

# **REGULAR MEETING OF THE BILLINGS CITY COUNCIL**

## **October 11, 2005**

The Billings City Council met in regular session in the Council Chambers located on the second floor of the Police Facility, 220 North 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 Vince Ruegamer.

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

**MINUTES – September 26, 2005** – Approved as printed.

**COURTESIES – NONE**

### **PROCLAMATIONS**

- October 15: White Cane Awareness and Safety Day

### **BOARD & COMMISSION REPORTS**

- Zoning Commission Member Ed Workman said he would be reporting on the activities of the Zoning Commission for the 1/2004 to 9/2005 period. During that time the Commission processed 46 special review requests and 39 zone change requests, including 6 amendments to the Unified Zoning Code. He noted that 56% of the special reviews concerned new or revised liquor license requests. Of the 33 zone changes forwarded by the Commission, 26 were approved and 7 were denied by the Council. The amendments to the zoning code that were considered included: expansion of the Montana Avenue Sign District, 2 separate overlay zoning districts relating to the Shiloh Road Corridor, improvements to the temporary use code, setting standards for utility pipeline transmission and distribution and reviewing definitions and zoning pertaining to limited pharmaceutical manufacturing. Mr. Workman said the Commission met 21 times during the two-year period and held 1 joint meeting with the County. He thanked the Mayor and Council for the opportunity to be a small part of the workings of City government.
- Greg Krueger, Downtown Billings Partnership, presented a brief summary of the First Quarter FY2006 Report for the Partnership's activities. He noted the Partnership is currently managing 56 different tax increment projects, allocating \$1.575 Million in tax increment funds. To date the Partnership has paid out \$141,000 with a value of the projects to Tax Increment District including private contributions in excess of \$10 Million. He said the Partnership is "tracking" at a \$5.74 ratio (\$5.74 private dollars to every \$1.00 of tax increment dollars) currently for this fiscal year.

### **ADMINISTRATOR REPORTS – Tina Volek**

- Acting City Administrator Tina Volek noted that the agreements relating to Item E1 through E3 and a revised recommendation for Item 6 were in the Friday packets. She recommended that the Council separate Items E1, E2 and E3 to allow for an additional staff report regarding the status of the agreements.
- Ms. Volek thanked the Public Works Department for their diligence and prompt action during the recent snow storm and resulting damages. She noted several parks (5) have been designated as drop-off sites for tree branches and debris. She asked the citizens to make use of the park sites, process their tree branches into 4-foot lengths for curbside pickup by the Solid Waste Department, or bring their tree branches to the landfill for disposal. Ms. Volek estimated that the clean-up will take another 3-4 weeks. She noted that 300 vehicles with debris were processed at the landfill the day after the storm.
- Ms. Volek announced there would be a joint City/County meeting at DJ's on Main Street in Laurel at 5:30 P.M., Thursday, October 13, 2005.

**PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: #1, #4, #5 & #6 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.)*

There were no speakers.

**CONSENT AGENDA:**

**1. A. Bid Awards:**

(1) **W.O.99-07\* Lake Elmo Road – Main Street to Hansen Lane, \*Includes Federal Aid Project No. STPE 1099(41), CN5292.** (Opened 10/11/05). Recommend delaying award to 10/24/05.

(2) **SID 1370 Interlachen Drive (Phase 1).** (Opened 9/27/05). Recommend HL Ostermiller Construction, Inc., \$153,481.50 and 60 calendar days.

(3) **Terminal Window Cleaning Services for Billings Logan International Airport.** (Opened 9/27/05). Recommend Skyline Services, \$54,000.00.

(4) **Cascade Pump 20MF and 200 HP Motor for Wastewater Treatment Plant.** (Opened 9/27/05). Recommend delaying award to 10/24/05.

(5) **Hazardous Material Abatement, Building Demolition, Underground Storage Tank Removal and related Construction Activities for the Properties located at 114-116, and 120 N. 26<sup>th</sup> St. (formerly Darryll Apartments & Commercial Space).** (Opened 10/11/05). Recommend delaying award to 10/24/05.

**B. Amendment #2, Professional Services Contract with HDR Engineering, Inc., for additional tasks required by the State Revolving Fund to secure funding via an SRF loan for W.O. 04-14: the Wastewater Treatment Plant Headworks Building Replacement and Improvements Project, \$45,778.00.**

**C. Construction Agreement** with Montana Dept of Transportation (MDOT) for the West Billings-King Avenue Bridge - Federal Aid Project No. BR1010(1).

