

SPECIAL MEETING OF THE BILLINGS CITY COUNCIL

April 27, 2005

The Billings City Council met in special 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 Mayor Tooley.

ROLL CALL – Councilmembers present on roll call were: Gaghen, McDermott, Brown, Ruegamer, Veis, Boyer, Ulledalen, Clark and Jones. Councilmember Brewster was excused.

RECONSIDERATION:

Councilmember Brown moved to reconsider Item A4 from the April 25th Agenda: W.O. 04-11: SID 1373: South Billings Boulevard – King Avenue East to Underpass Avenue, seconded by Councilmember Clark. Councilmember Brown said there were issues surrounding the letting of the bid that appear irregular and the Council should discuss this. Mayor Tooley and City Attorney Brent Brooks confirmed this is a special meeting and is the next scheduled meeting where Council can take action, so it is appropriate to reconsider this item.

Councilmember Ruegamer asked if there is a public notice issue with this item, or can the Council hear this tonight. Mr. Brooks confirmed that the rules allow the Council to take action on this issue tonight. Mayor Tooley added the parties involved have been informed that this action may take place tonight. On a voice vote for the reconsideration, the motion was unanimously approved. This item was added as Item #2.

Councilmember Clark moved to reconsider the water rate portion of the increase of Item 11 from the April 25th Agenda: Water and Wastewater Rate Schedule Adjustments, seconded by Councilmember McDermott. On a voice vote, the motion was approved with Councilmembers Boyer, Ruegamer and Mayor Tooley voting "no". This item was added as Item #3.

PUBLIC COMMENT on "NON-PUBLIC HEARING" Agenda Item: #1-3. Speaker sign-in required. (Comments offered here are limited to 1 minute per speaker.)

- EARL HANSON, EXECUTIVE VICE PRESIDENT AND GENERAL COUNSEL FOR JTL GROUP – MT/WY, spoke in regard to the bid award on the W.O. 04-11 project that include specifications (general and specific) in the bid package. Mr. Hanson said the City must follow the rules in the Montana Public Works pamphlet regarding the specification requirements relating to the unit price extension. He said there is an error in the bid from Chief Construction concerning item 336 and the integrity of the bid process is at stake. He noted that had JTL been in the same position they would expect to have their bid refused. Mr. Hanson said this sets a precedent and puts the bidders at a disadvantage if the bids are rejected because confidential bid pricing has now been made known.

- BILL COLE, ATTY FOR CHIEF CONSTRUCTION, spoke in regard to the bid award on W.O. 04-11. He said there are two issues with the bid award to JTL Group. He objected to the reconsideration at the last meeting because the debate during the public comment period after the issue was first delayed influenced the outcome and is against Council rules of procedure. He said Chief Construction just wants the opportunity to present legal issues for consideration by the Council. He said the issue is that the Council is throwing away \$63,000 and ignoring the low bid from a qualified bidder. The issue is a misplaced decimal point that in no way affected the bottom line of the bid. He said the rule that Mr. Hanson refers to is a situation where there is a legitimate disagreement between the City and the contractor. There is no disagreement in this case, he added; City Staff understands the decimal point error. He noted the unit bid amount was correct in another area of the bid. Mr. Cole said his client would like a delay to have the opportunity to discuss the error with the City Staff. If bids are rejected, some information has been made public (to the City's benefit) but all parties are "in the same boat".
- JOHN BREWER, PRESIDENT OF THE CHAMBER OF COMMERCE, said the Chamber's mission is to support the quality of life in the Billings' community through the creation of a vibrant economy. The issue of the transfer center is important to the future of our community and economy. He said the board representing the Chamber's 836 members supports the Ad Hoc Committee and their mission and process. The Chamber also supports the four recommended sites and asked the Council to allow the community the process it needs to evaluate the merits of each site.
- JAMIE RING, 3423 TIMBERLINE, said the transfer center location is important to the community but it must meet the needs of the pedestrians and vehicles. She is concerned about buses that will be entering and exiting at or near busy intersections. Some of the sites include major east/west crosstown arterial streets in the community. She asked if some of the sites would require reduced speed limits and increased street widths to accommodate bus traffic. Ms. Ring is also concerned about the diesel fumes that would be generated in the enclosed area at the 4th and Broadway site. She said that area is used by the Deaconess Classic and is vital to the downtown.
- BRUCE SIMON, 217 CLARK, said he would like to speak on the reconsideration of the water rate increase and the Ad Hoc committee's recommendations for the transfer center. He said he considers that when raising water rates the City is also raising another tax. He said the franchise fee on the water rates goes into the General Fund and not into the Utility Fund. He said he believes that fee is an illegal tax, which is against state law. He asked the Council to request an Attorney General's opinion on the franchise fee. He commended the work of the Ad Hoc Committee on the transfer center but said another public hearing is needed to gather input for their new selections. He urged the Council to have a public hearing to allow citizens more than one minute to give their input prior to the Council's decision.
- KAY ERICKSON, CHAIR OF THE CHURCH COUNCIL OF FIRST UNITED METHODIST CHURCH, asked the Council to seriously consider the recommendations of the Ad Hoc Committee for the transfer center. She is concerned that the City will be seriously considering the 4th and Broadway site. She said she is opposed to that site for the transfer center as it would negatively impact their mission and service to the community and because of the emissions, safety, noise and

