

CITY OF BILLINGS

**CITY OF BILLINGS MISSION STATEMENT:
TO DELIVER COST EFFECTIVE PUBLIC SERVICES
THAT ENHANCE OUR COMMUNITY'S QUALITY OF LIFE**

AGENDA

COUNCIL CHAMBERS

February 13, 2006

6:30 P.M.

CALL TO ORDER – Mayor Tussing

PLEDGE OF ALLEGIANCE – Mayor Tussing

INVOCATION – Councilmember Larry Brewster

ROLL CALL

MINUTES -- January 23, 2006

COURTESIES

- Airport – American Association of Airport Executives (AAE) Award
- Finance – Government Finance Officers Assn (GFOA) Budget and Financial Reporting Awards

PROCLAMATIONS

BOARD & COMMISSION REPORTS

ADMINISTRATOR REPORTS – Tina Volek

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: #1- 3, #9 and #10 ONLY. Speaker sign-in required. (Comments offered here are limited to 1 minute per speaker. Please sign up on the clipboard located at the podium. 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.)

CONSENT AGENDA:

1. A. Mayor’s Appointments:

	Name	Board/Commission	Term	
			Begins	Ends
1.		City/County Planning Bd.	2/13/06	12/31/06

2		City/County Planning Bd.	2/13/06	12/31/06
3.		Board of Adjustment	2/13/06	12/31/09
4.		Board of Adjustment	2/13/06	12/31/09
5.		Board of Adjustment	2/13/06	12/31/09
6.		Board of Adjustment	2/13/06	12/31/09

1. Unexpired term of Mick Ohnstad
2. Unexpired term of Carol Gibson (due to Ward redistricting)

[\(Corresponding Staff Memo A\)](#)

Bid Awards:

B. (1) Two New Current Year Large Area Mowers and One Tandem Trailer. (Opened 1/17/06). (Delayed from 1/23/06). Recommend Turf Care and Specialty Products, \$94,500.00 including trade-ins and rejecting bids on trailer.

[\(Corresponding Staff Memo B1\)](#)

(2) W.O. 04-18: Expansion and Condition Audit Repair of Park II. (Opened 1/31/06). Recommend delaying award to 2/27/06.

[\(Corresponding Staff Memo B2\)](#)

(3) SID 1368: Lake Hills Subdivision, Annandale Road. (Opened 1/31/06). Recommend delaying award to 2/27/06.

[\(Corresponding Staff Memo B3\)](#)

(4) AIP 30 – Runway 10R-28L Rehabilitation. (Opened 2/7/06). Recommend delaying award to 2/27/06.

[\(Corresponding Staff Memo B4\)](#)

(5) AIP 30 – Incursion Road Paving & Drainage Improvements. (Opened 2/7/06). Recommend delaying award to 2/27/06.

[\(Corresponding Staff Memo B5\)](#)

(6) Lower Restrooms Upgrades for Billings Logan International Airport. (Opened 1/24/06). Recommend rejecting all bids, redesigning the project and rebidding at a later date.

[\(Corresponding Staff Memo B6\)](#)

(7) Wastewater Plant Chemicals – Dry Polymer. (Opened 1/31/06). Recommend Polydyne Inc., \$1.53/lb with the option for renewal up to three (3) years, upon mutual agreement.

[\(Corresponding Staff Memo B7\)](#)

(8) Castle Rock Park Spray Ground. (Opened 2/7/06). Recommend delaying award to 2/27/06.

[\(Corresponding Staff Memo B8\)](#)

(9) One New Current Model 2006 Trailer with CC Inspection Equipment. (Opened 2/7/06). Recommend delaying award to 2/27/06.

[\(Corresponding Staff Memo B9\)](#)

C. Agreement for CAD Interface with Laidlaw Medical Transportation dba American Medical Response (AMR), term: initial term is eight (8) months commencing May 2, 2005 and expiring on 12/31/05, with automatic renewal for up to two (2) subsequent one-year periods thereafter.

[\(Corresponding Staff Memo C\)](#)

D. Approval Recreational Trails Program Grant Agreement for Bannister Drain Trail., \$23,000.00 reimbursement and use of \$5,750.00 GO Bond funds for matching funds if reimbursement cannot be secured.

[\(Corresponding Staff Memo D\)](#)

E. Resolution on Inter-Fund Loan from General Fund to the Property/Liability Insurance Fund, \$300,000.00 until 8/2007.

[\(Corresponding Staff Memo E\)](#)

F. Grant Award to 300 N. 25th LLC, fka Marchi-Tolliver Partnership for the façade of the Terrace Apartments located at 300 N. 24th St., \$29,725.00.

[\(Corresponding Staff Memo F\)](#)

G. Approval of Baggage Circulation Study Project with CTA Architects, \$149,210.00.

[\(Corresponding Staff Memo G\)](#)

H. Downtown Billings Association (DBA) Street Closures:

(1) *Food Fairs*: May – Aug (every other Wednesday). 2nd Ave. from N. 29th to N. 28th.

(2) *Alive After 5*: June 15 (Hooligan's) and July 27 (Montana Brewing Company). N. 28th St from 1st to 2nd Ave. N.

(3) *Alive After 5*: June 22 (Tiny's Tavern). N. 24th St. between 4th Ave N. and 3rd Ave. N.

(4) *Alive After 5*: June 29 (CTA Architects). N. 23rd St. between Montana Ave and 1st Ave. N.

(5) *Alive After 5*: July 6 (The Carlin). N. 25th St. between Montana Ave and 1st Ave. N.

(6) *Alive After 5*: July 20 (Monte Carlo Casino). N. 29th St. between Montana Ave. and 1st Ave. N.

(7) *Alive After 5*: August 3 (Don Luis Restaurant). N. 26th St. between Montana Ave. and 1st Ave. N.

(8) *Alive After 5*: August 10 (The Q). N. 25th St. between Montana Ave. and 1st Ave N.

(9) *Alive After 5*: August 17 (Computers Unlimited). N. 25th. St. between Montana Ave. and 1st Ave. N.

(10) *Alive After 5*: August 24 (Pug Mahons). N. 30th St. between 1st Ave. N and 2nd Ave. N.)

(11) *Strawberry Festival*: June 10. N. 28th St. from 1st to 3rd Ave. and 2nd Ave from the alley east of N. 27th to N. 29th and N. 29th from 1st to 2nd Ave.

(12) *Montana State Chili Cook-Off*: June 24. N. 28th St. from 1st to 2nd Ave. and 2nd. Ave from the alley east of N. 27th to N. 29th.

(13) *Farmers' Market*: July 15 thru Oct 7th (every Saturday). N. 28th from 1st to 3rd Ave. and 2nd Ave. from the alley east to N. 27th to N. 29th and N. 29th from 1st to 2nd Ave.

(14) *Farmers' Market*: Aug 2 thru Aug 23 (every Wednesday night). N. 28th St. from 1st to 2nd Ave. and 2nd Ave from the alley east of N. 27th to N. 29th.

(15) *HarvestFest*: October 14. N. 28th St. from 1st to 3rd Ave. and 2nd Ave. from the alley east of N. 27th to N. 29th.

(16) *Holiday Parade*: November 24. Established Downtown Parade Route.

(17) *Christmas Stroll*: December 1. N. 28th from 1st to 3rd Ave and 2nd. Ave. from the alley east of N. 27th to N. 29th.

[\(Corresponding Staff Memo H\)](#)

I. W.O. 04-11: South Billings Boulevard/SID 1373, acceptance of the tract of land dedicated with the amended plat of the north half of Lot 6, Sugar Sub, 1.53 acres, from Larry and Marlene Thiel, owners.

[\(Corresponding Staff Memo I\)](#)

J. Resolution authorizing the City Administrator to approve/execute contracts totaling \$50,000 or less and repealing Res. 03-18016.

[\(Corresponding Staff Memo J\)](#)

K. Resolution approving and adopting the updating Purchasing Policy dated February 2006.

[\(Corresponding Staff Memo K\)](#)

L. Resolution relating to financing certain proposed projects, establishing compliance with reimbursement bond regulations under the Internal Revenue Code, regarding the Briarwood sanitary sewer main extension.

[\(Corresponding Staff Memo L\)](#)

M. Second/final reading ordinance amending BMCC by repealing Chapter 23, Sections 23-101 through 23-1501, declaring them to be null, void and of no effect, and adding a new Chapter 23 with sections to be numbered 23-101 through 23-1107, providing comprehensive subdivision regulations. (Delayed from 1/23/06).

[\(Corresponding Staff Memo M\)](#)

N. Preliminary Plat of Amended Lot 15, and the East Half of Lot 16, Block 3, Rolle Sub., conditional approval of the plat, approval of variance and adoption of the findings of fact.

[\(Corresponding Staff Memo N\)](#)

O. Bills and Payroll.

(1) January 6, 2006

[\(Corresponding Staff Memo O1\)](#)

(2) January 13, 2006

[\(Corresponding Staff Memo O2\)](#)

(3) January 20, 2006
[\(Corresponding Staff Memo O3\)](#)

(Action: approval or disapproval of Consent Agenda.)

REGULAR AGENDA:

2. **SPECIAL REVIEW #800:** a special review to allow a four-plex and a rehabilitation service center in a Residential-6,000 zone described as Tract A of C/S 2237 and located at 1721 8th Avenue North, Rimrock Foundation, David Cunningham, applicant, Design Lab Architects, agent. Zoning Commission recommends conditional approval. (Delayed from 1/23/06). **(Action:** approval or disapproval of Zoning Commission recommendation.)

[\(Corresponding Staff Memo 2\)](#)

3. **RIGHT-OF-WAY COMPENSATION** to Yegen Grand Avenue Farm, Inc. and Yegen Golf Course for Phase II Construction of the Arlene Corridor Project (i.e. Zimmerman Trail Extension from Grand Avenue to Broadwater Avenue), \$575,000.00. Staff recommends approval. **(Action:** approval or disapproval of Staff recommendation.)

[\(Corresponding Staff Memo 3\)](#)

4. **PUBLIC HEARING AND CITY ADMINISTRATOR SELECTION PROCESS.** Staff recommends the Council approve a selection process and direct Staff to assist in any appropriate way. **(Action:** approval or disapproval of Staff recommendation.)

[\(Corresponding Staff Memo 4\)](#)

5. **PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #773:** text amendments to Section 27-611 of the Unified Zoning Regulations regarding sexually-oriented businesses. Zoning Commission recommends approval. **(Action:** approval or disapproval of Zoning Commission recommendation.)

[\(Corresponding Staff Memo 5\)](#)

6. **PUBLIC HEARING AND RESOLUTION** approving and adopting budget amendments for FY 2005/2006. Staff recommends approval. **(Action:** approval or disapproval of Staff recommendation.)

[\(Corresponding Staff Memo 6\)](#)

7. **PUBLIC HEARING AND RESOLUTION** vacating Broadwater Avenue right-of-way located directly west of 52nd Street, located on the existing C/S 1877, Tract 3, Engineering, Inc., petitioner. Staff recommends approval. **(Action:** approval or disapproval of Staff recommendation.)

[\(Corresponding Staff Memo 7\)](#)

8. **PUBLIC HEARING AND FIRST READING ORDINANCE** providing that the BMCC be amended by adding a section 13-505; providing for a procedure whereby city

contractors can be debarred from bidding on city contracts, establishing an effective date and providing a severability clause. Staff recommends approval. **(Action: approval or disapproval of Staff recommendation.)**

[\(Corresponding Staff Memo 8\)](#)

9. **RESOLUTION** annexing the west half of Lots 5 and 28, and all of Lots 6, 26, 27, 38, and 40 of Sunnycove Fruit Farms, 58.041-acres located south of Rimrock Rd. between 58th and 62nd Sts. W, Thomas E. Romine and Paul V. Hoyer, petitioners, Annex #06-01. Staff recommends conditional approval of the resolution of annexation with conditions. (PH held 1/23/06 and closed. Action delayed from 1/23/06). **(Action: approval or disapproval of Staff recommendation.)**

[\(Corresponding Staff Memo 9\)](#)

10. **RECONSIDERATION OF APPROVAL OF BELLVILLE SUBDIVISION.** (Councilmember Brewster request). (Delayed from 1/23/06). Staff makes no recommendation. **(Action: direction to Staff.)**

[\(Corresponding Staff Memo 10\)](#)

11. **PUBLIC COMMENT on Non-Agenda Items -- Speaker sign-in required.** (Restricted to ONLY items not on the printed agenda; comments limited to 3 minutes per speaker. Please sign up on the clipboard located at the back of the Council Chambers.)

COUNCIL INITIATIVES

ADJOURN



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, FEBRUARY 13, 2006

TITLE: **Boards & Commissions –Appointments**
DEPARTMENT: **City Administrator’s Office**
PRESENTED BY: **wynnette Maddox, Administration**

PROBLEM/ISSUE STATEMENT: Confirmation of appointments for Board and Commission positions that are vacant due to resignations, ward redistricting and terms not concurrent with the Mayor’s term.

FINANCIAL IMPACT: No financial impact involved.

RECOMMENDATION

Mayor Tussing recommends that Council confirm the following appointments:

	Name	Board/Commission	Term	
			Begins	Ends
1.		City/County Planning Brd.	2/13/06	12/31/06
2.		City/County Planning Brd.	2/13/06	12/31/06
3.		Board of Adjustment	2/13/06	12/31/09
4.		Board of Adjustment	2/13/06	12/31/09
5.		Board of Adjustment	2/13/06	12/31/09
6.		Board of Adjustment	2/13/06	12/31/09

3. Unexpired term of Mick Ohnstad
4. Unexpired term of Carol Gibson (due to Ward redistricting)

Approved By: **City Administrator** ____ **City Attorney** ____

Attachment

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, February 13, 2006

TITLE: Recommendation for Award of Bid for 2 Replacement Mowers with Tandem Trailer

DEPARTMENT: Park, Recreation, and Public Lands

PRESENTED BY: Gene Blackwell, Acting PRPL Director

PROBLEM/ISSUE STATEMENT: Bids were opened at 2:00 p.m. on Tuesday, January 17, 2006, for the purchase of a 16 foot mower unit and an 11 foot mower unit to replace similar sized Units #1678 and #1637, as approved in the FY 06 Equipment Replacement Program. Specifications and bid documents were distributed to Billings' area dealers. The low bid was received from **Turf Care and Specialty Products**, Billings, Montana, for the amount of \$94,500 including the trade-in allowance of \$7,500. The mowers bid meet all specifications as requested. The tandem trailer bid is for \$2,500 and this has been determined to not meet the requirements for the Equipment Replacement Program fund, which is for items of equipment greater than \$5,000. Staff is determining if funding for the trailer is available in the PRPL – Parks operating budget. The trailer will be purchased separately if funds are available. This item was delayed from the January 23, 2006, Council meeting to allow staff to review the bids and make a recommendation.

FINANCIAL: The amount available in the budget for the replacement of these 2 units is \$104,767. The bids received were \$62,000 for a 16 foot street worthy mower unit, and \$40,000 for a 10 foot mower unit. The trade-in amount is \$7,500. The trailer bid of \$2,500 will be rejected as explained above.

RECOMMENDATION

Staff recommends that Council accept the bid of Turf Care and Specialty Products of Billings for the total amount of \$94,500, including the trade-in for the 2 existing mowers, and rejecting the bid for the tandem trailer.

Approved By: City Administrator _____ City Attorney _____

ATTACHMENTS

- A. Call for Bids, Bid Tabulation Summary, and Low Bid Proposal.

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, February 13, 2006

TITLE: WO 04-18—Park II Expansion and Park I Repair, Contract Award
DEPARTMENT: Public Works - Engineering
PRESENTED BY: David D. Mumford, P.E., Public Works Director

PROBLEM/ISSUE STATEMENT: This project encompasses expansion and improvements to the Park II parking garage, as well as some additional condition repairs to the Park I parking garage. The work includes vertical and horizontal expansion of Park II, the addition and extension of stairwells and elevators, typical maintenance repairs (fixing cracks, spalling, control joints, sealants, coatings, striping, etc.), and remodeling the façade of the existing and new Park II. The ground level of the horizontal expansion will be constructed to allow Wells Fargo to use the space for drive-through banking, as agreed to in a separate lease with the City.

The project was designed by Collaborative Design Architects, Inc. in conjunction with parking specialists, Carl Walker, Inc. Bids were opened for the project January 31, 2006. As shown below, the bids came in much higher than the engineer's estimate. The bid(s) will be reviewed with the respective contractor(s) in an attempt to determine the reasoning for the large discrepancy. One possibility is that materials prices, especially those for steel and concrete (the primary components of a parking garage), have risen dramatically and are very volatile due to the destruction caused by all the hurricanes in other parts of the country. Complete analysis of the bids should provide more insight.

By law, Council must act on the bid opening at this meeting.

FINANCIAL IMPACT: The project is being funded by the Parking Division. The associated C.I.P. (FY 2006: PK-001, 003, 004, 005; FY 2007: PK-003, 005) was approved by the Mayor and City Council February 28, 2005. These C.I.P funds include the repair work on all garages (Park I, II, III, IV) as well as the expansion of Park II.

The amount spent and obligated to date includes the contracts for design work on all four garages, the repair work on Park I, III, and IV, and the demolition of the Darryl Apartments and Smith Funeral Home where the Park II expansion is to be constructed. All these contracts were approved by Council previously.

Location of Work: Park II (primarily) and Park I Parking Structures
Funding Sources: User Fees, Revenue Bonds, Parking Reserves

Approved Dollar Amount for Project: **\$ 8,126,830**
 Spent (and obligated) to date: \$ 1,632,924
Funding available: **\$ 6,493,906**

Bids were opened January 31, 2006 with the following results:

Firm	Fisher Construction	Hardy Construction	<i>Engineer's Estimate</i>
Base Bid:	\$9,223,148.52	\$10,006,215.00	
Alternate No. 1	\$16,000.00	\$17,000.00	
TOTAL:	\$9,239,148.52	\$10,023,215.00	\$6,295,295.00

RECOMMENDATION

To allow further analysis of the bids, staff recommends that Council delay action in awarding a construction contract for W.O. 04-18—Park II Expansion and Condition Audit Repair.

Approved By: **City Administrator** ____ **City Attorney** ____

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA
Monday, February 13, 2006

TITLE: SID 1368 Annandale Road Bid Award
DEPARTMENT: Public Works/Engineering
PRESENTED BY: David D. Mumford, PE, Public Works Director

PROBLEM/ISSUE STATEMENT: Bids were received and evaluated for SID 1368 on January 31, 2006. This project will construct public improvements on Annandale Road between Cherry Hills Road and Greenbriar Road generally consisting of water, sanitary sewer, storm drain, curb and gutter, and street improvements.

ALTERNATIVES ANALYZED:

1. Award SID 1368 to JTL Group, Inc. in the amount of \$510,280.90; or
2. Not award SID 1368.

FINANCIAL IMPACT: The costs of the Improvements are to be paid from the following sources: (1) Special Improvement District bonds which will be recovered through direct assessments to property owners; (2) cash contribution by Ron Hill, the owner of 51 of the 77 lots in the District; and (3) \$125,000.00 of contribution by the City of Billings which is ENGP5 in the CIP.

	<u>Total</u>
Engineer's Estimate	\$514,372.74
JEM Contracting, Inc.	\$656,690.23
H.L. Ostermiller Construction	\$580,098.29
A.M.E., Inc.	\$618,555.60
COP Construction	\$563,520.00
JTL Group, Inc.	\$510,280.90

RECOMMENDATION

Staff recommends that Council approve the construction contract for SID 1368 with JTL Group, Inc. in the amount of \$510,280.90.

Approved By: **City Administrator** _____ **City Attorney** _____

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, February 13, 2006

TITLE: Postponement of the Award of Airport Improvement Program (AIP) 30 Runway 10R/28R Rehabilitation

DEPARTMENT: Aviation and Transit

PRESENTED BY: J. Bruce Putnam, A.A.E., Director of Aviation and Transit

PROBLEM/ISSUE STATEMENT: Included in the City's approved Capital Improvement Program is the Runway 10R/28L Rehabilitation project, which is a Federal Aviation Administration (FAA) approved Airport Improvement Program (AIP) project. This runway is primarily used by general aviation and student pilots. The asphalt surface of this runway has deep lateral and longitudinal cracks along its entire length, which creates an uneven surface that, if not replaced, will become unsafe for aircraft operations. Also, the safety areas for this runway have become difficult to maintain due to storm water erosion. This makes compliance with FAA FAR Part 139 requirements difficult. Finally, the existing runway edge lights and associated cabling is over 20 years old and has become unreliable. The scope of work for this project includes removal and replacement of the top three inches of the runway's surface; grading in the safety areas of this runway to prevent erosion damage; and removing and replacing the existing runway edge lights and cabling. This project is being advertised in the *Billings Times* and is on the City's Web site. We will receive bids on the project on February 7, 2006. Due the complexity of this project, staff requires additional time to review the bids.

RECOMMENDATION

It is recommended that the City Council postpone the award of AIP 30 Runway 10R/28L Rehabilitation for Billings Logan International Airport until the February 27, 2006 City Council meeting. This will allow staff sufficient time to review the bids and accompanying bid documents.

Approved By: City Administrator ____ City Attorney ____

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, February 13, 2006

TITLE: Postponement of the Award of Airport Improvement Program (AIP) 30 Runway Incursion Prevention Road Safety Upgrades and Drainage Improvements

DEPARTMENT: Aviation and Transit

PRESENTED BY: J. Bruce Putnam, A.A.E., Director of Aviation and Transit

PROBLEM/ISSUE STATEMENT: Included in the City's approved Capital Improvement Program is the Runway Incursion Prevention Road Safety Upgrades and Drainage Improvement project, which is a Federal Aviation Administration (FAA) approved Airport Improvement Program (AIP) project. As you may recall, the Runway Incursion Prevention Road allows vehicle access around the east end of the Airport, thereby reducing the vehicle traffic on the active runway system. A section of the existing road will be widened to allow two vehicles to pass each other safely. Additionally, the heavy rains last year caused erosion damage to this road that requires significant repairs to be made. This project will also construct a drainage ditch to collect the surface storm water, and install underground piping to channel the collected water to our storm water detention ponds. This project is being advertised in the *Billings Times* and is on the City's Web site. We will receive bids on this project on February 7, 2006. Due to the complexity of this project, staff requires additional time to review the bids.

RECOMMENDATION

It is recommended that the City Council postpone the award of AIP 30 Runway Incursion Prevention Road Safety Upgrades and Drainage Improvements for Billings Logan International Airport until the February 27, 2006 City Council meeting. This will allow staff sufficient time to review the bids and accompanying bid documents.

Approved By: City Administrator ____ City Attorney ____

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, February 13, 2006

TITLE: Rejection of all Bids Received for the Airport Terminal Building's Lower Level Restrooms Upgrades

DEPARTMENT: Aviation and Transit

PRESENTED BY: J. Bruce Putnam, A.A.E., Director of Aviation and Transit

PROBLEM/ISSUE STATEMENT: The Airport Terminal Building's lower level restrooms have not been remodeled since they were built in 1958. This project would have provided new floor and wall tile in the men and women's restrooms located in the lower level of the Terminal. When this project was originally bid last June, only one bid was received and it was well over the available budget. In spite of reducing the scope of work and re-bidding this project during a historically slower time for the contractors, the bids still exceeded our budget and project estimates. This project was advertised in the *Billings Times*, at the Builders Exchange, and on the City's Web site. We received the following bids on this project:

<u>Company</u>	<u>Bid Amount</u>
Fisher Construction	\$44,200
General Contractors	\$46,231
Keystone Construction	\$50,000
Engineers Estimate	\$30,000

FINANCIAL IMPACT: The total cost of this project was estimated at \$30,000. There will be no financial impact at this time.

RECOMMENDATION

Staff recommends that the City Council reject all bids received for the Airport Terminal Building's Lower Level Restrooms Upgrades. The project will be redesigned and budgeted at a later date.

Approved By: City Administrator ____ City Attorney ____

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 13, 2006

TITLE: Award of Chemical Bid – Polymer, Wastewater Division
 DEPARTMENT: Public Works
 PRESENTED BY: David D. Mumford, P.E., Public Works Director

PROBLEM/ISSUE STATEMENT: We use chemicals, referred to as polymers, at the wastewater plant to aid in dewatering wastewater solids. We periodically advertise for and accept bids for the chemical. The subject bid award is for an initial 12 month period with the option for renewal up to 3 years upon mutual agreement.

FINANCIAL IMPACT: We advertised for bids on Jan. 12, 19, and 26, 2006. We received bids on Jan. 31, 2006 for dry polymer chemical as follows:

Participant	Price/lb	Package	Package Cost
Polydyne Inc.	\$ 1.53	1,500 lb Bag	\$ 2,295.00
Ciba Specialty Chemical Corp	\$ 1.67	1,543 lb Bag	\$ 2,576.81
Consolidated Chemicals Inc	\$ 2.60	2,000 lb Bag	\$ 5,200.00

We have sufficient monies in the FY06 Chemical Supply Budget for the purchase of polymer.

RECOMMENDATION

Staff recommends that Council award the wastewater plant chemical bid for dry polymer to Polydyne Inc. in the amount of \$1.53 per pound with the option for renewal up to 3 years upon mutual agreement.

Approved By: City Administrator ____ City Attorney ____

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, February 13, 2006

TITLE: Award of Bid for Construction of a Spray Ground at Castle Rock Park
DEPARTMENT: Park, Recreation, and Public Lands
PRESENTED BY: Gene Blackwell, Interim Director, PRPL Department

PROBLEM/ISSUE STATEMENT: The City Of Billings budgeted \$218,000 in the 2006 FY to be used to plan, engineer, design and construct a spray ground at Castle Rock Park. Bids for the construction phase of the project will be opened at 2:00 p.m. on Tuesday, February 7, 2006. The opening of bids is too late to allow it to be awarded at the February 13, 2006 City Council meeting and, accordingly, it is recommended to delay the award to the February 27th regular meeting.

FINANCIAL IMPACT: Funding for the project is through regular appropriation in the FY 2006 Capital Improvement Program.

Location of Work: Castle Rock Park, Wicks Land and Nutter Boulevard

Funding Source: City of Billings CIP General Fund – \$218,000.00

Approved Dollar Amount of Project	\$218,000.00
Architectural and Engineering	<u>\$32,382.00</u>
Funds available for Construction	\$185,618.00

RECOMMENDATION

Staff recommends that City Council delay the award of the bid until the February 27, 2006, City Council meeting.

Approved By: City Administrator _____ City Attorney _____

ATTACHMENTS

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA
Monday, February 13, 2006

TITLE: Equipment Bid Award – 2006 Trailer with CCTV inspection equipment
DEPARTMENT: Public Works Department
PRESENTED BY: Dave Mumford, Public Works Director

PROBLEM/ISSUE STATEMENT: The Public Works Department received bids for replacement of existing equipment in accordance with the approved equipment replacement plan and is recommending delaying the bid award. Additional time is needed for evaluation of the bid award.

FINANCIAL IMPACT: Bids were publicly advertised for the replacement of this equipment on January 26 and February 2, 2006. Bids were opened on February 7, 2006. There is adequate funding in the Distribution and Collection budget for this expenditure.

RECOMMENDATION

Staff recommends that Council delay the bid award for the replacement of the 2006 trailer with CCTV inspection equipment to February 27, 2006.

Approved By: City Administrator ____ City Attorney ____

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C

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, January 13, 2006

TITLE: CONTRACT – CAD Interface Agreement with American Medical Response (AMR).

DEPARTMENT: Fire

PRESENTED BY: Marv Jochems, Fire Chief

PROBLEM/ISSUE STATEMENT: The 9-1-1 Center is currently contracting with AMR to provide dispatch services. The CAD interface is vitally necessary to give the Communications Center the ability to dispatch the appropriate AMR resources in a reasonable amount of time and track response times of AMR.

FINANCIAL IMPACT: For dispatch services this contract stipulates that AMR is 3.5% of the overall incidents generated in the Communications Center. The Communications Center FY 06 operating budget, less capital is \$1,799,339.00. The beginning annual fee would be approximately \$62,976.87. The annual fee will increase commensurate with the Communications Center operations budget. Either party may terminate this agreement with out cause upon 60 day notice. AMR is responsible for any necessary capital investments in the future. The term of the agreement is automatically renewed for up to two (2) subsequent one (1) year periods thereafter, subject to the termination rights and change in compensation as set for here in.

