

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

January 13, 2003

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

ROLL CALL – Councilmembers present on roll call were: McDermott, Gaghen, Brown, Brewster, Kennedy, Ohnstad, and Jones. Councilmembers Iverson, Poppler and Larson were excused.

MINUTES – December 9, 2002. Approved as printed.

COURTESIES – Airport, Police Dept

- Airport Director Bruce Putnam introduced Kim Annin and his wife Carol and asked them to come to the podium. Mr. Annin recently earned recognition as a Certified Airport Management Executive. He is the construction engineer for the Airport.
- Police Chief Ron Tussing introduced Officers Vince Feuerstein, Matt Chaney and Kelly Compton who will be confirmed later in this evening's meeting.

PROCLAMATIONS – Mayor Tooley.

- JANUARY: Volunteer Blood Donor Month

BOARD & COMMISSION REPORTS – Human Relations Commission

- Margie McDonald of the Human Relations Commission reported that they have a new member of the Commission – a member of the Muslim faith. This member has briefed the committee on the diversity issues that face the community. School District #2 has also shared with the committee some of the diversity features they have incorporated into their organization. St. Vincent Hospital provided training on diversity issues regarding the Jewish community. Ms. McDonald said issues that come before them repeatedly concern individuals that are disabled or struggle with mental health problems. She noted that health care funding is critical to the wellness and independence of these individuals and proposed budget cuts in these areas would significantly impact these individuals. The committee meets the first Friday of each month at Noon in the City Hall conference room.

ADMINISTRATOR REPORTS – Dennis Taylor.

- Legislative Report. Mr. Taylor asked for feedback on SB160 which would eliminate the 3-mile separation requirement for incorporation into a City. It is up for hearing on Wednesday this week. Alec Hanson from the Montana League of Cities and Towns said elimination of this requirement would put cities in jeopardy.

- HB275 provides that improvements would be taxable from the time a structure is occupied or used, thereby providing for pro rated taxes based on building occupancy. MLCT recommends supporting the bill. Mr. Taylor said he did not think either of these bills needed Council action this evening however.
- Councilmember Ohnstad moved to oppose SB160 and support HB275, seconded by Councilmember Gaghen. Councilmember Kennedy requested that the Council wait to take action and discuss them at a work session instead. On a voice vote, the motion failed. These bills will be discussed at a work session instead.
- Mr. Taylor noted that the recent rollback of the Governor's budget request to the 2000 FY levels would not affect the entitlement funding formula that was part of HB124 from the last legislative session. This means the funding for the entitlement program is intact.
- Mr. Taylor noted that Item N has a new recommendation this evening and referred to the memo on the desks of the Councilmembers. No bids were received for the bond bid opening today.

CONSENT AGENDA:

1. A. Mayor's Appointments:

	Name	Board/Commission	Term	
			Begins	Ends
1.	Jack Bayne	Aviation & Transit	01/01/03	12/31/06
2.	Dave Hawkins	Board of Appeals	01/01/03	12/31/06
3.	Michael Dennis	Board of Health	01/01/03	12/31/05
4.	Duane Loken	Community Development	01/01/03	12/31/06
5.	Paul DiLorenzo	Community Development	01/01/03	12/31/06
6.	Theresa Pattyn	Community Development	01/01/03	12/31/06
7.	*Gordon Belcourt	Human Relations	01/01/03	12/31/04
8.	**Ken Olson	Parking Advisory	01/01/03	12/31/05
9.	Randy Hafer	Parking Advisory	01/01/03	12/31/06
10.	Lynn Mullowney	Parking Advisory	01/01/03	12/31/06
11.	Denis Pitman	Parks/Rec/Cemetery	01/01/03	12/31/06
12.	***Earl Guss	Planning Board(Ward III)	01/01/03	12/31/03
13.	**** John Baber	Planning Board(Ward V)	01/01/03	12/31/04
14.	Melodee Hanes	Police Commission	01/01/03	12/31/05
15.	Mardi Madsen	Zoning Commission	01/01/03	12/31/06

B. Mayor's Appointments: Blue Ribbon Committee

	Name	Board/Commission	Term	
			Begins	Ends
1.	Kerri Crowe	Blue Ribbon Committee	01/01/03	11/30/05
2.	Mark Ehli	Blue Ribbon Committee	01/01/03	11/30/05
3.	Lynn Fox	Blue Ribbon Committee	01/01/03	11/30/05
4.	Tim Goodridge	Blue Ribbon Committee	01/01/03	11/30/05
5.	Randy Hafer	Blue Ribbon Committee	01/01/03	11/30/05
6.	Charlie Hamwey	Blue Ribbon Committee	01/01/03	11/30/05
7.	Mike Hennessy	Blue Ribbon Committee	01/01/03	11/30/05
8.	Shauna Kerr	Blue Ribbon Committee	01/01/03	11/30/05
9.	Lee Ann Logan	Blue Ribbon Committee	01/01/03	11/30/05
10.	Ernie Dutton	Blue Ribbon Committee	01/01/03	11/30/05
11.	Jack Bayne	Blue Ribbon Committee	01/01/03	11/30/05
12.	Jeff Ballard	Blue Ribbon Committee	01/01/03	11/30/05

C. Bid Awards:

- (1) **AIP 23, Schedule I: Restaurant Stair and Lift Relocation.** (Opened 12/10/02). Recommend General Contractors, \$102,154.00.
- (2) **Chemicals – Wastewater Plant – Dry Polymer.** (Opened 12/24/02). Recommend delaying award to 1/27/03.

D. Change Order #3, SID 1347: Lampman Subdivision, COP Construction, \$62,420.60 and 0 days.

E. Temporary Use Agreement for City-Owned Property for use of the Old Maverick Fire Station at 201 S. 30th Street by the Child and Family Intervention Center until 2/24/03.

F. Architectural Services Agreement with CTA Architects and Engineers for architectural and contract administration services for AIP construction projects, \$92,301.00.

G. Memorandum of Understanding between Beartooth RC&D and economic development district participants in Yellowstone County.

