

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

April 11, 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 Nancy Boyer.

ROLL CALL — Councilmembers present on roll call were: Gaghen, McDermott, Brewster, Brown, Ruegamer, Boyer, Ulledalen, Clark and Jones. Councilmember Veis joined the meeting already in progress at 6:40 p.m.

MINUTES – March 24, 2005 and March 28, 2005. Approved as printed.

COURTESIES -- None

PROCLAMATIONS – Mayor Tooley

- Keep America Beautiful's Great American Clean Up Month – April 2005

BOARD & COMMISSION REPORTS – Parking Advisory Board

- Brenda Burkhartsmeier, Chair of the Parking Advisory Board spoke on the Board's activities. She noted the Board is continuing to explore uses for the 4th & Broadway site. Demolition of existing structures will begin soon. The Park II architectural selection process has been completed. Collaborative Design Architects was the firm selected and the contract will come to the City Council for approval on May 9th. She noted that several options (including the MET Transfer Center) are being explored, but no specifics regarding the ground floor have been determined. The Board has had a few changes – four new members have joined the Board. A condition audit on all of the parking garages was performed in August of 2004. The group met three times prior in goal planning sessions, but decided not to do an annual session this year. The Board will wait to see how the Park II expansion proceeds. Ms. Burkhartsmeier also noted that the proposed Sandstone Project (featuring a parking facility) is still alive, but remains in the consideration stage.

ADMINISTRATOR REPORTS – Kristoff Bauer

- Mr. Bauer informed the Council that United Airlines has signed the Operating Agreement and wishes to be considered in the operating agreements under Item C. The Council would need to add United Airlines to Item C.
- Item 2 needs to be pulled from the agenda as the Planning Dept was unable to complete the mapping that was requested. It will be rescheduled for the April 25th meeting.

LEGISLATIVE REPORT – Kristoff Bauer

- Mr. Bauer noted that he has provided the Councilmembers with information on SB222 (revising local option fuel tax and clarifying the authority for administration and

distribution) and SB289 (revising existing law under 7-1-111 MCA clarifying the restriction on municipalities related to license fees or taxes).

- SB184: Mangan's local option bill was tabled in House Taxation on Friday. This bill is presumably dead for the session.
- City Bills (except SB175) -- modifying assessment options for street maintenance districts have made it through the process and are headed to the Governor for signature.
- SB146 – the public defender bill, passed the house on 2nd reading and will now go to a conference committee for finalization.
- HB2 passed the Senate and will now go to a conference committee for final changes.
- HB483 – mandatory arbitration for municipal police officers passed and has been transmitted to the Governor. Mr. Bauer noted that an arbitrator would now be required at the next police negotiation.

LATE ADDITION:

Councilmember Clark moved to add United Airlines Operating Agreement to Item 1C, seconded by Councilmember Boyer. On a voice vote, the motion was unanimously approved.

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Item: #1 & 5 ONLY.

Speaker sign-in required. (Comments offered here are limited to 1 minute per speaker. Comment on items listed as public hearing items will be heard ONLY during the designated public hearing time for each respective item.)

(NOTE: For Items not on this agenda, public comment will be taken at the end of the agenda. Please sign up on the clipboard located at the back of the room.)

THERE WAS NO PUBLIC COMMENT.

CONSENT AGENDA:

1. A. C.O. #1, AIP 28 Project: Airport Operations Facility Addition, High Tech Construction, Deduct \$1,312.00.

B. Agreement to Recondition the Airport Terminal's 180-Ton Chiller Compressor, Trane, \$37,210.00.

C. Operating Agreement and Terminal Building Lease with Big Sky Airlines, Horizon Air, Northwest Airlines and SkyWest Airlines, extending contract expiration to 6/30/2006, \$2,900,000.00. NOTE: UNITED AIRLINES ADDED TO THE LIST OF AIRLINES – See motion above.

