

# REGULAR MEETING OF THE BILLINGS CITY COUNCIL

MONDAY, APRIL 24, 2000

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

**ROLL CALL** – Councilmembers present on roll call were: Bradley, McDermott, Deisz, McDanel, Kennedy, Iverson, Ohnstad, Johnson, and Larson. Councilmember Elison was excused.

**MINUTES – April 10th**. The Minutes were approved as printed.

**COURTESIES – APWA Awards**. Staff Engineer John Nowak of the Public Works Dept. presented the Rocky Mountain Chapter of the American Public Works Association award for Contractor of the Year to Don Kelly Construction, for their work on the City/County Drain project.

City Engineer Brian Borgstadt presented David Berg (aka Detour Dave) with the APWA's award for Best News Story Concerning a Public Works Issue, for Mr. Berg's daily program Roadwatch Montana.

**Solid Waste Division:**

Solid Waste Superintendent Ken Behling presented eight employees from the Solid Waste Division with safety awards for being accident and injury free for a year. Employees receiving the award were: Chad Hasler, Dave Lauwers, Wade Gilsdorf, Dave McKeen, Larry Bradley, Erin Papke, and Leonard Munter.

**PROCLAMATIONS – Mayor Tooley**. Mayor Tooley proclaimed the following:

- Days of Remembrance in Memory of Victims of the Holocaust (April 30 – May 7)
- Arbor Day (April 28)
- Respect For Law Week (May 7 – 13).

**BOARD & COMMISSION REPORTS** — Councilmember Johnson reported on the Great American Cleanup – to be held on Saturday, April 29.

**ADMINISTRATOR REPORTS – Dennis Taylor**. Assistant Administrator Bill McGill introduced Bob Keefe, the new Finance Director. Mr. Keefe replaces former Finance Director Nathan Tubergen, who retired earlier this year for health reasons.

**CONSENT AGENDA:**

1. A. **Bid Awards:**

- (1) **W.O. 99-05, Kings Green Drainage Improvements.** (Opened 4/4/2000). (Delayed from 4/10/00). Recommend COP Construction, \$155,665.00.
- (2) **Runway Sand for Billings Logan International Airport.** (Opened 4/4/2000). (Delayed from 4/10/2000). Recommend Fisher Sand and Gravel Company, \$59,500.00.
- (3) **W.O. 95-08, Phase I: Shiloh Road & Grand Avenue Intersection Improvements.** (Opened 3/28/2000). (Delayed from 4/10/2000). Recommend delaying award to 5/8/2000.
- (4) **W.O. 93-19, Montana Avenue Landscaping STPE 1020(12) – Billings.** (Opened 3/28/2000). (Delayed from 4/10/2000). Recommend delaying award to 5/8/2000.
- (5) **SID 1340, Water, Sanitary Sewer, Storm Drain & Street Improvements for South 27<sup>th</sup> Street West & Holman Avenue Adjacent to Cenex Park Subdivision.** (Opened 4/11/2000). Recommend delaying award to 5/8/00.
- (6) **SID 1341, Country Manor Park Improvements and Water, Sanitary Sewer, Storm Drain and Street Improvements for Swanson Lane, Circle Fifty Subdivisions.** (Opened 4/18/2000). Recommend delaying award to 5/8/00.
- (7) **Pumping Improvements (Contract XI).** (Opened 4/18/2000). Recommend Star Service, Schedule I: \$109,500 and Schedule II: \$239,000.
- (8) **Public Utilities Department, 2000 Capital Improvements Projects.** (Opened 4/18/2000). Recommend Yellowstone Electric for Schedule I: \$166,065.00 and Star Service for Schedule II: \$306,900.00.

B. **Utility Agreement** between the Montana Department of Transportation (MDT) and the City of Billings covering water and sanitary sewer improvements for Phase II of Rimrock Road improvements. (City's estimated cost is \$509,225.00).

C. **Change Order #2, New Terminal Carpet for Billings Logan Airport,** Pierce Flooring, \$1,194.00.

D. **Contract Amendment #1, W.O. 96-06: Grand Avenue Widening and Reconstruction, 12<sup>th</sup> to 17<sup>th</sup> Streets,** MSE-HKM, Inc., \$73,008.00.

E. **Authorization of Payment** of \$34,501.38 of Tax Increment Funds to Yellowstone County for Courthouse Renovation Project.

F. **Approval** of Billings Animal Shelter "Neuter Before Adoption" policy.

G. **Approval** of application for Certified Local Government (CLG) Grant for carrying out historic preservation activities. (\$5,500 grant dollars; \$5,500 city match).

**H. Confirmation of Police Officer:** Edwin Young

**I. Subordination of Housing Rehab Loan:** Louanne Sonsteng, 910 Avenue C, \$5,000 of \$15,000 deferred loan.

**J. First Reading Ordinance** creating an Emergency Medical Service (EMS) Advisory Commission and setting a public hearing for 5/8/2000.

**K. First Reading** Ordinance extending the boundaries of Ward I to include recently annexed property: Annex #00-01, Tract 1-A of C/S 984, containing approximately 4.3 acres, and setting a public hearing for 5/8/2000.

**L. Proposed Address Changes** for portions of Wicks Lane, Hilltop Road and Alkali Creek Road, and setting a public hearing date for 5/22/00.

**M. Authorization of Expenditure of ECGC Funds** by Downtown Exchange Club, \$500 from Park 3 Golf Course profits to Yellowstone River Parks Association for trail improvements.

**N. Approval** of joint application (with Yellowstone County) to the Montana Board of Crime Control for Youth Intake and Assessment Center grant and accompanying Interlocal Agreement. (\$176,156 grant dollars; \$19,573 City match).

**O. Preliminary Minor Plat** of Amended Lot 1, Block 3, Hogan Homestead Subdivision. (Generally located at the southeast corner of King Avenue and South 24<sup>th</sup> Street West).

**P. Preliminary Major Plat** of North Slope Homes Condominium Subdivision. (Generally located at 943 Rimrock Road).

**Q. Bills and Payroll.**

(Action: approval or disapproval of Consent Agenda.)