H. Traffic Safety Bureau Standard Agreement with Montana Dept. of Transportation for completion of the Mobile Data Technology project, \$135,665.41.

I. Allocation of HOME Funds to Habitat for Humanity for infrastructure work at 4 project sites, \$32,400.00.

J. Acknowledge receipt of annexation petition #03-01: C/S 1079, Tract 4A, Eugene and Carol Brosovich, petitioners, and setting a public hearing date for 1/27/03.

K. Approval of the sale and disposition of four (4) used MET Transit buses and bus parts.

L. Confirmation of Police Officers:

- (1) Kelly Compton
- (2) Shane Weinreis
- (3) Matt Chaney
- (4) Vince Feuerstein.

M. Acceptance of Quit Claim Deeds relating to Cottonwood Park:

- (1) QCD from Westward Ho, Inc. for T1N-R25E-S31: SE4NE4 except: Parcel 1: Yellowstone Meadows, Phase I; Parcel 2: C/S 1323; Parcel 3: Yellowstone Meadows, Phase III; Parcel 4: C/S 1815; and Parcel 5: the East 30 ft and the South 25 ft reserved in vacation order recorded as Document #870492, dated 10/30/70.
- (2) QCD from Yellowstone County for: Parcel 1: the park indicated on the plat of Yellowstone Meadows, Phase I, recorded as Document #873104; Parcel 2: park indicated on the plat of Yellowstone Meadows, Phase III, recorded as Document #1035948; Parcel 3: C/S 1815, and Parcel 4: C/S 1323, Tr 1.

N. \$7,135,000 Tax Increment Urban Renewal Refunding Bonds, Series 2003:

- (1) **Bond Bid award.** ~~Recommendation to be made at meeting.~~ Recommend postponing the sale to 1/27/03 since no bids were received and authorizing the Finance Director to attempt to negotiate a sale. Recommend delaying action to 1/27/03.
- (2) **Resolution** relating to \$7,135,000 Tax Increment Urban Renewal Refunding Bonds Series 2003; Authorizing and Directing the Issuance, Awarding the Sale and Prescribing the Form and Terms and Security. Recommend delaying the resolution to 1/27/03.

O. Resolution 03-17938 amending/superseding Res. 02-17789: correcting the legal description for Annexation #01-20 for annexed portions of Daniels Subdivision.

P. TWO Resolutions 03-17939, 03-17940 for authorized signatories on US Bank Accounts and **ONE Resolution 03-17941** for authorized signatories on the UBS PaineWebber Investment Account.

Q. Second/final reading ordinance 03-5233 for expanding Ward V to include recently annexed property: Tracts 2A, 2B, 2C and 3C, C/S 2991 – Annex #02-17.

R. Second/final reading ordinance 03-5234 for zone change #707: a zone change from R9600 to R7000 and RMF-R on Tracts 2A, 2B, 2C, and 3C of C/S 2991, located north of Monad Road, south of Central Avenue and west of the BBWA Canal. Legacy Homes, owner; Engineering Inc., agent.

S. Lease with Bureau of Land Management for storage space at Airport, 5-year term.

T. Discover America video:

(1) **Agreement** with Teaching Learning Network to create a video segment on Billings.

(2) **Resolution** authorizing the use of \$19,500 in Council Contingency funds for the production and broadcast of the video.

U. Bills and payroll.

(Action: approval or disapproval of Consent Agenda.)

Councilmember McDermott separated Item A from the Consent Agenda. Councilmember Brown separated Items E, G I, and N from the Consent Agenda. Councilmember Jones separated Item T from the Consent Agenda.

Councilmember Kennedy moved for approval of the Consent Agenda with the exceptions of Items A, E, G, I, N and T, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

Councilmember Kennedy moved for approval of Item A, seconded by Councilmember Brewster. Councilmember McDermott noted that four of the applications for Board and Commission appointments were received past the advertised deadline. She asked that the Council be more responsible and abide by the cutoff dates unless a quorum issue is involved. She also requested that all applications received be submitted to the Council for review to confirm that the best applicant for the position is being approved by the Council. Mayor Tooley noted there are times when no applications are received for a certain position and at that point he allows late entries to be considered. He said the deadline is simply a guideline to manage the flow of applications. On a voice vote, the motion was unanimously approved.

Councilmember Kennedy moved for approval of Item E, seconded by Councilmember Brewster. Councilmember Brown asked who would oversee the contract and conditions of this temporary use agreement between the Child and Family Intervention Center and the City to occupy certain premises in the Maverick Fire Station. City Administrator Dennis Taylor said this is an extension of the current contract through February 24th when the property will revert to the new owners. He said John Walsh, Community Development Manager will administer the contract. Councilmember Jones asked if item 12 in the agreement covers the City against an additional 30 days of occupancy by CFIC past the February 24th deadline. John Walsh said the agreement was reviewed by the City's legal staff and February 24th is the last date CFIC may occupy the premises. If CFIC requires another extension, it would be brought back to Council for approval. City Attorney Brent Brooks confirmed that the City is covered under the default clause. On a voice vote, the motion was unanimously approved.

Councilmember Kennedy moved for approval of Item G, seconded by Councilmember Brewster. Councilmember Brown asked if there is a duplication in contributions as the City is paying \$7,000 and another \$7,000 via County taxes. He asked

why we are using Beartooth RC & D when there is BSEDA here in Billings. Councilmember Kennedy said there are some programs that Beartooth RC & D can do that BSEDA cannot regarding economic development. He said participating through Beartooth RC & D saves the City money. He cited the Sysco deal as an example of Beartooth RC & D's ability to obtain "bridge gap" funding for the Sysco project. On a voice vote, the motion was approved with Councilmember Brown voting "no".

Councilmember Kennedy moved for approval of Item I, seconded by Councilmember Brewster. Councilmember Brown asked if Habitat for Humanity has staff that is paid with tax dollars. John Walsh said that most of the work performed by Habitat for Humanity is accomplished with volunteer labor. They accept government grants only in the case of funding for infrastructure. In this case the infrastructure cost would be associated with the demolition of the old Al's Tavern and developing various lots for construction of affordable housing. Councilmember McDermott noted that the homes that are constructed by Habitat for Humanity are sold upon completion and therefore go back on the tax rolls. On a voice vote, the motion was unanimously approved.

