Maintenance – Parmly Billings Library Building.** (Opened 5/14/02). Delayed from 5/28/01. Recommend Pro-Tech Mechanical, Inc for a 3-year contract, \$48,985.00.
 - (2) **W.O. 02-02, #1: 2002 Miscellaneous/Developer-Related Improvements.**

(Opened 5/28/02). Delayed from 5/28/02. Recommend JTL Group, Inc., \$408,270.00 and 150 calendar days.

(3) Rimrock Road Waterline. (Opened 5/21/02). Delayed from 5/28/02. Recommend COP Construction, \$403,386.00.

(4) One New Current Model Tractor and Flail Mower for Billings Logan International Airport. (Opened 5/14/02). Delayed from 5/28/02. Recommend Billings Equipment Company, \$20,400.00.

(5) 2002 Water Leak Restoration Project. (Opened 5/28/02.) Delayed from 5/28/02. Recommend Studer Construction Co., \$17,044.50.

(6) Airport Metasys System Upgrade. (Opened 5/28/02). Delayed from 5/28/02. Recommend delay to 6/24/02.

(7) Miscellaneous Concourse Remodel for Billings Logan International Airport. (Opened 5/28/02). Delayed from 5/28/02. Recommend delay to 6/24/02.

(8) Marlex 90-Gallons Refuse Containers. (Opened 5/28/02). Delayed from 5/28/02. Recommend Western Systems & Fabrication, Inc., 1 year contract for containers @ \$61.95/each.

(9) \$1,341,000 Special Improvement District No. 1356 Bonds. (Opens 6/10/02). Recommendation to be made at meeting. Piper Jaffray @ 4.27% NEIR.

(10) \$1,578,000 Pooled special Improvement District Bonds, Series 2002A (SIDs 1353, 1357, and 1359.) (Opens 6/10/02). Recommendation to be made at meeting. Piper Jaffray @ 4.27% NEIR

B. C.O. #1, Billings Community Center Remodeling, General Contractor Construction, ~~\$3,795.04~~. \$4,997.54.

C. Contract for Professional Services for W.O. 01-05: Lake Hills Storm Drain Outfall with Interstate Engineering, Inc., \$145,560.00.

D. Contract for Professional Services for W.O. 01-09: Bench Boulevard Corridor Right-of-Way Identification with Morrison-Maierle, Inc., \$54,365.00.

E. Lease Agreement with Visionary Communications, Inc., for antenna tower space, \$200.00/month, term: 5 years beginning 1/1/02.

F. Maintenance Agreements:

(1) Yellowstone County for Riverside Cemetery maintenance, 5-year term beginning 7/1/02 to 6/30/07, \$7,056.00 for 1st year.

(2) Yellowstone Art Museum for grounds maintenance, 5-year term beginning 7/1/02 to 6/30/07, \$7,568.00 for 1st year.

G. Service Agreement with Guardian Security for Library guard service for a 1-year term beginning 7/1/02, \$54,272.00 with option to negotiate for two additional years.

H. Approval of Telephone Voice Mail System from Dial Pro/Octel, \$43,255.00.

I. Approval of Sale of 850 Model 60 Meter Mechanisms to the City of Missoula, \$850.00.

J. Acknowledge receipt of petition to annex: (#02-13), C/S 3011, Tract 2B and 3, Roy and Jock Clause, owners and petitioners and setting a public hearing for 6/24/02.

K. Resolution of Intention 02-17845 to Create SILMD 277: Forest Park Subdivision, 4th filing, and setting a public hearing date for 7/8/02.

L. Subordination of Housing Rehab Loan, Lots 8 and 9, Block 23, Highland Addition to O.T., John C. Arellano, \$14,000.00.

M. Yellowstone Save-a-Life Alliance Spay/Neuter Event on August 26-27, 2002.

N. Cancellation of warrants and checks totaling \$4,466.42.

O. Confirmation of Police Officer: Shawn Mayo.

P. Preliminary Plat of Amended Plat of Lot 4A, Block 5 of the Amended Plat of Lots 1 and 4, Block 5, Hogan Homestead Subdivision, generally located at the southeast corner of King Avenue West and South 24th Street West.

Q. Preliminary Plat of Strong Subdivision, generally located at the southeast corner of Carbon Street and King Avenue West.

R. Final Plat of Transtech Center Subdivision.

S. Bills and payroll.

(Action: approval or disapproval of Consent Agenda.)

Councilmember Brewster separated Item J. Councilmember McDermott separated Items B and G. Councilmember Jones separated Item A2. Councilmember Brown separated Items D and F. Councilmember McDermott moved for approval of the Consent Agenda with the exception of Items A2, B, D, F, G and J, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

Councilmember McDermott moved for approval of Item A2, seconded by Councilmember Brewster. Councilmember Jones noted there are two recommendations on this item and he moved to approve the item but delete the second recommendation, seconded by Councilmember McDermott. On a voice vote, the motion was unanimously approved.

Councilmember McDermott moved for approval of Item B, seconded by Councilmember Brewster. Councilmember McDermott asked the staff for an approximate number of square feet the Parks and Recreation Department now occupies in the

Community Center. Parks and Recreation Director Don Kearney said the approximate space now occupied by the Parks and Recreation Department is 2,600 square feet, which is about 1/5 of the total space. On a voice vote, the motion was unanimously approved.

Councilmember McDermott moved for approval of Item D, seconded by Councilmember Brewster. Councilmember Brown asked what effect this work order would have on the property presently owned by Judy Trinkka. Public Works Director Dave Mumford said at this point the project is to find the alignment and clarify right-of-way easement and would not directly affect her property at this time. On a voice vote, the motion was unanimously approved.