security concerns. Ms. Erickson said the Church does not have a recommendation regarding the sites selected by the committee.

- SHANNON GREER, 42 MARSHALL DRIVE, said the safety of the members of the First United Methodist Church will be greatly compromised if the transfer center is placed at 4th and Broadway. She said the City must not go against the public concerns that have been expressed against placing the transfer center there. She urged the Council to listen to public concerns.
- JIM ALEXANDER, NO ADDRESS GIVEN, said he commends the Ad Hoc Committee for their work on the transfer center site selections. He said they exhibited what citizens, business and the community can do when they all work together toward a common goal. He urged the Council to listen to the recommendations of the committee and the concerns of the citizens of Billings.
- ARDYS OLIN, 217 AVENUE D, said she was on the original site selection committee. She noted they chose their selections carefully, considering all the needs and requirements. She noted that it is difficult for some citizens to walk to their destinations and the need for a centralized transfer center location is critical. She asked the Council to consider their choice.
- MARY WESTWOOD, 2808 MONTANA AVENUE, said she is concerned that the Council will be making a decision without adequate public comment. She said the people that are most affected by the location of the transfer center are the riders and they cannot voice their opinions because the transit schedules do not allow them to attend the evening council meetings. She said a public hearing to accommodate those riders should be considered. Ms. Westwood noted there are opportunities to improve the Library with the use of the 4th and Broadway site.
- CONNIE WARDELL, NO ADDRESS GIVEN, asked what action the Council intends to take this evening regarding the transfer center. Mayor Tooley stated if a motion is made to direct Staff to proceed with negotiations on a specific and preferred location, that motion will be considered. Ms. Wardell said the appropriate action of the Council would be to accept the four sites recommended by the Ad Hoc Committee and begin further study and a community input process on those selections. She said getting input from transit riders is a good idea. She added she is very excited that the Wells Fargo site has become available and thinks the City should not "look a gift horse in the mouth". Ms. Wardell suggested a time limit for this process as those types of limits "are what make deals happen". She added that citizens who want to speak on several items on the agenda should be allowed to have one minute per issue as have a legal right to do that, plus the Council may hear something that will assist in making a good decision.
- DIANE MILLER, 2520 2ND AVENUE, said she is the owner of an apartment building that is adjacent to the Wells Fargo site considered for the transfer center. She said her building is on the National Historic Registry and has "just undergone another rehab" due to construction work on the Yellowstone River that has adversely affected her property. She said her building does not have central air and she is concerned about the effects of diesel fumes that will compromise the safety and welfare of her tenants. Ms. Miller said the transfer center would definitely impact her business economically.

