

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

July 25, 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, Veis, Boyer, Ulledalen, Clark and Jones.

MINUTES – July 11, 2005. Approved as printed.

COURTESIES

- City Attorney's Office: Melanie Pfeifer, 2005 Outstanding Prosecutor Award. City Attorney Brent Brooks introduced Melanie Pfeifer, an attorney in the City Attorney's office for approximately a year and a half. Ms. Pfeifer has about 17 years legal experience and works primarily with domestic and sexual violence cases. Mr. Brooks presented Ms. Pfeifer with a plaque commemorating the award. Mr. Brooks also introduced Karen Benner and Charlyn Johnson, members of the Victim Witness staff.
- City of Billings: Montana Shares Outstanding Workplace Philanthropy Award. Mayor Tooley introduced Joy McGrath, Executive Director of Montana Shares. Ms. McGrath presented the City with the *Silver Medal* for outstanding workplace philanthropy. The City's participation increased 43% over the past year. Montana Shares provides an alternative to United Way in that it has different member agencies.

PROCLAMATIONS – None

BOARD & COMMISSION REPORTS – Planning Board

- Jim Coons, president of the City/County Board reported the City's membership on the Board is currently filled, but there are several county representative positions vacant. Activities of the Board over the past six months have entailed primarily subdivision plat processing including review of 9 major preliminary plats in the City and 7 major preliminary plats in the county. 684 lots have been placed in the marketplace via final city plats and 339 lots in the marketplace via final county plats. Other accomplishments have been the Northwest Shiloh Plan and 2005 Transportation Plan updates. Several board members assisted in monitoring subdivision and planning legislation during the last legislature. The Board has helped the Staff implement an education program for the Board of Realtors regarding Subdivision Improvement Agreements. It has also helped the Planning Dept. develop its annual work plan. The Board will be participating in the revision of the subdivision regulations. Mr. Coons said the Board is very appreciative of the Planning Staff, a hard working and dedicated group.

ADMINISTRATOR REPORTS – Tina Volek

- Interim City Administrator Tina Volek informed the Council that a ribbon cutting ceremony would be held at 3:00 p.m. on Thursday for the new section of Zimmerman Trail, formerly known as Arlene Corridor. The event will be held north of the intersection of Poly Drive and Zimmerman Trail.
- Ms. Volek noted a clarification on Item M, the ordinance for court administrative fees. The fees pertain only to court-related services.
- Ms. Volek noted that a memo from City Attorney Brent Brooks concerning the Attorney General opinion on maintenance and repair of irrigation canal laterals was placed on the council desks this evening.
- Ms. Volek asked the Council to ADD two items to the agenda this evening: (1) a grant for the Yellowstone County School Preparedness Project (a grant proposal for a crisis management plan for each school) and (2) a resolution relating to the Pooled Special Improvement District Bonds, Series 2005.

LATE ADDITIONS:

(1) Councilmember Brewster moved to ADD the Memorandum of Understanding for the Yellowstone County School Preparedness Project to the agenda, seconded by Councilmember Clark. On a voice vote, the motion was unanimously approved. The item was added to the Consent Agenda as Item S.

(2) Councilmember Brewster moved to ADD a resolution relating to Pooled Special Improvement District Bonds, Series 2005; determining the form and details and authorizing the execution and delivery to the agenda, seconded by Councilmember Jones. On a voice vote, the motion was unanimously approved. The item was added to the Consent Agenda as Item T.

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: #1, #10 & #11

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.)

- GREG KRUEGER OF 2815 2ND AVE N, Director of the Downtown Partnership spoke in favor of Items H, J and 11 noting how important these projects are to the Downtown. He said it is commonly known that the first to leave and the last to come back to a distressed area are the developers. To get people and businesses to move back to an area, the opportunity to move forward must be evident. Mr. Krueger said “great projects don’t make the downtown great, great downtowns look for great projects.” Sandstone Towers is a great project, is what the downtown has been looking for and now is the time to say yes to it.
- JOE WHITE OF 926 N. 30TH ST., spoke on the Sandstone Development. He urged the Council to delay the project to resolve outstanding issues and to designate areas for low-income subsidized housing.
- ERNIE DUTTON OF 2046 MARIPOSA LANE, said he supports the Sandstone project. Mr. Dutton said the downtown does not need more public and commercial projects; it needs a 24-hour community in the downtown to discourage vandalism, etc.

The project will increase the tax base and parking downtown and is an infill project. It will also provide much-needed upscale housing for 40 families with sufficient disposable income to have a vested interest in the downtown area and its revitalization. He urged the Council to support the project.