Councilmember Larson separated Item N. Councilmember Johnson separated Item P. Councilmember McDermott separated Items B and E. Councilmember Deisz separated Items F and J.

Councilmember Kennedy moved for approval of the Consent Agenda except Items B, E, F, J, N and P, seconded by Councilmember Larson. On a voice vote, the motion was unanimously approved. Councilmember Kennedy moved for approval of Item B, seconded by Councilmember Larson. Councilmember McDermott asked where the city dollars were coming from. Public Utilities Director Carl Christensen said the \$509,000 was coming from the water and wastewater utility

funds. On a voice vote, the motion was unanimously approved.

Councilmember Kennedy moved for approval of Item E, seconded by Councilmember Larson. On a voice vote, the motion was approved. Councilmembers McDanel, McDermott and Deisz voted "no". Councilmember Kennedy moved for approval of Item F, seconded by Councilmember Larson. On a voice vote, the motion was approved. Councilmember Deisz voted "no". Councilmember Kennedy moved for approval of Item J, seconded by Councilmember Larson. Councilmember Deisz asked if having a council liaison was against the rules of the City Charter. City Attorney Brent Brooks said it depended how liaison was defined. "As long it is not an elected city councilmember, it would be permissible," he stated. Councilmember McDermott questioned the term limitations and asked if that referred only to the individual members that were non-city employees. Mr. Brooks said staff representation would be ongoing and voting members as well. Councilmember Deisz asked, "for clarification, only three members on that whole committee are going to be appointed at large and have term limits; the rest, or 2/3rds of that committee will be bureaucrats. Is that correct?" Mr. Brooks said he didn't have the ordinance in front of him and couldn't tell him the exact mix. "What I can tell you is that this is the recommendation that was presented to me by Acting Fire Chief Jochems, as a recommendation of the EMS Task Force. What I simply did was to place the substantive directions to me in ordinance form," he stated. On a voice vote, the motion was approved. Councilmember Deisz voted "no".

Councilmember Kennedy moved for approval of Item N, seconded by Councilmember Johnson. Councilmember Larson said he would abstain due to a potential conflict of interest. On a voice vote, the motion was unanimously approved, with one abstention. Councilmember Kennedy moved for approval of Item P, seconded by Councilmember Iverson. Councilmember Ohnstad asked if this would come back to the council. Planning Director Kerwin Jensen confirmed that all preliminary plats come back to the Council for final approval – normally within a 3-year period. Councilmember Ohnstad asked if there would be a public hearing at that time. Mr. Jensen said there is no public hearing before the Council; it is placed on the Consent Agenda like the preliminary plat is. The final plat approval is merely to make sure the applicant has met the conditions imposed at the preliminary stage.

Councilmember Ohnstad said he understood that this is considered a condominium and as such, the road going into this subdivision is owned by the condominium association. Mr. Jensen confirmed that was correct. Councilmember Ohnstad said the problem he sees is that the road will be on the west side and the people directly west of this plat would have back yards that suddenly become front yards. Mr. Jensen said that was true; it will be a private drive that will be built to specifications as requested by the Fire Dept. He noted that the properties to the west of this private street would not have access to this street. It is intended to serve only those seven condominium units that are part of this subdivision request.

Councilmember Ohnstad asked if the residents could put a curb cut onto this street from their back yard. Mr. Jensen said this is not classified as a city street, but as a private drive, similar to other condominium settings around the city. Councilmember Ohnstad made a substitute motion to delay the item to the next council meeting on May 8 to give the owner/developer time to meet with the neighbors to come up with something to save their back yards or the aesthetics of their neighborhood, seconded by Councilmember Kennedy. Councilmember Johnson said the private drive is specified to be 28 feet and suggested fencing on the west side. He asked if the private drive will be used to haul garbage and answer police and fire calls. Mr. Jensen said he was not sure about the solid waste service, but it would definitely be used for fire and police protection. He added that under state and local regulations, "we are required to take action on a preliminary plat within 60 days of the application being made. This is the last available opportunity the Council has, without written consent

from the applicant, to extend that period of time. We are obligation by law to make a decision this evening," he stated.

Councilmember Larson asked if there would be any other public hearings on this property regarding zoning, etc. Mr. Jensen said there would be no other public hearings. It is zoned R9600, requiring 9600 sf of lot area for each unit. If you exclude the property of the private drive, the lot areas are 12,000 sf to 19,000 sf, well within the limits. There are not other zoning issues with this property. The property can be legally used for single-family housing and at the density the applicant has proposed. They have chosen to go through the condominium process instead. Councilmember Kennedy asked if the developer would be willing to agree to the 2-week delay. Mr. Jensen confirmed that the developer was in the audience. The developer, Mr. Langlas agreed to the 2-week delay. Councilmember McDanel asked that the concurrence by the developer be put in writing to the Planning Dept. He asked that an explanation be given to the developer so that he understands the reason for the delay. Councilmember Ohnstad explained that many of the neighbors complained about this project. He said he felt that since their backyards becoming front yards, there should be some agreement between the neighbors and the developer as to what they will have as a buffer area – fence, shrubbery, etc. and how he plans on dividing this area, since they have absolutely no access to this street. On a vote on the substitute motion (to delay action 2 weeks), the motion was unanimously approved.

## **REGULAR AGENDA:**

### **2. PRESENTATION by Department of Environmental Quality (DEQ) on Environmental Protection Agency's Re-designation of Billings as Attainment for Carbon Monoxide. (Action: Presentation only.)**

Debbie Skibicki of the State Dept of Environmental Quality said the DEQ will be presenting a re-designation plan to the EPA, to re-designate Billings to attainment status for carbon monoxide. In 1978, the EPA looked at Billings as a non-attainment area for CO<sub>2</sub>, as a result of the 1977 clean air amendments. The national ambient air quality standards for CO<sub>2</sub> is 9.0 ppm for an 8-hr average concentration, not to be exceeded once/year. Control measures were developed to bring Billings back into compliance after its non-attainment status. The CO<sub>2</sub> violation was contributed primarily to motor vehicle emissions in high traffic area. The first CO<sub>2</sub> control plan included intersection reconstruction at Exhibition and 1<sup>st</sup> Avenue North. The final CO<sub>2</sub> control plan incorporated computer modeling with the reconstruction and was approved by EPA in 1986. Following the 1990 Clean Air amendment, Billings was re-evaluated based on its lack of exceedances in 1988 and 1989. EPA listed Billings then listed Billings as a "not classified" non-attainment area for CO<sub>2</sub>.

