

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

March 8, 2004

The Billings City Council met in regular session in the Council Chambers located on the second floor of the Police Facility, 220 North 27th Street, Billings, Montana. Mayor Charles F. Tooley called the meeting to order and served as the meeting's presiding officer. The Pledge of Allegiance was led by the Mayor, followed by the Invocation, which was given by Councilmember Vince Ruegamer.

ROLL CALL — Councilmembers present on roll call were: Gaghen, McDermott, Brewster, Brown, Ruegamer, Iverson, Boyer, Poppler, Clark and Jones.

MINUTES – February 23, 2004. APPROVED as printed.

COURTESIES -- None

PROCLAMATIONS – Mayor Tooley.

- **DEMOLAY WEEK: March 14-21, 2004**

BOARD & COMMISSION REPORTS

- **Library Board** -- Dave Ward, Chair of the Library Board of Trustees, said there are 5 trustees, 3 appointed by the Mayor and 2 appointed by the County Commissioners. There are many new members on the board or members with a short tenure, so many previous actions are being reviewed. The Board has requested to review the original Interlocal Agreement of 1975 as well. The Board is also interested in the study being conducted by A & E Architects regarding renovations of the Library. Internet use and access policies are being reviewed, due to recent legislation. Staff is in the process of developing new Internet access policies and new filtering software is being implemented. There are ongoing discussions with MSU-Billings College of Technology regarding a collaborative library effort for an extension of the library at the campus on Shiloh Road and Central Avenue.

ADMINISTRATOR REPORTS – Kristoff Bauer.

- Mr. Bauer noted there is a revised report for Item 4A.
- There will be two public meetings this week on Street Light District #97. They will be held in the basement conference room of the Hart-Albin building.
- Item I on the Consent Agenda needs to be removed from consideration this evening. He noted the best way is to “vote it down” and a revised proposal will be brought back on the 22nd.

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: #1, #6, and #7 ONLY. Speaker sign-in required. (Comments offered here are limited to 1 minute per speaker.)

(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.)

NO SPEAKERS.

CONSENT AGENDA:

1. A. Bid Awards:

1. **One Grounds Maintenance Park Tractor.** (Opened 2/24/04). Recommend delaying to 3/22/04.

2. **2600 Gallon Aluminum Water Tank for Fire Department.** (Opened 2/17/04). Recommend Beall Corporation, \$42,555.00.

B. W.O. 03-20: Contract for Professional Services, Camp Dresser & McKee Inc., \$99,526.00.

C. W.O. 02-04: 13th & Poly Intersection Reconstruction, Right-of-Way Easements:

1. First Presbyterian Church, 50 sf parcel, \$300.00
2. Nick E. & Frances A. Poulos, 21.12 sf parcel, \$0.00

D. Accept Quit Claim Deed from Randall and Kayanne Swenson for Lot 1B, Block 6 of Amended Lots 1-3, Block 6, Rush Subdivision, 2nd filing, \$27,216.20.

E. Pledged Collateral on Certificates of Deposit, US Bank Repurchase Account, and US Bank Municipal Investor Account.

F. Semi-Annual Investment Report.

G. Annex #04-03: Acknowledge receipt of petition to annex C/S 680 Amended and all adjacent right-of-way of Lake Elmo Road (Tract A-2) and setting a public hearing date for 3/22/04.

H. Authorization to purchase Smith Funeral Chapel property at 120 N. 26th Street, \$660,000.00.

I. Resolution of Intent to Create SID 1358: water, sanitary sewer, storm drain, curb and gutter, sidewalk, street widening and street improvements to Lake Hills Drive, Clubhouse Way, Black Diamond Road, Oakmont Road, Pebble Beach Road, Greenbriar Road, Inverness Drive and Broadmoor Drive and setting a public hearing date for 4/12/04.

J. Second reading ordinance 04-5267 for Zone Change #726: A zone change from Residential Manufactured Home to Highway Commercial on Lots 3 and 10, Block 4 of Superior Homes Subdivision. The subject property is located at 525 Jerrie Lane. Northwest Development, LLC, owner.

K. Second reading ordinance 04-5268 modifying the boundaries of Ward I to

EXCLUDE recently annexed properties described as: Tract 2B, C/S 2218, Amended Tract 2 (Annex #03-10).

L. Second reading ordinance 04-5269 expanding the boundaries of Ward IV to include recently annexed properties described as: Tracts 2A-1, 2A-2 and 3A-1, Amended C/S 1876 -- (Annex #04-01).