- MICHAEL BURKE OF 2101 LOCUST, said his firm is the architect on the Sandstone project. The firm has won numerous design awards (St. Patrick's Co-Cathedral) and is known for many notable projects in the community, such as Walker's Grill and the Securities Building. He urged the Council to support the Sandstone project that will enhance the downtown area.
- SHELBY WALDRON OF 1440 TETON said he is the realtor that has been assisting Harrison Fagg to market the residential units in the Sandstone project. The public response has been tremendous. He reminded the Council that 50% of the units must be pre-sold before the project is built, substantially lowering the risk to the City. Mr. Waldron noted there is a need and a market for upscale housing in the downtown.
- LISA WOODS OF 2815 2ND AVE. N, said she is the director of the Downtown Billings Assn and is speaking on behalf of the downtown merchants. Merchants are excited about the Sandstone project because it will keep people downtown and opens possibilities for expanded business hours. She said a 24-hour community is desirable in the downtown area. The increased investment and commitment in the downtown will only make the heart of downtown and the downtown merchants stronger.
- DAVID BOVEE OF 424 LEWIS AVE said he is not opposed to the Sandstone project but did not believe the City should be giving away property to private developers who are building expensive housing. He says he does not support giving free property to the wealthy, as he does not see the benefit to the general public.
- RANDY ROBERTSON OF 3127 EDMOND STREET said he is a real estate appraiser. He said he supports the Sandstone project and believes it is a good project that will accomplish many good things, but it is his understanding that the financial analysis for the project was done by an uncertified appraiser. He said this should be a concern for the City. He said he does not support the project if it continues in its present state.
- HARRISON FAGG OF 1414 MYSTIC DRIVE said he has been trying to answer the Council's questions and concerns for the past 3 weeks. Mr. Fagg said the only subsidies that benefit the purchasers of the project are the land – the land from the City for a parking lot and his land for residential housing. He said his property is vacant, benefiting no one and that could bring at least 40 people into the downtown community. He urged the Council to make a decision on the project this evening. In answer to the low-income concern, Mr. Fagg said the units priced at \$178,000.00 were geared toward starter homes for young business people. He said the realtors advised there is a big market for this group of buyers. He also noted that the appraiser is a recognized appraiser that did a very credible job. If that concern would hold up the project, another appraiser could be utilized. Mr. Fagg said this project is a long way from having all the answers, but he is available to work with the Staff to answer those questions. The completion of this building will bring a real revitalization to the downtown, he added.
- SUSAN PLATH OF 415 N. 30TH STREET said she represents Billings Public Schools. She spoke on the grant for the Yellowstone County School Preparedness Project,

noting it is for a crisis management plan for the forty-one (41) schools in Yellowstone County. The plan includes training, work sessions and mock drills involving many agencies such as the Fire Department, Police and Sheriff's Departments, and mental health centers. They are asking the Council's endorsement of the project so that the Police and Fire Departments can participate and assist with coordination of the training drills and threat assessment. She explained the funding and noted there would be a 2% administration fee paid to the School District. Interim City Administrator Tina Volek noted that both Police Chief Archer and Fire Chief Jochems both agree this is a necessary project and note that their participation has already occurred. This memorandum of understanding formalizes the process that has been in place. Councilmember Jones expressed concern for the fact that City departments will not be reimbursed for City costs incurred in the program. Fire Chief Marv Jochems said this is an important program and after discussions, he is comfortable that this program will not stretch the resources of the Fire Department unreasonably.

CONSENT AGENDA:

1. A. Mayor's Appointments:

Action delayed from 7/11/05.

	Name	Board/Commission	Term	
			Begins	Ends
1.	Stephen Eliason	Animal Control	07/01/05	12/31/09

B. Bid Awards:

(1) **W.O. 05-03, 2005 Street Maintenance Contract #2.** (Opened 7/12/05). Recommend JTL Group, Inc., \$1,045,303.04.

C. Amended Agreement for Billings Police STEP OT grant from the Montana Dept. of Transportation, (MDOT), State Highway Traffic Safety Contract 2005-08-02-17 and 2005-13-01-17, \$8,500.00 increase.

D. CTEP Project Specific Agreement for *Big Ditch Trail*, a continuation of the Heritage Trail on the west side of the Shiloh Underpass, \$135,169.00 CTEP grant, \$20,951.00 local match.

E. Approval of Landlord's Consent for transfer of Commercial Ground Lease for Communication Equipment Site Lease from 3 Rivers PCS, Inc. to MTPCS, LLC for a site at the Billings Regional Landfill, \$5,000.00 annual ground rental and use fee.

F. Storm Drain Easements, W.O. #04-31: Gold Dust Drainage:

- (1) Jeff and Rosetta Glover, \$0.00
- (2) Robert L. & Helene N. Knight, \$0.00
- (3) Dennis W. & Deanna J. Rudolph, \$0.00

G. W.O. 04-12: Acceptance of Warranty Deed from Kenneth J. Rolle for right-of-way for construction and maintenance of Alkali Creek Road improvements, \$0.00.

H. Approval of Two (2) Tax Increment Fund Grant Awards for SoNoMa Development Venture, L.P., 2915 2nd Avenue South, (1) \$60,000.00 for housing and (2) \$2,400.00 for parking.

I. Acknowledging receipt of petition to annex #05-07: an undeveloped 172-acre parcel located east of the Ironwood Subdivision along Molt Road between the Yellowstone Country Club and the Rims, described as Tract 1, C/S 3030, GSK Partners, LLC petitioner and setting a public hearing for 8/8/05.

J. Resolution of Intent 05-18309 to Create a Downtown Business Improvement District (BID) and setting a public hearing for 8/22/05.

K. Approval of Sale of surplus Fire Apparatus, 1985 Pierce Arrow Quint to the Columbus Volunteer Fire Department, \$34,000.00.

L. Street Closure: Powder Horn Lounge Fundraiser for Montana Troops, Foote Street from Simpson Street to Frontage Road, 11:00 am to 6:00 pm, Sunday, August 7, 2005.

M. Second/final reading ordinance 05-5334 amending BMCC by adding Sections 10-401 through 10-403; providing for the assessment of administrative fees by municipal court as part of the disposition of all citations, criminal and traffic complaints, and time payment contracts.

N. One-year extension of Final Plat for Hogan Homestead Subdivision, Amended Plat of Lot 4A, Block 5 of the Amended Plat of Lots 1 and 4, Block 5.

