

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

January 24, 2005

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 Dave Brown.

ROLL CALL -- Councilmembers present on roll call were: Gaghen, McDermott, Brewster, Brown, Ruegamer, Veis, Boyer, Ulledalen, Clark and Jones.

MINUTES – January 3, 2005 and January 10, 2005. APPROVED as printed.

COURTESIES – Police Dept

- Mayor Tooley recognized former Councilmember Marion Dozier in the audience this evening.
- Mayor Tooley acknowledged that former Mayor Howard Hultgren passed away and extended sympathies to his family.
- Police Chief Ron Tussing presented the following awards: Medal of Honor (the Police Department's highest honor) to Officer Mike Guy; Commendations to Sergeant John Bedford, Officer Tim Hawkins, Officer Dave Cardillo and Officer Chuck Moore; Medal of Merit to Officer Gaye Gauthier and Officer Sandy Leonard; and Medal of Valor to Officer James Gartner.

PROCLAMATIONS – Mayor Tooley. NONE

BOARD & COMMISSION REPORTS – Animal Control Board

- Kevin Walsh, Chair of the Animal Control Board noted that 3 new members have just been appointed to the Board. The Board has not met yet this year but will be meeting shortly and intends to bring forward some ordinance amendments for Council consideration.

ADMINISTRATOR REPORTS – Kristoff Bauer

- Mr. Bauer noted that a corrected agenda has been placed on Council desks this evening adding the identifier for Item L (approval of Accounts Payable items) on the Consent Agenda.

LEGISLATIVE REPORT – Kristoff Bauer

- Mr. Bauer reported that SB184, the Local Option Tax bill will be heard this week. Two amendments have been proposed: (1) an amendment for the resort tax and (2) the addition of a distribution formula.
- SB32 and SB175, two pieces of legislation requested by the City concerning street assessments, have been sent to the Executive Committee.

- A new bill on the resort portion of the resort tax is being considered to change the population ceiling from 5500 to 8000, to allow larger communities to utilize the resort tax legislation. This does not impact the City of Billings.
- SB158 and SB185 are dueling impact fee bills and are coming up next week. These bills will be assigned to a sub-committee to work toward reconciling the differences. The City is sending Al Towlerton from the Utilities Dept to testify on these bills as the City uses these fees via System Development Fees to defray the cost of building new infrastructure to support growth.
- Mr. Bauer noted the City of Whitefish has enlisted the support of the City of Billings for a proposal to change the way engineering and architectural consultants are hired. Current state law does not allow price to be a consideration during the contract decision process. He noted this was not a part of the current legislative agenda.

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Item: #1, 2, 10, 11, 12 and 13 ONLY. Speaker sign-in required. (Comments offered here are limited to 1 minute per speaker.)

(NOTE: For Items not on this agenda, public comment will be taken at the end of the agenda.)

- RANDY REGER, NO ADDRESS GIVEN, spoke on the Shiloh Corridor item. He reminded the Council that at a previous meeting, Joel Long spoke about Reserve Street in Missoula and its development. Mr. Reger noted that the street experienced many traffic problems. He proposed that the City use some of the arterial street fees to combine with state and federal dollars to widen Shiloh Road.
- JIM OLSON OF 3245 TURNBERRY CIRCLE said he is very much in favor of Briarwood being part of Ward I as it makes sense from a geographical standpoint. He is a member of the Briarwood Homeowners Association and noted that most of the members are in favor of being in Ward I.
- MARION DOZIER, NO ADDRESS GIVEN, requested that a project moving the railroad tracks from the downtown area be included as a long-term goal in Item 11 – the Transportation Plan and Item 13 – the Federal Affairs Program.
- BRUCE BARRETT, NO ADDRESS GIVEN, said he is the administrator of the Montana Department of Transportation. Mr. Barrett noted that a feasibility study was NOT done on the railroad. To have a project approved, a feasibility study including a cost/benefit analysis must be completed. The feasibility study that has been completed to date was only for the highway project. Mr. Barrett said the railroad project should not be included in the program because its necessity cannot be defended at this time.
- MARY WESTWOOD, NO ADDRESS GIVEN, spoke on Item 1J – the redistricting of wards. She said this decision is an important one because it will influence the makeup of the City for the next 10 years. She said the issues concerning this item need additional consideration. As proposed, the population numbers between wards vary by as much as 10%. Ms. Westwood said she felt inadequate public participation was obtained for this issue. She noted that diversity has been mentioned in the discussion of redistricting, but it is not included in redistricting law. Ms. Westwood said too much politics has surrounded this issue.

- DEBRA BRAUNSTADTER OF 4412 JANSMA AVENUE said she is speaking on behalf of her parents who own property at 723 S. Billings Blvd. She said they oppose the annexation that is being proposed and do not want to be included in any future SID. She noted that the property should be exempt from forced annexation because of the cemetery that exists on the property.

CONSENT AGENDA:

1. A. Bid Awards:

(1) Cellular Telephone Service. (Opened 1/04/05). Recommend Verizon Wireless, \$90,859.00, 2-year contract with option to renew.

(2) Billings Wastewater Treatment Plant Headworks Replacement. (Opened 1/11/05). Recommend delaying award to 2/14/05.