- DAVE BURGESON, 520 AVE B, said he is a member of the First United Methodist Church. He said the church has been in its present location for over 100 years and has chosen to remain downtown rather than move to the suburbs. He said they rewrote their mission to help the "street people" and needy of the community. Many athletic programs are also held at the church. He said the church has made the decision to stay in their facility despite the noise, the panhandlers, and security issues.
- LONNIE WHITE, BOX 21499, WHITE FAMILY LLC, said he owns property adjacent to the Courthouse that may be a preferable site for the transfer center. He noted that his family has presented to the City and Council two attorney letters informing them that they will litigate against the City if they chose any one of the selected sites in the area of this property. Mr. White said he would like the opportunity to discuss their site with the City. He objected to the City-initiated statement of intent process that allowed third-party developers to submit proposals that bypassed the owners. He did not want to put his real estate value at risk to some third party. He said the City should have employed the RFP process and would probably have received many more valid property owner proposals.
- LOUISE WARNER, 2139 WHITEWATER CIRCLE, asked the Council to listen to the recommendations of the Ad Hoc Committee. She expressed concern for the health and safety of the elderly and children that use the services provided by the First United Methodist Church. Another issue of concern is the loitering element that a bus station terminal seems to gather.
- DARRELL EHRLICK, 1981 PRYOR LANE, said he had heard through the media that the Staff is considering the 4th and Broadway site as the recommended site. This is a concern to the members of the First United Methodist Church, of which he is a member, because they are opposed to that site. He expressed concern for the parking lot spaces that would be lost because of the inability to get in and out of the spaces that are currently there. He urged the Council to consider the recommendations of the Ad Hoc Committee.
- GREG KRUEGER, EXECUTIVE DIRECTOR OF THE DOWNTOWN BILLINGS PARTNERSHIP, said downtown redevelopment is not easy, and often extremely difficult. He said he hears that buses are evil and he does not believe that. He said the buses and a transit center are important to the downtown. He asked the Council to look at the Framework Plan, listen to all the input and make the right choice in selecting a transfer center site.
- MIKE ROSCOE, 1028 SENORA AVENUE, said there is one location for the transfer center that he does not oppose for the location of the transfer center. It is the property that involves the railroad and the arts center - #8. This is an older part of town and that area needs redevelopment. He said he is an adjacent property owner and is excited about the "possibilities and would be willing to work with the City to achieve better things".

AGENDA:

1. **REPORT from the Mayor's Ad Hoc Transit Center Study Committee on proposed Downtown Transfer Center sites.**

Joe McClure, Big Sky Economic Development Authority, recognized the members of the Ad Hoc Committee and said they began the site selection process with an open mind. He said the committee reviewed the resolution and the minimum requirements for a MET Transfer Center. He said there was discussion about the role of the committee and the direction they should be taking with respect to the process. It was eventually clear that the Council wanted the committee to help facilitate potential sites and not just be a repository for proposals. He said the committee developed and published an advertisement with a small window of opportunity for interested parties to respond. He noted that a process was put into place that acknowledged the property owner that was involved in any site proposal. Mr. McClure said the basic premise was to look at a map of Billings and find the best site for the transfer center.

Mr. McClure said twelve (12) separate proposals were received by the committee, two duplicates and three similar proposals dealing with the site on the first floor of the Park II expansion project. After sorting through the proposals, the committee ended up considering nine (9) proposals. The committee then took a bus tour of the sites that was extremely helpful to the process. The criteria that were considered were: location, size, access, environmental concerns, operational compatibility, pedestrian-friendly options, redevelopment opportunities, and property tax implications. After the tour, four (4) sites emerged as the top four locations on everyone's list. The top four sites in order of importance and by consensus were: #8 – Old Rail Line property behind Yellowstone Art Museum. This site could begin a potential green belt along "5th Avenue" to MetraPark with many redevelopment possibilities, #5 – Wells Fargo Drive-up Bank facility. The locality and size made it a good site and the possibility that the first floor of the Park II expansion could be used in exchange for the property would keep the first floor on the tax rolls, #6-7a-7b – First Floor of the Park II Garage including the use of portions of 2nd Avenue and 26th Street, and #4 – Property at 6th Avenue North and 24th Street. That property owner proposed a possible land swap with the 4th and Broadway site. He noted the committee gave the opportunity to the community to participate in this process and the community came up with the sites. Mr. McClure said the committee sifted through the proposals and recommended sites that they felt the community would endorse.