RECOMMENDATION

Staff recommends that Council approve entering into a CAD Interface Agreement with American Medical Response.

Approved By: City Administrator ____ City Attorney ____

[\(Back to Consent Agenda\)](#)

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 13, 2006

TITLE: Recreational Trails Program Grant Agreement for Bannister Drain Trail
DEPARTMENT: Planning and Community Services Department
PRESENTED BY: Candi Beaudry, AICP, Interim Director

PROBLEM/ISSUE STATEMENT: The City of Billings applied for the Recreational Trails Program (RTP) grant from the Montana Fish, Wildlife and Parks Department for the year 2005 for the trail development connecting the Midland Trail that Dave Veeder and Scott McRae built west of S. 24th St. W. to the piece of trail that the McCall's built south of Lazy Boy Furniture store along S. 29th St. W. The trail in this corridor runs through private land, but the property owners, Mark Nogel and Home Depot, are granting the City of Billings an easement for the trail. The grant was submitted in June, 2005, with required approval from the City Council. The grant award is for \$23,000 and requires a 20% match of \$5,750. A Community Transportation Enhancement Program (CTEP) grant is also funding a portion of the trail improvements. The Planning Division has requested \$25,000 from the BikeNet to fund both the RTP match and a portion of the required CTEP match. Because the RTP grant is for the City of Billings, the City Council must accept the grant and the Mayor must sign the agreement. The only other funding source for matching these grants is the 1999 General Obligation (GO) Bond. Currently, there is approximately \$84,910 remaining in this fund. At this time, the Planning Division is not anticipating using this funding source for the match. However, if the contribution from BikeNet isn't forthcoming, the Council is requested to approve the expenditure of \$5,750 from this fund to cover the match for the RTP grant only.

FINANCIAL IMPACT: The Recreational Trails Program Grant provides funding for a portion of the Bannister Drain Trail between the trail built by the Veeders and McRaes and the trail built by the McCalls. Matching funds were requested from BikeNet to cover the cost of the RTP grant match and a portion of the CTEP grant. In the event the City does not receive the matching funds from BikeNet, Planning staff is requesting approval from the Mayor and Council to use \$5,750 from the 1999 GO Bond. A request has been submitted to BikeNet for \$25,000 and a response is expected later this month.

RECOMMENDATION

Staff recommends that Council accept the grant and sign the Recreational Trails Program Agreement for a total of \$23,000 reimbursement for the Bannister Drain Trail Project. Staff also

recommends that the Council approve the expenditure of \$5,750 from the 1999 GO Bond for the matching funds, if the required match for the RTP grant cannot be secured from BikeNet.

Approved By: **City Administrator** _____ **City Attorney** _____

ATTACHMENT

A. Recreational Trails Program Agreement

RECREATIONAL TRAILS PROGRAM AGREEMENT #RT2006-02

THIS AGREEMENT, entered into this 28th day of December, 2005, by and between FISH, WILDLIFE AND PARKS, the governmental agency of the State of Montana designated to act for the State of Montana, for the purpose of implementing the Recreational Trails Program, with its principal place of business at Helena, Montana, hereafter called the "Department," and City of Billings, hereinafter referred to as the "Sponsor".

WITNESSETH:

WHEREAS, the Sponsor desires to conduct a trail project called Gabel Road Connector/Heritage Bicycle-Pedestrian Trail, for the purpose of public outdoor trail recreation, and to qualify for reimbursement of the amount approved by the Department for this trails project; and,

WHEREAS, it is the duty of the Department to share in the responsibility for administration of said project and to determine satisfactory completion and performance;

NOW, THEREFORE, in consideration of the covenants to be performed by each party on behalf of the other, as hereinafter set forth, IT IS HEREBY UNDERSTOOD AND AGREED by and between the parties hereto as follows:

1. That the Sponsor will conduct the following described trail project in accordance with the plans and specifications approved with Project Application submitted to the Department.

This project will provide new trail construction.

2. That the Sponsor will initiate said project promptly and will diligently pursue completion on or before 10/15/2008.

3. The Sponsor guarantees that it has funds necessary for the implementation of this project, that it will pay for said project, and will request reimbursement for allowable costs only. Upon receipt of satisfactory billing documentation from the Sponsor and upon receipt of funds from the United States for this purpose, the Department agrees to reimburse the Sponsor the allowable funds expended by the Sponsor. The total state share shall not exceed \$23,000.

4. The National Recreational Trails Fund is an 80% recreational trails program/20% Sponsor cost-share program. At the time/s of request for reimbursement by the Sponsor, the Sponsor will account for Sponsor funds expended and value of in-kind contributions, with the Sponsor's share being not less than 20% of costs incurred.

5. It is understood and agreed by both parties hereto that the mandates of the Recreational Trails Program are hereby incorporated into this Agreement by this reference and that the same shall be binding upon both parties hereto, and that modification of this Agreement, and special terms and conditions to the project may be established by the Department upon agreement by the Department and the Sponsor.

6. The Sponsor agrees to provide the Department with all reports and certifications, including accounting reports, receipts and vouchers as requested and in the form and upon the dates requested either prior to commencement of the project or at any time during the project. The Sponsor also agrees to follow accounting procedures satisfactory to the Department and to provide, upon request at any time during the project, a financing commitment indicating that continued funds will be available for completion of the project as proposed in the referenced plans and specifications, and to reimburse the Department for any and all overpayments on this project. In addition, the Sponsor agrees to allow Federal, Legislative, Department or State Auditors access to its records for the purpose of determining that this grant is administered in accordance with grant terms and conditions and, upon request, to provide the Department with a copy of any such audit.

7. Requests for reimbursement by the Sponsor may be made on a quarterly basis or at project completion. The final payment to the Sponsor will require an on-site inspection of the completed project. Final payment will be contingent upon the Sponsor satisfying the Department that work identified has been completed. Sponsor documentation shall include invoices for services rendered or materials purchased, financial accounting of services rendered including dollars expended, allowable labor hours and value, value and type of in-kind contributions, copy/ies of canceled checks/warrants and a completion report describing the final product and photographs of the work performed.

8. If this project involves the purchase of equipment, the following purchasing procedures must be followed and documented by the Sponsor. No employee, officer or agent of the Sponsor shall participate in the selection, award or administration of a contract supported by Recreational Trails Program funds if a real or apparent conflict of interest would be involved. Equipment may not be purchased by the Sponsor from any business in which the Sponsor, an officer or agent has a financial or other interest.

Equipment purchased with Recreational Trails Program funds will not be used for personal gain or purposes. Equipment that costs more than \$1,000 may not be traded or sold by the Sponsor in less than five (5) years without prior written approval by the Department. Any income received by the Sponsor from the sale of equipment purchased with Recreational Trails Program funds must be reinvested in the project for which the equipment was purchased or a similar project that benefits public trails.

The following state procedures apply for equipment purchase.

If the equipment cost is less than \$5,000	No bid are required
If the equipment cost is \$5,000 to \$15,000	Limited solicitation is required
If the equipment cost is more than \$15,000	Take formal written bids. Provide written specifications, publish invitation for bids.

9. The Department may unilaterally terminate this agreement upon refusal by the Sponsor to allow access to records necessary to carry out the legislative audit and analysis function set forth in Title 2, Section 7, Part 5, Montana Codes Annotated.

10. The Sponsor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any contract or in the administration of its DBE program or the requirements of 49 CFR part 26. The recipient shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of contracts. The recipient's DBE program, as required by 49 CFR part 26 and as approved, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

11. The Sponsor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

12. The Sponsor further agrees to permit inspection of the project by the Department or its employees or agents at any and all reasonable times during or after project completion.

13. The Sponsor further agrees that this trail project will be available to the general public.

14. It is understood and agreed by both parties that a failure to comply with any of the points listed above can result in a voiding of this Agreement and a loss of further Recreational Trails Program assistance.

15. The Sponsor further agrees to protect, defend, and save the state, its elected and appointed officials, agents and employees, while acting within the scope of their duties as such, harmless from and against all claims demands, and causes of action of any kind or character, including the cost of defense thereof, arising in favor of the Sponsor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of service performed or omissions of services or in any way resulting from the acts or omissions of the Sponsor and/or its agents, employees, subcontractors, representatives, or the state under this Agreement.

IN WITNESS WHEREOF, the Department has caused its name to be subscribed thereunto duly authorized and the Sponsor has caused its name to be subscribed by its proper officers, thereunto duly authorized, on the day and year first above written.

BY: _____
FISH, WILDLIFE and PARKS

BY: _____
PROJECT SPONSOR

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 13, 2006

TITLE: Resolution Relating to an Inter-Fund Loan and Approving the Terms and Conditions of the Loan from General Fund to the Property/Liability Insurance Fund

DEPARTMENT: Administration-Finance Division

PRESENTED BY: Patrick M. Weber, Financial Services Manager

PROBLEM/ISSUE STATEMENT: The Property/Liability Insurance Fund's cash reserves are depleted to such a low level that soon there will be insufficient cash to meet payroll and claims expenses. The cause is two fold; due to MMIA's costs incurred to defend the City in several large lawsuits, the Property/Liability Insurance Fund's FY 2006 liability insurance premium exceeded budget by approximately \$300,000, and late FY 2005 claims costs were greater than expected when budgeting cash carryover into FY 2006. Staff recommends that Council authorize a short-term inter-fund loan from the General Fund to the Property/Liability Insurance Fund.

ALTERNATIVES ANALYZED: Finance considered the following alternatives:

- (1) Borrow cash from the general fund in FY 2006 and repay it in FY 2007 with increased charges built into each user fund's FY 2007 budget.
- (2) Charge user funds additional amounts in FY 2006, which would have required budget amendments and possible cash flow problems for numerous funds.

The first approach is preferable because it minimizes effort and it also allows each fund additional time to plan for increased charges. This is the alternative department heads determined to be the best solution.

FINANCIAL IMPACT: If the Property/Liability Insurance Fund continues to operate without additional cash, the resulting deficit cash balance would be a violation of state statutes. The General Fund has sufficient cash reserves to make a short-term loan.

Budget amendments have been presented to Council to authorize the additional expenses in the Property/Liability Insurance Fund and for the loans between the two funds.

RECOMMENDATION

Staff recommends that Council authorize a short term loan from the General Fund to the Property/Liability Insurance Fund in the amount of \$300,000, which will be repaid in August 2006.

Approved By: **City Administrator** ____ **City Attorney** ____

ATTACHMENT

A – Resolution Relating to an Inter-Fund Loan and Approving the Terms and Conditions of the Loan

RESOLUTION NO. 06-_____

RESOLUTION RELATING TO AN INTER-FUND LOAN AND
APPROVING THE TERMS AND CONDITIONS OF THE LOAN

BE IT RESOLVED by the City Council (the “Council”) of the City of Billings, Montana (the “City”), as follows:

Section 1. Authorization.

1.01. This Council has approved a budget amendment for the Property/Liability Insurance Fund in the amount of \$300,000 to pay for liability insurance premiums that exceeded budget by approximately the same amount. In order to pay increased costs, the Council determined that it was necessary and desirable and in the best interests of the City to finance such costs through an inter-fund loan from the General Fund to the Property/Liability Insurance Fund.

Section 2. Terms.

2.01. The Property/Liability Insurance Fund will make a lump-sum payment to the General Fund in FY 07. Interest will be the City’s annual rate of return for the previous year ending June 30 plus one-half of one percent applied to the unpaid principal amount.

Passed by the City Council of the City of Billings, Montana, this 13th day of February, 2006.

RON TUSSING, Mayor

Attest: _____
MARITA HEROLD, City Clerk

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 13, 2006

TITLE: Downtown Billings Partnership (DBP) Recommendation to provide a Grant Award in excess of \$49,999 to 300 North 25th LLC, formerly Marchi-Tolliver Partnership for the façade of the Terrace Apartments located at 300 N. 25th Street.

DEPARTMENT: Administration - Finance Division

PRESENTED BY: Patrick M Weber, Financial Services Manager

PROBLEM/ISSUE STATEMENT: The DBP seeks Council approval for a \$29,725 facade grant to 300 North 25th LLC, formerly Marchi-Tolliver Partnership, for the Terrace Apartments project located at 300 N. 25th Street. The DBP previously awarded a \$4,000 housing grant to the entity for two units of the Terrace Apartments and a \$72,000 housing grant for an additional twelve units. Because the combined grants exceed \$50,000, the facade grant must receive Council approval before funds may be allocated to the \$29,725 project.

The DBP approved the \$29,725 grant at its December 19, 2005 board meeting as a part of consent agenda item 3-b (see attachment A).

FINANCIAL IMPACT: The Tax Increment Fund has a FY 2006 budget for this grant.

RECOMMENDATION

The Executive Committee of the DBP recommends that Council approve the grant award.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENTS

A – Downtown Billings Partnership, Inc., Board of Directors special meeting, held on January 6, 2006

B - Downtown Billings Partnership, Inc., Executive Committee Meeting held on December 16, 2005

C - Facade Grant Committee Meeting held on December 13, 2005

**DOWNTOWN BILLINGS PARTNERSHIP, INC.
BOARD OF DIRECTORS SPECIAL MEETING
FRIDAY, JANUARY 6, 2006 – 7:30 A.M.
MSU-B DOWNTOWN CONFERENCE ROOM
214 NORTH BROADWAY**

PRESENT: Jon Saunders, Jock West, Bernie Nelson, Lisa Woods, Steve Wahrlich, Bill Fisher, Jim Reno,
Tina Volek, Ron Tussing, Brenda Burkhartsmeier, Bill Honaker, Ann Miller and Chuck Barthuly

GUESTS: Harry Gottwals

DBP STAFF: Greg Krueger, Lisa Harmon and Gladys Phelps

AGENDA

1. CALL TO ORDER/INTRODUCTIONS/COURTESIES

DBP Board President, Jock West, called the meeting to order at 7:35 a.m. Harry Gottwals was introduced to those who did not know him. Director Krueger provided a brief recap of the history of Mr. Gottwals and Kay Foster as the Co-Chairs of the original “Everyone’s Neighborhood” Project, which laid the groundwork for the DBP. Mr. Gottwals has offered to become a volunteer for the DBP as a Downtown Ambassador on a part-time basis. He is a valuable asset for the DBP.

President West introduced Ron Tussing, the new mayor of Billings and a new DBP Board member. President West also commented on the fire in the Montana Power Building last night. Kay Foster informed the Board that the fire occurred in the kitchen of the Montana Brew Pub.

2. CONSENT AGENDA

- a) **Minutes of the previous DBP Board meeting – 11-18-06** – The minutes of the DBP Board meeting of November 18, 2006 were presented for review. As there were no corrections or additions, Presented West accepted the minutes as presented.
- b) **Review of minutes of DBP Executive Committee – 12-16-05** – The minutes of the DBP Executive Committee meeting of December 16, 2005 were presented for review. Ann Miller requested that the minutes include the fact that Mr. Hafer was requested to obtain a letter regarding the historic status of the L & L Building. As there were no other corrections or additions, President West accepted the minutes as presented.

3. EXECUTIVE COMMITTEE RECOMMENDATIONS

- a) **Action Item: Budget Reallocations** – Director Krueger informed the Board that, although today is a Special DBP Board meeting, the regular DBP Board meeting for January will still be held at 7:30 a.m. on Friday, January 27th at 7:30 a.m. Director Krueger continued to

provide a recap of the Board's request to track TID funding. He provided a new handout for Agenda Item 3a and reviewed this budget sheet. Director Krueger and Commissioner Reno discussed the base tax. Discussion followed. Director Krueger suggested that Yellowstone County Treasurer, Max Lenington, be invited to the meeting that he will be attending with Pat Weber and Bruce McCandless of the City to discuss the TID revenue. Director Krueger presented a "worst-case scenario" regarding the DBP's budget beyond the end of FY06. With the decrease in TIFD revenue collections, the DBP Operations Budget could sunset on June 30, 2006. There would be no DBP staff or DBP office beyond July 1, 2006. Director Krueger stated that he is recommending today's transfer of funding for the Facade Grant Program in the amount of \$79,168. Discussion followed. The \$800,000 that was allocated to the City's Parking Division is still allocated. The City has informed Director Krueger that this amount would not be put into the Parking Division until the sunset of the TID in 2008. Brenda Burkhartsmeier emphasized that this allocation was for the City's Parking Division and not only for the Sandstone Project. Jim Reno stated that he needed to have a better comfort level to make any financial decisions at today's meeting. Jon Saunders also stated that the Board needs actual numbers for any financial recommendations. Discussion continued. **Chuck Barthuly moved to clarify that the DBP continues to support the use of the funding of \$800,000 for the City's Parking Division and maintains this allocation to Parking and the DBP's support for City Parking, seconded by Brenda Burkhartsmeier. Call for discussion. Motion amended by Mr. Barthuly to maintain this for a 6-month timeframe. Motion carried.**

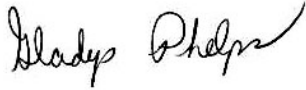
- b) **Action Item: Façade Grant Approvals:** Director Krueger provided a recap of the funding transfer request for the Facade Grant Program to fund the presented grant awards. These grant awards include the following: Billings Federal Credit Union-up to \$3,000, Rainbow Bar-up to \$26,841, L&L Building-up to \$10,250, Three Dances LLC-up to \$7,750 and Terrace Apartments-up to \$29,725. Discussion followed. **Bill Honaker moved to approve the transfer of \$79,168 from Railroad Quiet Zone Line Item to the Urban Design Façade Grant Program to fund the aforementioned grants, seconded by Kay Foster. Motion carried unanimously.**
- c) **Action Item: Montana Avenue Development Grant Approval** – Director Krueger provided a recap of the allocation of funding of \$75,000 for this development project. Discussion followed. Director Krueger stated he has received a letter from Ken Tolliver stating that he is interested in this project but a \$75,000 grant was not sufficient to proceed. Director Krueger requested Board direction on this matter. The original RFP indicated that there was a grant award of \$75,000. The DBP Executive Committee can modify its recommendation to increase the grant to \$145,000 and readvertise in another RFP. President West requested Mr. Gottwals' view on this proposal. Mr. Gottwals stated that the property values would increase along this block of Montana Avenue if the Empire Bar closes. This is going on the right track. President West also requested the view of Mayor Tussing as the new mayor and the former Chief of Police. He stated that this is the best that the DBP is capable of doing at this time.

Director Krueger asked Interim City Administrator Volek what needs to be done legally regarding this RFP. Ms. Volek stated that the revised RFP would need to be readvertised. Discussion followed. **Jon Saunders moved to approve the authorization for Director Krueger to readvertise the RFP with a \$145,000 grant available, seconded by Steve Wahrlich. Motion carried with Bill Honaker abstaining.**

4. ROUND TABLE DISCUSSION – PUBLIC COMMENT – ADJOURNMENT

- ❖ Harry Gottwals commented regarding the historic character of the Empire Bar. Brenda Burkhartsmeier stated that Urban Design Chair, Kim Olsen, had issued a statement from the Urban Design Committee at the last DBP Executive Committee meeting that the Urban Design Committee supported this proposal.
- ❖ The meeting was adjourned at 9:15 a.m.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Gladys Phelps", with a stylized, flowing script.

Gladys Phelps
Assistant Secretary

**DOWNTOWN BILLINGS PARTNERSHIP, INC.
EXECUTIVE COMMITTEE MEETING
FRIDAY, DECEMBER 16, 2005 – 7:30 A.M.
MSU-B DOWNTOWN CONFERENCE ROOM
2804 THIRD AVENUE NORTH**

PRESENT: Joe McClure, Bill Honaker, Ann Miller, Jock West, Steve Wahrlich, Tina Volek, Kim Olsen, Don

Olsen, Chuck Tooley and Brenda Burkhartsmeier

GUESTS: Randy Hafer and Ed Turner

DBP STAFF: Greg Krueger, Lisa Harmon and Gladys Phelps

AGENDA

1. CALL TO ORDER/INTRODUCTIONS/COURTESIES

DBP Board President, Jock West, called the meeting to order at 7:35 a.m.

2. REPORTS & MINUTES OF PREVIOUS MEETING – 11-11-05

The minutes of the DBP Executive Committee meeting of November 11, 2005 were presented for review. As there were no corrections or additions, President West accepted and approved the minutes as presented.

a) DBP STAFF/OFFICERS' REPORTS

- i. Executive Director's Report** – Director Krueger informed the Committee that his written report would be included in the Board meeting packet for January as there is no December Board meeting.
- ii. Operations Director's Report** – Operations Director Harmon provided an update on the BID and the snow removal process during the recent snowstorm. She informed the Committee that temporary workers from Labor Ready had been employed for two different days for snow removal but this was cost prohibitive for the BID. The BID has entered into a lease for an ATV with a snowplow attachment. This has proven to be cost efficient and is capable to clearing the complete district.
- iii. DBP Financial Reports** – Director Krueger provided a review of the financial spreadsheets. He also noted that a BID Summary is now included with the Projects and Operations Budget Reports.
- iv. DBA – DBA Director – Grants Update** – No report given as Ms. Woods is out of the office today.

3. EXECUTIVE COMMITTEE RECOMMENDATIONS

- a) **Action Item: Project Budget Grant Approvals (Action on Facade Grants)** – Director Krueger provided an update. Based upon the November’s Board approval of granting the L&L Building’s appeal and the developers were directed to reapply for a new grant, the Facade Grant application process was reopened for short time to allow other applications. Today’s grant approvals by the Facade Committee are those applications that were received. The question was asked if these awards should be considered separately or as a whole for approval or disapproval. Kim Olsen informed the Committee of the Facade Committee’s action on these grants. Discussion continued regarding where the funding would come from. Director Krueger stated that this would be discussed in Agenda Item 3b. Following the below referenced discussion on Budget Amendments, **Jock West moved to approve the funding of the five grants presented – Billings Federal Credit Union, \$3,000; The Rainbow Bar, \$26,841; L&L Building, \$10,250; Three Dances, LLC, \$7,750 and Terrace Apartments, \$29,725 and assign the total funding, \$77,566, from the Quiet Zone Line Item to the Facade Grant Committee Line Item, seconded by Joe McClure. Motion carried with one abstaining.**
- b) **Action Item: Budget Amendments** – Director Krueger provided a recap and informed the Committee that the only available funding for the aforementioned Facade Grants is in the Property Owners’ Line Item of Quiet Zone. Bill Honaker provided a brief review of the Property Owners’ Committee meeting on December 14th. The property owners still view the Quiet Zone Project as a top priority and wish it to remain as a Project Line Item. Discussion followed regarding the lack of specific costs for this project. Interim City Administrator Volek stated that she will follow-up with the consultant who did the work for this project. Discussion continued with Brenda Burkhartsmeier stating that the DBP Executive Committee Board needs to approve actual projects that are moving forth, rather than maintaining a potential project with no defined timeline. Joe McClure concurred and stated that the project “needs to be in front of us” and not think that something will happen sometime in the future. Discussion was also held regarding the Historic Designation for the L&L Building.
- c) **Action Item: Development Project – Montana Avenue (Action on Montana Avenue Development Grant)** – Director Krueger provided a review of the proposed Development Grant. He also provided a recap of the meeting that Kim Olsen, Lisa Harmon and he had attended with Mr. Lund, owner of the Empire Bar. Mr. Lund is agreeable to selling the property for \$350,000 and separate from the liquor license. He will not sell the liquor license before the property is sold. Director Krueger requested approval of the Montana Avenue Development Land Assemblage Grant Application. He suggested that a clause be added to the grant application stating that the City would have the opportunity to buy the land from the private developer within a specific period of time after the private transaction. Director Krueger informed the Committee that he will notify all the property owners that have expressed an interest in the purchase of the Empire Bar property by letter today and will have the Notice published in the Billings Times next week. At this time DBP Executive Committee member Bill Honaker excused himself from the discussion, as he is one of the interested parties in purchasing this property. He turned over Property Owners representation on the Executive Committee to Property Owners Alternate, Steve Wahrlich. The timeframe for acceptance of proposals should be 45 days. Discussion followed regarding scheduling a Special DBP Board meeting in early January to review this. The City Council will have the final decision regarding approval or disapproval of this grant. Discussion continued regarding the clause for the City’s opportunity to purchase the property from the private party at a later date. Director Krueger stated that he was withdrawing this suggestion. Ms.

Burkhartsmeier stated that she still wished to see that the City has first right of refusal. Director Krueger stated that he views this surface parking lot as an interim use. Ms. Olsen commented that although, the Urban Design Committee does not wish to see buildings demolished for the use as a parking lot, they endorse this proposal as an interim use. President West suggested that the City be given a window of 18 months to purchase the property from the private developer. Discussion continued. **Jock West moved to authorize DBP Executive Director Krueger to moved forward with this grant application proposal, notify all interested parties and publish a notice in the Billings Times, seconded by Kim Olsen. Motion carried unanimously with Steve Wahrlich voting as the DBP's Property Owners' Committee representative.** The DBP Special Board meeting will be held on Friday, January 6, 2006 at 7:30 a.m.

4. OLD BUSINESS AND BRIEF REPORTS (Partners/Affiliates/Committees)

a) Partner Updates and Reports:

- i. DBA** – Gladys Phelps informed the Committee that the DBA Alive After 5 Lottery drawing for the 2006 events was held on December 15th. Nineteen applications were received for the 12 available slots.
- ii. Property Owners** – Bill Honaker provided an update on the Property Owners' Committee meeting that was held on December 14th. Snow removal that is done by the City was discussed at the meeting. Lisa Harmon reported that she has discussed this issue with City staff on behalf of the downtown property owners. Ms. Volek provided a review of the City's snow removal policies. The City has ordinance that prohibits the piling of snow in the center of a street and the City does not possess enough manpower to fulfill all property owner requests. Ms. Volek stated that she is aware of the concerns of Holliday Furniture but the business does not reside within the Central Business District. If Ms. Cook wishes to be included, she can request this. Ms. Volek also stated that a City representative would attend the January Property Owners' Committee meeting.
- iii. City of Billings** – Mayor Tooley informed the Committee that he, Joe McClure, Jim Reno and John Brewer had flown to Phoenix to meet with American West Airline. He stated that America West maintains an "astounding" data collection system. America West is in the air industry to make a profit and they operate under the business concept of making a profit. They are different from the airlines that are currently in bankruptcy. America West's fuel costs have increased to 25% from 8% a few years ago. The merger with American Airlines also caused a readjustment in their routes.

Mayor Tooley concluded his report by informing the Committee that no feedback has been received yet from the City Committee regarding 4th Avenue North and North Broadway.

b) Project and Committee Reports:

- i. DBP Committee: Future Organization – DBP and the DDC** – Director Krueger that this committee is scheduled to meet in January.

- ii. Other Committee Reports – Urban Design** – Don Olsen provided an update on the Wayfinding and Signage Project.

5. NEW BUSINESS

Director Krueger reminded the Committee that today is the last DBP meeting for Mayor Tooley. The Mayor was thanked for all of his work with the DBP. Director Krueger informed the Committee that the Mayor will be acknowledged at the last December Council meeting with comments from staff and others. The DBP Board is invited to attend.

6. AJOURNMENT

The meeting was adjourned at 9:10 a.m.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Gladys Phelps", with a stylized flourish at the end.

Gladys Phelps
Assistant Secretary

**FACADE GRANT COMMITTEE MEETING
TUESDAY, DECEMBER 13, 2005 – 7:30 A.M.
MSU-B DOWNTOWN CONFERENCE ROOM
2804 THIRD AVENUE NORTH**

PRESENT: Sondra Daly, Jim Collins, Kim Olsen, Steve Mysse and Maribeth Haynes

GUESTS: Ken Tolliver, Todd Denowh, Debbie Strever, Linda Jacobson, Ed Thurn, Skip King,
Buzz _____ and Jock West

DBP STAFF: Greg Krueger, Lisa Harmon and Gladys Phelps

Kim Olsen called the meeting to order at 7:35 a.m.