**D. Software Purchase & Maintenance Agreement** with JP Morgan Sympro Inc for investment management software, \$23,600.00 (\$20,900.00 purchase with \$2,700.00 annual maintenance).

**E. Agreements with Wells Fargo Bank: (Delayed from 9/26/05)**

(1) Sale and Purchase Agreement of existing automatic teller (ATM) site of the City of Billings, \$975,000.00.

(2) Temporary Leaseback Agreement from the City to Wells Fargo, \$1,625.00/month.

(3) Wells Fargo ATM Site Lease of the Park II Garage Space from the City to Wells Fargo, \$2,850.00/month with a 2.5%/year inflator; term: 13 years with an option to renew for two 10-year terms.

**F. Authorization** to solicit bids for eleven (11) used MET Transit buses.

**G. Approval** of Operating Permit for the operation of a flight school by Yellowstone Valley Aviation.

**H. Second/Final reading ordinance 05-5345 for Zone Change #766:** a text amendment to the Unified Zoning Regulations, amending BMCC Sections 27-201 and 27-306, adding a definition of limited pharmaceutical manufacturing and setting limited pharmaceutical manufacturing uses allowed in Highway Commercial and Controlled Industrial Zoning Districts.

**I. Second/Final reading ordinance 05-5346** expanding the boundaries of Ward II to include recently annexed property in Annex #05-08, described as: a 33.71 acre parcel described as Tracts 1 and 2, C/S 3190, located at 120 Wicks Lane, Ernest and Francisca Shaw, petitioners.

**J. Second/Final reading ordinance 05-5347** amending Section 11-102; providing for new Council Ward boundaries, establishing an effective date, repealing all previous ward boundaries and providing a severability clause.

**K. Bills and Payroll.**

(1) September 9, 2005

(2) September 16, 2005

(3) September 15, 2005 (Municipal Court)

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

Mayor Tooley separated Item E from the Consent Agenda. Councilmember Brown separated Items A5 and F from the Consent Agenda. Councilmember McDermott separated Items A1 and J from the Consent Agenda.

Councilmember Gaghen moved for approval of the Consent Agenda with the exception of Items A1, A5, E, F and J, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

Councilmember Gaghen moved for approval of Item A1 of the Consent Agenda, seconded by Councilmember Brewster. Councilmember Brewster asked if the area adjacent to Wicks Lane will be rehabilitated after the recent sewer work. Public Works Director Dave Mumford said that would be completed as soon as possible.

Councilmember McDermott asked for confirmation that the total project cost for this Lake Elmo project is \$811,000 of which \$160,000 or 20% of the total cost is in the form of SID assessments to property owners. Mr. Mumford confirmed those figures and said the remainder of the cost will come from a CTEP grant, gas tax or stormwater funding. On a voice vote, the motion was unanimously approved.

Councilmember Gaghen moved for approval of Item A5 of the Consent Agenda, seconded by Councilmember Brewster. Councilmember Brown asked how the City came to acquire a property with hazardous materials. Councilmember Gaghen said this property was acquired for the Park II expansion (primarily the Darryl Apartments). Councilmember Brown asked if the liability for this stays with the seller. Deputy City Administrator Bruce said a Phase I environmental assessment was done on all of the properties. This assessment revealed some asbestos containing materials bound in the floor tiles. This floor tile must be removed (abated) separately from the demolition of the building so the asbestos fibers are not released into the air. He said the floor tiles are a common construction material in older buildings and will continue to be found in any older buildings the City purchases. They will continue to be abated according to state and federal law. On a voice vote, the motion was unanimously approved.

Councilmember Gaghen moved for approval of Item E1 of the Consent Agenda, seconded by Councilmember Brewster. Mr. McCandless said his comments relate to items that are not found in the documents that were sent to the Council in their Friday packets. He said the City is approximately 99% in agreement and complete with the negotiations of all three agreements and the remaining issues have verbal agreement. He said Staff is recommending that the Council consider approving the three agreements with the condition that the following items are resolved in a satisfactory manner. Mr. McCandless said the issue involved in the lease-back (lease of the present Wells Fargo Drive-up facility after City purchase) is that there is not a sufficient description of how the City will terminate the lease when their Park II facility is available. A revision to this agreement was received by the City today requiring the City to notify Wells Fargo 180 days (or six months) prior to completion of the Park II expansion which will be close to the date that notice to proceed will be given. Then notice must be given again at 60 days prior to completion of the expansion project and Wells Fargo given up to 60 days to operate their dual facility (continue to operate the existing drive-up facility and new drive-up facility in the Park II garage). At the end of that 60 day period, Wells Fargo would be required to vacate the property, allowing MET Transit to begin construction of the Transfer facility.

