

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

## **July 12, 2004**

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

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

**MINUTES – June 28, 2004.** Approved as printed.

**COURTESIES** – Planning Department Director Ramona Mattix introduced new employee, Debra Hagel, Planner II, who comes to the City with 10 years experience.

**PROCLAMATIONS – Mayor Tooley.** NONE

**BOARD & COMMISSION REPORTS – Housing Authority**

▪ Lucy Brown, Executive Director of the Housing Authority of Billings presented the Council with the agency's Annual Report for 2003-2004. She said the Housing Authority has been in existence in Billings since 1973 and currently has 274 public housing units. The agency is rated as a "high performer" (98% score) under the PHAS (Public Housing Assessment System) including the public housing aspect and other financial agency functions. She noted there are currently 915 families and individuals awaiting public housing assistance.

Ms. Brown expressed concern for possible cuts in the Authority's operating subsidy and cuts in program administration. She spoke about the Capital Fund Program with a total annual grant amount for modernization of \$539,000. This grant funds goals such as re-siding all 58 single family homes with metal maintenance free siding and installing energy efficient replacement windows.

Ms. Brown stated there is a list of 1,800 families awaiting assistance for Section 8 Rental Assistance. She said the agency started a new program for Section 8 homeownership this year. This program allows current eligible Section 8 voucher holders to use their voucher assistance for a mortgage payment instead of a rental payment. She also noted Section 8 new construction includes an elderly housing project - Pleasantview Apartments, that serves 100 elderly and disabled individuals. This property scored a 96% during a February 2004 inspection.

Ms. Brown said several legislative issues would impact the agency and will mean a \$37,000 cut in public housing. This also impacts the full-time Police Officer that is funded from the agency's operations. She said Congress and HUD need to hear "loud and clear" that the agency needs a subsidized Housing Production Program that allows assistance to the very low income families and individuals on waiting lists. Councilmember Peggy Gaghen encouraged the Council and the

public to contact their legislators and inform them that the funding shortages are not satisfactory and must be addressed.

**ADMINISTRATOR REPORTS** – Kristoff Bauer.

- Mr. Bauer requested the Council pull Item W from the Consent Agenda and delay action to 8/23/04 as there are still concerns about the permit exception issue for alcohol use in public parks.
- He noted several revised staff reports and attachments were provided in the Council Friday Packet including A2 and A4 bid award items. Item A2 concerned postponing the bid award for an Airport project and A4 included a recommendation for janitorial services at the BOC. He said Item X (public safety mill levy) had a third revision to the ordinance that was placed on the Councilmember's desk this evening and a revision to the resolution included in their Friday packet.
- Mr. Bauer gave an update to the Teamster negotiations. He said the City has requested mediation, however the mediator was not available today but hopes contact would be made and meetings scheduled for tomorrow.
- Councilmember Brewster requested the reconstruction activities on Main Street in the Heights be monitored. He noted a 50-minute wait was backing up traffic from Lake Elmo Drive to Wicks Lane at 11:00 AM today. Mr. Bauer said the City would communicate with the State regarding these concerns.

**PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Item: #1, and #8 ONLY. Speaker sign-in required.** 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.* )

GLENN OPPEL, 1643 LEWIS AVENUE #12, spoke on Item V. He said he is the Government Affairs Director for the Billings Association of Realtors stating that their group recommends that the Council consider this as a zone change giving “full due process”. rights to the surrounding property owners A zone change would accomplish the same goals such as design and lighting standards. He said the Council should consider reducing the scope of the project to 500 feet from the centerline of Shiloh Road.

RANDY REGER, 2708 PALM DRIVE, asked the Council to delay action on the Shiloh Overlay District until after the County work study session. He noted the Council should consider holding a lighting and signage work study session. Mr. Reger said he is opposed to the 1000 foot requirements for the overlay district. He said legal opinion is that this is a zone change and because notice was not given to surrounding property owners this action is an illegal act. He said this type of district would not be successful in a commercial area because it is too strict and stringent.

DEBRA REGER, 2708 PALM DRIVE, said she has researched several other overlay districts and their disposition in the courts. She said, in one case, the Circuit Court struck down the overlay district action because the surrounding property owners

were not properly notified of the restrictions that would be placed on the land. She noted the Court did not rule on the restrictions themselves.

CHARLIE HAMWEY, 1010 GRAND AVENUE, said the 1994 action considering the Light Entryway District was considered a zone change and he thinks the Shiloh Overlay District should be processed by the "same rules". He said this action appears to be a zone change and is subject to legal challenge as it stands now.

TOM ZURBUCHEN, 1747 WICKS LANE, asked the Council to reconsider Item 10 (to remove the cap on the General Fund) from the June 28<sup>th</sup> Council meeting. He said that item was the correct way to balance the General Fund budget. He said Item X1 is just "smoke and mirrors" and is not proper procedure. He said the City is building a big new building and Animal Shelter, and yet cannot find money for fire and police. He asked the Council to "do it right, take the cap off and balance the General Fund". Initiative 105 (I-105) was passed because the voters wanted entities like the City to come before them with truth and honesty about tax increases.

## **CONSENT AGENDA:**

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

**(1) Water Treatment Plant Electrical Improvements.** (Opened 6/08/04). (Delayed from 6/14/04). (Delayed from 6/28/04). Recommend Yellowstone Electric, \$65,748.00, Schedule I.

**(2) AIP 28, Schedule I: Airport Rescue and Fire Fighting Facility Addition.** (Opened 6/29/04). Recommend Fisher Construction, \$534,639.00. Recommend delaying bid award to 7/25/04.