AGENDA

1. New Applications

- **Application #125, Terrace Apartments, Ken Tolliver** – Mr. Tolliver provided a recap of his project that will include the installation of panels on the balcony rails of the apartments. This would include green colored trim. The apartment building will have this installed on every balcony but for now the work will only be completed on the Third Avenue side of the building. Discussion followed with the question of the ownership of the Terrace Apartments. Mr. Tolliver informed the Committee that he owns 72% of the property and Charles “Timer” Moses owns the remaining 28%. Discussion was also held regarding how this committee can accept and fund future projects when there is no funding left for FY06. DBP Director Krueger informed the Committee that the DBP Board of Directors desires to continue accepting grant applications. DBP Board President, Jock West, commented on the DBP Board’s views on the grant application process and the continued acceptance of applications. Following the departure of Mr. Tolliver and Mr. Denowh, the Committee opened discussion regarding the grant application. This project is eligible for a grant of up to \$29,725.00. **Jim Collins moved to approve a grant award of up to \$29,725.00 or 50% of the actual cost of the project, whichever is less to Ken Tolliver and the Terrace Apartments, seconded by Steve Mysse. Motion carried unanimously. Whereas, the Terrace Apartments have previously received a Housing Grant award, the grant award amount for this request will take the Terrace Apartment grant awards above \$49,999.00 and will require the approval of the City Council. This approval recommendation will be presented to the DBP Executive Committee at their meeting on December 16th for their action.**
- **Application #126, Billings Federal Credit Union, Debbie Strever** – Ms. Strever provided a recap of the project and presented colored pictures of the anticipated completion. Discussion followed. Following the departure of Ms. Strever, Ms. Harmon informed the Committee that this project is eligible for a grant of \$3,000.00, which is the maximum signage grant award. **Kim Olsen moved to approve a grant award of up to \$3,000.00 or 50% of the actual**

signage project, whichever is less to the Billings Federal Credit Union, seconded by Jim Collins. Motion carried unanimously. This approval recommendation will be presented to the DBP Executive Committee at their meeting on December 16th for their action.

- **Application #127, The Rainbow Bar, Linda Jacobson** – Ms. Jacobson provided a recap of the project and of the business. Ms. Jacobson's grandmother began the business in 1935. Ms. Jacobson provided a rendering of the proposed awning that shows lights on each side but stated that there would be no lights when the awning is installed. Upon the departure of Ms. Jacobson, the Committee opened discussion regarding the project. This project is eligible for a grant of up to \$26,841.00. **Kim Olsen moved to approve a grant award of up to \$26,841.00 or 50% of the actual cost of the project, whichever is less, seconded by Jim Collins. Motion carried unanimously. This approval recommendation will be presented to the DBP Executive Committee at their meeting on December 16th for their action.**
- **Application #128, L&L Building, Ed Thurn, Skip King, Buzz _____** - Mr. _____ provided a recap of the project. The building is substantially completed throughout. Mr. Krueger asked about the Historic Status for the building. The application process has been completed but a final determination has yet to be rendered by the State. Mr. Krueger provided a review of the grants that have been awarded to this project of the L&L Building. Mr. West also provided a review of the timetable on this project. Following the departure of the three representatives of the project, the Committee opened discussion regarding this grant application and the overall project. This project is eligible for a grant award of up to \$10,250.00 that includes \$5,000.00 for the Historic designation of the building. **Jim Collins moved to approve a grant award of up to \$10,250.00, which includes \$5,000.00 for Historic Designation, pending a favorable recommendation from the Montana State Historic Preservation Office, seconded by Kim Olsen. Motion carried unanimously. This approval recommendation will be presented to the DBP Executive Committee at their meeting on December 16th for their action.**

2. Old Business – Revisions

- **Application #117, Three Dances, LLC, Schutz Foss** – Chair Haynes provided a recap of the request for the project's revisions. Discussion followed with the concurrence that there is no great deviation from the original plans. The request for this revision is for \$7,750.00. **Jim Collins moved to approve a grant award of \$7,750.00 to Three Dances, LLC, seconded by Steve Mysse. Motion carried unanimously. This approval recommendation will be presented to the DBP Executive Committee at their meeting on December 16th for their action.**
- **Application #105, Best Western Ponderosa Inn** – Ms. Harmon distributed pictures of the revised entryway to the motel. There will only be one tower at the entrance, rather than two as originally presented. Mr. Wahrlich is requesting approval of this modification. Discussion followed. Kim Olsen stated that the entryway has lost its "edge" with only one tower. **Steve Mysse moved to approve the modification of the plans for the Best Western Ponderosa Inn, seconded by Jim Collins. Motion carried unanimously.**

3. New Business

DBP Director Krueger informed the Committee that he would be requesting authorization from the DBP Board of Directors for a \$75,000.00 grant for a Montana Avenue Parking Project. This will be for a specific area on Montana Avenue between North 27th Street and North Broadway on the north side of the street. This funding has already been allocated for such a purpose. Discussion followed regarding funding for the aforementioned Facade Committee Grant Award approvals from today's meeting. Director Krueger stated that there is sufficient funding in the DBP Projects Budget line item for "Quiet Zone". Whereas, no information has been received from the City's consultant regarding the Quiet Zone and FY06 is half over, the funding for this line item can be considered a source for the Facade Grant awards. The total of today's awards total \$77,566.00.

The meeting was adjourned at 9:30 a.m.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Gladys Phelps", with a stylized flourish at the end.

Gladys Phelps
DBP Executive Secretary

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 13, 2006

TITLE: Approval of the Baggage Circulation Study Project with CTA
DEPARTMENT: Aviation and Transit
PRESENTED BY: J. Bruce Putnam, A.A.E., Director of Aviation and Transit

PROBLEM/ISSUE STATEMENT: The Baggage Circulation Study is being undertaken to evaluate the facility changes and associated costs that would be needed to relocate the Transportation Security Administration's (TSA) trace detection equipment and baggage inspection stations at the Airport. It is anticipated the relocation of these stations will require significant renovation to the airline ticketing, baggage make-up areas, and the adjacent stair tower. The information and cost estimates developed will then be used to prepare a Federal capital improvement request to fund the necessary improvements. This study has been approved by the Federal Aviation Administration (FAA) and will be included in the Airport Improvement Program (AIP) for funding. Due to the Federal requirements for planning, designing, constructing, and administering projects funded through the FAA's Passenger Facility Charge (PFC) and AIP programs, the City has historically entered into a five-year term contract for architectural services at the Airport. The current five-year contract is with CTA Architects and Engineers, which is adjusted each time a new project is undertaken. The scope of work and fees associated with this study have been reviewed and approved by Airport staff and the FAA. Including these proposed current fees of \$149,310, the total cost of the architectural work under this agreement during the first four years of this agreement totals \$831,928.66, and has produced \$5,291,665 in construction projects.

FINANCIAL IMPACT: The total fee from CTA for this study is \$149,310 and will be funded through a 90% FAA AIP entitlement grant with a 10% local share match. The FAA portion will be \$134,379 and the City's match is \$14,931. This project is included in the current budget.

RECOMMENDATION

Staff recommends that the City Council approve the fee in the amount of \$149,310 for the Baggage Circulation Study for the City of Billings Logan International Airport with CTA Architects.

Approved By: City Administrator ____ City Attorney ____

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 13, 2006

TITLE: Downtown Billings Association (DBA) Street Closures
DEPARTMENT: Parks, Recreation and Public Lands
PRESENTED BY: Gene Blackwell, Interim Parks, Recreation and Public Lands Director

PROBLEM/ISSUE STATEMENT: The DBA requests temporary street closures for its annual events as outlined in the attached document. These annual events are following the same basic outline as in previous years.

Recommended conditions of approval include DBA:

1. Contact all businesses and make them aware of the event 60 days in advance
2. Clean the area to be used and provide and empty waste cans after the event
3. Notify all emergency facilities, bus lines and media at least two weeks in advance of the event
4. Provide a certificate of insurance naming the City of Billings as additional insured
5. Obtain proper alcohol and noise permits from the Police Department for events that require them

ALTERNATIVES ANALYZED:

1. Approve request to close streets for the events (recommended).
2. Deny the street closures.

FINANCIAL IMPACT: There are no costs to the City of Billings other than administrative time to process permit. Police, traffic control and litter removal are to be paid for the DBA.

RECOMMENDATION

Staff recommends that Council approve the closures as outlined in the attached document.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENTS

- A. Letter from DBA outlining events (4 pages)
- B. Certificate of insurance (3 pages)



Downtown Billings Association, Inc.
2815 2nd Ave N., Billings, MT 59101
Phone: 259-5454 Fax: 294-5061
Email: lisaw@downtownbillings.com

Street Closure Requests

FOOD FAIRS 2005 (EAT IN THE STREET): May – Aug. (Every other Wednesday)

This popular event repeats as a treat for our Downtown workers and visitors. We will need street closure from **6 AM to about 3:30 PM**. We will have about 12 food vendors and will not be selling alcoholic beverages. The specific dates will be 05/31, 06/14, 06/28, 07/12, 07/26, 08/09, and 08/23

2nd Ave. from N. 29th to N. 28th (traffic diverted left only onto 29th).

ALIVE AFTER 5:

06/15/06, 07/27/06

Alive After 5 has 12 different hosting venues. The Alive After 5 will include many of the same activities as it did last year. There will be two different Alive After 5's under Skypoint this year, each one hosted by a different restaurant/pub. We will need street closure from 3 PM until 9 PM. The event includes music and alcohol sales (open container permit will be obtained by the hosting restaurant/pub) and usually draws a large crowd. The specific dates and hosting restaurants are: 06/15/06 – Hooligan's, 07/27/06 – The Montana Brew Pub.

For the Hooligan's – 07/28/05 and Montana Brewing Company – 08/18/05: N 28th from 1st to 2nd Ave. Traffic will not be able to turn south from 2nd or north from 1st onto N. Broadway

ALIVE AFTER 5

Thursday, June 22, 2006

One of the Alive After 5's will be hosted by Tiny's Tavern. The event will have many of the same activities as it did last year. The event includes music and alcohol sales (open container permit will be obtained by Tiny's Tavern) and usually draws a large crowd. We are requesting to close the following street:

N. 24th street between 4th Ave N. and 3rd Ave N. (1 block) from 3:00 PM to 9:00 PM. Traffic on 3rd Ave N. and 4th Ave N. will not be affected except they will not be able to turn north or south down N. 24th between 4th Ave N. and 3rd Ave N. We will mark the street as "closed" at 4th Ave N. and 3rd Ave N. so traffic can not turn down this street.

ALIVE AFTER 5

Thursday, June 29, 2006

One of the Alive After 5's will be hosted by the CTA Architects. The event will have many of the same activities as it did last year. The event includes music and alcohol sales (open container permit will be obtained by the restaurant catering the food) and usually draws a large crowd. We are requesting to close the following street:

N. 23rd street between Montana Ave and 1st Ave N. from 3:00 PM to 9:00PM. Traffic on Montana Ave will not be allowed to turn left onto N. 23rd street.

ALIVE AFTER 5**Thursday, July 6, 2006**

One of the Alive After 5's will be hosted by The Carlin the same as last year. The event will have many of the same activities as it did last year. The event includes music and alcohol sales (open container permit will be obtained by The Carlin and usually draws a large crowd. The bus depot has been contacted. We are requesting to close the following streets:

N. 25th street between Montana Ave and 1st Ave. N. (1 block) from 3:00 PM to 9:00 PM. Traffic on Montana Ave. will not be allowed to turn left onto N. 25th street and accommodations will be made for the Bus Depot (Bus traffic only) to access their facility via 1st Ave N. at N. 25th. Since N 25th is a northbound one-way street, this will be a special departure from normal bus traffic. We will mark the street as "closed" at 1st Ave. N. just to make sure that regular traffic doesn't enter even though they would be going the wrong way on a one-way street. In addition, using cones and yellow caution tape, we will clearly mark a "no access area" on the street to accommodate any bus traffic. (Most of the action & crowd occupancy on the street will occur far from the Bus Depot near Montana Ave.)

ALIVE AFTER 5:**Thursday, July 20, 2006**

One of the Alive After 5's will be hosted by the Monte Carlo Casino. The event will have many of the same activities as it did last year. The event includes music and alcohol sales (open container permit will be obtained by the Monte Carlo Casino) and usually draws a large crowd. We are requesting to close the following street:

N. 29th street between Montana Ave and 1st Ave N. from 3:00 PM to 9:00PM. Traffic on Montana Ave will not be allowed to turn left onto N. 29th street.

ALIVE AFTER 5**Thursday, August 3, 2006**

One of the Alive After 5's will be hosted by Don Luis Restaurant. The event will have many of the same activities as it did last year. The event includes music and alcohol sales (open container permit will be obtained by the Don Luis) and usually draws a large crowd. We are requesting to close the following street:

N. 26th street between Montana Ave and 1st Ave N. from 3:00 PM to 9:00PM. Traffic on Montana Ave will not be allowed to turn left onto N. 26th street. Traffic on 1st Ave N. will not be able to turn south on N. 26th St.

ALIVE AFTER 5**Thursday, August 10, 2006**

One of the Alive After 5's will be hosted by The Q the same as last year. The event will have many of the same activities as it did last year. The event includes music and alcohol sales (open container permit will be obtained by The Q and usually draws a large crowd. The bus depot has been contacted. We are requesting to close the following streets:

N. 25th street between Montana Ave and 1st Ave. N. (1 block) from 3:00 PM to 9:00 PM. Traffic on Montana Ave. will not be allowed to turn left onto N. 25th street and accommodations will be made for the Bus Depot (Bus traffic only) to access their facility via 1st Ave N. at N. 25th. Since N 25th is a northbound one-way street, this will be a special departure from normal bus traffic. We will mark the street as "closed" at 1st Ave. N. just to make sure that regular traffic doesn't enter even though they would be going the wrong way on a one-way street. In addition, using cones and yellow caution tape, we will clearly mark a "no access area" on the street to accommodate any bus traffic. (Most of the action & crowd occupancy on the street will occur far from the Bus Depot near Montana Ave.)

ALIVE AFTER 5**Thursday, August 17, 2006**

One of the Alive After 5's will be hosted by Computers Unlimited the same as last year. The event will have many of the same activities as it did last year. The event includes music and alcohol sales (open container permit will be obtained by catering venue and usually draws a large crowd. The bus depot has been contacted. We are requesting to close the following streets:

N. 25th street between Montana Ave and 1st Ave. N. (1 block) from 3:00 PM to 9:00 PM. Traffic on Montana Ave. will not be allowed to turn left onto N. 25th street and accommodations will be made for the Bus Depot (Bus traffic only) to access their facility via 1st Ave N. at N. 25th. Since N 25th is a northbound one-way street, this will be a special departure from normal bus traffic. We will mark the street as "closed" at 1st Ave. N. just to make sure that regular traffic doesn't enter even though they would be going the wrong way on a one-way street. In addition, using cones and yellow caution tape, we will clearly mark a "no access area" on the street to accommodate any bus traffic. (Most of the action & crowd occupancy on the street will occur far from the Bus Depot near Montana Ave.)

ALIVE AFTER 5**Thursday, August 24, 2006**

One of the Alive After 5's will be hosted by Pug Mahons. The event will have many of the same activities as it did last year. The event includes music and alcohol sales (open container permit will be obtained by Pug Mahon's) and usually draws a large crowd. We are requesting to close the following street:

N. 30th street between 1st Ave N. and 2nd Ave N. from 3:00 PM to 9:00PM. Traffic on 2nd Ave N. will not be allowed to turn south onto N. 30th street. Traffic on 1st Ave N. will not be able to turn north on N. 30th St.

STRAWBERRY FESTIVAL:**Saturday, June 10, 2006**

The Strawberry Festival will include many of the same activities as in the past THIRTEEN years. We request permission to close the following streets from **4:00 am to 7:00 pm**: (4½ blocks)

N 28th from 1st to 3rd Ave. (traffic diverted left only onto 1st N.);
And 2nd Ave. from the alley east of N. 27th to N. 29th (traffic diverted left only onto N. 29th);
And N. 29th from 1st to 2nd Ave. (traffic diverted left only onto 1st N.).

MONTANA STATE CHILI COOK-OFF:**Saturday, June 24, 2006**

The Montana State Chili cook-off will be a cook-off for anyone who wants to enter. The event started two years ago and we are excited about it. We are requesting the following streets to be closed on Saturday June 24, 2006 from 6AM till 5PM.

N. 28th from 1st to 2nd Ave. (traffic will not be allowed to turn south on N. Broadway from 3rd)
And 2nd Ave. from the alley east of N. 27th to N. 29th (traffic diverted left only onto N. 29th);

FARMERS' MARKET:**Every. Sat. 07/15/06-10/07/06**

The Farmers' Market will include many of the same activities as the last four years. We request permission to close the following streets every Saturday starting July 15th through, and including, October 7, 2006 from **6 am to 1 pm**: (4½ blocks)

N 28th from 1st to 3rd Ave. (traffic diverted left only onto 1st N.);
And 2nd Ave. from the alley east of N. 27th to N. 29th (traffic diverted left only onto N. 29th);
And N. 29th from 1st to 2nd Ave. (traffic diverted left only onto 1st N.).

FARMERS' MARKET:**Wednesday August nights 08/02/06-08/23/06**

The Farmers' Market will include many of the same activities as the last four years. We request permission to close the following streets every Wednesday night starting August 08th through, and including, August 23rd from **3 pm to 9 pm**: (2 blocks)

N. 28th from 1st to 2nd Ave. (traffic will not be allowed to turn south on N. Broadway from 3rd)
And 2nd Ave. from the alley east of N. 27th to N. 29th (traffic diverted left only onto N. 29th);

HARVESTFEST:**Saturday, October 14, 2006**

HarvestFest is a smaller Strawberry Festival that will be ending the event season. We are requesting the following streets to be closed on Saturday October 14, 2006 from 6AM to 5PM.

N. 28th from 1st to 3rd Ave. (traffic will not be allowed to turn south on N. Broadway from 3rd)
And 2nd Ave. from the alley east of N. 27th to N. 29th (traffic diverted left only onto N. 29th);

HOLIDAY PARADE:**Friday, November 24, 2006**

Pursuant to City Ordinance Sections 24-540 and 24-501 I would like to hereby request permission to hold our annual Holiday Parade. We intend to use the usual established Downtown Parade Route. We will start the parade at 7:00 PM on Friday, November 24, 2006 with final staging beginning in the staging area east of 26th St. at about 5:30 PM. We will arrange for proper closure of the staging area and parade route. We will do our best to ensure that no vehicles are parked in the parking lanes on 3rd Ave. between 27th and 29th streets and we will secure the services of the Billings Police Department to assist in temporary street closures, especially N. 27th.

We would request the usual police department support for this parade with a lead car and a follow car. We would also like permission to place a review trailer on 3rd Ave across from The Alberta Bair Theater...same as previous years. Finally, I hereby inform your department that there may be animals in this parade and the streets will need to be cleaned following the parade. We will arrange for event zone/no parking signs and place them on the parade route prior to the event.

CHRISTMAS STROLL:**Friday, December 1, 2006**

The Christmas Stoll will include many of the same activities as in the past FOURTEEN years. At this time, we are requesting that the following streets be closed from 4pm to 9:30pm: (3½ blocks)

N. 28th from 1st to 3rd Ave. (traffic diverted left only onto 1st N.);
And 2nd Ave. from the alley east of N. 27th to N. 29th (traffic diverted left only onto N. 29th).

For all of these events, the Downtown Billings Association will provide necessary barricades for traffic control. We will also arrange for adequate trash cans to control litter as well as clean up. And, we will send letters before each event to inform emergency personnel of the street closures and parade events. At this time, we request adequate police escort for the holiday parade and bike/foot patrol officers, if available, at all events. If you have any questions or concerns, please call me at 259-5454.

Thank you for your time and consideration and for helping us make Downtown Billings, the HEART of the Magic City. See you Downtown!

Lisa Woods
Executive Director
Downtown Billings Association

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 13, 2006

TITLE: Work Order 04-11 – South Billings Boulevard/SID 1373, Property Acquisition of the North 1.53 Acres of Lot 6, Sugar Subdivision

DEPARTMENT: Public Works Department, Engineering Division

PRESENTED BY: David D. Mumford, Public Works Director

PROBLEM/ISSUE STATEMENT: Mayor and City Council are asked to consider a motion to accept a tract of land situated in the north half of Lot 6, Sugar Subdivision, located in the NE¹/₄ of Section 8, T.1S., R.26E., P.M.M., Yellowstone County, Montana (4808 Underpass Avenue). The said tract of land, as shown on attached Exhibit A, is being acquired to facilitate improvements in traffic operations (truck turns) in the intersection of South Billings Boulevard and Underpass Avenue.

ALTERNATIVES ANALYZED:

1. Pass a motion to accept the dedicated tract of land and authorize the Mayor to sign the plat as set forth in Exhibit A
2. Do not pass a motion to accept the dedicated tract of land and authorize the Mayor to sign the plat as set forth in Exhibit A.

FINANCIAL IMPACT: There is no financial impact to the City of Billings.

RECOMMENDATION

Staff recommends that City Council accept the tract of land dedicated by the Thiels and authorize the Mayor to sign the amended plat of the north 1.53 acres of Lot 6, Sugar Subdivision.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENTS

- A. Exhibit A – Location of Conveyed Tract
- B. Exhibit B - Mutual Release and Settlement Agreement

INTRODUCTION

Larry and Marlene Thiel, property owners of the Parkway Motel located at 4808 Underpass Avenue in Billings, have agreed to convey a tract of land to the City of Billings, as shown on attached Exhibit A. This tract of land is situated in the north half of Lot 6, Sugar Subdivision, located in the NE¼ of Section 8, T.1S., R.26E., P.M.M., Yellowstone County, Montana. Conveyance of this tract will facilitate the construction design at the intersection of South Billings Boulevard and Underpass Avenue and improve traffic turning movements, especially those of larger vehicles.

BACKGROUND

During the design and survey for the South Billings Boulevard improvement project, it was determined that a portion of the Parkway Motel structure, located at 4808 Underpass Avenue, was encroaching in City of Billings right-of-way making construction of the improvements and the widening of South Billings Boulevard in that area impossible. The City of Billings has successfully negotiated a Mutual Release and Settlement Agreement (attached Exhibit B) with the property owners, Larry and Marlene Thiel. The Thiels have agreed to remove the structure encroaching in the right-of-way by February 1, 2006, at their expense and convey to the City the tract of land situated in the north half of Lot 6, Sugar Subdivision at no expense to the City. The City of Billings, in turn, has agreed to re-plat the described property at no expense to the Thiels, provide all parties with a recordable legal description, and prepare and deliver a quitclaim deed of the property for the Thiel's signature. Once City Council accepts the tract of land conveyed to the City of Billings by Larry and Marlene Thiel, the City will be able to move forward with completing the construction improvements at the intersection of South Billings Boulevard and Underpass Avenue.

ALTERNATIVES ANALYSIS

1. Pass a motion authorizing the Mayor to sign the plat as set forth in Exhibit A.
Authorizing the Mayor to sign the plat will allow for completion of the intersection improvements at South Billings Boulevard and Underpass Avenue.
2. Do not pass a motion authorizing the Mayor to sign the plat as set forth in Exhibit A.
Not authorizing the Mayor to sign the plat will inhibit the completion of the intersection improvements at South Billings Boulevard and Underpass Avenue.

RECOMMENDATION

Staff recommends that City Council accept the tract of land dedicated by the Thiels and authorize the Mayor to sign the amended plat of the north 1.53 acres of Lot 6, Sugar Subdivision.

ATTACHMENTS

- A. Exhibit A – Location of Conveyed Tract
- B. Exhibit B - Mutual Release and Settlement Agreement

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 13, 2006

TITLE: Resolution authorizing City Administrator to approve contracts up to \$50,000 and repealing Resolution 03-18016

DEPARTMENT: Administration – Finance Division

PRESENTED BY: Patrick M. Weber, Finance Services Manager

PROBLEM/ISSUE STATEMENT: New State law increases the sealed bid amount to \$50,000. Therefore, Resolution 03-18016 is amended to authorize the City Administrator to approve and execute contracts on behalf of the City to \$50,000 or less. The current Resolution 03-18016, authorizes the City Administrator to only approve and execute contracts \$25,000 or less.

FINANCIAL IMPACT: There is no financial impact for this action.

RECOMMENDATION

Staff recommends that the City Council approve the resolution authorizing the City Administrator to approve and execute contracts on behalf of the City Of Billings \$50,000 or less.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENTS

- A. Amended resolution

Attachment A

RESOLUTION NO. **06** - _____

A RESOLUTION OF THE BILLINGS, MONTANA CITY COUNCIL AUTHORIZING THE CITY ADMINISTRATOR TO APPROVE AND EXECUTE CERTAIN CONTRACTS ON BEHALF OF THE CITY AND REPEALING RESOLUTION 03-18016.

WHEREAS, each year the City Council duly approves and adopts by resolution, a budget which provides specific funding for specific purposes; and,

WHEREAS, formal approval of said annual budget constitutes legal authorization by the City Council to expend funds for specified purposes; and,

WHEREAS, pursuant to State law, MCA 7-5-4302, sealed bids are used for purchases for any automobile, truck, other vehicle, road machinery, other machinery, apparatus, appliances, equipment, materials or supplies, or for construction, repair or maintenance in excess of \$50,000.

WHEREAS, the City Council may legally delegate to the City Administrator the authority to approve and execute contracts which are funded in the Council-approved budget \$50,000 or less.

WHEREAS, the Council desires to eliminate unnecessary additional Council action on such contracts.

NOW, THEREFORE, BE IT HEREBY RESOLVED AS FOLLOWS:

Section 1: The City Administrator is hereby authorized to approve and execute on behalf of the City contracts for \$50,000 or less.

Section 2: The City Administrator may designate, in writing, City employees authorized to act on his/her behalf in executing the contracts referred to in this resolution.

Section 3: Resolution 03-18016 is hereby repealed.

APPROVED AND ADOPTED by the City Council this 13th day of February, 2006.

CITY OF BILLINGS:

BY: _____
Ron Tussing, Mayor

ATTEST:

BY: _____
Marita Herold, CMC/AAE City Clerk

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February, 13, 2006

TITLE: Updated Purchasing Policy with Resolution
DEPARTMENT: Administration – Finance Division
PRESENTED BY: Patrick M. Weber, Financial Services Manager

PROBLEM/ISSUE STATEMENT: The Purchasing Policy has been updated from the current version dated 1994. The Purchasing Procedures will be adopted by Administrative Order.

Purchasing Policy Highlights:

- Mission statement to maximize tax dollars spent
- Sealed bids and quotes creates competition which equals lower pricing
- Purchasing Policy complies with State law

ALTERNATIVES ANALYZED: Make no changes and remain status quo.

RECOMMENDATION

Staff recommends that Council approves this updated Purchasing Policy.

Approved By: **City Administrator** ____ **City Attorney** ____

ATTACHMENT

A- Resolution for Purchasing Policy

RESOLUTION NO. 06- _____

A RESOLUTION OF THE BILLINGS, MONTANA CITY
COUNCIL ADOPTING A CITY-WIDE PURCHASING POLICY

WHEREAS, the City of Billings Purchasing Manual has been in use since 1994 but has never been adopted as the official policy of the City of Billings; and

WHEREAS, the City purchases a substantial amount of goods and services each year through its various departments and agencies; and

WHEREAS, state law requirements regarding municipal contracts have changed since 1994; and

WHEREAS, the City of Billings needs to adopt a Purchasing Policy to establish city purchasing policies as well as a procedures manual outlining the various methods of appropriate procurement practices used by the City of Billings in order to provide for an efficient and equitable system of public purchasing by the City; to obtain the maximum purchasing value of public funds in procurement by the City, and to provide for a procurement system of quality and integrity; and

WHEREAS, the *2006 City of Billings Purchasing Procedure* is being adopted contemporaneously by Administrative Order.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA, AS FOLLOWS:

That the City of Billings hereby adopts the *2006 City of Billings Purchasing Policy* which is set forth in Attachment 'A'. All prior versions of the City of Billings Purchasing Policies are repealed, revoked and superseded thereby.

APPROVED AND PASSED by the City Council of the City of Billings, this ____ day of _____, 2006.

