

# REGULAR MEETING OF THE BILLINGS CITY COUNCIL

## December 13, 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 Richard Clark. Mayor Tooley expressed his deep sorrow for family members and friends of former Councilmember Doris Poppler who died Sunday evening. He noted the funeral would be at the First Congregational Church at 10:30 A.M. on Thursday, December 16<sup>th</sup>.

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

**MINUTES – November 22, 2004** - Approved as printed.

**COURTESIES** - Councilmember Ruegamer noted the achievements of the two Montana College football teams that will be playing in the National Finals.

**PROCLAMATIONS – Mayor Tooley.** NONE

**BOARD & COMMISSION REPORTS** NONE

**ADMINISTRATOR REPORTS – Kristoff Bauer.**

- City Administrator Kristoff Bauer requested that Items F & Y of the Consent Agenda be separated for further information from Staff.
- He noted this is the last council meeting of the year. The Council will meet again on 1/3/05 for a Special Meeting and Work Session at the Community Center.

**PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Item: #1, #2 and #8**

**ONLY. Speaker sign-in required.** (Comments offered here are limited to 1 minute per speaker. Comment on items listed as public hearing items will be heard ONLY during the designated public hearing time for each respective item.)

*(NOTE: For Items not on this agenda, public comment will be taken at the end of the agenda. Please sign up on the clipboard located at the back of the room.)*

RANDY REGER, 2708 PALM DRIVE, spoke on the proposed appeal process for Item #2. He said the four (4) criteria included in the process place restrictive conditions and deny property owners the right of appeal. He added that he has been fighting for 3 years to insure that the overlay be treated as a zone change and believes that the text amendment method will be overturned.

MARION DOZIER, 3923 3<sup>RD</sup> AVENUE, said she has been involved in the Over, Under and Around the Railroad Tracks Committee since 1998. She said the committee supports the short-term recommendations and the eventual moving of the railroad tracks from the downtown area. She noted that the Montana Congressional delegation sits on

important committees in Washington and can assist with funding for this project. Ms. Dozier said moving the tracks would be economic development at its best and superior planning for the City of Billings. She asked the Council to give consideration to this long-term project.

CHARLIE HAMWEY, 1010 GRAND AVENUE, spoke on the Railroad Feasibility Study. He said he has served on the committee and said the short-term recommendations are important and should be implemented as soon as possible for better flow of traffic in the affected downtown area. He said this is a 20-30 year project and noted that Federal dollars are involved.

MARY WESTWOOD, 2808 MONTANA AVENUE, said she is in favor of the temporary "fixes" for the railroad tracks. She noted that she must often wait several minutes to access her parking place near her business on Montana Avenue. She recommended the Council accept the study, proceed with the short-term recommendations and hoped that in time the long-term remediation may become easier to implement.

RANDY HAVER, 2910 MORLEDGE STREET, said he speaks on behalf of the Downtown Property Owners Committee. He asked the Council to accept the study as complete even though the Quiet Zone amendment portion of the study has been funded but still needs to be done. He endorsed the short-term recommendations, but noted he is not in favor of the "Over, Under and Around" recommendations included in the report. Those recommendations would have a devastating impact on properties in the immediate area.

JOAN FORSETH, 1435 MADING DRIVE, spoke on Item S – the amendment of the Subdivision Improvements Agreement for B & R Subdivision. She said she is concerned about the fencing issue and the need for a distance greater than 3 feet for a buffer. She said 10 feet encourages children to play too close to the animals and 3 feet allows their livestock to endanger the fencing. She asked the Council to allow more time for negotiations with B & R Development on the fencing issues.

BILL COLE, 3733 TOMMY ARMOUR CIRCLE, said he represents B & R Development which is responsible for installing the fence. He said the 6-foot sight-obscuring fence moved 3 feet from the property line should provide an adequate buffer. He noted there are 34 signatures required to sign any amendments making that a daunting task. He feels the current fencing proposal is a good compromise and added that it needs to be installed while the good weather conditions still exist. Mr. Cole noted the 3-foot buffer was originally the Forseth's idea. He added the vinyl fence would be installed by B & R Development at their expense and they have offered to pay for the cost of relocating the Forseth's barbed wire fence in the places where it currently encroaches on subdivision property.

## **CONSENT AGENDA:**

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

**(1) Vehicles – City of Billings.** (Opened 11/16/04). Recommend Archie Cochrane Ford, \$100,486.00; Menholt Chevrolet, \$63,752.00; and purchasing five (5) police vehicles from the State of Montana bid, \$113,196.90.

