

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

March 10, 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 Mark Kennedy.

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

MINUTES – February 24, 2002. Approved as printed.

COURTESIES – City Administrator's Award (Airport staff)

- Jess Boatley from Boy Scout Troop #370 was in the audience and recognized by the Mayor.
- Assistant City Administrator Kristoff Bauer presented the Airport with the City Administrator's Award, noting the exemplary performance of the entire staff following the events of Sept 11th and all the security regulation changes that followed. Mr. Bauer noted that usually an individual is presented with this award, but in this case, the entire department was being recognized.
- Mr. Angelo Bianco, Commander of Chapter 10 of the DAV presented Mountview Cemetery with a check for \$1000 for the veterans' section of the cemetery for annual upkeep and maintenance. Past chapter president Art Klein spoke briefly on the veterans' hospitals and the death rate of veterans. He noted there are 166 veterans living in nursing homes in the City of Billings. There are a total of 107,000 veterans in the State of Montana with 15,416 of them residing in Yellowstone County. He requested help from the Council in attempting to get the new Veterans' Nursing Home located in Billings or Yellowstone County, as well as another veterans' cemetery in Billings. He noted there is approximately \$90,000 in escrow for the purchase of a cemetery.

PROCLAMATIONS – Mayor Tooley.

- **Girl Scout Week: March 9-15, 2003**
- **Developmental Disability Awareness Month: March**

BOARD & COMMISSION REPORTS. None

ADMINISTRATOR REPORTS – Dennis Taylor.

- Assistant City Administrator Kristoff Bauer spoke about the Economic Development Summit that will be held in Billings this Spring, tentatively planned for May 28th and 29th at MSU-Billings. The summit's intent is to discuss the tools that need to be utilized to best "grow the economy". Planning is not

complete at this point. He noted that the City has been asked to help sponsor the event. More details will be forthcoming.

- Copies of the legislative report are on the council's desk this evening. Mr. Bauer said he will be in Helena tomorrow at the Legislature to assist with the bill involving impact fees. The hearing on HB640 has been cancelled and not yet rescheduled. HB640 is the replacement for the "donut" bill. The bill by Rep. Glaser regarding local option tax is being monitored and he said Councilmember Kennedy will be in Helena to assist with monitoring this bill. Councilmember Brewster noted there are 3 different versions of the local option tax bill before the Legislature.

CONSENT AGENDA:

1. A. **Legislative Report and direction to Staff.**

B. **Bid Awards:**

- (1) **One (1) New Current Model 2003, ¾ ton, Regular Cab, 2WD Pickup with Utility Box.** (Opened 2/18/03). Recommend Denny Menholt Frontier Chevrolet, \$21,270.00.
- (2) **Two (2) New Current Model 2003 2WD Backhoe/Loaders.** (Opened 2/18/03). Recommend RDO Equipment Co., \$184,940.00.
- (3) **One (1) New 2003 Current Model Hydraulic Sewer Jet Cleaner System, Truck Mounted for Public Utilities Dept.** (Opened 2/18/03). Recommend Utility Specialties, Inc., \$154,400.00.
- (4) **Concessionaires to Operate Four (4) Car Rental Concessions in Airport Terminal Building.** (Opened 2/25/03). Recommend Overland West Inc., dba Hertz Rent-A-Car, \$1,405,006.00; Corpat Inc., dba Alamo/National, \$1,000,000.00; Enterprise Rent-A-Car Company, \$695,378.00; and Missoula Acceptance Co. dba Budget Rent-A-Car, \$507,000.00.
- (5) **One Tow Behind Stump Cutter.** (Opened 2/25/03). Recommend delaying award to 3/24/03.
- (6) **Gabel Road Corridor and South 29th Street West Properties (SID 1360).** (Opened 2/25/03). Recommend delaying award to 3/24/03.
- (7) **Overhauls of MET Transit Detroit Diesel Engines.** (Opened 3/4/03). Recommend delaying award to 3/24/03.