Councilmember McDermott moved for approval of Item F, seconded by Councilmember Brewster. Councilmember Brown asked if the contract with the County for services at the Art Museum and the Cemetery went out for private bid. Parks and Recreation Director Don Kearney said the County is actually contracting with the City and therefore the City did not go out for bid. This would have been the County's responsibility and he was not aware of the County's actions on this, he added. He and Councilmember Brewster noted that there has been no maintenance provided previously for the cemetery. Councilmember Jones said that he is not in favor of government competing with private enterprise. On a voice vote, the motion was unanimously approved.

Councilmember Brown moved for approval of Item G, seconded by Councilmember Brewster. Councilmember McDermott said the City would be better served by using the Billings Police Department rather than a private security guard service to maintain safety at the Library facility. She noted that the original contract was for \$40,000.00 and it is now up to \$54,000.00. On a voice vote, the motion was approved with Councilmembers McDermott and Poppler voting "no".

Councilmember McDermott moved for approval of Item J, seconded by Councilmember Iverson. Councilmember Brewster asked if the Council could deny receipt of this petition. City Attorney Brent Brooks said they could not. Councilmember Brewster asked why it is on the agenda as acknowledging receipt. Mr. Brooks said it is the traditional step to acknowledge the petition prior to setting a public hearing for the annexation. On a voice vote, the motion was unanimously approved.

REGULAR AGENDA:

2. PUBLIC HEARING on proposed FY 2003 Annual City Budget. (Action: public hearing only. Council action scheduled for 6/24/02).

The public hearing was opened. ANNE CLANCY, 111 WYOMING, said she is the President of the Billings Police Foundation and spoke on behalf of the Board members. She said they are a group of concerned citizens who established the foundation in 1999 as a 501C(3) non-profit corporation partnering with the City of Billings' Police Department to make the City a safer community. Their functions are to raise funds to supplement the resources of the Police Department, to raise public awareness about the department and to enhance relations between the citizens of the community and the Police Department. She said there are 15 board members representing a wide range of interests in the community and a committee format that identifies goals to work on in the three functions of the foundation. She noted that the foundation sponsors a golf tournament and has established an endowment as a tax-exempt vehicle to receive donations. She said the

foundation has helped to fund much needed technology for the officers in the Police Department including digital cameras and portable breath testers. Ms. Clancy said the foundation is not able to help fund the personnel that is needed for the necessary level of service and encouraged and supported the Council's approval of the portion of the budget that funds the proposal for three officer positions, including vehicles and equipment.

WELDON BIRDWELL, 44 YELLOWSTONE AVENUE, said he is speaking on behalf of the Southside Neighborhood Task Force Highland Park Wading Pool Committee. He said that re-opening the Highland Park wading pool is a priority to the Southside Task Force. He said the Council needs to commit \$100,000.00 to the Parks portion of the budget to get this project done. He asked the Council for support for this neighborhood and this project by approving this portion of the budget.

BILL LAMERES, 2617 BURLINGTON AVENUE, asked where the funds are coming from to add the police officers and equipment. He noted that in the previous election, the citizens voted to maintain rather than increase the level of Public Safety. He said in every year since that vote, the level of public safety has increased. He noted public safety dollars can only be used to maintain, not increase. He said he asked the City Finance Director how the public safety dollars are monitored and has not yet received a reply. He suggested that the Council research this to make sure that mill levy funds are not being used for the increases before they approve the budget that has increased public safety.

KEN OLSEN, 2022 HICKORY DRIVE, said he is President of the Friends of the Library Board. He thanked the Mayor and City Council for the good job on the Capital Improvement Plan and for their support of the Library bond issue. He said the need for a new Library is now. This will bring more people to the downtown area to visit the shops, he added. He asked the Council to support the Library and place it on the ballot for the voters on November 5th.

CAROLYN BOYD, 1434 MCMULLEN LANE IN LAUREL, said she is a County appointee to the Library Board of Trustees. She urged the Council to place the bond issue for a new library building on the November 5th ballot. She noted that the space and structure problems at the current Library are critical and with current growth will not allow the current level of service to continue. She said it is the Library Board's opinion that the best solution to the current and future needs of the Library is for a new building. She asked the Council to allow the citizens of Billings to decide the future of the Billings Parnly Library.

There were no other speakers. The public hearing was closed. The Council will take final action on the annual budget at their June 24th meeting.

3. PUBLIC HEARING on proposed Preferred MET System Plan revisions. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

MET Transit Manager Ron Wenger presented the results of a comprehensive evaluation of the MET system. He said the last study was done in 1996 and since that time there have been significant changes in the community with regard to demographics and traffic patterns and levels. The year long study, that included input from the public as well as the MET drivers, was intended to make the best use of limited resources. He noted there are some changes that need to be made. He asked the Council to approve the proposed MET system plan revisions. He introduced Dr. A. T. Stoddard who

continued the presentation. Dr. Stoddard said the study was initiated in response to several issues. Those issues were: 1) the ability to stay on schedule, 2) low use of some of the bus routes, and 3) rider pattern changes. From the study, four concepts were presented and refined into the proposed system plan. He said some minor operational changes to the routes and schedules were proposed to solve some issues. Fixed route service to the Northwest area of the community was another issue that required consideration because of low usage, he said. A proposal to use a call-in shuttle or shared-ride type of service using a smaller vehicle was recommended. He said the Southside required significant changes using a time-transfer route with another bus that solves the timing problem that exists on that route. He noted this also added service to an area that was not presently covered and added direct access to the Mall from the Southside. He said the final area of concern was the issue of Saturday service as opposed to weekday service. He said the proposal consists of restructuring Saturday service to be similar to the weekday service.