M. Final plat of Barnard Subdivision.

N. Final plat of Olive Glen Subdivision.

O. Bills and Payroll.

(Action: approval or disapproval of Consent Agenda.)

Mayor Tooley separated Item I from the Consent Agenda. Councilmember Jones separated Items B and D from the Consent Agenda. Councilmember Brown separated Item A2 from the Consent Agenda. Councilmember Boyer moved for approval of the Consent Agenda with the exceptions of Items A2, B, D and I, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

Councilmember Boyer moved for approval of Item A2, seconded by Councilmember McDermott. Councilmember Brown asked what the year of purchase was and the miles or hours that were on the water tender that was sold to the Reedpoint Volunteer Fire Department. Fire Chief Marv Jochems said the tender was bought used and met all the criteria of the equipment replacement program. On a voice vote, the motion was unanimously approved.

Councilmember Boyer moved for approval of Item B, seconded by Councilmember Iverson. Councilmember Jones said this bid should go to a local company. Councilmember Jones made a substitute motion to delay this action to 3/22/04 to receive further information, seconded by Councilmember Clark. Councilmember Brewster said he served on the selection committee for this contract. He noted all three companies that submitted a bid were very comparable. On a voice vote, the substitute motion was unanimously approved. Item was delayed to 3/22/03 meeting.

Councilmember Boyer moved for approval of Item D, seconded by Councilmember McDermott. Councilmember Jones said it appeared the City is spending \$2.20 per square foot for this property. He asked if this property could be built on or used for something else. Public Works Director Dave Mumford replied "no". Councilmember Jones asked if the City is treating other property owners along this parcel of land the same. Mr. Mumford said in the areas where the City needs right-of-way, an appraisal is obtained and that price is applied to all properties that are acquired, treating all property owners in the area equally. Councilmember Jones asked if the City is responsible for that portion of the SID. Mr. Mumford said the assessment would be on the property behind it. Councilmember Jones commented that \$2.20 per square foot is a high price to pay for property that can't be used for anything else. Councilmember Clark asked if the property is appraised as a whole and then the 30-foot portion split from that. Mr. Mumford said the appraisal is for the 30-foot strip only. City Administrator Kristoff Bauer noted the appraisal information is contained in

attachment "B" of the staff report. On a voice vote, the motion was approved with Councilmember Jones voting "no".

Councilmember Boyer moved for disapproval of Item I, seconded by Councilmember Poppler. Councilmember Brown asked how many residents are needed to put this item to a Council vote. Mr. Bauer said an SID can be formed with one property owner's request and one property owner's complaint could lead to denial. No specific number of protests alone can defeat it, as this is a Council decision. On a voice vote, the motion to disapprove was unanimously approved.

REGULAR AGENDA:

2. PUBLIC HEARING AND RESOLUTION annexing Tracts 101, 123 & 124 of Sunny Cove Fruit Farms, generally located at the northwest corner of Grand Avenue and 58th Street West. Applicant has requested action be delayed. Staff recommends tabling until 4/12/04. (Action: approval or disapproval of Staff recommendation.)

Planning Manager Candi Beaudry noted that the Council denied the request to expand the Urban Planning Area. The annexation requires the expansion to be approved before further annexation progress. She said the annexation petition is no longer valid due to the denial. She added that the petitioner has requested a change that limits the requested annexation to the twenty acres that is already in the Urban Planning Area. This is why the staff has recommended that the public hearing be delayed to 4/12/04. Councilmember Brown asked how the three Tracts (101, 123 and 124) would be changed to conform to the new annexation request. Ms. Beaudry said that Tracts 101 and 123 are both currently within the Urban Planning Area and Tract 124 is outside the Urban Planning Area. It is the ten acres that is being removed from the annexation petition. Mayor Tooley suggested delaying the public hearing and resolution to 4/12/04 because the Council is not able to annex by any action that it takes this evening. Councilmember Poppler moved to table the public hearing and resolution to 4/12/04, seconded by Councilmember Brown. On a voice vote, the motion was unanimously approved.

3. PUBLIC HEARING AND RESOLUTION 04-18096 regarding the disposal of city-owned property described as Lots 1-19, Block 231, O.T. (Action: public hearing only; action scheduled for 3/22/04).

Community Development Manager John Walsh said the sale of land concerns City-owned property on the 800 block of South 27th Street, Lots 1-19, Block 231 in Billings Original Town. There are twelve lots on the South 27th Street frontage and 7 lots on the South 28th Street frontage. This property is included in the South 27th Street Permit Zoning District and any development must comply with the requirements of that zoning district. The City acquired the property in the mid 1980's for redevelopment purposes. He said an option agreement with Accessible Space Inc. was proposed in 2000 that was contingent on receipt of HUD funding for the proposed project. The project was not approved by HUD and the option agreement expired on November 30, 2000.