Councilmember Kennedy moved for approval of Item N (to delay to January 27, 2003), seconded by Councilmember Brewster. Councilmember Brown asked how much money would be saved with this item. Mr. Taylor noted there is a request from the staff to delay this item to the January 27th meeting to research questions that arose from today's bid opening. Controller Pat Weber said there were no bids received at the bid opening. He said the financial institutions that participated in the bid opening expressed concerns about the rating at Qwest, who is one of the largest property holders in the district, and a need for insurance. By postponing this item the staff can look for other options. He said waiting for another 6 months may not be financially sound as interest rates can have a negative effect if changed. On a voice vote, the motion was unanimously approved.

Councilmember Kennedy moved for approval of Item T, seconded by Councilmember Brewster. Mayor Tooley said several Councilmembers expressed concerns that the City should not be "footing" the entire cost of a 5 or 6-minute segment on the City of Billings to approximately 640,000 households. He stated this is a way to expose the City of Billings to the "rest of the world". He said the actual broadcast costs would be paid by actual corporation sponsors. The Teaching Learning Network requires that the City pay the pre-production costs of approximately \$19,500. He said several Councilmembers suggested that other organizations share the pre-production costs. He noted that he has contacted the executive directors of the Billings Chamber of Commerce, the Downtown Billings Partnership and BSEDA. All three directors are interested in participating but must obtain approval from their boards of directors. Mayor Tooley recommended that the Council postpone the decision of the level of investment the City will make to this project until the next meeting. This will allow for feedback from the other organizations as to their level of commitment to the expenditure.

Councilmember Ohnstad made a substitute motion to delay approval of Item N to January 27, 2003, seconded by Councilmember Gaghen. Councilmember Gaghen asked about the time frame requirements from Teaching Learning Network. Mayor Tooley said, although he committed to the TLN that they would have an answer by January 14th, he intends to call them and relay the postponement information to them and ask for a commitment date of January 28th. On a voice vote, the motion was unanimously approved.

REGULAR AGENDA:

2. PUBLIC HEARING FOR SPECIAL REVIEW #731: a special review to allow the location of a beer and wine license with gaming in a Community Commercial zone on property located at 3969 Grand Avenue, described as Lot 1A, Block 1, Circle Fifty Subdivision, Amended. SOCO Development, owner and agent.

Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)

Zoning Coordinator Jeff Bollman said this special review allows the location of a beer and wine license with gaming in a Community Commercial zone located on the northeast corner of Grand Avenue and Shiloh Road. He noted there were no uses within the 600-foot radius that require the separation waiver. Part of the proposal is to construct an addition to the existing convenience store to accommodate the casino. Mr. Bollman said the total area of casino use is 1,238 square feet. He noted there have been two previous special reviews approved in this subdivision, for all beverage liquor licenses. He said the Zoning Commission recommends approval with the condition that the area approved for on-premise alcohol consumption shall be limited to the 1,238 square feet of area labeled as "casino" on the submitted site/floor plan. Councilmember Kennedy asked if the petitioners are satisfied with the condition. Mr. Bollman said they were in agreement at the Zoning Commission meeting. Councilmember Brown asked if they will be serving food. Mr. Bollman said that was not part of the original plan and not on the application.

The public hearing is opening. MYKEL STOCKTON, 3114 STILLWATER DRIVE said he is part owner with his father in the business. He said a sandwich shop was originally located on the property and is now closed. The only interest in renting the space was by a casino proprietor. He said they would run the casino themselves with only 20 machines allowed (per license). He noted there would be no food service. There were no other speakers. The public hearing was closed.

Councilmember Ohnstad moved for approval of the Zoning Commission recommendation, seconded by Councilmember Kennedy. Councilmember Brewster noted that the changes over the years from gas station to convenience store to casino show how economics drive change. On a voice vote, the motion was unanimously approved.

3. PUBLIC HEARING AND RESOLUTION 03-17942 annexing a tract of land situated in the NE4 of Section 14, T1N-R26E, containing 9.9197 acres. B&R Development, owners. (Annex #02-18). Staff recommends approval of the public services report and conditional approval of the annexation. (Action: approval or disapproval of Staff recommendation.)

Planning Staff Member Bruce McCandless said the property is being annexed by petition from B & R Development who is the property owner. This is an unplatted tract of land located at 2122 Bitterroot Drive. Zoning on the property is Residential 7,000 that permits single and two-family dwellings. He said the future proposed land use is for single-family residential use. The surrounding land is also zoned Residential 7,000, he added. Mr. McCandless noted that B & R Development also developed the adjacent Daniels Subdivision. He said the concurrent subdivision application will be considered

by the Planning Board Tuesday evening, January 14th. The Council will consider the Planning Board's recommendation on January 27th. Mr. McCandless said the parcel is contiguous to the city limits. He said the staff recommends that the City Council approve the public service report and the resolution annexing this property, with the following conditions:

1. That prior to development of the site the following shall occur:
 - a. A Development Agreement shall be executed between the owner(s) and the City that shall stipulate specific infrastructure improvements and provide guarantees for said improvements; or
 - b. A Subdivision Improvements Agreement (SIA.) and Waiver of Protest to SID and PMD shall be approved and filed that will stipulate specific infrastructure improvements and provide guarantees for such infrastructure improvements.
2. All of the adjacent Bitterroot Drive shall be annexed. This will satisfy any jurisdictional issues.

Mr. McCandless said the annexation conforms to the Comprehensive Plan and the Annexation Policy. He said the City departments generally support the annexation. He noted the Fire Department commented that additional resources will be needed with this and other newly annexed areas. This property is currently served by BUFSAs. He noted there is a dedicated park in the adjacent Daniels Subdivision and park services will probably be guaranteed by cash in lieu of land and the owners will participate in a PMD to develop Daniels Park. Storm drainage will be handled on-site. Private solid waste haulers may be providing services to current property owners and this bars the City's Solid Waste Division from serving the property for a five-year time period. He said a traffic accessibility study was not required because there are fewer than 50 homes being developed on the property. Financing for city facilities will be 100% financed through the developers.

