

# REGULAR MEETING OF THE BILLINGS CITY COUNCIL

## May 9, 2005

The Billings City Council met in regular session in the Council Chambers located on the second floor of the Police Facility, 220 North 27<sup>th</sup> 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 Peggy Gaghen.

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

**MINUTES – April 25, 2005 and April 27, 2005.** Approved as printed.

**COURTESIES** – Councilmember McDermott said County Commissioner Bill Kennedy has asked the Councilmembers and anyone in the audience to participate in the Council on Aging's "celebrity" auction/bake sale that supports the *Meals on Wheels* program. She said the Councilmembers are asked to donate their "specialty" baked goods to be sold to raise funds for the program. Baked goods should be delivered to West Park Plaza 5/14/05 prior to the noon sale. Ms. McDermott noted U.S. Marshall Dwight McKay would be auctioning the items.

### **PROCLAMATIONS – Mayor Tooley**

- Police Week: May 15-21, 2005
- Buckle Up America Month: May 9 – June 5, 2005
- Poppy Day: May 21, 2005

### **BOARD & COMMISSION REPORTS – Human Relations Board**

Human Relations Board Member Claudia Stephens said the board consists of nine members broadly representative of all citizens of Billings and reflecting the religious, racial, ethnic and minority groups whose background would aid the commission in its work. The members are appointed by the Mayor with the consent of the City Council. The purpose of the commission is to promote understanding and respect, inform its members relating to matters concerning human relations, review and study complaints, build collaborations, aid in assuring individuals have a voice, and inform and report to the Mayor, Council and the Police Commission as appropriate.

Ms. Stephens noted that Mayor Tooley attended a recent board meeting and responded to the letter sent to the Council recommending activities the City should initiate to cultivate positive human relations in the community. She noted the Mayor requested the board members make their recommendation specific.

This resulted in the development of a strategic plan with actions that involve community partners. Those partners would include the Mayor, City Council, Police Department, Code Enforcement, schools, organizations, the media and populations who feel marginalized. She added the board members would be willing to coordinate, initiate some tasks and seek delegation to other community partners for these recommendations. She said the Human Relations Board recommends the following

strategy for the future of positive and respectful human relations for the City of Billings. She said the board recommends the Council pass a resolution opposing the closure of the Denver Office of U.S. Commission on Civil Rights to support the City's stand on preventing civil rights attacks. Without access to this advocacy, persons in need in this region would be without a voice. She said the determinations are now in process and action is required as soon as possible.

Ms. Stephen said the board also recommends the Council establish an annual conference based on the "Now in Our Town" conference to educate the public on prevention of civil rights attacks and how to build community. Other recommendations are: 1) develop and pass an annual proclamation to state the City's stand against hate crimes, 2) work with Code Enforcement to develop a program to battle graffiti in the City and County, 3) pass an ordinance to state the City's stand against hate crimes, 4) adopt the model policy supported by the International Association of Chiefs of Police for investigating and reporting hate crimes, 5) encourage organizations such as Crime Stoppers to report situations and concerns related to issues of racism, bigotry and violence, 6) organize a rotation of high school students to assist property owners in removal of racist graffiti as part of community service, 7) encourage police and schools to work together (similar to DARE program) to establish a program to educate students in ways to prevent, recognize and diffuse hate crimes and incidents of harassment, 8) develop an educational citizen handbook relating to reporting hate crimes including a list of current City policies, law and regulations addressing them. She noted this report and additional board member information was previously submitted to the Councilmembers.

#### **ADMINISTRATOR REPORTS – Kristoff Bauer**

- Mr. Bauer noted that he attended the convocation at the MSU-B College of Technology this past week where Battalion Chief John Staley received an Outstanding Faculty Award for his support of the firefighter training program carried out by the College of Technology.
- Mr. Bauer noted there was additional information on the Councilmember's desk this evening pertaining to Item A3 - the proposed bid award for the SID 1373: South Billings Boulevard – King Avenue East to Underpass Avenue project. He noted the bid award recommendation has not changed.
- He noted that Item U - the proposed ordinance granting MDU a non-exclusive franchise with the City included changes that were in the Council's Friday packets.
- Mr. Bauer said Item X – preliminary plat for Riverfront Pointe Subdivision should be separated to allow for a Staff presentation and proposal from the developer.

#### **PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Item: #1 and #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.)*

- RICK LEUTHOLD, ENGINEERING, INC., spoke about Item X. He said he is working with the developer on an agreement for the park land dedication relating to land

and cash. He noted the proposal includes some modification to the conditions. He asked the Council to separate that item to allow for the Staff presentation.

▪ BILL COLE, 3733 TOMMY ARMOUR CIRCLE, asked the Council to separate Item A3 relating to the South Billings Blvd. bid award. He said the legal team for Chief Construction has presented three (3) cases where the courts have clearly held that a municipality may change an obvious clerical error. He said it appears that the Staff accepts this information but still feels the bid should be awarded to JTL Group. This is a very difficult policy decision. He added this Council should not adopt the inflexible, "one-size fits all" concrete rule approach where all clerical errors no matter how obvious should be thrown out. Mr. Cole suggested the Council look at each situation on "an ad hoc case-by-case basis and where there is nothing nefarious or untoward, correct the clerical error." He noted the Staff's recommendation to reject the bid on the grounds of a decimal point error, in his opinion, is arbitrary and capricious.

▪ BUZZ TARLOW, 1439 W. BABCOCK, BOZEMAN, MT, spoke on behalf of Chief Construction. He stated three points to clarify Chief Construction's concerns. The first point is that Chief Construction was originally considered the bid award winner in the original agenda published in the final version on April 14<sup>th</sup>. The second point was that through accelerated research, he was able to find three recorded cases (trial and appellate courts) that examined this issue and came up with the same conclusion. The third point he noted is the Council's responsibility to provide the best improvements at the lowest possible cost to the community. He stated there is great flexibility in the State of Montana for municipalities to interpret an error and make a decision from that interpretation. The rule imposed by the "disappointed bidder" removes that flexibility and prevents conversations relating to interpretation and correction of clerical errors.