O. Final Plat of Bishop Fox Subdivision.

P. Final Plat of Country Homes Subdivision, Amended Lot 6, Block 1.

Q. Final Plat of Parkland West Subdivision, 6th Filing, Amended Plat of Lot 3, Block 10.

R. Bills and Payroll.

(1) June 30, 2005

LATE ADDITIONS:

S. MEMORANDUM OF UNDERSTANDING for the Yellowstone County School Preparedness Project.

T. RESOLUTION 05-18314 RELATING TO POOLED SPECIAL IMPROVEMENT DISTRICT BONDS, SERIES 2005, determining the form and details and authorizing the execution and deliver.

(Action: approval or disapproval of Consent Agenda.)

Councilmember Brown separated Items B and D from the Consent Agenda. Councilmember Clark separated Item S from the Consent Agenda. Councilmember Ulledalen moved for approval of the Consent Agenda with the exception of Items B, D and S, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

Councilmember Ulledalen moved for approval of Item B of the Consent Agenda, seconded by Councilmember Brewster. Councilmember Brown noted there was only one bidder and asked if there are no other companies in the area that can bid this contract. Director of Public Works Dave Mumford said there are other companies that can bid this project, but contractors are busy at this time and not able to commit their resources to this job or their bonding capacity is not available if the job is awarded to them. On a voice vote, the motion was unanimously approved.

Councilmember Ulledalen moved for approval of Item D of the Consent Agenda, seconded by Councilmember Brewster. Councilmember Brown said he liked the idea of using ditch banks for trails, but he would like to see some assurances that problems with the private property owners will not negatively impact the project. Ms. Volek said this project involves dedicated parkland. Councilmember McDermott noted that the Staff memo mentioned a possible loss of CTEP funding if this project is not approved. She said CTEP funding stays in Yellowstone County and would move to another project if this project is not approved. On a voice vote, the motion was unanimously approved.

Councilmember Ulledalen moved for approval of Item S of the Consent Agenda, seconded by Councilmember Brewster. Councilmember Clark said this is a good project, but noted the size of the grant should allow monies to be available to the Police and Fire Departments. He said the School District is receiving a 2% fee but asking the City to do all the work. Councilmember Brewster said it would have been better if the School District waived their fee and put that money back into the program as a sign of good faith. On a voice vote, the motion was unanimously approved.

REGULAR AGENDA:

2. PUBLIC HEARING AND RESOLUTION 05-18310 approving the filing of a Federal Transit Administration Section 5309 Discretionary Grant. Staff recommends authorization to file the grant and to execute a grant agreement with the Department of Transportation/Federal Transit Administration. (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 Clark moved for approval of the Staff recommendation, seconded by Councilmember Brown. On a voice vote, the motion was unanimously approved.

3. PUBLIC HEARING AND FIRST READING ORDINANCE extending the boundaries of Ward IV to include the recently annexed properties in Annex #05-04: a 10.52-acre parcel located near the northeast corner of Grand Avenue and 60th Street West intersection, known as Tract 123 of the Sunny Cove Fruit Farms property, aka the proposed Foxtail Village Subdivision, 2nd Filing. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

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

4. PUBLIC HEARING AND RESOLUTION 05-18311 creating Park Maintenance District #4029 to include Cottonwood Grove Subdivision. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

Acting Parks, Recreation and Lands Director Gene Blackwell said Cottonwood Grove Subdivision is located on 54th Street West and Grand Avenue. The creation of the Park Maintenance District is part of the Subdivision Improvement Agreement and is covered by waivers of protest. He said there were no comments received during the public comment period. Councilmember Brown said it appears that the City has too many parks to maintain from the General Fund and asked if it would be more appropriate to require cash-in-lieu payments instead. Mr. Blackwell said there was a cash-in-lieu payment from the Cottonwood Grove Subdivision for Cottonwood Park that is directly to the north across Colton Blvd. The maintenance district is being created to fund the storm water detention area and street landscaping along Colton Blvd. and 54th Street West.

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.

5. PUBLIC HEARING AND RESOLUTION 05-18312 vacating Holfeld Lane at a cost of \$4,547.50. Blake Laughlin, petitioner. 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 McDermott moved for approval of the Staff recommendation, seconded by Councilmember Gaghen. Councilmember Brown asked what the cost was to the City for the property. Ms. Volek said the property was dedicated with the plat at no cost to the City. Councilmember Boyer noted she would abstain from voting on this issue because of a personal interest. On a voice vote, the motion was unanimously approved with one abstention. Councilmember Boyer abstained.

6. PUBLIC HEARING AND RESOLUTION 05-18313 disposing of City owned property described as Lots 13-19, Block 231, O.T. and located on the 800 Block of South 28th Street. Staff recommends that Council (1) direct Staff to re-bid the

property, or (2) consider a donation of ~~donate the property to homeWORD. (Action: approval or disapproval of Staff recommendation.)~~

Planning Director Ramona Mattix said bids were solicited for affordable housing on this City-owned property. A non-responsive bid from homeWORD of \$0 was received. homeWORD is a non-profit agency that desires to construct multi-family affordable housing at this site. The property is 24,000 square feet in size containing six lots that could generate revenue of approximately of \$75,000 based on past sales experience. She said because the legal department has determined that a \$0 bid is considered non-responsive, the Council may consider two options: 1) rebidding the property, or 2) donate the property to homeWORD.

The public hearing was opened. HEATHER MCMILIN, DEVELOPMENT MANAGER FOR HOMEWORD, 2722 3RD AVENUE N., thanked the Staff for considering this potential donation of land to homeWORD for affordable housing. This shows the City's commitment to affordable housing and a community-oriented development project.