**(2) Legal Advertising.** (Opened 11/19/04). Recommend Billings Times

for 3-year contract (1/1/05 – 12/31/07).

(3) **Parking Control System Improvements.** (Opened 11/23/04). Recommend Yellowstone Electric, \$371,089.14.

(4) **Rose Park Recreation Building.** (Opened 11/23/04). Recommend delaying award to 1/10/05.

**B. Extension of Airport Gift Shop Concession Lease,** Airport Gifts, 8-month extension (to 8/31/05).

**C. Professional services contract** for W.O. 05-01: 2005 Water and Sewer Rehabilitation Project, Morrison-Maierle, Inc., \$475,355.00.

**D. Professional services contract** for Pow Wow Park Master Plan, Peaks to Plains Design, \$19,963.00.

**E. Professional services contract** for Stewart Park and the Lampman Strip, Land Design, Inc., \$15,000.00.

**F. City-County Special Investigations Unit (CCSIU) Agreement** with Yellowstone County, term: 1/1/05 – 12/31/05.

**G. Contract** with Rimrock Foundation to provide treatment services for Billings Adult Misdemeanor Drug Court Chemical Dependency (BAMTC) participants, \$87,164/year, 1-year contract with option to renew for two years.

**H. Acceptance of W.O. 03-17: Railroad Crossing Feasibility Study** final report.

**I. Approval** of 2005 annual budget for the Exchange City Golf Corporation.

**J. Approval** of supplemental funds (\$5,163.75) to the 2003 *High Intensity Drug Traffic Area* (HIDTA) Award #I3PRMP606.

**K. Approval** of the purchase of the N2 of Lot 3, Sandra Subdivision, located at 23 Charlene St., for future plant and distribution system expansion of the water treatment facility, \$115,000.00.

**L. Resolution 04-18227 amending Res 04-18132** creating a citizen's committee on antique and classic car restoration, extending the time for the committee to complete its work.

**M. Acknowledging receipt of petition #04-13 to annex:** a 50-acre parcel described as C/S 1877, Tracts 1 and 2, located on Grand Avenue south of the intersection of Grand Avenue and 54<sup>th</sup> Street West, Jack D. and Robert H. Sukin, petitioners, and setting a public hearing date for 1/10/05.

**N. Second/final reading ordinance 04-5306 for Zone Change #744:** a zone change from Residential 9600 to Residential-7000-Restricted on Tracts 3A & 4, C/S 2465. The property is 96.87 acres in size and is generally located north of Rimrock Rd, west of 66<sup>th</sup> St. W. Golden Acres Partners, owner; Engineering, Inc., Oakland Companies, agents; approval of zone change and adoption of the determinations of the discussed 12 criteria.

**O. Second/final reading ordinance 04-5307 for Zone Change #746:** a zone change from Ag-Open to Entryway General Commercial on an unplatte 10-acre property generally located at the southeast corner of the intersection of S. Billings Blvd. and S. Frontage Rd. Joseph & Mary Miller, owners, Engineering, Inc. agent; approval of zone change and adoption of the determinations of the discussed 12 criteria.

**P. Second/final reading ordinance 04-5308 for Zone Change #747:** a zone change from R9600 to Community Commercial on a portion of C/S 3106, Tract 3 and C/S 2337, Tract 2, generally located on the east side of Shiloh Rd., between Broadwater Ave and Central Ave., Faith Chapel owners, Ed Jorden, agent; approval of zone change and adoption of the determinations of the discussed 12 criteria.

**Q. Second/final reading ordinance 04-5309 for Zone Change #748:** a zone change from Residential Multifamily Restricted to Residential Professional on the southern portion of Lot 4, Block 2, Goodman Subdivision, 3<sup>rd</sup> Filing, generally located along the southwest corner of 41<sup>st</sup> St. and Avenue B, northwest of the intersection of Shiloh Rd. and Grand Ave., JRS, LLC owner, Engineering, Inc. agent; approval of zone change and adoption of the determinations of the discussed 12 criteria.

**R. Amended plat** of Lots 2-5 of Amended Lot 1, Blue Meadow Acreage Tracts – creating a right-of-way tract.

**S. Amendment** of the Subdivision Improvements Agreement (SIA) for B & R Subdivision.

**T. Preliminary plat** of Alkali Creek Subdivision, 5<sup>th</sup> Filing, generally located west of Alkali Creek Road along the extension of Tumbleweed Drive; conditional approval of plat based on the written findings of fact.