The public hearing was opened. DAN SCHWARZ, 2058 MILES AVENUE, said he wanted to present a compromise to the plan with regard to the Miles Avenue route. He said the Miles Avenue route that his family uses has been deleted. He noted 40-100% of the people who ride this route get on at W 19th Street, which is the part proposed to be cut. He proposed that if a loop is added from Gay Place to Houle Drive it will cover this area and will add only 2-1/2 minutes to the route of the Broadwater bus. Mr. Schwarz added that this would only be needed during morning and evening commuter hours. He asked the Council to add this loop when they approve the proposed changes.

JAMES KAVONIUS, 42 FLORINE, said he has ridden the MET bus system for thirty years. He said the proposed Saturday service on the Central route is confusing. He noted that the wait time can be as much as 1-1/2 hours and is a long wait to catch a bus when it is cold. He said there are many handicapped and elderly persons who need the service on this route on Saturdays. Mr. Kavonius said the public needs to see more details on these routes.

NOTE: Councilmember Larson arrived at 8:10 P.M.

There were no other speakers. The public hearing was closed. Councilmember Brown moved to approve the Preferred MET System Plan, seconded by Councilmember Brewster. Councilmember Iverson asked staff to address the questions posed by the previous public hearing speakers. Dr. Stoddard said, while it is true it would only take 2-3 minutes to service the area in question, the problem with regard to the Miles route becomes a timing issue as the extra loop would involve 10% of the running time and would use time allotted for any layover or slack time that is needed for the transfers. He said changes in the route, where only a short segment is not being served, will not be the best for each individual rider but said the overall system would perform better. He said the recommendation should remain as proposed. Dr. Stoddard said the goal is to increase the Saturday service significantly, adding one more bus with 9 routes and extended hours of service. He said he felt the proposal would address the concerns of Mr. Kavonius. Councilmember Jones asked if the 7D run would have a 6 and 7 a.m. run. Dr. Stoddard said it is an all-day service and would have a 6:10 a.m. inbound run and a second run at 7:10 a.m. to the downtown area. Councilmember Iverson asked when the changes would take place. Mr. Wenger said if approval is granted tonight, the new route schedule printing of the maps and brochures would go out to bid. This is a significant process and he said

the implementation should start about mid August. He added that this would give parents a chance to see how the new routes fit with their school-aged children. Councilmember Jones asked how long a bus stays in the transfer station. Dr. Stoddard said the schedule tries to provide for at least 2-3 minutes of layover at the transfer center for the variability of traffic situations and transfers. He noted that the Miles route runs at about 27 minutes and does not have the extra 2-3 minutes needed.

Councilmember Poppler asked if the concerns of the drivers with regard to bus washing were addressed. Mr. Wenger said this proposal actually reduces the amount of time that the drivers use to do cleaning activities and increases driving time. He said there would still be some cleaning time built in to meet the contractual obligations. City Administrator Dennis Taylor noted that this was a major concession point with the union. He said where there was not ridership to justify additional driving time, additional tasks were assigned to justify the additional hours that were a part of the bargaining agreement. On a voice vote, the motion was unanimously approved.

4. PUBLIC HEARING AND SECOND READING ORDINANCE 02-5204 providing that the Billings Montana City Code be amended to revise Section 27-612(A) by modifying the 600 ft separation that is required between establishments that have on-premise alcohol consumption and certain public uses. Zoning Commission recommends approval. (Action: approval or disapproval of ordinance on second/final reading.)

The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Brewster moved for approval of the ordinance on second reading, seconded by Councilmember Larson. Councilmember McDermott amended the motion to include wording at the end of Section 27-612(a)(1) to include “and parks used primarily by children and children’s groups”, seconded by Councilmember Poppler. Councilmember Larson was concerned about the criteria involved in the language suggested by Councilmember McDermott. He said there are some parks that would fall into that category that do not have that much use and should not be subject to that exclusion. He suggested that staff should request the Council to make a determination as to the intent of “primarily used by children” language. Mayor Tooley said the definition of a playground should also be clarified. City Attorney Brent Brooks said he did not think that playgrounds have been defined at all. Zoning Coordinator Jeff Bollman said playgrounds are not defined in the zoning regulations at this time. He suggested that the wording of the amendment that would satisfy the Council’s intentions could include language stating “a park that contains a playground or play field”. He noted the purpose of this ordinance is to clarify from what the Council wants to separate these establishments. Councilmember Brown noted that Athletic Park would be a problem because alcohol is sold at the park. Councilmember McDermott withdrew her amendment if certain wording could be changed. Councilmember Poppler withdrew her second. Councilmember McDermott amended the motion to add “parks with children’s playground and/or a play field”, seconded by Councilmember Brewster. On a voice vote on the amendment, the motion was unanimously approved. On a voice vote for the motion as amended, the motion was unanimously approved.

5. PUBLIC HEARING AND SECOND READING ORDINANCE 02-5205 providing that the Billings Montana City Code be amended to revise Section 27-306 by modifying the zoning districts that permit microbreweries. Zoning Commission recommends approval. (Action: approval or disapproval of ordinance on second/final reading.)

The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Iverson moved for approval of the ordinance on second reading, seconded by Councilmember Larson. On a voice vote, the motion was unanimously approved.

6. PUBLIC HEARING AND SECOND READING ORDINANCE 02-5206 amending the Billings Montana City Code by adding sections to be numbered 18-901 through 18-906; providing a method for labeling and tracking alcoholic beverages sold by the keg and providing penalties for violations. Staff recommends approval. (Action: approval or disapproval of ordinance on second/final reading.)