▪ EARL HANSON, 2301 AZALEA LANE, EXECUTIVE VICE PRESIDENT AND COUNSEL FOR JTL GROUP, said the reason case law is so limited in this issue is that the specifications are written with strict language that is enforceable. He said he is glad the City of Billings has made the specifications so clear. He stated the owner has the right to waive all informalities that do not involve price, time or change. The bid award item for South Billings Blvd. involves price. Mr. Hanson noted that Chief Construction would have signed an agreement during the bid process that the unit price shall govern during the bid verification process. If a discrepancy exists, the total amount of the unit price shall be used in awarding the contract. Mr. Hanson said there is an exact process when errors are discovered. The bidder must call within 24 hours after the bids are opened and file a sworn, written notice with the owner relating to the error. The City is then directed to rebid the job and the bidder who made the error is disqualified from bidding. He said this eliminates any ambiguity and keeps the bidding process on a strict, conservative, objective basis. He noted there were two dissents in the Massachusetts' Supreme Court opinion that spoke of the importance of maintaining the integrity of the bidding process.

▪ BOB KOBER, 333 QUIET WATER AVENUE, VICE PRESIDENT OF JTL GROUP, said there are procedures in the specifications for correcting errors during the bidding process. If any of these procedures are waived by the Council, the integrity of the competitive bidding process would be violated and unintended consequences may occur on this and future projects. Under the guise of saving money for the City, future bidders may routinely claim a bid error and petition the Council to correct or modify their bids.

Waiving the procedure establishes a dangerous precedent, he added. He said the rules are clearly established to protect the integrity of the process. He asked the Council to consider the accountability of the actions of bidders.

- CARY HEGREBERG, 1717 11<sup>TH</sup> AVENUE, HELENA, MT, EXECUTIVE DIRECTOR OF THE MONTANA CONTRACTORS' ASSOCIATION, said his organization is a statewide trade association representing commercial construction firms in the state and is affiliated with the Associated General Contractors of America. Their association has a policy that addresses this issue relating to public letting of contracts because it is not a new issue. The association adheres to the policy because it believes that the integrity of the public bidding system is at stake. He said if a rule is waived it should first be amended or changed. Mr. Hegreberg said the Council will be sending a message to other municipalities throughout the state if that rule is waived. His association is here to guard against that practice.

- LEO ZWEMKE, 4160 JUNE DRIVE, VICE PRESIDENT AND GENERAL MANAGER OF EMPIRE SAND AND GRAVEL, said he has worked in the construction industry in Billings for 21 years. He said he has been on both sides of the issue when mistakes have been made. In all cases the rules and laws were followed. He said this is very important that the rule applying to unit price governs the bid price. Adherence to the process is vitally important to the industry and the City. He asked the Council to follow the past practices, correct the bid and award to the lowest responsible bidder.

- RICK REID, 2205 TREASURE DRIVE, MANAGER FOR MONTANA DAKOTA UTILITIES, agreed with Mr. Bauer's comments regarding the MDU item. He said the discussion between MDU and the City has concluded in agreement. He asked the Council to adopt the ordinance. Mr. Reid noted the format of the agreement is different but the content is the same as with other cities.

- RICH KING, 4123 WELLS PLACE, ESTIMATING MANAGER FOR COP CONSTRUCTION, said he supports the Council acting in favor of the rules and procedures prescribed in the bid documents. The total bid price must be governed by the unit prices and corrected to determine the low bidder. He said the Council must maintain compliance with their bid documents to maintain an open and competitive bidding environment in Billings. Consistent and non-discriminatory interpretation of the bid documents is necessary. He said the Council will maintain their credibility by upholding the standards set by bid specifications and remain above reproach when dealing with the taxpayer's money.

- ROB STOLTZ, 13404 PRYOR ROAD, PRESIDENT OF CHIEF CONSTRUCTION, thanked the Mayor and Council for hearing their argument relating to the clerical error on the South Billings Blvd. bid. He assured Council that if awarded the bid, the unit price of \$1,550.00 would be corrected in the contract. This has been done in past contracts in favor of the City. He said this error was obvious enough to recommend Chief Construction originally for award of the project.

- DEAN EDMISTEN, 1337 LOCKVIEW LANE, ESTIMATOR FOR WESTERN MUNICIPAL CONSTRUCTION, said he has been an estimator for Western Municipal Construction for over twenty years. He said their company bids actively in a fourteen-state area and in all those areas the unit price always prevails.

- EMILY SHAFFER, 824 NO. 25<sup>TH</sup> STREET, said she has been a member of the Community Development Board for three years. She said Mr. Brown of the Community

Housing Resource Board is asking for more money than the CD Board is comfortable with recommending. She said he does not seem to run good board meetings. She said the CD Board recommendation to the CHRB is \$15,000 from two funds with Mr. Brown controlling only \$5,000 and the remainder to be distributed by the CD Board for any acceptable fair housing requests. She asked the Council to adhere to the recommendations of the CD Board.

▪ TODD TEXLEY, 2480 TRASK CIRCLE, VICE PRESIDENT OF CHIEF CONSTRUCTION, said the City has the right to make changes in a bid when both the City and contractor agree on an error. He said he values that opportunity to clarify and make adjustments while approaching issues with common sense and fair practices. He said the City would not be held to the \$1,550.00 unit price. The contract documents would be correct and that would be the document where the City would hold the contractor accountable.

## **CONSENT AGENDA:**

### **1. A. Bid Awards:**

(1) **Uniform Rental Service for Public Works Dept – Utilities.** (Opened 4/19/05). Recommend Alsco/American Linen, \$41,945.28.

(2) **Demand Response Software Package with AVL and MDT Integrated Modules for MET Transit.** (Opened 4/26/05). Recommend delaying award to 6/13/05.

(3) **W.O. 04-11: SID 1373: South Billings Boulevard – King Ave East to Underpass Avenue.** (Opened 4/12/05). Reconsidered and delayed from 4/27/05. Recommend JTL Group, Inc., \$2,037,141.70.

**B. Security Contract** for the City's four parking garages, D-N-D Security, \$21,900.00, one-year contract with one-year option to renew.

**C. Contract for Professional Services** for Park II Garage Expansion and Repair Work Projects, Collaborative Design Architects, Inc., \$662,045.00.

**D. Lease Agreement** for retail/office space in Park 1 Garage, World Class Travel, 1-year lease with three 1-year options to renew.

**E. Lease Agreement** for retail/office space in Park 1 Garage, Gunsmoke BBQ, 3-year lease with two 1-year options to renew.

**F. Approval of Purchase Agreement** for Fire Station #7 land purchase at 1524 54<sup>th</sup> Street West, described as Lot 2, Block 1, Bishop Fox Subdivision, \$200,000.00.