Mr. McCandless noted that the fiscal impact analysis is based on a number of assumptions and has limited usefulness with small areas such as the proposed annexation. The analysis points out that the development may not pay the full cost of the Public Safety Fund and General Fund services.

Councilmember Brewster noted that the temporary storm water retention that serves the adjacent Daniels Subdivision is inadequate for the high water table in that area. He expressed concern for this same problem in the proposed annexation area. He asked if this will severely impact the water table that is at times near the surface. Mr. McCandless said this property will not drain in the same direction as Daniels Subdivision. He said he did not think the water retention from this subdivision will impact Daniels Subdivision and noted that the retention basin will have to be designed with the water table issues in mind and approved by the City Engineer. Public Works Director Dave Mumford said when the storm water study is done the City will be looking at and giving consideration to the impact on adjacent property owners.

Councilmember Brewster asked if dewatering will be part of the process. He expressed concern for the shallow wells in the area. Mr. Mumford said it would depend on the water table. He said if the water table is too high, dewatering would be necessary before City services could be installed. He added that a plan would have to be approved that would demonstrate that adjacent wells would not be adversely affected. Mr. McCandless said the only point that would require possible dewatering would be the point

of connection with the storm sewer trunk line. Any sewer laterals to the west would not likely require dewatering prior to installation. He added that these are subdivision issues that would be considered at another Council meeting.

Councilmember Brown asked what areas of Bitterroot Drive are being considered for annexation. Mr. McCandless said only the portion immediately adjacent to the property. Councilmember McDermott asked what part of Bitterroot Drive would be annexed. Mr. McCandless said the entire width of the road adjacent to the property. Councilmember McDermott expressed concern regarding the actual portion of Bitterroot Drive that will be annexed and who would maintain the road when County is on either side. Mr. McCandless said that only the portion that is adjacent to the private property would be annexed and there are several areas where City and County have both formal and informal agreements concerning joint maintenance. Councilmember McDermott said that she would be willing to listen to public concerns about any subdivision issues as there will not be a public hearing when this property comes before the Council for subdivision approval.

Councilmember Gaghen noted that the water issue and the high water table are problematic and a "red flag".

The public hearing was opened. JUDY REED, NO ADDRESS GIVEN, C/S 1073 PROPERTY OWNER, said she and her husband own property along the north side of the proposed subdivision. She said they protest the annexation of the 10-acre tract as it is an encroachment by the City into a rural area. There are 34 homes in this rural area that would not be compatible. She noted that the environmental assessment stated that there are similar subdivisions to the south and east. The only similar subdivision is to the west. The area between Barrett Road and Mary Street has irrigated tracts of land with deeded water rights served by a series of ditches. Ms. Reed said annexation and development of this subdivision would sever the irrigation system to the north and east, including their property. She noted that there is no replacement proposal for the abandoned ditch; only an easement for irrigation along the north side. Ms. Reed also noted that the proposal states that each lot can drill wells for lawn irrigation. This would deplete the existing wells in the area that are depended upon for water to livestock. Dewatering will also deplete the wells. She noted that during irrigation season the water table is very high and water can be found in basements, crawl spaces and during post-hole digging. She said she thinks all of the future homes would have water problems during the irrigation season. She questioned whether the City is prepared to compensate the surrounding affected homeowners for damages that could occur from this annexation.

KURT THOMPSON, ENGINEERING, INC. said he is working with B & R Development on this project. He said the project conforms to the Annexation Policy. He noted the smallest lot that is planned is under 8,800 square feet and the largest is 17,000 square feet.

KATHY BARKELL-KIRK, 1439 BARRETT ROAD, said she strongly opposes this subdivision. She said her concern is for the high density subdivision that will be situated in the middle of an irrigated rural area. The proposed subdivision does not fit in with the character of the area. It represents urban sprawl. She said only 330 feet of the proposed annexation touches the current city limits. She said she lived through dewatering in the 80's when the trunk line was installed in Barrett Road and her well was dry for 7 months. She said she is also concerned about the irrigation rights of deeded water rights users.

She is also concerned about possible standing water with the water retention proposal that could spawn West Nile Virus. She requests that a DEQ study be done and questioned traffic safety with regard to Mading Drive, Bitterroot Drive, Mary Street and Barrett Road. She said the area property owners are in agreement that they do not support this annexation. She submitted over 75 signatures that attest to this.

PETE TURNER, NO ADDRESS GIVEN, said he lives just north of this annexation. He said his major concerns are with possible contamination of wells in the area from the dewatering process. There have been problems in the past. He said the developers of the Daniels Subdivision showed an indifference to property owners who depend on the effectiveness of the irrigation system. He also said those developers promised to keep the surrounding property owners involved in the future plans but failed to do so. He said when the dewatering was done in the 1970's it affected the surrounding wells and several lawsuits resulted.

IVEEN PRYOR, MADING DRIVE & BITTERROOT DRIVE, said she opposed the proposed subdivision. She said the development is inconsistent with the Yellowstone County Growth Policy because the subdivision is incompatible with the character of the neighborhood. She noted the smallest property in the area is 1.96 acres. She cited the mobile home development recently approved on Bitterroot Drive that complies with the requirement to develop affordable housing in the area. The impact of that development would strain existing public services, not including the proposed annexation. She noted that fire protection is a constant concern for small landowners, particularly during this time of drought. An area of higher density increases the potential for fire danger. She also expressed concern for traffic safety on Bitterroot Drive, as speeding and increased traffic flows are potential problems. She said the process of dewatering will affect her water source that she depends on for everyday use. Ms. Pryor asked what guidelines will be used to insure unencumbered delivery of irrigation water to landowners north of the proposed subdivision. She asked the Council to reconsider this development.