Ms. Skibicki said Billings is still listed as a non-attainment area, even though there have been no violations in over 15 years. A new emission inventory and a maintenance plan were required by EPA for re-designation as attainment. She noted this could have been done in 1991, but hasn't been done for a variety of reasons, namely bureaucratic paperwork.

The Montana DEQ began its re-designation effort based on a limited maintenance plan, a less restrictive plan for areas like Billings that have not had a problem with attainment is a long time, and on the 1996 baseline CO<sub>2</sub> emission inventory. The primary control measure in the plan is the Federal Motor Vehicle Emission Control Program, i.e. cleaner

cars. She said this means that as manufacturers continue to build cleaner cars, the air in Billings gets cleaner, even though vehicle miles traveled actually increases.

Ms. Skibicki said the plan requires that the CO2 monitor remain in place, current at 8 Grand Avenue (in front of the bridal shop) and continue to be monitored by local and state officials for exceedances of standards. In the event of an exceedance, local and state officials would be notified within 60 days. The DEQ and the Yellowstone Air Pollution Control Program will recommend appropriate contingency measures based on the meteorological conditions that lead up to the exceedance, information on historical exceedances and estimated pollution growth in an area. Following review of these measures, appropriate contingency measures would be proposed for adoption. The adoption process would need to be completed within 3 months of the exceedance. Contingency measures would not be implemented until a violation has occurred. She pointed out that it takes two exceedances of the standard during a one-year period to create a violation of the standards. Without the re-designation plan, if Billings experienced a violation of the CO2 national ambient air quality standard, it would be designated by EPA as a full non-attainment area, bringing it back to 1978 status and be required to develop a control plan from square one to bring it back to attainment.

The benefits of the re-designation include: removing the stigma attached to being a non-attainment area and simplify transportation conforming procedures (for federal funded projects). It would not change the state funding for the Yellowstone County Air Pollution Control Program. It will be submitted to EPA following a formal department hearing – in Helena in June. She noted that Great Falls is going through this same process. EPA acts on these requests within 2 years.

Ms. Skibicki said this is a non-regulatory plan. "Nothing will change for the citizens of Billings except transportation issues, transportation planning will be easier and Billings will be officially listed as an attainment area," she stated.

### **3. PUBLIC HEARING for draft CDBG and HOME FY2000 Action Plan and FY2000-2004 Consolidated Plan.**

**(Action: public hearing only.) (Council action on 5/8/2000.)**

Community Development Block Grant Manager John Walsh said the purpose of the public hearing this evening is to gather public input on the City's CDBG program and HOME program. This is the 25<sup>th</sup> year that the City has participated in the CDBG program. One of the primary purposes of this national program is to create viable neighborhoods. With the CDBG program, the City can provide affordable financing for those low to moderate income individuals needing to make repairs to their properties and their neighborhoods.

This year the City received approximately \$1 Million for allocation; 15% are traditionally allocated to public service activities -- \$150,000. This is the 7<sup>th</sup> year the City is participating in the HOME program. The City will be receiving \$540,000 in funding. One of the primary programs the City has under these funds is the First Time Homebuyer Program. Since 1994, the City has helped over 300 low to moderate income homeowners and attracted \$12 Million for the Montana Board of Housing program – specifically for the First Time Homebuyer Program.

This year's budget is part of a Five-Year Plan for these resources. The five strategies approved for the use of these funds over the next five years are: (1) improve the economic condition of lower income households in the community by working with nonprofit organizations to help address the human service needs of lower income residents and lower income neighborhoods, working with economic development and non-profit agencies to undertake strategies that will result in job training and employment opportunities for lower income households. (2) promote affordable housing and fair housing city-wide, by promoting home ownership, encouraging the development of new affordable single and multi family and special

needs housing in the community through private developers and non-profit agencies, and supporting activities that increase the awareness of fair housing in the community. (3) promote the preservation of the existing supply of affordable housing in the community, by providing affordable financing to allow low and moderate income homeowners to perform needed repairs to their homes and providing affordable financing to encourage rehabilitation of affordable multi-family units in the community. (4) promote the preservation and revitalization of the community's older neighborhoods where the affordable housing stock is located, by upgrading the housing stock in older lower income neighborhoods, providing incentives to encourage development of vacant lots in targeted neighborhoods, providing funding for amenities that will continue to make older neighborhoods attractive places to work and live, empowering residents of lower income neighborhoods to work together to address needs and respond to opportunities, and complimenting public works activities that address the infrastructure needs of the older lower income neighborhoods. (5) work as an active partner with non-profits, neighborhood groups, and other to address housing, community, and neighborhood needs, by: providing the institutional structure for community and housing development organizations to work together to work together to address common issues and promoting activities that help build strong community structures and organizations that will allow the community to better address needs and respond to opportunities.

Tom Iverson, chairman of the Community Development Board said the board goes through a lengthy process, which includes visiting the agencies to public hearings for the budgets. All applicants were asked a new question this year – to describe why they thought CDBG funding was appropriate for their program. In regard to housing and neighborhood activities, the Board generally agrees with the staff recommendation. They are core programs and change very little from year to year. The Board did recommend the transfer of \$8,000 from special services to the HeadStart North Park Improvement Plan. Staff recommendations left \$64,241 in unprogrammed funds. The Board recommends the allocation of those funds as follows: IRMA House for \$7,500; Cobb Field for \$10,000; Friendship House sidewalks for \$10,000; leaving \$36,000 in unprogrammed funds for other projects. He said in the public service area, the Board received 19 applications totaling \$283,000, with a budget of \$150,000. The Board recommended funding some agencies at historical levels, it recommended funding the following new programs: Sage Towers computer learning center for \$2,000; InCare Network for \$2,000; The Family Tree Center for \$3,250; Billings Board of Alcohol and Drug Free Housing for \$9,000; Big Brothers and Sisters for \$3,500 and Boys and Girls Club for \$3,000. They did not recommend funding for the following agencies: Prairie Tower Park Neighborhood Network Program, Community Daycare, Crime Prevention Council and Graffiti Removal Program.