**G. W.O. 04-12: Alkali Creek Road, Storm Drain Easement** from Ernest and Jacqueline Szillat for a 20-foot strip in Spring Valley Sub.

**H. Approval of Right-of-Way Agreements for Grand Avenue Widening:**

(1) W.O. 00-15, Parcel 124: Highland Rim Properties, Inc., A tract in Lots 1-2, Sunset Sub., 4<sup>th</sup> filing and Lot 1, Sunset Sub., 7<sup>th</sup> filing, \$34,700.00.

(2) W.O. 00-15, Parcel 131: Douglas A. & Theresa J. Jenkins, A tract in Lot I(2) of Amended Plat #607 Amended, situated in Lots 3-4, Block 1, Algeo Sub., \$0.00.

(3) W.O. 00-15, Parcel 125: Big Sky Federal Credit Union, A tract in Lots 9-10, Block 2, Sunset Sub., 2<sup>nd</sup> filing EXCEPT that part conveyed to the City under Doc #3080838, \$0.00.

(4) W.O. 00-15, Parcel 122: MTB5, Inc., A tract in Lot 1A of Amendment of Lot 1, Sunset Sub., 3<sup>rd</sup> filing and Lot 1, Sunset Sub., 8<sup>th</sup> filing, \$7,450.00. AND Parcel 123: MTB5, Inc., A tract located in Lot 1, Sunset Sub., 6<sup>th</sup> filing, \$7,700.00.

**I. Approval of Fair Housing Initiatives Program (FHIP) Grant** submission, for fair housing activities, \$100,000.00.

**J. Approval of Coal Impact Funds Grant** pre-application submission for Crime Scene Investigation Vehicle, \$200,000.00.

**K. Authorization** to negotiate salvage/sale of surplus items from City-owned property located at 120 N. 26<sup>th</sup> St in anticipation of demolition for the Park II expansion project.

**L. Subordination** of First Time Homebuyer Loan, Stormi Riojas, 4526 Vaughn Lane, \$5,000.00.

**M. Street closure** for United Veterans' Council *Memorial Day Parade*, May 30, 2005, Central Avenue: from Albertson's parking lot on corner of Central Avenue and 24<sup>th</sup> St. W. to Mountview Cemetery.

**N. Pledged Collateral** on Wells Fargo Bank and US Bank Certificates of Deposits, US Bank Repurchase Account and US Bank Municipal Investor Account.

**O. Reimbursement** of Shiloh Business Park Subdivision Escrow Account, \$112,800.00.

**P. Acknowledging receipt of petition** from JL Partnership to vacate Madison Avenue right-of-way and setting a public hearing date for 6/13/05.

**Q. Acknowledging receipt of petition** from Yellowstone Health Partnership/Yellowstone City-County Health Dept. to vacate a portion of S. 26<sup>th</sup> St. between 1<sup>st</sup> and 2<sup>nd</sup> Aves. S and setting a public hearing date for 6/13/05.

**R. Resolution of Intent 05-18260** to trade property in Holfield Subdivision Park for a parcel in Brookfield Sub. and setting a public hearing date for 6/13/05.

**S. Resolution 05-18261** Specifying Water Rate Schedule Adjustments. (PH held 4/11/05; reconsidered 4/27/05; delayed from 4/27/05).

**T. Second/final reading ordinance 05-5324 for Zone Change #756:** a zone change from Agricultural-Open Space to Community Commercial on Lot 1, Public on Lot 2, R-7000 on Lots 3-4 and R-9600 on Lot 5 for a 40.5 acre parcel of unplatte land in the proposed Bishop Fox Subdivision, generally located on the east side of 54<sup>th</sup> St. W. between Grand Avenue and Colton Boulevard. Bishop Fox Company, owner; Engineering, Inc., agent. Zoning Commission recommends approval of the zone change and adoption of the determinations of the 12 criteria.

**U. Second/final reading ordinance 05-5325** granting to Montana Dakota Utilities Co., a non-exclusive franchise to construct, maintain, operate, replace and repair a gas distribution system within public rights-of-way of the City of Billings.

**V. Preliminary Plat** of Amended Lot 6, Block 1, Country Homes Subdivision, generally located at 1908 Bitterroot Drive in Billings Heights, conditional approval of the preliminary plat and acceptance of the findings of fact.

**W. Preliminary Plat** of Amended Lot 3A of Amended Lot 1, Block 1, Goodman Subdivision, 2<sup>nd</sup> filing, generally located at the southeast corner of the intersection of Avenue B and 41<sup>st</sup> Street W, one block north of Grand Ave. and one block west of Shiloh Rd., conditional approval of the preliminary plat, adoption of the findings of fact and approval of a variances from BMCC Section 23-602(a).

**X. Preliminary Plat** of Riverfront Pointe Subdivision, generally located south of the West Billings Interchange, from Mullowney Lane to S. 12<sup>th</sup> St. W northeast of the intersection of Elysian Road and Mullowney Lane, conditional approval of the preliminary plat, approval of the variance and adoption of the findings of fact.

**Y. Final Plat** of Estates at Briarwood.

**Z. Final Plat** of Menholt Subdivision Amended Lot 1, Block 1.

**AA. Bills and Payroll.**

- (1) April 8, 2005
- (2) April 15, 2005

**(Action:** approval or disapproval of Consent Agenda.)

Councilmember McDermott separated Items A3, Q, S and X from the Consent Agenda. Councilmember Veis separated Item H from the Consent Agenda. Councilmember Jones separated Item C from the Consent Agenda.

Councilmember Ruegamer moved for approval of the Consent Agenda with the exception of Items A3, C, H, Q, S and X, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

Councilmember Ruegamer moved for approval of Item A3 of the Consent Agenda, seconded by Councilmember Brewster. Councilmember McDermott stated that she agrees with and believes the City has the right and flexibility to look at typographical errors and use reasonable judgment in those instances. Accepting the bid of JTL Group, that is \$63,000 higher, will place a large burden on some of the residents of Ward I. She said it is a great mistake not to take the low bid and stated she would not support the motion. Councilmember Brewster agreed that the Council has broad discretion in these areas, but preservation of the bidding process is compelling.