KAREN HINMAN, MADING DRIVE, said she has the same concerns of all the previous speakers. She said she is in full opposition of this annexation and asked the Council to reconsider.

EUGENE MELHOUSE, 1800 BLOCK OF BANNACK, said he comes from a farming and ranching family and has lived in the area since 1988. He said he thinks the proposed annexation needs more work before proceeding. He is concerned about the future homes that will have water in their basements and crawl spaces when the irrigation season begins. He said he does not know how the residents of the proposed subdivision will exit the area onto Barrett Road as the property is privately owned. He said he is against the project and asked the Council to reconsider.

JIM CORCORAN, 2314 BITTERROOT DRIVE, said he lives north of the proposed annexation. He said he concurs with the same concerns as all of the previous speakers. He said there is an obvious problem with the irrigation as the ditches will go through the proposed subdivision and the affected property owners have deeded water rights to the irrigation system. He said there are no assurances as to the functionability of the proposed replacement ditch and expressed concern about the project interfering with the beginning of the irrigation season. He said the retention basin poses problems and will be a hazard for the neighborhood and livestock owners. He noted that in one instance the elevation of the street is below the bottom of the ditch. The only solution to that is siphons

which will greatly reduce the ditch "head" pressure. He said he hopes the Council will consider the surrounding neighbors' concerns when they make their decision.

There were no other speakers. The public hearing was closed. Councilmember McDermott moved for approval of the staff recommendation, seconded by Councilmember Brewster. Councilmember Brewster said all the concerns raised this evening apply to the Subdivision Improvement Agreement that will be discussed at the public hearing with the Planning Board tomorrow night. He advised the speakers to come to that public hearing and express their concerns about the ditch and the storm water retention that are very legitimate concerns. He added that the Planning Board will make their recommendation to the Council based on the comments expressed at that public hearing. He noted the only decision the Council can make tonight is whether the City can provide services to the annexation and determine if it meets the annexation criteria.

Councilmember McDermott said that the annexation appears to meet the required criteria and the Council is obligated to approve it. She said she is concerned about the serious problems that have been expressed that may require considerable negotiation during the subdivision process. Councilmember Gaghen said she would have serious considerations about approving this annexation with the concerns that have been expressed by the surrounding property owners.

On a voice vote, the motion was unanimously approved.

4. PUBLIC HEARING AND RESOLUTION annexing Lot 124, Sunny Cove Fruit Farms, Dober, LLC, owner. (Annex #02-19). Staff recommends approval of the public services report and DENIAL of the resolution of annexation. (Action: approval or disapproval of Staff recommendation.)

Planning Staff Member Juliet Spalding said this is a petitioned annexation request. The parcel area is 10 acres located at the northwest corner of Grand Avenue and 58th Street West and is zoned Agricultural Open Space and has that use. She said the proposed use is for single-family residential subdivision at Residential 6,000 densities. She noted there is a zone change application concurrent to the annexation that proposes a 37-lot subdivision. Ms. Spalding noted that the city limits are one mile to the north and approximately two plus miles to the east. She said the staff recommendation is to approve the public service report and deny the annexation request. She said this annexation is within the sphere of influence of the annexation policy but does not comply with several other goals of the annexation policy. The parcel is not contiguous or wholly surrounded by the City limits and is not larger than ten acres, nor does it currently receive City services. The proposed annexation will not provide affordable housing, employment centers or mixed uses.

Ms. Spaulding said it does meet the Comprehensive Plan goals of capitalizing on existing public water and sewage systems but does not meet the following goals: 1) to protect against encroachment of incompatible or unrelated uses, 2) to curb urban sprawl and discourage leapfrog development, 3) to promote rational land use, and 4) to encourage urban growth and infill areas.

The annexation petition also does not meet the following goals of the 2001 West Billings Plan: 1) to reduce sprawl and development pressure on agricultural lands or conserve irrigated farm land, 2) have medium and high-density development located close to commercial centers, medical facilities, park and recreational amenities, and 3) plan for

the orderly and efficient urbanization of agricultural lands. She summarized that the location and size of this parcel makes it less efficient and more costly to provide City services. City facilities such as water and sewer are located within the area, but there would be a need for on-site storm water drainage.

Ms. Spaulding said a fiscal analysis shows the development, through taxes and fees, would not support the cost of general services to the parcel. She noted there were 37 letters of protest received from nearby property owners objecting to the annexation. The objections were based on the density of the development and incompatibility with the surrounding land uses. She reiterated that it does not meet the goals of the Annexation Policy, is not consistent with the West Billings Plan or the 1990 Comprehensive Plan. She also noted that routes for Solid Waste and the Street Department would be impacted.

The public hearing was opened. TOM LLEWELLYN, 2110 OVERLAND AVENUE, said he does not agree with the report from the Planning Board. He said the Council has set a policy by extending the urban planning boundary and water and sewer lines to the area. He said that smaller parcels such as the proposed annexation should be considered when this policy decision is in effect. He said the parcel is 10 acres and is within 1,800 feet of the proposed plat of Yellowstone Meadows and close to Cottonwood Park.

ROSS ADAMS, 3535 RACQUET DRIVE, said he is a co-owner of land adjacent to the proposed annexation. He said he opposes the project because of the density. He noted that Cottonwood Park is an undeveloped park. He said the property in the area owned by the School District does not indicate a school will be built there, especially in light of their financial difficulties. He asked the Council to consider opposing this annexation. He noted that the homes being built in the area are typically on 5 to 10-acre parcels.

DAN SLOAN, 414 MONTCLAIR DRIVE, said he owns 20 acres north of the proposed annexation. He said he is opposed to the annexation because of the leapfrog development issue. He noted that the property around the annexation is agricultural. He asked the Council to deny the annexation.

DON LORENZ, OWNER OF TRACT 102, said his property is adjacent to the proposed annexation. He referred to the Declaration of Covenants and Restrictions document that contains the guidelines for development of the parcel. He is concerned that the document does not protect the interests of the surrounding property owners and that the development may or may not be built according to the present plan. He noted the present plan includes 37 lots with 36 for single-family residences and 1 large lot for 14 townhomes. He said this does not fit with the area.