The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Poppler moved for approval of the ordinance on second reading, seconded by Councilmember Brewster. Councilmember Jones asked about the requirement for the liquor establishment to make and preserve a copy of a valid photographic identification from the purchasers and would these establishments have the equipment to do this. City Administrator Dennis Taylor said Sergeant Tony Barone has established a dialogue with these retailers and asked him to respond to Councilmember Jones' concern. Sergeant Barone said there has not been an official poll as to what establishments do have the appropriate copiers, but suggested that the vast majority of businesses do have copiers that are used for their own purposes and would be able to make and preserve those photographic identifications. Councilmember Jones asked what the intent is for having the photocopy on file. Sergeant Barone said it makes a follow-up investigation easier to determine if the person on the identification is in fact the person that made the purchase. He noted that false identifications are prevalent in these situations. Councilmember Brown noted that copiers can fail and asked what the retailer should do in that situation. He said he thinks it is an unworkable plan and said there should be an option that written information can be used in place of a photocopy when a copier is not available. Councilmember Jones asked if that portion of the ordinance were deleted would it create a liability. Sergeant Barone said "no". Councilmember Larson amended the motion to add "and to either preserve a copy of such or to complete a written identification form as approved by the Billings Police Department" to Section 18-901(b), seconded by Councilmember Brown. Sergeant Barone noted that perhaps the information gathered on the form would be more accurate. Councilmember Jones asked if the identification requirement would now be just the written form and not the photocopy. Councilmember Larson withdrew his amendment and Councilmember Brown withdrew his second. Councilmember Larson offered a new amendment to the motion substituting language in Section 18-901(b) to read "shall require valid photographic identification from purchaser and completion of a written identification form as approved by the Billings Police Department, seconded by Councilmember Jones.

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

7. PUBLIC HEARING AND SECOND READING ORDINANCE 02-5207 amending the Billings Montana City Code by revising Section 15-704 and adding Section 15-703.5; providing that required ambulance response time does not apply to “no code” calls and requiring ambulance services to provide a quarterly response time report. Staff recommends approval. (Action: approval or disapproval of ordinance on second/final reading.)

The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Ohnstad moved for approval of the ordinance on second reading, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

8. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #697: A zone change from Residential-9,600 to Residential-8,000 on Lots 2-6 in Block 14, Lots 7-11 in Block 15, and Lots 1-6 in Block 19 all in Lampman Subdivision. The subject lots are generally located along Rosebud Drive, between South 30th and 32nd Streets West. Matthew & Stephanie Rowan and Lais Development, Inc., owners; Barbara Hawkins, agent. Zoning Commission recommends approval. (Action: approval or disapproval of Zoning Commission recommendation.)

Zoning Coordinator Jeff Bollman said this Zone Change concerns lots on property generally located on Rosebud Drive between South 30th and 32nd Streets West, north of King Avenue West. The change request is from Residential 9,600 to Residential 8,000. He noted that property to the south is zoned as Residential 6,000 and further to the south is Community Commercial; to the east and north is Residential 9,600 and to the west is Planned Unit Development. He said the owners have submitted the request to allow the lots to be re-platted to create additional building sites, allowing between 6-9 new single-family lots. He noted that Residential 8,000 does allow for duplexes with a minimum of 10,000 square feet of lot area. Mr. Bollman said the Zoning Commission recommended approval of the Zone Change, noting it provided a logical transition to the surrounding zoning. 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 Ohnstad. On a voice vote, the motion was unanimously approved.

9. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #698: A zone change from Residential Professional to Neighborhood Commercial on Lot 9, Block 4 of Britannia Subdivision. The subject property is located at 1450 Golden Boulevard. Premier Development, LTD, owner; Barbara Hawkins, agent. Zoning Commission recommends denial. NOTE: applicant has requested withdrawal. (Action: approval or disapproval of staff recommendation to grant applicant’s request for withdrawal.)

Zoning Coordinator Jeff Bollman said the Zone Change request concerns property at the northwest corner of Grand Avenue and Golden Boulevard. The request

is a zone change from Residential Professional to Neighborhood Commercial. He noted that a request for withdrawal of the application has been received. He said the Zoning Commission has recommended denial of the Zone Change. Their concerns were: 1) the present zoning is a good stopping point for commercial along Grand Avenue, 2) the Neighborhood Commercial zoning would allow more signs in the area, and 3) the neighborhood relied on the Residential Professional zoning when buying their property. Councilmember Larson asked what the waiting period would be for the applicant to file a similar request if the Council allowed the withdrawal request. Mr. Bollman said if the Council grants the withdrawal, the waiting period would be four months. Councilmember Larson asked what the waiting period would be if the Council does not grant the withdrawal and denies the Zone Change. Mr. Bollman said the applicant would have to wait one year if it is denied. Councilmember Poppler asked if the Planning Department has received many requests from the surrounding residents for denial of the application. Mr. Bollman confirmed that the Planning Department received requests from the surrounding residents asking for denial of the Zone Change and said the Council and the Zoning Commission were provided with copies of those requests. He noted there were a significant number of requests from the residents living north along Golden Boulevard. Councilmember Brown said the Council should deny the Zone Change request rather than accept the withdrawal of the application because of the surrounding residents' understanding that the area was zoned Residential Professional.