D. Contract with Brenda Roche, Ph.D., LP, as program evaluator for Billings Adult Misdemeanor Treatment Court, \$22,500.00, one year contract.

E. Approval of QCD to release the City from interest in vacated ROW located on Lot 28, Block 1 Country Club Heights Subdivision, \$0.

F. Accept Tract 3 of unnumbered C/S relocating common boundaries between certain parcels and adding .0597 acres to the dedicated parkland in Rehberg Ranch Estate Subdivision, 1st filing, \$0.

G. Subordination of First Time Homebuyer Loan, Lewis Paul Lux, 622 North 15th Street, \$4,577.34.

H. Subordination of First Time Homebuyer Loan, Chuck Gross, 919 South 30th Street, \$4,618.37.

I. Second/Final Reading Ordinance 05-5321 expanding the boundaries of Ward 1 to include the recently annexed properties in Annex #05-01: five (5) wholly surrounded properties along South Billings Boulevard described as:

- Tract 1, Popelka Industrial Tracts Subdivision, First Filing
- Tract A, C/S 289 in Sugar Subdivision, Lot 20
- Tract A, C/S 289 in Sugar Subdivision, Lot 19
- Tract 19B-1, C/S 289 in Sugar Subdivision, Lot 19
- Tract 19B-2, C/S 289 in Sugar Subdivision, Lot 19.

J. Second/Final Reading Ordinance 05-5322 amending BMCC Section 22-1003 providing for an arterial construction fee, providing for a procedure whereby fees can be determined, imposed and appealed, establishing an effective date and providing a severability clause be amended for clarification.

K. Second/Final Reading Ordinance 05-5323 for Zone Change #754: a city-initiated zone change for lands affected by the recently adopted South Shiloh Corridor Overlay District regulations established in BMCC Sections 27-1427 thru 27-1453, approving the zone change and adopting the determinations of the 12 criteria.

L. Preliminary Plat of OCSS Subdivision, generally located on the southeast corner of Lampman Drive and Carbon Street, OCSS Investment, owner, Engineering, Inc., agent. Approval of the requested variance and conditional approval of the preliminary plat and adoption of the findings of fact.

M. Final Plat of Rehberg Ranch Estates Subdivision, 2nd filing.

N. Final Plat of Ironwood Estates Subdivision, 3rd filing.

O. Final Plat of Eagle Ridge Subdivision.

P. Final Plat of Vintage Estates Subdivision.

Q. Bills and Payroll.

- (1) March 18, 2005
- (2) March 25, 2005

(Action: approval or disapproval of Consent Agenda.)

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

REGULAR AGENDA:

2. PUBLIC HEARING AND RESOLUTION adopting the North West Shiloh Area Plan. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

Councilmember Jones moved to delay the public hearing and resolution adopting the North West Shiloh Area Plan to 4/25/2005, seconded by Councilmember Clark. On a voice vote, the motion was unanimously approved.

3. PUBLIC HEARING AND RESOLUTION 05-18253 ordering construction for W.O. 04-12: Alkali Creek Road Improvements, sidewalk assessments. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

Public Works Director Dave Mumford said these improvements consist of a small section of missing sidewalk on Alkali Creek Road between the Saddle Club and Alkali Creek School. There have been no negative comments from the public as they recognize the repair is needed.

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

4. PUBLIC HEARING relating to the proposed cost-of-service water and wastewater rate adjustments. Staff recommends delaying action to 4/25/05. (Action: approval or disapproval of Staff recommendation).

Public Works Director Dave Mumford said his department contracted with Integrated Utilities Group, Inc. to review the current rate structure for water and wastewater and offer advice for rate increases. Preliminary information was presented to the Public Utilities Board in February 2005 and to the Council in two (2) work sessions. He said the proposed rate increases were presented to the Public Utilities Board recently. Mr. Mumford said the Board does have some concerns and the chairman will express those concerns during the public hearing. He said the proposed rate increases are 6.4% for water and 4.6% for wastewater and are needed due to increased utility costs, wage costs, construction projects, services provided to the General Fund and increases and internal services charges. Mr. Mumford noted action is not required this evening and has been scheduled for April Council action.