LYNETTE DIAZ, NO ADDRESS GIVEN, said she is the administrator for homeWORD. She said the donation of land to the project will lend to long-term affordability of the units that are planned. She asked for support for the donation.

JIM RONQUILLO, CHAIRMAN OF THE SOUTHSIDE TASK FORCE, said he lives across from the subject property that has been vacant for 15 years. He asked the Council to consider donation of the land. He said the housing will be a beneficial project for the community. Mr. Ronquillo noted that homeWORD has done a beautiful job on renovating the Acme Hotel for affordable housing.

There were no other speakers. The public hearing was closed. Councilmember Brewster moved for approval of donation of the property to homeWORD, seconded by Councilmember Boyer. Councilmember McDermott said she is getting concerned about the frequent donation of City-owned property on the Southside. If this continues the Revolving Fund won't be "revolving" much longer. She said this is an extremely important project, but she would like to see a policy on land donations move forward for future consideration. Councilmember Gaghen agreed with Councilmember McDermott and noted that homeWORD is a well-run program that has successfully completed several quality projects for low-income housing.

Councilmember Ruegamer asked how the City acquired the property. Ms. Volek said this property was acquired in 1994 for redevelopment using tax increment resources at a cost of \$23,533. Councilmember Ruegamer shared the concerns about giving away land that represents taxpayer dollars. He added that the City has lost eleven (11) years in opportunity costs. Ms. Mattix confirmed that this property is within the Tax Increment District.

Councilmember Ulledalen asked how many units this project would represent. Ms. McMilin said the project is just entering the design phase, but it could be between 10-16 units. She said homeWORD is planning to invite interested neighbors and the Council to a planning and design session on August 12-13 at Our Lady of Guadalupe Church to determine what type of design is desired.

Councilmember Ulledalen asked what has happened to the supply of low-income rentals in the community. Mr. Ronquillo said this property originally housed six (6) rentals and has been vacant since the City demolished the buildings.

Councilmember Brown asked what the total cost of the project is and would it involve private funding. Ms. McMilin said the budget is not finalized at this point, but most of the homeWORD projects are a balance of public and private funding. Because of the City's donation of land, funding from affordable housing programs, community investment banks, AHP funds can be accessed because the commitment of the land generates funds from other sources. She added those funds are spent on local architects, contractors and suppliers within the City. The donation of the land also has a direct affect on reduced rent amounts. Ms. McMilin noted the land involved in the project in Missoula was sold to homeWORD at a discounted rate.

Councilmember Brown asked if the subject property would be non-taxable. Ms. McMilin said homeWORD is a non-profit agency but would consider a payment-in-lieu of taxes.

Councilmember Jones said he agrees with Councilmember Ruegamer's comments, but noted that any payment for the land would go back to the Tax Increment District. He said he will support this motion, but does not like the idea of giving away City-owned property.

Mayor Tooley said the TID was extended south to include this property which was considered blighted and, as an entrance to the City, in need of redevelopment. It became a goal of the City to acquire these blighted properties when they became available for redevelopment possibilities. The properties have not always been given away, but have been sold for the development of Howard Johnson's, the Chamber of Commerce, the Women's Prison and the Labor Temple. Slowly the blighted area has been remediated. He noted this particular property has been City-owned since 1994, allowing the Council to consider donating it for a worthwhile cause.

Councilmember Brown said the City should take advantage of the payment in lieu of taxes offer. Ms. Volek said the PILT offer would have to be negotiated after consideration of the donation of land.

Councilmember Brewster noted this property will generate Street Maintenance Fees, Storm Water Maintenance Fees and Arterial Construction Fees. These are contributions that are not being made on this property currently. He said this project will bring people into this redeveloped blighted area. He added that revenue from the sale of this land would go back into the TID that would be given to another project.

On a voice vote, the motion was approved with Councilmembers Jones and Brown voting "no". (See Reconsideration at the end of the meeting. Donation of the land was reconfirmed during reconsideration.)

7. PUBLIC HEARING AND RESOLUTION disposing of City-owned property described as Lots 1-8, Block 226, O.T. and located on the 700 Block of South 27th Street. Staff recommends that Council re-advertise a request for proposals. (Action: approval or disapproval of Staff recommendation.)

Planning Director Ramona Mattix said the City received interest from the Meineke Car Center on this property. When the City did not receive a bid, it found that the owner was in the hospital and was not able to respond to the bid. She said the Staff is asking that the City be allowed to rebid the property.

The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Brown moved for approval to re-advertise a request for

proposals, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

8. PUBLIC HEARING AND SPECIAL REVIEW #789: a special review to permit the location of a restaurant grease recycling plant and transfer facility located at 800 Minnesota Avenue in a Heavy Industrial zone described as Tract 1B of C/S 1037 Amended. Baker Commodities, owner; Dave Hurlburt, Ackerly-Hurlburt, agent. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)

Planning Director Ramona Mattix said this special review is located on Minnesota Avenue across from A-1 Distributors with MetraPark to the north. The facility that will be constructed will prohibit odors or steam to emit from the plant. She said there were a number of comments from stakeholders at the Zoning Commission meeting. The unfortunate incident involving the buffalo carcasses that impacted the neighborhood was mentioned. She said this incident precipitated the special review.