RON FRANK, 5816 GRAND AVENUE, said he lives across the street from the proposed annexation. He asked why "are we paying the Planning Staff if we won't listen to them?"

JIRI HEGER, OWNER OF TRACT 90, said he is in the process of building a home on his lot. He said the proposed annexation is not adjacent to the City limits. He said appropriate roads need to be available for safe travel of bikers, walkers and joggers.

KURT DOFFINGER, NO ADDRESS GIVEN, said he is one of the owners and developers of Tract 124. He said prior to this petition request for annexation he read the Northwest Urban Planning Study, Yellowstone Comprehensive Plan, 2001 West Billings Plan and the 2003 Growth Policy. He noted they imply that development in that area should be developed to urban standards and not promote sprawl. He said City sewer and

water service border the proposed annexation. He said it is B & R's intention to develop affordable housing and promote more moderately priced homes. He said it is his understanding that if the water and sewer service come though the area they are meant to be used and adjacent properties can contribute to the installation costs of those services.

CRAIG CANFIELD, 407 CONSTITUTION AVENUE, said he works for Interstate Engineering and is working with the developers on this project. He said there are certain points to consider with this annexation. It will allow the development to occur with more control by the City. He noted that water and sewer are available. He said if the annexation does not occur there is a possibility of a development of small acreage lots with individual wells and septic, or small community systems. He said the development would provide a source of moderately priced homes. Mr. Canfield said the developer could be included in a Park Maintenance District for Cottonwood Park. He said he did not think the annexation contributes to additional sprawl, but rather provide an opportunity to control it.

BETTY BERGLAND, NO ADDRESS GIVEN, said she is a realtor and partner in the development. She said this development would provide a source of moderately priced homes for this area, with homes in the price range of \$130,000 to \$187,000. This will also provide housing for first time home-buyers because financing limits have been raised to \$160,000. This will in turn provide economic benefits to the building trades in Billings.

RON BERGLAND, 3919 PINE COVE ROAD, said is one of the owners and noted that the restrictions were filed after the zoning application was filed. He said the proposed annexation is on the path to Ironwood Subdivision and will not put additional pressure on City services. He said if the City bypasses this annexation, there may not be a second chance to annex and the revenue will be lost forever. He said he thinks leapfrog development already happened when Ironwood and Yellowstone Country Club Estates were annexed. The appropriate next step would be for the City to annex everything in between and the City in an orderly fashion. He noted if it was possible to obtain City sewer and water without annexation he would be "all for it".

DOUGLAS FRANK, NO ADDRESS GIVEN, said he owns property across the street to the south of the proposed annexation. He said he does not think it is economically feasible for the City to annex and maintain and serve this parcel especially when it doesn't meet a lot of the annexation criteria and only has close connection to water and sewer "going for it". He said he is against this annexation and hopes the Council is also in opposition.

CINDY DOFFINGER, NO ADDRESS GIVEN, said she is one of the owners/developers of Dober, LLC. She said the proposed annexation is within the sphere of influence, the 2001 West Billings Plan and the Northwest Urban Planning Study. She also noted that the \$5 Million water and sewer development borders the property. The annexation will promote orderly growth and create an efficient usage of public services that will generate revenue for the City of Billings. Affordable housing is another goal that will be met with this annexation.

KIM LORENZ, OWNER OF LOT 102, said she owns the lot adjacent to the proposed annexation. She said the proposed development is not in harmony with the rest of the rural atmosphere and puts the surrounding property values at risk.

JOHN MAHAN, OWNER OF LOT 122, said he farms in the West Billings area. He said he thinks the annexation should be curbed until there are four lane roads in the area

to accommodate both car and farm equipment traffic. He said the road cannot handle the traffic nor the speed of the traffic currently there now.

JOE WHITE, 926 NORTH 30TH STREET, said he wanted to see a detailed master plan that the City will follow.

CHARLIE GAMBLE, NO ADDRESS GIVEN, said with his experience working with the Planning Department and working on the West Billings Plan he concurs with the recommended denial.

There were no other speakers. The public hearing was closed. Councilmember Jones moved for approval of the staff recommendation to approve the public services report and deny the annexation, seconded by Councilmember Brewster. Councilmember Brown said any kind of expansion in the City creates jobs. Councilmember McDermott said she traditionally votes against leapfrog developments like this and she noted that she has been hearing the same incompatibility issue in the last two annexations. Councilmember Jones said it appears to be leapfrog development but noted that annexations have gone as far as Ironwood. He said he struggles with this as annexation allows for better control of development. On a voice vote, the motion was approved with Councilmember Brown voting "no".

The Mayor called for a 5-minute break at 8:37 P.M.

The Mayor reconvened the Council Meeting at 8:45 P.M.

5. PUBLIC HEARING AND RESOLUTION 03-17943 creating Park Maintenance District #4014 for Rush and Shiloh Point Subdivisions. Staff recommends approval of the resolution. (Action: approval or disapproval of Staff recommendation.)

There was no staff presentation. The public hearing was opened. CHARLIE GAMBLE, 1819 CRYSTAL DRIVE, said he is not sure where the park is, but is in favor of it. He said there is a bike path that will cross Crystal Drive and he is concerned that traffic is damaging landscaping that the City has installed at the east end of the underpass on Shiloh Road.

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

6. PUBLIC HEARING AND RESOLUTION 03-17944 creating Park Maintenance District #4018 for Frances Park in Lake Hills Subdivision, 24th Filing, Block 56, Burning Tree Road. Staff recommends approval of the resolution. (Action: approval or disapproval of Staff recommendation.)

There was no staff presentation. Councilmember Brewster asked if there will be parking adjacent to the park. Parks and Recreation Director Don Kearney said there is no parking inside the park boundaries but on-street parking is available adjacent to the south side of the park. Councilmember Brewster asked if speed limits are reduced on streets adjacent to parks. Public Works Director Dave Mumford said the speed limits near parks are the normal posted speed limits, generally 25 MPH.