**(3) AIP 28: East Ramp Rehabilitation and Runway 7/25 Earthwork.** (Opened 6/29/04). Recommend Donnes, Inc., \$1,268,065.00.

**(4) Janitorial Services, City of Billings' Operations Center Administrative Building.** (Opened 7/6/04). Recommendation to be made at meeting. Recommend Executive Cleaning Co., \$34,132.221 for 1<sup>st</sup> year and \$36,562.42 for 2<sup>nd</sup> year.

**B. Change Order #1, New Rooftop HVAC Unit for Airport,** Empire Heating and Cooling, \$4800.00.

**C. Amendment #5, AIP 28: Engineering Services for East Ramp Rehabilitation, Runway 7 Earthwork and Pavement Condition Index Upgrade for Airport,** Morrison-Maierle, Inc., \$265,643.00. (Funded via grant; FAA: \$252,361.00; City: \$13,282.00)

**D. Amendment #12, Alkali Creek Water Main, Professional Services Contract,** Morrison-Maierle, Inc., \$2,800.00.

**E. Amendment of Lease, Office Space for Transportation Security Administration (TSA),** changes annual rentals to \$32,716.68.

**F. Amendment #3, W.O. 95-08: Shiloh Road Improvements (Rimrock Road to Grand Avenue), Professional Services Contract, Rimrock Road to Poly Drive**

**Section**, Engineering Inc., \$165,000.00, contingent on the creation of SID 1371. (See Item 4 also).

**G. W.O. 03-25: Rimrock Road, Professional Services Contract, HKM Engineering, Inc., \$364,986.00.**

**H. State School Trust Lands Lease #4081**, annual rent of \$500/year, term: 10 years.

**I. First Time Homebuyer Program**, changes to keep up with the increasing cost of housing in Billings.

**J. Acknowledge receipt of petition #04-08 to annex:** Tract 4B-2 of Amended Tract 4B, C/S 1876 Amended and setting a public hearing date for 7/26/04.

**K. Office space for Frontier Airlines:** rescind original approval for temporary office space approved on 4/26/04 and approve new Commercial Terminal Building Lease, 1 year term with 1-year renewal option, \$4,917.00 for first year.

**L. Operations Center Building Addition:** approve the fees for design, architectural and construction administration services with CTA Architects and Engineers, \$54,804.00. (Funded via grant, FAA: \$52,064.00; City: \$2,740.00).

**M. Easement in Southgate Sub. Park**, North Western Energy, \$75.00, to provide electricity to Johnstone Supply Inc.

**N. Big Sky State Games Street Closures:**

- (1) Mountain Bike Races, Black Otter Trail: July 18, 2004
- (2) Triathlon, Billings Heights: July 18, 2004
- (3) Cycling Race, 62<sup>nd</sup> Street West, Tract 2 of Molt Road: July 17, 2004
- (4) 5K Run, 3<sup>rd</sup> Street West at Grand Avenue and Parkhill Drive, and partial closures along Virginia Lane: July 16, 2004.

**O. Resolution 04-18153** authorizing Construction Bids for SID 1365, amending Res. 04-18136 and setting a bid award date for 8/9/04.

**P. Resolution 04-18154** relating to Industrial Development Revenue Bond (BPHR Project); lowering the interest rate floor for the Rimrock Inn IDR Bonds, Series 1984.

**Q. Resolutions 04-18155 and 04-18156 authorizing Signatories on US Bank accounts:**

- (1) Court Bond Refund Account
- (2) Jury Witness Account

**R. Resolution of Intent 04-18157 to Create SILMD 288: Wentworth Drive** and setting a public hearing date for 8/9/04.

**S. Resolution 04-18158** revising the fees for purchase of gravesites, niches and setup of services; an explanation of the fees in Mountview Cemetery; amending Res. 01-17729, 97-17192 and repealing Res. 94-16865, 94-16810, 92-16517, 91-16493, 90-16315 and 90-16291.

**T. Second/Final Reading Ordinance 04-5289 For Zone Change #734:** a zone change from Agricultural-Open Space to R-7,000 on a 38-acre parcel, described as a tract of land situated in the E2 of Section 31, T1N-R25E, known as the Sunny Cove Fruit Farms, a portion of Lot 65A of the Plat of Amended Lots 65-68, 93-100 and 125-128, and generally located on the west side of 54<sup>th</sup> Street West, north of Grand Avenue.

**U. Second/Final Reading Ordinance 04-5290** expanding the boundaries of Ward IV to include recently annexed property described as Sunny Cove Fruit Farms, a portion of Lot 65A, of the Plat of Amended Lots 65-68, 93-100 and 125-128. (Annex #04-06).

**V. Ordinances on Unified Zoning Code Regulation Text Amendments and Shiloh Corridor Overlay District:**

(1) **Second/final reading ordinance** amending the Unified Zoning Code Regulations as modified, including removal of the County Zoning Permit Form and that portion of the Shiloh Corridor Overlay District south of Hesper Road. (NOTE: Delayed to 8/23/04).

(2) **Delaying public hearing and first reading ordinance** for development standard alternatives for that portion of Shiloh Corridor Overlay District located south of Hesper Road to 8/23/04.

**W. Second/Final Reading Ordinance** amending BMCC Section 19-202, prohibiting possession of alcoholic beverages in City parks, except by permit or use agreement. (NOTE: Delayed to 8/23/04).

**X. Public Safety Mill Levy Charter Amendment:**

(1) **Second/Final Reading Ordinance 04-5288** providing that the Billings City Charter be amended to add Section 1.05.1; providing for a permanent mill levy to fund Fire, Police and related public safety expenses and submitting the proposed amendment to the electors of the City as provided by law.