C. **MDT General – Project Specific Agreements for 2003 CTEP Projects:**

- (1) STPE 1099 (38) Trans Tech Trail
- (2) STPE 1099 (39) Washington School Walks
- (3) STPE 1099 (40) Stewart Park Trail
- (4) STPE 1099 (41) Lake Elmo Pedestrian/Bike

D. **Easement Agreement** with NorthWestern Energy for an underground power line for electrical power to the Public Utilities Dept new water pumping station on the

west end of the Airport, T1N-R25E-S25: NESW – an 8-ft strip of land across C/S 2334, Tract 1.

E. Easement Agreement with NorthWestern Energy for an underground power line for electrical power to the Airport's newly developed Executive Hangar area located west of the Operations Center, T1N-R25E-S25: NESW – an 8-ft strip of land across C/S 2334, Tr 1.

F. Approval of a loan to Urban Frontier Development Venture 2, L.P, for partial financing of six (6) loft apartments and commercial office space at 2606-2608 Montana Avenue, \$220,000.00, term: 20 years.

G. Transfer Line Item budget amounts within the Tax Increment Financing (TIF) Fund per request of the Downtown Billings Partnership (DBP).

H. Acceptance of grants and approval of Recreational Trails Program agreements for Swords Park Trail, \$35,000.00.

I. Temporary Street Closure for Downtown Billings Association (DBA) *St. Big Skyfest Parade*, July 31, 2003.

J. Temporary Street Closure Downtown Billings Association (DBA) *Strawberry Festival*, June 14, 2003.

K. Temporary Street Closures for Downtown Billings Association (DBA) *Food Fair*, May 28, June 25, July 30, and August 27, 2003.

L. Temporary Street Closure for Downtown Billings Association (DBA) *Christmas Stroll*, December 5, 2003.

M. Temporary Street Closure for Downtown Billings Association (DBA) *Burn the Point Car Show*, August 30, 2003.

N. Temporary Street Closures for Downtown Billings Association (DBA) *Farmers' Market*, Saturdays beginning July 18 thru October 4, 2003.

O. Temporary Street Closure for Downtown Billings Association (DBA) *Holiday Parade*, November 28, 2003.

P. Temporary Street Closure for Yellowstone Art Museum *Arts and Crafts Summerfair*, July 11 - 13, 2003.

Q. Temporary Street Closure for Human Resources Development Council (HRDC) *St. Patrick's Day Parade*, March 15, 2003.

R. Public Hearing And Second Reading Ordinance 03-5240 revising

Chapter 8 of the Billings Montana City Code (BMCC) regarding Cemeteries and repealing Ordinance No. 01-5169.

S. Resolution 03-17965 relating to Special Improvement District No. 1363; creating special funds and accounts for the administration of certain money derived therefrom and defining the terms and manner of payment of a \$516,000 Special Improvement District No. 1363 Bond (DNRC Revolving Loan Program), Series 2003A.

T. Resolution 03-17966 relating to Special Improvement District No. 1363; creating special funds and accounts for the administration of certain money derived therefrom and defining the terms and manner of payment of a \$818,000 Special Improvement District No. 1363 Bond (DNRC Drinking Water Revolving Loan Program), Series 2003B.

U. Resolution 03-17967 amending Res. 02-17868 re: legal description on Annex #02-13 for property located near the intersection of Bitterroot Drive and Wicks Lane.

V. Bills and Payroll.

(Action: approval or disapproval of Consent Agenda.)

Councilmember McDermott separated Items C & F from the Consent Agenda. Councilmember Ohnstad moved for approval of the Consent Agenda with the exceptions of Items C & F, seconded by Councilmember Larson. On a voice vote, the motion was unanimously approved.

Councilmember Ohnstad moved for approval of Item C of the Consent Agenda, seconded by Councilmember Larson. Councilmember McDermott noted that North 22nd does not run along Washington School. She also asked for clarification of the responsibility of overrun costs on the Trans Tech Trail portion. Public Works Director Dave Mumford said the contract for the Trans Tech Trail states that Trans Tech will not be responsible for overrun costs. He said the City would be responsible and the contract is a standard contract that the City uses with other State jobs. Councilmember McDermott asked if the Trans Tech Trail is part of the BikeNet system. Mr. Mumford said it was. Councilmember McDermott asked what other projects are eligible for CTEP dollars. Mr. Mumford said any alternative transportation projects, such as bike or pedestrian trails, are eligible for these funds. Councilmember Poppler asked if the overrun costs are "open ended". Mr. Mumford said it is the City's responsibility to monitor the project to avoid overrun costs. He noted that the City has the opportunity to halt a project that "comes in over budget". On a voice vote, the motion was approved with Councilmember Poppler voting "no".