Paul Matthews, Integrated Utilities Group, Inc., said there are a few key issues related to the proposed cost-of-service adjustments for the water and wastewater rates.

One issue concerns the City using more long-term debt to fund the Capital Improvements Plan (CIP). This insures that future customers would pay their proportionate share for improvements. In 2003 a detailed cost-of-service analysis for the wastewater was done and the City actually changed the rate-based structure for non-residential customers. With the proposal, the wastewater rates were increased proportionally based on the revenues required to operate the system. Mr. Matthews said their firm did complete an update of the detailed cost-of-service by class analysis of the water rate structure. It was made consistent with the 1998 agreement with the Billings Heights Water Association. Another key factor is that the City is reducing some of the Water Fund balances for both water and wastewater as specified by the City Finance Department. He noted that both utilities have historically had high fund balances. He said there is \$8.5 Million (including bonds) available that will be spent by 2006.

Mr. Matthews said the methodology used to update the rates followed industry-standard approaches set forth by the Water Environment Federation and American Waterworks Association. The proposed water rates will be increased over a three-year period and vary by class based on the cost-of-service. He noted that resale customers have the highest increase and that is part of the 1998 agreement with the Billings Heights Water Association. The agreement states that they will not be charged for the use of the fixed assets until they are in service. Mr. Matthews explained resale customers are other water utilities that provide their own transmission and distribution network, have their own storage reservoirs and provide for all the infrastructure that are typically provided to customers. Water haulers are not included in the resale category. He explained the proposed water fixed monthly charges and reviewed some residential water bill comparisons for different categories.

Mr. Matthews said the proposal includes the sewer volume rate increases of 4.6% for most customers. He also explained the proposed sewer fixed monthly charges and reviewed some residential and commercial/public building customers' sewer bill comparisons. He noted the commercial and public building customers have a domestic strength rate and a high strength rate that is for customers that have difficult wastewater to treat.

He said the recommendations of Integrated Utilities Group, Inc. are to: 1) implement the proposed rate increases effective July 2005 to keep the financial plan in balance, 2) closely monitor water sale revenues, 3) re-examine the City's financial plan if the Capital Improvement Plan, interest rates, water/wastewater revenues or other key factors change, and 4) conduct formal rate reviews every three (3) years to remain up to date.

Councilmember Brewster noted the analysis is based on several drought years. He asked if there would be adequate reserves during a wetter weather pattern. Mr. Matthews said the City has enough reserves, but still recommends monitoring the water revenues closely because it takes a few years to discern whether there is a weather impact, a trend or economic downturn.

Councilmember Clark asked that the Public Utilities Board be allowed to report to the Council outside of the public hearing to allow for testimony that may require more than the three minutes time allotment.

The public hearing was opened. ERIC COOBS, CHAIRMAN OF THE PUBLIC UTILITIES BOARD, said the Board has a few philosophical issues with the recommendations. He noted the cost of everything, from fuel to labor costs, has increased and it is understandable that the rates should increase to cover those costs. He said the Board does not have concerns with the wastewater increase of 4.6% as it seems reasonable. The water rates are almost 20% over three years and this increase would greatly affect many residents who are currently on fixed incomes. He said he did not know if those residents should be paying for the larger projects such as the Briarwood sewer project and the Briarwood reservoir. Mr. Coobs said the water/wastewater budget analysis is a "gloomy budget picture" with the City spending its reserve funds and financing most of the projects with debt. He noted a net income of \$5 Million in the Water Fund according to the recent CAFR. He also added that the Council decided that the Public Utilities Department would no longer charge other departments for the water they use to ease some of the budget burdens. This means that ratepayers are paying for the water the City uses, such as water used for watering parks, washing MET buses and filling swimming pools. He said the taxpayers are already paying for those services through their taxes. Mr. Coobs said none of these concerns will be addressed if the Council approves the proposed rate increases. He recommended the Council send this back to the Public Utilities Board to "take another look at it".