THE CITY OF BILLINGS:

BY: _____
Ron Tussing, MAYOR

ATTEST:

BY: _____
Marita Herold, CMC/AEE CITY CLERK
Attachment 'A'

CITY OF BILLINGS
PURCHASING
POLICY

February 2006

Introduction

In order to provide an efficient purchasing program built on excellence and expertise it is important that all personnel (Citywide) function as a team with cooperation as the essential element. Those individuals whose duties require them to become a part of the purchasing cycle must be completely acquainted with the program and have a clear definition and understanding of its purposes, insofar as it applies to the procurement of materials, supplies, equipment and professional services at the lowest possible cost consistent with the quality needed for the operation of municipal departments.

Policy Summary

The City of Billings Purchasing Policy establishes an efficient, fiscally responsible, centralized purchasing system, a program, which will effectively provide day-to-day service and support citywide. This policy recognizes and addresses the importance of the overall support mission and the need for maximizing and enhancing whenever possible, the value of each tax dollar expended.

The City of Billings requires departments, divisions, units and City personnel to cooperate fully in their adherence to policy and procedure related to the Purchasing Policy as adopted by the City Administrator and/or the City Council.

Personnel Behavior according to Purchasing Policy

1. City of Billings personnel will govern themselves in a manner that is consistent with the Code of Ethics, City Codes and Resolutions.
2. The Purchasing Policy is created to promote and cultivate at all personnel levels within the City of Billings goodwill and good business relationships with vendors in order to establish equity and protect the public interest in such a way that enhances the City's reputation for impartiality, courtesy, ethical deportment, service, and economy.
3. The Purchasing Policy assures that all purchases receive the benefit of competition to the maximum extent practicable, through the use of formal sealed bids, quote bids, cost verification methods, and other recognized and professionally acceptable methods of procurement that accrues positive benefit to the City of Billings.

I. Purpose

This policy establishes efficient procedures and guidelines to aid each department of the City of Billings in monitoring its own compliance and commitment to authorizing, approving and processing expenditures.

II. Scope

- II.1. This policy supersedes all previous City of Billings purchasing policies. If future policies conflict with or supersede parts of this policy, the remaining sections of the policy will stay in effect.
- II.2. The policy applies to all City of Billings departments and divisions. It applies to ALL types of expenditures.
- II.3. Public procurement functions essentially share primary fundamental goals such as obtaining maximum value for each tax dollar expended and establishing systematic, consistent and fiscally responsible accountability and control over all purchases.
- II.4. The City of Billings Finance Department is responsible for maintaining overall control and implementation of the policy.
- II.5. The City Council approves the Purchasing Policy and the City Administrator establishes the Purchasing Procedures of the City of Billings through Administrative Order.

III. Policy Statement

- III.1. It is the policy of the City of Billings to obtain maximum value for each tax dollar expended in the purchase of goods and services, and to establish systematic, consistent and fiscally responsible accountability and control over all City purchases.
- III.2. This policy applies to all activities, including the City's State and Federally-funded programs or grants and other entities under the authority of the City Administrator and/or City Council. It includes but is not limited to the acquisition of:
 - Equipment
 - Merchandise
 - Materials
 - Professional services
 - Other services
 - Construction contracts
- III.3. This policy is in compliance with all Federal and State laws as they may apply.
- III.4. Those who fail to comply with this policy may be subject to disciplinary action.

- III.5. This policy will be used in conjunction with the policies in place for the Capitalization Policy/CIP, the Equipment Replacement Plan (ERP), and the Technology Replacement Plan (TRP). These policies are available for reference in Appendix A.
- III.6. Upon adoption of this policy, the City Council authorizes the City Administrator to establish any procedures and standards necessary for implementation.
- III.7. The City Administrator will review this policy at least every two years and make recommendations for changes to the City Council.

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L

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 13, 2006

TITLE: Resolution Relating to Financing of Certain Proposed Projects;
Establishing Compliance with Reimbursement Bond Regulations under
the Internal Revenue Code

DEPARTMENT: Administration – Finance Division

PRESENTED BY: Patrick M. Weber, Financial Services Manager

PROBLEM/ISSUE STATEMENT: The City does not anticipate the Department of Natural Resources and Conservation issuing revenue bonds for the Briarwood sanitary sewer main extension until February. However, the City needs to expend monies related to the project before funds are available from the bond sale proceeds. Preliminary engineering costs will be paid from the wastewater reserves. The following resolution allows the City to reimburse those expenses from the bond sale proceeds.

RECOMMENDATION

Staff recommends City Council approve the attached resolution.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENT

A – Resolution prepared by Dorsey & Whitney

CERTIFICATE AS TO RESOLUTION AND ADOPTING VOTE

I, the undersigned, being the duly qualified and acting recording officer of the City of Billings, Montana (the "City"), hereby certify that the attached resolution is a true copy of a resolution entitled: "RESOLUTION RELATING TO FINANCING OF CERTAIN PROPOSED PROJECTS; ESTABLISHING COMPLIANCE WITH REIMBURSEMENT BOND REGULATIONS UNDER THE INTERNAL REVENUE CODE" (the "Resolution"), on file in the original records of the City in my legal custody; that the Resolution was duly adopted by the City Council at a regular meeting on February 13, 2006, and that the meeting was duly held by the City Council and was attended throughout by a quorum, pursuant to call and notice of such meeting given as required by law; and that the Resolution has not as of the date hereof been amended or repealed.

I further certify that, upon vote being taken on the Resolution at said meeting, the following Council Members voted in favor thereof: _____;
_____;
voted against the same: _____;
abstained from voting thereon: _____;
or were absent: _____.

WITNESS my hand officially this _____ day of February, 2006.

City Clerk

RESOLUTION NO. _____
RESOLUTION RELATING TO FINANCING OF CERTAIN
PROPOSED PROJECTS; ESTABLISHING COMPLIANCE
WITH REIMBURSEMENT BOND REGULATIONS UNDER
THE INTERNAL REVENUE CODE

BE IT RESOLVED by the City Council of the City of Billings, Montana (the “City”), as follows:

Recitals.

The United States Department of Treasury has promulgated final regulations governing the use of proceeds of tax-exempt bonds, all or a portion of which are to be used to reimburse the City for project expenditures paid by the City prior to the date of issuance of such bonds. Those regulations (Treasury Regulations, Section 1.150-2) (the “Regulations”) require that the City adopt a statement of official intent to reimburse an original expenditure not later than 60 days after payment of the original expenditure. The Regulations also generally require that the bonds be issued and the reimbursement allocation made from the proceeds of the bonds within 18 months (or three years, if the reimbursement bond issue qualifies for the “small issuer” exception from the arbitrage rebate requirement) after the later of (i) the date the expenditure is paid or (ii) the date the project is placed in service or abandoned, but (unless the issue qualifies for the “small issuer” exception from the arbitrage rebate requirement) in no event more than three years after the date the expenditure is paid. The Regulations generally permit reimbursement of capital expenditures and costs of issuance of the bonds.

The City desires to comply with requirements of the Regulations with respect to certain projects hereinafter identified.

Official Intent Declaration.

The City proposes to undertake certain projects, which projects and the estimated costs thereof are generally described on Exhibit A hereto, which is hereby incorporated herein and made a part hereof (the “Projects”).

Other than (i) expenditures to be paid or reimbursed from sources other than the Bonds (as hereinafter defined), (ii) expenditures permitted to be reimbursed under the transitional provision contained in Section 1.150-2(j)(2) of the Regulations, (iii) expenditures constituting preliminary expenditures within the meaning of Section 1.150-2(f)(2) of the Regulations, or (iv) expenditures in a “de minimus” amount (as defined in Section 1.150-2(f)(1) of the Regulations), no expenditures for the Projects have heretofore been paid by the City and no expenditures will be paid by the City until after the date of this Resolution.

The City reasonably expects to reimburse some or all of the expenditures made for costs of the Projects out of the proceeds of debt in an estimated maximum aggregate principal amount of \$4,789,350 (the “Bonds”) after the date of payment of all or a portion of the costs of the Projects. All reimbursed expenditures shall be capital expenditures, a cost of issuance of the Bonds or other expenditures eligible for reimbursement under Section 1.150-2(d)(3) of the Regulations.

Budgetary Matters. As of the date hereof, there are no City funds reserved, allocated on a long-term basis or otherwise set aside (or reasonably expected to be reserved, allocated on a long-term basis or otherwise set aside) to provide permanent financing for the expenditures related to the Projects, other than pursuant to the issuance of the Bonds. The statement of intent contained in this resolution, therefore, is determined to be consistent with the City's budgetary and financial circumstances as they exist or are reasonably foreseeable on the date hereof.

Reimbursement Allocations. The Director of Administrative Services shall be responsible for making the "reimbursement allocations" described in the Regulations, being generally the transfer of the appropriate amount of proceeds of the Bonds to reimburse the source of temporary financing used by the City to make prior payment of the costs of the Projects. Each allocation shall be evidenced by an entry on the official books and records of the City maintained for the Bonds or the Projects and shall specifically identify the actual original expenditure being reimbursed.

Adopted this 13th day of February, 2006.

Mayor

Attest:

City Clerk

EXHIBIT A

<u>Description of Projects</u>	<u>Estimated Cost</u>
Replace existing aged Briarwood wastewater treatment facility by extending sanitary sewer main from the City's existing sewer infrastructure in South Billings Boulevard, thereby integrating the extension into the City's wastewater system.	\$4,835,350

[\(Back to Consent Agenda\)](#)



CITY COUNCIL AGENDA ITEM**CITY OF BILLINGS, MONTANA****Monday, February 13, 2006**

TITLE: Second Reading of Ordinance for the Amended City Subdivision Regulations (Article 23, BMCC)

DEPARTMENT: Planning and Community Services

PRESENTED BY: Juliet Spalding, Planner II

PROBLEM/ISSUE STATEMENT: The 2005 Legislature approved Senate Bill 116 in April, enacting a number of changes to the Subdivision and Platting Act (Title 76-3, Montana Code Annotated) and requiring adoption of updated local subdivision regulations by October, 2006. In response to this mandate and in order to implement some of the goals of the 2003 Growth Policy, Planning staff, in collaboration with other City staff and community members, is presenting a new draft set of City Subdivision Regulations for adoption. The City Council held a public hearing on the Amended City Subdivision Regulations (Article 23, BMCC) on December 19, 2005 and voted to adopt the ordinance containing the new regulations on first reading on January 9, 2006. The City Council must approve ordinances through two readings. The ordinance was considered on second reading on January 23, 2006, and action was delayed until this meeting. A copy of the entire 132-page ordinance can be acquired from the City Clerk's office, or found on the City Planning Website at: www.ci.billings.mt.us/Government/planning/index.php.

FINANCIAL IMPACT: There are no foreseen financial impacts to the City for adopting the Amended City Subdivision Regulations.

RECOMMENDATION

Planning Board recommends that Council adopt the City Subdivision Regulations, as Amended.

Approved By: City Administrator ____ City Attorney ____

INTRODUCTION

The 2005 Legislature approved Senate Bill 116 in April, enacting a number of changes to the Subdivision and Platting Act (Title 76-3, Montana Code Annotated) and requiring adoption of updated local subdivision regulations by October, 2006. In response to this mandate and in order to implement some of the goals of the 2003 Growth Policy, Planning staff, in collaboration with other City staff and community members, is presenting a new draft set of City Subdivision Regulations for public hearing and adoption.

PROCEDURAL HISTORY

- April, 2005: State Legislature approved Senate Bill 116 requiring updates to local subdivision regulations.
- March, 2004 – May, 2005: Planning staff drafted revised City Subdivision Regulations.
- April, 2005 – June, 2005: Planning staff and other City staff reviewed draft regulations.
- June 21, 2005 – August 16, 2005: Technical Review Committee made up of key staff and development community representatives reviewed draft regulations in a series of weekly meetings.
- November 7, 2005: City Council Work Session.
- November 22, 2005: Planning Board held a Public Hearing on the amended regulations.
- December 19, 2005: City Council held a Public Hearing on the amended regulations.
- January 9, 2006: City Council voted to approve the amended regulations on the 1st Reading of Ordinance.
- January 23, 2006: City Council delayed action on the 2nd Reading of Ordinance until the February 13, 2006 meeting.

BACKGROUND

The City's Subdivision Regulations (Article 23, BMCC) are in need of revision for several reasons. First, with the adoption of Senate Bill 116, the 2005 State Legislature mandated, among other things, significant changes to subdivision review procedures. Additionally, the 2003 Growth Policy established several goals that can be achieved through these updates. Also, the new regulations have been drafted to address concerns and constraints of the current regulations that City staff and development community have faced in recent years.

City Council members were previously provided with a copy of the ordinance that would amend the regulations. Key changes and updates to the regulations are highlighted by Chapter below. In addition to these changes, the new regulations will include more figures and appendices in an effort to illustrate and clarify the text.

Chapter 1: General Provisions: This chapter outlines the purpose of the regulations. New to this chapter are provisions on construction timing in relation to plat approval, and regulations on entering into contracts for deed prior to final plat filing.

Chapter 2: Definitions: This chapter is updated with new words/concepts defined and illustrated when possible.

Chapter 3: Subdivision Review Procedures: This chapter addresses several updates mandated by Senate Bill 116. A few of the key changes are:

- Outlines review procedures for major subdivisions, first minor subdivisions, subsequent minor subdivisions, subdivisions qualifying for expedited review (new to regulations), and amended plats.
- Outlines new mandated requirements for preapplication meetings, preapplication completeness and sufficiency reviews, and the subsequent public hearing option.

Chapter 4: Development Standards: This chapter combines Chapter 6 (Design Standards) & Chapter 7 (Required Improvements) of the existing regulations to create an easy to read composite of all the development requirements. The updated chapter also attempts to resolve over-used variances and other recent issues in design standards such as:

- Requiring 2 accesses for major and subsequent minor subdivisions.
- Reducing right-of-way and street width requirements (i.e. residential local access streets require 56 feet of right-of-way and 34-foot street surfaces).
- Requiring installation of boulevard sidewalks.

Chapter 5: Guarantee of Public Improvements: This chapter reviews the acceptable financial securities to guarantee required subdivision improvements. Changes to the existing regulations include the omission of SID's as an acceptable security, and the addition of the bond option.

Chapter 6: Subdivisions for Rent or Lease: This chapter reviews development standards for subdivisions that create spaces for manufactured homes and recreational vehicles. Updated standards include guidelines for spacing of units and buffering similar to those designed for the Cherry Creek Manufactured Home Park.

Chapter 7: Cluster Subdivisions and Planned Neighborhood Developments: This chapter is new to the regulations but authorized and encouraged by State law.

- Provides guidelines and incentives for development of cluster subdivisions and Planned Neighborhood Developments (PND).
- PND is intended to replace the Planned Unit Development provisions found in the Zoning Code to make the review process more streamlined and design-oriented, and to allow conditional approval of these developments (the zone change process only allows approval or denial).

Chapter 8: Condominiums and Townhomes: This chapter clarifies the distinction between these forms of housing, and outlines the development standards for each.

Chapter 9: Environmental Assessment: This chapter outlines the requirements and exemptions for the Environmental Assessment document. At this time, because we have an adopted Growth Policy, city-wide zoning, and a Capital Improvements Plan, all subdivisions are exempt from the EA requirement in the city.

Chapter 10: Dedication of Parks, Trails and Open Space: This chapter establishes the parkland dedication rules for major subdivisions as authorized by State law. Updates from the existing regulations include:

- Provisions for condominium and multi-family development dedication.
- School land dedication in lieu of park land dedication.

- Standards for linear parkland dedication for trail corridors and storm water detention ponds in parks.

Chapter 11: Administrative Provisions: This chapter addresses administrative processes involved with subdivision review including variances, corrections and adjustments, appeals, and penalties for violation. Changes to the existing regulations include:

- Requires subdivider to provide justification for variance requests.
- Addresses procedures for corrections to recorded final plats, as well as corrections to plats, conditions and supporting documents after preliminary plat approval.

RECOMMENDATION

Planning Board recommends that Council adopt the City Subdivision Regulations, as Amended.

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 13, 2006

TITLE: Preliminary Plat of Amended Lot 15, and the East Half Lot 16, Block 3, Rolle Subdivision

DEPARTMENT: Planning and Community Services, Ramona Mattix, AICP, Planning Director

PRESENTED BY: Cynthia Wilson, Planner I

PROBLEM/ISSUE STATEMENT: The applicant is requesting preliminary plat approval of Amended Lot 15 and the East Half Lot 16, Block 3, Rolle Subdivision, which was submitted on January 1, 2006. The owners are Michael and Stacy Haskell and Engineering, Inc. is the owner's representative. Pursuant to Section 23-404(c), BMCC, the City Council shall act on a preliminary minor plat within 35 working days of the application submittal.

ALTERNATIVES ANALYZED: State statutes and City subdivision regulations require that preliminary plats be reviewed using specific criteria, as stated within this report. The City may not unreasonably restrict an owner's ability to develop land if the subdivider provides evidence that any identified adverse effects can be mitigated. The City Council is required to:

1. Approve
2. Conditionally Approve; or
3. Deny the Preliminary Plat

FINANCIAL IMPACT: Should the City Council approve the preliminary plat, the subject property may further develop, resulting in additional tax revenues for the City. However, it is unknown if the value of these proposed homes will generate sufficient taxes and fees to pay for the required services.

RECOMMENDATION

Staff recommends that the City Council conditionally approve Amended Lot 15 and the East Half Lot 16, Block 3, Rolle Subdivision, approve a variance, and adopt the Findings of Fact, as presented in the staff report.

Approved by: City Administrator _____ City Attorney _____

ATTACHMENTS

A: Preliminary Plat

B: Site Photographs

C: Mayor's Approval Letter

D: Findings of Fact

INTRODUCTION

The proposed subdivision would create three (3) lots, ranging in size from 21,956 square feet to 9,678 square feet. The proposed lots are vacant with plans to construct single-family residences. The subject property is located south of Alkali Creek Road between the intersections of Travois and Indian Trails. A white fence encloses the subject property and provides a boundary at its frontage between the property and the road. The subject property is bordered on the north by the Spring Valley Subdivision and vacant and developing R-9600 residential land within Rolle Subdivision borders the subject property to the east, west, and south.

PROCEDURAL HISTORY

- The final plat of Rolle Subdivision was filed on January 2, 1957.
- The preliminary plat application of Amended Lot 15 and the East Half Lot 6, Block 3, Rolle Subdivision, which contains the subject property, was filed on January 1, 2006.
- The City Council will consider the preliminary plat application on February 13, 2006.

BACKGROUND

General location:	South of Alkali Creek Road between the intersections of Travois and Indian Trails
Legal Description:	Amended Lot 15 and the East Half Lot 16, Block 3, Rolle Subdivision, SW ¼, Section 28, Township 1 North, Range 26 East, P.M.M., Billings, Yellowstone County, Montana
Subdivider/Owner:	Michael and Stacy Haskell
Engineer and Surveyor:	Engineering, Inc.
Existing Zoning:	Residential-9600
Surrounding zoning:	R-9600
Existing land use:	Vacant
Proposed land use:	Single-Family Residential
Gross area:	1.001 acres
Lots:	Three (3): Lot 15A containing \pm 9,678 square feet; Lot 15B containing \pm 21,956 square feet; and, Lot 16A containing \pm 11,980 square feet
Dedications:	Parkland dedication is not required for a minor subdivision.

ALTERNATIVES ANALYSIS

One of the purposes of the subdivision review process is to identify potentially negative impacts of a subdivision on adjacent properties. When negative impacts are identified, it is the subdivider's responsibility to mitigate those impacts. Various City departments, utility companies and other agencies have reviewed this application and provided input on potential impacts and mitigation. The Findings of Fact, which are presented as Attachment D, discuss the potential negative impacts that have been identified by the reviewing agencies. The following conditions are recommended as a measure to mitigate any negative impacts:

RECOMMENDED CONDITIONS

In order to mitigate the effects on agriculture and agricultural water user facilities, local services, the natural environment, wildlife and wildlife habitat and protect public health and safety, the planning staff recommends the following conditions of approval (76-3-608 (3), MCA):

1. To minimize the effects on local services and to protect public health and safety, the final plat shall clearly show a 1-foot no access strip along the frontage of lots: 15A and 16A. (*Recommended by City Engineer's Office; Section 23-601(a)(c), BMCC*)
2. To minimize the effects on local services and to protect public health and safety, the SIA shall specify and the final plat shall show the length and width of the reciprocal access easement as it fronts Lots 15A, 15B, and 16A. (*Recommended by City Engineer's Office; Section 23-601(a), BMCC*)
3. To minimize the effects on local services and agricultural water user facilities the *Irrigation Ditch Easement* document shall clarify whom the 10-foot wide irrigation lateral easement is being created to serve. (*Recommended by City Engineer's Office; Section 23-603(b), BMCC*)
4. To minimize the effects on local services, the natural environment, and to protect public health and safety, the word "historical" shall be removed from the last sentence of *Section V. STORM DRAINAGE A*, and replaced with the word "planned." Furthermore, this sentence shall contain, "*and shall be subject to the approval by the City Engineer.*" (*Recommended by City Engineer's Office; Section 23-603(b), BMCC*)
5. To provide for the location and installation of gas utilities, the subdivider shall provide a 12-foot wide Montana-Dakota Utilities Company easement along the northern boundaries of Lots 15A, 15B, and 16A, and shall show the proposed placement of this utility easement on the final plat. (*Recommended by Montana-Dakota Utilities Company; Section 23-603(a) and Section 23-708, BMCC*)
6. Minor changes may be made to the SIA and final documents, as requested by the Planning Division, Public Works Department, and Engineer's Office to clarify the documents and bring them into the standard acceptable format.
7. The final plat shall comply with all requirements of the City Subdivision Regulations, rules, regulations, policies, and resolutions of the City of Billings, and the laws and Administrative Rules of the State of Montana.

VARIANCES

A variance is requested to allow a 40-foot right-of-way along Alkali Creek Road, a principal arterial street. The minimum right-of-way width for a City of Billings principal arterial street is 120-feet. Unless a variance is requested and granted, the City of Billings Engineer requests half of this right-of-way width at 60-feet along the proposed subdivision as it fronts Alkali Creek Road (23-601 (k)(l), BMCC).

STAKEHOLDERS

The Rolle Subdivision was scheduled for discussion at the Heights Task Force meeting of January 24, 2006. Mr. Denis Pitman, Chairman facilitated the meeting and reported after distribution of the preliminary plat to task force members, no discussion followed, and no questions were asked.

Other than inter-departmental comment, and distribution of the preliminary plat at the Heights Task Force January 24, meeting for discussion and comment purposes, the Planning Department has received no public comments or questions regarding the proposed subdivision.

The City Council will take action on the Rolle Subdivision at its meeting scheduled for Monday, February 13, 2006. Nearby property owners may attend this meeting.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

Consistency with the Growth Policy, the 2005 Transportation Plan Update, and Heritage Trail Plan are discussed within the Findings of Fact.

RECOMMENDATION

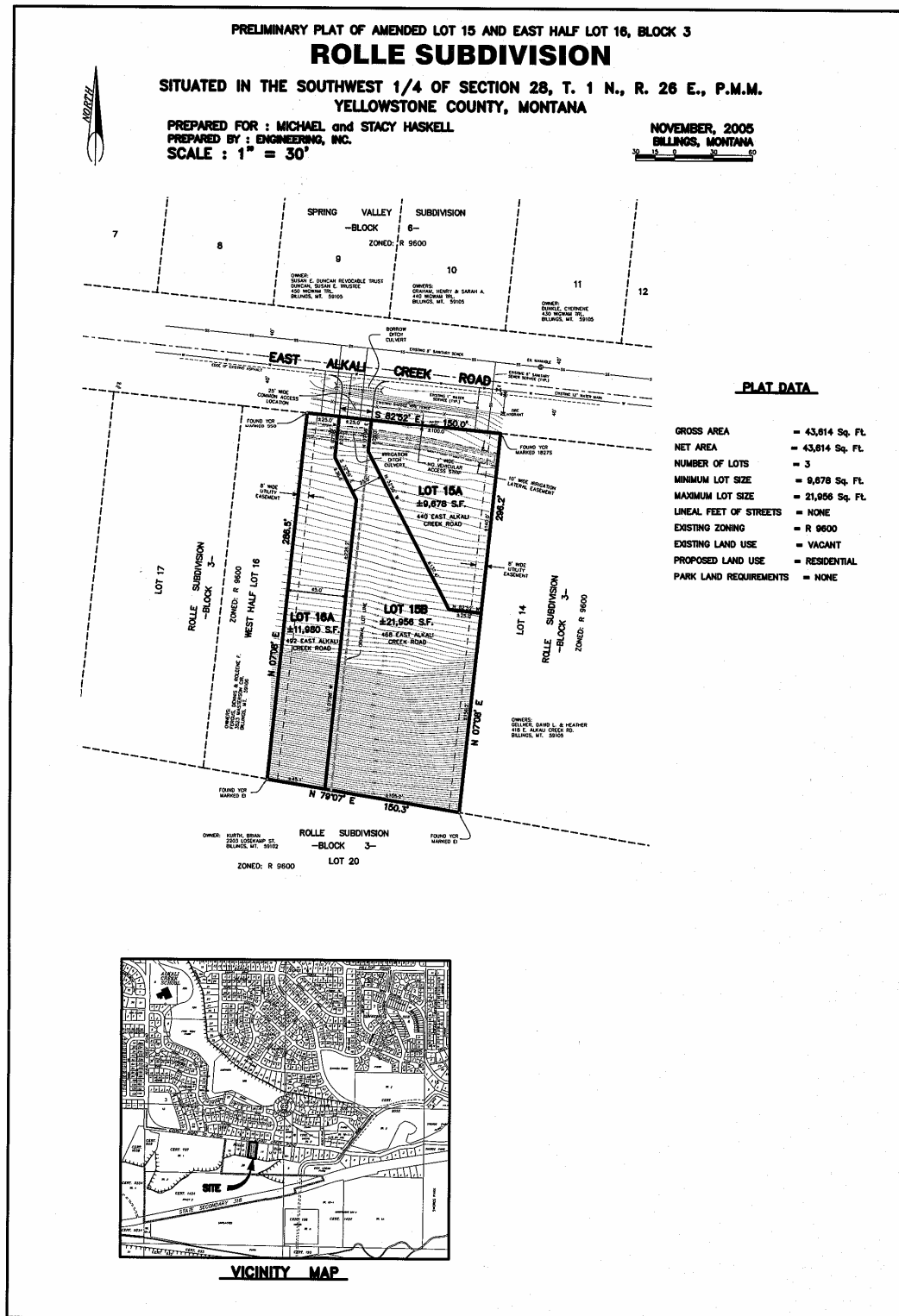
Staff recommends that the City Council conditionally approve the Preliminary Plat of Amended Lot 15 and the East Half Lot 16, Block 3, Rolle Subdivision, approve a variance, and adopt the Findings of Fact, as presented in the staff report.

ATTACHMENTS

- A: Preliminary Plat
- B: Site Photographs
- C: Mayor's Approval Letter
- D: Findings of Fact

ATTACHMENT A

Preliminary plat of Amended Lot 15 and the East Half Lot 16, Block 3, Rolle Subdivision



ATTACHMENT B



Photo 1:

View southwest from northside of East Alkali Creek Road
looking towards the subject property.



Photo 2:

View north towards Alkali Creek Road and the Spring Valley Subdivision
from the base of the steep/rimrock part of Lot 15A.



Photo 3: Looking south toward the subject property from across Alkali Creek Road along the eastern lot line.



Photo 4: Looking south toward the subject property from across Alkali Creek Road along the western lot line.