The public hearing was opened. CHUCK WILLKOM, 1548 GOLDEN BOULEVARD said he represents residents living just to the north of the proposed zone change property. He said the attorney at the Zoning Commission meeting said that after the Zoning Commission's vote, the application could not be withdrawn. He noted that regardless of the Council's action, the surrounding residents would oppose this Zone Change in four months or a year because they don't think the developer would honor the commitment he and the City of Billings made to the residents who purchased property in this area. He said 80% of the residents in the neighboring Carriage House Subdivision, 64% of the residents to the east, 66% of the residents to the west, and many unsolicited residents to the north have signed a petition against the Zone Change. He asked the Council to leave the zoning as Residential Professional because there is not sufficient street parking to allow for overflow from anything other than professional office buildings. There were no other speakers. The public hearing was closed.

Councilmember Larson moved to approve the Zoning Commission recommendation of denial, seconded by Councilmember McDermott. Councilmember Larson said he would usually recommend the withdrawal of the application request be allowed, however he said this is a unique situation. He noted one of his concerns is there are a significant number of residents that are gone for most of the year and that these people would not be available to voice their concerns in four months time. He also noted there is a significant gap of understanding between the applicant and the residents that might not be addressed in the four month time frame. For these reasons he supports the Zoning Commission's denial of the zone change. On a voice vote, the motion was unanimously approved and the Zone Change was denied.

10. PUBLIC HEARING AND SPECIAL REVIEW #719: A special review to allow the location of a beer and wine license with gaming in a Controlled Industrial zone on an unplatted fraction of the S½SW¼ of Section 8, T.1S., R26E, located south of the Laurel Road and east of Parkway Lane. The subject property is located at 5400 Laurel Road. West Parkway Investors, owner; Bill Schrup, agent. Zoning Commission recommends denial. (Action: approval or disapproval of Zoning Commission recommendation.)

Planning Department Planner I Nicole Cromwell said the staff recommendation for the Special Review was for conditional approval considering the location and the actual physical barriers to the site. The conditions were to build a screening fence along the east boundary and require a waiver of the 600 ft. separation. She said the special review asked the City to allow the location of a beer and wine license with gaming at the West Parkway Sinclair Station on Laurel Road. Ms. Cromwell said the Zoning Commission is recommending denial of the Special Review.

The public hearing was opened. RON BARNHART, 43 MACARTHUR AVENUE, said the surrounding area is always littered with garbage. He also noted that the trucks that park at the Sinclair Station have torn down parts of the fencing and lamp posts that are made of concrete and he is concerned that there is no screening material that would stand up to this treatment. He said he does not think it is a good idea to have a gambling or liquor license in this neighborhood because the residents are young families with children.

STEVE KROLL, 19 NIMITZ DRIVE, said he does not want to live near a casino. He said there are many children playing and small animals in that area most of the time. He said it is a residential neighborhood and he doesn't think a casino should be located anywhere near there. He noted it is a very family oriented neighborhood and he said he is concerned about the potential for accidents that could involve children and drivers under the influence of alcohol.

LEON PATTYN, 453 NEWMAN said he is the chairman of the Southwest Task Force. He said the Task Force unanimously voted to not support this special review.

KATHY BENTZ, 39 NIMITZ DRIVE said she has lived in the Streeter Subdivision for ten years and has two young children. She said the traffic could be a problem with approval of the special review and she asked the Council to deny the request. She said she doesn't think this neighborhood is the appropriate place for an establishment with an alcohol and gambling permit.

TAMERA BARNHART, 43 MACARTHUR AVENUE, said that some of the garbage found in the area have been syringes and pop bottles filled with urine. She noted that the trucks presently drive through their subdivision, even though this is not allowed. She is concerned about their neighborhood being congested with unwanted traffic. She said she has lived in the area for two years and the pictures in the special review were taken after the only time the lot had been cleared of garbage and debris. She said it would be a disaster to the surrounding neighborhood if the Council approves the special review.

WILL GORIE, 11 MARSHALL DRIVE, said he has lived in the area for 53 years. He said the business in question says they want to be good neighbors but they don't take care of their property at all. He said another request ten years ago was turned

down. He said he doesn't think alcohol should be served where truck drivers have access.

BILL SCHRUP, 1115 CUSTER, said he is the operator that is proposing the change. This business has been there for the past 30 years and would continue to be a truck stop, restaurant and convenience store regardless of the approval or disapproval of the special review and he noted the concerns about truck traffic would not change. He said the property is zoned to allow this type of request and the access is onto Laurel Road and West Parkway and does not egress directly into the surrounding neighborhood. He said he thinks this is a proper use of the property and asked for the Council's approval.

FRANCES GORIE, 11 MARSHALL DRIVE, said the residents of the surrounding neighborhood deserve to have privacy and have their property protected financially. She is concerned about the safety of the children who ride skateboards and bicycles in the neighborhood.

DUANE KRAMER, 13 NIMITZ DRIVE, said it is not a question of using the property as it is zoned, but rather the type of use that is proposed.

LANETTE SAUNDERS, 27 NIMITZ DRIVE, said she would like to see this special review denied. She is concerned for the safety of her children who play in the nearby neighborhood. She said she does not think this is an appropriate use for this type of facility at this location.

There were no other speakers. The public hearing was closed. Councilmember McDermott moved for approval of the Zoning Commission recommendation for denial, seconded by Councilmember Brewster. Councilmember Larson asked, according to the new ordinance approved tonight, if the Council would be required to submit justification for the decision not to waive the 600 ft separation on this application. City Attorney Brent Brooks said there would have to be some reason to waive the 600 ft. separation, however the Council can deny the request. Mayor Tooley clarified that it would be against the law as it stands and if the Council wants to allow a variance on it, it would behoove the Council to explain why. Councilmember McDermott said the neighboring Streeter Brothers Subdivision is full of children that use the convenience store. She said it would be poor judgment on the Council's part to allow beer and wine and casino licenses there and said the Council should deny this special review. On a voice vote, the motion was unanimously approved to deny the special review.