(3) Interior Terminal Painting for Billings Logan International Airport. (Opened 1/11/05). Recommend Sayer Painting, \$39,597.00.

(4) One New Model (2005) 2WD Tractor with Front End Loader and Optional Attachments. (Opened 1/11/05). Recommend Yellowstone County Implement, \$36,858.15.00.

B. W.O. 04-30: Signal Design and Construction Administration for West Wicks Lane & Governors Blvd., Contract for Professional Services, Marvin & Associates, \$54,000.00.

C. W.O. 01-06: Arlene Corridor – Big Ditch Maintenance, Operation & Ownership Agreement, Big Ditch Company.

D. Recreational Trails Program Grant Agreement with Fish, Wildlife and Parks for a portion of the Gabel Road Connector Trail, \$23,500.00.

E. Subordination of Housing Rehab Loan, Rochele Wilson, 325 Howard Ave., \$13,400, provided a \$6,600 payment is made to the City.

F. Resolution 05-18234 relating to Special Improvement Districts, establishing a policy relating thereto and amending Res 87-15592 (raw land SID policy).

G. Resolution of Intent 05-18235 to Dispose of City Property described as Lots 44-46, Block 7, Amended Westside Addition and setting a public hearing for 2/28/05.

H. Resolution of Intent 05-18236 to De-Annex a recently annexed parcel described as T1N-R26E-S27: S2N2SW4NE4NE4 located at 637 Lincoln Lane, Bill Dunlap, petitioner, and setting a public hearing for 2/28/05.

I. Second/final reading ordinance 05-5312 expanding Ward II to include recently annexed property. (Annexation #04-09): 1.6 acre parcel of land on the

northeast corner of the intersection of Main Street and Airport Road described as Tract 3, C/S 90, Gauger Acres, Lamar Outdoor Advertising Montana, petitioner.

J. Second/final reading ordinance 05-5313 amending BMCC Section 11-102. changing ward district boundaries to reflect new census information and account for future growth. (Redistricting of the Ward boundaries.) Staff recommends Scenario 1 including placing Rehberg Ranch in Ward II.

K. Preliminary Plat of Vintage Estates Subdivision, generally located at the southwest corner of 52nd St. West/Grand Ave. intersection; approving the requested variances and conditionally approving the plat based on the written findings of fact.

L. Bills and Payroll.

- (1) December 23, 2004
- (2) December 30, 2004

(Action: approval or disapproval of Consent Agenda.)

Councilmember Brewster separated Items B & C from the Consent Agenda. Councilmember McDermott separated Item J from the Consent Agenda. Councilmember Gaghen moved for approval of the Consent Agenda with the exception of Items B, C and J, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

Councilmember Gaghen moved for approval of Item B of the Consent Agenda, seconded by Councilmember Ruegamer. Councilmember Brewster asked if the study on the intersection last year would offset any engineering costs for this current work order. Public Works Director Dave Mumford said there would be some offset costs in the refining of the data that was done in the original study. Traffic numbers from the original study would be reviewed, but there will be a cost savings because the calculations would not have to "start from scratch". On a voice vote, the motion was unanimously approved.

Councilmember Gaghen moved for approval of Item C of the Consent Agenda, seconded by Councilmember Ruegamer. Councilmember Brewster asked how the City would reconcile the two differing positions regarding legal actions with the Ditch Company on the maintenance of the ditch crossings before annexation into the City. City Administrator Kristoff Bauer said this agreement clarifies the issue of maintenance before annexation. Mr. Mumford said the City is responsible for maintenance of the main ditches that cross the roads. The laterals are a separate issue. He said the ditch company's position is that once the water leaves the main ditch and goes into the lateral ditches it is the shareholders' responsibility. On a voice vote, the motion was unanimously approved.

Councilmember Gaghen moved for approval of Item J of the Consent Agenda, seconded by Councilmember Ruegamer. Councilmember McDermott asked the Council to either delay or deny this item on second reading as there is not enough valid research to determine the accuracy of the redistricting. Councilmember Ruegamer reiterated his comments from the prior council meeting, namely that the Council has spent enough time on this issue. He said the concerns are not valid and he sees the opposing views as discriminatory according to income levels. He noted the letter submitted by Mary

Westwood contained an inaccuracy that stated he implied "something sinister" about an underlying political agenda. He said he supports the redistricting as it has been proposed and developed by a capable staff that has presented a good plan.

Mr. Bauer said that Councilmember McDermott has raised several concerns that the Legal Department has been reviewing. He said there are some "grey areas" and cautioned the Council to use discretion in their judgment. He said more research can be done, but he is not certain that would provide more certainty. In the research to this point, the Staff has not identified any "red flags" that would raise concerns about the Council's actions to this point. Councilmember Brewster said the objections that have been raised about "community of common interests" concern such a small percentage of the Ward I residents that he does not see how anyone is being disenfranchised. He said he does not see any concerns regarding a legal challenge. He recommended the Council move forward with the current proposal.

Councilmember Gaghen asked if the Planning Staff considered the percentage of population of minorities during the evaluation process in each Ward. She said Ward I is a very diverse ward and wondered if that was a greater impact than on the other wards. Mr. Bauer said the Staff did review the minority compositions within the existing and proposed wards. He said the question is whether this action disenfranchises the minority population. He noted that Ward I is and has been represented by members of the Native American population including Councilmember McDermott and former Councilmember Stephen Bradley.