Councilmember Ohnstad moved for approval of Item F of the Consent Agenda, seconded by Councilmember Larson. Councilmember McDermott asked who was affiliated with the Urban Frontier Development Venture 2. Administrative Services Director Robert Keefe said the general partner is Randy Hafer. He said he did not know all of the other partners involved. Councilmember Poppler asked if this partnership has other

corporations that the City is loaning money to. Mr. Keefe said the only other loan to this partnership is for the building known as South Broadway. He added that the Revolving Loan Fund Committee is very thorough in their investigation of potential borrowers and sets certain stipulations to assure success of the loan. Councilmember Brown asked what the interest rate was on money the City borrows. Mr. Keefe said the current agreement says the interest rate is set as of the last day of September at the low Feds Fund rate. This is currently 1.5%. He noted by ordinance the City charges 1% above that rate. On a voice vote, the motion was unanimously approved.

REGULAR AGENDA:

2. PUBLIC HEARING AND RESOLUTION 03-17968 annexing land in Annex #03-02: Lots 1-9, 10A, 11A, Block 1, Zimmerman Trail Subdivision; remainder of Lot 1, Block 1, Brovista Subdivision; Lot 1B, Block 1, Amended plat of Lot 1, Block 1, Brovista Subdivision; City Park located in the remainder of Tract 1A of Amended Tract 1, C/S 1358; Lot 1A, Block 1, Amended plat of Lot 1, Block 1, Brovista Subdivision; and Zimmerman Trail Park. (Steven L. and Pauline A. Tostenrud ETAL petitioners.) (aka Zimmerman Trail area.) Staff recommends approval of the public service report and resolution annexing. (Action: approval or disapproval of Staff recommendation.)

Planning Staff Member Bruce McCandless said this proposed annexation is located on the top of the Rimrocks east of Zimmerman Trail and south of Highway 3. It includes 22 acres with 9 of the lots developed with single-family residences and similar development planned for the remaining 3 lots. He said this annexation is by petition from 92% of the owners of land in the area. The primary reason for annexation is to obtain City services, principally water. Mr. McCandless said there are two public parks included in the annexation. He said there were no objections from City departments to the annexation. He noted the Fire Department will need additional resources to serve the area at some future time and Solid Waste Division will be prohibited from serving the area for five years. Water service is available, but sewer will not be extended in the near future. He added no storm drainage or street improvements should be required.

Mr. McCandless said the City will collect \$8,300 additional City tax with this annexation. He noted that approximately \$13,000 in taxes and fees will be collected from these properties. He said the recommendation is for conditional approval, with the condition that all of the adjacent Montana Highway 3 will be annexed. In answer to Councilmember Poppler's question, Mr. McCandless said the south boundary of the Zimmerman Trail Subdivision is at the base of the Rimrocks. He said the boundaries do not include Wilshire Park. In answer to Councilmember Brown's question, Mr. McCandless said the State will maintain Highway 3 and Zimmerman Trail is a county road. He added that the State will continue to maintain Highway 3 without cost to the City after annexation.

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

3. PUBLIC HEARING AND RESOLUTION 03-17969 creating SID 1363 for the Briarwood/Cedar Park water and wastewater improvements. 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 Larson moved for approval of the staff recommendation, seconded by Councilmember Iverson. On a voice vote, the motion was unanimously approved.

4. PRELIMINARY PLAT of Rush Acreage Tracts Subdivision, Amended Tract 1. Planning Board recommends conditional approval. (Action: approval or disapproval of Planning Board recommendation.)

Planning Staff Member Bruce McCandless said this is a two-lot minor plat located at 1918 Shiloh Road, south of Parkhill Drive. He said the property owner is the Billings Urban Fire Service Area and the zoning is Residential 7,000 with a single family residence on the property. He said the potential use of the second lot is a future fire station.