(2) **Resolution 04-18159** referring the ordinance amending the Billings City Charter to provide for a permanent mill levy to fund fire, police and related public safety expenses to a vote of the people at an election to be held on 11/02/04.

**Y. Delaying Approval of Right of Way Agreement** and acceptance of Quitclaim Deed from Shiloh United Methodist Church to 9/13/04.

**Z. Preliminary Plat of Estates at Briarwood Subdivision, 1<sup>st</sup> Filing,** generally located north of McMasters Road on Tracts 6A and 7A of C/S 2544.

**AA. Preliminary Plat of Gunn Subdivision**, generally located between Orchard Lane and Calhoun Lane, south of Vaughn Lane on Tract 1A of Am. C/S 31, Tract B of C/S 147 and Lot 3, Block 2 of Burns Subdivision, 2<sup>nd</sup> Amended.

**BB. Preliminary Plat of Hancock-Grand Subdivision, Amended Lot 1A & 2, Block 1**, generally located on the 3700 Block of Grand Avenue.

**CC. Preliminary Plat of Hardy Subdivision, Amended Lot 5, Block 1**, generally located in the Heights at the northwest corner of the intersection of Bench Boulevard and Lambrecht Lane. (Delayed from 6/14/04).

**DD. Preliminary Plat of McKay Acres Subdivision, Amended Lot 4**, generally located at the northeast corner of the intersection of Poly Drive and Orchard Drive.

**EE. Preliminary Plat of Parkland West Subdivision, 6<sup>th</sup> Filing, Lot 3, Block 10**, generally located on the southwest corner of the intersection of Central Avenue and South 32<sup>nd</sup> Street West.

**FF. Preliminary Plat of Stardust Acres Subdivision, Amended Lot 4, Block 1**, generally located in the Heights, east of St. Andrews Drive on the south side of Venus Circle.

**GG. Bills and Payroll.**

- (1) June 11, 2004
- (2) June 18, 2004

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

Councilmember Brewster separated Items V1, V2 and W from the Consent Agenda. Councilmember Clark separated Item F from the Consent Agenda. Councilmember McDermott separated Items 1A3, X and AA from the Consent Agenda. Councilmember Jones moved to approve the Consent Agenda with the exceptions of Items 1A3, F, V1, V2, W, X and AA, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

Councilmember Jones moved for approval of Item 1A3 of the Consent Agenda, seconded by Councilmember Brewster. Councilmember McDermott asked if the bid award went to a local firm. Airport Engineering and Planning Manager Kim Annin said Donnes, Inc. is a Shepherd, MT firm. On a voice vote, the motion was unanimously approved.

Councilmember Jones moved for approval of Item F of the Consent Agenda, seconded by Councilmember Brewster. Councilmember Clark made a substitute motion to delay action on this item until after consideration of Item 4 on the Regular Agenda, seconded by Councilmember Brown. On a voice vote, the motion was approved with Councilmembers Brewster and Ruegamer voting "no".

Councilmember Jones moved for approval of Item V1 of the Consent Agenda, seconded by Councilmember Brown. Councilmember Brewster made a substitute motion to delay action on this item to 8/23/04, seconded by Councilmember Gaghen. Councilmember Brewster suggested this item be a discussion at the next work session. Councilmember Boyer noted the councilmembers should consider participating in the hearings with the County tomorrow and Wednesday at 7 A.M. Councilmember Brewster cautioned that the City and County view things differently and have the same constituency with different interests and councilmembers should not allow the County's view to influence City goals and be our compelling interest. Councilmember Boyer asked about a legal opinion regarding the concerns that this should be considered a zone change. City Attorney Brent Brooks said a joint meeting with the City and County legal staffs concluded that this is not a zone change. This was memorialized in a letter from Deputy County Attorney Tom Gai. Mr. Brooks said he would provide the Councilmembers with a joint memo about this issue. In response to Councilmember Boyer's question, Mr. Bauer said a discussion on this issue would be on the Council's July 19<sup>th</sup> Work Session. On a voice vote, the substitute motion to delay was unanimously approved.

Councilmember Jones moved to approve Item V2, seconded by Councilmember Brewster. Councilmember Brewster made a substitute motion to delay action on this item to 8/23/04 and the outcome of Item V1, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.

Councilmember Jones moved to delay action on Item W to 8/23/04, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

Councilmember Jones moved for approval of Item X, seconded by Councilmember Ruegamer. Councilmember McDermott said she is opposed to the 60 mills, stating it is "far too high for property owners to provide to the City over the next five years". She added that she was still unclear as to what this would buy as she understood this levy was for labor costs. She said she would support 20 mills with the option to go back to the voters on an annual basis. Councilmember McDermott made a substitute motion to reduce the mills to 20 for one year, seconded by Councilmember Brown. On a voice vote, the motion failed with Councilmembers Gaghen, McDermott and Jones voting "yes".

Councilmember Brewster asked for verification that all of the mills would be for public safety. City Administrator Kristoff Bauer said all of the funding would be dedicated to Fire, Police and 911. He emphasized that the contribution from the General Fund to the Public Safety Fund would continue to grow over time despite the mill levy. Mr. Bauer said the mill levy would also provide funds for capital and equipment costs for the Fire Department. This would be expended only on the approval of the Council on an annual basis. Mr. Bauer also noted the Council must approve the number of mills and the associated dollar amount according to new state law. This dollar amount is a cap. Councilmember McDermott asked what capital projects would be funded. Fire Chief Marv Jochems said capital funding would include a new fire station and "pumper" and associated equipment in the 4<sup>th</sup> year of the mill levy. Councilmember Clark asked if there was a way to include wording in the resolution that would guarantee the mill funds now going to public safety from the General Fund would not be eliminated before it goes before the voters. Councilmember Ruegamer asked if

any cuts of that nature would require approval of the Council. Mr. Bauer replied "yes". On a roll call vote, the original motion was approved 5-4 with Councilmembers Gaghen, Brewster, Ruegamer, Boyer and Mayor Tooley voting "yes" and Councilmembers McDermott, Brown, Clark and Jones voting "no".