Councilmember Boyer said members from the Briarwood Homeowners Association have stated that they want to be in Ward I and should be included in Ward I. She said the Council should take a leadership stand on this issue and listen to the majority of those homeowners. This is a city of diversity and Ward I is no different.

Councilmember McDermott said she is not sure that all of the boundaries may be wrong and would like to look at the entire City for any evidence of faulty research. She said she would like to see more compactness and groupings of neighborhoods of common interest as two of the most important criteria for redistricting.

Councilmember Boyer called for the question (to stop debate), seconded by Councilmember Ruegamer. On a roll call vote, the motion to stop debate failed 6-5 for lack of a supermajority. Councilmembers Gaghen, Ruegamer, Veis, Boyer, Ulledalen, and Mayor Tooley voted "yes" and Councilmembers McDermott, Brewster, Brown, Clark and Jones voted "no". There was no additional discussion.

On a roll call vote on the original motion, the motion was approved 7-4 with Councilmembers Gaghen, Brewster, Ruegamer, Veis, Boyer, Ulledalen, and Mayor Tooley voting "yes" and Councilmembers McDermott, Brown, Clark and Jones voting "no".

REGULAR AGENDA:

2. **RESOLUTION OF INTENT 05-18237 TO ANNEX (#05-01) WHOLLY SURROUNDED PROPERTY described as Tract 1, Popelka Industrial Tracts Subdivision, 1st filing; Tract A, C/S 289, Sugar Subdivision – Lot 20; Tract A, C/S 289, Sugar Subdivision – Lot 19; Tracts 19B-1 and 19B-2, C/S 289, Sugar Subdivision – Lot 19 and setting a public hearing date for 2/14/05. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

Public Works Director Dave Mumford said this intent to annex was brought forward by the Public Works Department due to several specific issues. The annexation includes five lots on South Billings Boulevard that would benefit from the improvements but not pay their fair share for these services. He said it was not realized during the bond process for South Billings Boulevard that there was a small county island of five lots wholly surrounded by the City. The purpose of this annexation is to ensure the completion of the South Billings Boulevard reconstruction project as planned and the ability to utilize City funds on the entire project. A meeting with the City and County Public Works Departments resulted in the County also recommending these properties be annexed as they were wholly surrounded.

Mr. Mumford said there are five property owners involved in the annexation. The difference in their assessments would increase to between \$200-\$400 per year with the annexation. The annexation meets all of the annexation criteria such as the Annexation Policy and the Growth Policy. It is located within the Sphere of Influence and within the Urban Planning Area. He said the City is able to provide services to the properties and is currently providing water. They would not be charged for the other services until they are ready to hook up to the services.

After reconstruction of South Billings Boulevard the public improvements within the area to be annexed will also meet City standards. He said the Staff is recommending the Council approve the Resolution of Intent to annex these county properties. Councilmember Brown expressed concern for those property owners who may no be able to afford the increased assessments. Mr. Bauer noted the action tonight would allow a public hearing for this annexation to be scheduled for February 14, 2005 and not actually annex the properties.

Councilmember Brewster moved for approval of the Staff recommendation, seconded by Councilmember Ruegamer. On a voice vote, the motion was approved with Councilmembers Brown and McDermott voting "no".

3. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE
#749: a Planned Development zone change changing the underlying Residential Multi-Family zoning to Neighborhood Commercial in the Parkland West PUD, on a tract described as Lot 5, Block 10, Parkland West Subdivision, 6th Filing and located on the west side of 32nd St West. Central Capital LLC, owner, Engineering, Inc. agent. Zoning Commission recommends approval and adoption of the determinations of the 12 criteria. (Action: approval or disapproval of Zoning Commission recommendation.)

Planner Aura Lindstrand said the applicant is requesting a zone change to change the underlying Residential Multi-Family zoning to Neighborhood Commercial in the Parkland West Planned Unit Development. The property is located south of the intersection of Central Avenue and 32nd Street West and is approximately 3.7 acres in size. The surrounding zoning includes PUD-Community Commercial to the north with a bank building and a storage facility under construction, PUD-Residential Multi-Family to the south including 4-plex homes and condominiums, Residential 9,600 and Residential Multi-Family-Restricted to the east with an assisted living facility under construction and PUD and Residential 9,600 to the west that is currently vacant. She noted there would be a landscape buffer that would shield residents to the south from the commercial use.

She said the Zoning Commission is recommending approval based on the 12 review criteria. The property is located on a principal arterial and can be readily served by City services. It encourages services within this neighborhood but certain uses are restricted and no liquor licenses will be allowed in the Neighborhood Commercial zoning district.

The public hearing was opened. RICK LEUTHOLD, ENGINEERING, INC., said he represents the owners – Central Capital, LLC. He noted there is a predominance of Multi-Family and assisted living development in the area. There has been a need for additional smaller mixed use commercial allowed under the Neighborhood Commercial zoning in this area. He noted all traffic from this parcel would go onto 32nd Street West which is the principal arterial in the area and keeping it out of the residential neighborhoods to the south. This zoning request does have certain restrictions that are suitable to the higher density neighborhoods. Mr. Leuthold asked for support of the Zoning Commission's recommendation.