Councilmember McDermott asked if the committee contacted the property owners involved in the railroad site. Mr. McClure said the committee did contact the railroad for permission to put the site into a proposal and they agreed. All other property owners that were involved in a proposal signed a statement acknowledging that they were aware of the proposal.

Councilmember Boyer asked if the 4th and Broadway site was a consideration for the committee. Mr. McClure said it was and that site did not make the committee's top four list.

Councilmember Brown asked if there has been communications with the property owners of the selected sites that is bi-directional and cooperative. Mr. McClure said that was true.

Site #5 – Wells Fargo Drive-up Banking Site:

Patrice Elliott, President of Wells Fargo Bank, and Dan Majeske, Property Manager for the Wells Fargo locations in Montana gave a presentation on the potential site. Mr. Majeske said the site is one of the better sites for the transfer center as it is centrally located downtown within easy walking distance to retail shops. He said the bank would

consider moving the drive-in bank facility to the first floor of the Park II expansion. The bank would then be a long-term tenant for the City with the possibility of proceeding with a land trade if it is feasible. He said the bank is not considering this a money making proposal, but one for the benefit of the City. Ms. Elliott noted this drive-up facility is the busiest one for Wells Fargo and the land exchange with Park II is critical for relocation of the drive-up facility. She said the bank was not looking to relocate as the site does work well for them, but the Park II location does offer some efficiencies as it is adjacent to their building. She said the bank has reviewed all aspects of the Park II location and has completed plans in anticipation that the Park II space would be suitable for the drive-up facility. Councilmember Brown asked what the traffic count is for the drive-up. Ms. Elliott said there are from 500 to 1,000 cars that use the drive-up daily.

Councilmember Ulledalen asked which option is preferable to the bank, leasing or purchasing. Ms. Elliott said the bank does not own the building downtown and would prefer to continue leasing space for that branch. She said the bank would consider other financial aspects if it were in the City's best interests. Councilmember Jones asked what lease term would be preferred. Mr. Majeske said a ten-year lease with 3 five-year options was part of the proposal.

#4 – 6th Avenue North between 23rd and 24th Streets:

Mike Schaer said this site (6th Avenue Motel) is located within the defined area and includes 60,000 square feet. It is located between two major streets - 4th and 6th Avenues North. The area is flat with no known environmental issues. He said the two buildings on the site were built in 1915-1920 and he is offering to remove them as part of the proposal. He will also relocate the current tenants. Construction could start as soon as August of 2005 and no replacement parking would be required. There would be no additional costs to the proposal and a possible land trade with 4th and Broadway could be considered. He said he either owns the land or has current buy/sells on property within the proposal, so the transaction could be completed in a matter of weeks. He said the transfer center could be built for less than previously estimated because multi-level parking would not be required. Remaining dollars could go towards a transit center in the Heights, expanding the West End center or on shelters along the routes. Mr. Schaer said growth in the downtown area will be progressing east because of the restricting boundaries in all other directions. This site is the lowest cost of all the sites, he added.

Mayor Tooley called for a recess at 7:15 P.M.

Mayor Tooley reconvened the meeting at 7:25 P.M.

#6-7a-7b – First Floor of Park II expansion:

Don Olson and Randy Hafer gave their presentations. Mr. Hafer said this site is in the "heart of downtown" being in close proximity to Skypoint which is the theoretical center of downtown. He said the Park II expansion is underway and the City already owns the land. He said the area has good access to major arterials, North 27th Street and First Avenue North. He noted there were concerns expressed by property owners to the east of the proposal. Mr. Hafer said the close proximity to the parking garage would be an existing benefit that would have to be accounted for in other sites. His proposal does not consider 26th Street as part of the transfer center's usable area.