The public hearing was opened. CURT HANEY, DIRECTOR OF THE FRIENDSHIP HOUSE thanked the Board and the Council for funding the two programs they applied for – the Summer Enrichment Program and the Explore Work Life Program, and offered a brief explanation of each.

GREG VERSTRAETE OF THE SOUTH SIDE NEIGHBORHOOD TASK FORCE said their application was for replacing the sidewalk at Friendship House. They are a community organization that serves the youth of the south side and the elders of that area. The second project is for the Temporary Teen program, which will be expanded this year to include grocery delivery and housepainting.

JEFF DAVIS, EXECUTIVE DIRECTOR OF TUMBLEWEED RUNAWAY PROGRAM said next year would be the 25<sup>th</sup> anniversary of their organization. Each year they serve about 550 youth in crisis. 92% of them are returned to home or some stable living situation deemed positive. 84% of them are from within City limits. 45% of them come from low income

families. 37% are from families with a female head of household. He said their services are essential and unduplicated. He said the \$16,000 they requested this year is essential to the agency's continued function.

LINDA ROBBINS, ROUTE 1, JOLIET, MT said she represents Family Services. Last year they helped 49 families stay in their homes, with the CDBG funding. She thanked them for the Board and council for their funding support. She also added that the Billings Healthy Community program is also a very important program to assist many agencies in the community to provide more prescriptions and medical assistance for many families who just don't have the money for prescriptions.

JOAN HURDLE OF BILLINGS BOARD OF COOPERATIVE HOUSING said they provide a place for recovering women, who find it best not to go back to their former environment when they get out of treatment. Their clients are required to pay rent @ \$200/month. The Board picks up the share of the rent when a vacancy occurs. Their request is to help provide funding for administrative support.

LEON PATTON, CHAIRMAN OF THE SOUTHWEST CORRIDOR TASK FORCE said they are asking funding for the Southgate Cop Shop and the Southwest Corridor BikeNet. He thanked the Board and Council for considering their projects.

MANUEL CASTILLO, COORDINATOR FOR THE VISION SEEKERS PROGRAM, a component of the InCare Network, said this is the first time they have applied for CDBG funding. He thanked the Board and the Council for their consideration.

REATHA THOMAS, EXECUTIVE DIRECTOR OF BIG BROTHERS AND SISTERS said they appreciate the recommendation for \$3,000. It will be used to support costs of volunteer recruitment and sexual abuse prevention training. She said in July 1998, they had 54 matches and 65 children ready to be matched. For calendar year 1999, they provided services for 276 children. She said their High School Bigs Program is their greatest success. In this program, high school juniors and seniors are screened and become mentors for elementary school students. They have programs with Senior High, Skyview, Central and Laurel High School. A number of new programs will begin this Fall.

JUDY BRYNGELSON OF YELLOWSTONE COUNTY HEADSTART said they have been in the community for 35 years. She thanked the Board for their recommendation of \$8,000 for their North Park Site Development Project. About 280 families/year receive services from HeadStart. They would like to have the North Park Elementary School become the permanent site for their program. As part of the site development project, and in keeping with the North Park Neighborhood Plan, they would like to begin answering some of the questions identified in that plan to make the neighborhood more family friendly and the park more accessible and safer. The funds would fund a planning study to identify the most appropriate option to improve the space between the North Park Elementary School and the park across the street.

MIKE MARNIN OF 244 YELLOWSTONE, EXECUTIVE DIRECTOR OF THE BOYS AND GIRLS CLUB said he has been in his position and executive director for about two months and has worked at the club for about a year. He said their request would fund additional staff (an educational student from one of the colleges), so they can have a better staff/child ratio. They have experienced a 50% increase in the number of children served in 1999. About 200 children per day attend in the summer and about 120/day in the year, with a capacity of 200.

MARY GALULEE OF THE FAMILY TREE CENTER said they are a new applicant this year. They are asking for funding for their Nurturing Parent Program. She said they appreciate the funding recommended by the Board. It will allow them to provide that service to 25 additional families this year.

TERRY FELLON OF EXECUTIVE DIRECTOR OF COMMUNITY AFTER SCHOOL ACTIVITIES said they appreciate

the support of the Board and Council. They are opening a second intermediate site this year. Their Sandstone site has been a big success this year and next year a site will be opened at Rose Park School. She said they will collaborate with other organizations to offer programs like Junior Achievement and 4H and perhaps a drama program.

BRANDY CADY, PRESIDENT OF THE OPTIMIST YOUTH SPORTS CLUB said they thank the Board for recommending them for funding this year. She said their primary program is a baseball program and their focus area is the south side area. Many children from all over the city come and participate however. There is a lot of family participation from parents as well.

ARDELL KRUTHOFF EXECUTIVE DIRECTOR OF SENIOR HELPING HANDS said they are in their 21<sup>st</sup> year of service to the community. She thanked the Board for their continuing support of this program. They serve the reduced income elderly in Yellowstone County. This year they experienced a 21% increase in the amount of clients they served. They have a waiting list of clients. She noted that their request was not filled, but cut by \$5,000. This means they will serve 10 less people this year.

There were no other speakers. The public hearing was closed. The Council will take action on the requests on May 8<sup>th</sup>.

Mayor Tooley called a brief recess at 9:05 p.m. The meeting was called back to order at 9:12 p.m.