**U. Preliminary plat** of Arnold Subdivision, 2<sup>nd</sup> Filing, Amended Lot 2, Block 6, located at 2206 Lewis Avenue; conditional approval of plat, approval of the requested variance and the findings of fact.

**V. Preliminary plat** of Cottonwood Subdivision, 1<sup>st</sup> Filing, generally located on the southwest corner of 54<sup>th</sup> St. West and Colton Boulevard; conditional approval of plat, approval of the requested variances and the findings of fact.

**W. Preliminary plat** of Interstate Subdivision, generally located at the southeast corner of South Frontage Road and South Billings Boulevard; conditional approval of plat, approval of the requested variances and the findings of fact.

**X. Preliminary plat** of King Place Subdivision, generally located at the southeast corner of Wicks Lane and Bench Boulevard; conditional approval of plat, and approval of the staff-requested variances and the findings of fact.

**Y. Preliminary plat** of the Second Amended plat of Lot 5, Block 3, Superior Homes Subdivision, generally located at the southeast corner of the intersection of Lake Elmo Drive and Roxy Lane; conditional approval of plat and approval of the findings of fact.

**Z. Final plat** of Goodman Subdivision, 4<sup>th</sup> Filing.

**AA. Final plat** of Midland Subdivision, 4<sup>th</sup> Filing, Amended Lot 1-A-1.

**BB. Final plat** of Sunny Cove Fruit Farms, Amended Lot 65A.

**CC. Final plat** of Ware Subdivision, Amended Lot 1.

**DD. Bills and Payroll.**

- (1) November 5, 2004
- (2) November 12, 2004
- (3) November 19, 2004

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

Councilmember Brewster separated Items F, S, X and Y from the Consent Agenda. Councilmember Gaghen separated Item H from the Consent Agenda. Councilmember Brown separated Item 1A2 from the Consent Agenda. Councilmember Jones separated Items D, E and U from the Consent Agenda. Councilmember Boyer separated Item V from the Consent Agenda.

Councilmember Gaghen moved for approval of the Consent Agenda with the exception of Items 1A2, D, E, F, H, S, U, V, X and Y, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

Councilmember Gaghen moved for approval of Item 1A2 of the Consent Agenda, seconded by Councilmember Ruegamer. Councilmember Brown said the City should contract with other media to allow legal information to be published in publications that citizens are more familiar with. He said many citizens do not know of the existence of the Billings Times. On a voice vote, the motion was unanimously approved.

Councilmember Gaghen moved for approval of Item D of the Consent Agenda, seconded by Councilmember Brewster. Councilmember Jones said Items D & E have the same issues pertaining to the terms and conditions within the contract. He said he has talked with the Staff and City Administrator Kristoff Bauer has drafted a memo concerning these issues. Mr. Bauer said he has had a conversation with Councilmember Jones about

some of the wording of the scope of work and specific terms regarding terminations and ownership of documents. He said Councilmember Jones is seeking to standardize the contracts. Councilmember Jones amended the motion to allow the Staff to negotiate the terms of the contract based on the memo, seconded by Councilmember Clark. Councilmember Brewster asked for clarification that the Council would not be granting any authority beyond what is contained in the memo. Councilmember Jones assured the Council that this would not stop the projects. On a voice vote, the amendment was unanimously approved. On a voice vote, the motion as amended was unanimously approved.

Councilmember Gaghen moved for approval of Item E of the Consent Agenda, seconded by Councilmember Brewster. Councilmember Jones amended the motion to allow the Staff to negotiate the terms of the contract based on the memo, seconded by Councilmember Clark. On a voice vote, the amendment was unanimously approved. On a voice vote, the motion as amended was unanimously approved.

Councilmember Gaghen moved for approval of Item F of the Consent Agenda, seconded by Councilmember Brewster. Mr. Bauer said City Attorney Brent Brooks has reviewed this agreement and has concerns about the indemnification language. He asked the Council to authorize the City Attorney to revise the indemnity paragraph prior to execution of the agreement by the Mayor. Councilmember Brewster amended the motion to allow the City Attorney to revise the indemnification paragraph, seconded by Councilmember Boyer. On a voice vote, the amendment was unanimously approved. On a voice vote, the motion as amended was unanimously approved.