Mr. McCandless said the Park II lease is presently valued at \$2,850.00 per month based on comparable lease rates for similar properties and revenue that could be obtained for lease of that area for parking. The lease-back would be valued at \$1,625.00 per month for the present drive-up facility and the purchase price for the

property is \$975,000.00. He said there is confusing language in the ATM lease relating to taxes. That issue has been successfully negotiated that all taxes attributed to their tenancy would be the responsibility of Wells Fargo.

Mr. McCandless said a traffic study and an easement for the pneumatic tubes (overhead from the Park II facility to the existing Wells Fargo Bank) would be required. A final document on these issues will be sent to Wells Fargo for their final approval. There is also a need to be more specific about the landlord/tenant improvements that are exhibits to the ATM lease. He said in a phone conversation with Jeff Rader, Wells Fargo Real Estate Specialist, it was agreed that 100% of the issues have been resolved.

Councilmember Ulledalen asked why another traffic study must be done on that corner. Mr. McCandless said there are two reasons that require the study: 1) the entrance to the drive-up facility in the Park II garage will be off 2<sup>nd</sup> Avenue North and there is a potential to impact traffic as it backs up turning into the facility, and the queuing traffic entering the drive-up facility would impede traffic exiting onto 26<sup>th</sup> Street and impact the signals before or after that drive-up entrance, and 2) the exit point for the drive-up that will be the alley that is on 26<sup>th</sup> Street may have an adverse impact on vehicles exiting from the garage or the signals that are before and after. This study will be a fairly localized traffic accessibility study and Wells Fargo has asked to complete that as part of their work on the agreements.

Councilmember Clark asked when construction is expected to begin on the Transfer Center. Mr. McCandless said that depends on progress with the Park II expansion. That schedule includes design completion by late November 2005, construction bids for the Council to consider by mid January 2006 and construction to start immediately after. He said the construction phase is estimated to be fourteen months for completion of the entire garage and a shorter period of time for the extension phase. The horizontal expansion will begin first (allowing Wells Fargo the opportunity to occupy their Park II facility and also allow cars presently in Park II to be relocated) with the vertical expansion next to be completed in approximately 10 months. The entire project could be completed in 14 months and the City is 4 months away from start of construction.

Airport Director Bruce Putnam said he and his Staff have spent over three years on the Transfer facility venture and are very pleased with the resultant agreements. In answer to Councilmember Brown's question about the low interest rate, Mr. Putnam said there was an extremely clear message from the Council during the process to obtain a transfer facility site. The Council unanimously directed him and his Staff to "get this deal done." He said that he has honored that request in a significant way and during the negotiations there were trade-offs in the process. Mr. Putnam said the 2% interest rate is low, but to reach an amicable agreement with Well Fargo, it was considered a reasonable trade-off because of their willingness to assume the state tax issues. He said he is satisfied that "in the big picture this is a great deal" and the contracts were amicably arrived at with terms that are imminently fair.

Councilmember Brown asked if the 2.5% inflator is automatic. Mr. McCandless said that is an inflation rate that is applied to the ATM lease (Wells Fargo Park II) and has an automatic 2.5% per year rate increase. He noted that the rate was proposed by

Wells Fargo. At the lease renewal term which begins in 2018 there is a process in the lease agreement for how that new lease rate is established for the renewal terms.

Councilmember Boyer said this was a complicated and arduous task and she thanked them for the tremendous job that they have completed. Councilmember Ulledalen said many people in the background of these deals have commented on the smoothness of the negotiations and appreciation for the Staff's attitude and the manner in which all things have been handled. Councilmember Ruegamer said this has been a great team effort and a perfect example of how private and public sides can work together.

Councilmember Veis moved to amend the motion for approval of Item E1 pending successful completion of negotiations to the satisfaction of the City, seconded by Councilmember Boyer. On a voice vote, the amendment was approved with Councilmembers Clark and Brown voting "no". On a voice vote, the motion as amended was approved with Councilmembers Clark and Brown voting "no".

Councilmember Gaghen moved for approval of Item E2 of the Consent Agenda pending successful completion of negotiations to the satisfaction of the City, seconded by Councilmember Veis. On a voice vote, the motion was approved with Councilmember Brown voting "no".

Councilmember Gaghen moved for approval of Item E3 of the Consent Agenda pending successful completion of negotiations to the satisfaction of the City, seconded by Councilmember Boyer. On a voice vote, the motion was approved with Councilmember Brown voting "no".