Councilmember Jones moved for approval of Item AA, seconded by Councilmember Clark. Councilmember McDermott said she received several phone calls regarding concerns about the Residential 6,000 and 7,000 zoning which allows 10-plexes to be built and whether it would be all single-family residential as proposed in the plat. Planning Director Ramona Mattix said the setbacks would only allow for single-family residential. On a voice vote, the motion was unanimously approved.

## **REGULAR AGENDA:**

### **2. PUBLIC HEARING AND RESOLUTION 04-18160 amending the FY2005 budget to provide authority to increase General Fund expenditures for the Parks and Recreation operations and maintenance in regard to the Athletic Pool. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

There was no staff report. The public hearing was opened. MARY WESTWOOD, 2808 MONTANA AVENUE, said she was the "ad hoc fund raiser" for keeping Athletic Pool open and maintained. She has received \$7,002.00 in solid pledges to date. There is an additional \$5,500 in promises for future donations and she said she is determined to raise as much as possible. She noted there was \$1,800.00 actual money in hand because the pledges were made on the basis that the pool would remain open for the rest of the season. Ms. Westwood said the pool is an important amenity to the community and the only pool with a permanent handicap or disabled access. She also noted it is an important feature for the daycare community, where over 30 daycares use the pool frequently. Ms. Westwood also noted that Liquid Engineering has completed their inspection of the leaks in the pool and materials to make the repairs are now on hand and ready for installation. She admitted this is only a short-term solution, but noted the community must think about the next pool that will be needed because of the growth. She asked the Council to find the money to keep the pool open.

GAIL STEWART, NO ADDRESS GIVEN, said she supports the City keeping Athletic Pool open. She said she and her family are long-time users of the pool. She noted that it is a great source of recreation for all ages. Ms. Stewart said the pool should not be considered a revenue generator because it is a park and the City parks are not in that category. She asked the Council to keep the pool open and added that evening hours should be included in the pool schedule. Ms. Stewart added that grass and lawn chairs should also be provided for pool users. She said this is a valuable asset on a valuable piece of property. She said the citizens are looking to the Council to "make this work".

SHAUNA KERR, 907 NORTH 31<sup>ST</sup> STREET, said she is an officer of the North Elevation Task Force and served on the Blue Ribbon Committee for Cobb Field and the Heights Pool. She said the community was "caught unawares" when the Council approved closure of Athletic Pool to help balance the budget. She said the pool serves low and moderate income families in the downtown, the Heights and Lockwood that have no access to private pools or summer camps. Ms. Kerr said the Parks Department engaged in the systematic decline of Athletic Pool, while investing over \$2 Million in the Rose Park Pool.

The diving pool, the grass picnic area and all but five lawn chairs were removed from Athletic Pool. She asked the Council to use Council Contingency money to keep Athletic Pool open through August. Ms. Kerr added this area is eligible for Community Block Grant Funds for next year.

JIM RONQUILLO, NO ADDRESS GIVEN, said he is the Vice Chairman of the Southside Task Force. He said there are problems with many of the pools in the City. He asked where citizens in the Heights would go if Athletic Pool was closed. He said "kids need some place to go and have fun". He also noted that Rose Park Pool has many nice amenities that other pools in the area do not, such as heat and water slides. He asked the City to give the Southside a pool like Rose Park with some of those amenities.

EMILY SHAFFER, NORTH PARK TASK FORCE AREA, said she lives across from Cobb Field and noted that 3 buses from the "Y" brought children to Athletic Pool today. She said her family used the pool for years and enjoy it. She said the amenities such as grass and chairs and the diving area have been taken away from the pool. Ms. Shaffer said this is the cleanest pool in the City. She asked the Council not to close the pool.

SARAH MACKNER, 473 MILLSTONE, said Rose Park Pool is usually very crowded. She said there is \$34,000 per year in the budget each year set aside for maintenance on Cobb Field. She said that facility doesn't need any less maintenance than Athletic Pool, but it is not being considered for closure. She said the Southside Pool is very small and not accessible. Ms. Mackner said she understood that Rose Park Pool generated enough money to support Athletic Pool and wonders what happened to that revenue.

LOIS BENT, 611 YELLOWSTONE AVENUE, said she has lived in Billings her entire life and her family has been taxpaying citizens of Billings since the 1920's. She said Athletic Pool and the parks in Billings are one of the most important assets to the quality of life in Billings. Pool access is a big part of a strong community and healthy lifestyle for young people and keeps families doing things together. Ms. Bent said the renewal of downtown Billings is important to the welfare of the City. A good quality of life should be developed in the downtown area to aid the economy. She said Athletic Pool is a very valuable part of what Billings can provide. She urged the Council to the continue financial support of Athletic Pool.

CHARLES HAMWEY, 1010 GRAND AVENUE, said he is a member of the Planning Board representing Ward I and a member of the Blue Ribbon Committee concerning Cobb Field and the Heights Pool. He said the surveys he received on the committee indicated that a pool is an important part of this community. He said he is willing to "step up" and help to keep Athletic Pool open. He encouraged the Council to amend the budget to allow for operations and maintenance of the pool.