Mayor Tooley asked the City Attorney to clarify the explanation of the bid extension that made JTL Group the low bidder. City Attorney Brent Brooks said by multiplication of the unit price of \$1,550.00 by the quantity, the apparent low bid of Chief Construction became the high bidder. City Administrator Kristoff Bauer said prior to verification of the bid prices, the apparent low bidder was Chief Construction. After the computations were verified, it was discovered that Chief Construction made an error in the unit price of the gravel item causing their bid to become the high bid. Councilmember Brown asked if it is reasonable to look at the unit price and know that the number was an error. Mr. Bauer said the number does not appear ambiguous, it is clearly written. The specifications are very clear, the number regardless if it is wrong or right, is the number that must be used to calculate the ultimate bid price, he added.

Councilmember McDermott said the Council should be able to have the flexibility to save the taxpayers \$63,000 and still retain the integrity of the process. It is an obvious error, she added. Councilmember Veis said it is clear that the unit price governs the bid total and he said he has not heard anything tonight that demonstrated the process the City is using is incorrect. The Council must follow the rules and uphold the integrity of the bid process. Mr. Brooks clarified that this is not a new rule. Councilmember Jones said the Council should investigate something that gives them more flexibility to make a decision that could ultimately save the taxpayers millions of dollars. On a voice vote, the motion was approved with Councilmembers McDermott, Gaghen and Brown voting "no".

Councilmember Ruegamer moved for approval of Item C of the Consent Agenda, seconded by Councilmember Brewster. Councilmember Brown noted the contract price is now 15% higher than previously bid and that seem outrageous. Mr. Bauer said the difference in the two projects is the magnitude of the project. As the amount of the project is less it is expected the percentage to be a little higher. The difference does not reflect inflationary pressure, but merely a difference in the size of the project. Councilmember Brown asked if the price is negotiated after the fact. Mr. Bauer said if the offer made is unreasonable the Staff tries to discuss whether the scope of the project is appropriate and the service is appropriately priced.

Councilmember Jones said the scope of work does not include mention of the potential for a drive-through bank facility. He said he would like to see language included to that affect. Parking Division Manager Liz Kampa-Weatherwax said the drive-through facility for the banking facility was "off the table" at the time of the Request for Proposal. She said she anticipates either change orders or amendments to the contract during negotiations. Councilmember Jones said he would like to see the language changed before the contract is signed to avoid the change order process. Councilmember Jones amended the motion to amend the contract to add language for a potential office retail use or drive-through banking facility to the scope of work, seconded by Councilmember Boyer.

Councilmember Brewster asked if this changes the scope of work requiring negotiations that may increase costs. Ms. Kampa-Weatherwax said she did not believe it would create more architectural or professional services. She noted there was preliminary information about the Wells Fargo potential. Councilmember Brewster asked if the cost of the facility is "rolled into the lease". Mr. Bauer said this depends on the negotiations of the lease and how the responsibility for development is apportioned. There is flexibility during the negotiations to proceed one way or the other and tailor the lease to provide for the direction that is ultimately taken. Mr. Bauer noted this contract also includes conditions assessment of the other City parking garages in the scope of work adding to the price and inflating the percentage. On a voice vote, the amendment was approved with Councilmember Brown voting "no". On a voice vote for the motion as amended, the motion was unanimously approved.

Councilmember Ruegamer moved for approval of Item H of the Consent Agenda, seconded by Councilmember Brewster. Councilmember Veis asked if this is the last of the right-of-way agreements for Grand Avenue. Public Works Director Dave Mumford said as the City is able to acquire property more agreements would come to Council as they are processed. He estimated there were approximately 6 or 7 more to be processed. On a voice vote, the motion was unanimously approved.

Councilmember Ruegamer moved for approval of Item Q of the Consent Agenda, seconded by Councilmember Brewster. Councilmember McDermott wanted to clarify that this item was scheduled for a public hearing on 6/13/05. She said some businesses in the Conoco/Gateway triangle area are concerned about the street closures. On a voice vote, the motion was unanimously approved.

Councilmember Ruegamer moved for approval of Item S of the Consent Agenda, seconded by Councilmember Brewster. Councilmember Veis noted the handout he provided to the councilmembers that includes the old rates and the proposed rates. He asked if the rate increase of 6.4% would be added to the \$1.33 for residential in FY 2006. Mr. Mumford said the current proposal includes revisions of the rates that were approved in 2001. The 6.4% rate would not be compounded on top of the current rates. That rate would change the rate from \$1.31 to \$1.33 for FY2006. Councilmember Clark asked if the new rate of \$1.31 would still go into effect if the Council does not approve the proposed rate increase. Mr. Mumford said the \$.02 increase would go into effect, but the following two years would not have an increase and that is where it is needed. The resale rate would also not increase and the Heights Water District needs to carry their share of the costs of water service to their area.

Councilmember Veis asked Mr. Mumford to highlight the improvements in the Water Department over the past few years. Mr. Mumford said the projects have included \$3.8 million in water extension to newly annexed areas, carrying out the rehabilitation program, \$3-\$4 million in 2001 for a sedimentation basin to aid in purifying water coming from the river, \$1 million in 2000 to change the filter media, reservoir repainting and numerous water lines installed that were associated with road projects.

Councilmember McDermott asked for clarification of what projects would go forward and would be placed on hold if this water rate proposal is not approved. Mr. Mumford said the water plant filtration project must go forward and the replacement program would be curtailed because the ongoing construction projects would take precedent. The reservoir projects are critical, especially the zone four reservoir because it does not have the

capacity to balance the system relating to pressure fluctuations. This will ultimately limit growth in the area that has already been annexed. He noted the Briarwood tank is not on City property and that must be brought under City control. Many other projects are maintenance and would require funding that would be questionable. Councilmember Ulledalen asked at what point will the City be capacity constrained and not able to address future growth. Mr. Mumford said the filtration system upgrade would help filters that were advised to be placed under cover since 1998. A comprehensive master plan for water and wastewater is also in process, he added. This plan will assist in planning issues for the Utilities Department. He noted the last plan stated that water would not cross Shiloh Road.

Councilmember Veis noted the filter improvements budget item has increased from \$14.9 million to \$15.7 million and asked if that change will impact the rate increases. Mr. Mumford said he did not think it would. Councilmember Veis asked what the \$22 million in revenue bonds were for. Mr. Mumford said that would fund the filter building and the two reservoirs. He noted the Staff is looking into a state-administered State Revolving Fund loan for the filter building to lower the bond costs. Councilmember Veis asked if the funding for bonding in both FY2005 and 2006 are going to be expended. Mr. Mumford said the bonding is over a three-year period. He said the City is hoping to fund the improvements with the SRF loan and not sell bonds in 2005.