He said the Planning Board is recommending approval with the following conditions:

1. The SIA will state that the property is subject to PUD water transmission and main fees, sewer trunk and lateral fees, system development fees and franchise fees. *Requested by Public Utilities Dept. to inform owners/purchasers that fees will be due when they connect to the systems.*
2. The SIA will indicate that the subdivision does not modify the easement agreement with the City filed under Document # 3107389. *Requested by Public Utilities Department to inform owners/purchasers that utility systems cross the property and will not be abandoned or removed regardless of the land's future use.*
3. The SIA will indicate that the property may be used for a fire station and any associated improvements may be required at the time of lot development. *Requested by Public Works Department to clarify that predicted improvements will occur only if a fire station is built at this location.*
4. Minor wording changes may be made in the final documents upon request of the Planning or Public Works Departments to clarify the documents and bring them into standard, acceptable format. The changes are not intended to alter the intent or extent of the documents. *Standard condition that permits minor changes to the final plat documents without requiring the subdivider to repeat the subdivision review and approval process.*
5. Subdivider shall comply with all applicable federal, state and local statutes, ordinances and administrative regulations during the performance and discharge of its obligations. *This condition informs the subdivider that all local and state laws and policies apply to the subdivision even if they are not specified in the documents.*

Mr. McCandless said a variance from BMC Section 23-601(d) prohibiting driveways on arterial streets to allow a 40' and a 30' access to Shiloh Road has been requested. Prior platting prevents these two lots from gaining access to any local street, so Shiloh is the only public street access that is available.

Mr. McCandless said the findings of fact are:

A. What are the effects on agriculture, local services, the natural environment, wildlife and wildlife habitat and public health, safety and welfare? [BMC 23-304 (c) (1) and MCA 76-3-608 (3) (a)]

1. Effect on agriculture

This subdivision will have no effect on agriculture. The property is too small to be used productively for crops or livestock.

2. Effect on local services

- a. Utilities – Water, sewer and storm drain facilities are in place in Shiloh Road. They are available for connection when the property develops. PUD fees will be due at that time.
- b. Solid waste – Since the property is partially developed and may have been served by a private hauler, the City may be barred from serving this land until 2005 (5 yrs after annexation). The City's landfill has adequate capacity for this waste.
- c. Streets - The subdivider will be responsible for the land's proportionate share of expenses when Shiloh Road is reconstructed. The Engineering Division is preparing SID creation documents and expects to bid the project this calendar year. The SIA and waiver of protest to creating SIDs ensures this property's participation in the future improvements.
- d. Emergency services – Billings Police and Fire Departments will respond to emergencies in this subdivision. The nearest fire station is Station #3 located at Parkhill and 17th, which is approximately 4 miles from this property. Police response will depend upon officer availability and location when a call for service is placed. AMR provides medical care and transport and response would probably come from the west station that is located in the 2500 block of Grand Avenue.
- e. Schools – The subdivision is in School District 2. Present and any future subdivision residents will attend Central Heights Elementary, Will James Jr. High and West High School. The district did not respond to a request for comments, so it is assumed that the facilities are adequate to serve the proposed subdivision.

- f. Parks and Recreation – There is no parkland dedication requirement because this is a minor plat. The low number of potential future residents can be accommodated by the City's present park and recreation programs.
- g. MET Transit – The nearest MET bus route terminates at St. John Lutheran Home at Shiloh and Rimrock Road. The high density housing and assisted living units that have been built in this area may eventually warrant MET route expansion to this area.

3. Effect on the natural environment

There will be no effect on the natural environment that is attributable to this subdivision because it is in a rapidly urbanizing part of the city and because of its small size.

4. Effect on wildlife and wildlife habitat

There will be no effect on wildlife and wildlife habitat attributable to this subdivision. There are no known endangered or threatened species on the property.

5. Effect on the public health, safety and welfare

There are no known health or safety hazards on the property. This property is not within a mapped floodway or flood zone and should not create flooding hazards for surrounding properties.