ATTACHMENT C
Mayor's Approval Letter
Amended Lot 15 and the East Half Lot 16, Block 3, Rolle Subdivision

February 13, 2006

Michael and Stacy Haskell
1205 West 12th Street
Laurel, MT 59044

Dear Mr. and Ms. Haskell:

On February 13, 2006, the Billings City Council approved the preliminary plat of Amended Lot 15, and the East Half Lot 16, Block 3, Rolle Subdivision, subject to the following conditions of approval:

1. To minimize the effects on local services and to protect public health and safety, the final plat shall clearly show a 1-foot no access strip along the frontage of all three lots: 15A and 16A. *(Recommended by City Engineer's Office; Section 23-601(a)(c), BMCC)*
2. To minimize the effects on local services and to protect public health and safety, the SIA shall specify and the final plat shall show the length and width of the reciprocal access easement as it fronts Lots 15A, 15B, and 16A. *(Recommended by City Engineer's Office; Section 23-601(a), BMCC)*
3. To minimize the effects on local services and agricultural water user facilities the *Irrigation Ditch Easement* document shall clarify whom the 10-feet wide irrigation lateral easement is being created to serve. *(Recommended by City Engineer's Office; Section 23-603(b), BMCC)*
4. To minimize the effects on local services, the natural environment, and to protect public health and safety, the word "historical" shall be removed from the last sentence of *Section V. STORM DRAINAGE A*, and replaced with the word planned. Furthermore, this sentence shall contain, "*and shall be subject to the approval by the City Engineer.*" *(Recommended by City Engineer's Office; Section 23-603(b), BMCC)*
5. To provide for the location and installation of gas utilities, the subdivider shall provide a 12-foot wide Montana-Dakota Utilities Company easement along the northern boundaries of Lots 15A, 15B, and 16A, and shall show the proposed placement of this utility easement on the final plat. *(Recommended by Montana-Dakota Utilities Company; Section 23-603(a) and Section 23-708, BMCC)*
6. Minor changes may be made to the SIA and final documents, as requested by the Planning Division, Public Works Department, and Engineer's Office to clarify the documents and bring them into the standard acceptable format.

7. The final plat shall comply with all requirements of the City Subdivision Regulations, rules, regulations, policies, and resolutions of the City of Billings, and the laws and Administrative Rules of the State of Montana.

Should you have questions regarding the conditions of approval, please contact Cynthia Wilson with Planning and Community Services at (406) 247-8654 or by email at wilsonc@ci.billings.mt.us.

The Governing Body's decision may be appealed within 30 days to the Montana District Court for Yellowstone County.

Sincerely,

Ron Tussing, Mayor

Cc: Matt Waite, Engineering, Inc.

ATTACHMENT D

Findings of Fact

Amended Lot 15 and the East Half Lot 16, Block 3, Rolle Subdivision

The following are recommended Findings of Fact for Rolle Subdivision. These findings are based on the preliminary plat application and supplemental documents and address the review criteria required by the Montana Subdivision and Platting Act (76-3-608, MCA) and the City of Billings Subdivision Regulations (Sections 23-304(c), BMCC).

A. What are the effects on agriculture and agricultural water user facilities, local services, the natural environment, wildlife and wildlife habitat and public health and safety? (76-3-608 (3)(a), MCA) (23-304 (c)(1), BMCC)

1. Effect on agriculture and agricultural water user facilities

It is unknown when the subject property was last used for agricultural purposes. A vacant lot is located on the southwest portion of the subject property.

An irrigation drainage ditch is located on the north side of the proposed subdivision adjacent to Alkali Creek Road. The subdivider will install an irrigation drainage ditch culvert at the street access location of sufficient length and adequate size to match planned flows, as required by Condition #4.

An *Irrigation Ditch Easement* is part of the SIA, creating a perpetual ditch easement across, over and through Lots 15A, 15B, and 16A of the proposed Subdivision, as required by Condition #3. This easement runs with the real property, and was created for the purpose of constructing, maintaining, operating, repairing, improving, replacing, and using the said ditch and its necessary fixtures and appurtenances.

2. Effect on local services

- a. **Utilities** – to provide for the location and installation of gas utilities, the subdivider will provide a 12-foot wide Montana-Dakota Utilities Company utility easement along the northern boundaries of the three lots as required by Condition #5. Northwestern Energy indicated in its reply to request for information, the location and installation of its electrical utilities shown on the preliminary plat on the western edge of Lot 16A and the eastern edges of 15A and 15B is preferable. Northwestern Energy added that different locations for easements may be required for the proposed subdivision due to rocky terrain onsite and the steep grade of Lot 16A's western edge, but that has not been determined.
- b. **Stormwater** – There are no detention facilities existing onsite although an irrigation drainage ditch is located on the north side of the proposed subdivision adjacent to Alkali Creek Road. As required by Condition #4, the subdivider will install a culvert at the street access enabling flow through the ditch. Any drainage improvements will comply with the provisions of the *Stormwater Management Manual* and Section 23-706, BMCC. Furthermore, the proposed subdivision may be required to participate in future area-wide storm drainage improvements.

- c. **Water and Sanitary Sewer** – Individual property owners will apply for extension and connection to water mains and sanitary sewers within Alkali Creek Road. As defined in the SIA, the water distribution system shall be designed to maintain a minimum normal working pressure of 35 psi; and minimum pressure under all condition of flow shall be 20 psi. The SIA further specifies, the design and installation of sanitary sewer and water main within Alkali Creek Road will be in accordance with design standards, specifications, rules, and regulations of, and as approved by, the City of Billings Public Works Department, Fire Department, and the Montana Department of Environmental Quality.
- d. **Solid waste** – The City of Billings will provide solid waste collection and disposal. The City of Billings landfill has adequate capacity to accommodate waste from this subdivision.
- e. **Streets** – Access to the proposed subdivision will be restricted to an existing 25-foot common access on Alkali Creek Road. The remainder of the lot's northern boundary will have a 1-foot no access strip, as required by Condition #1. Alkali Creek Road has recently undergone asphalt pavement improvements (City of Billings Work Order No. 04-12). No additional improvements are proposed for this development at this time. There is a reciprocal access easement between Lots 15A, 15B, and 16A for the use of future internal access that will provide ingress/egress and parking for the proposed subdivision, as defined by the requirements of Condition #2.
- f. **Emergency services** – Billings Police and Fire Departments will respond to emergencies within the proposed subdivision. The subdivision is located within the ambulance service area of American Medical Response.
- g. **Schools** – The subject property is within School District #2; no comments were received from the school district.
- h. **Parks and Recreation** – There is no parkland dedication requirement, as this is a minor plat.
- i. **MET Transit** – The subject property is serviced by MET transit. The MET system route is adjacent to the development on the north side of Alkali Creek Road. The proposed residential development on this property and surrounding properties will positively impact MET service by increasing ridership.

3. Effect on the natural environment

The proposed subdivision should have only minor effects on the natural environment, as there will be short term air and noise pollution associated with construction on the property. However, the property is within an urbanized portion of the city and these effects should be minimal. Furthermore, the SIA specifies that there could be potential limitations for proposed construction on the lots, which may require a geotechnical survey prior to construction due to poor soils on the site.

4. Effect on wildlife and wildlife habitat

There are no known endangered or threatened species on the property. As indicated within the Conditions the Run with the Land section of the submitted SIA, future property owners should be aware that the proposed subdivision is being built in close proximity to prime wildlife habitat, therefore conflicts with wildlife may occur.

5. Effect on the public health and safety

The subdivision should not negatively affect public health or safety. The subject property is not within a mapped floodway or flood zone. There are no obvious threats to public health or safety.

B. Was an Environmental Assessment required? (76-3-603, MCA) (23-304 (c)(1), BMCC)

The proposed subdivision is exempt from the requirement for an Environmental Assessment pursuant to Section 76-3-210, MCA.

C. Does the subdivision conform to the Yellowstone County-City of Billings 2003 Growth Policy, the 2005 Transportation Plan Update, and the Heritage Trail Plan? (23-304 (c)(3), BMCC)

1. Growth Policy

The proposed subdivision conforms to the following land use goals of the *Yellowstone County – City of Billings 2003 Growth Policy*.

a. Goal: Predictable land use decisions that are consistent with the neighborhood character and land use patterns (Land Use Element Goal, Page 5)

The proposed subdivision contains an existing single-family residence and is bordered on all sides by R-9600 properties.

b. Goal: Safe and efficient transportation system characterized by convenient connections and steady traffic flow (Transportation Goal, Page 10).

The proposed subdivision is adjacent to existing city streets that provide convenient connection to this subdivision.

c. Goal: Sanitary and safe properties (Public Services Goal, Page 11)

The design and installation of sanitary sewer and water main within Alkali Creek Road will be in accordance with design standards, specifications, rules, and regulations of and as approved by the City of Billings Public Works Department, Fire Department, and the Montana Department of Environmental Quality.

2. The 2005 Transportation Plan Update

The proposed subdivision adheres to the goals and objectives of the 2005 Transportation Plan Update and preserves the street network and street hierarchy specified within the plan. Furthermore, Alkali Creek Road has recently undergone asphalt pavement improvements, and the Alkali Creek Road Project (City of Billings Work Order No. 04-12) will accommodate increased traffic in this area with its proposed and existing construction. The subject property is

served by MET transit. A MET system route is adjacent to the development on the north side of Alkali Creek Road, which is anticipated to positively be influenced by the proposed subdivision.

3. Heritage Trail Plan

Although there is no parkland dedication requirement for this minor subdivision, the Heritage Trail Plan identifies Alkali Creek Road, adjacent to the proposed subdivision as an arterial bikeway and Alkali Creek near the development to the north, as a proposed multi-use trail area.

D. Does the subdivision conform to the Montana Subdivision and Platting Act and to local subdivision regulations? (76-3-608 (3)(b), MCA) (23-304 (c)(4), BMCC)

The proposed subdivision satisfies the requirements of the Montana Subdivision and Platting Act and conforms to the design standards specified in the local subdivision regulations. The subdivider and the local government have complied with the subdivision review and approval procedures set forth in the local and state subdivision regulations.

E. Does the subdivision conform to sanitary requirements? (23-304 (c)(5), BMCC)

The subject property is served by municipal water, sewer, storm drain and solid waste services, which will be extended from Alkali Creek Road to the proposed lots. All services are approved and regulated by state and federal authorities.

F. Does the proposed subdivision conform to all requirements of the zoning in effect? (23-304(c)(6), BMCC)

The subject property is located within a Residential-9600 zoning district and shall comply with the standards set forth in Section 27-308, BMCC.

G. Does the proposed plat provide easements for the location and installation of any utilities? (76-3-608 (3)(c), MCA)(23-304 (c)(7), BMCC)

To provide for the location and installation of gas utilities, the subdivider shall provide a 12-foot wide utility easement along the northern boundaries of the three lots.

H. Does the proposed plat provide legal and physical access to each parcel within the subdivision and notation of that access on the plat? (76-3-608(3)(d), MCA)(23-304(c) (8), BMCC)

Legal and physical access will be provided via an existing 25-foot common access located along Alkali Creek Road.

CONCLUSIONS OF FINDING OF FACT

- The proposed subdivision does not create any adverse impacts that warrant denial of the subdivision.

- There should be small effects on local services because this is an in-fill project and the subdivider will be responsible for most of the capital facilities that are needed to serve the property.
- The proposed subdivision conforms to several goals and policies of the 2003 Growth Policy and doesn't conflict with the Transportation or Heritage Trail Plans.
- The proposed subdivision complies with state and local subdivision regulations, with the notes exceptions, meets sanitary, easement and zoning requirements and provides legal and physical access to each parcel.

Approved by the Billings City Council on February 13, 2006

Ron Tussing, Mayor

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 13, 2006

TITLE: Payment of Claims
DEPARTMENT: Administration – Finance Division
PRESENTED BY: Patrick M. Weber, Financial Services Manager

PROBLEM/ISSUE STATEMENT: Claims in the amount of \$1,014,655.27 have been audited and are presented for your approval for payment. A complete listing of the claims dated January 6, 2006, is on file in the Finance Department.

RECOMMENDATION

Staff recommends that Council approve Payment of Claims.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENT:

A -- List of claims greater than \$2500

[\(Back to Consent Agenda\)](#)

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, February 13, 2006

TITLE: Payment of Claims
DEPARTMENT: Administration – Finance Division
PRESENTED BY: Patrick M. Weber, Financial Services Manager

PROBLEM/ISSUE STATEMENT: Claims in the amount of \$823,328.58 have been audited and are presented for your approval for payment. A complete listing of the claims dated January 13, 2006, is on file in the Finance Department.

RECOMMENDATION

Staff recommends that Council approve Payment of Claims.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENT:

A -- List of claims greater than \$2500

[\(Back to Consent Agenda\)](#)

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 13, 2006

TITLE: Payment of Claims
DEPARTMENT: Administration – Finance Division
PRESENTED BY: Patrick M. Weber, Financial Services Manager

PROBLEM/ISSUE STATEMENT: Claims in the amount of \$1,899,398.63 have been audited and are presented for your approval for payment. A complete listing of the claims dated January 20, 2006, is on file in the Finance Department.

RECOMMENDATION

Staff recommends that Council approve Payment of Claims.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENT:

A -- List of claims greater than \$2500

[\(Back to Consent Agenda\)](#)

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, FEBRUARY 13, 2006

TITLE: Special Review #800 – Delayed Action
 DEPARTMENT: Planning & Community Services
 PRESENTED BY: Nicole Cromwell, AICP, Zoning Coordinator, Planner II

PROBLEM/ISSUE STATEMENT: This is a Special Review to allow the construction of a 4-plex apartment building and operate a Community Residential Facility in a Residential 6000 zone on Tract A of Certificate of Survey 2237 at 1721 8th Avenue North. The subject property is located on the northwest corner of the intersection of North 17th Street and 8th Avenue North and currently supports a single family home and a duplex dwelling. Rimrock Foundation is the owner and Design Lab Architects is the agent. The Zoning Commission conducted a public hearing on January 3, 2006, and is forwarding a recommendation of conditional approval to the City Council. The City Council conducted a public hearing on January 23, 2006, and has delayed action on this item to February 13, 2006.

ALTERNATIVES ANALYZED: Before taking any action on an application for a Special Review use, the City Council shall first consider the findings and recommendations of the City Zoning Commission. In no case shall the City Council approve a special review use other than the one advertised. The Council shall take one of the following actions:

- Approve the application;
- Conditionally approve the application;
- Deny the application;
- Allow withdrawal of the application; or
- Delay the application for a period not to exceed thirty (30) days.

FINANCIAL IMPACT: The special review, if approved, should have little financial impact to the City.

RECOMMENDATION

The Zoning Commission is recommending that the City Council conditionally approve Special Review #800.

Approved By: **City Administrator** ____ **City Attorney** ____

ATTACHMENTS

- A. Zoning Map
- B. Site Photographs
- C. Site Plan

INTRODUCTION

The applicant is requesting a Special Review to allow the construction of one 4-plex apartment building to be used as a Community Residential Facility in an R-6,000 zone on Tract A of C/S 2237. The subject property is located at 1721 8th Avenue North and currently has a single family home and a duplex located on the property. Both structures were renovated in 1993 and are currently occupied. The property is approximately 1.57 acres in size and has frontage on 8th Avenue North and North 17th Street. The 8th Avenue Apartments are directly east and these buildings were constructed in 1996, prior to the change in the Residential-6,000 regulations that now require a special review for multi-family homes in this district. The remaining area around the subject site is primarily single and two-family dwellings. The Zoning Commission voted 4-0 to recommend conditional approval of the special review request.

PROCEDURAL HISTORY

- A special review application to allow a 4-plex apartment and a Community Residential Facility was received on December 5, 2005.
- The City Zoning Commission voted 4-0 at its public hearing on January 3, 2006, to recommend conditional approval of the special review.
- The City Council will conduct a public hearing and consider this application on January 23, 2006.

BACKGROUND

The owner, Rimrock Foundation, is proposing to initially build one 4-plex apartment building on this property and operate a residential facility for adults who are in need of housing due to drug addiction. The residents will be referred through the Adult Misdemeanor Drug Court and will be supervised on a 24-hour basis. On-site counseling will be available as well as communal cooking facilities. A special review is required for both the multi-family structure and the Community Residential Facility use because the proposed 4-plex will serve more than eight (8) residents. The site plan shows two (2) future 4-plex units on the property. The Zoning Commission is recommending this review apply only to the first proposed 4-plex Community Residential Facility.

The Planning staff considered the application and recommended conditional approval to the Zoning Commission. The North Park Neighborhood Plan identifies this area as an area for in-fill and development of high quality low and moderate income housing. The existing 8th Avenue Apartments will complement this proposed new multi-family complex. This is a generally appropriate use on this site with the recommended conditions. Single family homes are present to the north and west of the property. The recommended conditions attempt to limit the impact of the proposed use on the adjoining residences.

The City Zoning Commission has considered the application and is recommending conditional approval of the special review request based on its concurrence with the Planning staff recommendation with the addition of one condition to address the parking lot lighting.

ALTERNATIVES ANALYSIS

Section 27-1503(D) specifies that all Special Reviews shall comply with the following three (3) criteria:

1. Complies with all requirements of this Article (27-1500).

This application does comply with the requirements of the zoning regulations.

2. Is consistent with the objectives and purposes of Chapter 27 and the Growth Policy.

This application is generally consistent with the purposes of Chapter 27, the 2003 Growth Policy and the North Park Neighborhood Plan.

3. Is compatible with surrounding land uses or is otherwise screened and separated from adjacent land in such a way as to minimize adverse effects.

The proposed use is compatible with the adjoining land uses and conditions are being recommended that will ensure compatibility.

Further, the City Council shall consider and may impose modifications or conditions concerning, but not limited to the following:

1. Street and road capacity;
2. Ingress and egress to adjoining streets;
3. Off-street parking;
4. Fencing, screening and landscaping;
5. Building bulk and location;
6. Usable open space;
7. Signs and lighting; and/or
8. Noise, vibration, air pollution and similar environmental influences.

Based on the above criteria, the Zoning Commission is recommending conditional approval of the special review request.

CONDITIONS OF APPROVAL

The applicant shall comply with the following conditions of approval:

1. The special review approval is limited to one (1) 4-plex apartment building to be operated as a Community Residential Facility for more than eight (8) persons on Tract A of C/S 2237.
2. The proposed location of the 4-plex apartment building shall be as shown on the submitted site plan (adjacent to the northern property line). Additional multi-family structures for either private residences or for use as Community Residential Facilities shall require additional special review approval of the Billings City Council.
3. Prior to the occupation of any multi-family structure, a 6-foot tall sight obscuring fence or wall shall be installed along the west property line beginning at a point not more than 56 feet north of the property corner at the intersection of the alley and 8th Avenue North and ending at the northwest property corner. A continuous evergreen hedge may be substituted for the required fence if the evergreen trees or shrubs are at least 4 feet in height when planted, reach a mature height of at least 8 feet, a mature width of at least 6 feet and are planted no greater than 7 feet on center. Any sight obscuring fence must be constructed of wood, stone, vinyl, brick or block or other conventional fencing materials. No chain-link or wire fencing is allowed in this application.
4. The applicant shall maintain as many of the existing healthy trees within the subject site. Prior to the occupation of any multi-family structure, the applicant must install, or

financially guarantee the installation of at least four (4) canopy trees, of a 2-inch caliper and 8-foot tall minimum. These four (4) trees shall be evenly spaced within the front yard setback along the northern 200 feet of property frontage on North 17th Street. The remaining landscaping of the subject property shall comply with the landscaping standards in BMCC 27-1105; 27-1106; 27-1107 and 27-1110.

5. The applicant and any subsequent owner or operator shall provide 24-hour supervision of the residents in the approved 4-plex apartment, the number of residents shall not exceed sixteen (16) on any given day and the facility shall be duly licensed by the State of Montana.
6. Any lighting within the parking lot shall have full cut-off shields so light is directed to the ground and not onto adjacent property.

****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.

STAKEHOLDERS

The public hearing held on January 3, 2006 before the City Zoning Commission was attended by Mr. Craig Frohlich of Design Lab Architects on behalf of the Rimrock Foundation as well as Mona Sumner, Chief Operations Officer of Rimrock Foundation, Bill Lambden, Board President of Rimrock Foundation, Dave Cunningham, Chief Executive Officer of Rimrock Foundation, and Scott Sanders, Board member of the Rimrock Foundation. Mr. Frohlich, Ms. Sumner and Messrs Lambden, Cunningham and Sanders all offered testimony in support of this application. The Rimrock Foundation has operated community residential homes for up to eight (8) indigent persons referred by the Adult Misdemeanor Drug Court in the two existing homes on the property since 2003. There have been no problems or issues with the operation. There is a dire local need for these safe and sober living arrangements particularly for addicts in early recovery. Ms. Catherine Woodward, Director of Special Populations for the Yellowstone City/County Health Department, also offered testimony in support of the application. Ms. Woodward has worked with many different groups and local initiatives in the area for homeless populations. On a typical day there are between 800 and 1,000 homeless people in Billings and Yellowstone County and many of those individuals are struggling with mental health problems and drug addictions. Judge Mary Jane Knisley offered written testimony presented by Nikki Schaubel, Court Administrator. Judge Knisley stated that her work with the Adult Misdemeanor Drug Court has shown that given a chance many of the people in drug court can and will break the cycle of addiction and go on to become productive members of society. Safe and sober housing is a critical component of their recovery. Sheriff Chuck Maxwell also offered written testimony in favor of the application that was presented by Dave Cunningham of the Rimrock Foundation. Sheriff Maxwell encourages the development of this local housing for treatment of adult drug addicts because it will alleviate the population overload in the County Detention Facility. Many people who are eligible for this type of treatment and housing wait for months for a place to open in the Butte facility. Local beds and treatment options will shorten the time these individuals must wait. Mr. Charles Hamwey, a resident of North Park, spoke in favor of the application. Mr. Hamwey is a member of the North Park Task Force and the Rimrock Foundation has done an

excellent job addressing their concerns and this will help build the neighborhood. Mr. Hamwey pointed out this is also a good in-fill development opportunity. Mr. Charles Tooley, a supporter of the Rimrock Foundation, offered testimony in favor of the application. Mr. Tooley is a long time observer and supporter of the Rimrock Foundation's work. He urged the commission to give a favorable recommendation of the development to the City Council.

Ed Stevenson and Curt Zygmund of Vuecrest Drive and residents of the area offered testimony in opposition to the application. Mr. Stevenson was concerned about the effect on surrounding property values, the intended use of the alley on the west of the property and whether the housing would include sex offenders. Mr. Zygmund pointed out to the commission that all the supporters of the project with the exception of Mr. Hamwey do not live in the area and that Rimrock Foundation is running a business in a residential area.

Ms. Sumner and Mr. Frohlich rebutted the concerns by testifying that no more 16 individuals would be living in the 4-plex unit and that Rimrock Foundation does not under any circumstances treat sex offenders. Ms. Sumner testified that no police calls have been made to the current location for the two years they have owned and operated the smaller residential facilities that front on 8th Avenue North. Mr. Frohlich pointed out that the building code that will apply to the 4-plex is not a commercial building code and will be considered an "R2" occupancy, a residential occupancy under the adopted building code.

CONSISTENCY WITH ADOPTED PLANS AND POLICIES

In addition to the above discussion in the Alternatives Analysis section, this application does conform to the goals of the 2003 City of Billings/Yellowstone County Growth Policy, specifically:

- New Development that is sensitive to and compatible with the character of adjacent City neighborhoods.
- Affordable housing for all income levels dispersed throughout the City and County.

RECOMMENDATION

The Zoning Commission is recommending that the City Council conditionally approve Special Review #800.

ATTACHMENTS

- A. Zoning Map
- B. Site Photographs
- C. Site Plan

ATTACHMENT A

Zoning Map – Special Review #800



Subject Property at 1721 8th Avenue North

ATTACHMENT B
Site Photographs for Special Review #800

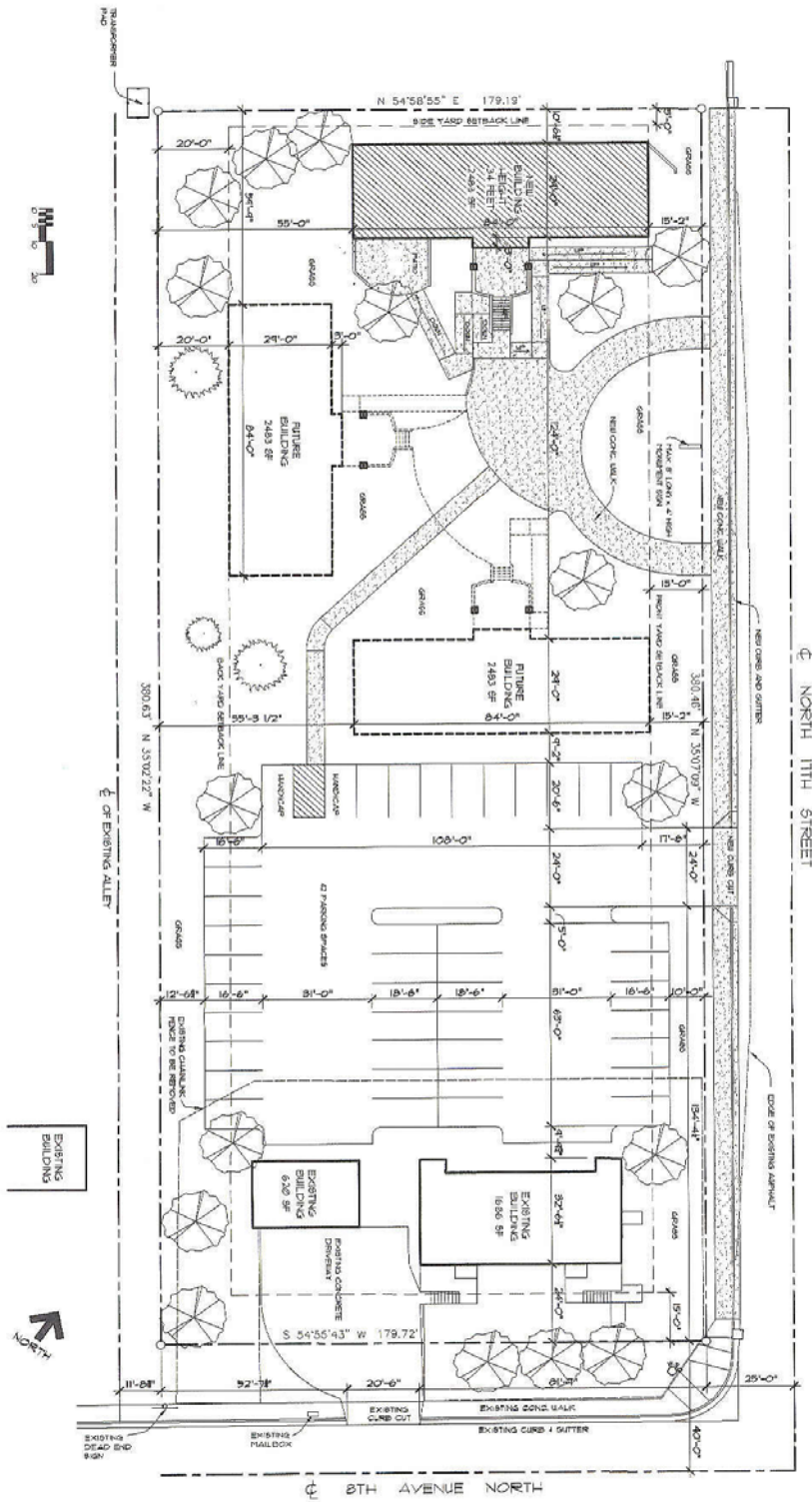


Subject Property at 1721 8th Avenue North view northwest



Subject Property from south side of 8th Avenue North - view northeast

ATTACHMENT C
Site Plan – Special Review #800



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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM**CITY OF BILLINGS, MONTANA****Monday, February 13, 2006**

TITLE: Right-of-Way Compensation to Yegen Grand Avenue Farm, Inc. for Phase II Construction of the Arlene Corridor Project (Zimmerman Trail Extension from Grand Avenue to Broadwater Avenue)

DEPARTMENT: Public Works Department

PRESENTED BY: David D. Mumford, PE, Public Works Director

PROBLEM/ISSUE STATEMENT: The City of Billings must acquire right-of-way from Yegen Grand Avenue Farm, Inc. and the Yegen Golf Course for construction of Phase II of the Arlene Corridor Project. Phase II will extend Zimmerman Trail through the Yegen Golf Course between Grand Avenue and Broadwater Avenue. To date, the Yegen Family has rejected two separate compensation offers from the City based upon three property appraisals conducted in 2004. In November 2004, the City Council, by Resolution, authorized the City of Billings Public Works Department to begin condemnation proceedings and continue with negotiations. The Public Works Department is proposing three separate options, as outlined on Page 2 of this memo, for the acquisition of the necessary right-of-way. Staff is recommending City Council approval of Option 1, which will eliminate the need to continue with condemnation proceedings.