Councilmember Brown asked if this park was donated. Mr. Kearney replied "yes", it was donated prior to the subdivision regulations. It is an improved park donated by Mr. Ken Holler. Councilmember McDermott asked if the staff could research when the 15

MPH speed limit around parks was discontinued. Councilmember Kennedy said a discussion approximately 7 or 8 years ago about the speed limit on Colton Drive precipitated the move toward more consistency in speed limits.

The public hearing was opened. GREG ALBRIGHT, 1829 WENTWORTH, said he first learned of the park when he got a copy of the notice for the park. He said the assessment for the park maintenance district is not a lot of money and he is happy to participate. He said his concern is for traffic that does not negotiate a turn near the park and continually "takes out" his or a neighbor's mailbox. He asked that the City put up street signs or speed limit signs to avoid this problem and control the speed in the area. He asked the Council to include in their approval a recommendation to adjust the speed limit in the area of the park.

There were no other speakers. The public hearing was closed. Councilmember Brown moved for approval of the staff recommendation, seconded by Councilmember Brewster. Councilmember Brewster noted that part of the park development is to include park signs. On a voice vote, the motion was unanimously approved.

7. PUBLIC HEARING AND DECISION on allowing Car Rental Dual Branding at the Billings Logan International Airport Terminal Building. Staff recommends approval of dual branding. (Action: approval or disapproval of Staff recommendation.)

Airport Director Bruce Putnam said the current car rental concession agreement was set to expire December 31, 2002. During the bidding process, Corpat, the concessionaire that operates National Car Rental requested a change in the RFP process to include dual branding. Dual branding is the act of allowing two car rental brands to operate from the same car rental concession space. The other three car rental concessionaires have protested this change to the bid process. In order to give all interested parties an opportunity to express their viewpoints, the City Council extended the car rental agreements to March 31, 2003. He noted the public hearing tonight will allow those parties to express their views. Councilmember Kennedy asked if dual branding is common to the car rental business. Mr. Putnam replied "yes" and noted that it is present in the airline business and agreements as well.

The public hearing was opened. STEVE JACOBSON, 1117 POLY DRIVE, said he is the owner of the Alamo/National franchise. After September 11th the parent company, in order to facilitate chapter 11 bankruptcy, merged Alamo and National car rentals at approximately 100 airports in the nation. He said dual branding is not new to the industry in general or the travel industry. It will promote additional competition, travel choice, convenience and increased revenue at the Airport. He said it is an excellent opportunity for the Airport to maximize revenues in a limited space.

STEVE COSTLEY, 2221 BOULDER AVENUE, said he represents Overland West the Hertz licensee in Billings. He said the Bozeman and Helena Airports have refused permission for dual branding proposals for the current interim contracts. A formal request to the Kalispell Airport for dual branding has been withdrawn by the National Car licensee. Jackson Hole Airport recently denied permission for the Alamo and National dual branding. Great Falls Airport has approved the dual branding on their contracts. He said his company encourages the Council not to permit dual branding. He said he wants to see

all competitors bid on the same fair and equitable basis. This is healthier for the business and the City's revenues, he added.

PETER VANVALKENBURG, NO ADDRESS GIVEN, said he is Director of Airport Relations for ANC Rentals, who fully supports the staff recommendation. He noted the staff report details several of the large airports that have allowed dual branding. He said the US Court of Appeals has affirmed the lower courts decision to deny the standing of Avis and Hertz in the bankruptcy case with ANC. Hertz and Avis have tried to contest and interfere with the consolidation and restructuring plans of ANC. There are other consolidation efforts with Avis and Budget. Dollar and Thrifty now operate as a single company to centralize their resources. These consolidations are all one step closer to dual branding.

ROBERT WORK, VICE PRESIDENT OF ENTERPRISE RENT-A-CAR, said his agency has two operations in Billings. He said he wants a level playing field as far as competition. If two brand names operate under one company name it is not a level field.

ROB DOYLE, AVIS CAR RENTAL, said he has the Billings, Missoula and Kalispell franchises. He said the basic point is a question of fairness. When companies consolidate, one is more business oriented and one is more leisure oriented. He said he does not think dual branding will bring more revenue to the City. He said the value of the counter space will also decrease.

ANDY WILCOX, OWNER OF CORPAT, ALAMO/NATIONAL, said Corpat is one company with two brands. He said that in regard to the level playing field issue, everyone is free to do this. With the tourism industry decreased after September 11th, many companies are doing this. He said Corpat is not asking for anything special.

GREG MURPHY, NO ADDRESS GIVEN, said he practices law and represents the Hertz, Avis and Budget licensees. He said branding is important and is how the market works. He said the Council's interest should be to protect the market and not any of the car rental agencies. There is an adverse impact on the market when two companies market as one entity. It also reduces the value of the concession for all other agencies and reduces the number of bidders for those spaces. He said the best interest of the City is to have separate entities.

Councilmember Brown asked what the revenue from the rental agencies is based on. Mr. Costley said it comes from both the number of car rentals and space rental. Councilmember Kennedy asked where the car rental market occurs, with everyday foot traffic or reservations. Mr. Costley said 20% is walk-up and 80% comes from reservations. Councilmember Kennedy noted that the majority of the car rental business is from an outside source.

WAYNE SCHILE, 2064 MOLINA ROAD, POLSON, MONTANA, said he has known Andy Wilcox since he was born. He is here to support his position. He said dual branding is not new and is more important today than it used to be. He supports the staff recommendation to allow the dual branding. He noted Corpat is a single company.

DOLLY RYAN, THRIFTY CAR RENTAL, said she and her husband have owned Thrifty Car Rental for seventeen years. She noted that the car rental agencies are listed as two separate companies when they appear on the Internet. She said it is an unfair advantage for them to be at the Airport as one company but have the capability of taking reservations as two companies. She said she doesn't think the market can bear dual branding.