Don Olson, O2 Architects, said his proposal is primarily the same as Mr. Hafer's but differs in the proposed use of one lane of 26th Street and 2nd Avenue North and possible use of the MDU building, which has about 21,000 square feet, leaving additional space for other City facilities. He said officials at MDU were receptive to discussing this possibility with the City. He said this site is close to City Hall. Mr. Olson said a transfer center will have a great impact on the pedestrian experience downtown and that is an important consideration. On another note, he said expanding Park II and leaving the first floor empty is a missed opportunity. He thinks locating the Wells Fargo drive-up facility there is a "no-brainer". Councilmember Ulledalen asked what the impact on 2nd Avenue North traffic would be for his proposed location. Mr. Hafer said the proposal could be condensed to maintain through traffic on 26th Street. It is a relatively lightly traveled street, but it is important to maintain through traffic on it. He said a combination of ideas in these proposals would accomplish the objectives. Mr. Olson said there was consideration of closing 26th Street when the site at the Federal Credit Union was being considered, so it seemed that using a portion of that street would be acceptable.

#8 – Railroad and Yellowstone Art Museum Site:

Don Olson, O2 Architects, said their first exercise was to see if the transfer center would fit at the site and found that it would work quite well. The idea with this site was to "push back" the industrial edge of the eastern part of town. This site is immediately east of the Yellowstone Art Museum complex and north of what was called the Radiator building. He said the YAM has been receptive to the proposal because the building of concern is larger than what they need. He noted there is the opportunity to develop a green space on the site at the 5th Avenue corridor (old rail strip) from the bus transfer center to the west for a ten-block area. He said the property is predominately owned by Montana Rail Link and Burlington Northern Santa Fe and they are receptive to the proposal. Adjacent property owners have been open to the proposal as well. Mr. Olson said the environmental issue is not an insurmountable task. Because there was a rail line there does not mean there is soil contamination. The real potential for contamination is usually around the rail service yards where solvents are used to clean parts. Sites to the east have found no environmental concerns. He encouraged the Council to do what is best for Billings in twenty years and not what is cost effective now.

Airport and Transit Director Bruce Putnam said his Staff was actively involved with the Ad Hoc committee deliberations. He thanked the committee for their great job identifying potential sites. He said one of the top two choices of the committee is also one of the Staff's top two choices. This is significant. The site that the Staff and the committee share an opinion on is Site #5 – Well Fargo Bank Drive-up facility. He said the Staff finds Site #5 and Site #9 – 4th and Broadway to remain excellent locations for the transfer center. Site #9 remains in consideration because the Council directed the Staff to study this site. After careful examination Staff concluded that it was a good choice for the following reasons: 1) the site works well in the City's pulse system from an operational perspective, 2) is physically well located – easy access to the heart of the downtown, 3) benefits to other City functions on or near the site – Parking Division and the Library could be reimbursed for project funds for the land these operations originally acquired, and 4) the City does own the site, construction could begin immediately. This site remains a strong contender for the locations of the transfer center.

Mr. Putnam said Site #5 – Well Fargo Bank Drive-up facility is an equally good site. It is the best of all the other sites recommended by the committee. He said Staff prefers this site above all others if purchase of a site is a consideration. Successful transit centers are located in major activity centers like Billings. This site will accommodate the pulse system and appears to have a willing seller. He noted the seller expressed interest in locating in the Park II expansion, so the selection of this site proposal could be mutually beneficial for the City and Wells Fargo. This enhances the chances for success. Having a site that is available and the ability to “strike a deal” would allow the environmental assessments to begin immediately leading to the ability to commit grant dollars to accomplish the environmental assessments, appraisals, and design packages.

Mr. Putnam noted the site is slightly smaller, but Dr. Stoddard has reviewed the site and agrees that if it is configured properly it would accommodate the transit necessities. Preliminary assessments indicate that street narrowing to accommodate the transfer center may not be needed. He said the existing building will probably have to be removed as it is positioned in the middle of the property and is larger than would be required.