Ms. Mattix said the Zoning Commission is recommending conditional approval with the following conditions:

1. The special review approval shall be limited to Tract 1B of C/S 1037.
2. The transfer station for raw materials – animal carcasses - shall be controlled at all times with either a closed and locked gate or staffed when open to receive materials. “No dumping” signs shall be posted at the entrances and exits to the property.
3. All animal carcasses shall be stored in an enclosed building or container until shipped off site. No animal carcasses shall be stored in the open or on the ground. The operator shall employ all available means to control flies and odors.
4. All used grease and oil brought to the site shall be stored in water tight containers. Barrels or drums shall have tight fitting lids.
5. Baker Commodities shall obtain all necessary and required permits to access public utility services including water supply and waste water discharge to the public sewer system.
6. The operator of the site shall appoint an individual to act as a contact person and complaints about failure to comply with these conditions shall be directed to that person in writing as a first step in resolving the problem. Failure to reasonably address the complaint will be considered a violation of the zoning regulations and enforcement of the regulations and conditions shall be as set forth in Section 27-1604 of the Billings Montana City Code.
7. The development of the site shall be in substantial conformance with the submitted site plan dated 6/1/2005.
8. All other limitations on expansion or changes in operations shall apply in accordance with Section 27-613(c) of the Billings Montana City Code.

****NOTE**** Approval of this Special Review does not constitute approval of a building permit, sign permit or fence permit. Compliance with all applicable local codes will be reviewed at the building permit level. This application is for a Special Review as noted above and no other request is being considered with this application. The Planning Department points out that the use and

development of the property must be in accordance with the submitted site plan.

Councilmember Boyer asked what would happen if odors were to be found coming from the plant. Ms. Mattix said the owners would be subject to the zoning code regulations and if any of the conditions are violated, they would be fined and required to go to court. The business would not be shut down. Two conditions address the odor issue, she added.

Councilmember Brown asked if the facility would be rendering animals there. Ms. Mattix said they would not. The animals would be sent to a facility in Spokane, WA. Councilmember Brown asked what the City had to gain from this facility. Ms. Mattix said several restaurants will benefit from the facility picking up and recycling their restaurant grease. There currently is no such service.

Councilmember McDermott asked what is meant by raw materials and how would the City control future incidents like the one with the buffalo carcass. Ms. Mattix said any storage activities must be within an enclosed area. The buffalo carcasses were left out in the open. She noted that it is difficult to control what is "dumped" on a property, such as happens at the landfill. Councilmember Clark asked if a fence with a locked gate would discourage unauthorized dumping. Ms. Mattix said there are plans for fencing and the Council could make that a condition.

The public hearing was opened. DICK HINTHORNE, 15615 158TH AVENUE SE, RENTON, WA, said he is the General Manager for Baker Commodities. He said he is responsible for rendering plants in Seattle and Tacoma and five transfer facilities similar to the one proposed in Billings. The firm is an 80-year rendering firm based in southern California. He said the company has vast experience in facilities that process this particular product and it may be one of the oldest recycling businesses traditionally where tallow was used for making soap. He said the meat and bone meal from the rendering process goes into a protein supplement for animal feed, with the restaurant grease providing the animal energy. The facility here will only recycle 3-4 dead animals a week through the Spokane facility. It will not be in their best interest to allow dead animals to stay at this facility. Processing the restaurant grease is their primary goal, then selling the finished product in the immediate area to avoid transporting it out of the area. He said this amounts to 40 tons per week in Billings alone. Mr. Hinthonre said the restaurant grease is currently being reprocessed and sold to several areas as "energy" feed for different animals such as chickens and hogs. He noted that dead animals come from farms, feedlots and dairies and amount to 1 or 2 per week. These animals are shipped out as soon as they can accumulate a load, usually within 24 hours. He said the company also services many meat facilities in the City, picking up their meat scraps and adding that to the load. This is a very small part of their business.

Regarding the fencing issue, it is the company's plan to erect a fence, but he noted that there is a tendency for people to drop off dead animals outside of the gate. He said those animals would be removed as soon as possible. Ms. Volek noted the City is also a victim of dead animal drop-offs at the well-gated landfill facility. Councilmember Jones asked what effect a one-year approval would have on the business. Mr. Hinthonre said the company would have to re-evaluate whether they would want to invest the money it would take to construct the costly facility if it would only be for one year. Councilmember Ulledalen asked about the history of the

rendering plant. Mr. Hinthorne said the previous owners left for financial reasons only because the rendering facility could not charge enough money to "make it work". A few years later Baker Commodities was contacted to discuss processing the raw material in Billings. It has taken four years to get to this point. He noted there have been no incentives or reduced rates/costs for their company to stay in Billings. Councilmember McDermott asked if their company was offered the opportunity to find another site. Mr. Hinthorne said realtor Ernie Dutton assisted the company in reviewing every property in the immediate area that had the amenities they required. He said there is no other heavy industrial property that meets their specifications.

JOE WHITE, 926 N. 30TH STREET, said he is encouraged by such a project. The City needs a rendering plant because of the active livestock industry and wildlife issues. He suggested issuing the conditional approval with review by agencies involved in such concerns as agriculture, food safety and wildlife. He said the facility poses dangerous and serious conditions however because of its close proximity to urban areas.