**4. REPORT AND RECOMMENDATIONS by Downtown Skate Park Committee. (Action: approval or disapproval of Committee recommendations.)**

Mary Westwood, Chair of the Skateboard Park Advisory Committee said this report is an interim report of the committee. The report contains five recommendations:

- (1) Designation of a location. They are recommending the Arcade Block, located between Minnesota Avenue and First Avenue South and South 26<sup>th</sup> and South 27<sup>th</sup> Streets as the most appropriate site, primarily because of its size and the existing structure (Galles Filter Building) that could be used as a clubhouse. It is also an eyesore presently that could be improved by the construction of a skateboard park.
- (2) Establishment of a fund to receive donations, so they can proceed with fundraising efforts.
- (3) Assistance from City staff to proceed with the project.
- (4) \$6,000 that has been set aside in the Parks Dept to do the design work on the project.

Mayor Tooley thanked Ms. Westwood for her work on this project – the way she interviewed people and got input from various stakeholders in the downtown area and the community. Councilmember McDermott moved for approval of the four recommendations, seconded by Councilmember Deisz. Councilmember McDanel amended the motion to include a fifth recommendation – the allocation of \$20,000 from Council Contingency for construction of the skate park, seconded by Councilmember McDermott. Councilmember McDanel said he is anxious to see this project move forward as a pilot program. If it works, the City will want to build additional parks in other parts of town, he said. Mayor Tooley clarified that \$25,000 had already been set aside to be used for this purpose. Councilmember McDanel noted that \$25,000 was to be used as a match (2 for 1); his request this evening required no match; it was an additional allocation. On a roll call vote, the motion was approved 6-4. Councilmembers voting "yes" were: Bradley, Deisz, McDanel, Tooley, Ohnstad, and Larson. Councilmembers voting "no" were: McDermott, Kennedy, Iverson and Johnson. Approval of the council contingency

allocation will be documented via RESOLUTION 00-17563. On a voice vote on the motion as amended, the motion was unanimously approved.

**5. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #658: a zone change from Community Commercial to Controlled Industrial on Lots 23-24, Block 160 and Lots 1-2, Block 161 of Billings Original Town, located at 219 and 224 South 24<sup>th</sup> Street, Kent Wilson, Conrad Miller, Lester Litzsinger and Earl & Theresa Dahlstrom, owners; CTA Architects Engineers, agent. Zoning Commission recommends approval.**

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

Zoning Coordinator Jeff Bollman said this zone change is on two separate parcels located on the NE and NW corner of Third Avenue South and South 24<sup>th</sup> Street. They are presently zoned Community Commercial and are proposed to be changed to Controlled Industrial. Last year three properties in the area were rezoned to Controlled Industrial – the NorPac Building. The properties south of that were acquired after that zone change was approved. The owners want to change these properties to have the same zoning as the contiguous property to accommodate future expansion.

The public hearing was opened. There were no speakers from the audience. The public hearing was closed. Councilmember Iverson moved for approval of the Zoning Commission recommendation, seconded by Councilmember Larson. On a voice vote, the motion was approved. The ordinance was approved on FIRST reading. Second reading of the ordinance is scheduled for May 8<sup>th</sup>.

**6. MONTANA BREW PUB PATIO PROPOSAL:**

**A. PUBLIC HEARING AND APPLICATION FOR ENCROACHMENT PERMIT. Staff recommends conditional approval. (Action: approval or disapproval of staff recommendation.)**

**B. PUBLIC HEARING AND SPECIAL REVIEW #673: a special review to allow an outdoor patio in the public right-of-way in the Central Business District zone on the eastern portion of the North Broadway (North 28<sup>th</sup>) right-of-way that is adjacent to Lots 17, 18 and the north 9" of Lot 19, Block 92 of Billings Original Town, located at 111 and 113 North Broadway. City of Billings, owner; Mike Schmechel, agent. Staff recommends conditional approval. (Action: approval or disapproval of staff recommendation.)**

City Engineer Brian Borgstadt said the encroachment permit is an administrative matter under normal circumstances and issued by the City Engineer's Office to cover things like old stairwells in alleys, fire escapes, window wells, etc. that project into the public right-of-way. It is actually use of public right-of-way by a private property owner. It is not a vacation of the right-of-way, but a lease or rental of the space instead. He noted they are issued throughout the Central Business District. In this case, the proposal is to extend a patio out onto the sidewalk in front of the establishment. The plan calls for pulling the sidewalk area out into the existing parking lane, so there is room for pedestrians to go around the patio. They are proposing a café-style use of the right-of-way, that would function 5 out of the 12 months of the year. The application is by Mike Schmechel, manager of the Brew Pub. The property is actually owned by other individuals. The permit is generally issued and tied to an adjacent property for the purposes of paying the encroachment fee on an annual basis.

The special review action that is the second part of this item, is for the extension of the activity of serving alcohol out beyond the existing boundaries of the Brew Pub out onto the patio. This is a council action because it is a significant and unusual encroachment on public right-of-way, going beyond an administrative matter. It affects the neighbors and the downtown area, as well as the general population of the city. As a result, the City Engineer's Office created a process to allow for public input and council action. There is no public hearing process set up for encroachment permits normally, only the appeal process that if the City Engineer rejects an encroachment permit application, the application is brought to the Council for review. He noted that in bringing the permit to the council, they had the request reviewed by those agencies most interested in what was taking place in the public right-of-way. This was done through the Development Review Committee process – which involved the Planning Dept, Fire Dept, Police Dept, Traffic Engineer, etc.

Mr. Borgstadt said the encroachment is extensive into the right-of-way, as it takes place on almost all of the sidewalk. The proposal says they need a minimum of 14 feet of patio to make the proposal work. The encroachment is very unique in that it is a point on the street, rather than an entire streetscape. Staff examined how it affects the Broadway Corridor, how it relates to the Downtown Framework Plan and how it would fit in with traffic circulation and pedestrian circulation. He noted that the liability issue must also be considered, as well as the enforcement of the permit conditions. These conditions include: (1) that the encroachment permit be issued subject to the approval of the special review; (2) the occupation of the public right-of-way is to be limited to the area shown on the site plan; (3) the patio is to remain an open air facility; (4) the encroachment permit will be reviewed at the end of the 10-year period to determine if the use should continue; (5) the area that alcohol is served in should be separated from the open sidewalk area by wall, fence or railing; (6) the applicant will carry liability insurance as specified by the City; (7) the permit can be revoked at any time if the city determines the use is not conducive to the public's interest; (8) in the event the patio use is terminated, the sidewalk will be restored.

