

# **REGULAR MEETING OF THE BILLINGS CITY COUNCIL**

## **November 28, 2005**

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

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

**MINUTES – November 14, 2005** – Approved as printed.

### **COURTESIES**

- MMIA First & Second Class Cities Safety Award was accepted by Risk and Safety Officer JoLynn Yerger. Mayor Tooley noted that the City received this award because Billings has the lowest experience in Workers' Compensation claims for all first and second class cities in the State of Montana. Ms. Yerger noted that this was a combined effort of all the department managers and supervisors.

**PROCLAMATIONS – NONE**

**BOARD & COMMISSION REPORTS – NONE**

### **ADMINISTRATOR REPORTS – Tina Volek**

- Interim City Administrator Tina Volek noted that three items pertaining to tonight's agenda were contained in the Friday packet. The first item was an amendment to the lighting agreement for Lighting District #97 (Item P). The second item was a reformatted ordinance for Item 2 pertaining to changes to the Animal Control ordinance. The last item was a Staff memo and proposed resolution for Council consideration that would create a 4<sup>th</sup> and Broadway Development Proposal Review Ad Hoc Committee to consider the proposals submitted for the 4<sup>th</sup> and Broadway property. This last item will need a motion to be added to the agenda as a late addition. A request was received from HGSA to consider adding a representative from the Downtown Billings Partnership to the committee. If that change is made, the item must be separated and the delay date revised.
- Ms. Volek said she received a phone call confirmation from William Coffey of Stockman Bank agreeing to extend the bid award for Item #A4 - the 4<sup>th</sup> and Broadway Redevelopment - 2005 to 1/09/06 due to a request from a member of the potential 4<sup>th</sup> and Broadway committee to review all pertinent documents relating to the proposal. She said the item should be separated so the date can be changed to reflect the date of the first Council meeting in January (1/09/06).
- Ms. Volek noted that three items on the regular agenda (Items #3, 4 and 5) are all subjects of withdrawal requests from the applicants. An approved withdrawal request would only require a 4-month waiting period to reapply, whereas a denial

would require a 1-year waiting period. These three items have been recommended for denial by the Zoning Commission. She added the public hearings must still be convened as they were legally noticed.

- She noted the email handout on the Councilmember's desks regarding information pertaining to Item 17 (Resolution setting annual salary of the Municipal Court Judge). She said this email gives some additional salary history for the Municipal Court and the District Court.

**LATE ADDITION: RESOLUTION Creating 4<sup>th</sup> and Broadway Development Proposal Review Ad Hoc Committee. Staff recommends approval. (ACTION: approval or disapproval of Staff recommendation.)**

Councilmember Veis MOVED to add the resolution to the Agenda, seconded by Councilmember Boyer. On a voice vote, the motion was unanimously approved. ITEM was added as ITEM #18.

**PUBLIC COMMENT on "NON-PUBLIC HEARING" Agenda Items: #1, and #12 through #18 ONLY.** (Comments offered here are limited to 1 minute per speaker. Comment on items listed as public hearing items will be heard ONLY during the designated public hearing time for each respective item.)

*(NOTE: For Items not on this agenda, public comment will be taken at the end of the agenda.)*

- MARY WESTWOOD, 2808 MONTANA AVENUE, said she is happy that the Council will be taking more time to consider the proposals on the 4<sup>th</sup> and Broadway property – the last great development place in the downtown. She asked them to take a hard look and make the best decision for the community. She said GSA must be included in the mix because it is important to keep the federal courts in the downtown and getting an addition to the Library for \$6.8 Million is another important consideration. Ms. Westwood asked the Council to look at all the aspects of what can be done at 4<sup>th</sup> and Broadway, including some combinations that have not even been thought of yet.
- MONA SUMNER, CHIEF OPERATIONS OFFICER FOR RIMROCK FOUNDATION, spoke on Item #17. In her position she has become associated with the Municipal Court and was astounded at what she learned. She asked the Council to approve the salary increase for the municipal court judge. She said it becomes a problem when the municipal court judge earns less than the prosecutors particularly when you consider that this judge handles well over 30,000 cases per year with only 1/3 of them being related to traffic court and the balance being criminal cases. She noted that the judge has been innovative in saving money through such additions as drug court, court-related mental health commitment and other areas. Ms. Sumner urged the Council to bring the judge up to a competitive salary.
- CHRIS ALLARD, 1126 KYHL LANE, spoke on Item #16. He said his neighborhood is currently a quiet one, but the Bellville Subdivision will bring additional traffic congestion and unsafe conditions for the children in that neighborhood. He said he does not want to be paying for an SID for street

improvements for someone else's profit. He offered two solutions that would postpone street improvements until other lots develop.