J.T. SMITH, BEARTOOTH R C & D, 604 W. FRONT STREET, JOLIET, MT, said the agency services a five-county area regarding economic development and has been working on this project for 4 years. He said there is a need for this kind of facility that deals with waste products from a value-added agricultural industry. He noted that Barb Butler, the City's Environmental Compliance Coordinator, said there are between 12 and 20 carcasses a month dropped off at the landfill. The facility charges between \$50.00 and \$75.00 per carcass. Mr. Smith said Baker Commodities will be charging \$25.00 per carcass and is willing to consider a pickup service. This provides a great service to the area, bringing stability to disposal issues and providing the infrastructure to support other agriculture related industries. Mr. Smith said this is a million-dollar investment in the economy that will bring jobs to the area. He asked the Council to not base their decision on one bad incident and noted the conditions that have been agreed upon to rectify the problem. Baker Commodities is committed to following through with the conditions and willing to be good community member.

MARY WESTWOOD, 2808 MONTANA AVENUE, said she has mixed feelings about this development. She understands the loss of the rendering plant to the community as an essential service to an agricultural state. She also is aware of the many uses for recycled cooking grease, but she is concerned about the impact this facility will have on the downtown and the area east of downtown. Ms. Westwood supports a conditional approval with a review in a few years to assess the extent of the effects to the area including air quality issues. She said there are other locations that should be considered, but if the facility is in this area it must be tightly controlled. Speaking as a resident that lives close to the railroad tracks, she expressed concern for the odors from dead animals that will emit from the boxcars as they are being loaded. She asked the Council to consider their decision carefully.

ERNIE DUTTON, 2046 MARIPOSA LANE, said he assisted the owners in acquiring the property. He said the area around the Conoco Refinery is the only Heavy Industrial zoned property available for this type of facility. Other businesses in the area are doing a lot of "cooking", whereas Baker Commodities won't be using that process. He noted the unfortunate incident and said the owner noted that this has happened only once in his twenty-five years in the business. This is an agricultural-based community

and this company has not created the associated problems, but desires to operate a facility that represents a potential solution by shipping the dead animals out of the area as soon as possible. Mr. Dutton said this company has years of responsible experience and are recognized professionals in this industry.

There were no other speakers. The public hearing was closed. Councilmember Ruegamer moved for approval of the Zoning Commission recommendation with conditions, seconded by Councilmember Jones. Councilmember Brown asked who will enforce the conditions. Ms. Mattix said Code Enforcement Officers will assess and inspect the conditions during the building permit process and also will respond to complaints. Mr. Hinthorne noted that rendering companies are inspected annually by the Food and Drug Administration.

Councilmember Clark amended the motion to add the condition that the property be fenced with a locked gate, seconded by Councilmember Ulledalen. On a voice vote, the amendment was unanimously approved.

Councilmember McDermott said she is still not convinced that this is the appropriate area for this facility. The City is creating a potential problem, noting that both task forces in the area have requested that this special review not be approved because those are the neighborhoods that will be directly affected. Councilmember Brewster said this if one of those businesses that nobody wants in their areas. He said he did not think a more appropriate area can ever be found, but with the conditions there is enough protection to the City to make this a good business for the community. Councilmember Ruegamer said the technologies have changed and he is certain there are appropriate controls in place. On a voice vote, the motion as amended was approved with Councilmembers Gaghen and McDermott voting "no".

9. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE
#760: a zone change from Residential Manufactured Home to Highway Commercial
on property described as Tract 2, C/S 529 and located at 2202 Main Street.
Terrance Luff, owner; Jim Carroll, Downtown Realty, agent. Zoning Commission
recommends approval of the zone change and adoption of the determinations of
the 12 criteria. (Action: approval or disapproval of Zoning Commission
recommendation.)

Planning Director Ramona Mattix said this zone change request has Highway Commercial zoning on two sides and Residential Manufactured Home on one side. The property is located on Main Street in Billings Heights with a manufactured home and a non-conforming barbershop on site. The zone change would allow the barbershop to be conforming and the manufactured home to remain in place as a non-conforming use.

Ms. Mattix said the Zoning Commission is recommending approval based on the 12 review criteria including:

- 1) Highway Commercial access
- 2) Frontage on Main Street with existing access
- 3) Any redevelopment of the property would require landscaping and screening of adjacent residential uses to the rear.

Councilmember Brown asked if there were any protests to the zone change. Ms. Mattix said there were none.

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

10. 2005-2009 TRANSPORTATION IMPROVEMENT PROGRAM (TIP). Staff recommends approval of the Transportation Improvement Program. (Action: approval or disapproval of Staff recommendation.)

Transportation Planner Scott Walker said this is a yearly document that is brought to the Council for approval. This year the document is tracking projects that have been considered in previous years. The Montana Department of Transportation has also inserted several new projects. He said some of the projects include: Airport Road, Bench Boulevard and 6th Avenue, Shiloh Road, North By-Pass, Midland Traffic Signal, two I-90 overlays, Rimrock Road (Shiloh Road to 54th Street West), a variety of railroad crossing improvements and electrical and safety projects, and transit projects. Mr. Walker said this is basically a fiscal-tracking document that monitors the projects and their associated costs. The Staff is asking for the Council's recommendations to the Policy Coordinating Committee (PCC), which will hold a meeting on August 1st. He added that the Planning Board and the County Commissioners will review and make their recommendations tomorrow.

Councilmember Boyer moved for approval of the Transportation Improvement Program (TIP) and forwarding the recommendation to the Policy Coordinating Committee (PCC), seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

11. RESOLUTION Approving Development Agreement with Downtown Billings Investors, LLC for the redevelopment of Lots 5-10, Block 92, O.T. (Sandstone Downtown Redevelopment Project), providing a subsidy of \$450,000.00 for land, \$2,000,000.00 in Tax Increment Funds (TIF) and \$1,722,500.00 in Parking Funds and authorizing the Mayor to execute said agreement. (Action delayed from 6/27/05). Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

Deputy City Administrator Bruce McCandless provided an update on this project. He said there have been extensive discussions with the bond counsel concerning the Tax Increment District and the issuance of the tax increment bonds. He said there are a number of issues and details that need to be worked out concerning those issues, but the Staff does not think there are any issues that are insurmountable. The Council has several options: 1) approve the development agreement with conditions, 2) request the agreement be brought back to the Council after the details are worked out (approximately 4 weeks), or 3) reject the development agreement.