11. PUBLIC HEARING AND SPECIAL REVIEW #720: A special review to allow the location of a beer and wine license with gaming in a Community Commercial zone on Lots 1-3, Block 2 of Streeter Brothers Subdivision. The subject property is located at 1 MacArthur Avenue. Gary Davis, Leann Lane & Marilyn Davis, owners; Kenneth Frazier, agent. Zoning Commission recommends denial. (Action: approval or disapproval of Zoning Commission recommendation.)

Zoning Coordinator Jeff Bollman said the location of this Special Review for a beer and wine license is a former gas station that is now vacant. The property is surrounded on the east and south sides by MacArthur Avenue and the surrounding zoning to the west are commercial uses, residential uses to the south and commercial industrial uses to the east. He noted that the Planning Department has received a request from the applicant that the application be withdrawn. He said the site is within

600 ft. of Amend Park and walkways connecting this property to the Park and Newman School, and therefore does not comply with the current regulations regarding the 600 ft. separation. Mr. Bollman said the main concern expressed by the staff and the Zoning Commission about this special review was the close proximity of the single-family residential immediately to the south of the property. He also noted there is not easy access or opportunity to provide screening of the property from the residential neighborhood. He said this was the main reason the Zoning Commission recommended denial of the Special Review.

The public hearing was opened. LEON PATTYN, 453 NEWMAN LANE, said he is chairman of the Southwest Task Force. He said the Task Force, at their April 25th meeting, voted unanimously to ask the Council to deny this special review.

STEVE KROLL, 19 NIMITZ DRIVE, said there is already a casino in the area and another one is not needed.

KATHY BENTZ, 39 NIMITZ DRIVE, said there is a great deal of high speed traffic on Nimitz Drive that cuts over from Laurel Road. She is also concerned about the late hours of the proposed business, serving alcohol and providing gambling. She asked the Council to consider denial of the special review.

TAMERA BARNHART, 43 MACARTHUR AVENUE, said her main concern is not only the "drunk drivers" that may speed through her neighborhood, but a possible problem with a drug element that seem to hang out around the casino at the 4B's Restaurant nearby. She is concerned for the safety of the children in the area.

BRENDA SUMMERVILLE, 10 NIMITZ DRIVE, said she agrees with the previous comments about concerns for the safety of the children in the neighborhood. She said the neighborhood does not need the kind of problems this can create.

LANETTE SAUNDERS, 27 NIMITZ DRIVE, said she lives very close to the property of this proposed special review. She said that Nimitz Drive is a main road used between Laurel Road and King Avenue East and is concerned about the increase in traffic, persons driving under the influence of alcohol, increased speed of the traffic and property damage resulting from the traffic. She also noted the close proximity to Amend Park that holds many school events.

DAVE JARZYNE, 9 NIMITZ DRIVE, said he attended the Southwest Task Force meeting where this special review was proposed. He said he thinks the Council should not allow a casino in any residential areas.

VAL RONQUILLO, 3 NIMITZ DRIVE, said she is opposed to a casino in her neighborhood. She said this would result in a bad impression for the children living in the area. She is also concerned about the safety of the children regarding drivers that may be drinking and driving and the increased traffic flow. She asked that the Council deny the special review.

RON BARNHART, 43 MACARTHUR AVENUE, said there is no adequate place for parking for the proposed establishment. This would cause the patrons of the establishment to park in their neighborhood.

DUANE KRAMER, 13 NIMITZ DRIVE, said during the time he has lived in the area, there have not been many businesses that have been residential friendly. There is a problem with garbage left on the streets and nearby properties, he added. He said he is opposed to a bar or casino being located in this area.

There were no other speakers. The public hearing was closed. Councilmember Brown moved for approval of the Zoning Commission recommendation for denial, seconded by Councilmember Larson. Councilmember Larson said that with the new regulations to the 600 ft separation, the burden is on the applicant to go to the surrounding neighborhood and demonstrate a strong commitment to make a compatible use of the proposed establishment and that any burden to the surrounding residents has been resolved. He said it does not appear that the applicant has dealt with the residents' objections in this special review. Councilmember McDermott said there is a small parking lot in back of the building that is literally in the neighborhood's backyard and a casino would utilize this lot all hours of the night. She said this has the potential to be a dangerous situation. She urged denial of the special review. On a voice vote, the motion for approval of the Zoning Commission recommendation for denial was unanimously approved.

12. PUBLIC HEARING AND SECOND READING ORDINANCE 02-5208 extending the boundaries of Ward IV to include recently annexed property in Annexation #02-08 for Tract 1, C/S 828, located in T1N-R25E-S30: SW4, Aviara, Inc., owner and petitioner. Staff recommends approval. (Action: approval or disapproval of ordinance on second/final reading.)

Mayor Tooley noted that Items 12 through 15 are all public hearings and second readings on ordinances to extend the boundaries of Ward IV because of recently annexed properties. He said it is a routine matter and opened the public hearing for Items 12 through 15. There were no speakers. The public hearing was closed. Councilmember Brewster moved for approval of this ordinance on second reading, seconded by Councilmember Larson. On a voice vote, the motion was unanimously approved.

13. PUBLIC HEARING AND SECOND READING ORDINANCE 02-5209 extending the boundaries of Ward IV to include recently annexed property: #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. (Action: approval or disapproval of ordinance on second/final reading.)