MARION DOZIER, 3923 3RD AVENUE SOUTH, said she is speaking on behalf of her neighbors who are retired people, her daughter who is working two jobs and herself. She said it is time to look at how the water rates are determined and the cost of providing the water. People who require pumping stations to get water to their property should be paying more than residents who live $\frac{1}{2}$ mile from the water supply plant. She suggested using zones, miles or zip codes to determine a rate structure with more equality. Ms. Dozier said the people who paid for the construction of the system should not have to continue to pay for the growth and sprawl of the City. It is time that growth pays for itself by allowing the newly annexed neighborhoods to pay more for their water rates. She said it is time to look at determining the rate structure in a different way to be more equitable.

CONNIE WARDELL, NO ADDRESS GIVEN, said she is speaking as a property manager. She said she has noticed that water bills continue to creep upwards. She asked if the rate increase would be 7% each year and a cumulative 21% in three (3) years. She said this is a "pretty hefty water bill" if it is cumulative. She said she is concerned that the cost of the pools is not absorbed by all of the users and people need to know how much they are subsidizing. Ms. Wardell said she is also concerned that the user fees and the franchise fees are no longer included on the water bills. The residents are entitled to have that information especially for out-of-state owners who need that information for deductions. Also, areas like Briarwood should be responsible for the costs of their holding tanks. She asked the Council to look closer at this proposal as it appears that the City is "pushing the envelope" when asking for a 21% increase in three years. She also noted the commercial users will feel the pinch of these increases in two years.

Councilmember McDermott moved to continue the public hearing and delay action to 4/25/2005, seconded by Councilmember Gaghen. Councilmember Veis asked

what had been done previously related to funding capital improvements and why is there such a significant shift. Public Works Director Dave Mumford said the Public Utilities Department previously paid cash for all capital improvements. Paying for improvements in that manner requires charging current ratepayers for something that future ratepayers would be benefiting from. It would also require double digit rates to fund capital improvements. These methods seemed unfair, so the City decided to look into long-term bonding debt that is spread over time. He noted there was some bonding done in the past. Rates were raised in the past that contributed to the reserves that the City is able to use today to fund the projects. Mr. Matthews said the City is in an investment cycle and that requires more capital. Mr. Mumford also noted there are many smaller projects and basic ongoing maintenance projects in the CIP such as reservoir repainting for which the City is paying cash. Bonding or using the state's Revolving Grant Fund is reserved for the bigger projects where capital outlays extend over long periods of time.

Councilmember Veis asked about the specified fund levels recommended by the Finance Department and why they have changed. Finance Department Manager Pat Weber said three years ago the Finance Department completed a six-month review of 10 years of cash flows and recommended a reserve for each fund. The recommended reserve for the Water Fund is \$1.1 Million. He noted cash also has to be saved for encumbrances of \$3.2 Million (contracts let but not completed). He said the 2006 budget, which is not complete, will advise what cash is available for projects. He also added that the capital costs are not included in expenditures, so the \$5 Million net income Mr. Coobs noted does not account for those costs. Mr. Weber said the Council has the final say on whether the City will use reserves or debt financing for the capital projects.

Councilmember Clark asked if the increased rates would allow the City to build up reserves or would it just keep the operations going and paying on the long-term debt. Mr. Mumford said the debt service is a portion of the reason for the increases, but other issues include increases in cost of energy, wages, changes in services for the General Fund and increases in internal service charges that affect the rates.

Councilmember McDermott asked why can't residents in the newly annexed areas participate in a portion of these expenses under the SID program. Mr. Mumford noted those residents have paid System Development fees for their developments. He recognized that residents in the Southside do not benefit from system development in places like Ironwood. Mr. Bauer noted higher System Development fees are in place now to provide funds for new developments. Mayor Tooley added that water and sewer lines don't last forever and must be replaced. He expressed concern about adopting a policy that requires the residents in a certain area to pay for the cost of water and sewer because the older parts of the City will be punished when it comes time to replace their old water and sewer lines. Councilmember Ulledalen said he feels that using long-term debt is the most equitable way to finance long-term capital projects that will benefit residents for a long time. With low interest rates it is reasonable to lock the debt in at this time.