Mr. Putnam said Site #9 and #5 are the formal recommendations to the Council for the transfer center location. Mr. Bauer stated the Staff’s responsibility is to evaluate, advise and provide information to the Council. This is their role under the Charter and is the direction of the Council. Councilmember Ulledalen asked the Staff to center their comments on any site to the bus operational aspects. Councilmember Jones asked what the issues are with Site #8. Mr. Putnam said what brought the Staff to select Site #5 was comparison with the other selected sites, considering what site would be best from an operational standpoint.

Site #8 may need a Phase II environmental assessment, which could include core sampling, related to the prior location of the railroad tracks. This is a significant unknown. He said Site #8 is also located on the “edge” of the downtown area. Mr. Putnam said the positive aspects are that the site could redevelop a distressed property. This is not a primary benefit for the City, however. The site has sufficient size if the existing building was relocated or remodeled because it occupies 16,000 square feet leaving only 37,000 square feet of usable area to configure the operational aspect. Acquiring property to the north would enhance the site making it functional. He said there is a potential for multiple owners at this site – Montana Rail Link, Burlington Northern and the Yellowstone Art Museum.

Councilmember Jones noted that Site #5 has 41,000 square feet and asked if there would be a time when a larger facility will be needed. Mr. Putnam said the current configuration used to assess sites accommodates parking on-site for 14 coaches. He said Staff feels that is sufficient into the “medium-term” future.

Councilmember Ruegamer asked if the one opposing speaker relating to Site #5 could discuss her concerns with Staff. Mr. Putnam said buffering neighbors uses would be a goal in the design of this project as it is the Staff intention to accommodate neighboring uses.

Councilmember Boyer asked if the three criteria - pedestrian friendly, redevelopment options, and property tax implications, were considered when assessing the staff recommendations. Mr. Putnam said neither the Staff nor the committee had an opportunity to address the redevelopment options nor the tax implication issues. Councilmember Boyer noted the proposal from Mike Schaer includes huge tax benefits for

getting the 4th and Broadway property back on the tax rolls. Mr. Bauer noted that Tax Increment Funds, Parking Funds and Library Funds all are included in the purchase of the 4th and Broadway property. This does not allow for a property swap for transit use. He added that there is a significant need for parking at that site. That must be taken into consideration regardless of what use is proposed there.

Mr. Putnam said Site #4 has sufficient area for the transfer center; however it is the farthest site from the downtown area. Walking distance negatively impacts passenger use. He said 300 people a day ride to downtown destinations. With a facility located that far from the downtown, the south side routes would not work without significant changes. Dr. Stoddard said it is true that a bus will drop passengers off along the route, but if the routes are moved out of the immediate area of the downtown, many passengers will be required to transfer or walk an unacceptable distance. For many passengers a transfer is a disincentive to use the bus due to the uncertainty of catching the bus. The further the bus gets from destinations the lower quality of service is offered, he stated. Councilmember Veis asked if Mr. Schaer's comments about Site #4 being cheaper and the funds saved could be used elsewhere were correct. Mr. Putnam said the bulk of the construction costs are in the building of the facility. The City is "locked into the language" in the funding bill that provides the funds and it would be questionable if the money savings could be expended for additional transit facilities. Ron Wenger, Transit Manager, said there is no simple answer for this tonight. There are three (3) different appropriations that identify separate items that funds can be applied to. It would depend on the language in the appropriations as to whether the funds could be expended on other transit facilities.

Councilmember Boyer asked where the money would come from to assist the Library. Mr. Putnam said this would come from the local transit funds. The value of land would be used as a match and the money that would have been dedicated to land acquisition would be used to fund Library improvements at the 4th and Broadway site. Councilmember McDermott asked how much money could be used to fund those improvements. Mr. Putnam said he did not know the amounts owed to the TIF, the Parking Division and the Library. Funds in the amount of \$4.457 million are in the FTA account for this project and the local share match is \$1.2 million. He said \$400,000 to \$800,000 could be provided for Library purposes after reimbursement to the funds is accomplished.

Councilmember Veis asked if there are sufficient federal funds for each recommended site. Mr. Putnam said all of the sites are buildable with the money that is available including the cost of land acquisition.