Councilmember Gaghen moved for approval of Item H of the Consent Agenda, seconded by Councilmember McDermott. Councilmember Gaghen said this is a long-term problem that is far from being solved. She said the short-term solutions will alleviate some of the issues. She cautioned the Council that all the issues need to be resolved by the year 2020 to efficiently move traffic in a growing community. Councilmember McDermott said both the short and long-term solutions are important and must be considered and implemented.

Mr. Bauer noted the Council needs to give direction to the Staff on the funding process. He said the federal legislative funding request will come before Council in January. He asked Public Works Director Dave Mumford to share information from Montana Department of Transportation Regional Director Bruce Barrett. Mr. Mumford said Mr. Barrett noted there are concerns by MDT about the inclusion of the railroad relocation for the outer belt loop study. Including it would change the scope of the project and require rewriting the original necessity ruling for the study and resubmission to the Federal Highway Administration. It would also change right-of-way requirements, grade, and areas available to be used. Additionally, there are issues of crossings of multiple roads that would require significant grade separations. Mr. Mumford said the MDT would prefer this to be a separate project run concurrently.

Councilmember Brewster made a substitute motion to accept the short-term recommendations in the study and refer the long-term recommendations for discussion as it relates to the other projects on the federal level, seconded by Councilmember Ruegamer. On a voice vote, the substitute motion was unanimously approved.

Councilmember Gaghen moved for approval Item S of the Consent Agenda, seconded by Councilmember Ruegamer. Councilmember Brewster asked who made the

recommendation for the 3-foot buffer. Planning Manager Candi Beaudry said the Staff originally recommended the 3-foot buffer to which the Forseths originally agreed. She noted the property owners would have lost the back 10 feet of their property for any use with the Forseth's counter proposal. Councilmember Brewster amended the motion to change the setback to 4 feet, seconded by Councilmember Jones. Councilmember Boyer said the Subdivision Improvements Agreement would have to be resigned by all 17 of the affected property owners, which would ultimately change the process. Councilmember Brewster withdrew his amendment, Councilmember Jones withdrew his second. On a roll call vote, the motion was approved 6-5 with Councilmembers McDermott, Ruegamer, Iverson, Boyer, Ulledalen, and Mayor Tooley voting "yes" and Councilmembers Gaghen, Brewster, Brown, Clark and Jones voting "no".

Councilmember Gaghen moved for approval of Item U of the Consent Agenda, seconded by Councilmember Ruegamer. Councilmember Jones asked what could be built on the second lot. Planning Director Ramona Mattix said it is restricted to a single-family residence. On a voice vote, the motion was unanimously approved.

Councilmember Gaghen moved for approval of Item V of the Consent Agenda, seconded by Councilmember Ruegamer. Councilmember Boyer asked what happens to the cash-in-lieu of park land that is submitted on the subdivision. Mr. Bauer said the funds go into the parks development fund for construction of the park improvements to reduce the cost of a future parks improvement district. Councilmember Boyer said she would like to see that money tracked. On a voice vote, the motion was unanimously approved.

Councilmember Gaghen moved for approval of Item X of the Consent Agenda, seconded by Councilmember McDermott. Councilmember Brewster asked about the concurrent zone change. Ms. Mattix said that would come before the Council in January. On a voice vote, the motion was unanimously approved.

Councilmember Gaghen moved for approval of Item Y of the Consent Agenda, seconded by Councilmember Boyer. Mr. Bauer said there is a change in a condition of the plat. Ms. Mattix said condition #1 requires a language change regarding the 5-foot right-of-way easement. A dedication requires changes to the setbacks on every lot, whereas an easement does not. Councilmember Brewster amended the motion to change the word "dedication" to "easement", seconded by Councilmember Boyer. On a voice vote, the amendment was unanimously approved. On a voice vote, the motion as amended was unanimously approved.