Mr. Walsh noted there have been several redevelopment efforts in the past for this site including a Women's Prison, Parkview Nursing Home, a Youth Treatment Center, the

Chamber of Commerce, the Labor Temple, the Justice Building, a Probation and Parole Office and the Deering Clinic. He noted that in January, Mailing Technical Services expressed interest in purchasing the property. On February 9th the Council approved a resolution of intent to dispose of the property and on February 19th the sale of the property was advertised for bids. On February 20th a notification was mailed to the surrounding property owners and bids were received on February 27th. Tonight is the public hearing and the Council is scheduled to act on the Staff recommendation to sell the property on March 22nd.

He said Mailing Technical Services is currently located at 2817 2nd Avenue North. They have been operating since the late 1970's and have approximately 50 employees. Their service provides mailing, Internet and related services. Mr. Walsh said the company is proposing to construct a 9,000 square foot building including a second future phase to add 5,000 square feet when feasible.

Mr. Walsh said MTS' offer is time sensitive to assure that construction is completed by October of this year. Their base bid offered \$3.00 per square foot with a 20% reduction based on the South 27th Street Development Incentives or \$2.40 per square foot. He said MTS' bid is only for Lots 1-12 on South 27th Street. The South 27th Street Development Incentives were approved in the late 1980s and provide a reduction in sales prices based on: 1) the size of the development, 2) jobs created, 3) value of improvements or increased tax base, and 4) cash sales. The incentives also allow for a 5% commission to realtors for sales over \$100,000 and require that development begin within six months of the completion of the sale. Councilmember Brown asked what the aggregate cost of the property was to the City. Mr. Walsh said he would provide that information to the Council on 3/22/04. He noted that it was significantly more than the sales price because the lots originally had homes on them that were later relocated. Councilmember McDermott asked how many square feet are included in Lots 1-12. Mr. Walsh replied 42,000 square feet. He noted that the offer from MTS is for \$100,800.

Councilmember Boyer noted there was only one bidder for this property. She asked what other interest has been expressed in the site. Mr. Walsh said interest has been expressed from "time to time", but the last agreement that "came this far" was from Accessible Space Inc. in 2000. Councilmember Ruegamer confirmed that MTS' bid for 42,000 square feet (Lots 1-12) is \$100,800. Mr. Walsh replied "yes".

Mr. Bauer noted the resolution tonight authorizes the City staff to sell all of the lots (66,500 square feet). The next action would be to accept or reject the authorization to sell Lots 1-12 (42,000 square feet) to Mailing Technical Services on 3/22/04. Councilmember McDermott commented that she is pleased there is private enterprise interest in developing property on South 27th Street.

The public hearing was opened. GREG KRUEGER, DIRECTOR OF DOWNTOWN BILLINGS PARTNERSHIP, 2906 3RD AVENUE NORTH, said MTS has worked with the DBP regarding preliminary designs for this property. He said it is "a huge improvement" and very complementary to other businesses in that area. He noted that MTS has outgrown their space in the downtown area and have become a congestion problem for traffic in the adjacent alley. They need more space and noted that their current location is a prime retail space for the downtown.

JOE WHITE, 926 NORTH 30TH STREET, said the air quality is extremely deficient in that area. He added the prison should be moved from that area.

There were no other speakers. The public hearing was closed. Councilmember Clark moved for approval of the resolution, seconded by Councilmember Gaghen. Councilmember Jones said he is glad to see this property moved from City ownership to private enterprise. Councilmember Brewster asked if this action was a public hearing only. Mayor Tooley noted a resolution is required to give the authority to sell the property. The next Council meeting would define the actual property that is being sold. Mr. Bauer confirmed the Council must act on the resolution this evening. On a voice vote, the motion was approved with Councilmember Brown voting "no".

4. SID 1361: SHILOH ROAD – AVENUE B TO RIMROCK ROAD:

A. PUBLIC HEARING AND RESOLUTION creating SID 1361. Staff recommends ~~approval~~ delaying creation to evaluate alternative project funding methods. (Action: approval or disapproval of Staff recommendation.)

Public Works Director Dave Mumford said this SID is for the reconstruction of Shiloh Road from Grand Avenue to Rimrock Road. Included in the reconstruction would be drainage, adding three lanes, adding a traffic signal, street lights, pedestrian sidewalk and trail on one side and realignment of 40th and Rimrock Road. He said the original recommendation was to create this project like other SIDs through assessment of the property owners adjacent to the project. This would have included 93 properties.