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

4. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #750: a zone change from Residential-7000 to Residential Multi-Family Restricted and Neighborhood Commercial on Tract B2-A of C/S 1056 Amended, generally located at the southeast corner of the intersection of Wicks Lane and Bench Boulevard in the proposed King Place Subdivision. King Place LLC, Richard Dorn, owner, Engineering, Inc., agent. Zoning Commission recommends approval and adoption of the determinations of the 12 criteria. (Action: approval or disapproval of Zoning Commission recommendation.)

Planner Aura Lindstrand said there has been a valid protest submitted with this zone change request requiring a 2/3 majority vote of the Council for approval. She said the applicant is requesting a re-zone from Residential 7,000 to Residential Multi-Family-Restricted on the southern portion of the subject property and Neighborhood Commercial on the northern portion. The property is located along the southeast corner of the intersection of Wicks Lane and Bench Boulevard and is approximately 8 acres. She said the applicant has indicated a possible use for the northern portion of the property is a bank or office building.

Ms. Lindstrand said the property is bordered on three sides by Residential 7,000 zoning containing single-family residences and a Church use to the north and east. It is bordered on the west by Community Commercial zoning containing a US Post Office, a medical office and veterinary clinic.

She said the Zoning Commission is recommending approval based on the 12 review criteria. The subject property is located at the intersection of two principal arterial streets, the land uses are anticipated to be a mix of commercial and residential uses. The proposed multi-family zoning for the southern portion of the property will create a buffer zone between the surrounding residential uses to the north and south of the subject property. The proposed zoning will further provide the surrounding residential and commercial neighborhoods with commercial amenities within a close walking distance. The proposed zoning will also allow for a mix of residential and commercial uses.

The public hearing was opened. RICK LEUTHOLD, ENGINEERING, INC., said he represents Rick Dorn of King Place, LLC. Mr. Dorn has been looking for a pedestrian friendly development for the "graying" population that is looking for convenient, easy access to services. This parcel is excellent for these purposes. He said this is a good infill project that matches urban development patterns and promotes these types of mixed uses. Because of the intersection of two principal arterials, it would be expected that there would be some kind of commercial "node" activities similar to those in the West Billings Plan. On Bench Boulevard there are about 4,200 vehicle trips per day and it is part of the vehicle couplet design plan. He noted the properties that created the valid protest are from the Residential 7,000 area. He asked the Council to approve the Zoning Commission recommendation.

TOM ZURBUCHEN, 1747 WICKS LANE, asked the Council to deny this zone change - east of Bench Boulevard. He said Neighborhood Commercial and its associated amenities such as electronic reader boards would be intrusive to the Residential 7,000 neighborhood and alters the character of the residential neighborhood. He asked what would be provided as a buffer for the residences from the bank.

GEORGEANN KOBEL, 835 WICKS LANE, said she would be one of the owners that will look across the street to see a bank or some other commercial use. She said she was told the area would stay Residential 7,000 when she built her home (in 1992) and thinks the neighborhood should stay as a residential use. She noted Bench Boulevard is a perfect buffer and commercial uses should not be permitted east of Bench. She also expressed concern for the already overcrowded nearby school that would not be able to accommodate future residents of the proposed apartment complex. Ms. Kobel said she hopes the area stays single-family residential.

TONY SAMUELS, 827 WICKS LANE, said he lives next to Ms. Kobel. He said the proposed development is trying to split the neighborhood sentiment to get their zone change approved. He said the area should remain residential; commercial is not needed. He suggested a delay to further study several of the 12 criteria that need to be reviewed.

JIM VUKOVICH, 830 ANCHOR AVENUE, said he does not live within 150 feet of the proposed zone change but supports the people on Wicks Lane and their views. He said twenty-five property owners on Naples, Anchor and Rome have signed a petition opposing the zone change. He noted there is enough vacant property on Main Street for commercial development. He said there is no reason for commercial development to come across Bench Boulevard. Mr. Vukovich asked the Council to deny the zone change.

CY ELERT, 835 ANCHOR AVENUE, said he opposes the zone change to commercial. He said there is very little or no commercial property east of Bench Boulevard and would like to see it remain that way. He expressed concern for increased crime rate and decreased property values with what multi-family dwellings may bring. He said there are plenty of commercial uses within two blocks of the subject property.

ROB WILSON, 422 SHAMROCK LANE, said he is a part owner in the subject property. He said the lower portion (approximately 20 acres) will remain Residential 7,000. He said Residential 7,000 development is not economically feasible on the upper portion because subdivision rules do not allow cars to back out onto arterials. He noted Neighborhood Commercial is different than development on Main Street, which is zoned Highway Commercial. There is a need for commercial that is not like "highway commercial" and that is conducive to the neighborhood and is pedestrian or bicycle

friendly. Mr. Wilson said there have been several businesses that have inquired about the commercial property and believes there is sufficient buffer with 70 foot of arterial on each side. He said this is an appropriate development for this area and asked the Council to consider approval.

BLAINE POPPLER, 5403 KING AVENUE WEST, asked the Council to support the zone change request. He said he would like to address 5 points that have been raised this evening.