## **REGULAR AGENDA:**

### **2. SECOND/FINAL READING ORDINANCE 04-5310 amending BMCC by adding Section 27-1400: establishing a Zoning Overlay District to extend 500 feet from the center line of Shiloh Road from King Avenue West north to Rimrock Road; regulating development standards, landscaping standards, building design standards and other site development standards; and sign standards for commercial, industrial and multifamily developments. (Delayed from 11/8/04). Staff recommends approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

Planning Manager Candi Beaudry said the Council approved the first reading of the ordinance for the district north of King Avenue on October 25, 2004. Included in the

approval were three motions, two of which were approved. The first motion approving the ordinance on first reading reduced the width of the overlay district from 1000 feet to 500 feet. The second motion was to include an appeals process to permit applicants to appeal directly to the City Council. This motion failed, however the Staff has included an appeals process because the owners south of King Avenue have insisted on that. She asked the Council to retain consistency in the overlay district between the north and south portions and consider the inclusion of the appeals process. She noted the process includes criteria (Section 27-1426) that protects the Council from making decisions that could be considered arbitrary and capricious. The criteria states the Council should consider whether the official erred in the interpretation or application of this chapter, that approving the permit would not confer any special privilege on the applicant denied to other land in the same district, that no substantial detriment to the public good is created and the intent and purpose of the chapter is not impaired. The third motion asked for further information about a zone change process, which she said is included in the presentation this evening.

Ms. Beaudry said the Planning Department is recommending approval of the second reading of the Shiloh Corridor Overlay District as defined by the area 500 feet from the centerline of Shiloh Road, from King Avenue north to Rimrock Road. She said the second reading includes the appeal process that failed approval by the Council in the first reading. The south district is requesting the appeals process and it is the opinion of the Staff that it should be included in the north district as well to maintain consistency. However, the process can be removed if the Council deems it necessary. She noted that without this appeal process an applicant may still appeal Staff decisions or request a variance from the Board of Adjustment.

Ms. Beaudry said the Council requested Staff to identify the effects of a zone change for this district. She said there are 61 affected properties that would require notification to those properties and to owners within 300 feet of those properties. The zone change would extend the valid protest provision to surrounding property owners and permit the district to be shown on the official Zoning Map. If the zone change is defeated, the entire overlay district could not be implemented. She noted the zone change cannot be conditioned. The estimated costs for address certification, legal ad mailing, announcement posting and staff time would be \$1,246.99 for the zone change process. She noted the zone change fee would be waived because it was Council initiated.

Ms. Beaudry reminded Council that the Legal Department's opinion is that the text amendment is sufficient for implementing the Overlay District. The only reason to proceed with a zone change is to increase the notification level and afford surrounding property owners the right to a valid protest. Councilmember Brewster reminded the Council that a zone change includes placement on the Zoning Map.

Mr. Bauer said the concern with allowing the Council to provide for an applicant's request could repeal in part the regulations in place, without due process to the other properties owners that are protected by this district. This could lead to liability for the City for not enforcing the ordinance as adopted by the Council. He recommends the Council consider the appeal process included in the ordinance and address those issues through this process. If there is a property owner that wanted to go outside the current regulations, the appropriate process to take would be to amend the ordinance rather than provide an exception for one property owner. Councilmember Brewster asked if determination of interpretation would be allowed in this appeal process. Ms. Beaudry replied "yes".

City Attorney Brent Brooks said it is very important to remain consistent and treat everyone equally regarding the appeals process. Due process must be afforded to everyone. The ordinance must state the criteria for the process and the standards by which they are applied. He urged the Council to adopt some form of established criteria for the appeal process.

Councilmember McDermott moved for approval of the Staff recommendation, seconded by Councilmember Boyer. Mr. Bauer confirmed the Staff recommendation includes adoption of the ordinance that includes the appeal process. Councilmember Brewster amended the motion that the zone change process would move forward, seconded by Councilmember Jones. On a voice vote, the amendment was unanimously approved.

Councilmember Brewster said this is the first time the Council has been presented with the criteria and he would like time to review and discuss it. Mr. Bauer suggested the ordinance could be amended if the criteria or appeals process needs to be changed. Councilmember Brewster asked if the Council would have an opportunity to discuss the appeals process when the proposal is presented on the south half of the district during first and second reading and if this ordinance can be amended at that time. Mr. Bauer replied "yes".

On a voice vote, the motion as amended was approved with Councilmember Brown voting "no". Mr. Bauer said the Staff would proceed with bringing the zone change to the Council for consideration.

**3. PUBLIC HEARING AND RESOLUTION excluding (de-annexing) territory described as Tract 2-A, Amended Tracts 1 & 2, C/S 741. Staff recommends denial of the deannexation request. (Action: approval or disapproval of Staff recommendation.)**

Planner Wyeth Friday said this parcel was annexed into the City in November of 1965. The deannexation petition was filed in September of 2004. He said the petitioner, Mr. Wood, is concerned with the fees that he must pay to be inside the City. The property is 1.3 acres located at 4190 South Frontage Road. There are two existing manufactured homes being used as residences on the property that would continue as currently used. This parcel was part of the school property that was separated when the Interstate was constructed.