Mr. Mumford said this project started two years ago with public hearings and speaking with the affected residents in the area on what should be done. Five months ago the design plans included a recommendation for a five-lane section of road that would have meant high assessments to the adjacent property owners. The City staff and consultant re-evaluated the traffic patterns and concluded that a three-lane section would accommodate the traffic for the next 20 years. This brought forward a re-design that eliminated one lane in each direction and placed drainage swales, and pedestrian facilities in their final location to avoid loosing facilities already built if an additional two lanes were added later.

He said the total cost of the project is \$3.6 Million. The City would be contributing \$2 Million of that amount from various funds. Residential properties in this SID would be assessed for drainage and a 11-foot section of asphalt and commercial properties would be assessed for drainage and a 15-foot section of asphalt. Mr. Mumford said the City has been listening to concerned property owners and evaluating different options. At the close of the protest period there were 15 valid protests. He noted there were more protests received, but those properties had waivers of protest signed or encumbered when the subdivisions were built.

Mr. Mumford said this SID compares to others in the City. He said an SID in the Heights for a minor arterial had a mean average assessment of \$17,500 per property. King Avenue East's assessments were \$12,500 and Lake Hills Drive was \$16,400. The mean average assessment on Shiloh is \$12,000. He noted this is not a small amount, but added that the assessment is over a 15 year period making the increase \$100 to \$150 per month. He said some residents were concerned about the bonds negatively affecting this SID. He noted two bond projects - South Billings Boulevard and Alkali Creek Road both have an SID as part of their funding. Arlene Corridor differs in that adjacent property is either owned by the City or the County. Councilmember Brown asked why the SID boundaries are so irregular in distance from Shiloh Road. Mr. Mumford said the boundary

varies because the properties vary in size and shape. He noted the properties are assessed according to their size. He said the assessments would be higher and carry some of the burden of commercial property costs if based on the lineal foot method and that is why it is based on square footage.

Councilmember Iverson asked if the Staff recommendation is to delay the creation of the SID. Mr. Mumford said Staff has been reviewing this SID for a more acceptable option. He noted one option includes adding the 50 lots in Circle 50 to the SID to increase the number of properties in the SID and lower the per property assessment. These properties have waivers stating they would pay for improvements in that area. He said the original subdivision agreement for Circle 50 also states that all properties would waive their rights to protest paying for Shiloh Road. Councilmember Boyer asked why this group was eliminated from the SID. Mr. Mumford said past practice of only assessing adjacent properties was considered in the beginning of this SID. If Circle 50 were included the assessments for this SID would be reduced by a third.

Councilmember Jones asked how long the Staff recommends this SID be delayed. Mr. Mumford said it would take 4 to 6 weeks to re-evaluate the funding for this SID and still include this project in this year's construction season. Mr. Bauer said if the Council is comfortable with past practice of assessing only adjacent property owners, then the recommendation would be to approve creating SID 1361. He said the Staff can change the design, the boundaries and scope of the project if the Council prefers that Staff research those changes or alternate policies. Mr. Mumford said the SID could be eliminated, but noted that Shiloh Road does need some type of reconstruction. Councilmember McDermott said she prefers the idea of expanding the property base because it is not just residents of Shiloh Road that would take advantage of this reconstruction. Councilmember Gaghen agreed that the base of assessment should be expanded to lessen the burden of the affected property owners on Shiloh Road.

Councilmember Brewster asked how this assessment compares to other assessments on a typical residential street. Mr. Mumford said this assessment would be similar to the assessment on Lake Hills Drive. The \$2 Million contribution from the City covers portions of the construction that normally would not be required in a typical street assessment.

Councilmember Iverson said streets that are used by all residents of the City should be covered with a citywide street maintenance district assessment. This would result in individual property owners not being assessed for street improvements on major routes that are near their homes. She said this is something she would like to see the Staff look into. Mr. Bauer suggested that street maintenance fees could be increased to build up a fund that would be available for this purpose. Councilmember McDermott noted that street maintenance fees are based on square footage of a lot and are not the best or most equitable method of assessment. She said those fees are a tremendous burden on larger property owners. She said the best avenue of funding is through the bond issues. Mr. Mumford reminded the Council that the bonds would only offset the City's \$2 Million portion in the case of SID 1361.