B. Was an Environmental Assessment required? [(MCA 76-3-603 and BMC 23-304 (c) (1)]

An Environmental Assessment is required and a summary report was submitted with the application. No significant adverse environmental effects were identified.

C. Does the subdivision conform to the 1990 Yellowstone County Comprehensive Plan and the Urban Area 2000 Transportation Plan? [BMC 23-304 (c) (3)]

1. Comprehensive Plan:

The subdivision meets the following goals/policies of the comprehensive plan

- a. Capitalize on existing public water supply systems. H-2
- b. Capitalize on existing public sewage systems and improve sewage systems in areas not currently served by public systems. H-4
- c. Encourage and direct urban growth to urban areas and contiguous lands to maintain a strong economy and accomplish a sound transition of agricultural land. I-3
- d. Curb urban sprawl and discourage leapfrog development. K-7

The subdivision does not meet the following goals/policies of the comprehensive plan
None

2. Urban area transportation plan

The subdivision is in the jurisdictional area of the Urban Area 2000 Transportation Plan. Shiloh Road is a principal arterial street that is planned for reconstruction later this year. The property will participate in the costs of that improvement.

3. BikeNet Plan

The subdivision is also within the jurisdictional area of the BikeNet Plan. Shiloh Road is not a recommended bike route but a bike/ped. facility will be part of the street reconstruction.

4. West Billings Plan

The property is not within the West Billings Plan area.

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

This proposed subdivision meets the requirements of the Montana Subdivision and Platting Act and the local subdivision regulations. The subdivider and the local government have complied with the subdivision review and approval procedures set forth in the local and state subdivision regulations.

E. Does the subdivision conform to sanitary requirements? [BMC 23-304 (c) (5)]

The subdivision will use City water, sewer and stormwater services. It may in the future use City solid waste collection services. All services are approved and regulated by state and federal authorities.

F. Does the proposed subdivision conform to all requirements of the zoning in effect? [BMC 23-304 © (6)]

The property is in the Residential 7000 zoning district and the subdivision conforms to the zoning. Single and two family dwellings are permitted in the R7000 zone. A future fire station would have to receive Special Review approval.

G. Does the proposed plat provide easements for the location and installation of any utilities? [MCA 76-3-608 (3) © and BMC 23-304 © (7)]

The subdivision contains public street rights of way and dedicated utility easements that provide adequate space for utility installation.

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

Both lots will have access to a public street.

CONCLUSIONS OF FINDING OF FACT

- The overall conclusion of the Findings of Fact is that the proposed Rush Acreage Tracts Subdivision amended tract 1 does not create any adverse impacts that warrant denial of the subdivision.
- The proposed subdivision will impact local services and cause some increase in demand for those services. It is uncertain if future development will pay taxes and fees in an amount to pay for those services.
- The proposed subdivision conforms to several goals and policies of the 1990 Yellowstone County Comprehensive Plan and doesn't conflict with the Transportation or BikeNet Plans.
- The proposed subdivision complies with state and local subdivision regulations, local zoning, sanitary requirements and provides legal and physical access to each parcel.

Councilmember McDermott moved for approval of the Planning Board recommendation, seconded by Councilmember Kennedy. On a voice vote, the motion was unanimously approved.

5. PURCHASE OF THE INTELLIGENT LIBRARY SYSTEM from Checkpoint, Inc., for a radio frequency identification system, \$293,217.00. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

Library Director Bill Cochran said this is a project that was approved with the FY 03 budget. The \$350,000 cost of equipment, software and supplies for the initial project is being funded through private gifts. Ongoing expenses will come out of the departmental budget and be partially offset by discontinuation of currently required supplies. Mr. Cochran introduced Systems Administrator Dee Ann Redman who gave a presentation about the Radio Frequency Identification System. She said this system will eliminate the current bar code system using short-range radio antennas that activate targets placed in library materials. This will reduce staff handling time, reading up to 30 targets simultaneously. She said it will also reduce wait times for customers and get materials circulated quicker. The current workload has increased 75% since the last addition to the circulation department in 1995. She said FY 95 saw 7.5 FTEs in circulation handle 479,643 items whereas in FY 03 7.88 FTEs are expected to handle 841,00 items. To keep the same level of customer service in 1995 would require 13.13 FTEs.