1) Safety of the children walking to Bitterroot School would be improved via the orderly development that would include sidewalks and adequate lighting.

2) There is no evidence to support the notion that the crime rate would increase due to the introduction of the multi-family developments.

3) Increased traffic with or without the zone change is inevitable at intersections like Wicks Lane and Bench Boulevard because of their arterial designation. With the traffic counts, this area is not suitable for single-family residences.

4) There is no evidence for deterioration of the home values because of a development such as proposed on Bench Boulevard and Wicks Lane. It is an ideal location for Neighborhood Commercial.

5) This is infill development that the City has been encouraging.

Mr. Poppler encouraged the Council to support the zone change.

There were no other speakers. The public hearing was closed. Councilmember Brown moved for approval of the Zoning Commission recommendation, seconded by Councilmember Boyer. Councilmember Brewster made a substitute motion to delay this zone change for three weeks to allow an opportunity to meet with the neighborhood and discuss the issues, seconded by Councilmember Jones. Councilmember Ulledalen said there are some legitimate concerns about containing commercial development and maintaining the character of the neighborhood. On a voice vote, the substitute motion was unanimously approved. Action on the item was delayed for three weeks to February 14, 2005.

5. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE
#751: a zone change from Residential-7000 to Residential-7000-Restricted on a 100-acre parcel described as Tract 3A, C/S 3217 Amended, generally located on the north side of Mary Street between Hawthorne Lane and Bitterroot Drive. BRV Development, LLC, owner. City of Billings, petitioner. Zoning Commission recommends approval and adoption of the determinations of the 12 criteria. (Action: approval or disapproval of Zoning Commission recommendation.)

Planning Manager Candi Beaudry said this zone change is a Council initiated zone change. In November 2004, the Council considered a request for a preliminary plat of Bitterroot Subdivision. At that time there were concerns raised that the developer promised that only single-family homes would be built in the subdivision. Even though the covenants provided for this condition, the Council advised the developer and the Staff to prepare a zone change that would insure only single-family homes were placed on this property. The City has recently adopted a new zone classification of Residential 7,000-Restricted (restricting only single-family homes to the district). She said the application is to change the zoning from Residential 7,000 to Residential 7,000-Restricted in Bitterroot Subdivision, 1st filing.

Ms. Beaudry said the subdivision is located on the northwest corner of Mary Street and Bitterroot Drive and includes approximately 100 acres. Property to the south is zoned Residential 7,000 and Agricultural zoning is to the west and north. Residential Manufactured Home and Residential Suburban zoning also is to the west. Ms. Beaudry said the Zoning Commission is recommending approval on a 3-0 vote.

The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Ruegamer moved for approval of the Zoning Commission recommendation, seconded by Councilmember Brown. Councilmember Brewster said this zone change satisfies the concern with this subdivision remaining as single-family homes. On a voice vote, the motion was unanimously approved.

Mayor Tooley called for a recess at 8:10 P.M.
Mayor Tooley reconvened the meeting at 8:15 P.M.

6. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE
#752: a zone change amending the official Zoning Map to show the extent of the Shiloh Corridor Overlay District, generally located 500 feet east and west from the centerline of Shiloh Road north from King Ave West to Rimrock Road. City of Billings, petitioner. Zoning Commission recommends approval and adoption of the determinations of the 12 criteria. (Action: approval or disapproval of Zoning Commission recommendation.)

Planning Manager Candi Beaudry said this zone change is also a Council initiated zone change. The ordinance for the north portion of the Shiloh Corridor Overlay District was adopted on second reading in December 2004. At that time the Council requested this come back as a zone change to ensure greater notification for the affected property owners and to have the zoning district shown on the official zoning map. The zoning district expands from King Avenue North to Rimrock Road and is 500 feet on either side of the centerline of Shiloh Road. She said there are 41 affected properties that are zoned for commercial, industrial or multi-family purposes. There are 391 surrounding property owners that need to be notified. Property owners in the County were not notified.

Ms. Beaudry said there were only a few stakeholders at the Zoning Commission meeting that voiced concerns about the zone change. The incorporated changes that Council requested have been retained and include:

- 1) Reduced extent of overlay from 1000 feet to 500 feet from centerline and from King Avenue to Rimrock Road.
- 2) Direct appeal to Planning Director and City Council.
- 3) Vague language omitted.
- 4) Simplified light emission standards.
- 5) Reduction of number of relative points required to accommodate small businesses.
- 6) Replaced imprecise design elements with quantifiable standards.
- 7) Allows electronically changeable message signs.
- 8) Re-examine regulations after one year to determine effectiveness.

Ms. Beaudry said the Staff (as well as the Zoning Commission on a vote of 3-0) is recommending approval based on the 12 review criteria. The ordinance implements the Growth Policy and the West Billings Plan. It will promote health and general welfare and

will not affect underlying permitted uses (only the site design, some building requirements and landscaping will be affected). She said it will encourage high quality commercial, industrial, multi-family and mixed use development for this zoning district.

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

7. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #753: a zone change from Residential-7000 and Residential-6000 to Public zoning, described as Lot 1, Block 27, Lake Hills Subdivision, 6th filing. Rocky Mountain College & Billings Heights Water District, owners, Engineering, Inc. agent. Zoning Commission recommends approval and adoption of the determinations of the 12 criteria. (Action: approval or disapproval of Zoning Commission recommendation.)