MIKE TUSS, 1046 NORTH 31<sup>ST</sup> STREET, said he is the chairman of the North Elevation Task Force. He spoke for himself to make two arguments for the pool. As an owner of CTA Architects who recently made a large investment in the downtown area, he sees the operating budget for Athletic Pool being part of his investment by making downtown more livable. His other point is about what happens to the pool if it is closed. He said the City can hardly let the pool sit unused with weeds growing all around as it is located on a major entrance to Billings. Therefore, the pool would have to be demolished with costs running over \$300,000 to \$400,000. He said this money could fund operation of

the pool for at least 10-15 years. He asked the Council to make that investment in downtown by keeping Athletic Pool open.

There were no other speakers. The public hearing was closed. Councilmember Gaghen moved for approval to amend the FY2005 budget to provide General Fund expenditures for the Parks and Recreation operations and maintenance in regard to Athletic Pool stipulating that money raised by Mary Westwood and others to keep the pool open be included in the budget consideration, seconded by Councilmember McDermott. Councilmember Brewster clarified that the Council is voting on the budget authority to expend the donations. Mr. Bauer said it would actually be in excess of the donations because the amount to operate the pool for the next two months is more than pledges at this time. This would authorize \$33,000 in expenditures with offsetting revenues of approximately \$9,000, with the difference coming from reserves. He said the more donations received would reduce the net amount required.

Councilmember Clark amended the motion to use City funds to operate and keep Athletic Pool open and offer to return donated money or use it to purchase amenities for the pool, seconded by Councilmember McDermott. Councilmember Clark said it is the City's responsibility to expend the funds to keep the pool open. Councilmember McDermott said using the donated dollars as Councilmember Clark suggested could be used for the amenities, would address a need that has existed for quite some time. Councilmember Gaghen said it is a concern that the City is closing one-third of the pools. She said she prefers the pool to be maintained from the City budget with additional donations to be used in the process. Amenities could be provided for in the future and future enhancements such as extending the hours could be considered. Mr. Bauer said this is an opportunity for the Council to start the City on a path to invest in or divest itself of assets that have significant maintenance costs. Athletic Pool and Cobb Field are going to require significant resources to keep these facilities open and operational. He said the Council is faced with some difficult choices given the communities' failure to support the recent bond issue for Cobb Field and the Heights Pool, in finding the funding to keep these aging facilities open and operational. The choice is to keep the facilities and improve them or divest these assets. Mr. Bauer said this would be a "band-aid" approach for this year. He asked the Council to consider making a long-term commitment to invest in the Athletic Pool or not because the Staff needs to know the Council's intent for this facility. Councilmember Boyer said she is concerned that the Council is sending mixed messages that keeping the pool open this year will create the expectation for continued operation of the pool for the future. It is unclear if this is possible. Councilmember Ruegamer said he agrees with Mr. Bauer even if it is an unpopular choice. He also said the donations should be used to keep the pool open for this summer. He would support operation of the pool for the remainder of the year. He said the pool does not get a lot of use and to keep one open at a huge expense when the City is facing a budget crunch does not make sense. Councilmember McDermott said it may be time to set up a five-year capital improvement plan to use the \$6,000 in block grant funds that are available for facilities such as Athletic Pool that are in the low income areas.

Councilmember Brewster said he does not support the amendment that spends down reserves. He said the budget authority should be approved but only fund the pool from donations. Councilmember Brown suggested that unimproved park land be sold with the money used to keep the pool open. Councilmember Clark said the money would not

have to come from reserves, but could come from contingency funds from the Parks Department. Mr. Bauer said there is no money in the contingency funds for the Parks Department. On a voice vote, the amendment was unanimously disapproved.

Councilmember Brewster made a substitute motion to authorize the budget authority based on donations, seconded by Councilmember Ruegamer. Mr. Bauer noted that costs expended to date have already exceeded monies received. He said it costs \$500 per day to keep the pool open. On a roll call vote, the substitute motion failed 4-5 with Councilmembers Brewster, Ruegamer, Jones and Mayor Tooley voting "yes" and Councilmembers Gaghen, McDermott, Brown, Boyer and Clark voting "no". On a voice vote on the main motion, the motion was approved with Councilmembers Brewster, Clark and Jones voting "no".

**3. PUBLIC HEARING AND RESOLUTION 04-18161 ANNEXING Tract C of C/S 1011 Amended, including all adjacent right-of-way of 34<sup>th</sup> Street West. (#04-07). Staff recommends approval of the public service report, acceptance of the Annexation Agreement and Waiver of Rights to Protest and approval of the resolution annexing. (Action: approval or disapproval of Staff recommendation.)**

Planning Staff Member Wyeth Friday said this annexation is located south of Avenue E and just east of 34<sup>th</sup> Street West, which is the future Arlene Street Corridor. It is a 5-acre property including the adjacent street right-of-way for 34<sup>th</sup> Street West. He said the current zoning is Agricultural Open Space and there are two residents currently on the northern part of the property with the southern part being used for agricultural purposes. The proposed use is for future residential or commercial development.

Mr. Friday said there were no objections to the annexation from departments, but the Fire Department noted resources would be needed in the future as annexations continue. He noted the owners of Tract B are not interested in annexation. There are no significant impacts to City services and the property could use existing utilities, including water lines in either Avenue E or 34<sup>th</sup> Street West and sewer lines in 34<sup>th</sup> Street West and part of Avenue E west of Golden Boulevard. He said the owner is considering selling the property and intends to remain on a water cistern and septic for the present. Future improvements in Arlene Street would also be available to the property.