Ms. Redman said the RFID would save 3,561 staff hours and \$50,290. The proposed \$293,217 investment would be returned to the Library in 5 to 8 years. She noted that the largest donor of funds has approved this project. She said the radio frequency identification will save 4,982 staff hours annually over the current barcode technology, which is equivalent to 2.4 FTEs.

She asked that Council approve the purchase of the Intelligent Library System from Checkpoint, Inc. and authorize the Mayor to execute any associated agreements. Councilmember Iverson asked about a reduction in price. Ms. Redman said Checkpoint, Inc. is offering a marketing agreement that includes a 12% reduction in the initial

purchase of supplies, which will add up to over \$30,000. Councilmember Gaghen moved for approval of the staff recommendation, seconded by Councilmember McDermott. Councilmember Gaghen commended the Library staff for their efforts to obtain funding for the system that reduces workload. Councilmember Jones said this is a great partnership between the private and public sectors. On a voice vote, the motion was unanimously approved.

6. RESOLUTION 03-17970 RELATING TO CERTAIN IMPROVEMENTS ALONG ST. ANDREWS DRIVE (W.O. 03-02, #1), declaring it to be the intention of the City Council to order in the program for the purpose of undertaking certain local improvements under the Miscellaneous/Developer-Related Program. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

Public Works Director Dave Mumford said this is the result of a request from the Council to investigate the cost of completing sidewalk improvements, including ADA ramps, along St. Andrews Drive. The City sidewalk policy requires sidewalks on both sides of all collector streets. He said the staff is asking the Council for permission to send out letters notifying property owners of the process and to schedule a public hearing in April for public discussion. If the Council approves these actions the work can be placed in this summer's miscellaneous sidewalk program.

Councilmember Brown moved for approval of staff recommendation, seconded by Councilmember Brewster. Councilmember Brewster said he is appreciative that this project has come before the Council. On a voice vote, the motion was unanimously approved.

7. ADOPTION of FY 2003-2004 Mayor and City Council Goals. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

There was no staff report. Councilmember Brewster moved for approval of the staff recommendation, seconded by Councilmember Iverson. On a voice vote, the motion was unanimously approved.

8. CERTIFICATION OF LIQUOR LICENSE TRANSFER for the AMVETS Club 90, 2033 Grand Avenue. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

Zoning Coordinator Jeff Bollman said this is an unusual situation and is the first time this type of request has come before the Council, which is to certify to the State of Montana that they can allow a license transfer. This request involves the AMVETS Club 90 on Grand Avenue. They currently have a fraternal license put into place in the 1960's. He said the license allows all beverage service and game functions similar to an all beverage license. The request asks that a license from outside of Yellowstone County be "floated in" to this location as an all beverage license. He said this would mean that the facility would have a fraternal license upon closing one evening and a regular all beverage license upon opening the next day with the operations of the business remaining the same. Mr. Bollman said this request originates from the Department of Revenue. He noted their issue is a church that moved to 2110 Grand Avenue in 2001

that violates the State's 600-foot separation. He noted the church was previously a pawn shop. At the time of the fraternal license, there were no special review requirements for this use. He said City staff has written to the State that they do not object to the transfer of the license, because the operation and use of the property will remain the same. Mr. Bollman said the recommendation to the Council is to authorize the Mayor to sign a letter to the State Department of Revenue to approve the requested liquor license transfer.

Councilmember Brewster asked if there was "any difference or different requirements" between a regular beverage license and a fraternal license. Mr. Bollman said as far as the use that is allowed on the property, there is no difference. If the transfer of the license is approved, the existing fraternal license would be extinguished. Land use is all the City is concerned with, he emphasized.