Deputy Director of Public Works Al Towlerton said \$22 million in bonding was the best estimate for the 2005 budget, but since that time reserves have been better identified and consideration of the SRF Revolving Loan program have adjusted that figure and no debt proceeds would have been expended. Councilmember Veis asked if the \$11.3 million in revenue bonds would increase for FY2006. Mr. Towlerton said the City would be debt-financing as each project is considered for 2006. Mr. Mumford noted the SRF funding is paid out so the debt is not accumulated at once, but gradually over the life of the project, which is three years in the case of the filter building.

Councilmember Ruegamer asked how the SRF loan works. Mr. Mumford said the loan is handled like one for building a house. Councilmember Ruegamer asked how much is planned to be spent that is affected by the rate increases. Mr. Towlerton said the total to be spent is approximately \$61 million over a period of five years. He said \$4.1 would come from reserves, bringing the reserves down to \$1.4 million. Councilmember Ruegamer asked if there was \$15 million in reserves currently. Mr. Towlerton replied "no". Mr. Mumford said \$5.5 million from operating expenses would finance the rehabilitation program. Debt financing would fund the large projects such as the filter building and the reservoirs and all other improvements would come from operating expenses, he added.

Councilmember Ulledalen asked if there is more flexibility in paying down the SRF loan. Mr. Towlerton said he would verify that, but thought there was more flexibility in that type of financing program. Mr. Mumford said there is flexibility in asking for extension for repayment. He added there is more flexibility than in revenue bond funding. Councilmember Ulledalen asked if there was additional spending anticipated for infrastructure improvements in the next four years. Mr. Mumford said the City does not anticipate any large infrastructure changes in the future at this point unless there was huge and rapid growth in Billings. He said it is anticipated that there would be an \$8 - \$9 million investment in the Capital Improvement Program in the future because 1% of the system is slated for replacement and maintenance.

Councilmember McDermott said it was her understanding that the Utility Fund was larger than is currently being reported. Mr. Mumford said that since he has been managing the Utilities Department the reserves have never been the numbers to which people have alluded. The reserves have been spent down over time on different projects. Upon recommendation from the Finance Department, the current reserves that will be kept are \$1.4 million. He said \$4.1 million of reserves will be spent on improvements and \$350,000 is kept in a fund for emergencies, such as loss of pumps. Councilmember McDermott said she understood that higher rates were supposed to build up the reserves. Mr. Mumford said that was not the intention. He said, aside from the large projects, the Utilities Department has always adhered to the "pay as you go" philosophy.

Councilmember Brown asked what would transpire without the rate increase. Mr. Mumford said the projects would not have funding past this year without the rate increases beyond 2005. The rate increases approved in 2001 would just allow the department to function. Mr. Bauer said the CIP creates obligations and incurring debt for projects. If the Council does not authorize the rate increases for future years, the projects the City is undertaking today will be difficult to pay for in the future. He said if the Council is not inclined to approve the future increases, he suggested the Council provide direction on what future projects should be deleted.

Councilmember Ulledalen asked if the City is behind on maintenance that the City should have been doing. Mr. Mumford said "yes". He said the utility workers have done an excellent job of keeping the system functioning, but age has caught up with it. Councilmember McDermott asked if maintenance funds were spent on new lines. Mr. Mumford said \$3.8 was spent on new lines that came from reserves and some maintenance funds.

Councilmember Veis asked for historical information for the last ten years on Public Utilities budgets, capital projects, fund balances and major spending. Mr. Mumford noted the Capital Improvement Program has only been in effect for the last few years. He said the rate increases are also caused by increased power rates, cost of materials and supplies, wages and associated costs. He reiterated there is no basis to the assertion that there were large reserves in the Utility Fund. Mr. Bauer said if there were reserves, they have been spent on utility operational or capital projects and could not have gone into other funds because that is against the law. He said the Staff has given the Council the best information that is available today and how the City can structure those resources for the future to the best advantage.

Councilmember Veis said he is concerned about the Staff request to the Council to make a major change from cash financing to debt financing. Mr. Mumford noted that the projects that are slated for improvement are 50 and 60 years old and that is why there is a different format suggested. Those improvements will not be required for the same amount of time in the future. That is why the future ratepayers are being asked to fund those projects. Mr. Towleron noted the City has used long-term debt financing in the past. Mr. Bauer noted the Staff can provide the Council with a proposal using only cash financing, but the rate increase would be double digit and substantial. He said that probably would not be more palatable or prudent. He said the Staff's opinion is that somewhere in the middle of all cash and all debt financing is the most palatable to minimize the current rate increase, without putting the utility at a financial risk.

Councilmember Brewster noted that the Capital Improvement Program, when it came into existence, "shed the light of day" on a lot issues that were perhaps a little mysterious before. The CIP has made the capital improvement projects more open and easier to understand where the money was going. If there had been a CIP in place 15 years ago, the City would have a better record of capital improvement monies. He said the previous rate increase, along with the current proposal, are a change from past practices. The previous system was a graduated rate where more water usage allowed for small water charges. He noted it was the Council who asked the Staff to investigate another way of charging for utilities improvements, by using debt to keep the cost down. That is where the City is today and is the responsible way to go. He said this is a good change. Councilmember Brewster added that the nature of utility reserves is that they fluctuate depending on the usage, the weather and many other factors. He stated that maintaining the reliability of the City's utilities should be the first priority.

Councilmember Jones said he thinks the Utilities' Staff is being very conservative when estimating the rate increase that is needed. He said he believes in the concepts, the projections however don't support the higher rates. Councilmember Brewster suggested the Public Works Utility Department submit annual financial reports and the Council could adjust the rates by initiative if needed. Mr. Bauer said part of the proposal projections are for five years and Staff is only asking for increases for three years with a study in 2 years that would bring an analysis back to the Council. This is tightening up the "checking in" schedule from past practices because there are so many factors that impact the financial picture. He said the intent of the Staff is to provide the Council with quarterly updates and to redo the rate study every two years. On a voice vote, the motion was approved with Councilmembers McDermott, Brown, Clark and Jones voting "no".