Planner Aura Lindstrand said the zone change is located on the east side of St. Andrew's Drive, at the intersection of Almadin Lane and St. Andrew's Drive. The proposed zoning is "Public" in order to comply with the condition of the final plat of the Kreitz Heights Subdivision in 2001. Surrounding zoning includes Residential 7,000 to the north and east, Residential 9,600 to the south and Residential Multi-Family and Community Commercial to the west.

Ms. Lindstrand said the Zoning Commission is recommending approval of the zone change based upon the 12 review criteria. The proposed zoning will bring the lots into compliance, as they currently do not satisfy the minimum lot size requirement for Residential 7,000 and Residential 9,600. It will also provide for a landscaped entryway to the proposed Kreitz Heights Subdivision, maintaining a buffer between the proposed street (extension of Almadin Lane) and the adjacent single-family residence to the north. The Heights Water District will maintain the landscaping.

The public hearing was opened. RICK LEUTHOLD, ENGINEERING, INC., said he is representing the developer. He clarified the south side of the parcel would be maintained by the Heights Water District and the north side would be included in the homeowners association to be maintained by the property owners of Kreitz Heights Subdivision. The project was gifted to Rocky Mountain College and has a new purchaser that is moving into the development phase. The final plat will be referred to as Eagle Ridge.

There were no other speakers. The public hearing was closed. Mayor Tooley stated a conflict of interest as he is a trustee of Rocky Mountain College (one of the owners of the property) and would abstain from voting. Councilmember Clark moved for approval of the Zoning Commission recommendation, seconded by Councilmember Ulledalen. On a voice vote, the motion was unanimously approved with one abstention.

8. PUBLIC HEARING CONTINUED AND RESOLUTION creating SID 1369: Moore Lane improvements consisting of water, sanitary sewer, storm drain, curb and gutter, sidewalk, streetlights and street improvements to the Moore Lane frontage. (Continued from 11/22/04). Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

Public Works Director Dave Mumford said this is a continuation of a prior council meeting subject that was postponed to provide time to meet with affected property owners. He said there was a 53% protest of the property owners to create the district therefore the Council cannot proceed with creation of the SID. The public hearing was opened. There were no speakers. The public hearing was closed. No action was taken.

9. PUBLIC HEARING AND FIRST READING ORDINANCE expanding the boundaries of Ward V to include the recently annexed properties of Annex #04-13, described as a portion of the NW4 of Section 4, T1S, R25E, C/S 1877, Tracts 1 & 2. Jack and Robert Sukin, petitioners. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

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

10. SECOND/FINAL READING ORDINANCE 05-5314 amending BMCC: establishing a Zoning Overlay District to extend 500 feet from the center line of Shiloh Road from King Avenue West south to Interstate 90, including Zoo Drive; regulating development standards, landscaping standards, building design standards and other site development standards; and sign standards for commercial, industrial and multifamily developments. Zoning Commission recommended on 5/10/04 approval of the Shiloh Corridor Overlay District as a whole, excluding the portion along Zoo Drive. Staff recommends approval of the South Shiloh Corridor Overlay District, as defined by the area 500 feet from the centerline of Shiloh Road, from King Avenue West south to Interstate 90, including Zoo Drive. (Action: approval or disapproval of Staff recommendation.)

Planning Manager Candi Beaudry said the Councilmembers' Friday packet on January 21, 2005 contained a revised council memo pertaining to this item. It revised the approved changes from three to four. Staff is recommending approval of the ordinance on second reading, the Shiloh Corridor Overlay District as defined by the area 500 feet from the centerline of Shiloh Road, from King Avenue West south to Interstate 90, including Zoo Drive with the following requested changes:

- 1) Reduce the number of relative criteria from 7 of 9 categories to 6 of 9 categories (Section 27-1509),
- 2) Remove the second sentence of Section 27-1509, "The number of points required depends on the underlying zoning of the property on which the development is located",
- 3) Remove 3a in Section 27-1509 – "All lighting shall be cutoff type fixtures with recessed lamps having no dropped lenses", and
- 4) Add a single point for lighting values that are less than 1.5 foot candles.

She noted the zone change for this south district will proceed to the Zoning Commission on February 1, 2005.

Councilmember Brewster moved for approval of the Staff recommendation and to direct the Staff to initiate a zone change on the subject property, seconded by Councilmember Boyer. On a voice vote, the motion was unanimously approved.

11. 2005 TRANSPORTATION PLAN. Staff recommends approval of the Transportation Plan project goals and both the short-range and long-range project lists and their priority ranking. (Action: approval or disapproval of Staff recommendation.)

Transportation Planner Scott Walker said he was available for Councilmember questions. Councilmember Jones asked why the stoplight at 32nd Street West and Central Avenue is not included on the short term project list. Mr. Walker said the signal that is currently in place is sufficient for the near term. The intersection did not receive enough warrants to include any upgrading of the signal. Additional traffic from the proposed Arlene Corridor was included in the calculations for that intersection. The intersection at Monad Avenue and 32nd Street West also did not rate high enough on the list to be included in the funding of the Transportation Plan. Mr. Bauer noted there are development requirements for the 32nd Street West and Central Avenue intersection that would provide for intersection improvements as development occurs. Developments that are currently occurring there are contributing to future improvements.