Councilmember Gaghen asked if there is a time frame that requires the transfer center to be operational according to the federal dollar guidelines. Mr. Putnam said the federal requirements state that the project must be "under grant", which means a sign-off on the site is required. That includes approval of the site after environmental assessment and an appraisal. At that point the funds can be obligated and if reasonable progress is demonstrated, the requirements will have been met. Mr. Bauer reminded the Council that an important consideration is that the FTA does have to approve the site the Council designates. Site #9 has the environmental assessment and an appraisal has been done on Site #5, he added.

Councilmember Boyer noted the request of the Ad Hoc committee for another public hearing on the recommended sites. She hopes the City will move forward with that.

Councilmember McDermott suggested a series of meetings to include comments from transit riders. Councilmember Boyer moved to set up several public hearings to gather information on the recommended sites, seconded by Councilmember McDermott. Councilmember McDermott asked how soon the public meetings should be held. Mayor Tooley stressed this must be done as soon as possible. Councilmember Ruegamer said he would hate to see more delays on a public process that may be fruitless because transit riders may still not be able to attend meetings during the day. The only alternative is to hold meetings in different locations and times for easy accessibility. He said he does not think the Council can accommodate everyone. Councilmember Jones said this has been a very open process and it is time for the Council to make a decision and select one or two sites. There are always opportunities for the public to call the councilmembers with their concerns. Councilmember Ulledalen suggested selecting up to three choices and begin the public process at that point. There are too many choices at this time and the process could drag on for a long time. He would like to choose one site and begin public hearings. Mayor Tooley suggested the Council make one choice and advise Staff to begin negotiations. This would then come back to the Council for a public hearing and in a public forum for discussion. Councilmember Brown said a public hearing is required according to the law before the Council makes a final decision. Councilmember McDermott said two choices are preferable in case the first selection does not work. Councilmember Ruegamer said he does not want to discourage testimony from anyone so moving the public hearings out into the City should be considered.

Councilmember Veis asked if there is a date that the site selection must be proposed to the FTA. Mr. Bauer said a one-year extension (to September of 2006) has been requested for this year's appropriation, but the project must be significantly begun to obligate those funds. Two other appropriations come up next year that the City is not likely to be able to extend. He said it is important to understand that the window of opportunity is not that large. The City is at a point where there is a limited window of opportunity for negotiations. There is a larger window at the 4th and Broadway site and smaller windows on other sites because of the unknowns that increase the risks.

Councilmember Ulledalen made a substitute motion to direct staff to begin negotiations on Site #5 – Wells Fargo Site, seconded by Councilmember Jones. Councilmember McDermott confirmed that a public hearing will be held on the selection of Site #5. Mayor Tooley replied "yes". Councilmember Ruegamer suggested getting input from transit riders via a flyer that they could fill out as they ride and turn in to the bus drivers. Mr. Putnam said that was possible, but probably wouldn't net much input. Mr. Bauer asked what type of feedback the Council is looking for at a public hearing. He recommended the Council choose one site so that it is clear on which site the Staff would be advising the Council. Negotiations also could be complicated if a public involvement process is ongoing, he added. Councilmember Ulledalen said at some point the Council has to make a decision and he noted there is a site that both the Staff and the committee agree upon. Councilmember McDermott suggested the public meetings could be more of an informational nature. On a voice vote, the substitute motion was approved with Councilmember Brown voting "no".

Mayor Tooley called for a recess at 8:55 P.M.
Mayor Tooley reconvened the meeting at 9:03 P.M.

RECONSIDERATION:

Mayor Tooley noted there is a councilmember who would like to change his vote on the previous item. Councilmember Gaghen moved to reconsider the motion relating to the REPORT from the Mayor's Ad Hoc Transit Center Study Committee on proposed Downtown Transfer Center sites, seconded by Councilmember Boyer. On a voice vote, the motion was approved with Councilmember Ulledalen voting "no". Councilmember Brown said he learned that this was a publicly advertised legal meeting and he wishes to change his vote. On a voice vote for the substitute motion to direct staff to begin negotiation on Site #5 – Wells Fargo Site, the motion was unanimously approved.