Councilmember Poppler asked if CTEP funds could be used for the bike/pedestrian trail portion of this project. Mr. Mumford said they could be used for that. Councilmember Jones asked when the Shiloh Road portion from Grand Avenue south would be completed. Mr. Mumford said the State is still working on the design because of drainage

issues with the Hogan's Slough area. It would be approximately five years until construction is completed. He noted that the majority of the Shiloh Road traffic occurs between Grand Avenue and Rimrock Road.

Mayor Tooley called for a break at 7:30 P.M.
Mayor Tooley reconvened the meeting at 7:40 P.M.

The public hearing was opened. ERWIN SMITH, 2082 SWANSON LANE, said he is the president of Fox Run Townhome Association. He noted that he sent a letter of protest on this district. He said he concurs with Mr. Mumford's recommendation to delay creation because the design is flawed.

BILL HART (AND ELIZABETH HART, HIS WIFE), 3981 AVENUE D, #13, said they own unit #13 in the Circle 50 Subdivision. He said he appreciates the Council being aware of the unfair allocation of burden of paying to improve this arterial. He said their subdivision would have very little benefit from these improvements and it may diminish their property values. Mr. Hart noted that Avenue D is their only access to that portion of Shiloh Road. He said the recommended improvements would likely increase their taxes about \$700 per year, which is difficult on a fixed income. He asked the Council to reconsider their method of assessments.

BONNIE KELLISON, 2076 SWANSON LANE, said last summer she counted 93 JTL trucks on Shiloh Road within a two-hour period. She added that this portion of Shiloh Road is also a route for trucks to Zimmerman Trail. She said she would like to see this situation addressed. This is a residential area that is plagued with heavy commercial usage.

TRUDY KOSTER, 2404 SHILOH ROAD, said she lives three houses down from Poly Drive and has lived there for thirty years. She said the City is trying to assess some of the oldest houses in the neighborhood. She said the SID should be expanded to those subdivisions behind her property that routinely use the same accesses and Shiloh Road. Ms. Koster said she is not against the improvements and will pay her fair share, but would like to see the assessment be more equitable and include all those properties that will benefit from the improvements.

MIKE HEFFNER, 4209 GRAND AVENUE, said he is representing the developer of Goodman Subdivision. He said he agrees that the assessments are unequal. He said he supports creating the SID so their project can continue.

RHONDA GLASSING, 4135 JUNE DRIVE, said she is not directly affected by the creation of the SID, but noted her only access from her property is via Poly Drive and Shiloh Road. This is also true for all phases of Rimrock West Estates. She said she is not opposed to the improvements to the road as there is increased traffic that warrants it. She said she is opposed to the method of assessment and the burden it imposes on her neighbors. Ms. Glassing said the entire City uses both Rimrock and Shiloh Roads and the people who would benefit from the improvements should be assessed. She asked the Council to expand the tax base for this SID.

SHARON THOMPSON, 2072 SWANSON LANE, said she has never voted against any bond issue or mill levy. She said this shows she is a community-minded citizen in favor of community improvements and paying her fair share. However, she said this SID represents a commitment that is much more than her fair share to widen and improve

Shiloh Road. She requested the SID be reconsidered, looking for other ways to pay for the improvements. Ms. Thompson said she is not opposed to paying her fair share of improvements that will benefit the entire City. She noted that the burden of \$700 per year for 15 years is an unfair tax burden compared to lesser assessments for similar housing in the area.

KRISTEN ALLEN, 2304 SHILOH ROAD, said she is one of the youngest persons to buy a home on Shiloh road. For first time homebuyers increasing the monthly payments by \$100 to \$150 is a huge burden. She said this is also true for retired homeowners. She asked the Council to find another way to fund these improvements.

TONI MURRAY, 3981 AVENUE D, #11, said she is not opposed to the widening of Shiloh Road. Because it is a major thoroughfare the assessment is unfair to the surrounding residents as it is a benefit to the entire City. She asked why only a portion of Shiloh Road is a State Highway. Ms. Murray asked the Council to reconsider the method of assessment.

LINDA STEELMAN, 4017 COLTON AVENUE, said her property would not be assessed with the present method of assessment. She said Shiloh Road is not strictly a residential street but a commercial arterial. She said the City is asking 93 people to pay for 44% of the improvements on a street that is used by 100% of the people in Billings and Yellowstone County, including some out-of-state residents.

JOE WHITE, 926 NORTH 30TH STREET, said he has less direct interest in this issue than the other speakers but noted that the City residents will have a heavy tax burden. It will also create more traffic for the area. He asked why the City residents should be responsible for paying for what is a bypass to a federal or state highway.