Mr. Friday said fiscal impact to the City is difficult to ascertain due to the uncertain future of the property. If the property develops as residential uses, it is unlikely it would pay for the costs of the city services required. He said this is common with residential development. He noted the utility construction fees, except for the Arlene Street Corridor project, would be paid by the landowner. This stipulation of expenses for the corridor project is included in the annexation agreement.

He said the annexation meets three of four of the high priority criteria to conform to the Annexation Policy, failing to meet the 10-acres in size criteria. The City limits are at the property's northern and eastern boundaries. It contains regular boundaries and should not cause decline in City services to the existing residents. Mr. Friday said the property is well within the City's Sphere of Influence and it is likely to have a high-density development in the future, given its location. The goals the annexation does not meet are: 1) that it is not a surrounded county island, 2) it does not currently receive city services, and 3) it does not presently contain affordable housing or an employment center.

Mr. Friday said Staff is recommending the Council approve the public service report, accept the Annexation Agreement and Waiver of Right to Protest signed by the petitioner, approve annexation of all the adjacent right-of-way of 34<sup>th</sup> Street West and approve the resolution annexing Tract C of C/S 1011, Amended. Mr. Bauer clarified that the City would be annexing a portion of 34<sup>th</sup> Street West and is in negotiations with the property owner to acquire additional right-of-way. It is not the intention of the City to assess any property owners for the cost of improvement on Arlene Street. This is consistent with City policy. Councilmember Clark asked if 34<sup>th</sup> Street West would eventually be annexed all the way to Grand Avenue. Mr. Bauer replied "yes".

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

**4. PUBLIC HEARING AND RESOLUTION 04-18162 creating SID 1371: water, sanitary sewer, storm drain and street improvements on Shiloh Road – Poly Drive to Rimrock Road. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

Public Works Director Dave Mumford said this is the section of Shiloh Road from Poly Drive north to Rimrock Road. The project is a five-lane roadway constructed to City standards. He said there were no formal protests to this SID. Councilmember McDermott said her analysis of the City contributions is equal to 90% or \$2 Million and the property owner contributions would be 10% or \$314,000. She said this is spending more than the original SID 1361 and the project is reduced to 2 blocks rather than the original 11 blocks. Mr. Mumford noted that the project scope has increased the street section to a full five-lane improvement. This increases the City's costs due to the additional three lanes. Councilmember McDermott asked what the future plans are for completing the remaining 9 blocks. Mr. Mumford said there are several options for this including placing it with the State Highway Systems funding along with their project on Shiloh Road. He said the critical portion of this project is installing the much needed signal at Shiloh Road and Rimrock Road.

The public hearing was opened. BILL PATERSON, 712 PARK LANE, said he has sent an e-mail to the councilmembers stating to his objections to this project. He said this is inequitable because an arterial should not be funded by taxing the adjacent property owners. He reminded the Council that 93 property owners opposed SID 1361 last April. Alternative #5 of the proposed SID 1361 was the fairest option for completing part of the Shiloh Road construction project and the route the Council should have taken. He said SID 1371 is just as unfair as SID 1361, assessing from \$3,487 to \$14,219 on eleven adjacent property owners who do not need the improvements. He said they are being penalized for living along an arterial road. Mr. Paterson suggested the City construct improvements for which existing funds exist.

KENT BURGESS, 3940 RIMROCK ROAD, said he is the president and CEO of St. John's Lutheran Ministries. He said he fears that nothing will happen and something must happen to insure safety for the dangerous intersection at Rimrock and Shiloh Roads and retain the residential nature of the area. St. John's is the largest property owner, contributing the largest amount of dollars to the project and most of the

improvements will occur on their land. He noted that traffic is using the St. John's parking lot to avoid the backup of cars at the intersection. Mr. Burgess said City staff has worked with St. John's to improve the plans for the intersection. He said his agency supports this important project.

There were no other speakers. The public hearing was closed. Councilmember Brewster moved for approval of the Staff recommendation, seconded by Councilmember Boyer. Mr. Bauer advised there is a revised attachment that included the number of protests as zero. Councilmember Boyer said this is a good compromise and should go forward while the City has the opportunity to complete this portion of the project. Councilmember Jones said he does not support this resolution as the SID Committee is currently working on a policy for projects like SID 1371. He said it is premature to approve it before that policy is completed. Mr. Mumford said the project is in the approved CIP, but if it is not constructed this year the funds would be allocated to another project. He added that this project is not out of step with the SID Committee because this is a residential portion of the arterial.

Mr. Bauer said there are many assumptions to consider with this SID: 1) that the SID Committee will establish an SID Policy consistent with the current proposal, 2) that the Council does not allocate funds for this project to another project, and 3) that the cost of the project does not increase past the current estimates and budget. The project could be completed next year if those assumptions are favorable.

Councilmember Boyer said she has heard from many citizens that the signal at this intersection is a critical need. Councilmember Jones said there are several meetings planned for the SID Committee and the policy is not yet formulated. He agreed the intersection is not safe, but noted "Arlene Corridor would take a lot of pressure off this road". If Arlene Corridor were not forthcoming, he said he would agree that SID 1371 needs to move forward now. The projects would be constructed at the same time so that gives time to develop a policy before constructing SID 1371. Councilmember Boyer noted that she is a member of the SID Committee and noted several other projects have continued without a policy in place. On a voice vote, the motion was approved with Councilmembers McDermott, Jones and Clark voting "no".