Councilmember Gaghen moved for approval of Item F of the Consent Agenda, seconded by Councilmember Brewster. Councilmember Brown asked if these items could be sold via the Internet to a national or international market, thereby increasing the selling prices. Transit Manager Ron Wenger said there is a possibility of doing that and Staff would look into it. He noted that the used bus market is currently very soft especially for those buses that don't meet ADA standards, which excludes other transit companies from using these buses. Buses without the ADA specifications can only be sold to firms that specialize in rehabbing and reselling them outside of the country. The City is aware of who those firms are and bidding materials will be sent directly to them. The items will also be placed for sale in a national transit publication. Mr. Wenger said the buses are in such bad shape they cannot be driven anywhere and must be shipped. Only firms that are capable of moving them would be interested in bidding on them. He added that the lowest mileage on the buses is 350,000 plus on the frame with the engines being rebuilt twice and the transmission rebuilt four or five times. On a voice vote, the motion was unanimously approved.

Councilmember Gaghen moved for approval of Item J of the Consent Agenda, seconded by Councilmember Brewster. On a voice vote, the motion was approved with Councilmember McDermott voting "no".

## **REGULAR AGENDA:**

**2. PUBLIC HEARING AND FIRST READING ORDINANCE expanding the boundaries of Ward V to include recently annexed property in Annex #05-09: Grand Acre Park and right-of-way, an undeveloped 0.363-acre parcel located on**

**Broadwater Avenue, west of 52<sup>nd</sup> St. W, DC Capital Real Estate, LLC 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. On a voice vote, the motion was unanimously approved.

**3. PUBLIC HEARING AND RESOLUTIONS regarding the respread for refunding of assessments on the following Special Improvement Districts:**

- (A) **RESOLUTION 05-18359 - SID 1327:** street and utility improvements in Cenex Park Sub. Claimstake Sub. and C/S 2158, Tr. 1 and 2B.
- (B) **RESOLUTION 05-18360 - SID 1332:** street and utility improvements in Circle 50 Sub.
- (C) **RESOLUTION 05-18361 - SID 1334:** Historic District Streetscape - Montana Ave.: N. 21<sup>st</sup> to N. 29th.
- (D) **RESOLUTION 05-18362 - SID 1335:** 38<sup>th</sup> St. W adjacent to Parkland West.
- (E) **RESOLUTION 05-18363 - SID 1340:** Storm drain, water and sewer in Cenex Park Sub.

**Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

There was no Staff report. Acting City Administrator Tina Volek noted that the Legal Department is advising that the SIDs be considered and voted on separately.

The public hearing was opened. DAVE BOVEE, 424 LEWIS AVENUE, asked for information. He said he hasn't researched "things" and thinks it would be helpful if the Staff could explain from where this money is being refunded, why it is being refunded and what the impact on the average resident and taxpayer would be.

MARY WESTWOOD, 2808 MONTANA AVENUE, said she is included in SID 1334 and it is not clear on what the City is doing with this action. She said she has long had a concern about council agendas because they do not tell a lot about what is really happening, especially with complicated things like SIDs. Ms. Westwood said she believes the City could do a better job with public information. There would be more people engaged in helping the City to do a better job if "we let people know what is really going on." She noted downloading the agenda information from the website is cumbersome.

There were no other speakers. The public hearing was closed. Ms. Volek noted for the benefit of the listening public, that a complete copy of the supporting documents for every item on the agenda is on file at the Library Reference Desk and there are computers available at the Library to download and view the electronic documents. (NOTE: An additional copy of the agenda and supporting documents is also on file in the City Clerk's office.)

Deputy City Administrator Bruce McCandless said these districts concern bonds that were previously issued and were refunded about six months ago. Refunding means that the bonds were resold in order to obtain a lower interest rate. The beneficiary of this is the property owners within these Special Improvement Districts.

He said the action before the Council tonight is to respread the new lower assessments on the property owner's tax statement due to the refunding of SID bonds.

Councilmember Ulledalen noted refunding really means refinancing. Mayor Tooley noted that the property owners will benefit from lower interest that the City was able to negotiate on the resale of the bonds.

Councilmember Brewster moved for approval of Item 3A – SID 1327, seconded by Councilmember McDermott. On a voice vote, the motion was unanimously approved.

Councilmember Brewster moved for approval of Item 3B – SID 1332, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

Councilmember Brewster moved for approval of Item 3C – SID 1334, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

Councilmember Brewster moved for approval of Item 3D – SID 1335, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

Councilmember Brewster moved for approval of Item 3E – SID 1340, seconded by Councilmember Ruegamer. Councilmember Brown asked about the rate prior to the refunding. Mr. McCandless said he would get that information to the Council in the Friday packet. On a voice vote, the motion was unanimously approved.