Councilmember Brewster asked if there is a sense of when the issues the bond counsel has concerns with will be finalized. Mr. McCandless said the developer's attorney has been unavailable for several weeks. He said he is confident that the details can be worked out in four weeks time. It appears the tax increment funds will be used to finance the public portion of the parking for the project and any parking funds would be used to finance the parking units that are associated with the condominium units. Other issues the

bond counsel has asked about are: 1) how the project will be bid, 2) will the bank have a lien against the City's portion of the project, 3) timing of the issuance of the bonds – i.e. at what stage of the project, and 4) forming language that would address these issues. Mr. McCandless said the reason for using the tax increment funds on the public parking portion is due to the tax increment statutes that indicate those type of funds must be used for "public" improvements. The bond counsel is very narrowly defining what public improvements are, which in their opinion is a public facility that is owned and operated by the City. Parking that is either long-term lease or sold to owners of the residential or commercial units would not qualify because it is not operated for the benefit of the public.

Councilmember Ulledalen moved to delay action for four (4) weeks to the August 22, 2005 meeting, seconded by Councilmember Boyer. Councilmember Ruegamer agreed with the delay. This is a \$17 Million deal and he will not vote for approval until every question is answered. He expressed concern for the lack of a traffic study and not knowing the bank's expectations and requirements for how their loan will go into the project. He said he is concerned that the City is subsidizing the project with taxpayer dollars and assuming risk. He said the City should not be doing both. Mr. McCandless said the traffic accessible study is an expensive study and the developer will not proceed with that study until the Council approves the Development Agreement. A preliminary finding from an engineering company that the City uses indicates there will be no significant impact on the 27th Street traffic. The maximum number of vehicular traffic would not exceed the number of spaces in the garage, which is approximately 215. Assuming those vehicles make several trips a day out of the garage, that would only add 1000 vehicle trips to 27th Street, not a significant impact. He said the City would work with the engineering firm to mitigate any impacts that the entering and exiting vehicles may have on 27th Street.

Councilmember Boyer said the four week delay is a prudent action for the Council because this should be "done right." Councilmember Brewster agreed that a delay to address the issues with the bond counsel is the correct thing to do before approving the Development Agreement. It also gives a certain comfort level to the City; the more questions that are answered before the decision is made, the better decision the Council will make.

Councilmember McDermott said she does not support the project and is ready to take a vote this evening. Councilmember McDermott made a substitute motion to deny approval of the Development Agreement, seconded by Councilmember Brown. Mayor Tooley said it is a community value and goal to revitalize the downtown area. Public monies have been used extensively for public housing, including lower income housing in the downtown area. He said it is very important and part of the strategy for the downtown area that mid to upper-level housing is available. Lower income housing properties create a negative affect on the downtown. He said this project is the perfect project to bring the upper-level population to the area. Councilmember Brewster said the City has a history of large subsidies to almost every kind of downtown property through tax increment funding; it is not a new concept. Councilmember McDermott said while it is not a new concept, the City has never spent so much money on such a risky development. Councilmember Gaghen expressed concern for the amount of Parking Fund resources that are required for this project. On a show of hands, the substitute motion failed 5-6 with Councilmembers

Jones, Ulledalen, Brown, McDermott and Gaghen voting "yes" and Councilmembers Brewster, Ruegamer, Veis, Clark, Boyer and Mayor Tooley voting "no".

On a voice vote on the original motion to delay, the motion was approved with Councilmember Brown voting "no". Action was delayed to 8/22/05.

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

- HELEN GASICK OF 130 BUENA VISTA asked the Council if the grass and weeds could be cut and the fence repaired in Mystic Park. She distributed pictures of her concerns. Councilmember McDermott noted that Mystic Park is a natural park, but it is falling into some disrepair. Ms. Volek said this land was acquired through expansion of the water plant and is not officially a park. Public Works Director Dave Mumford said mowing of that area and fence repair is slated to be done soon.
- JOE WHITE OF 926 N. 30TH ST said he has been reading the newspaper about matters concerning Cobb Field. He suggested seeking funding from major league baseball to assist in the Cobb Field project.
- MARY WESTWOOD OF 2808 MONTANA AVE spoke on the issue of selling, donating or disposing of public property. She said she is concerned about the Council's practice of giving away City property to developers who are not providing services the City needs. She thinks it is the developer's job to take the risks and they should not be assured of public funds. She urged the Council to review the practice via an initiative. Ms. Westwood said she is also concerned about the use of Tax Increment funds. She understood those type of funds are for developments that would not have occurred without them. This has not always been the case. Some developments could have occurred without the funding and other developments should not have even occurred. Ms. Westwood said the Council should consider these issues when deciding on development.