Councilmember Brewster moved for approval of Item F of the Consent Agenda, seconded by Councilmember Ruegamer. Councilmember Clark asked what the \$165,000 was for. Mr. Mumford said the larger street section incurred additional engineering costs for curb and gutter, the two-lane transition at Poly Drive and other design concerns that created the need to revise the bid package. Councilmember McDermott said this will cost a considerable amount of money because of the way this project has been split. Councilmember Jones asked why the cost of these modifications are more than the original engineering for the bigger project. Mr. Mumford said Engineering, Inc.'s estimate of hours has been reviewed and found to be reasonable and the rates are equal to those on other projects and from other engineering firms. On a voice vote, the motion was approved with Councilmembers Brown, McDermott and Clark voting "no".

Mayor Tooley called for a recess at 8:40 P.M.  
Mayor Tooley reconvened the meeting at 8:47 P.M.

**5. PUBLIC HEARING FOR VARIANCE #CC04-01: a variance from the Site Development Ordinance Section 6-1203(h)(2) & (5), regarding the number of curb cuts and spacing of curb cuts, on Lots 4-21, Block 59, Fosters Addition. High Plains Architects, owner architect. Staff recommends allowing a maximum of five driveways on the North 25<sup>th</sup> Street frontage and five driveways on the North 26<sup>th</sup> Street frontage between 6<sup>th</sup> Avenue North and 7<sup>th</sup> Avenue North and denying the variance to allow less than 25 feet between driveways. (Action: approval or disapproval of Staff recommendation.)**

City Administrator Kristoff Bauer noted that a communication from Tim Cramer of High Plains Architects asked the Council to delay action on this item so that Staff and the applicant could continue work on the proposal to reach a more suitable compromise. He also noted that the variance was not posted. He recommended the Council continue the public hearing and delay action to 8/9/04.

The public hearing was opened. RANDY HAVER, 2910 MORLEDGE STREET, said High Plains Architects is not the owner of the project. He said they are the architects for the project. Mr. Hafer said his firm is working with City Staff and are close to a compromise. He asked for a postponement of action.

There were no other speakers. The public hearing was continued to 8/9/04. Councilmember Brown moved to postpone action on the variance to 8/9/04, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.

**6. PUBLIC HEARING AND RESOLUTION 04-18163 levying and assessing storm sewer fees for FY2005 and repealing Res. 04-18141. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

Public Works Director Dave Mumford said this item corrects the overcharge of 2 zoning districts via the recent resolution that levied and assessed storm sewer fees. He said the Finance Department detected the error while balancing square footage and zoning.

The public hearing was opened. TOM ZURBUCHEN, 1747 WICKS LANE, said he did not see the advertisement for this public hearing and therefore had no information about the changes. Mr. Bauer said the public notice was advertised in the Billings Times and would provide a copy of the Affidavit of Publication to councilmembers.

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

**7. PUBLIC HEARING AND FIRST READING ORDINANCE providing that the BMCC be amended by revising Section 2-214, formalizing opportunities for public comment at city council meetings. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

Mayor Tooley said it was discovered that the Council was not following their own procedures relating to holding public comment periods. Because it was determined that these comment periods were required, the Council procedures should be revised to provide for that. Mr. Bauer said the rules of procedure would match the current Council practice with ordinance. He noted an Attorney General's Opinion to clarify the requirement of the public comment period was sought, but the results have not been forthcoming as

quickly as expected. Therefore, it was concluded that a procedural change was appropriate.

The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Boyer moved for approval of Staff recommendation, seconded by Councilmember Gaghen. Councilmember Brewster said this revision should stay in place regardless of the Attorney General's Opinion. He said it has been productive and helpful to have public comment on all agenda items. Mr. Bauer said the AG opinion could provide additional information on procedures for some items that have already had a public hearing and where a public comment period could be violating the judicial nature of it. It is a complex issue that needs assistance with technical qualification.

Councilmember Jones expressed concern for wording that sign-in prior to public comment is required. The letter of the law would not allow their comments without sign-in. Mayor Tooley noted speakers could sign-in after speaking as the Council is not denying the right to speak due to lack of "signing in". Mr. Bauer said the ordinance is trying to articulate what is current practice. He added that sign-in of public comment speakers aids the Clerk's office in guaranteeing accuracy of the minutes. He noted it is very difficult to get the correct name and address from verbal responses. It is not meant to be onerous. Councilmember Brewster amended the motion to change the word "required" to "requested" relating to the public comment sign-in, seconded by Councilmember Jones. Councilmember Clark said the number of minutes should be uniform during each comment period and not a random number declared by the presiding officer. Councilmember Gaghen suggested that the number of minutes for public comment be discussed at a work session. She said the one-minute period is too short for certain items. On a voice vote on the amendment, the motion was unanimously approved. On a voice vote, the motion as amended was unanimously approved.

**8. W.O. 03-14: MONTANA AVENUE TRAFFIC CALMING STUDY presentation and adoption of study recommendations. Staff recommends approval of Alternative 1 as modified by the Project Guidance Committee. (Action: approval or disapproval of Staff recommendation.)**

Chuck Strum, Interstate Engineering, Inc. said the purpose of the study was to develop a package of improvement measures to "calm" traffic on Montana Avenue. The project was to include significant community and agency involvement and develop conceptual plans and cost estimates for future implementation. He said traffic calming by definition is the combination of mainly physical measures that reduce the negative effects of motor vehicle use, alter driver behavior and improve conditions for non-motorized street users.