He said there were several favorable responses from City departments to deannexation. Planning Staff expressed concerns about deannexation if the property is within 500 feet of a water or sewer line. The Finance Department noted the property is receiving tax-supported services. Public Utilities noted the costs of connecting the property to water and sewer services would be \$16,500 for water (it is currently served through County water lines by City water) and \$10,000 to \$20,000 for sewer. Sewer line is available under South Frontage Road and water service is available about 150 feet to the west. He noted future storm water facilities may be assessed to the owner through SIDs. The City has financed public sewer in South Frontage Road. The property pays City taxes and City fees for garage collection, fire hydrant maintenance, street maintenance (including the new Arterial Construction fee) and storm sewer maintenance that help offset any infrastructure costs to the City.

Mr. Friday said this property was reviewed by the Planning Department in the

context of suitability to annex. He said the property is connected to the rest of the City limits at its northern boundary and contains regular boundaries. The property is well within the "sphere of influence" and keeping this property within the City limits will continue the City's goal of annexing areas that plan to or have high-density development on arterial streets. Mr. Friday said the property contains two manufactured homes and that type of housing is often considered to be affordable to many income levels. This is one of the City's annexation goals, to annex areas that meet community goals like affordable housing.

Mr. Friday said this property does not meet annexation goals that require parcels to be larger than 10 acres and it is not a County island. The annexation meets several goals of the 2003 Growth Policy. Keeping this property in the City would continue to protect public health and reduce the cost of groundwater remediation and would address Annexation Policy goals to help plan for expansion and provision of municipal services. Therefore, the Staff recommends the Council deny this deannexation request. Councilmember Boyer asked if the property owner is required to hook up to the City water and sewer at this time. Mr. Friday confirmed that he does not have to make those connections as long as his systems are working properly.

The public hearing was opened. TIM WOOD, 4190 SOUTH FRONTAGE ROAD, asked the Council to support the deannexation. He said he is the owner of the subject property and has appealed the proposed arterial fees for this property without success. He said this is a fairness issue as the ordinance has created unjust fees that are 8-1/2% of the appraised value of his property. He noted the Planning Department is the only department that is against this deannexation. Mr. Wood said "the straw that broke the camel's back was the arterial fee". He said he is taxed by square footage in three areas adding up to \$950 and the only service he is getting in return is garbage collection. There is something wrong when the fees become such a big percentage of the taxes, he said.

TOM ZURBUCHEN, 1747 WICKS LANE, asked the Council to refuse the deannexation because the only reason is the fees. He said the fees are not equitable and should not be based on square footage and zoning. There must be a better solution, such as based on the number of bedrooms or water usage for residential or occupancy for a commercial facility.

There were no other speakers. The public hearing was closed. Councilmember Brewster moved for approval of the Staff recommendation (to deny the deannexation), seconded by Councilmember Iverson. On a voice vote, the motion was approved with Councilmembers McDermott and Brown voting "no". The deannexation was denied.

Mayor Tooley called a recess at 8:21 P.M.

Mayor Tooley reconvened the Council Meeting at 8:30 P.M.

**4. A. PUBLIC HEARING regarding the disposal of City-owned property described as Lots 9-12, Block 142 O.T., located on the 100 Block of South 25<sup>th</sup> Street.  
(Action: public hearing this evening and continuing hearing to 1/10/05.)**

**B. Bid Award: South 27<sup>th</sup> Street Corridor Redevelopment 2004-4.  
(Opened 11/30/04). Recommend delaying action to 1/10/05.**

Planning Director Ramona Mattix said this property was acquired through a land swap with Deering Clinic in 2003. Land traded to the Deering Clinic was donated to the

City by the American Baptist Home Mission Society and purchased through the CDBG Program for \$30,000.

She said the sale process for this property started in October when the Montana Rescue Mission expressed written interest in purchasing the property. The Council approved the Resolution of Intent to dispose of the property on November 8, 2004 and the property was then advertised for bids on November 18<sup>th</sup>. Surrounding property owners were notified on November 23<sup>rd</sup> and bids were received on November 30<sup>th</sup>. Tonight is the public hearing. Staff recommends the Council delay action to January 10, 2005.