ALTERNATIVES ANALYZED:

1. Review each of the three options detailed on Page 2 of this memo and approve Option 1, which City Staff feels is in the best interest of the City of Billings for acquisition of the necessary right-of-way.
2. Review each of the three options detailed on Page 2 of this memo and do not approve Option 1 as the option that is in the best interest of the City of Billings for the acquisition of the necessary right-of-way.

FINANCIAL IMPACT: The financial impact to the City for Option 1 totals \$575,000. The financial impact of Options 2 and 3 is undetermined at this time, as described in Page 2 of this memo.

RECOMMENDATION

Staff recommends that Council approve Option 1 to compensate Yegen Grand Avenue Farm, Inc. and Yegen Golf Course the proposed settlement of \$575,000, which will eliminate the need to continue with condemnation through the courts.

Approved By: **City Administrator** ____ **City Attorney** ____

BACKGROUND

In 2003, the City of Billings began discussions with the Yegen Family and the leaseholders of the Yegen Golf Course regarding the design and right-of-way acquisition through their property for the extension of the Arlene Corridor from Grand Avenue to Broadwater Avenue. In early 2004, three appraisals of the property were completed. The appraisals were performed by Charles Rutherford and Steven Repac. The review appraisal was performed by Norman Lee. There is a significant discrepancy between the appraisals of Mr. Rutherford and Mr. Repac. Mr. Repac appraised the property at \$237,762, and Mr. Rutherford appraised the property at \$478,500. The disparity between the two appraisals is due to the Yegen Golf Course Lease. The Yegens did not provide a copy of the lease, so Mr. Rutherford did not take the lease into account. Mr. Repac generically accounted for the lease. Using the review appraisal advice from Norman Lee, the City of Billings Public Works Department made an offer to Yegen Grand Avenue Farm, Inc. in the amount of \$237,800. This offer was rejected by the Yegen Family and the leaseholders of the golf course, and they requested the high appraised value of \$478,500. In November 2004, in an attempt to find common ground, the City of Billings made a counteroffer of \$358,131, which split the difference between the two appraisals. This offer was also rejected. In November 2004, the City Council, by Resolution, authorized the Public Works Department to begin condemnation proceedings and continue with negotiations. On January 13, 2006, the Montana Thirteenth Judicial District Court authorized right-of-entry to the City of Billings to begin construction. At the same time, the Yegen Family proposed a settlement with Yegen Grand Avenue Farm, Inc. and the Yegen Golf Course in the amount of \$575,000. At this time, the Billings City Council must determine whether or not to accept the Yegen Family's proposed settlement of \$575,000 (referenced in this memo as Option 1).

ALTERNATIVES ANALYSIS

The Billings City Council is being asked to consider three options to compensate Yegen Grand Avenue Farm, Inc. for the right-of-way to construct the Zimmerman Trail (Arlene Street Corridor) extension through the golf course property from Grand Avenue to Broadwater Avenue.

Option 1: Agree to compensate Yegen Grand Avenue Farm, Inc. and Yegen Golf Course with their proposed settlement offer of \$575,000. This option would eliminate the need to continue with condemnation and allow the construction of Phase II to move forward without further right-of-way acquisition expense. This settlement is \$100,000 above the 2004 high appraisal and is the option recommended by Staff.

Option 2: Continue with the condemnation process through the courts. This option could require the City of Billings to pay for the land, the plaintiff's attorney fees, and 10% interest on the final settlement amount.

Option 3: Compensate Yegen Grand Avenue Farm, Inc. with the original compromise offer of \$358,000 now, and request a new appraisal that includes the golf course lease. Utilizing the new appraisal and the compensation for attorney fees, the City would offer to settle with the Yegen Family. If settlement could not be accomplished at that time, the City would continue with condemnation proceedings.

RECOMMENDATION

Staff recommends that Council choose Option 1 to compensate Yegen Grand Avenue Farm, Inc. and Yegen Golf Course the proposed settlement of \$575,000, which will eliminate the need to continue with condemnation through the courts.

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 13, 2006

TITLE: City Administrator Selection Process
DEPARTMENT: Administration
PRESENTED BY: Bruce McCandless, Deputy City Administrator

PROBLEM/ISSUE STATEMENT: At its January 23, 2006 meeting, the City Council adopted an initiative to discuss and agree upon a City Administrator selection process at its February 13, 2006 meeting. The Council also indicated that it intends to discuss this issue at its February 6 work session. Multiple process proposals may be considered at both meetings and the Council will narrow the choices or select a process at the regular meeting.

ALTERNATIVES ANALYZED: The City Council could adopt any of several processes, including, but not limited to:

- Select a citizen panel to advise the Council on the process, the candidate profile, select the application finalists and potentially participate in the interview and selection process
- Offer the position to an internal candidate and appoint a City Council panel to negotiate an employment agreement
- Hire an executive recruiting firm that will advise the Council on the hiring process, advertise the position, conduct background investigations, advise the Council on finalists and negotiate an employment agreement with the selected candidate
- Direct staff to conduct the search process under guidelines set by the Council

FINANCIAL IMPACT: The search costs are variable depending on the method that is selected. The recruiting firm that the City used in 2003 is obligated to provide its services to the City for out-of-pocket expenses, estimated to be \$7,000. Other processes that have been discussed will be relatively inexpensive except for the direct costs of advertising, interviewing, background investigations and relocation expenses. These expenses will be incurred in any process that includes a nation-wide search.

RECOMMENDATION

Staff recommends that Council approve a selection process and direct staff to assist in any appropriate way.

Approved By: **City Administrator** ____ **City Attorney** ____

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 13, 2006

TITLE: Zone Change #773 Public Hearing and 1st Reading of Ordinance –Text Amendment to Section 27-611 of the Unified Zoning Regulations, Sexually Oriented Businesses

DEPARTMENT: Planning and Community Services

PRESENTED BY: Nicole Cromwell, AICP, Planner II, Zoning Coordinator

PROBLEM/ISSUE STATEMENT: The Board of County Commissioners of Yellowstone County has initiated this text amendment to Section 27-611 of the Unified Zoning Regulations at the request of a group of concerned citizens including representatives from Montana Help Our Moral Environment (Montana H.O.M.E.), Mr. Dallas Erickson, and Citizen's Against Sexual Exploitation (C.A.S.E.), Reverend Ron Palmer. The proposal includes significant additions to the existing code adopted into the zoning regulations by the City and County in 1992. The City Zoning Commission held a public hearing on the amendment to the zoning regulation on January 17, 2006, and voted 3-2 to recommend approval to the City Council.

ALTERNATIVES ANALYZED: The City Zoning Commission held a public hearing on the proposed text amendment on January 17, 2006. The Commission heard testimony before recommending approval of these changes. The City Zoning Commission is forwarding a recommendation of approval. The City Council may choose, after closing the public hearing, to approve, deny, delay action for thirty (30) days or place the proposed ordinance on a ballot.

FINANCIAL IMPACT: There should be a direct financial impact to the City, specifically the Code Enforcement Division, as a result of the new zoning regulation. The Code Enforcement Division will likely have to reduce levels of service for other areas of enforcement in order to document existing sexually oriented businesses to establish legal nonconformity under the proposed new regulation. Legal challenges to the proposed regulation are unknown and may result in a significant financial burden to the City.

RECOMMENDATION

The Zoning Commission recommends that the City Council approve Zone Change #773.

Approved by: _____ City Administrator _____ City Attorney

ATTACHMENTS:

- A: Comparison of Existing Regulation to Proposed Regulation
- B: Ordinance

INTRODUCTION

In December 2001, Planet Lockwood at 1127 North Frontage Road in Lockwood, began offering live nude dancing at the bar and casino. Planet Lockwood is located outside the city limits but within the 4 ½ mile jurisdictional zoning area for Yellowstone County. The Unified Zoning Regulations Section 27-611 does not classify live nude dancing as a “sexually oriented business”. The existing zoning code regulates several classes of sexually oriented businesses that are clearly defined including adult arcades, adult book stores, adult movie theaters and adult motels. BMCC Section 3-304 allows the City to prohibit nude dancing where any alcohol is served or sold. The current zoning regulation allows sexually oriented businesses in certain districts if they can meet the required separation distances to other sexually oriented businesses, residential zoning districts, public libraries, playgrounds, parks, public or private schools, day care facilities, churches and other places of worship. Sexually oriented businesses are restricted to four (4) zoning districts – Central Business District, Highway Commercial, Controlled Industrial and Heavy Industrial provided they meet separation requirements.

PROCEDURAL HISTORY

- On November 7, 2003, District Court Judge Russell Fagg determined that two proposed ordinances – one addressing Obscenity and one to make changes to Section 27-611, Sexually Oriented Businesses (Unified Zoning Regulations) were valid and constitutional and could be placed on a ballot for a public election on June 8, 2004.
- On February 5, 2004, the proponents of the ordinances failed to gain the required signatures within ninety (90) days of Judge Fagg’s ruling in order to place the ordinances on the June 8, 2004, primary ballot.
- On October 13, 2005, Dan Schwarz, Chief Deputy County Attorney, forwarded to the Planning and Community Services Department the proposed text amendment to Section 27-611 of the Unified Zoning Regulations. The Board of County Commissioners initiated this amendment. The proposed amendment is identical to the one presented to Judge Russell Fagg for a ruling in 2003.
- On January 1, and January 8, 2006, the legal ad for a special joint public hearing of the City and County Zoning Commissions was published in the Billings Gazette.
- On Tuesday January 17, 2006, the City and County Zoning Commissions conducted the public hearing on the proposed amendments to Section 27-611 of the Unified Zoning Regulations. The City Zoning Commission voted 3-2 to forward a recommendation of approval to the City Council. The County Zoning Commission voted 3-1 to recommend denial to the Board of County Commissioners.
- The City Council will hold a public hearing and 1st reading of the ordinance on February 13, 2006, and make a decision on the proposed text amendment.
- The Board of County Commissioners will hold a public hearing on Tuesday, February 21, 2006, to consider the proposed text amendment.
- If the text amendment ordinance is approved on first reading, the City Council will consider it for second reading on February 27, 2006.

ALTERNATIVES ANALYSIS

The City Council may choose, after closing the public hearing, to approve, deny, delay action for thirty (30) days or place the proposed ordinance on a ballot. The Planning Department recommended to the City and County Zoning Commissions denial of the proposed changes. The

proposed changes present several difficulties including terms that are not defined, regulation of the interior design of buildings, references to case law and studies that have not been presented to the City Council for consideration, and proposes to regulate the day-to-day operations of sexually oriented businesses. An overall concern of the Planning Department with the proposed ordinance was whether it exceeds the authority granted to enact zoning regulations as stated within Montana Code and within the Unified Zoning Regulations. Many proposed sections of the code the Planning staff believes exceed this authority. Another primary concern of the Planning Department was the enforceability of some of these provisions particularly the interior building restrictions. For example, if all adult arcade viewing rooms must be limited to 150 square feet, not have closing doors and have an obstructed view from the booth to a manager's station, Code Enforcement Officers would need to check each of these specifications on an almost daily basis to determine compliance. Doors, furniture and space arrangements are easily changed even from hour to hour. Compliance will be difficult to determine and enforce for these provisions.

The City Zoning Commission determined after conducting the public hearing and considering all testimony, and the Planning Department's recommendation, the proposed amendment was suitable for adoption on a 3-2 vote. The County Zoning Commission received the same testimony but conversely determined the proposed amendment was not suitable for adoption on a 3-1 vote. The Board of County Commissioners will conduct a public hearing on the proposed amendment on Tuesday, February 21, 2006. The Board of County Commissioners has expressed an interest in placing this measure on the ballot for a public vote perhaps on the June 6, 2006 primary election. The City Council also has the option of placing this amendment to the zoning regulations on a ballot for public vote. This is not the usual method for adoption of amendments to zoning regulations either in the City or in the County. In addition, there may not be enough time to prepare an ordinance to place this issue on the June 6, 2006 primary election ballot. The deadline for submittal of complete ballot language is March 23, 2006.

If the changes are not adopted, the city still retains its existing authority to regulate sexually oriented businesses and its authority to regulate businesses under BMCC Section 3-304, which prohibits nude dancing where any alcoholic beverages are served or sold. If the changes are not adopted massage parlors will not be regulated as sexually oriented businesses and venues that offer nude dancing but not alcoholic beverages would not be regulated as sexually oriented businesses. If the changes are not adopted, the City will avoid significant financial burdens to enforce the new ordinance and defend likely legal challenges to the adopted text amendment. If the City Council chooses to not adopt the proposed changes it will need to articulate specific reasons for denial.

STAKEHOLDERS

The City and County Zoning Commissions held a public hearing on January 17, 2006 on the proposed changes to Section 27-611 Sexually Oriented Businesses. Eighteen (18) persons testified in favor of the proposed changes, five (5) persons testified against the proposed changes and four (4) persons submitted written testimony in favor of the proposed changes. Those in favor testified the proposed regulation would counteract the negative secondary effects of the sexually oriented businesses including sexually transmitted disease, blight and the break down of families. Those in favor testified that sexually oriented business contribute to addictive behavior and an increase in sexual assaults. Those opposed to the ordinance testified that the proposed change exceeds the zoning authority of the City and County, would invite litigation and is an

invasion of citizen's right to privacy and free speech. Those opposed also testified that existing sexually oriented businesses are well run and have not created blight where they are located.

RECOMMENDATION

The Zoning Commission recommends that the City Council approve Zone Change #773.

ATTACHMENTS:

- A: Comparison of Existing Regulation to Proposed Regulation
- B: Ordinance

ATTACHMENT A

Comparison of Existing Regulation to Proposed Regulation Section 27-611 Sexually Oriented Businesses (SOB)

Existing SOB Regulation

Restricts and defines:

- Adult Arcades
- Adult Book Stores
- Adult Video Stores
- Adult Motels
- Adult Movie Theaters

Allowed Only in 4 Zoning Districts

- Central Business District
- Highway Commercial
- Controlled Industrial
- Heavy Industrial

Minimum separation from another SOB

- 600 feet

Minimum separation to residential zoning, libraries, playgrounds, parks, public & private schools, day cares, churches and other places of worship

- 1,000 feet

Legal Nonconformity lapse period

- 1 year

Restriction on size of viewing booth/room

- None

Proposed SOB Regulation

Restricts and defines:

- Adult Arcades
- Adult Book Stores
- Adult Video Stores
- Adult Motels
- Adult Movie Theaters
- Viewing Rooms/Booths
- Nudity in Sexually Oriented Businesses

Restricts but does not define:

- Adult Massage Parlor
- Adult Sauna
- Adult Entertainment Center
- Adult Cabaret
- Adult Health/Sport Club
- Adult Steam Room/Bathhouse Facility
- Nude Dancing Establishment

Allowed Only in 4 Zoning Districts

- Central Business District
- Highway Commercial
- Controlled Industrial
- Heavy Industrial

Minimum separation from another SOB

- 600 feet

Minimum separation to residential zoning, libraries, playgrounds, parks, public & private schools, day cares, churches and other places of worship

- 1,000 feet

Legal Nonconformity lapse period

- 1 month (30 days)

Restriction on size of viewing booth/room

- 150 square feet
- No doors allowed
- Viewable from manager's station

Existing SOB Regulation

Sign Limitations

- Prohibits obscene, pornographic or immoral words or pictures (City Sign Code)
- No prohibition in County Sign Code
- Size and number limited by City & County Sign Code applicable to zoning district

Operating Standards

- Prohibits nude dancing where alcohol is served (City only)

Proposed SOB Regulation

Sign Limitations

- Prohibits pictures, silhouettes or drawings of any kind – just business name
- Requires uniformity on lettering and background of sign
- Limits each SOB to 2 signs maximum – 3 display sides total
- Must be a rectangle, not exceed 75 square feet, cannot exceed 10 feet in height or ten feet in length
- No flashing lights allowed
- Must post sign on each door stating “Adults Only” or “No Minors Allowed”

Operating Standards

- Prohibits nudity and specific sexual activity in any SOB except for Adult Motels
- Prohibits SOB in any building where alcohol is served except for Adult Motel (City & County)
- Prohibits employees from soliciting for business outside the SOB
- Requires live performances in SOB to be on a stage and at least 9 feet from audience
- May not be open between midnight and 9 am
- No minors allowed in SOB
- In Adult Video Arcades lighting must be at least 5 foot candles at floor level
- In Adult Video Arcades must have easily cleaned walls and flooring in viewing booths, rugs and carpeting are prohibited
- No merchandise or activities can be displayed from building exterior
- No flashing lights, drawings, pictures or silhouettes on the building exterior
- Single color required on building exterior unless part of a multi-tenant building

ATTACHMENT B
ORDINANCE NO. 06-

AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING THAT THE BILLINGS, MONTANA CITY CODE BE AMENDED BY REVISING SECTION 27-611(a), 27-611(b), 27-611(c), AND ADDING NEW SECTIONS 27-611(g), 27-611(h), 27-611(i), 27-611(j) and 27-611(k); SEXUALLY ORIENTED BUSINESSES PURPOSE AND FINDINGS, DEFINITIONS, SIGN LIMITATIONS, OPERATING STANDARDS AND BUILDING EXTERIOR REQUIREMENTS AND ADOPT THE REVISIONS AS AN AMENDMENT TO THE ZONING REGULATIONS AND SET A TIME PERIOD FOR THE REGULATION TO BE EFFECTIVE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA:

Section 1. RECITALS. *Title 76, Chapter 2, Part 3, MCA, and Section 27-1502, BMCC, provide for amendment to the City Zoning Regulations from time to time. The Board of County Commissioners initiated the amendment to the Unified Zoning Regulations for the City of Billings and Yellowstone County and the City Zoning Commission and staff have reviewed the proposed zoning regulations hereinafter described. The recommendations of the Zoning Commission and staff have been submitted to the City Council, and the City Council, in due deliberation, has considered the proposed amendments to the City Zoning Regulations.*

Section 2. DESCRIPTION. The proposed zoning regulation shall apply to all land within the City Of Billings.

Section 3. That the Billings, Montana City Code be amended by revising Sections 27-611(a), 27-611(b), 27-611(c) to read as follows:
SEC. 27-611. SEXUALLY ORIENTED BUSINESSES.

- (a) Purpose and Intent. It is the purpose of this section to regulate sexually oriented businesses and related activities to promote the health, safety, morals, and the general welfare of the citizens of the City of Billings and Yellowstone County, and to establish reasonable uniform regulations to prevent the continued deleterious location and concentration of sexually oriented businesses within the City and County jurisdictions. The provisions of this section have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly it is not the intent or effect of these regulations to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, nor to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of these regulations to condone or legitimize the distribution of obscene materials.

- (b) ~~Findings and Determinations.~~ The Billings City Council and Yellowstone County Commission hereby finds and determines that:

Based upon evidence concerning the adverse secondary effects of sexually oriented businesses on the community presented in hearings and reports made available to the City Council and Board of County Commissioners, and upon findings incorporated in the cases of *City of Renton v. Playtime Theatres, Inc.* 475 U.S.41 (1986); *Young v. American Mini Theatres*, 426 U.S. 50 (1976); and *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *Arcara v. Cloud Books, Inc.* 478 U.S. 697 (1986); *California v. LaRue*, 409 U.S. 109 (1972); *Iacobucci v. City of Newport, Ky*, 479 U.S. 92 (1986); *United States v. O'Brien*, 391 U.S. 367 (1968); *DLS Inc. v. City of Chattanooga*, 107 F 3rd 403(6th Cir. 1997); *Kev, Inc. v. Kitsap County*, 793 F. 2nd 1053 (9th Cir 1986); *Hang On Inc. v. City of Arlington*, 65 F. 3rd 1248 (5th Cir. 1995); *South Florida Free Beaches Inc. v. City of Miami*, 7344 F 2n 608 (11th Cir 1984); and *N.W. Enterprises v. City of Houston*, 27 F. Supp. 2d 754 (S.D. Tex. 1998), as well as studies conducted in other cities including but not limited to, Phoenix, Arizona; Minneapolis, Minnesota; Houston, Texas; Indianapolis, Indiana; Amarillo, Texas; Garden Grove, California; Los Angeles, California; Whittier, California; Austin, Texas; Seattle, Washington; Oklahoma City, Oklahoma; Cleveland, Ohio; and Beaumont, Texas; and findings reported in the Final Report of the Attorney General's Working Group on the Regulation of Sexually Oriented Businesses (June 6, 1989, State of Minnesota), and statistics obtained from the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, the City of Billings and Yellowstone Commission find that:

- ~~(1) The establishment of adult uses in business districts which are immediately adjacent to and which serve residential neighborhoods has a deleterious effect on both the business and residential segments of the neighborhood, causing or contributing to blight and a downgrading of property values.~~
- ~~(2) The establishment of more than two (2) adult uses within six hundred (600) feet of each other has a deleterious effect on surrounding residential and business areas and the fostering of such businesses within a close proximity tends to create a "skid row" atmosphere.~~
- ~~(3) The location of several adult uses in the same neighborhood tends to attract an undesirable quantity and quality of transients, a circumstance which adversely affects property values, causes an increase in crime and encourages residents and businesses to move elsewhere.~~
- ~~(4) Concern for, and pride in, the orderly planning and development of a neighborhood should be encouraged and fostered in those persons comprising residential and business segments of that neighborhood.~~

- (1) Sexually oriented business lend themselves to ancillary unlawful and unhealthy activities that are currently uncontrolled by the operators of the establishments. Further, there is currently no mechanism to make owners of these establishments responsible for the activities that occur on their premises.
- (2) Crime statistics show that all types of crimes, especially sex-related crimes, occur with more frequency in neighborhoods where sexually oriented businesses are located. See, e.g. Studies of the cities of Phoenix, Arizona; Indianapolis, Indiana; and Austin, Texas.
- (3) Sexual acts, including masturbation, sadomasochistic abuse, and oral and anal sex, occur at sexually oriented businesses, especially those which provide private or semi-private booths or cubicles for viewing films, videos or live sex shows. See, e.g. *California v LaRue*, 409 U.S. 109, 111 (1972); See also Final Report of the Attorney General's Commission on Pornography (1986) at 377.
- (4) Offering and providing such booths and/or cubicles encourages such activities, which creates unhealthy conditions. See, e.g. Final Report of Attorney Generals' Commission on Pornography (1986) at 367-77.
- (5) Persons frequent certain adult theaters, adult arcades, and other sexually oriented businesses, for the purpose of engaging in sex within the premises of such sexually oriented businesses. See e.g. *Arcara v. Cloud Books Inc.* 478 U.S. 697, 698 (1986), see also Final Report of the Attorney General's Commission on Pornography (1986) at 376-77.
- (6) At least 50 (fifty) communicable diseases may be spread by activities occurring in sexually oriented businesses including, but not limited to, syphilis, gonorrhea, human immunodeficiency virus infection (HIV- AIDS), genital herpes, hepatitis B, Non A, Non B amebiasis, salmonella infections, and shigella infections, See, e.g. Study of Fort Meyers, Florida.
- (7) As of December 31, 1996, the total number of reported cases of AIDS in the United States caused by the human immunodeficiency virus (HIV) was 581, 429. See, e.g. Statistics of the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention.
- (8) As of December 31, 1999, there have been 92 (ninety-two) reported cases of AIDS in the State of Montana for the years 1997 through 1999.
- (9) The total number of cases of genital Chlamydia trachomatis infection in the United States reported in 1997 was 526,653, an 8% increase over the year 1996. See, e.g. Statistics of the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention.
- (10) The total number of cases of early (less than one year) syphilis in the United States reported during the twelve year period 1985-1997 was

387,233. See, e.g. Statistics of the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention.

- (11) The number of cases of gonorrhea in the United States reported annually remains at a high level, with a total of 1,901,365 cases reported during the period 1993-1997. See e.g. Statistics of the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention.
- (12) The Surgeon General of the United States, in his report of October 22, 1986, advised the American public that AIDS and HIV infection may be transmitted through sexual contact, intravenous drug use, exposure to infected blood and blood components, and from an infected mother to her newborn.
- (13) According to the best scientific evidence available, AIDS and HIV infection, as well as syphilis and gonorrhea, are principally transmitted by sexual acts. See, e.g. Findings of the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention.
- (14) Sanitary conditions in some sexually oriented businesses are unhealthy, in part, because the activities conducted therein are unhealthy, and, in part, because of the unregulated nature of the activities and the failures of the owners and operators of the facilities to self-regulate those activities and maintain those facilities. See, e.g. Final Report of the Attorney General's Commission on Pornography (1986) at 377, and testimony to the Montana Senate Judiciary Committee February 9, 2001, in reference to SB399.
- (15) Numerous studies and reports have determined that bodily fluids, including semen and urine, are found in the areas of sexually oriented businesses where persons view "adult" oriented films. See, e.g., Final Report of the Attorney General's Commission on Pornography (1986) at 377.
- (16) Studies show nude dancing in adult establishments increases prostitution, increases sexual assaults, and attracts other criminal activity. See, e.g., Barnes v. Glen Theatre, 501 U.S. 560, 583 (1991).
- (17) Nude dancing in adult establishments increases the likelihood of drug dealing and drug use. See, e.g., Kev, Inc. v. Kitsap County, 793 F.2d 1053, 1056 (9th Cir. 1986).
- (18) The findings noted in paragraphs numbered (1) through (17) raise substantial governmental concerns.
- (19) Sexually oriented businesses have operational characteristics which should be reasonably regulated in order to protect those substantial governmental concerns.

(20) Removal of doors on adult booths and requiring sufficient lighting on the premises with adult booths advances a substantial governmental interest in curbing illegal and unsanitary sexual activity occurring in adult establishments.

(21) The general welfare, health, morals and safety of citizens in the City of Billings and Yellowstone County will be promoted by enactment of this regulation.

(c) Definitions.

(1) Adult Arcade means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to five (5) or fewer persons per machine at any one (1) time, and where the images so displayed are distinguished or characterized by an emphasis on the depiction or description of "specified sexual activities" or "specified anatomical areas."

(2) Adult Book Store or Adult Video Store means a commercial establishment which, as one (1) of its principal business purposes, offers for sale or rental for any form of consideration any one (1) or more of the following:

- a. Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, video reproductions, slides, or other visual representations which are characterized by an emphasis on the depiction or description of "specified sexual activities" or "specified anatomical areas"; or
- b. Instruments, devices, or paraphernalia which are designed for use in connection with "specified sexual activities."

(3) Adult Motel means a hotel, motel, or similar commercial establishment which:

- a. Offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by an emphasis on the depiction or description of "specified sexual activities" or "specified anatomical areas"; and has a sign visible from the public right-of-way which advertises the availability of this adult type of photographic reproductions;
- b. Offers a sleeping room for rent for a period of time that is less than ten (10) hours; or
- c. Allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than ten (10) hours.

(4) Adult Motion Picture Theater means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly shown which are characterized by an emphasis on the depiction or description of "specified sexual activities" or

"specified anatomical areas."

- (5) Church or Other Place of Worship means a building which is used primarily for religious worship and related religious activities, including but not limited to churches, convents, monasteries, shrines, and temples.
- (6) City means the City of Billings, Montana.
- (7) County means Yellowstone County, Montana.
- (8) Establishment means and includes any of the following:
 - a. The opening or commencement of any sexually oriented business as a new business;
 - b. The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;
 - c. The additions of any sexually oriented business to any other existing sexually oriented business; or
 - d. The relocation of any sexually oriented business.
- (9) Nudity or State of Nudity means a male appearing without clothing to conceal his genitals or anal cleft or a female appearing without clothing to conceal her breasts, genitals or anal cleft. A male or female's genitals or anal cleft are concealed when they are not visible. A female's breasts are concealed when her areolas and nipples are not visible.
- (10) Sexually Oriented Business means an adult bookstore, adult theater, adult motel, adult massage parlor, adult sauna, adult entertainment center, adult cabaret, adult health/sport club, adult steam room/bathhouse facility and/or nude dancing establishment.
- ~~(10) Sexually Oriented Business means an "adult" arcade, "adult" book store, "adult" video store, "adult" motel, or "adult" motion picture theater.~~
- (11) Specified Anatomical Area means the male genitals in a state of sexual arousal and/or the vulva or more intimate parts of the female genitals.
- (12) Specified Sexual Activities means and includes any of the following:
 - a. The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts;
 - b. Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy;
 - c. Masturbation, actual or simulated; or
 - d. Excretory functions as part of or in connection with any of the activities set forth in above (a) through (c).
- (13) Transfer of Ownership or Control of sexually oriented business means and includes any of the following:
 - a. The sale, lease, or sublease of the business;
 - b. The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange or similar means; or

- c. The establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.
- (14) Viewing Room/Booth/Adult Arcade means a room or booth of less than one hundred fifty (150) square feet of floor space to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to five (5) or fewer persons per machine at any one (1) time, and where the images so displayed are distinguished or characterized by an emphasis on the depiction or description of "specified sexual activities" or "specified anatomical areas."