There were no other speakers. The public hearing was closed. Councilmember Gaghen asked if the 4 car rental entities are limited to a certain number of cars in their fleet. Mr. Putnam said the market dictates that; whatever the demand is is what is provided. He said there are a finite number of vehicle stalls but they have been able to accommodate the fleet sizes. Councilmember Gaghen asked if the Alamo/National consolidation will change the vehicle space requirements for that company. Mr. Putnam said he couldn't estimate that answer but said competition generally stimulates the market, adding that he thinks there will be a marginal increase in revenue due to the consolidation.

Councilmember Kennedy moved for approval of the staff recommendation, seconded by Councilmember Brown. Councilmember Jones asked if there was a solicitation for all companies to do what ANC did. Mr. Putnam said there was. Councilmember Jones said, as far as the fairness issue, anyone could consolidate and take advantage of the same efficiencies as ANC did. Mr Putnam said it is his opinion that this is already occurring with Avis and Avis Preferred, Hertz and Hertz Gold.

Councilmember Brewster asked Mr. Putnam to speak to how dual branding will increase the market and revenue. Mr. Putnam said the competition is a good thing and usually stimulates markets, which in turn, creates more revenue. He said it also benefits the consumer in many ways. He said dual branding will bring in more brands and increase the competition. He noted that Alamo is not present now and that will create new dollars for the Airport.

Councilmember Kennedy said he agreed with Mr. Wilcox's statement that when there is no noise from competitors, then something is wrong. He said there is competition in the car rental industry and in his opinion that is a good thing. He said dual branding is part of the changing market and the City cannot buck the trends without losing something. He said he is in favor of this proposal.

Councilmember Jones asked how many bidders usually respond. Mr. Putnam said most of the time is has been the four bidders with an occasional one or two additional.

Councilmember Brown asked if every bidder has been offered the same thing relating to their contracts. Mr. Putnam said the same opportunity is being offered to everyone.

Councilmember Gaghen asked if all four rental spaces are put up for bid at the same time. Mr. Putnam confirmed that was correct.

On a voice vote, the motion was unanimously approved.

8. RE: SID 1360: For water, sewer, storm drain and street improvements to the Gabel Road and S. 32nd Street West Area:

- (A) **PUBLIC HEARING AND RESOLUTION 03-17945 creating SID 1360.**
Staff recommends approval. (Action: approval or disapproval of Staff recommendation).
- (B) **Contract for Professional Services for consulting engineering services on SID 1360. (Delayed from 12/9/02).** Staff recommends approval. (Action: approval or disapproval of Staff recommendation).
- (C) **RESOLUTION 03-17946 authorizing advertising for construction bids on SID 1360.** Staff recommends approval. (Action: approval or disapproval of Staff recommendation).

Public Works Director Dave Mumford said staff is asking for approval of the creation of SID 1360 and the award of the engineering contract. He said this is a very large SID and includes the construction of Gabel Road from South 29th Street to Zoo Drive with a peripheral road. He said there have been no formal protests from involved property owners as of today. The total estimated cost of the project is \$8,735,000 that will be recovered through direct assessments to property owners within the district boundary. The project will include construction of water and sewer, storm drains, street sections and street lights. There is one section of the road that will not be constructed to standards and that is between Hesper Road and Zoo Drive. The road will be built to ½ street standard to accommodate a property owner that could not financially participate at this time. Other property owners in the area are aware that they will be participating with a larger portion because of this and have agreed to this.

The public hearing was opened. JIM ROSCOE, OWNER OF ROSCOE STEEL, said their plant is situated between Hesper Road and Gabel Road. He said the company was founded in 1953 and has occupied the current site since 1975. He said the plant needs 29th Street West to allow for entry into the plant site and said he supports the project. He noted this project is a logical extension of the Shiloh Interchange project as a main artery through the neighborhood. He added that the South 29th Street entrance will serve their plant site for the next 25 years.

DON BOTTRELL, 2110 OVERLAND AVENUE, said he represents Bottrell Family Investments, the group that is developing property in the Gabel Road area. He said the SID will encompass about 115 acres of their property, a third of the area of the project. He said the SID is important to their development and to the West End of Billings, where a high-tech subdivision that will bring jobs to the community is being created. He said he supports the project.

GENE BROSOVICH, OWNER BROSO VALLEY PARK, said his property extends from Zoo Drive to Hesper Road. He said his intent is to create a nice entry and a thoroughfare through Billings to ease the bottleneck on King Avenue. He said this is a priority for the City and for his operation.

DAN KENNEDY, 2655 BUFFALO DRIVE, said he owns Ashley Furniture. He said benefits to the consumer is a top priority. He said this project fits that goal and he strongly recommends that the Council approve it.

There were no other speakers. The public hearing was closed. Councilmember Brewster moved for approval of the staff recommendation on Item 8A (to create the SID), seconded by Councilmember Kennedy. On a voice vote the motion was unanimously approved.

Councilmember Brewster moved for approval of the staff recommendation on Item 8B (to approve the contract for professional services), seconded by Councilmember Kennedy. On a voice vote the motion was unanimously approved.

Councilmember Brewster moved for approval of the staff recommendation on Item 8C (to approve the resolution authorizing the advertising for construction bids), seconded by Councilmember Kennedy. Councilmember Jones said this is a great project and he is glad to see it happen. Councilmember Gaghen said she is gratified to see community support for this project. On a voice vote the motion was unanimously approved.

Council Initiatives:

- Councilmember Brewster moved to direct staff to prepare a report to Council on the eight (8) unfinished sidewalk pieces on St. Andrew's Drive and to include them in the Miscellaneous Sidewalk Program, seconded by Councilmember Kennedy. Councilmember McDermott asked that the report also include suggestions to address the mailboxes on St. Andrew's Drive that are located in the middle of the sidewalk and violating ADA access. On a voice vote, the motion was unanimously approved.
- Mayor Tooley noted that the Resolution of Support for maintaining local control will be on the agenda at the January 27th meeting.

ADJOURN —With all business complete, the Mayor adjourned the meeting at 9:45 P.M.

THE CITY OF BILLINGS:

By: _____
Charles F. Tooley MAYOR

ATTEST:

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