**4. RESOLUTION 05-18364 creating the Downtown Business Improvement District Board of Trustees, naming the initial members, establishing their terms and specifying their powers and duties. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

There was no Staff report. Councilmember Brown moved for approval of the Staff recommendation, seconded by Councilmember Boyer. Councilmember Clark asked if this action is required by state law; that the Council and not the district itself must do this. City Attorney Brent Brooks replied "yes". On a voice vote, the motion was approved with Councilmember Brown voting "no".

**5. RESOLUTION 05-18365 designating an ADA Coordinator, establishing a grievance procedure to be used by anyone who wishes to file a complaint alleging discrimination on the basis of disability and repealing Resolution 98-17429. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

There was no Staff report. Councilmember Ruegamer moved for approval of the Staff recommendation, seconded by Councilmember McDermott. Ms. Volek noted the City has had an ADA Coordinator and grievance procedure previously. This action updates the procedures to conform to current regulations and shifts the coordinator position from the Purchasing Agent to the Facilities Manager. She added that this is in agreement with the ADA settlement that the Council adopted at a prior meeting. On a voice vote, the motion was unanimously approved.

**6. BID AWARD: Gasoline, Diesel Fuel and Lubrication Products. (Opened 10/4/05). Recommend award of Gasoline and Diesel Fuel to Town and Country and the Lubrication Products to A & I Distributors for the next 12 months.**

There was no Staff report. Councilmember Veis requested a public comment period for this item. The public comment period was opened. There were no speakers. The public comment period was closed. Councilmember Veis moved for approval of the Staff recommendation, seconded by Councilmember Ruegamer. Councilmember Clark asked if the City is exempt from the federal tax on fuels. Mr. McCandless said the City is exempt from federal tax on diesel, but would have to research that issue for gasoline. On a voice vote, the motion was unanimously approved.

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

There were no speakers.

## COUNCIL INITIATIVES

**COUNCILMEMBER RUEGAMER:** Councilmember Ruegamer asked Ms. Volek to seek options to resolve the problems created by the Empire Bar. Ms. Volek said there is an initiative underway by Code Enforcement and the Police Department to look at what can be done. A report will be forthcoming.

**COUNCILMEMBER VEIS:** Councilmember Veis asked about the status of the RV Task Force. Ms. Volek said the last committee members were confirmed today and the first meeting is planned for October 25<sup>th</sup>. The meeting will be advertised.

**COUNCILMEMBER BREWSTER:** Councilmember Brewster moved to direct Staff to schedule an evaluation of the RV Parking Ordinance and to have changes in place by the summer of 2006 or sooner, seconded by Councilmember Ruegamer. Councilmember Brown said something should be done sooner than next summer. Councilmember Brewster said the tasks before the Council, including hiring a new administrator and considering a new budget makes next year the more logical time to consider this issue. Councilmember Gaghen asked if the RV Task Force would be addressing the revision or modification of what is now in place. Mayor Tooley said he thought the intent of the motion was to concentrate on locally owned RVs rather than visiting RVs. Councilmember Boyer said the task force would only be addressing the issue as it relates to the Wal-Mart parking lot. Councilmember Veis asked if the scope of work for the RV Task Force could include addressing all RV ordinances. Mayor Tooley said the committee members were solicited based on the issue being the Wal-Mart parking lot situation and it would be unfair to the committee members to increase that scope of work. Councilmember Brewster suggested a work session to discuss the ordinances that affect RVs and what direction the Council would like to proceed. On a voice vote, the motion was unanimously approved.

**COUNCILMEMBER RUEGAMER:** Councilmember Ruegamer asked about the status of the proposed work session with the media relating to privacy issues. Ms. Volek said that meeting has been scheduled for next Monday evening and invitations have been sent to the media.

MINUTES: 10/11/05

**COUNCILMEMBER GAGHEN:** Councilmember Gaghen urged the Councilmembers to attend the Parking Division meeting at the MSU-B Conference Room tomorrow. It is important to hear the community's concerns.

**COUNCILMEMBER BROWN:** Councilmember Brown asked the Legal Department to give a ruling on whether inhibiting business at Wal-Mart or other stores with large parking lots as the City is "taking of something from them and giving something to businesses in the County." The motion died for lack of second.

**ADJOURN** – With all business complete, the Mayor adjourned the meeting at 7:38 P.M.

THE CITY OF BILLINGS:

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

ATTEST:

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