Councilmember Brown asked if the AMVETS Club 90 would lose their tax exempt status if they are licensed to run a public business. Mr. Bollman said he was unable to answer that question as he does not know how the license transfer will affect their tax status. Councilmember Gaghen asked if the transfer concerns any financial aspects, such as possible sale of the liquor license. Mr. Bollman said the existing fraternal license does not have any value. The all beverage license must stay at this location for a fixed amount of time. Once the time limit expires, the license functions as a regular liquor license and does have resale value. Assistant City Administrator Kristoff Bauer emphasized there is no difference in the allowed activities, from a land use perspective, between the two difference licenses, but there is a difference in who can come into the facility as far as City regulations are concerned.

Councilmember Larson said the club is required to justify any revenue gained from non-membership activities as part of their tax exempt requirements. He said a number of fraternal organizations promote their facilities to non-member usage. He also noted that "floater" licenses can be sold, but these issues are not land use issues.

Councilmember Kennedy noted he would abstain from voting as he has his name in the pool for one of the floater licenses. He said he is frustrated by the process that requires this certification of transfer.

Mr. Bauer said this unique situation involves a current grandfathered use where the location of a church within the 600 foot radius created an issue where a state law is preceded by local law. He said he did not believe this situation would duplicate itself again.

Councilmember McDermott said she thinks there is still a need to put requirements into place for this particular process. She asked why a special review, that would give a certain amount of control, was not required. She noted the parking area is not paved, the facility is located close to Rose Park and an alley area presently fosters noise for the neighbors. Mr. Bollman said the City is trying to be consistent with other businesses that have had similar interpretations. Councilmember McDermott asked if a special review can be requested. City Attorney Brent Brooks said this would fall under a non-conforming use exception because of the continuous use and the grandfathered status. He said there is a distinction between licenses required by the state versus the use and control of that use by the City. Because the use is continuous the City would not have the authority to require a special review. He said if the use is consistent and continuous, without a break, is the only concern for the City. Mr. Bollman said there could be an ordinance in

the future that could formalize this process in case there are additional certification requests.

Mayor Tooley asked if the Council could impose conditions on this certification. Mr. Brooks said that would have to come through the special review process.

Councilmember Jones asked what is the reason to change the license from a fraternal license to a regular license. Mr. Bollman said he speculates that the fraternal license is of limited value to other parties. The floater license could be sold or relocated to another location. Mayor Tooley noted that a floater license increases the value of the property. Councilmember Larson recalled a previous occasion that a floater license created a number of public issues. He said it is important that the Council make sure to deal with this action as a land use issue and "stay out of the dynamics of the state liquor license wars".

Mr. Bauer said the request before the Council from the State is whether under the City's ordinance the owner of the AMVETS Club property can legally sell alcoholic beverages at this site without additional processes. He said if the Council does not certify this transfer, there is some risk that the City is not applying their law properly.

Mr. Bollman noted that the State previously has not given the City clear direction as to what they are requiring from the City. This certification request before the Council finally gives clear direction to the City. He reiterated that the City does not have an objection to the transfer of the license because the use of the property will not change.

At Mayor Tooley's request, Mr. Bauer explained the request before Council concerning the certification. He clarified that this request is in response to a request by the applicant for license transfer and from the State for certification of the transfer. He said this is a continuation of an existing use and under City regulations does not trigger a special review. He said the City has no interest in reviewing the transfer of the license. The State has requested the City certify that this is an accurate and appropriate interpretation of the City regulations. He said the AMVETS Club is grandfathered in its current use and is moving from one license to another license with the same use. This would not trigger a special review or any additional conditions.

Councilmember Iverson asked if the Council can change their regulations to avoid this situation in the future and give the Council the ability to require a special review with the option to add conditions. Mr. Brooks said the City can review the present ordinance to see what can be done. He said it is his opinion that a grandfathered use would still prevent the Council from the special review process or placing conditions. Mr. Bauer said there are actions the City could possibly take with regard to grandfathered non-conforming uses and some way to extinguish them or require them to become conforming uses. This would address this issue in a broader way but not retroactively.

Councilmember Jones said he is still concerned with the issue that this request involves a distinct change from a fraternal organization to a public organization.

Councilmember Larson said the issue of the fraternal organization is with the IRS and does not involve the land use issue that is the City's concern.

Mr. Bauer clarified that the operation is not a tax exempt use and has operated as a corporation open to the public for 30 years with a fraternal license. He noted there is no distinction in the City between fraternal and public organizations with regard to zoning.