Section 4. That the Billings, Montana City Code be amended by adding new sections 27-611(g), 27-611(h), 27-611(i), 27-611(j) and 27-611(k) to read as follows:

(g) Applicability. The provision of this section shall apply to all existing and future sexually oriented businesses. Pursuant to MCA 76-2-208 and Section 27-401 of these regulations, any such existing business that does not meet the zoning district restrictions or the distance limitations, may continue its existence as a nonconforming use; but such nonconforming use will be subject to curtailment by current state law and these regulations. If a sexually oriented business is nonconforming to these regulations and such use is discontinued or abandoned for a period of thirty (30) consecutive days the nonconforming status shall lapse and any subsequent use of the property shall conform to the regulations specified by this resolution/ordinance for the district in which such land is located.

(h) Sign Limitations. Notwithstanding any other city ordinance or county resolution, code or regulations to the contrary, it shall be unlawful for the operator of any sexually oriented business or any other person to erect, construct, or maintain any sign for the sexually oriented business other than the one (1) primary sign and one (1) secondary sign, as provided herein.

(1) Primary signs shall have no more than two (2) display surfaces. Each such display surface shall:

- (a) not contain any flashing lights;
- (b) be a flat plane, rectangular in shape;
- (c) not exceed seventy-five (75) square feet in area or the maximum size allowed under any other relevant city ordinance or county resolution, whichever is less; and
- (d) not exceed ten (10) feet in height or ten (10) feet in length or the maximum size allowed under any other relevant city ordinance or county resolution, whichever is less.

(2) Primary signs shall contain no photographs, silhouettes, drawings or pictorial representations of any type and may contain only the name of the business.

(3) Each letter forming a word on a primary sign shall be of solid color, and each letter shall be the same print-type, size and color. The background behind such lettering on the display surface of a primary sign shall be uniform and solid color.

(4) Secondary signs shall have only one (1) display surface. Such display surface shall:

(a) be a flat plane, rectangular in shape;

(b) not exceed twenty (20) square feet in area or the maximum size allowed under any other relevant city or county regulations, whichever is less;

(c) not exceed five (5) feet in height and four (4) feet in width or the maximum size allowed under any other relevant city or county regulations, whichever is less; and

(d) be affixed or attached to any wall or door of the business.

(5) Each sexually oriented business operation must post a sign on each door stating with "Adults only" or "No Minors Allowed".

(i) Operating Standards. All sexually oriented businesses shall operate in accordance with the following:

(1) No employee shall solicit business outside the building in which the business is located;

(2) All live entertainment in sexually oriented businesses shall be performed on a platform or other exclusive area provided for such purpose, and no entertainer or performer shall be permitted to leave such platform or area while entertaining or performing. This platform or other exclusive area shall be constructed in such a manner as to keep the performers at least nine (9) feet away from patrons;

(3) Nudity and specified sexual activities while on the premises of a sexually oriented business, other than adult motel, shall be prohibited. Nothing in these regulations shall be construed to prohibit a person from appearing in a state of nudity while using a restroom. Restrooms may not contain video reproduction equipment or be used in any way to circumvent this zoning regulation;

(4) No sexually oriented business shall operate between the hours of 12:01 am and 9:00 am;

(5) No sexually oriented business, other than an adult motel, shall be located in any building where alcoholic beverages are dispensed or consumed; and

(6) No minors shall be allowed in sexually oriented businesses.

(j) Operating Standards that Pertain to Establishments that Exhibit Sexually Explicit Films, Videos or any other Images. A sexually oriented business which exhibits on the premises in a viewing room of less than one hundred fifty (150) square feet of floor space, a film, video cassette, other video reproduction that specified sexual activities or specified anatomical areas, shall comply with the following requirements:

(1) The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of the entire area of the premises to which any patron is permitted access for any purpose, excluding restrooms. If the premises has two or more manager's stations designated, then the

interior of the premises shall be configured in such a manner that there is an unobstructed view of the entire area of the premises to which any patron is permitted access for any purpose from at least one of the manager's stations, excluding restrooms. The view required in this subsection must be direct line of sight from the manager's station;

(2) No opening or holes of any kind shall exist between viewing booths/rooms or adult arcades;

(3) No doors shall be allowed on viewing booths/rooms or adult arcades;

(4) The premises shall be equipped with and have in continuous operation, while patrons are present, overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five (5.0) foot-candle as measured at the floor level; and

(5) All floor coverings and walls in viewing booths/rooms and adult arcades are to be constructed of nonporous, easily cleanable surfaces, with no rugs or carpeting.

(k) Building Exterior Appearance.

(1) It shall be unlawful for an owner or operator of sexually oriented business to allow merchandise or activities of the establishment to be visible from outside the establishment.

(2) It shall be unlawful for the owner or operator of a sexually oriented business to allow the exterior portion of the sexually oriented business to have flashing lights, words, lettering, photographs, silhouettes, drawings, or pictorial representations of any type except to the extent permitted by the provisions of this section.

(3) It shall be unlawful for the owner or operator of a sexually oriented business to allow exterior portions of the establishment to be painted any color other than a single monochromatic color. This provision shall not apply to a sexually oriented business if the following conditions are met:

(a) The establishment is part of a commercial multi-unit center;
and;

(b) The exterior portions of each individual unit in the commercial multi-unit center, including the exterior portions of the business, are painted the same color as one another or are painted in such a way so as to be a component of the overall architectural style or pattern of the commercial multi-unit center.

(4) Nothing in this section shall be construed to require painting of an otherwise unpainted exterior portion of a sexually oriented business.

Section 5. REPEALER. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 6. SEVERABILITY. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions of this ordinance which may be given effect without the

invalid provisions or application, and, to this end, the provisions of this ordinance are declared to be severable.

Section 7. EFFECTIVE DATE. This ordinance shall be effective from and after final passage and as provided by law.

PASSED by the City Council on first reading February 13, 2006.

PASSED, ADOPTED AND APPROVED on second reading February 27, 2006.

CITY OF BILLINGS:

BY: _____
Ron Tussing, Mayor

ATTEST:

BY:
Marita Herold, CMC/AAE, City Clerk

ZC#773 – Amending Section 27-611 – Sexually Oriented Businesses

[\(Back to Regular Agenda\)](#)

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM**CITY OF BILLINGS, MONTANA****Monday, FEBRUARY 13, 2006**

SUBJECT: Public Hearing and Approval of Resolution Approving and Adopting Budget Amendments for Fiscal Year 2005/2006

DEPARTMENT: Administration-Finance Division

PRESENTED BY: Patrick M. Weber, Financial Services Manager

PROBLEM/ISSUE STATEMENT: Budget adjustments are requested for Fiscal Year 2005/2006. The adjustments involve three funds, the health insurance fund, the property/liability insurance fund and the general fund - legal and code enforcement departments.

The health insurance fund committee elected to budget \$5,000 for wellness committee use. The committee unanimously voted to use \$5,000 of excess reserves for this purpose.

The property/liability insurance funds budget is requesting a budget amendment to increase insurance premium expenses by \$300,000. Liability insurance premiums increased approximately 40%, due to MMIA's legal costs incurred to defend the City in several large lawsuits, leaving the fund under budget and totally depleting cash reserves. The general fund will loan the property/liability insurance fund \$300,000 until FY 2007, when increased charges from the property/liability insurance fund will be sufficient to repay borrowed monies. A separate agenda item is being submitted to council for loan approval.

Municipal Court committed the City to provide \$50,000 to the Alternatives Inc.'s misdemeanor supervision program.

Code Enforcement's property abatements will be more than anticipated by an estimated cost of approximately \$11,000.

RECOMMENDATION

Staff recommends that the City Council conduct a public hearing and approve the resolution approving and adopting the budget amendments for Fiscal Year 2005/2006 per attached.

Approved By: **City Administrator** ____ **City Attorney** ____

ATTACHMENT

A-Resolution to Make Fiscal Year 2005/2006 Adjustment Appropriations (with Exhibit A)

RESOLUTION 06-

A RESOLUTION TO MAKE **FISCAL YEAR 2006**
ADJUSTMENTS APPROPRIATIONS PURSUANT TO M.C.A. 7-
6-4006 AS AMENDED, AND PROVIDING TRANSFERS AND
REVISIONS WITHIN THE GENERAL CLASS OF SALARIES
AND WAGES, MAINTENANCE AND SUPPORT AND
CAPITAL OUTLAY.

WHEREAS, M.C.A. 7-6-4006 provides that the City Council, upon proper resolution, adopted by said Council at a regular meeting and entered into its Minutes, may transfer or revise appropriations within the general class of salaries and wages, maintenance and support, and capital outlay, and

WHEREAS, based upon a **Quarterly** Budget Review (**FY 2005/2006**), it is necessary to alter and change said appropriations.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA:

That the attached transfers or revisions are hereby adopted.

(SEE EXHIBIT)

PASSED AND APPROVED by the City Council, this 13th day of February, 2006.

THE CITY OF BILLINGS:

BY: _____
Ron Tussing, MAYOR

ATTEST:

BY: _____
Marita Herold, CMCCITY CLERK

EXHIBIT A

BUDGET ADJUSTMENTS

	<u>Revenue</u>	<u>Expenditure</u>
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627-1752-417	3516	\$ 5,000 Wellness committee
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The Health Insurance Fund's expenditure budget will be increased to authorize funds for wellness issues and activities.

010-1611-416	7215	\$ 50,000 Grants / Misdemeanor Supervision Program
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The Legal department's expenditure budget in the General fund will be increased to fund the City's portion of the Misdemeanor Supervision Program through municipal court for Alternatives Inc. probation program.

630-1753-485	5130	\$ 300,000 Liability insurance premium
630-1753-381	6950	\$ 300,000 Loan funds borrowed from the general fund
010-1750-417	5930	\$ 300,000 Loan made to the property / liability insurance fund from the general fund

The Property / liability Insurance Fund's expenditure budget will be increased to give budget authority for the increased liability insurance premium costs. The amendment will also establish the budget line items where the loan from the general fund and the subsequent receipt of the loan funds in the property / liability insurance fund.

010-4321-419	3585	\$ 11,000 Nuisance abatement
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The Code Enforcement department's expenditure budget within the General fund will increase to provide budget authority for planned property abatements.

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 13, 2006

TITLE: Public Hearing and Resolution - Vacation of Right-of-Way for Broadwater Avenue in Legacy Subdivision

DEPARTMENT: Public Works Department – Engineering Division

PRESENTED BY: David D. Mumford, Public Works Director

PROBLEM/ISSUE STATEMENT: Engineering, Inc. has submitted a petition to vacate a portion of Broadwater Avenue right-of-way, as indicated on attached Exhibit A. The right-of-way to be vacated is approximately 650 feet long by 30 feet wide and is located immediately west of 52nd Street West within the proposed Legacy Subdivision.

ALTERNATIVES ANALYZED:

- After holding a public hearing, approve the vacation of Broadwater Avenue Right-of-Way
- After holding a public hearing, do not approve the vacation of Broadwater Avenue Right-of-Way.

FINANCIAL IMPACT: The portion of street being vacated is 19,345 square feet. The right-of-way will be dedicated for Dovetail Avenue and will provide continuity to the west in the future. The City Engineer's Office recommends the right-of-way be vacated at no cost since right-of-way will be dedicated for Dovetail Avenue.

RECOMMENDATION

Staff recommends that Council approve the vacation of Broadwater Avenue located directly west of 52nd Street West that is the proposed Legacy Subdivision, Billings, Montana.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENT

A. Exhibit A

RESOLUTION NO. 06-

A RESOLUTION OF THE CITY OF BILLINGS, MONTANA, DISCONTINUING AND VACATING **650 feet of Broadwater Avenue directly west of 52nd Street West located in Block 1, Legacy Subdivision.**

WHEREAS, a proper petition was filed with the City Council of the City of Billings, Montana, as per Section 22-601 BMCC, requesting discontinuance and vacation of **650 feet of Broadwater Avenue directly west of 52nd Street West located in Block 1, Legacy Subdivision** as described hereinafter; and

WHEREAS, a public hearing was properly noticed and held as required by law.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA, AS FOLLOWS:

1. **DISCONTINUANCE AND VACATION.** Pursuant to Sections 7-14-4114 and 7-14-4115, M.C.A., **650 feet of Broadwater Avenue directly west of 52nd Street West located in Block 1, Legacy Subdivision** and more particularly described in ***Exhibit "A"*** attached, is/are hereby discontinued, abandoned and vacated.
2. **PUBLIC INTEREST.** The discontinuance, vacation and abandonment of the above described **650 feet of Broadwater Avenue directly west of 52nd Street West located in Block 1, Legacy Subdivision** is in the best interest of the public and can be done without any public detriment. Ownership of the vacated area will revert to the adjacent owner – Rick Dorn.

PASSED by the City Council and APPROVED this 13th day of February, 2006.

THE CITY OF BILLINGS:

BY: _____
Ron Tussing MAYOR

ATTEST:

BY: _____
Marita Herold, CMC/AAE CITY CLERK

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February, 13, 2006

TITLE: Public Hearing and First Reading of Ordinance for Debarment of Suppliers

DEPARTMENT: Administration – Finance Division

PRESENTED BY: Patrick M. Weber, Financial Services Manager

PROBLEM/ISSUE STATEMENT: Departments within the City are having some issues with poor performing suppliers or suppliers delivering sub-standard goods on a regular basis. In some cases, these suppliers are the lowest responsible bidder. In order to protect the City, a City Ordinance has been created whereby contractors can be debarred from bidding on City contracts by the City Administrator based on specific terms within the Ordinance.

ALTERNATIVES ANALYZED: 1) Approve the ordinance 2) If an ordinance is not created, the City still must take the lowest responsible bidder, even though the supplier has not delivered quality service or goods. This costs the City time and money.

RECOMMENDATION

Staff recommends that Council approves the City Ordinance which allows the City Administrator to debar or suspend vendors based on the terms in the Ordinance.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENT

A- New City Ordinance for Debarment of City Contractors

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING THAT THE BILLINGS, MONTANA CITY CODE BE AMENDED BY ADDING A SECTION TO BE NUMBERED 13-505; PROVIDING FOR A PROCEDURE WHEREBY CITY CONTRACTORS CAN BE DEBARRED FROM BIDDING ON CITY CONTRACTS, ESTABLISHING AN EFFECTIVE DATE, AND PROVIDING A SEVERABILITY CLAUSE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA:

Section 1. That the Billings, Montana City Code be amended by adding a section to be numbered 13-308, to read as follows:

Section 13-505. Debarment of contractors.

(1) If a person commits an act, as defined in this ordinance, indicating that the person no longer merits the privilege of contracting with the city or participating in city projects, the city may begin proceedings under these rules to debar the person from bidding on or otherwise participating in city contracts or projects. The city will debar or suspend contractors which violate this ordinance, and will not do business with, or allow prime and subcontractors to do business with, on city-related projects, persons debarred or suspended by the federal government, by another state, or by an agency of Montana state government. A contractor who has been debarred by the city, the federal government, by another state, or by an agency of Montana state government may not participate in work, contracts or projects with the City. A person's decision to bid upon or accept contracts with the city, or otherwise participate in city contracts, is a voluntary acceptance of the provisions of these rules and their requirements.

(2) The city administrator has the authority to temporarily suspend a contractor from consideration for further contracts with the city if the city administrator has credible evidence to

believe that the contractor has engaged in activities that could lead to debarment from contract eligibility. Debarment applies both to a firm or an individual. In the case of a firm, it may be applied against any or all businesses in which a firm has involvement or over which it has ownership or control. In the case of an individual, debarment may be applied to and enforced against any and all businesses in which the individual has any level of interest, ownership or control. The causes for debarment include the following:

(a) submission of a false affidavit for Montana residency;

(b) contractor is not responsible because they do not have available the appropriate financial, material, equipment, facility, and personnel resources and expertise, or the ability to obtain them, necessary to indicate capability to meet all contractual requirements to perform fully the contract requirements;

(c) contractor is not responsive because their bid fails to conform in all material respects to the invitation for bids or request for proposals;

(d) deliberate failure, without good cause, to perform in accordance with the specifications or within the time limit provided in a contract;

(e) contractor does not have a satisfactory record of integrity;

(f) contractor is not qualified legally to contract with the City;

(g) contractor has failed to supply any necessary information in connection with the inquiry concerning the responsibility;

(h) a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts;

(i) failure to comply with the provisions of the Unemployment Insurance Law, Title 39, chapter 51, MCA;

(j) failure to comply with the provisions of the Workers' Compensation Act, Title 39, chapter 71, MCA;

(k) failure to pay the prevailing wage to any worker on any contract costing more than \$25,000 let for construction, heavy construction, highway construction or remodeling work; or

(l) any other cause that the city administrator determines to be so serious and compelling as to affect responsibility as a City contractor, including debarment by another governmental entity.

(3) If there is credible evidence that any of the situations exist as set out in (1), the city administrator shall mail a notice of suspension to the affected contractor or individual. The notice must state that:

(a) the suspension is for the period it takes to complete an investigation into possible debarment;

(b) bids or proposals will not be accepted from the suspended contractor and contracts will not be awarded to the suspended contractor during the period of suspension;

(c) the suspension is effective upon the date of issuance of the notice of suspension and, unless the suspension is terminated by the city administrator or a court, it will remain in effect for a period not to exceed 90 calendar days.

(4) If the city administrator's investigation confirms a cause for debarment, a notice will be served upon the contractor by certified mail, return receipt requested. The notice will include:

(a) the pertinent facts supporting the alleged cause for debarment and the city administrator's intent to remove the contractor from eligibility to contract with the city;

(b) the term of the debarment and to what extent affiliates are affected. The debarment will be for a specific period of time or until certain conditions are met, at the discretion of the city administrator; and

(c) notification of the contractor's right to a hearing on the matter with the city administrator, or designee, as hearing examiner, and of the contractor's right to appeal any adverse determination by the hearing examiner to the full City Council.

(5) A written request for hearing must be received by the city administrator from the contractor within 14 calendar days after the date of the mailing of the notice of debarment. Failure to timely request a hearing will constitute a waiver by the contractor of the opportunity for a contested case hearing and appeal and will result in the city administrator or city administrator's designee entering an order supporting the contractor's debarment from contracting with the city for a specified period of time or until certain conditions are met.

(6) Upon timely receipt of a written request for a hearing, the city administrator shall appoint a hearing examiner to hear the evidence in the matter and come to a determination as to whether the facts support the decision to debar the contractor from contracting with the city for a specified period of time or until certain conditions are met. A written notice appointing the hearing examiner shall be issued by the city administrator, and sent to the person requesting the hearing.

(7) The person against whom debarment is being considered has the right to be accompanied, represented and advised by counsel, and to appear in person or by or with counsel. Counsel will not be provided by or at the expense of the city.

(8) Service of notice and later documents for the hearing will be complete and effective when made upon a person, or his counsel, if he has counsel.

(9) A notice of hearing shall be sent by the hearing examiner to the person requesting the administrative hearing. The notice shall include:

(a) A statement of the date, time, and location of the hearing;

(b) A reference to the provisions of the violation(s) involved;

(c) A short, understandable statement of the matters asserted; and

(d) A statement advising the party of its right to be represented by legal counsel at the hearing.

(10) The hearing examiner shall not engage in communications with any party or their counsel except upon notice and opportunity for all parties to participate.

(11) For hearings:

(a) The city shall record any hearing conducted and maintain a record of the proceedings. The record shall include:

(i) the initial determination of the city administrator;

(ii) the written request for a hearing;

(iii) the appointment of the hearing examiner;

(iv) the notice of hearing;

(v) the evidence offered to, or considered by, the hearing examiner;

(vi) any objections and rulings thereon;

(vii) all matters placed on the record at the hearing;

(viii) all briefs or memoranda submitted by the parties; and

(ix) any transcript made of the proceedings.

(b) The hearing examiner presiding over the hearing shall have the powers and duties may administer oaths or affirmations; issue subpoenas; provide for the taking of testimony by deposition; regulate the course of hearings, including setting the time and place for continued hearings and fixing the time for filing of briefs or other documents; and direct parties to appear and confer to consider simplification of the issues by consent of the parties.

(c) Discovery will be available to the parties in accordance with Rules 26, 28 through 37 (except Rule 37(b)(1) and 37(b)(2)(d)) of the Montana Rules of Civil Procedure in effect as of the date of the adoption of these rules. Provided that: all references in the Montana Rules of Civil Procedure to a "court" are considered to refer to the city; all references to the use of subpoena power are considered to refer to the power in these rules; references to "trial" are considered to refer to the hearing; all references to "plaintiff" are considered to refer to a "party"; all references to "clerk of court" are considered to refer to the hearing examiner.

(i) If a party or other witness refuses to be sworn or refuses to answer any question after being directed to do so by the hearing examiner, the refusal to obey the hearing examiner's order shall be enforced as provided by law.

(ii) If a party seeking discovery from the city believes he has been prejudiced by a protective order issued by the hearing examiner under Rule 26(c), Montana Rules of Civil Procedure, or, if the hearing examiner refuses to make discovery, the party may petition the District Court, Thirteenth Judicial District for the County of Yellowstone, for review of the intermediate action of the hearing examiner.

(e) The usual order of presentation at a hearing shall be:

(i) Argument and the submission of evidence and testimony on behalf of the city;

(ii) Argument and the submission of evidence and testimony from the party requesting the hearing;
and

(iii) The introduction of rebuttal evidence and testimony by the city.

(f) The hearing may be continued with recesses as determined by the hearing examiner.

(g) Evidence introduced at the hearing may be received in written form or oral testimony given under oath or affirmation. Parties have a right to cross-examine all persons testifying at a hearing.

(i) The hearing examiner may consider hearsay evidence for the purpose of supplementing or explaining other evidence. A decision should not ordinarily be based wholly upon hearsay evidence, however, circumstances in some cases may require it (i.e., debarment based on a prior debarment in another jurisdiction), at the discretion of the hearing examiner.

(ii) Judicially noticed facts are not hearsay.

(iii) Fraudulent, criminal or other seriously improper conduct of any individual (officer, director, shareholder, partner, employee, or other individual associated with a person) may be imputed to the person when the conduct occurred in connection with the individual's performance of duties for or on behalf of the person, or with the person's knowledge, approval, or acquiescence. The person's acceptance of the benefits derived from the conduct will be evidence of such knowledge, approval or acquiescence.

(iv) The hearing examiner's experience, technical competence, and specialized knowledge may be utilized in the evaluation of evidence.

(v) Exhibits shall be marked and the markings shall identify the party offering the exhibit. Exhibits shall be preserved by the hearing examiner as part of the administrative record.

(h) Objections to offers of evidence must be made at the time of the offer and shall be noted in the administrative record. A hearing examiner may rule on evidentiary objections at the time of the hearing, after receipt of oral or written argument by the parties, or at the time of entry of the proposed decision.

(i) The person must present all potential and available grounds to contest the debarment, and failure to raise an issue before the hearing examiner will waive that issue's consideration on any appeal or potential judicial review.

(j) The city's burden of proof for the hearing will be a preponderance of the admissible evidence presented. That is proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

(k) After the hearing and any required post-hearing briefs and submissions, the hearing examiner shall enter a proposed decision, which shall be served on all parties by certified mail, return receipt requested, to their designated agent. The proposed decision shall contain findings of fact and conclusions of law supported by the administrative record, and recommend a proposed action to the city administrator.

(12) The city administrator shall within 30 days review the proposed decision and enter the hearing examiner's final decision. The city administrator may accept, reject or modify the proposed decision. The city administrator's final decision shall contain findings of fact and conclusions of law, and shall be mailed to the parties by certified mail, return receipt requested.

(13) The sole method of appeal of the city administrator's decision is as follows:

(a) The city administrator's decision is final unless appeal is made to the commission. An appeal may only be made if it is submitted to the city administrator in writing, and only if received by the city administrator's office no later than 10 calendar days after date of mailing of the final decision to the designated agent of the appealing party. If delivery of the final decision is refused or for any other reason not able to be delivered to the designated agent (i.e., returned as undeliverable, addressee moved and left no forwarding address, etc.), the decision will be final and the 10-day

appeal period will begin to toll on the date the certified letter is returned to the city administrator's office.

(14) The contractor may appeal any adverse determination by the hearing examiner to the full city council which shall review the administrative record of the proceedings and its findings and conclusions only. The council will determine whether or not the findings and conclusions are supported by that record. The council's review will not be a de novo hearing, nor will it receive written briefs from a party except on the issue of whether or not the findings and conclusions are supported by the administrative record. The council will not hear oral argument or testimony, or receive any evidence that was not presented in the hearing. The council may affirm, reject or modify the city administrator's decision. If the council determines that the record does not support the findings and conclusions, it may refer the matter back to the city administrator for any action the council deems appropriate and directs.

The council's determination shall be final.

(15) Debarment is distinct from a finding of nonresponsibility. The city has the authority and ability in its discretion to find a person nonresponsible for purposes of disallowing a bid on a project or contract, or prohibiting a person from otherwise participating in a project or contract (e.g., as a subcontractor, supplier, etc.) without conducting debarment proceedings.

(16) If debarred by the federal government or any Montana government agency, a person may not bid on or otherwise participate in any city project or contract in any capacity (prime contractor, subcontractor, supplier, etc.), including as a separate contractor for a utility to relocate utilities required by a city project, until after the completion of the entire debarment period, whether or not the city debars the person. Debarment proceedings may proceed even if the person ceases doing business during the proceedings.

(17) If a person is debarred by any agency of the federal government for any period, the city may debar it for a period up to that set by the federal government without need for further debarment proceedings. The only evidence required in a debarment hearing in a case based on an existing debarment will be a certified copy of an order, agency letter or other final action declaring the debarment in the other jurisdiction. That will not prevent the person from presenting evidence to dispute the proposed debarment or its length. If the person is debarred by a branch or agency other than of the Montana or federal government (i.e., another state, a county, etc.), or if the city may wish a debarment period exceeding that set by the other Montana agency or the federal government, the city must hold debarment proceedings before increasing the debarment period.

(18) If debarred by the federal government or any Montana government agency, a person may not bid on or otherwise participate in any city project or contract in any capacity (prime contractor, subcontractor, supplier, etc.), including as a separate contractor for a utility to relocate utilities required by a city project, until after the completion of the entire debarment period, whether or not the city debars the person. Debarment proceedings may proceed even if the person ceases doing business during the proceedings.

(19) If a person is debarred by any agency of the federal government for any period, the city may debar it for a period up to that set by the federal government without need for further debarment proceedings. The only evidence required in a debarment hearing in a case based on an existing debarment will be a certified copy of an order, agency letter or other final action declaring the debarment in the other jurisdiction. That will not prevent the person from presenting evidence to dispute the proposed debarment or its length. If the person is debarred by a branch or agency other than of the Montana or federal government (i.e., another state, a county, etc.), or if the city may wish

a debarment period exceeding that set by the other Montana agency or the federal government, the city must hold debarment proceedings before increasing the debarment period.

(20) A person planning to bid on or participate in a city contract or work, or who has already bid on or is participating in a city contract or work, must immediately notify the city administrator in writing of any debarment or suspension against it, or of any debarment or suspension proceedings pending against it in any jurisdiction.

(21) Projects or contracts already awarded to a person at the time it is debarred will not be affected, except that a bid may be rejected, or contract award rescinded, if a person submits the bid or is awarded the contract after the date on which it was debarred.

(22) The city shall maintain a list of debarred contractors on its website at <http://ci.billings.mt.us/>.

Section 2. EFFECTIVE DATE. This ordinance shall be effective thirty (30) days after second reading and final adoption as provided by law.