Planning Director Ramona Mattix noted several of the developments and their financial contributions to date. Mr. Mumford said that intersection is scheduled for planning of the upgrade within the next two years. Once all of the funding is in place, the project would begin. He said this intersection would have a new study completed this year. Mr. Mumford said there are twelve warrants that the Federal Highway Administration has set as guidelines that govern the placement of traffic signals. Mr. Bauer agreed that this intersection is one that currently is not at an acceptable level of service and the City should be prepared to address that to prevent future problems as soon as possible. The focus of this Transportation Plan however is on current problems. Councilmember Brewster suggested a future work session that would address the subject of warrants, what they are and how often they are reviewed and how they are prioritized.

Councilmember Veis asked if the railroad project could be added to the long range list. Mr. Walker said the railroad project can be listed in the transportation plan as a future project, not necessarily associated with the North By-pass. Currently a railroad project at 27th Street is included in the plan. The plan update would probably focus on either moving the tracks or some other "fix". Mr. Bauer said the specific proposal (associated with Item 13 on tonight's agenda – Federal Affairs Program) before the Council this evening is to advocate for the change in the current federal appropriation to increase the scope of the EIS to include the railroad project. Councilmember Veis asked if a motion is needed to change the Transportation Plan to provide for a separate item that provides for the ability to study a North By-pass railroad solution. Mr. Walker said that language could be added into the administrative update and the Mayor would bring that recommendation to the Policy Coordinating Committee.

Mayor Tooley said the issue is to start thinking about getting money for a study to relocate the tracks. Mr. Walker reminded the Council there is \$600,000 for a feasibility study at 27th Street. He said the concern is to identify the study in the plan and when the CIP is updated (on a yearly basis) and money is available, then the project becomes a reality. The project would continue to be in the CIP as long as federal funds are available. Councilmember Gaghen reminded the Council of the long range need for relocation of the railroad tracks and the need for a great deal of study for the project. It is imperative that it is on the long range federal monies list, she said.

Mayor Tooley said an amendment can be made to place the railroad project on the long range priority list to start the process of thinking about where to get the money for relocation of the tracks. Councilmember McDermott moved for approval of the Transportation Plan project goals, the Short Range and the Long Range project lists and the ADDITION to the Long Range goals, a plan to move the main line of the railroad out of downtown Billings with potential funding sources from Surface Transportation Program Hazard Elimination Fund (STPHS), and Rail Highway Crossing Elimination Hazard Program (STPRP), seconded by Councilmember Boyer. Councilmember McDermott noted that this motion was approved by the members of the Over, Under and Around Committee.

Mr. Bauer said the long range list of the Transportation Plan is fiscally constrained, which means estimated costs are identified for the projects on the list and it tries to include projects that can be funded within the next twenty years. He said the funding sources identified in the motion are fairly constrained dollar amounts requiring all of the other projects be removed to meet federal requirements of the ranking. He noted that if the Council adds the railroad relocation to the list as a project, a cost must be assigned to it. Councilmember Ullendale suggested there are other forces that will drive this project more quickly than the City anticipates. He said there should be appropriate language that everyone involved realizes this is a joint project that the City is very concerned about and will do what is needed to keep the momentum going.

Councilmember Brewster said he would not support the motion as it would make this project compete with ones already on the list. Councilmember McDermott said her understanding is that the project would only be competing with other "like" projects that are competing for the same funding sources in other cities and states. Mr. Walker explained that the funding source categories are set based on the population of the City and Yellowstone County. Some of the formulas are set by the Highway Department, especially any related to railway funding. A project like the relocation of the railroad tracks could be provided for with language in the narrative portion of the Transportation Plan that the City, County and the PCC have recommended for consideration of funding. To make it a priority when the cost is unknown puts the plan at risk for funding for the other projects.

Councilmember Ullendale said this important project appears to be beyond the scope of this plan currently, but he would like to see action that would assure a position in the plan for the time when funding does become available and the project could move forward. Councilmember McDermott said she would like to see stronger language than just the cursory mention that has been previously included. Mr. Bauer said the Staff needs clear understanding of the Council's desire regarding the importance of seeking funding for relocation of the railroad tracks over the projects currently on the list.

Councilmember McDermott said the intent of the Council is not to remove projects from the lists but add one item (railroad relocation) to it in the event that funding becomes available. Mr. Walker confirmed the narrative currently contains language that provides for a solution to the 27th Street railroad crossing to improve motorized and non-motorized mobility in the downtown area and improve passenger safety for 27th Street that will be at or over capacity by the year 2020 without consideration of capacity lost to the train activity. This language in the Transportation Plan keeps the City's options open if federal money becomes available.

Councilmember Brewster made a substitute motion to approve the 2005 Transportation Plan as submitted by Staff, seconded by Councilmember Boyer. On a voice vote, the substitute motion was approved with Councilmember McDermott voting "no".