CLARENCE CUNNINGHAM, 4019 VICKERY DRIVE, said he lives in an area that is not affected by this district. He said he has observed cars backed up on Rimrock Road waiting to turn onto Shiloh Road. He noted there is a lot of traffic from people who do not live in the area. Mr. Cunningham said trucks often use his cul-de-sac as a turn around.

There were no other speakers. The public hearing was closed. Councilmember Jones moved to delay creation of the SID for 90 days to look at alternatives, seconded by Councilmember Ruegamer. Councilmember Brewster asked what kinds of alternatives are being proposed. Mr. Bauer noted that a 90-day delay could take this project out of this construction season. He said 45 days would be more appropriate. Councilmember McDermott suggested an amendment to delay this project for 30 days. Councilmember Brewster suggest three items to re-evaluate: 1) look at assessing all property owners who have signed waivers of protest, 2) look at a "layering scheme" for assessment where residents along Rimrock might be assessed at a lower percentage proportionate to their distance from the improvement district, 3) delay part of the project for a year and concentrate on the intersection at Rimrock and Shiloh Roads now until more funding becomes available, and 4) bring the proposed alternatives to a work session before presentation to the public and another public hearing. Councilmember Brewster made a substitute motion to delay creation of SID 1361 to the first meeting beyond 30 days to look at the four proposed alternatives, seconded by Councilmember McDermott. Councilmember Brown asked if another public hearing would be held. Councilmember Gaghen said there should be public input on the proposed alternatives. Councilmember Jones amended the substitute motion to include any properties the same distance away from Shiloh to the east and west as well as those property owners who have signed

waivers, seconded by Councilmember Gaghen. On a voice vote, the amendment was unanimously approved.

Councilmember Iverson amended the substitute motion to look at a citywide assessment, seconded by Councilmember Gaghen. Councilmember Brewster said this amendment could be viewed as a broader policy issue and could take more than 30 days to accomplish. This is an issue that may need to have voter approval. Councilmember McDermott said there is a committee that is working on an equitable way to assess the current street maintenance fees. This would require legislative action and may be a year away from occurring. Councilmember Iverson said this a good opportunity to look at the possibility of citywide assistance for the improvements to a street like Shiloh that is not a residential street. Councilmember Jones agreed that this is something that should be evaluated but it cannot be done in 30 days. On a voice vote, the amendment failed with Councilmembers Gaghen, McDermott, Brewster, Brown, Ruegamer, Boyer, Poppler, Clark and Jones voting "no".

Councilmember Poppler said the Council should be careful what action is taken on this SID as it may be forming a policy and a precedent for future SIDs. Mr. Bauer noted that the first meeting after 30 days would be 4/12/2004. He added with regard to the "layering" issue, the City is constrained by State law, so that issue may have advantages and limitations. He suggested that the Council review the options at a work session and select the most presentable one and notify all the affected property owners of a new public hearing. Public comment time is also available at the work session, he added. Councilmember McDermott noted that the Council will examine the results of the alternatives suggested tonight, but cautioned the public that the only alternative may be the one currently recommended. On a voice vote, the substitute motion was unanimously approved.

B. RESOLUTION authorizing the advertising and letting of construction bids for the improvements. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

5. EXPANSION OF THE TAX INCREMENT FINANCE DISTRICT:

A. RESOLUTION 04-18097 regarding findings of blight. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

Planning Director Ramona Mattix said this is a proposal from the Downtown Billings Partnership to expand the Tax Increment Finance District. The legal requirements include the preparation of a District Plan, adoption of a resolution of blight, holding a public hearing (March 22nd) and adopting an ordinance that expands the district. She said blight is found when there is increased demolition and creation of vacant and surface parking lots, structural deterioration, long term land vacancy, curb and sidewalk deterioration, and unused alley ways which contain old sanitary sewer lines and high voltage overhead electrical lines.

Ms. Mattix said there were two reasons to expand the TIF district: 1) to include the CTA Architects' project in the expansion, and 2) to rectify a map error of certain areas that were thought to be in the TIF, but were not. She noted that an original boundary line is running through one of the Billings Depot buildings. This expansion corrects that error. She said the current district is projected to generate \$10 Million (\$2.15 Million per year) in

tax increment revenue for FY 2005 – 2008. Adding the CTA project would add revenue of \$167,000 to \$181,000 per year for four years based on the \$5.4 Million investment by CTA. This addition would also add 130 current CTA employees to the area and possibly add another 50 new jobs. Councilmember McDermott said the expanded area contains mostly residential properties, with the exception of the CTA project, that do not contribute to the Tax Increment District. Ms. Mattix said if the property is commercial multi-family, it does contribute. She added some of those residential properties could be redeveloped into multi-family residences.