Section 3. REPEALER. All resolutions, ordinances, and sections of the City Code inconsistent herewith are hereby repealed.

Section 4. SEVERABILITY. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions of this ordinance which may be given effect without the invalid provisions or application, and, to this end, the provisions of this ordinance are declared to be severable.

PASSED by the City Council on first reading this _____ day of _____, 2006.

PASSED, ADOPTED and APPROVED on second reading this _____ day of _____, 2006.

CITY OF BILLINGS

By _____
RON TUSSING, Mayor

ATTEST:

By _____
MARITA HEROLD, City Clerk

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM**CITY OF BILLINGS, MONTANA****Monday, February 13, 2006**

TITLE: Public Service Report and Resolution for Annexation 06-01,
Romine/Hoyer Properties

DEPARTMENT: Planning and Community Services Department

PRESENTED BY: Candi Beaudry, AICP, Planning Division Manager

PROBLEM/ISSUE STATEMENT: Thomas Romine and Paul Hoyer are requesting approval of the petition to annex the west half of Lots 5 and 28, and all of Lots 6, 26, 27, 38, and 40 of Sunnycove Fruit Farms. The 58.041-acre property is located on the south side of Rimrock Road between 58th and 62nd Streets West. The owners are requesting annexation in order to obtain municipal sewer and water for a proposed residential subdivision in accordance with 7-2-4601 et. seq., MCA. This public service report describes the City's capacity to serve the proposed development.

The City Council closed the public hearing and voted to delay action on this item on January 23, 2006, because the legal description was listed incorrectly in the staff memo. The Council was concerned that the property may have been incorrectly described in the legal advertisement for the public hearing. According to the affidavit of publication for the legal notice published on January 15 and 22, 2006, the legal advertisement correctly listed the legal description of the properties included in the petition for annexation.

ALTERNATIVES ANALYZED: The City Council may approve or disapprove a petition submitted by owners of 50% of the real property in the area to be annexed (7-2-4601 (3)(b), MCA).

FINANCIAL IMPACT: The City can provide service to this property. While the annexation will increase the City's tax base, in general, the costs of providing service to residential properties exceed the revenues generated from property tax.

RECOMMENDATION

Staff recommends that City Council approve the Resolution of Annexation with the following conditions:

1. That prior to development of the site the following shall occur:
 - a. A Development Agreement shall be executed between the owner(s) and the City that shall stipulate specific infrastructure improvements and provide guarantees for said improvements; or
 - b. A Subdivision Improvements Agreement (SIA) and Waiver of Protest the Creation of an SID shall be approved and filed that will stipulate specific infrastructure improvements and provide guarantees for such infrastructure improvements. The subdivider will be responsible for forming a Park Maintenance District at the time of subdivision.

Approved By: **City Administrator** _____ **City Attorney** _____

ATTACHMENT

A. Resolution

INTRODUCTION

The owner submitted a petition for annexation for a 58.041-acre property located south of Rimrock Road between 58th and 62nd Streets West on December 1, 2005. The owners also intend to submit preliminary subdivision plat application in the near future. The property is currently zoned Residential-9,600, Residential-15,000 and Agricultural-Open Space. However, the owners plan to rezone this property to Residential-9,600 and Residential 7,000 for a mix of single family and duplex residences. Upon approval of the Tom Romine Urban Planning Study and the Urban Planning Area expansion, this property is eligible for annexation

PROCEDURAL HISTORY

- December 1, 2005 – Engineering, Inc. submits Urban Planning Study and request for Urban Planning Area expansion.
- December 1, 2005 – Thomas Romine and Paul Hoyer submit Petition for Annexation
- January 9, 2006 – City Council acknowledges Petition for Annexation
- January 10, 2006 – Planning Board reviews and recommends approval of the Urban Planning Area Expansion.
- January 23, 2006 – City Council holds public hearing for Urban Planning Area expansion and Annexation Petition.

BACKGROUND

The Urban Planning Study that incorporates this property will come before Council at the same meeting as this petition for annexation. The approval of the Study and expansion of the Urban Planning Area is required prior to annexation of any property to the City of Billings.

ALTERNATIVES ANALYSIS

The City Council has expressed concerns about how annexations may affect the City's ability to provide services to annexed property without diminishing the services provided to existing City residents. To address these concerns, Council adopted an annexation policy that lists criteria for suitable annexations. The proposed annexation *complies* with the recently adopted Annexation Policy criteria as follows:

1. The area is located within the Limits of Annexation and within the Urban Planning Area.
2. The City is able to provide adequate services.
3. The proposed improvements meet City standards.
4. Upon approval of the final subdivision plat, the owners will sign a Waiver of Right to Protest the Creation of Special Improvement Districts.
5. Upon approval of the final subdivision plat, the owners will form a Park Maintenance District.
6. Residential densities will be approximately 4 dwelling units per acre.
7. With the exception of being contiguous to existing City limits, the proposed annexation meets the goals of the City-County Growth Policy.

Although MCA 7-2-4600 allows the municipality to waive the requirement of an annexation public services plan, it is the City's custom to have staff prepare a brief analysis of predicted impacts to services and facilities. State law lists the required contents of a public services plan

including a 5-year (minimum) plan that outlines how and when services and infrastructure will be extended to the annexed area and how they will be financed. This report follows that general format.

Departmental Response: City departments and Yellowstone County were given the opportunity to comment on this annexation. School District #2 and Yellowstone County were also notified of this annexation. All City departments responded favorably, with the exception of the Police Department. No comments were received from School District #2 or Yellowstone County.

City Facilities: The following improvements and facilities are necessary to provide adequate services to the subject property.

Water: Water service will be extended from Rimrock Road from an existing 20" water main.

Sewer: There is a 24" sanitary sewer main in 58th Street West and an 18" sanitary sewer main in Rimrock Road. Both of these mains could be used to serve the future subdivision

Stormwater: There are no City storm water facilities in the vicinity. Nearby subdivision developments have been required to retain storm water drainage onsite, or if permissible, discharge into a local irrigation facility.

Transportation: The study area adjoins Rimrock Road to the north, 58th Street West to the east, and 62nd Street West to the west. The 2005 Billings Urban Transportation Plan Update classifies Rimrock Road and 62nd Street as principal arterials, and 58th Street West is classified as a collector. Each of these roads will provide access to the future development of the property. Rimrock Road and 62nd Street West are both paved County roads. Fifty-eighth Street West is a gravel road. Internal streets serving this property will be constructed to local street standards. Impacts on the surrounding street network will be evaluated at the subdivision stage. Subdividers are required to pay their proportionate share of off-site street improvements identified in a Traffic Accessibility Study.

Based on the development of 99 acres described in the Urban Planning Study, it is estimated that during the peak morning period, 53 vehicles would enter the future subdivision, while 155 vehicles would exit. In the evening peak period, the number of vehicles entering the subdivision would increase to 192, while 109 vehicles would exit the development. On average, approximately 2,669 vehicle trips are expected to be generated per weekday. The Study indicates that about 96% of these trips would travel to or from the greater Billings area, with roughly half of them traveling on Rimrock Road and the half on Grand Avenue.

Fire Station: The study area is within the Billings Urban Fire Service Area and currently served by the Billings Fire Department. Interim fire protection will be provided to this property after annexation from Fire Station No. 3 at Parkhill and 17th Street West and Fire Station No. 5 at 24th Street and Rosebud prior to the construction of a new station. Land has been purchased for a new fire station at the intersection of Grand and 54th Street West. The station is scheduled for construction in 2008 and will service this area at that time. Based on 2002 statistics, the Fire Department responded to approximately 85 incidents per 1000 people. At this level of impact, the development could generate approximately 6 incidents per year at full buildout.

Parks: No detailed plans were provided on the future provision for parks and recreation. The City Parks, Recreation and Public Lands Department commented that the property lies within the “Benefited Area” of Cottonwood Park. If the future subdivision contributes cash-in-lieu of parkland, the cash will be used for the development and maintenance of Cottonwood Park. Regardless, the future subdivision will be required to participate in the Park Maintenance District of Cottonwood Park. As stated in the Urban Planning Study, the future subdivision is expected to contain significant greenspace, waterways, and park features. A separate park maintenance district would be set up for the maintenance of these features.

Bicycle and pedestrian facilities: The area proposed for annexation is not affected by the Heritage Trail Plan.

General City Services: These are the City services that are provided to all residents and businesses in the City, such as police and fire protection, street and storm drain maintenance, and garbage collection and disposal. The service providers that responded did not object to the annexation of this property.

Transit: MET does not regularly serve this area, but paratransit services will be provided. MET had no problem with the petition to annex.

Fire: The property is currently within the Billings Urban Fire Service Area (BUFSA) and is served by the Billings Fire Department. After annexation, the Billings Fire Department will continue to serve this area. The Fire Department did not object to this annexation.

Police: The Police Department responded that any annexation could adversely affect calls for service and require an increase in police service.

Ambulance Service: The City does not provide ambulance service but dictates the level of service provided by American Medical Response (AMR). By City ordinance, 90% of ambulance calls must be answered within 8 minutes. This annexation is within the area of acceptable response time.

Legal and Finance: General Fund services such as Legal and Finance have indicated that they will not be negatively impacted.

Other Departments: City/County services such as Library, Planning, and Environmental Health are only slightly affected by the annexation since they will serve new development if it is in the City or if it remains in the County.

STAKEHOLDERS

The annexation by petition method does not require notification of adjoining landowners but does require the City Council to hold a public hearing. Notice of the public hearing was posted on the property and published in the Billings Gazette. The Planning Division has received no comments on this proposed annexation.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

The property is also within the area covered by the West Billings Plan and the recently adopted Northwest Shiloh Land Use Plan. The proposed development is consistent with the applicable land use goals of these Plans in the following manner:

West Billings Plan

1. Establish Development Patterns that Use Land More Efficiently. *The future development will utilize available infrastructure that can service higher densities than those that currently exist.*
2. Plan for the Orderly and Efficient Urbanization of Agricultural Lands. *The property is currently zoned a mix of Residential-9600, Residential-15000 and Agricultural Open-Space. While the existing land use is agricultural, the zoning anticipates higher densities in this area. The higher density residential development is consistent with developments occurring to the north, northwest, south and east of this property.*

Northwest Shiloh Area Plan

1. Encourage new development that is compatible with and complements existing City neighborhoods and County townsites. *The west Rimrock Road area is developing as a major City neighborhoods with densities of 4 dwelling units per acre or more. Recently approved zone changes will also allow for commercial development at the intersection of 62nd Street West and Rimrock Road providing retail business and services to the residential developments. This proposed development is compatible with the current trends and existing uses in this area.*
2. Provide more housing and business choices within each neighborhood. Provide affordable housing for all income levels dispersed throughout the City and County. *The proposed land use for this area is for single family and duplex-style homes.*
3. Plan for the cost-efficient extension and delivery of public services. *The existing infrastructure is capable of providing services to the expansion area.*

The proposed development conflicts with some of the goals from these plans as follows:

1. Reduce sprawl and development pressure on agricultural land. *The entire expansion area is currently used for agricultural purposes.*
2. Reduce commuting and the number and length of daily vehicle trips. *The area to be developed is located at least 8.5 miles from the major downtown and west end work centers.*
3. Ensure the continued functionality of natural systems. *The expansion area lies within a flood prone area as identified by the Cove Creek – Little Cove Creek Approximate Flood Study prepared in 2004.*

The Urban Planning Area expansion is consistent with the following Growth Policy goals:

1. Affordable housing for all income levels dispersed throughout the City and County (Land Use Element Goal, page 6).
2. More housing and business choices within each neighborhood (Land Use Element Goal, page 6)

The Urban Planning area expansion conflicts with the following goal:
Contiguous development focused in and around existing population centers separated by open space (Land Use Element Goal, page 6). *The study area is not contiguous to City territory.*

RECOMMENDATION

Staff recommends that City Council approve the Resolution of Annexation with the following conditions:

1. That prior to development of the site the following shall occur:
 - a. A Development Agreement shall be executed between the owner(s) and the City that shall stipulate specific infrastructure improvements and provide guarantees for said improvements; or
 - b. A Subdivision Improvements Agreement (SIA) and Waiver of Protest the Creation of an SID shall be approved and filed that will stipulate specific infrastructure improvements and provide guarantees for such infrastructure improvements. The subdivider will be responsible for forming a Park Maintenance District at the time of subdivision.

ATTACHMENT

- A. Resolution

RESOLUTION NO. 06-

**A RESOLUTION OF THE CITY OF BILLINGS
APPROVING PETITIONS FOR ANNEXATION
AND ANNEXING TERRITORY TO THE CITY.**

WHEREAS, one hundred percent (100%) of the freeholders who constitute more than fifty percent (50%) of the resident freeholder electors have petitioned the City for annexation of the territory hereinafter described; and

WHEREAS, the territory was described in the Petition as required by law, and

WHEREAS, annexation of said territory would be in the best interest of the City.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA, AS FOLLOWS:

1. TERRITORY ANNEXED. Pursuant to Petition filed as provided M.C.A., Title 7, Chapter 2, Part 46, the following territory is hereby annexed to the City of Billings:

A tract of land situated in the NE1/4 of Section 36, T.1N., R.24E., and the NW1/4 of Section 31, T.1N., R.25E., P.M.M., Yellowstone County, Montana, more particularly described as: Sunny Cove Fruit Farms, the West ½ of Lots 5 and 28 and all of Lots 6, 26, 27, 38 and 40, Recorded April 27, 1910, Under Document No. 21540, Records of Yellowstone County, Montana; including all adjacent right-of-way of Rimrock Road, 60th Street West and 62nd Street West. Containing 63.543 gross and 58.041 net acres, more or less.

(# 06-01) See Exhibit "A" Attached

2. CONDITIONS. The annexation is approved subject to the following conditions:

That prior to development of the site the following shall occur:

- a. A Development Agreement shall be executed between the owner(s) and the City that shall stipulate specific infrastructure improvements and provide guarantees for said improvements; or
 - b. A Subdivision Improvements Agreement (SIA) and Waiver of Protest the Creation of an SID shall be approved and filed that will stipulate specific infrastructure improvements and provide guarantees for such infrastructure improvements. The subdivider will be responsible for forming a Park Maintenance District at the time of subdivision.
3. PROCEDURE. All procedures as required under M.C.A., Title 7, Chapter 2, Part 46, have been duly and properly followed and taken.

PASSED by the City Council and APPROVED this 23rd day of January, 2006.

THE CITY OF BILLINGS:

BY: _____

Ron Tussing, MAYOR

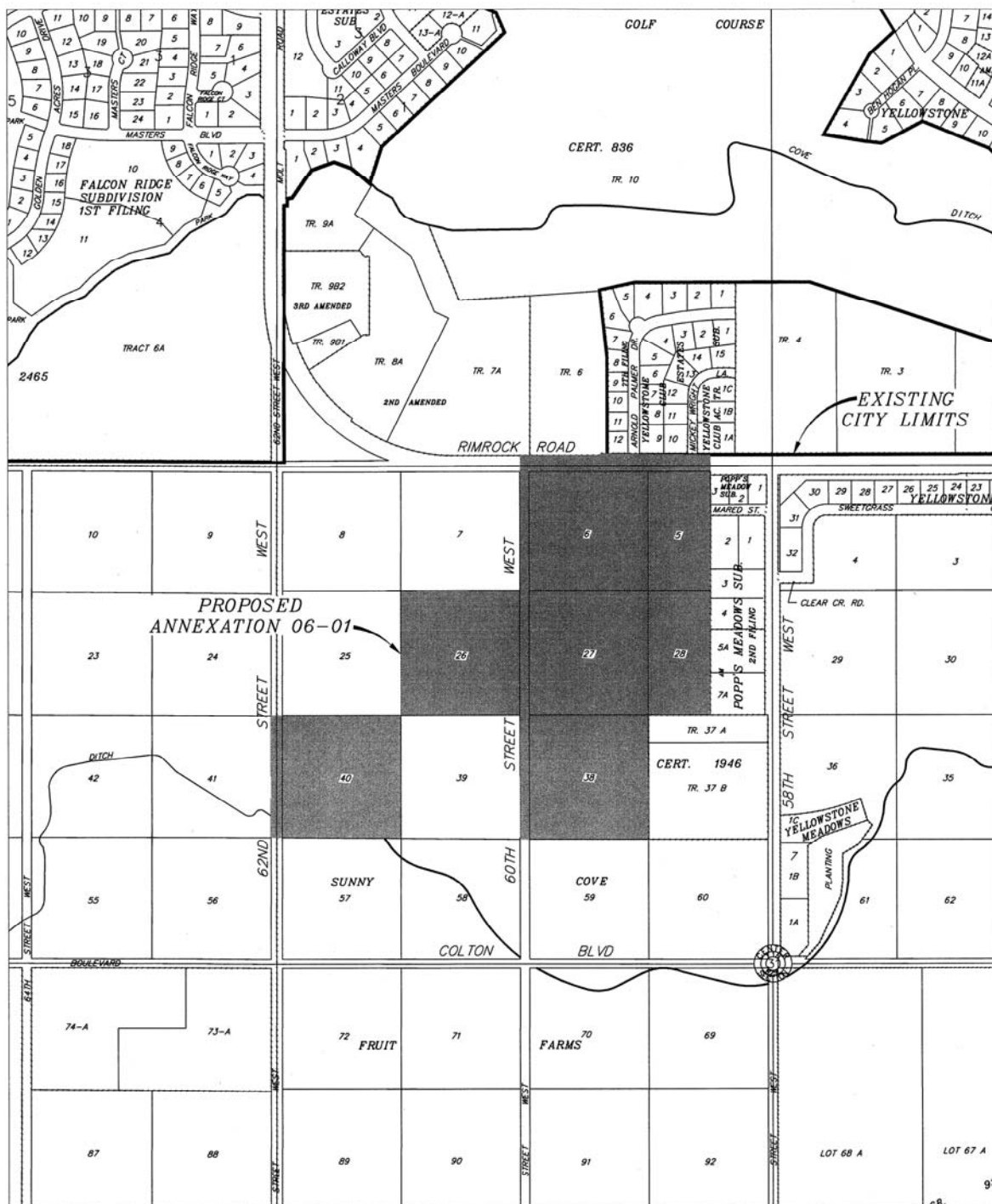
ATTEST:

BY: _____

Marita Herold, CMC/AAE CITY CLERK

(AN 06-01)

EXHIBIT "A"



AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 13, 2006

TITLE: Preliminary Plat of Bellville Subdivision Clarification of Motion
DEPARTMENT: Planning and Community Services, Candi Beaudry, AICP, Interim Planning Director
PRESENTED BY: Aura Lindstrand, Planner II

PROBLEM/ISSUE STATEMENT: Staff is requesting clarification of the City Council motion that was made on January 9, 2006, approving Bellville Subdivision with the provision of a secondary access via Lynch Lane located to the west of the subdivision. It is unclear as to whether the Council was requesting that an alternative access to Lynch Lane be added as a Condition of subdivision approval or whether they were directing staff to explore Lynch Lane as a possibility for future access to the subdivision.

Pursuant to Section 76-3-604(2) of the Montana Code Annotated (MCA), the governing body shall approve, disapprove, or conditionally approve a preliminary plat within 60 working days of its presentation unless the subdivider consents to an extension of the review period. In this case, as indicated in the timeline below, the subdivider requested an extension of the 60-day review period to a date certain (January 9, 2006). Council acted on that date to conditionally approve Bellville Subdivision. The timeline for the subdivision is as follows:

- The preliminary plat application was submitted to the Planning Division on September 1, 2005.
- On October 6, 2005, the subdivider submitted a letter requesting that the plat review be delayed to the October 25, 2005, meeting. The Planning Board acknowledged this delay at the October 13, 2005, meeting.
- On October 25, 2005, the Planning Board reviewed the plat.
- On November 8, 2005, the Planning Board conducted a public hearing on the plat and forwarded no recommendation to the City Council.
- On November 28, 2005, the City Council voted to deny the preliminary plat.

- On December 30, 2005, the 60 day review period for the subdivision, as set forth by Section 76-3-204(2), MCA ends.
- On December 12, 2005, the City Council voted to bring the preliminary plat back for action at the January 9, 2006, meeting. The Council stated that this would permit staff sufficient time to organize a neighborhood meeting to invite opponents to the subdivision in order to help alleviate their concerns.
- On December 13, 2005, the subdivider submitted an extension request of the 60-day review period to the January 9, 2006, City Council meeting.
- On December 15, 2005, a certified letter was sent to the five (5) opponents of the subdivision regarding a neighborhood meeting to be conducted on January 5, 2006.
- On January 5, 2006, a neighborhood meeting was conducted with the subdivider, Council Member Brewster, planning staff, two (2) proponents of the subdivision, and several opponents.
- On January 9, 2006, the City Council conditionally approved the subdivision. However, the motion was amended prior to approval to add Lynch Lane as an alternative access to the subdivision. It is unclear as to whether the Council was requesting that the subdivider provide secondary access via Lynch Lane, which would require a public hearing process, or whether they intended the City to further explore Lynch Lane as a future access to the subdivision.
- On January 10, 2006, planning staff was contacted by Steve Kerns, the subdivider, regarding Council's action. He relayed to staff in a telephone conversation that he understood that the motion conditionally approved his subdivision, as presented by staff, and that the City would be pursuing the construction of Lynch Lane.
- On January 23, 2006, the City Council voted to reconsider Bellville Subdivision motion at the February 13, 2006, meeting.

ALTERNATIVES ANALYZED: Pursuant to Section 76-3-604(2), MCA, the City Council cannot reconsider this plat.

RECOMMENDATION

There is no recommendation.

Approved by: **City Administrator** _____ **City Attorney** _____

ATTACHMENTS

- A. Conditions of Approval
- B. City Council Minutes (Pages 28-29) from January 9, 2006

Attachment A

The following are conditions of approval placed on the preliminary plat of Bellville Subdivision on January 9, 2006:

1. To minimize effects on local services, the 30-foot wide portion of Kyhl Lane located along the northern border of proposed Lot 1, Block 3 shall be vacated by the City Council prior to final plat approval. *(Recommended by the City Engineering Department and City-County Planning)*
2. To ensure the provision of easements for the location and installation of utilities, the subdivider shall provide easements on the plat in accordance with the plat reviews received from Northwestern Energy and the Montana-Dakota Utilities Company. *(Recommended by Northwestern Energy and the Montana-Dakota Utilities Company)*
3. To minimize effects on local services, the location of the centralized mailbox delivery shall be reviewed and approved by the post office prior to final plat approval. *(Recommended by the United States Postal Service)*
4. To minimize effects on local services, the subdivider shall provide a cash-in-lieu for the required parkland dedication. *(Recommended by the Parks and Recreation Department)*
5. In order to minimize effects on public health and safety, the 90-degree corner for the proposed emergency access along the southwest portion of the site shall be revised to 40-degrees on the outside of the curve and 20-degrees on the inside to provide an adequate turning radius for emergency vehicles. *(Recommended by the Fire Department)*
6. To minimize effects on local services, an easement document to permit the emergency access and sidewalk across the southern portion of Brewington Park shall be reviewed and approved by the Parks and Recreation Department. The easement shall be depicted on the final plat and the corresponding easement document shall be recorded with the final plat. *(Recommended by the Parks and Recreation Department and City-County Planning)*
7. Minor changes may be made in the SIA and final documents, as requested by the Planning, Legal or Public Works Departments to clarify the documents and bring them into the standard acceptable format.
8. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, regulations, policies, and resolutions of Yellowstone County, and the laws and Administrative Rules of the State of Montana.

Attachment B

8. PRELIMINARY PLAT of Bellville Subdivision, generally located north of Wicks Lane, west off of Brewington Lane at the terminus of Kyhl Lane. (Reconsidered and delayed from 12/12/05). Staff recommends conditional approval of the plat, approval of the requested variances and adoption of the findings of fact. (Action: approval or disapproval of Staff recommendation.)

Planning Staff Member Aura Lindstrand said the gross area of the Bellville Subdivision plat is 7.14 acres and the net area is 5.2 acres. The size of the lots range from 9,600 to 9,754 square feet and there are 22 lots proposed for duplex development with a zoning of Residential 7,000. She noted that a portion of Kyhl Lane will be vacated to be part of the subdivision where the subdivider is proposing to pave Kyhl Lane to the intersection of Brewington Drive. A storm water issue at that intersection will be corrected by the subdivider. Ms. Lindstrand said the Planning Board could not reach a consensus on what would be the best transportation plan for the subdivision and did not make a recommendation to the Council. Kyhl Lane is a platted right-of-way all the way to Hawthorne Lane on the east side, but does not go through because of Brewington Park. Ms. Lindstrand said the Council denied the subdivision on November 28th and at the request of the developer, the subdivision was brought back at the December 12th meeting. The plat was delayed to this meeting to allow the developer to hold neighborhood meetings to discuss the issues with surrounding property owners. She said a neighborhood meeting was conducted on January 5, 2006 and three options came out of that meeting and they were:

1. Approve the subdivision as presented in the staff report with Staff's recommendation of conditional approval, subject to 8 conditions.
2. The subdivider has proposed paving Kyhl Lane through to Hawthorne Lane (on the west) at his expense (rough estimate \$72,000), in order to lessen congestion on Brewington Lane and alleviate the need for a future SID.
3. Pave Lynch Drive from the southwest portion of the site across the existing park and bike path to create a second access from Bench Boulevard to the subdivision.

Ms. Lindstrand said the subdivider is proposing an emergency vehicle access in the southwest corner of the site. There have been discussions with the subdivider about paving Lynch Drive across the park and the bike path, creating a 60-foot right-of-way.

The issue is that Lynch Drive across the park is not a platted right-of-way at this time and may create issues with those neighbors. The Planning Staff would recommend that this issue go before the Planning Board for another public hearing process. Councilmember Brewster asked Ms. Lindstrand to address the issues that Mr. Allard raised in his letter to the Council. Ms. Lindstrand said relating to the SID concerns, it is her understanding that only property owners fronting a road would participate in the SID. She added that there could be an addition to the Subdivision Improvement Agreement that all property owners within Bellville Subdivision would pay their proportional share in the future. She noted there are no proposals or future proposals for SIDs on this property at this time. Councilmember Brewster asked if the half-width

paving of Kyhl Lane is too narrow. Ms. Lindstrand said it would be a 30-foot width and is two driving lanes, but would not allow for on-street parking. There would be curb and gutter on the south side only. The 60-foot width would “come into play” when the northern property develops. Ms. Lindstrand said the owner of the northern property stated that he would access off Hawthorne Lane which would alleviate the fears that Kyhl Lane would become a major thoroughfare and make Hawthorne Lane the main thoroughfare instead. Councilmember Brewster asked if Kyhl Lane can be terminated one lot away from Hawthorne Lane to assure that it will not become an arterial. Ms. Lindstrand said she could not answer that question because she does not know what the transportation plan is for that area. The road is currently a platted right-of-way and has collector status so a specific process to upgrade the road would be required. Ms. Volek noted that this process would be separate from the subdivision process and would hinge on traffic counts.

Ms. Lindstrand said another concern was safety of the children in the neighborhood. Speed bumps or traffic calming on Brewington Drive was discussed at the neighborhood meeting where the property owners were amenable to this suggestion.

Councilmember Brewster moved for conditional approval of the plat, variances and adoption of the findings of fact, seconded by Councilmember Jones. Councilmember Brewster amended the motion to add Lynch Drive as an alternative access to the subdivision, seconded by Councilmember Ruegamer. Councilmember Veis asked if there are any right-of-way problems with the Parks Department for this route through the Park. Ms. Lindstrand said in preliminary discussions with the Parks Department, it is agreeable with some conditions, but the Planning Staff is proposing that this issue go through a public hearing process because those residents have not been notified of this possible change. Councilmember Brewster said he agrees that a public process should begin, but feels that the subdivision can move ahead independently. On a voice vote, the amendment was unanimously approved. Councilmember Brewster expressed concerns about the Subdivision Improvement Agreement that states Kyhl Lane would be improved. City Attorney Brent Brooks said if the agreement is within 8 years the City can pursue the developer for conditions that were agreed to in the Subdivision Improvement Agreement. He said the City Attorney’s office would review the agreement. On a voice vote on the motion as amended, the motion was unanimously approved.

[\(Back to Regular Agenda\)](#)