Mayor Tooley called for the motion. Councilmember Iverson moved for approval of the staff recommendation, seconded by Councilmember Larson. On a voice vote, the

motion was approved with Councilmembers McDermott, Poppler, Ohnstad and Jones voting "no". Councilmember Kennedy abstained.

Council Initiatives

- **COUNCILMEMBER KENNEDY** re: Veterans' Cemetery/Nursing Home: Councilmember Kennedy requested that staff bring to Council a resolution and options for a veterans' cemetery and nursing home in Billings or Yellowstone County including ideas and all resources available on how the Council can assist in this process, seconded by Councilmember McDermott. Councilmember Larson suggested that the City ask BSEDA to become involved. He also noted that appointments to the legislative committees are critical and he stressed the need for a representative from the Yellowstone County delegation for this issue. Councilmember McDermott noted that the Swords Park Committee is heavily represented by reservists who are interested in working with anyone who can assist in getting another veteran's cemetery located in Billings. On a voice vote, the motion was unanimously approved.
- **COUNCILMEMBER McDERMOTT** re: Nonconforming uses/Process for review/conditions: Councilmember McDermott requested that staff research the possibility of establishing a procedure/process via ordinance to handle non-conforming uses as they change ownership, etc. to allow the Council to review such changes and possibly place conditions on the use if warranted, seconded by Councilmember Kennedy. Mr. Bauer asked if focusing on non-conforming use will encompass Councilmember McDermott's concerns. Councilmember McDermott said yes. On a voice vote, the motion was unanimously approved.
- **COUNCILMEMBER BROWN** re: New Animal Shelter plans: Councilmember Brown requested that staff review plans for the new Animal Shelter to find ways to trim the proposed \$1.2 Million cost or consider privatization of the shelter, seconded by Councilmember Jones. Councilmember Larson said he would like to see a work session devoted to this issue. He would like to hear from different groups concerned with pros and cons of the Animal Shelter. Mr. Bauer noted that the Animal Shelter must be bid in the next 30 days to meet the construction deadline required in the Sysco vacation agreement. He also noted that to have a public hearing forum on issues related to the Animal Shelter this item would be better placed as a regular agenda item on a Council Meeting agenda. Councilmember Jones suggested a Special Council Meeting as another avenue. Councilmember Poppler called for the question. On a voice vote, the motion to stop debate was unanimously approved. On a voice vote for the original motion, the motion failed. The Council did NOT SUPPORT this initiative at this time. Mr. Bauer noted that a fund raising campaign is in place in conjunction with the Humane Society to pay for additional phases of the Shelter. He also noted that this is a County function that the County elected not to provide. He suggested that the Council may

want to consider changing the current cost allocation between the City and the County. In response to a question from Councilmember Gaghen, Mr. Mumford said the proposed facility is approximately 2,000 square feet larger than the current facility. Councilmember McDermott noted there are volunteers that are willing to assist in some of the functions of the Animal Shelter free of charge. Councilmember Brewster said he would like to talk about the services that are offered at the Animal Shelter to see if the City is competing with local businesses.

- **COUNCILMEMBER OHNSTAD** re: Smoke-Free ordinance: Councilmember Ohnstad requested staff bring a clean-air ordinance for the community forward for Council review, seconded by Councilmember Gaghen. Councilmember Poppler amended the motion to NOT prepare an ordinance at this time, but direct staff to instead bring an analysis of issues and consequences of those issues to the Council for review, seconded by Councilmember Brewster. Councilmember Larson said his preference would be to put the proposed ordinance before the voters for their approval prior to Council action. Councilmember Kennedy noted it is easier to mandate and uphold this type of action through an ordinance rather than a vote of the electors. On a voice vote, the amended motion was approved with Councilmembers Gaghen, Ohnstad and Mayor Tooley voting "no". On the original motion as amended, the motion was unanimously approved.

ADJOURN –With all business complete, the Mayor adjourned the meeting at 8:53 P.M.

THE CITY OF BILLINGS:

By: _____
Charles F. Tooley MAYOR

ATTEST:

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