Councilmember Veis asked if replacing the High Service Pump Station pumps is a reoccurring Operation and Maintenance expense. Mr. Mumford said they are O & M expenses that would be years before they would be replaced again. Some of these

costs are O & M issues that had not been addressed over the years, noting the cycle the City is currently in addresses old infrastructure that needs to be replaced. A master plan is planned for water and wastewater that will allow better planning for the future infrastructure investments. He said 2007 appears to be the peak of this cycle. Mr. Bauer also noted that electrical power is and will continue to have a large impact on the water and wastewater rates in the future.

Councilmember Jones pointed out that \$27 Million of the CIP is slated for recurring capital outlay (for bringing the older pipes up to standards). The current reserves would not have handled those costs. In addition, the filter improvements are another \$15 Million in improvements for the community that based on the old method of financing would have created substantial rate increases to fund.

Councilmember Veis asked about the cash and utility basis, whether one or both methods were used. Mr. Matthews said both methods were used. In the water resale rate, the agreement with Billings Heights Water Association is that the City will charge them a return on investment plus depreciation; that is the utility basis approach. Total revenue requirements for the entire utility is on a cash basis, because the City needs cash for O & M, debt service and capital expenditures. Each basis is used where it is appropriate, he added. On a voice vote, the motion was unanimously approved.

Mayor Tooley called for a recess at 8:00 P.M.

Mayor Tooley reconvened the meeting at 8:05 P.M.

5. RESOLUTION 05-18254 approving adoption of the Bitterroot Heights Park Master Plan. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

Parks and Recreation Director Don Kearney said the Bitterroot Heights Subdivision, where the park is located, is bordered by 5 Mile Creek, an abandoned railroad corridor, Mary Street, Bitterroot Drive and Hawthorne Lane. It will have 8.3 acres of developed parkland and will have playgrounds, open space, athletic fields, restrooms, a basketball court, baseball backstop, landscaping, an irrigation system, interior walks, a parking lot for a total of 19 acres of open space that will be covered by a maintenance district.

Mr. Kearney said this park would be linked to the Heritage Trail System and provides a good mix of natural area and developed parkland. He said it would also mitigate the impact of 385 new residences to the City's park system. The master plan has been reviewed by the Parks and Recreation Board. Development of the park will be triggered through the Subdivision Improvement Agreement when there is 51% build-out of the subdivision which is anticipated to be in five years. Mr. Kearney said the aggregate trails will be constructed by the developer as part of the 1st filing along with the storm drainage infrastructure.

Mr. Kearney said the park development would be funded through a Special Improvement District (SID) and maintained through a Park Maintenance District (PMD). The construction estimate with a 5-year inflation factor is \$1.2 Million. The annual SID assessment per property owner would be a one-time payment of \$2,400 or \$166 per year for 15 years. The park maintenance district fees would be approximately \$65 per year, an average assessment. He noted the Planning Department now requires that the Subdivision Improvement Agreement (SIA) include notice of any future SID for

subdivisions. The SIA must also be disclosed to potential buyers when the buy/sell agreement is signed. Mr. Bauer noted there would be the same public process to form the SID where residents will be allowed to testify and provide comments. There will be waivers of protest in place however, he added. Councilmember Brewster said the future buyers should have an opportunity for input before they are assessed for the SID.

Mr. Kearney said the Parks and Recreation Board reviewed the master plan at their March 9th meeting and are recommending approval of the master plan as presented to the Council.

Councilmember Brewster moved for approval of the master plan, seconded by Councilmember McDermott. On a voice vote, the motion was unanimously approved.