Councilmember Ruegamer moved for approval of Item X of the Consent Agenda, seconded by Councilmember Brewster. Planning Director Ramona Mattix said the developer has proposed to revise the parkland dedication to eliminate the 2.8-acre park located along the southern boundary and provide a Heritage Trail (1.2 acres) corridor only along the northern boundary of the Suburban Ditch. A cash-in-lieu payment would be paid for the remaining 4.8 acres required for the subdivision's parkland dedication. She said the concern of the Planning Staff if the cash-in-lieu is approved, would mean the area would be excluded from the plat. The underlying zoning is Highway Commercial. The Staff would ask the Council to consider the concerns of the Planning Board. If the Council agrees with the subdivider's proposal, a motion should be made to approve the preliminary plat for Riverpoint Point Subdivision and Findings of Fact with these conditions:

- 1) Delete conditions #11 and 12 and add two conditions.
- 2) Add – only single-family residences shall be permitted on the proposed 2.8 acres located along the southern boundary of the property originally proposed for parkland.
- 3) Add – A park maintenance district shall be created for the maintenance of the proposed trail corridor located along the northern boundary of the Suburban Ditch.

Mr. Bauer said the applicant must agree to the change in the conditions. Councilmember Brewster amended the motion to delete conditions #11 & 12 and add the suggested conditions as stated above, seconded by Councilmember Boyer. Rick Leuthold, Engineering, Inc., speaking for the developer, said the developer acknowledges the

conditions. A letter that he submitted to the Council outlines the elimination of the park and acknowledges the single-family aspect of the development. The park maintenance district was not covered in the letter, but is an acceptable condition.

Councilmember Ruegamer asked how many access points there are for the subdivision. Ms. Mattix said there are two access points in Phase I and that is acceptable for fire control purposes. Councilmember Clark asked how the cash-in-lieu amount is calculated. Mr. Leuthold said the cash-in-lieu is determined by market value, in most instances a purchase agreement is used. Councilmember Brown asked about the zoning. Mr. Leuthold said the original zoning was Highway Commercial, so some commercial will be retain. Zoning suitable for duplex units would be on other parts of the subdivision. On a voice vote, the amendment was unanimously approved. On a voice vote, the motion as amended was unanimously approved.

Mayor Tooley called for a recess at 8:58 P.M.  
Mayor Tooley reconvened the meeting at 9:05 P.M.

## **REGULAR AGENDA:**

### **2. PUBLIC HEARING AND RESOLUTION 05-18262 annexing 40.5 acres of unplatte land in the W2W2SW4 of Section 32 in Township 1 North, Range 25 East, proposed as the Bishop Fox Subdivision, Bishop Fox Company, petitioners. Staff recommends approval of the resolution with conditions. (Action: approval or disapproval of Staff recommendation.)**

Zoning Coordinator Nicole Cromwell said the subject property is a 40.5 acre parcel known as the proposed Bishop Fox Subdivision and is located north and east of the intersection of Grand Avenue and 54<sup>th</sup> Street West. The purpose of the annexation is to acquire services. She said the current land use is Agricultural-Open Space and the proposed uses for the five lots are for residential, a church, commercial and a new fire station. Surrounding properties were previously annexed in 2004. She said all City departments gave a favorable response to the annexation. The area is currently served by BUFSAs and the nearest fire station is located at 1928 17<sup>th</sup> Street West. The new station is proposed for Lot 2 of the subdivision. Ms. Cromwell said City sewer and water are available in local streets extending from Grand Avenue. The developer will have onsite storm water detention and facilities would be designed and constructed during lot development. She noted the developer would be responsible for fees to connect to water and sewer service and storm water management.

Ms. Cromwell said the annexation conforms to most land use goals. It conforms to the Annexation Policy and is within acceptable limits of annexation. Staff is recommending approval of the annexation resolution requiring a Subdivision Improvement Agreement with a Waiver of Right to Protest to be executed prior to development of the site.

The public hearing was opened. JOE WHITE, 926 NORTH 30<sup>TH</sup> STREET, said he has mixed feelings about the annexation. It includes a church, school and fire station which he says he supports. He said the area needs an environmental study prior to annexation. He said he is also concerned about the soil diseases caused by the insects brought in by heavy salt storms. He urged the Council to employ an expert on the soil conditions due to the salt diseases.

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

**3. PUBLIC HEARING AND RESOLUTION 05-18263 annexing Tract 3, C/S 1877, DC Capital Real Estate LLC, petitioner. Staff recommends approval of the resolution with conditions. (Action: approval or disapproval of Staff recommendation.)**

Zoning Coordinator Nicole Cromwell said this annexation is a 25-acre parcel located south of the intersection of Grand Avenue and 52<sup>nd</sup> Street West. The land use is currently Agricultural-Open Space and the proposed land use would be single-family residential which would be the default zoning of Residential 9,600. She noted the close proximity to the previous annexation. Ms. Cromwell said the Planning Department received favorable responses from all City departments to the annexation and noted the Parks and Recreation Department will require the proposed subdivision parks to be developed by the subdivider during the platting process. The area is currently served by BUFSAs for fire as the nearest fire station is located on 24<sup>th</sup> Street West. She noted the new station proposed at Grand Avenue and 54<sup>th</sup> Street West would eventually serve the area. City sewer and water is available in local streets extending from Grand Avenue. Ms. Cromwell noted there are no storm drain lines, but the developer will have onsite detention that discharges to the Big Ditch. The developer will be responsible for fees to connect to water and sewer service and storm water management.

Ms. Cromwell said the annexation is consistent with the Annexation Policy and is within acceptable limits of annexation. She said the Planning Staff is recommending approval of the annexation and resolution that requires either a Development Agreement or a Subdivision Improvements Agreement with a Waiver of Right to Protest, to be executed prior to development of the site. The subdivision will be responsible for developing a neighborhood park within the subdivision. Councilmember Vies asked if dedication of Broadwater Avenue would be required by the subdivider. Ms. Cromwell said that would be part of the platting process.

Mr. Leuthold said his firm has a concept design for the subdivision plat and it does not include dedication of Broadwater Avenue. Portions of Broadwater Avenue have been vacated because a road in Oak Ridge Estates is a collector street. It is in accordance with the adopted street master plan. Planning Director Ramona Mattix confirmed that the Transportation Plan does show several breaks in Broadwater Avenue, which has not been shown as a through street.

The public hearing was opened. NANETTE STEVENS, 2910 LEWIS AVENUE, said she has concerns that the surrounding wells would be degraded, impacting the neighborhoods in the subdivision to the east. If the City eventually annexes the subdivision to the east, the taxpayers would be footing the bills for any problems that occur.