The public hearing was held in conjunction with Item 12. There were no speakers. The public hearing was closed. Councilmember Iverson moved for approval of the ordinance on second reading, seconded by Councilmember Larson. On a voice vote, the motion was unanimously approved.

14. PUBLIC HEARING AND SECOND READING ORDINANCE 02-5210 extending the boundaries of Ward IV to include recently annexed property: #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. (Action: approval or disapproval of ordinance on second/final reading.)

The public hearing was held in conjunction with Item 12. There were no speakers. The public hearing was closed. Councilmember Poppler moved for approval

of the ordinance on second reading, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

15. PUBLIC HEARING AND SECOND READING ORDINANCE 02-5211 extending the boundaries of Ward IV to include recently annexed property: #02-11 for Tract 2, C/S 3030, located in T1N-R24E-S24: SE4 and T1N-R25E-S19: SW4, Woodridge LLC, owners and petitioners. Staff recommends approval. (Action: approval or disapproval of ordinance on second/final reading.)

The public hearing was held in conjunction with Item 12. There were no speakers. The public hearing was closed. Councilmember Ohnstad moved for approval of the ordinance on second reading, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

16. PUBLIC HEARING AND RESOLUTION ANNEXING 02-17846 Tract 2, C/S 1648 Amended (Annex #02-12), Dorn/Lowe, LLC petitioner. Staff recommends approval of the public services report, the annexation agreement and conditional approval of the annexation. (Action: approval or disapproval of staff recommendation.)

Planning Staff Member Candi Beaudry said the petition for annexation presented by the owners Dorn/Lowe, LLC is for 14 acres approximately 800 feet west of the intersection of Central Avenue and Shiloh Road. The current land use is Agricultural Open Space and the proposal is to develop this as a 56-lot subdivision with the lots zoned as R7000. She said the fiscal impact to the City would be a net cost of \$45.00 per household, taking into account the revenue that the City will receive from each of the lots and expenditures for cost of providing services. She noted this is a common situation for residential development. Ms. Beaudry said that staff is recommending conditional approval of the public service report and the Annexation Agreement. She said the conditions of approval include: a) a Development Agreement between the owners and the City that would stipulate specific infrastructure improvements and provide guarantees for those improvements, or b) a Subdivision Improvements Agreement and Waiver of Protest to SID approved and filed that will stipulate specific infrastructure improvements and provide guarantees for those infrastructure improvements. She said the petitioner must also add a statement to the Annexation Agreement that they will not protest the creation of a future Park Maintenance District, which is part of the recently approved Annexation Policy. She also noted that both the Public Works Department the Planning Department have recommended that all of Central Avenue located adjacent to the annexation be annexed as well. She added there were no significant negative comments from City Departments regarding the proposed annexation. She said the Planning Department feels this annexation is consistent with the Comprehensive Plan and the West End Plan and it is close-in development to the City at higher urban densities. Ms. Beaudry said the annexation petition is consistent with the recently adopted Annexation Policy. Councilmember Brown asked for clarification of the net cost figure per lot for the proposed annexation. Ms. Beaudry expressed the fact that this figure was just an estimate that is based on averaging the revenues from the General and Public Safety Funds, which is approximately \$270.00 per lot and subtracting the average of the General Fund and

Public Safety Fund expenditures, which is approximately \$315.00 per household. This results in a net cost to the City of \$45.00 per household, which she added was not a significant cost. She noted this is taken from the 2002 FY budget. She added there are other non-tax revenues that would keep this from being a deficit. Councilmember Jones said, in his opinion, this estimate is useless because it does not take into account fixed and variable costs.

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

17. RECONSIDERATION of approval of Bid Award for W.O. 01-02, Contract #2: Broadwater Subdivision Improvements, Phase IV. (Opened 5/21/02). Staff recommends Rock Pile, Inc. for Schedule A, \$596,337.00 and 110 calendar days and Empire Sand and Gravel Co., Inc. for Schedule B, \$466,900.00 and 60 calendar days. (Councilmember McDermott). (Action: approval or disapproval of bid award.) Reconsideration failed 4-5. Councilmembers Brown, McDermott, Jones and Poppler voted "yes"; Councilmembers Brewster, Iverson, Mayor Tooley, Ohnstad and Larson voted "no".

Councilmember McDermott moved for approval of the reconsideration, seconded by Councilmember Poppler. Councilmember McDermott said she sees no problems with the bid award or the Phase IV Broadwater Subdivision project. She said she only wishes to remove from the recommendation the language in item three that reads "and execute all Change Orders up to the 10 percent of the bid amounts" by putting a period behind the word "contracts". Councilmember Iverson asked if the contract has been officially awarded and a Notice to Proceed issued as stated in the staff recommendation. Public Works Director Dave Mumford said that when he was notified that there would be a reconsideration, they halted the bid award. Councilmember Iverson said she opposes this reconsideration because she recalled that Phase III was barely completed before bad weather set in. She said she disagrees with holding this contract up when there has been considerable work done to get this contract approved. Councilmember Poppler reminded the Council that the 10% change order approval without Council approval goes way over the limit that was previously set for change orders. She reiterated that when change orders of such magnitude are being made, Council should approve them. Councilmember Iverson said she would recommend that this be done as a separate issue and not pertaining to this particular bid award. Councilmember Larson said one of the reasons for the 10% change order approval condition was to expedite these types of projects. He noted that Montana has a very limited construction period and the common complaint from developers is that certain procedures make it difficult to accomplish work that must be done with the City. He asked if Council is concerned that City Administrator Dennis Taylor is not capable of making these decisions. He noted change orders are driven by factors that are not able to be determined prior to the start of construction. He noted many projects would not have been completed in a timely manner had the change orders been held up due to being scheduled for Council approval. Councilmember Brown said the federal government uses a 5% change order benchmark and suggested that if Council does not