COUNCIL INITIATIVES

- COUNCILMEMBER MCDERMOTT: Councilmember McDermott moved to direct staff to draft a policy establishing guidelines for selling and/or donation of City-owned property regardless of how the City acquired the land, seconded by Councilmember Ruegamer. Councilmember Clark said a Work Session on this issue should be scheduled to get the Council's input and desire for disposition of City-owned properties. Councilmember Ulledalen said this issue could be incorporated with the goal-setting request to document the properties owned by the City, how they have been acquired and then reviewed for possible disposition. On a voice vote, the motion was unanimously approved.
- COUNCILMEMBER RUEGAMER: Councilmember Ruegamer moved to direct staff to develop a proposal to have the City Attorney report to the Council instead of the City Administrator, seconded by Councilmember Ulledalen. Councilmember McDermott said she did not think that was legal according to the Charter. Mayor Tooley said the Charter would have to be amended to accomplish that. Councilmember Brewster asked City Attorney Brent Brooks if he has always reported back to the Council on

issues that the Council has asked him to research. Mr. Brooks said he has always strived to do that, noting the memo on the Councilmember's desk this evening regarding the opinion on the lateral ditch concerns of the previous meeting. Councilmember Ruegamer said many problems with the Bauer/Tussing action could have been avoided and added pressures on the City Administrator would be relieved with this new configuration. Councilmember Boyer said the Charter is currently under some scrutiny and an amendment at this time would not be appropriate. Councilmember McDermott reminded the Council that the voters said "no" to a Charter review less than a year ago. Councilmember Brewster said it is inappropriate for the people who are regulated through the Charter (the Council) to initiate changes. Councilmember Gaghen said there has always been a completely open relationship between the City Attorney's Office and the Council and she does not support the initiative. Mr. Brooks noted there are rules on the constraints of his office relating to the advice he can dispense and he could be disciplined or disbarred by the state if he does not yield to those rules. On a voice vote, the motion failed with Councilmembers Brown and Ruegamer voting "yes".

- **COUNCILMEMBER BROWN:** Councilmember Brown moved to direct staff to accept any payment-in-lieu-of-tax (PILT) offers, seconded by Councilmember McDermott. Councilmember Boyer said this is a moot point because it is included in a previous initiative relating to a land donation policy. On a voice vote, the motion failed with Councilmembers Brown, Clark and Jones voting "yes".

RECONSIDERATION:

Councilmember Clark moved to reconsider Item #6, seconded by Councilmember Boyer. On a voice vote, the motion was unanimously approved.

ITEM 6 RECONSIDERATION: RESOLUTION 05-18313 disposing of City owned property described at Lots 13-19, Block 231, O.T. and located on the 800 Block of South 28th Street. Staff recommends that Council (1) direct Staff to re-bid the property, or (2) consider a donation of the property to homeWORD. (Action: approval or disapproval of Staff recommendation.)

Councilmember Jones amended the motion to have Staff negotiate with homeWORD for a Payment In Lieu of Taxes (PILT), seconded by Councilmember McDermott. Mayor Tooley noted that the reconsideration would "throw out" approval of the donation of property to homeWORD. Councilmember Brown noted that homeWORD has offered to consider a PILT and he suggested the Staff negotiate that offer. Ms. Volek suggested this item be continued so that approval of the donation of land would include the negotiation of the PILT. Mr. Brooks expressed concern that the applicant is not currently present to be heard regarding this new consideration. Councilmember Jones withdrew his motion and Councilmember McDermott withdrew her second.

Councilmember Jones moved to continue discussion on August 8th, seconded by Councilmember Boyer. Councilmember Clark expressed concern that the advice the Council received was that the PILT condition could not be added and is now advised that it can be added. Ms. Volek said the concern relates to proper advertising of the action. Councilmember Gaghen expressed concern for the reversal of tonight's decision without the applicant's knowledge and a tight timeframe to re-advertise the new proposal before

the August 8th meeting. City Clerk Marita Herold confirmed that re-advertising can occur in the required manner prior to the August 8th meeting.

Councilmember McDermott suggested this item remain as previously approved and in the future the Council should establish the negotiation of PILT's as part of the policy for donation of land. Councilmember Clark said he did not understand why the PILT cannot be negotiated after the approval as part of the contract with homeWORD. Ms. Volek said the Council has accepted a \$0 bid and the PILT would change the terms of the bid as it was originally advertised.

Councilmember Veis called for the question, seconded by Councilmember Ruegamer. On a voice vote to stop debate, the motion failed.

Councilmember Jones made a substitute motion to re-advertise a new request for proposal that states the property may be donated or the City may accept another development idea. The motion died for lack of a second. Mr. Brooks expressed concern that the previous decision to approve the donation has not been reversed. Councilmember Ulledalen suggested leaving the action as previously approved and develop a policy for future consideration of this type of action.

Councilmember McDermott made a substitute motion to accept the proposal and donate the land, seconded by Councilmember Gaghen. Councilmember Jones said he does not understand how the Council can accept a non-responsive bid. Mr. Brooks said the ordinance states that to dispose of public property a public hearing must be held that notifies the property owners within 300 feet of the subject property. This has been accomplished. He said he is comfortable that the substitute motion on the floor is fair to the homeWORD folks who were awarded the land after the public hearing.

Councilmember Boyer called for the question, seconded by Councilmember McDermott. On a voice vote, the motion to stop debate was approved with only Councilmembers Jones, Brown and Clark voting "no". On a voice vote for the substitute motion, the motion was approved with Councilmembers Clark, Jones, Brewster and Brown voting "no". Approval of donation of the property to homeWORD was reaffirmed.

ADJOURN – With all business complete, the Mayor adjourned the meeting at 10:02 P.M.

THE CITY OF BILLINGS:

By: _____
Charles F. Tooley MAYOR

ATTEST:

BY: _____

MINUTES: 07/25/05

Marita Herold, CMC/AAE, City Clerk