Mr. Borgstadt said several technical issues arose and have been resolved. One issue concerned drainage. He reminded the council that throughout the downtown there are a number of the old coal vaults under the sidewalks, used by many places for storage. He said the applicant has been investigating this matter and has found that the cap over the vault is a separate piece of concrete, separate from the sidewalk, so it would be possible to alter the sidewalk without taking the cap off the vault. He noted that the applicant has had this proposal reviewed by many different entities in the community and the downtown. Through this public hearing process, there should be no surprises as to what is intended with this project. He reminded the Council that this permit is experimental and unique in the way it is being proposed –as a single, catalyst type project, not in conjunction with the overall Broadway Streetscape proposal.

Councilmember Bradley noted that a removable rail is shown on the site plan. He asked if a curbwall is also proposed. Mr. Borgstadt said it did not. Councilmember McDermott asked if this fits into the Broadway Streetscape. Mr. Borgstadt said it does fit into the Downtown Framework Plan and has the support of the Downtown Parking Committee and Downtown Partnership. Councilmember Deisz asked if this proposal is temporary, why is the permit for ten years. Mr. Borgstadt said that is the request of the applicant and staff is recommending approval of that term. Councilmember Deisz noted that all costs and maintenance are to be borne by the permittee, and asked, "but how is it addressed if the permittee suddenly decides to leave Billings. Who bears the cost and how is it written into here?" Mr. Borgstadt said there is a condition in the permit about removing the encroachment from the public right-of-way and terminating the encroachment permit. Councilmember Deisz asked how the street and sidewalk are returned to their original state in this scenario. Mr. Borgstadt said they did not see removing the extended curbline in the future.

NOTE: The conditions recommended by the Zoning Commission on SR#673 are: (1) the area approved for alcohol service shall be limited to the area shown on the submitted site plan. (2) there shall be no amplified or live music on the proposed outdoor patio. Only background music shall be allowed. (3) the patio area shall remain 'open air' (except for fencing and or awning) and shall not be enclosed. Any fencing, awning or other encroachments into the public right-of-way shall be removed during seasonal periods of non-use. (4) due to the serving of alcohol within the public right-of-way, the patio shall be separated from the "open" sidewalk area by a wall, fence or railing a minimum of 3'6" high, but no over 5'0" high. All egress from the patio area must comply with fire and building codes. (5) the operator of the patio shall indemnify and hold the City harmless for the activity that takes place within the public right-of-way. The permittee or operator of the patio shall provide proof of an insurance policy, issued by a company licensed to do business in the state of Montana, in the amount of \$1,500,000 combined single limit, protecting the permittee and the city from all claims for damages to property and bodily injury, including death, which may arise from products liability and operations under or in connection with the encroachment permit. Such insurance shall name the City as an additional insured and shall provide that the policy shall not terminate or be cancelled prior to the expiration date without 30-days' advance written notice to the City. In addition, the permittee shall indemnify the City against any and all liability, loss or damage that the City may suffer as a result of claims, demands, costs or judgements resulting from activities related to use of the patio area within the public right-of-way. (6) this special review approval shall only be valid as long as there is a valid encroachment permit issued by the City Engineer's Office. (7) patio operator shall be required to provide interim safety measures. This shall include pavement markings from 1<sup>st</sup> avenue North through the end of the bulb-out.

The public hearing was opened and conducted as a joint public hearing for both items. MIKE SCHMECHEL, NO ADDRESS GIVEN, said he is the owner of the Montana Brewing Company. He said one of the other property owners – Jack Thomas, signed the permit application. If it were required to remove the concrete, the cost would be put onto his tax bill to cover the cost of removal. Mr. Schmechel said the Brewing Company opened about 5 ½ years ago on the 100 block of North Broadway. During this time there has been a lot of activity in a one-block radius: Montana Bank closed, Vinnie's closed, Pauli's opened and closed, Herbergers closed, the Broadway clothing store closed, the Music on Broadway store opened and closed, State Fur closed, River Run closed, The Kitchen Cupboard closed, Subway closed, the By George gift shop closed, Baron Jewelry closed, American West Gallery closed, Lambstown opened and closed, Jasons closed, Dain Bosworth moved, Montague Jewelry moved, now Barnett Opticians is closing. He said his customers look out their front window and see a lot of empty storefronts and bad sidewalk in need of replacement. "Business as usual downtown is not working very well. Our downtown needs a little help. Unfortunately downtown renovation projects don't fit very well in a cookie cutter type permitting process designed for new construction... It's pretty hard to get anything done if it has to be done by new construction standards. There's just not room to do very many new projects..." he stated. He said he is a member of the Downtown Business Association and attended a meeting last July in which the multi-use parking facility proposal was presented. He noted that everyone was excited about it. Everyone wants to see something happen, even it is just small projects that are successful. Mr. Schmechel said the Framework Plan has been out for four years now and no one has ever used it to design a project downtown. In August 1999 they went to the City Engineer's office and inquired how to apply for a permit, etc. He noted that this is the culmination of nine months of effort.

Mr. Schmechel said he has support from all the business owners on the block, from the Downtown Partnership, the Downtown Business Owners Association, the Downtown Property Owners Association, the Downtown Parking Commission

and a letter showing they have the required insurance coverage. He said they also have support from the Traffic Control committee and the Urban Design Committee. He noted that it is easier to get a building permit to build a strip mall on the west end than it is for a downtown renovation project. "As an accumulation of all this, we are asking you to approve something different, a little outside of the box. But how wrong can we be? When you look at all the stores and they are all empty, if we go out on a little bit of a limb, can we make a bigger mistake than we are now?" He said he would like a couple of changes in the conditions: #8: The conditions states that the hours would be from 8 AM to 10 PM. The Zoning Commission overturned that and said they could operate under normal business hours. He said they are proposing to spend \$60,000 on a patio that would be open about 90 days/year. He asked that the council support the Zoning Commission recommendation.