- FRANCES HARRIS, NO ADDRESS GIVEN, asked the Council not to lose their focus. She said the transfer center needs to be in the downtown area.

2. RECONSIDERATION: Item A4 from the April 25th Agenda: W.O. 04-11: SID 1373: South Billings Boulevard – King Avenue East to Underpass Avenue. (Opened 4/14/05). Recommend JTL Group, Inc., \$2,037.141.70.

City Administrator Kristoff Bauer confirmed that Chief Construction had the apparent low bid, but after the Staff confirmed the numbers utilizing the specifications provided in the bid process they were no longer the low bidder. Their error increased their price. City Attorney Brent Brooks said that lawyers for both companies have opposing opinions. The main objection of Chief Construction is they did not have adequate time to discuss the situation with the Council. He said the mistake is clear and the City had no complicity in the event. He said the Council could allow more time for the two companies to submit more information, but he did not think that would be of assistance.

Mr. Brooks stated the options are to: 1) affirm the previous decision, 2) allow time for further input, or 3) reject all bids. Mr. Bauer said a letter from JTL Group was received clarifying the issue from their perspective and noted that they are a very concerned party to consider. The City's job is to choose the lowest risk option. The reconsideration cures and clarifies the issue of procedural concerns raised by Mr. Cole. The next step is to decide whether to follow the specifications of the bid or reject them. Following the specifications of the current bid requires the Council to award to the low bidder and in the Staff's opinion that is JTL Group.

Councilmember Brown asked why the bottom line is not the deciding factor. Mr. Bauer said the specifications state that unit prices (not just the bottom line) are considered in the criteria that governs the price. If at the end of the project Chief Construction were to present a reconciliation change order for the unit price of \$1,550.00 per yard of gravel (as stated in the bid), it would be a valid unit price. This is the reason for validating the unit prices during the bid process. Public Works Director Dave Mumford said construction projects are based on unit prices because there will be quantities that go under and some that go over the specified amounts. This unit prices protect the owner, in this case the City, from those kinds of changes during construction. Councilmember McDermott asked if the contract includes the ability to correct minor errors on bids. Mr. Mumford said the contract does not allow the Staff to modify a bid. This is stated in the guidelines of the Montana Public Works Association. Mr. Mumford confirmed that the City has not modified any bid. He said there has to be consistency in the bidding process to avoid a party taking advantage of a typographical error to be awarded the bid. Mr. Bauer

said this really can't be considered a minor error; the misplacement of the decimal point has significant impact. The responsibility for the error must fall back to Chief Construction.

Councilmember Veis made a substitute motion to delay the bid award to 5/9/05 to allow Staff the opportunity to confer with Chief Construction and JTL Group, Inc. to substantiate their positions to the Public Works Department to determine the provisions within the Montana Public Works Association standards and specifications relating to the error, seconded by Councilmember Jones. Councilmember Ruegamer asked if this delay will negatively impact the project and what are the risks. Mr. Mumford said the construction schedule can be shifted to allow for this delay. The risk in changing the specifications to accommodate Chief Construction's bid is that JTL Group would have grounds to protest that action. This could delay construction enough to impact the completion of this project by the end of the construction season. Councilmember Brown called for the question, seconded by Councilmember Ulledalen. On a voice vote, the motion to stop debate was approved with Councilmember Jones voting "no". On a voice vote on the substitute motion, the motion was approved with Councilmembers Ulledalen, Clark and Mayor Tooley voting "no".

3. RECONSIDERATION: Water rate increase portion of Item 11 from the April 25th Agenda: Water and Wastewater Rate Schedule Adjustments. (PH held 4/11/05). Staff recommends approval.

Councilmember Clark moved to delay consideration of the water rate increase to 5/9/05, seconded by Councilmember McDermott. On a voice vote, the motion was approved with Councilmember Ulledalen and Mayor Tooley voting "no".

ADJOURN —With all business complete, the Mayor adjourned the meeting at 9:35 P.M.

THE CITY OF BILLINGS:

By: _____
Charles F. Tooley MAYOR

ATTEST:

BY: _____
Susan Shuhler, Deputy City Clerk