Councilmember McDermott moved to amend the Transportation Plan to ADD to Long Range projects a plan to move the main line of the railroad out of downtown Billings with potential funding from STPHS and STPRP, seconded by Councilmember Brewster. Mr. Bauer noted both sources in the motion are fairly limited for funding as they are identified in several other long range projects. Mr. Walker said the funding sources do not need to be identified in order to make a recommendation to the PCC to study more thoroughly a relocation of the tracks around Billings.

Councilmember Gaghen moved to amend the motion to remove the two funding sources and add the railroad project to narrative section, seconded by Councilmember McDermott. Mr. Walker confirmed that the relocation project could be placed on the long range list as a study without a cost estimate or a funding source. This project, if added, would be recommended to the PCC by Mayor Tooley and may or may not be placed on the list according to the decision of the PCC. Councilmember Brewster said his preference would be to place this request into the narrative and avoid the project displacing other projects currently on the long range list.

Councilmember Gaghen withdrew her amendment, Councilmember McDermott withdrew her second. Councilmember McDermott amended the motion to amend the Transportation Plan to ADD to Long Range projects a plan to move the main line of the railroad out of downtown Billings but remove the funding source designations, seconded by Councilmember Gaghen. On a voice vote, the amendment was approved with Councilmember Brewster voting "no".

Councilmember Jones moved to amend the Transportation Plan to ADD 32nd Street West and Central Avenue as a priority to the Short Range project list if it meets warrants, seconded by Councilmember Gaghen. Mr. Bauer said if there is no need for federal funding for a project, then it does not have to be placed in the Transportation Plan. This project should be placed in the Capital Improvement Plan instead. Councilmember Jones withdrew his amendment, Councilmember Gaghen withdrew her second.

12. W.O. 04-14: WASTEWATER TREATMENT PLANT HEADWORKS BUILDING, Contract Amendment #1 to Professional Services Agreement with HDR Engineering, Inc., \$398,841.00. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

Public Works Director Dave Mumford said this contract amendment is to add the administration and construction services for additional scope and cost of the Headworks Building that were not part of the original contract. The Headworks building is the first structure that removes large debris from effluent entering the Wastewater Treatment Plant. This process prevents damage to the system. He said the current structure was built over 60 years ago and requires more than general engineering. He acknowledged this contract amendment is a large dollar amount but includes over 250 shop drawings that must be reviewed by both electrical, sanitary and mechanical engineers. This is very specific work and the Engineering Department does not have the capability to perform those functions. He said the total contract amount for design and construction of the project is 14-15%, which is not out of line for the complexity of the project. Mr. Mumford said the Engineering

Department will look at ways to be more cost effective in future portions of this project.

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

13. 2005 FEDERAL AFFAIRS PROGRAM. Staff recommends approval of the proposed 2005 Federal Legislative Agenda presented at the 1/18/05 Work Session. (Action: approval or disapproval of Staff recommendation.)

Councilmember Brown moved for approval of the Staff recommendation, seconded by Councilmember Brewster. Airport Director Bruce Putnam distributed an updated Federal Affairs Program agenda to the Councilmembers. He said he and his Staff were available for questions. Councilmember McDermott amended the motion to remove language regarding addition to Outer Belt Loop project and "add instead language descriptive to relocate the main line of railroad out of downtown Billings", seconded by Councilmember Brewster. On a voice vote, the amendment was unanimously approved. On a voice vote, the motion as amended was unanimously approved.

14. PUBLIC COMMENT on Non-Agenda Items -- Speaker sign-in required. (Restricted to ONLY items not on the printed agenda; comments limited to 3 minutes per speaker.)

- JOHN MALIN OF 2817 ½ MONTANA AVENUE, #14 (FULLER HOTEL) said there is a problem with Native Americans drinking and urinating in the alley behind his residence and that backs up to the First Citizens Bank. He asked for something to be done to address the problem.

COUNCIL INITIATIVES

COUNCILMEMBER BROWN: Councilmember Brown moved to direct Staff to research the possibility of changing the name of Arlene Corridor to Zimmerman Trail, seconded by Councilmember Brewster. Councilmember Brown said the Zimmerman family are long-standing residents of Billings and Zimmerman Trail is a landmark and a name that should be preserved. Councilmember Boyer said the affected residents should be considered with this kind of decision. Councilmember Gaghen noted the family associated with the Arlene Corridor name has a similar history in the City of Billings. On a voice vote, the motion was unanimously approved.

COUNCILMEMBER BROWN: Councilmember Brown moved to direct Staff to research the State property tax relief program and bring back information to the Council, seconded by Councilmember Clark. On a voice vote, the motion was unanimously approved.

COUNCILMEMBER MCDERMOTT: Councilmember McDermott moved to direct Staff to prepare an inventory of ALL County islands, with information on type of zoning, the use, the ownership and a time schedule for potential annexation, seconded by Councilmember Gaghen. Councilmember McDermott asked that un-annexable properties also be included in the listing. On a voice vote, the motion was unanimously approved.

MINUTES: 01/24/05

ADJOURN —With all business complete, the Mayor adjourned the meeting at 10:15 P.M.

EXECUTIVE SESSION

- The City Council adjourned their regular meeting and moved to the City Hall Conference Room for a closed executive session regarding personnel matters.

THE CITY OF BILLINGS:

By: _____
Charles F. Tooley MAYOR

ATTEST:

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