Ms. Mattix said the Montana Rescue Mission is a non-profit organization that has operated for over fifty years addressing the needs of the homeless in the community. The Men's Shelter is located at 2822 Minnesota Avenue and the Women's and Family Shelter is located at 2520 1<sup>st</sup> Avenue North. They are proposing to relocate the facilities to South 25<sup>th</sup> Street where they have purchased adjacent lots and intend to pursue acquisition of City Right-of-Way. Ms. Mattix said the Staff is evaluating the bid proposal of \$20,000 and the project's consistency with the Gateway Business Park Plan. The extent of the vacation requests of South 25<sup>th</sup> Street, South 26<sup>th</sup> Street and 2<sup>nd</sup> Avenue South that is proposed needs to be reviewed. This is the main reason for the delay.

KEITH MYHRE, 234 YELLOWSTONE AVENUE, said the Montana Rescue Mission has been serving the homeless for over fifty years. Their goal is to help men, women and children find hope so that they may be able to change their life in positive ways. This process is begun by offering services such as food, shelter and clothing. The Mission serves over 150,000 meals per year, offers rehabilitation programs, chapel, bible study and counseling services. It also cooperates with other organizations to provide healthcare services for the homeless through the Deering Clinic.

Mr. Myhre said the Montana Rescue Mission is currently overcrowded, turning away 5 or 6 families weekly. He said at least 20 men sleep on the floor due to lack of room for beds. There is no safe playground for the children, forcing them to play in the hallways or the alley. The proposed project would be able to provide services for 190 single men, 70 single women and 42 units for women and families (doubling the existing facility for women and children). Purchasing this land and building the proposed facility will accommodate their growing needs. The project cost would be \$7 Million and their primary direction is to raise all of the money needed to complete the project. He said they are not planning to build the facility in stages because costs can increase over the years.

He said the Mission intends to sell all of their facilities, including the Mission building and the Women's and Families Shelter. The sale of these properties has assisted in the purchase of the properties that will house the new facility. The buy/sell agreements allow the facility to remain in their current buildings until the new facility is completed.

JOSEPH WHITE, 926 NORTH 30<sup>TH</sup> STREET, said an air sufficiency test should be required before the completion of the sale to insure the availability and quality of the air.

MARY WESTWOOD, 2808 MONTANA AVENUE, said she supports a fair deal on this property for the Mission. She said she is well aware of the problems of the homeless in our community. They need a place, particularly during the day, to stay and have access to bathroom facilities. She said the proposed facility does give them the opportunity to go from homeless to productive members of the community.

There were no other speakers. The public hearing was continued to 1/10/05. Mr. Bauer noted that the continuation would be for the purpose of additional comment once the

vacation issue has been recommended. Councilmember Brown moved to delay action on the bid award to January 10, 2005, seconded by Councilmember Brewster. Councilmember Clark asked what portion of 2<sup>nd</sup> Avenue South has been vacated. Mr. Myhre said his understanding was that 2<sup>nd</sup> Avenue South between South 27<sup>th</sup> and South 26<sup>th</sup> Streets has been vacated and Deering Clinic is currently requesting vacation of South 26<sup>th</sup> Street. Mr. Bauer said the vacation of South 26<sup>th</sup> Street has been authorized and is currently in the process of completion. Councilmember Brown said he would like to know the market value of the property before the sale is complete. Mr. Bauer noted the Executive Director of the Mission, Gary Drake has asked the City to consider donating the land for the proposed facility. He added the City could not complete an appraisal by January 10<sup>th</sup> and noted the additional expense. On a voice vote, the motion was unanimously approved.

**5. PUBLIC HEARING AND FIRST READING ORDINANCE expanding Ward 1 to include recently annexed property: (Annexation #04-12): the north 10-acres of an unplatteed parcel in T1S-R26E-S16: NW4 aka proposed Lot 1, Block 1, Interstate Subdivision, Joseph J. and Mary E. Miller, petitioners. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

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

**6. PUBLIC HEARING AND RESOLUTION 04-18228 vacating a portion of alley described as: the north-south alley in the N2 of Block 114, O.T. between North 22<sup>nd</sup> and North 23<sup>rd</sup> Streets and Montana Avenue and 1<sup>st</sup> Avenue North, CTA Architects, petitioner. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

Mr. Bauer said the Staff recommends the Council set the value of the compensation at \$15,000.00 for the right-of-way.