Councilmember Brown asked why the area is expanding beyond the CTA project. Ms. Mattix said the three reasons to expand were: 1) to include the Depot building in the TIF, 2) to include the multi-family project the Downtown Billings Partnership is working on, and 3) to include the CTA project.

Councilmember Gaghen moved for approval of the resolution regarding the findings of blight, seconded by Councilmember Boyer. On a voice vote, the motion was unanimously approved.

B. PUBLIC HEARING AND FIRST READING ORDINANCE expanding the District. Staff recommends approval. (Action: approval or disapproval of ordinance on first reading.)

This public hearing was not advertised; therefore the public hearing will be noticed and held on 3/22/04. The public hearing was opened. There were no speakers. The public hearing was continued to 3/22/04.

6. APPROVAL of CTEP recommendations. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

Councilmember McDermott moved for approval of Staff recommendation, seconded by Councilmember Boyer.

Planning Director Ramona Mattix said CTEP is an annual enhancement program that brings \$381,000 per year into the City of Billings and Yellowstone County for community transportation projects. Currently \$184,000 CTEP dollars are obligated to the Pompey's Pillar project in the County. The process starts with a recommendation by the Council that the Mayor carries to the policy coordinating committee for a final recommendation. The members of the policy coordinating committee are the Mayor, the Chair of the County Commission, president of the Planning Board and a District Administrator for the Montana Department of Transportation.

Ms. Mattix said there are three CTEP projects for the City this year. They are: 1) Alkali Creek Bike/Pedestrian Path for \$290,000, 2) School Route program (west of Jackson Street to Orchard Elementary School) for \$55,000, and 3) Gabel Road Bike/Pedestrian Path (King Avenue to ZooMontana) for \$672,510. She noted the PCC recommendations for funding were: 1) \$290,000 for Alkali Creek, 2) no funding for the School Route, and 3) \$91,000 for Gabel Road with \$184,000 for Pompey's Pillar. The Planning Board reinstated the funding for the School Route, taking the funding from Gabel Road. The County Commission agreed with the Planning Board and this is the recommendation that is before the Council and is different from the staff recommendation. Councilmember Brewster asked what the procedure was if the Council disagrees with the recommendation of the Planning Board. Ms. Mattix said the Mayor would bring the

Council recommendation to the Policy Coordinating Committee (PCC) who would discuss and vote on that recommendation.

Councilmember McDermott amended the motion to approve the recommendation of the County Commissioners and the Planning Board to include the School Route sidewalk project and take funding from the Gabel Road project, seconded by Councilmember Boyer. Councilmember McDermott asked Ms. Mattix to review other projects rather than bike/pedestrian paths for possible CTEP funding. Ms. Mattix said there are six categories that CTEP funds can be used for including bike/pedestrian paths, transportation related historic preservation, landscaping enhancements, and intersection improvements that are aesthetic. Roads and parking lots are not eligible. Councilmember Poppler asked if Black Otter Trail would qualify in the historic preservation category. Ms. Mattix said she would ask MDT to give an interpretation on this request. On a voice vote, the amendment was unanimously approved. On a voice vote, the motion as amended was unanimously approved.

**7. PUBLIC COMMENT on Non-Agenda Items -- Speaker sign-in required.
(Restricted to Non-Agenda Items only; comments limited to 3 minutes per speaker.)**

NONE.

Council Initiatives

- **COUNCILMEMBER IVERSON:** Councilmember Iverson moved to direct Staff to research alternatives for a citywide assessment for improvements of arterial streets, seconded by Councilmember Gaghen. Councilmember Jones asked if this was a new type of fee or tied into street maintenance fees. Councilmember Iverson said this would be any other option for separate assessments for arterials like Shiloh Road. Councilmember Brewster said he would like to see about capping residential lots on a square foot basis before assessing any more based on square footage. This is a necessary part of the equation. Councilmember McDermott suggested that this could be an added dimension to the committee that is currently working on legislation for street maintenance fees. Councilmember Boyer said this was an equitability issue. On a voice vote, the motion was approved with Councilmembers Poppler and McDermott voting "no".
- **COUNCILMEMBER BREWSTER:** Councilmember Brewster moved to direct Administration to bring alternatives to the Council to be used to resolve the question of legality of public utility franchise fees, seconded by Councilmember Jones. Councilmember Brewster said the issue continues to be raised that public utility franchise fees are a sales tax every time the Council discusses raising franchise fees on City-owned own utilities. He suggested the Staff bring forward alternatives that would more clearly define the legality of those fees. City Attorney Brent Brooks said there are three options including a formal request to the Attorney General for an opinion or legislative action in the 2005 session. On a voice vote, the motion was approved with Councilmember Brown voting "no".