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

- KELLY SONDANO, NO ADDRESS GIVEN, said she represents a group called Safe Harbor. Ms. Sondano asked the Council to reconsider the resolution that adopted new fees for the Animal Shelter, noting that the increase in adoption fees meant a “death sentence” for older animals. She said people may pay the \$100 for a puppy or kitten in an impulse purchase, but would not pay that fee for an older animal. Ms. Sondano also said her group and several other animal focused groups were not aware of the Council’s public hearing until after the resolution had been adopted. She also noted limited opportunity to comment on the fee increases at the Animal Control Board meetings. She said the shelter is supposed to be a “safety net for animals that are running at large” and have lost their homes and not a dead end. Ms. Sondano inquired about the status of a citizens’ committee that was to be created to work with the Animal Shelter and various animal focused groups. She said the Council also must address the issue that it costs the City more to put an animal down than it does to adopt them out.
- JOE WHITE, 926 N. 30TH ST. said the Grand Avenue School site is up for sale. He suggested that site would be ideal for an air park and asked for a special zoning review of the site. He noted that a phone call he placed to Rimrock Foundation may spark some interest in the site for their potential uses.
- HOLLY HUENNEKENS, 3216 RIMROCK RD, said she saw no notice regarding the fee increases at the Animal Shelter. She asked the Council to reconsider the recent fee resolution. Ms. Huennekens also asked for information on how the Animal Shelter spends the money collected from fees. She noted her mother bequeathed \$10,000 to the Animal Shelter in 1995 for the care and feeding of the animals, not to put them down.

COUNCIL INITIATIVES

- COUNCILMEMBER RUEGAMER: Councilmember Ruegamer moved to have City Staff and 1-2 Councilmembers meet with BSEDA, the Downtown Partnership, and the County to discuss and work on forming a tax increment district with boundaries roughly covering Minnesota Ave to 6th Ave North and Metra to N. 27th St., seconded by Councilmember McDermott. Councilmember Ruegamer said his intention is to coordinate these discussions with all impacted groups such as the Downtown

Property Owners. Greg Krueger from the Downtown Billings Partnership said this area may overlap the present tax increment district, but the boundaries are not set at this time. Councilmember Clark expressed concerns that the properties involved are both County and City. Mr. Bauer said an opinion from the County Attorney states that both City and County property can be involved in a tax increment district. He added that a clear definition of the goals and objectives must be considered with the formation of the district. Mr. Bauer also noted that a formation document would come back to the Council and the Commissioners for consideration and approval. Councilmember McDermott said it is important to include the Downtown Property Owners in the discussions. On a voice vote, the motion was unanimously approved. Councilmember Ruegamer will be the Council representative for this group.

- **COUNCILMEMBER RUEGAMER:** Councilmember Ruegamer moved to direct staff to have the City join Big Sky Economic Development Corporation (a group of businesses that participate in economic development for Billings) instead of Big Sky Economic Development Authority and to pay the annual \$1000 fee out of Council Contingency, seconded by Councilmember McDermott. Councilmember Brewster clarified that this would need to come back to the Council as an agenda item for approval. On a voice vote, the motion was approved with Councilmember Brown voting "no".

Councilmember McDermott asked about the status of the citizen/council committee that was to look into the issues concerning the Animal Shelter raised by the public comment speaker this evening. Mayor Tooley said Councilmember Brewster made a motion some time ago to create a council committee to review these issues. Councilmembers Brewster and Veis serve as councilmembers on this committee and the first meeting was held last Thursday. Councilmember Brewster noted that meeting was narrow in scope and said another meeting should be planned to broaden the scope and allow for a wider variety of input. He suggested holding another public forum soon. Based on that input the Animal Shelter fees could be adjusted, he added.

ADJOURN –With all business complete, the Mayor adjourned the meeting at 8:50 P.M.

THE CITY OF BILLINGS:

By: _____
Charles F. Tooley MAYOR

ATTEST:

MINUTES: 04/11/05

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