Mr. Schmechel said also that the downtown renovation process needs some help by streamlining the renovation permit process. "The project I'm proposing isn't a home run; it's a single. It has almost unanimous support for everything and I'm here tonight asking for your support and approval and amendment of the conditions," he stated.

SANDY FISHER OF 2644 WOODY DRIVE, said she is a downtown property owner, a member of the DBA and the Traffic Control Board. She was involved in the creation of the Framework Plan, the recent Urban Design Study and the master plan for the Broadway Streetscape. Ms. Fisher said they worked his proposal into the overall streetscape plan. Mr. Schmechel agreed to be the prototype project for the streetscape plan and has agreed to utilize many of the design details specified in the Broadway Streetscape Plan. She encouraged the council to approve the request with minimal restrictions, because it is good for downtown. She said she hoped the conditions would not allow the City to close them down if there is a complaint, noting Mr. Schmechel is investing a sizeable amount of money. "I don't think we should get in the way of empowering property owners or businesses to maintain and improve their properties. It shouldn't be easier to do this type of work on a parking lot next to Walmart, than in the heart of our City," she said.

JUDY MCNALLY, NO ADDRESS GIVEN, said she serves on the Urban Design and Historic Preservation Committees and is speaking in favor of the proposal. She said that over 200 people attended three meetings in which this project was discussed, noting there is public knowledge of the process. "I think we want an active and interactive downtown and this is exactly what this will do," she stated. It is good for downtown and she urged the council to support the project.

DAN BERRY OF 305 WYOMING AVENUE said he is the Chair of the Parking Advisory Board. The Board supports this project. He confirmed that Mr. Schmechel had his project reviewed by a large number of groups over the course of nine months and characterized this process as a "nine month root canal." "He showed extreme patience on this. The city staff has been very cooperative in working with this. Mike has stayed in contact with us. We're certainly in favor of releasing those two parking spaces," he stated.

GREG KRUEGER, NO ADDRESS GIVEN, said he is the executive director of the Downtown Billings Association. He also said this has been a long process for Mr. Schmechel. "The Brew Pub is a premier establishment in downtown Billings. If you've ever tried to get in there for lunch or in the evening, it's always full. On the Christmas Stroll night, Mike Schmechel had to eat dinner somewhere else because he couldn't get into his own restaurant. What I'm trying to point out is that he probably doesn't actually need this patio, but he wants this patio because it will enhance our downtown. It will start things," he stated. He urged the council to support the proposal.

MIKE GUYOUE, NO ADDRESS GIVEN, said he is a tenant in the building above the brew pub at 115 North Broadway. He supports the project, noting he hoped it is a spark that will "set a big brush fire downtown." He urged the

council to support the project.

CONNIE WARDELL OF 1400 POLY DRIVE said she is a member of the Downtown Property Board and the Downtown Property Owner's Association. She said Mr. Schmechel presented to the downtown property owners about nine months ago and presented his proposal to them. Everyone was enthusiastic about the project. She urged the council to support the project.

SCOTT GODFREY OF 5819 WIND DRIFT ROAD said he supports the project. He is the owner of Stogie's Newsstand and Tobacco and has been downtown for about five years. He said Mr. Schmechel has been a good neighbor and has demonstrated that he has sought input from a lot of other people involved in the downtown. Mr. Godfrey said it is important to do something now and not wait to work on revitalizing downtown.

DON TEETE said he lives on 1<sup>st</sup> West in Billings. He said he's heard the term proactive mentioned several times this evening. "We have to ask ourselves: are we proactive towards business in downtown Billings?" He said Mr. Schmechel has done an excellent presentation and urged the council to support the project.

There were no other speakers. The public hearing was closed.

Councilmember Ohnstad moved for approval of the encroachment permit, seconded by Councilmember Kennedy. Councilmember Ohnstad said he's heard that everyone is in favor of the project, noting there is a silent majority out there that owns the property called "city" property, "and we are entrusted with its use. I would have to say this. This is a benefit to have a sidewalk café... But we have to be very careful in that there are other owners. We are stewards of this property... Frankly, the problem is alcohol," he stated. On a voice vote, the motion was approved. Councilmember Johnson voted "no".

Councilmember Ohnstad moved for approval of the Zoning Commission recommendation for SR#673, seconded by Councilmember Kennedy. Councilmember Kennedy amended the motion to add condition #8 stating that operation of patio shall be allowed for normal business hours of the establishment, seconded by Councilmember Iverson. Councilmember McDanel asked if there is a condition prohibiting amplified music on the patio. Mr. Bollman said condition #2, a standard condition placed on outdoor patios and decks states there will be no amplified or live music on the patio, only background music is allowed. On a voice vote, the amendment was unanimously approved. On a voice vote on the main motion as amended, the motion was approved. Councilmembers Deisz and Johnson voted "no".

**7. PUBLIC HEARING AND SPECIAL REVIEW #674: a special review to allow the placement of an all beverage liquor license and an outdoor patio in a Controlled Industrial zone on Lot 4-B of Amended Lot 4, Block 3 of Midland Subdivision, 3<sup>rd</sup> Filing, located at 980 South 24<sup>th</sup> Street West. United Industries, owner; Eugene Stomvoll, agent. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

Zoning Coordinator Jeff Bollman said the subject property is located caddy-corner from Shopco. The property is currently vacant. The conditions recommended by the Zoning Commission are: (1) a 4 ft high minimum block wall shall be placed around the entire outdoor patio. Any gates required by building or fire codes shall be used for exit only from the patio. (2) there shall be no amplified or live music on the proposed outdoor patio; only background music shall be allowed. Mr. Bollman noted there are no facilities within 600 feet that require a waiver of the separation.