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

**4. PUBLIC HEARING AND RESOLUTION 05-18264 renaming Arlene Street to Zimmerman Trail. Staff recommends approval of the name change and keeping the**

**existing house numbers. (Action: approval or disapproval of Staff recommendation.)**

Public Works Director Dave Mumford said the Zimmerman family has requested the portion of new roadway alignment for the Arlene Street extension project that is part of the original Zimmerman homestead be named after their family. He said they are concerned that the family homestead and heritage will disappear. The family worked closely with Deputy City Attorney Kelly Addy to insure that all procedures were carefully followed. Mr. Mumford said the family members went door-to-door obtaining signatures on petitions from the affected property owners. Mr. Bauer clarified that the proposed resolution for the name change states the change would occur from Rimrock Road to Poly Drive.

The public hearing was opened. GARY OTT, 2526 ARLENE STREET, said he was not contacted. He said if the name change goes into effect it should go all the way to the Shiloh Overpass. He said he has been at his current residence for 45 years and noted that all of his legal documents will need to be changed to accommodate the address change. He also noted there will be additional costs to the City in mapping with no clear benefit to the City. Mr. Ott noted there was another request to change the name that was turned down. He said he does not support the name change.

NANETTE STEVENS, 2910 LEWIS AVENUE, said she co-owns her family home at 2517 Arlene Street. She said the family has owned the home since 1953 and she has many memories of growing up on that street. She said the street has history with the Arlene Street name too that means just as much to her. Ms. Stevens expressed concern for the property values that will drop when the new street is constructed. She asked the Council to honor the people on Arlene Street and not change the name.

GLORIA MORGAN, 2101 FOX DRIVE, said she was not contacted to change the street name. She said she co-owns 2517 Arlene Street with her sister. She said she thinks changing the name of Arlene Street to Zimmerman Trail will diminish the name, historical value and significance of the Zimmerman Trail. She said she prefers the Arlene Street name.

LYLE ZIMMERMAN, BOZEMEN, said he holds land in the Grand Avenue area and would appreciate the Council's consideration of the name change. He said he and his brother made several efforts to contact all of the residents on Arlene Street and a majority of the owners have signed the petition in favor and have no objections of the name change. He said his grandfather and father grew up on the homestead in that area so the area means a lot to the Zimmerman family. He also noted that the Postmaster stated the change is not a major problem for the postal service and would automatically transfer the mail so the residents would not have to fill out any change-of-address forms. Mr. Zimmerman said the benefit to the City would be one name for the road for emergency vehicle purposes. He urged the Council to support their request.

JOE LOENDORF, 3206 LEEANN BLVD., said he and his wife Sharlene support the Zimmerman family's request. He said he and his wife have known the Zimmerman family for many years and consider them a fine family that supports their community. He said their legacy deserves to be recognized through this renaming.

ROY ZIMMERMAN, 3028 LEEANN BLVD., said one of the last wishes of his father was to insist that the family name continue on the homestead. He asked the Council to support the family's request.

There were no other speakers. The public hearing was closed. Councilmember Ulledalen moved for approval of the Staff recommendation, seconded by Councilmember Ruegamer. Councilmember Ruegamer said this name change and having one street name makes sense geographically, historically and aesthetically. He said he agrees that it should go all the way to the Shiloh Overpass. Councilmember Gaghen noted the history of the Frank Roth family that has ties to the Arlene Street name and said she would not support the motion. Councilmember Brewster said renaming the road south of Grand Avenue to the overpass should be a separate issue with notification of the residents involved. Mr. Bauer confirmed that notice of a public hearing and a resolution stating the exact street portions to be renamed would be required. He noted that renaming the street to Broadwater Avenue would be appropriate because that street does not exist yet.

Councilmember Jones asked what the costs would be to the City and the residents on Arlene Street. Mr. Mumford stated the costs would be minimal, such as 4 or 5 street signs that the City has the ability to make. City Attorney Brent Brooks stated the current residents of Arlene Street would be required to make changes in their address status on several documents and mailings they receive. Mr. Bauer agreed that 29 property owners will be affected with the name change on all of their documents and mailing system. Councilmember Brown made a substitute motion to change the name south to Grand Avenue. The motion died for lack of a second. On a voice vote, the main motion was approved with Councilmembers Gaghen, McDermott, Ulledalen, Clark and Jones voting "no".

**5. APPROVAL OF THE FY2005-2009 CONSOLIDATED PLAN and allocation of CDBG and HOME funds for FY 2005-06. CD Board recommends approval. (Action: approval or disapproval of CD Board recommendation.)**

Councilmember Clark moved for approval of the CD Board recommendations, seconded by Councilmember Brewster. Councilmember McDermott noted she would excuse herself from voting on the Growth through Art recommendation because she is on their board of directors. Councilmember McDermott amended the motion to remove the recommendation for \$150,000 from the South West Bike Path and redistribute \$7,500 to the First Time Homebuyer Program and \$7,500 to the Affordable Housing Program, seconded by Councilmember Clark. Councilmember McDermott said the South West Bike Path project has not had the appropriate due diligence performed on it and needs to "go back to the drawing board." She said the money should be placed where it would do some good instead of sitting until the path project is ready. Councilmember Gaghen agreed and noted the two housing programs are worthwhile and have a great return. On a voice vote, the amendment was unanimously approved.

Councilmember Brewster asked why the training for landlords has been reduced. He said it is valuable to keep the landlords informed of the rules and regulations. Community Development Manager John Walsh said the CD Board had concerns about the funding request from the Community Housing Resource Board and recommended \$5,000 to the CHRB with \$10,000 set aside to be allocated in the future through an RFP process for Fair Housing activities. That gives the board more time to research in depth the concerns for funding through the CHRB. Mr. Walsh said it was not the intent of the CD Board to exclude landlord training from fair housing activities, but CHRB's ability to do the training will be impacted by the recommendation. He noted that the CHRB has been the

agency that the City has depended on to perform fair housing activities, but there are other organizations that could do the same work. Mr. Walsh said in all likelihood it would be the CHRB. Councilmember Jones amended the motion to approve the CD Board recommendation for funding to the Community Housing Resource Board and issue an RFP for the following year, seconded by Councilmember Ruegamer. Councilmember Jones said it would be inefficient for the program to fund \$5,000 now and \$10,000 later on. He would like to see competition in this area to find an organization that may be able to do a better job. On a voice vote, the amendment was unanimously approved.

Councilmember Brewster moved to separate the Growth through Art recommendation, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.

Councilmember Clark moved for approval of the Growth through Art recommendation, seconded by Councilmember Gaghen. Councilmember McDermott clarified that she is Chairman of HRDC under which Growth through Art is funded and would abstain from voting. On a voice vote, the motion was unanimously approved. Councilmember McDermott abstained from the vote.