He said the process included: 1) defining specific problems, 2) verifying problems through data analysis of field conditions, 3) determining desired outcomes, 4) designing alternative solutions to address problems and achieving desired outcomes, 5) selecting preferred alternatives and 6) developing concept plans and cost estimates. Mr. Strum said significant data collection took place to corroborate study results and recommendations. The data included traffic volume data, traffic speed data, pedestrian volume, vehicle gap study, corridor crash history and physical mapping.

Mr. Strum said the following problems were identified and verified: 1) traffic speeds showed 85% of the vehicles travel 32 mph with some observed speeds in excess of 50

mph, and 2) pedestrian crossing safety is compromised by 3 moving lanes of traffic motorists not yielding to pedestrians, nor pedestrians using crosswalk locations.

He said the desired outcomes are to reduce traffic speeds to safe levels, improve pedestrian crossing ease and safety and increase the on-street parking supply. To develop and select alternatives to these outcomes several steps were taken. A Project Guidance Committee was formed from several groups including downtown business owners, Downtown Billings Partnership, City Staff, Fire Department, and Police Department. He said this group developed the preferred alternative measures. Those measures were packaged into three alternatives that were presented to the committee for review and critique. A selection and creation of the preferred alternative was conceived. Mr. Strum said the selected measures were: 1) speed control measures including raised crosswalks, pavement texturing, lateral shifts, narrowing from road edge, using chokers and turn lane treatment at 21<sup>st</sup> Street, 2) pedestrian safety measures including raised crosswalks, reallocation to pedestrians of right-of-way, street edge landscaping treatments, reduced crossing distance and warning signs, and 3) parking availability measures including change to back-in angle parking and creation of an additional on-street parking area.

Mr. Strum explained the use of the narrowing or land drop to reduce the size of the street. The reduction to a two-lane street width in several places, assists with pedestrian crossings. The raised crosswalk (less than four inches) elevates the pedestrian by forming a "speed bump". It is easily traversable at 25 mph and increasingly uncomfortable at speeds above that. A lateral shift would also be used to force traffic to make a turn rather than "rocket ahead" of middle lane traffic.

He said the estimated impacts are to cause a 5-7 mph reduction 85% of the time. There would be significant reductions in the highest speeds. A reduction of pedestrian crossing distance by 1/3 would not create adverse capacity impacts. He said improved safety would be a benefit and a diversion of 20% traffic would be a result.

Mr. Strum said the total cost of the physical items would be \$240,000 and with engineering, mobilization, and administration the grand total would be \$330,500.

Councilmember Brown expressed concern that Montana Avenue is a main traffic path for residents of the Heights. Councilmember Brewster said he agrees with Councilmember Brown's concern. Long-term plans to improve traffic on First Avenue South should be considered with this plan.

Councilmember Boyer asked if the City was funding this project. Mr. Strum said the funding for the improvements came primarily from the downtown Billings property owners.

Councilmember Boyer said the back-in angle parking sounds like a disaster waiting to happen. Mr. Strum said this feature is used in many cities throughout the United States with great success. It appears to be better than the lack of visibility when exiting the front-in angle parking.

Mayor Tooley asked what alternative could be used for people traveling to and from the Heights. Mr. Strum said diversion of traffic to other streets was found to be negligible on other routes in other cities surveyed. Councilmember Brown asked about the crash history. Mr. Strum said the overall crash rate is well below expected levels. Councilmember McDermott suggested that traffic light synchronization and signage could be another solution to consider.

Councilmember Brown asked if a public hearing could be scheduled to receive public comment on this issue, especially from citizens in the Heights. Mr. Bauer replied "yes". Councilmember Clark moved to accept the study and to recommend an alternative after a public hearing to be held on 9/13/04, seconded by Councilmember Brown. Councilmember McDermott made a substitute motion to adopt the study and staff recommendation, seconded by Councilmember Gaghen. On a roll call vote, the substitute motion failed 4-5 with Councilmembers Gaghen, McDermott, Ruegamer, and Mayor Tooley voting "yes" and Councilmembers Brewster, Brown, Boyer, Clark and Jones voting "no". On a voice vote on the original motion, the motion was approved with Councilmembers Brewster and Ruegamer voting "no".

**9. 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.)

There were no speakers.

## **Council Initiatives**

**COUNCILMEMBER BREWSTER**: Councilmember Brewster moved to direct staff to amend the zoning regulations to allow travel trailers (unoccupied) with 5-foot setbacks to be parked on owner's property during the months of May 1 through September 30, seconded by Councilmember Jones. Councilmember Brewster said this is a complaint driven ordinance and because there are Residential 7,000 houses that are within the same setback distance, this ordinance should be revised accordingly. Councilmember McDermott asked if this would be in violation of fire codes. Mr. Bauer said the Council could discuss all the ramifications of this request. Councilmember Gaghen suggested other vehicles such as boats should be included. On a voice vote, the motion failed with only Councilmembers Brewster, Jones and Brown voting "yes".

**COUNCILMEMBER McDERMOTT**: Councilmember McDermott moved to direct the legal staff to provide a report on the relationship between the task forces and the City, seconded by Councilmember Gaghen. Councilmember McDermott said she was under the impression that the task forces were a direct link to the City. On a voice vote, the motion was unanimously approved.

**COUNCILMEMBER McDERMOTT**: Councilmember McDermott moved to direct staff to research and locate the missing bronze plaque that was originally displayed at South Park Pool stating "the pool was donated to the City by the railroad and no fees could ever be charged for its use" and return it to the South Park Pool, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.

**ADJOURN** —With all business complete, the Mayor adjourned the meeting at 9:45

MINUTES: 07/12/04

P.M.

THE CITY OF BILLINGS:

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

ATTEST:

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