JIM SHEPHERD, 1809 ARCADIA, said he represents CTA Architects. The request to vacate the property, a 3,000 square foot north/south segment of the alley, bisects CTA's property. Originally, a value of \$3.50/ per square foot, or \$10,500 was assigned to the property. The subsequent appraisal recommended \$4.00 to \$6.00 per square foot. He said CTA is asking the Council to approve the \$3.50 per square foot value because they have granted permanent easement to the utilities that will prevent CTA from doing anything with the property in terms of expansion of the buildings. This makes the value of the property much less. The property will be used for a handicapped access ramp and sidewalk.

There were no other speakers. The public hearing was closed. Councilmember Iverson moved for approval of the Staff recommendation with \$15,000 as the value of compensation, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

**7. PUBLIC HEARING AND RESOLUTION 04-18229 approving Annexation #04-09: Tract 3 of C/S 90, Gauger Acres, including all adjacent right-of-way on Main**

Street, Paul Dennehy, petitioner, Lamar Outdoor Advertising, owner. Staff recommends approval of the public service report, the annexation agreement and waiver of right to protest and the resolution. (Action: approval or disapproval of Staff recommendation.)

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

**8. C.O. #9, 2003 Schedule II Water and Sewer Line Replacement, Chief Construction, \$187,036.02 and 15 additional days. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

Councilmember Clark moved for approval of Change Order #9, seconded by Councilmember Jones. Councilmember Ulledalen said this change order is 27% over the bid and asked why. Public Works Director Dave Mumford said this project was designed and initiated under the old Public Utilities Department. There were several elements of the project that were not anticipated that have driven the costs over the bid price. When the Norman Drive area was added to the project, soil boring reports were not completed to ascertain the condition of the asphalt and the sub-soils. As heavy equipment was used in the area, the asphalt disappeared. He added that an abandoned asbestos sewer line that was not shown on the PUD design needed to be removed. After replacement of the water and sewer lines, the resulting asphalt replacement was a series of patchwork that made the road unusable for the residents in the area. He stated the roadway is in good driving condition now. Mr. Mumford noted the 2004 Replacement project has been completed significantly under-budget and time, stating that improvements in overseeing these types of projects have been made. On a voice vote, the motion was unanimously approved.

**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.) NONE**

## **Council Initiatives**

COUNCILMEMBER RUEGAMER: Councilmember Ruegamer moved that no merit pay raise be included in the 2005 contract for City Administrator Kristoff Bauer, seconded by Councilmember Boyer. On a voice vote, the motion was unanimously approved.

COUNCILMEMBER BREWSTER: Councilmember Brewster moved that the appeal process for arterial fees be discussed and the Council reconsider some alternatives for residential properties that are improperly zoned (other than rezoning them) at the next Work Session, seconded by Councilmember McDermott. Councilmember McDermott added that the Council should also keep this process in mind during review of the Street Maintenance Fees. On a voice vote, the motion was unanimously approved.

COUNCILMEMBER MCDERMOTT: Councilmember McDermott moved that the School Sidewalk Program study move forward to determine funding needs in anticipation of future CTEP funding, seconded by Councilmember Brown. Planning Director Ramona Mattix noted that the school projects for 2004 CTEP funding did not receive a recommendation at the Transportation Planning Coordinating Committee because the projects were not specifically defined. In order to set aside the funding, the projects must be clearly defined. Councilmember McDermott noted the projects do not have to be completed within a certain time to set aside the funds, but just need to be defined. On a voice vote, the motion was unanimously approved.

COUNCILMEMBER BOYER: Councilmember Boyer moved to direct Staff to bring back to the Council ways to restrict and track the funds that are given in lieu of park land, seconded by Councilmember Jones. Councilmember Brown asked for a cost estimate to track those funds. On a voice vote, the motion was unanimously approved.

COUNCILMEMBER JONES: Councilmember Jones moved to direct Staff to update the appraisals on the Yegen property, seconded by Councilmember Brown. Councilmember Jones said the current appraisals are a year old and the Council should insure that the amount of the offer is reasonable. Mr. Bauer said the review and update based on new information would be a standard practice of the condemnation process. On a voice vote, the motion was unanimously approved.

Councilmember Brewster and Mayor Tooley announced that this would be Councilmember Jan Iverson's last council meeting and thanked her for her dedication and 7 years of service on the Council. Several other councilmembers offered their admiration for her, reflections and thanks to Councilmember Iverson.

**ADJOURN** —With all business complete, the Mayor adjourned the meeting at 9:40 P.M.

THE CITY OF BILLINGS:

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

ATTEST:

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