The public hearing was opened. EUGENE STOMVOLL OF 3190 WEST MCDONALD said he is representing the buyers of the property – Dos Machos Restaurant. They are in the process of relocating from the Rimrock Mall area, where they have been a tenant for the past 21 years. He noted they looked for areas in the community where they would not be in violation of the separation requirement from schools, churches, and residential areas. "This is an area that is growing quite rapidly and this location was decided when the Wells Fargo Loan Processing Center became a reality just ½ block south," he stated.

There were no other speakers. The public hearing was closed. Councilmember Johnson moved for approval of SR#674, seconded by Councilmember Larson. On a voice vote, the motion was unanimously approved.

**8. PUBLIC HEARING AND FIRST READING ORDINANCE amending Section 27-306 of the Unified Zoning Code by: 1) adding Dance Studios, Schools and Halls (SIC 791) as allowed uses in the Residential Professional zone and 2) adding Martial Arts Instruction (SIC 7999) as an allowed use in the Residential Professional and Neighborhood Commercial zones. Zoning Commission recommends approval without modification. (Action: approval or disapproval of ordinance on first reading.)**

Zoning Coordinator Jeff Bollman said this item was before the council on February 28. At that meeting, the council held some discussion about making some substantial changes as to what had been proposed with the ordinance. At that time the council sent it back to the Zoning Commission to consider those changes and make a recommendation back to the Council. The changes being considered were potentially having some type of maximum size of the building for these uses or requiring a special review for these uses in a Residential Professional zone or a combination of requiring a special review if the use exceeded a certain square footage.

The Zoning Commission held another public hearing on these changes and recommended leaving the ordinance as originally proposed. He said the main reason for their recommendation was that the Zoning Commission was not comfortable treating these two uses differently than other instructional uses treated in the Residential Professional district. For example, elementary schools are allowed in these zones and there is no limit on the size or number of students. Mr. Bollman said those issues are addressed to some extent in the maximum lot coverage and parking space requirements specified for different uses. In addition, they felt these two uses were not that onerous as to require a special review in a Residential Professional zone.

The public hearing was opened. CHRIS TIMSON OF 939 GOVERNOR'S BOULEVARD said he is speaking in favor of the ordinance amendment. This amendment has been to the Zoning Commission twice and has twice recommended that the amendment be approved without restrictions of size or special review. He said there are many entities that can locate in an RP zone – elementary schools, motor freight offices, secondary schools, variety of offices, banking, credit agencies, security brokers, beauty and barber shops, etc. He noted that none of those have restrictions as to size, and he saw no reason to single out or discriminate against a dance school or a martial arts school on that basis. Mr. Timson said he is involved in martial arts and has some knowledge of what a school requires – about 4,000 sf minimum. "The martial arts stress courtesy, humility, honesty, discipline and is very family oriented. It's an asset to a community," he stated. He urged the council to approve the amendment without restrictions.

DONNA YUNG OF 2029 24<sup>TH</sup> STREET WEST said she supports this amendment. She has been in martial arts for 6 ½ years and found it to be a highly family oriented activity. It is very structured with small classes and promotes discipline,

integrity and a high value system. Ms. Yung said it is a wonderful form of exercise and promotes a healthy lifestyle mentally and physically.

DARLENE DURAND OF 7200 CENTRAL AVENUE said she supports this ordinance. She has been a student at a local martial arts academy for 23 years. She said her children and grandson are students of the academy as well. The teachings encompass respect, humility and discipline. She said the community will be enriched by the spiritual, mental and physical development of the children and adults involved in martial arts programs.

KAREN MCDONALD OF 813 BROADWATER said she is a martial arts student. She said martial arts have been around for centuries and is very family oriented with parents and children able to participate together. The philosophy teaches courage and confidence as well. Physically challenged students blossom with the patience and guidance they receive during martial arts instruction. She supported the amendment.

YON PARK OF 3737 HAYDEN DRIVE said her husband has been teaching martial arts in Billings for over 20 years. Their school has been highly supervised, not loud or out of control. They teach courtesy, humility, integrity and respect for all people, involving family and children. She supported the amendment as proposed.

LAURIE JAMES OF 1309 NUTTER CIRCLE urged the council to approve the ordinance without restrictions. She said she has been a student of Master Park for 15 years and is an instructor at the academy. Ms. James said a large portion of their students are children. They stress discipline that extends to their homes and schools as well.

There were no other speakers. The public hearing was closed. Councilmember Larson moved for approval of the Zoning Commission recommendation (no change to proposed ordinance), seconded by Councilmember Kennedy. Councilmember McDermott amended the motion that the ordinance includes a special review, seconded by Councilmember Bradley. Councilmember McDermott said she originally was going to ask for an amendment to include a limitation of 3,000 sf, but as she heard the testimony this evening, she realized that they needed more square footage in order to have a successful martial arts school. She said she wanted to reserve the right to look at the larger areas and smaller areas before allowing them into certain areas, so her amendment was for a special review.

Councilmember Deisz asked where these uses are presently allowed. Mr. Bollman said they are currently allowed in Community Commercial, Highway Commercial and Controlled Industrial zones. Councilmember Deisz said the council is relaxing the standards by allowing these uses into residential areas. Mr. Bollman replied, "yes and no. Part of the reason they are allowed in Community Commercial is the way the zoning code is set up with grouping uses by standard industrial classification zone, martial arts instruction falls into a miscellaneous category with gambling facilities. There are a lot of disparate uses that are in that miscellaneous category and you have to zone for the worst use... It would allow them into districts that we felt it would be appropriate to allow them," he stated.

Councilmember Kennedy urged the council to vote against the amendment. "I think we are special reviewed to death up here," he stated. On a voice vote on the amendment, the amendment failed. On a voice vote on the main motion, the motion was approved. Councilmembers Deisz, McDermott and Bradley voted "no".

**ADJOURN** – With all business complete, Mayor Tooley adjourned the meeting at 10:40 p.m.

THE CITY OF BILLINGS:

BY: Charles F. Tooley  
Charles F. Tooley

MAYOR

ATTEST:

BY: Marita R. Schell-Berg  
Marita Herold, CMC/AAE

Deputy City Clerk  
City Clerk