allow the 10% change order contingency, bidders may tend to bid higher. Councilmember McDermott said the City Administrator's capabilities are not in question, rather she said she is reluctant to delegate budget authority that has been given to the Council by the City Charter. "This has to stay with the Council", she said. Councilmember Larson noted that the Council has already exercised their budget authority by approving a budget that includes a contingency that all departments have to operate within. He said if the budget needs to be changed because of the change order, then the City Administrator must come back to the Council for approval. He said the Council is delegating the operation of the project, not the budget authority, to the City Administrator. City Administrator Dennis Taylor noted that past practice has been that change orders are processed and the City and the contractors subject to the change order, make the decision jointly to go forward before the change order can be placed on the agenda for Council approval and after the action has been completed. The alternative is to wait for Council approval and risk the project's completion, which is not a favorable way to proceed. This could be as much as a three-week delay, he noted. He said other cities in Montana have this general delegation at the level that is being proposed. He noted that Councilmember Iverson's suggestion to promote this as a matter of public policy is probably a better way to deal with the dollar amount of changes orders. His recommendation is to approve this contract as it has been proposed and take up the issue of "bounded delegation" to the City Administrator for approval of change orders as an overall policy and not within the context of every contract. Councilmember Iverson noted that the Council has already approved the contract and this action is a reconsideration. On a voice vote for the reconsideration, the motion failed 4-5 with Councilmembers Brown, McDermott, Jones and Poppler voting "yes" and Councilmembers Larson, Ohnstad, Iverson, Mayor Tooley and Brewster voting "no".

18. CONTRACT FOR PROFESSIONAL SERVICES for W.O. 99-11: Citywide Arterial Light District with Marvin & Associates, \$47,250.00. (Delayed from 5/28/02). Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Councilmember Larson moved for approval of the staff recommendation, seconded by Councilmember Iverson. Councilmember McDermott said she continues to be opposed to this contract. She said spending \$47,000.00 to determine whether the residents of Billings in the various neighborhoods should assist Costco and Wal-Mart in paying for their street lighting is not good judgment on the Council's part and hopes this will be defeated. On a voice vote, the motion failed with a vote of 4-5. Councilmembers Iverson, Mayor Tooley, Ohnstad and Larson voted "yes" and Councilmembers McDermott, Brown, Brewster, Poppler and Jones voted "no".

19. APPROVAL OF REQUEST FROM ECGC FUNDS for Big Sky Elementary School playground renovations, \$5,000.00. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Councilmember Brown moved for approval of the staff recommendation, seconded by Councilmember Brewster. Councilmember McDermott asked why this approval request is coming to the Council when it appears the Council's approval is not

needed. City Administrator Dennis Taylor said this is to show what the golf proceeds accomplish in terms of public improvements. It is a formal notice to the Council of the public relations value of the projects that are approved by the Exchange Club Golf Club from year to year and not something that requires action by the Council, he noted. On a voice vote, the motion was unanimously approved.

Council Initiatives

- Councilmember Brewster proposed a discussion, at a work session soon, of the issue of bid awards and change order approval authority. He agrees that it is a policy issue and would like the Council to resolve it. City Administrator Dennis Taylor supported the opportunity to have this discussion and get a sense of the direction the Council would like to take on this issue and to have a policy decision provided by an ordinance rather than a contract or ad-hoc delegation.
- Councilmember Brown moved to create a Council Committee to advise on financial plans of the City and to measure cost ratios, seconded by Councilmember McDermott. Councilmember Brewster asked for more information on the intention of Councilmember Brown's initiative. Councilmember Brown said the committee would be formed at the next work session and would be formulated according to the desires of the Councilmembers. Councilmember Poppler noted that this initiative is the same as the one that was voted on at the last Council meeting. Councilmember McDermott said that the original initiative was to be discussed at the next agenda meeting and was not, due to time constraints, and she therefore would like to see the Council approve the establishment of this committee. Councilmember Larson said he does not support this initiative and does not approve of an audit committee or understand what their function would be. Councilmember Brown called for the question, seconded by Councilmember McDermott. On a voice vote, the debate continued after a 4-5 vote to oppose stopping debate. Councilmembers McDermott, Brown, Mayor Tooley, Poppler voted "yes" and Councilmembers Brewster, Iverson, Ohnstad, Jones and Larson voted "no".

Councilmember Brewster said he would like to see how this audit committee would be structured and discuss that issue before approving the actual committee. Councilmember McDermott said she doesn't think any Councilmember has the intention to turn Council's budget authority over to anyone and she thought the Charter would not allow it. She said this would be a recommendation type of board. Councilmember Jones agreed with what Councilmember McDermott said noting that the Council does not give up their zoning authority with the Zoning Commission. He asked that a date be set. City Administrator Dennis Taylor said that his recommendation would be to schedule the July 1st work session as the time this initiative could be discussed. He recommended that the Council review their handbook to determine what kind of committee they would like to form and to complete this initiative through the ordinance process. On a voice vote, the motion to establish an audit committee failed. Note: It is still the Council's intention to discuss this at the July 1st agenda work session.

- Councilmember Poppler proposed a discussion to create a policy handbook.

NOTE: These three issues will be scheduled for discussion at the July 1st work session of the City Council.

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

THE CITY OF BILLINGS:

By: _____
Charles F. Tooley MAYOR

ATTEST:

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