Councilmember Clark moved for approval of the 2005-2006 CDBG and HOME funds allocation as amended, seconded by Councilmember Ruegamer. 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.)**

- MICHAEL ERICKSON, 990 B SOUTH HEIGHTS LANE, said he comes before the Council as a Vietnam Veteran and Vice Counsel for the VFW. He thanked the Council for approving the street closure associated with the United Veteran's Council Memorial Day Parade activities from Albertson's parking lot at Central Avenue and 24<sup>th</sup> Street West to Mountview Cemetery. This is a very important issue and event.

**COUNCIL INITIATIVES:**

COUNCILMEMBER JONES: Councilmember Jones moved to direct staff to initiate a request for development proposal for the 4<sup>th</sup> and Broadway site, seconded by Councilmember Boyer. Councilmember McDermott asked if there would be costs associated with this. Councilmember Jones said the only cost involved would be in advertising for the RFP. Mr. Bauer noted current direction from the Council was to demolish the buildings on site and bring back alternatives for surface parking to the Council. He asked if the intent of the motion was to stop work on that project. Councilmember Jones said his intent would be to hold off on any activity until the City secures an interested developer. Mayor Tooley noted that removing the buildings would make the area more marketable. Mr. Bauer said if the Council wants the Staff to stop the design phase and focus on demolition, this would be a change of direction. On a voice vote, the motion was unanimously approved.

COUNCILMEMBER McDERMOTT: Councilmember McDermott moved to direct Community Development staff to prepare policies regarding: 1) a limit to the number of years funding can be encumbered on projects, and 2) a Staff review process for all

projects submitted to the CD Board, seconded by Councilmember Gaghen. Councilmember Brewster requested additional information on the funds and how long they have been encumbered. On a voice vote, the motion was unanimously approved.

COUNCILMEMBER RUEGAMER: Councilmember Ruegamer moved to require that Joe McClure and one councilmember participate in the Wells Fargo negotiations for the transfer center, seconded by Councilmember Jones. Mr. Bauer noted that the property acquisition is nearly complete; a firm price has been provided supported by an appraisal. The property owners are working on a buy/sell so discussions are complete with the exception of a lease for the drive-up facilities. He said his hope is that this will not become a complex issue. He recommended the Council advise the Staff of a specific timeframe to complete the agreement or regular updates as to the status. Councilmember Ruegamer said his desire is to see this process go smoothly and quickly. COUNCILMEMBER ULLEDALEN: Councilmember Ulledalen made a substitute motion to direct staff to finalize the negotiations for the transfer center site by 7/11/05 with continuing updates on a regular basis to the Council during the process, seconded by Councilmember Boyer. Councilmember Jones said he has concerns about placing limits on the negotiating team. Councilmember Ulledalen said he would like both negotiating parties to know that the Council has great interest in the outcome of the negotiations. On a voice vote, the motion was unanimously approved.

COUNCILMEMBER MCDERMOTT: Councilmember McDermott moved to direct staff to provide information to the Council relating to tiered and zoned water rates, seconded by Councilmember Gaghen. Councilmember Ulledalen asked if this would be retroactively charged to users or for future annexations. Councilmember McDermott said this would only be for future annexations as part of the finance package. Councilmember Ruegamer amended the motion to look into freezing the rates for people on a fixed income, seconded by Councilmember Gaghen. Councilmember Gaghen suggested including younger persons on a low-income budget. Mr. Bauer said he has seen programs that include discounted rates for low-income and the elderly. What that does is shift the revenue requirement to someone else. This is not a simple process to analyze and could be included in the next year's revenue study. Councilmember Brewster said a tiered rate is a bad idea that has been previously turned down. He said growth and future water users are dealt with through the Annexation Policy. Councilmember Ruegamer said he understood tiered rates to mean "the more you use, the more you pay". Councilmember Ruegamer withdrew his amendment and Councilmember Gaghen withdrew her second. Councilmember McDermott said it is still a good idea to study both tiered and zoned rates. On a voice vote, the motion failed with Councilmembers McDermott, Gaghen, Brown and Ruegamer voting "yes".

COUNCILMEMBER RUEGAMER: Councilmember Ruegamer moved to direct staff to provide information to the Council regarding giving water rate relief to low income citizens, seconded by Councilmember Ulledalen. Councilmember Brewster asked if a payment alternative would be to pay the discount rate out of the General Fund rather than from the Utility rates. Councilmember McDermott noted there are programs that

assist the elderly with utility costs. Mr. Bauer noted administering this type of program would not be simple, there would be costs. Councilmember Jones said he does not support the concept. On a voice vote, the motion failed with Councilmembers Ruegamer, Ulledalen, Clark and Jones voting "yes".

**COUNCILMEMBER BROWN:** Councilmember Brown moved to direct staff to obtain an Attorney General opinion on the legality of the franchise fees on City services and arterial fees, seconded by Councilmember Jones. Councilmember Brewster asked about the status of a council initiative that he offered a year ago that asked the City to obtain an Attorney General opinion to determine whether the franchise fees on public utilities were legal. Mr. Bauer said he recalled the initiative having to do with Staff developing a strategy to determine or clarify whether the fees were legal and bring that back to the Council. He said he would verify the status of this request.

Councilmember McDermott noted Deputy Fire Chief Paul Gerber prepared a study charging variable rates for the Fire Department. His study was excellent and would give some background on this subject. Councilmember Brewster noted the arterial fees, the street maintenance fees and possibly the franchise fees on utilities do fit the definition of a fee because they do not supplement the General Fund and are used for a specific purpose. City Attorney Brent Brooks said his office has distributed to the Council an information sheet that defines the difference between a fee and a tax. He said he would redistribute that if necessary.

Councilmember Clark asked what the cost in Staff time would be to develop the brief for the AG opinion. Mr. Brooks said the staff time required to submit a brief would depend on the complexity of the issues and could be approximately 20-25 hours of Staff time. He also noted a prior AG opinion request has been pending for over a year. On a voice vote, the motion failed with Councilmembers Jones and Brown voting "yes".

**ADJOURN** – With all business complete, the Mayor adjourned the meeting at 11:15 P.M.

THE CITY OF BILLINGS:

By: \_\_\_\_\_  
Charles F. Tooley MAYOR

ATTEST:

BY: \_\_\_\_\_  
Susan Shuhler, Deputy City Clerk