- COUNCILMEMBER BROWN: Councilmember Brown moved to poll public comment speakers to see if the one minute time period for public comment is too restrictive, seconded by Councilmember McDermott. Councilmember Brewster said the one-minute appears to be sufficient and the Council can generally assess the thought presented in that period of time. On a voice vote, the motion failed with Councilmembers McDermott, Brown, Boyer and Jones voting "yes".
- COUNCILMEMBER CLARK: Councilmember Clark moved to have the City not contract for other advertising on City property until the Council sets a policy, seconded by Councilmember Brown. Mr. Bauer said a current advertising policy would be provided to the Council. Councilmember Jones said the Council should stay out of the issue of not contracting future advertising. Councilmember Poppler said the Staff can adequately decide on the appropriateness of advertising. On a voice vote, the motion failed with only Councilmember Clark voting "yes".
- COUNCILMEMBER JONES: Councilmember Jones moved to direct Staff to prepare a list of all City-owned raw land in the city limits – what the City owns and for what reason, for review by the Council to see what property could be sold, seconded by Councilmember Ruegamer. Mr. Bauer noted that properties held and managed by the CDBG program are provided to commercial realtors on a regular basis. He added there are other properties held and reserved for utilities or parks purposes. Councilmember Brown amended the motion to include a map of properties owned by the City within the city limits, seconded by Councilmember Poppler. Mr. Bauer said this is a valuable but not a trivial scope of work to prepare and inventory all of the city-owned properties and mapping their locations. This would take some time and resources, as this information is not centralized. Mr. Mumford noted there are significant sites owned by the City that are outside the city limits. Councilmember Gaghen suggested that the list only contain properties that are categorized as dispensable and available for sale in order to save labor and time. Councilmember Brewster called for the question, seconded by Councilmember Jones. On a voice vote to stop debate, the motion was unanimously approved. On a roll call vote for the amendment, the motion was approved 7 - 4 with Councilmembers McDermott, Brown, Ruegamer, Poppler, Clark, Jones and Mayor Tooley voting "yes" and Councilmembers Gaghen, Brewster, Iverson and Boyer voting "no". On a voice vote on the motion as amended, the motion was unanimously approved.
- MAYOR TOOLEY: Mayor Tooley asked the council members if the goals and objectives that were recently adopted and published are the ones the Council wants to use. Councilmember Brown said he felt the Council was pushed into adopting the goals and objectives by a process of elimination. Councilmember Clark said he wants a different process and was disappointed in the way it was done. Councilmember Brewster said having a facilitator would result in a better process. He said the Council should pay more attention to the goals and objectives as they are being discussed and approved instead of adopting them and then criticizing them afterwards. Councilmember McDermott

suggested that more than one meeting should be dedicated to this process. Councilmember Iverson noted that past councils used a facilitator and eventually agreed not to use them. Councilmember Clark noted that some councilmembers were newly elected and it was a tough position to adopt goals in that short time frame. He said he did not like the process and made his opinion known at the last council meeting. Mayor Tooley noted that these goals are critical to understanding Council's direction because they are used by departments in their budgeting process. Councilmember Gaghen noted that the goals and objectives were just published in the City Link and on the Website and are already public. She said she is concerned about the appropriateness of "backing up and try to rectifying" the goals that were evidently not entirely agreed upon. She said the Staff should be part of the process, but maybe it could be a two-step process. Councilmember Brewster said the Council is already voting against the goals and revisiting them would be appropriate. Mr. Bauer said the Staff is willing and available to facilitate whatever process the Council is most comfortable with to reach consensus on this very important decision. These goals are the Council's articulation of what the Council wants the Staff to accomplish in the next twelve months and on which to judge the City Administrator's performance. He said we would not want to spend the next twelve months concentrating on goals that do not reflect the consensus of the Council. Councilmember McDermott suggest that this was the time to develop a better process for goal setting. Councilmember Brown noted that two of his goals were completely ignored. Mayor Tooley reminded him that his goals were "on the board" but did not receive any votes. Mayor Tooley scheduled a council goal-setting meeting on Thursday, March 18th at 5:00 p.m. to revisit the recently adopted Council goals. Location to be announced.

ADJOURN —With all business complete, the Mayor adjourned the meeting at 9:28 P.M.

THE CITY OF BILLINGS:

By: _____
Charles F. Tooley MAYOR

ATTEST:

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