- JIM IVERSON, 406 MONTCLAIR, spoke on Item #13. He said he is the Chair of the Cobb Field Steering Committee and asked the Council to approve the resolution adopting the Cobb Field Feasibility Study Report. This will allow the process to continue with Cobb Field.
- LYNN COUGHLIN, 835 JOYCE CIRCLE, spoke on Item #17. She said she has worked for the City for 24 years, most recently for 19 years in the Municipal Court system. She said the judge has a passion for the law and wants only what is best for the Municipal Court and the community. Ms. Coughlin said the judge also insists on the best from her staff, being the toughest but best boss she has ever had the honor to work for. She asked the Council to consider the salary increase for the judge.
- GREG HILL, 1138 KYHL LANE, spoke on Item #16. He said he is opposed to the subdivision because it affects the neighborhood children. He said their child's safety is their biggest concern and this subdivision would double the traffic in their neighborhood. Mr. Hill said it was not fair to force homeowners to pay for special interests.
- LISA BAZANT, 2717 MILES, spoke on Item #17. She said she is an attorney in the federal district court system and has recently served as a pro-tem judge in Municipal Court. She said she was astounded by the number of cases that are processed in Municipal Court, noting that some deal with very serious issues including domestic abuse and DUI. She said the judge has been innovative and creative in addressing the punishment and rehabilitation aspects of the court, such as drug court and mental health commitment. Ms. Bazant said the salary increase would bring the municipal court judge in line with other judges in the State and the City's department heads. Councilmember Brewster asked if a second judge is needed. Ms. Bazant said that would be helpful if it could be funded. She noted that during her pro-tem duties she found the case load to be personally exhausting. Councilmember Boyer asked if Ms. Bazant knew the case load for the Missoula Municipal Court. Ms. Bazant said she did not.
- STEVIE EUBANK, 1144 KYHL LANE, spoke on Item #16. He said he currently owns the corner lot on a dead-end street. The proposed subdivision will change this and double traffic in the neighborhood. He said the street would become a through-street and "raceway" for people accessing the subdivision. Mr. Eubank said he is opposed to the through street concept because the safety of the children is foremost. The subdivision would be acceptable if a different route were to be designated as the access for the subdivision.
- IVAN JASPER, 1630 BREWINGTON, spoke on Item #16. He said the sentiment of the people in his neighborhood is to oppose the proposed subdivision. He said the area is a quiet and secluded neighborhood on a dead-end street. The proposed Bellville Subdivision would double the residents and increase traffic on Brewington Drive making it unsafe for children in the area. The streets need improvement to allow access to the subdivision, but there is opposition to SIDs. Mr. Jasper said this is a poor location for a subdivision as the access is not good. He asked the Council to reject the subdivision.

- JENNIFER JASPER, 1630 BREWINGTON, spoke on Item #16. She said the safety of the children near the proposed subdivision is her principle concern. She said it is the reason they moved to the area. Ms. Jasper said the traffic will double and she asked the Council to reject the subdivision.

## **CONSENT AGENDA:**

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

**(1) Sale of Used City Transit Buses.** (Opened 11/15/05).

Recommend Ron Kindsfather for Bus #1843, \$1326.00; Transit Sales International, Bus #1845 - #1852, \$15,888.00. No bids were received on Bus #1681 and #1749.

**(2) Seven (7) new 40-Cubic yard Capacity Roll-Off Containers.**

(Opened 11/22/05). Recommend delaying award until 12/12/05.

**(3) Vehicles, City of Billings.** (Opened 11/15/05). Recommend

Frontier Chevrolet for Schedules I and IV with no trades, \$50,690.00 and Archie Cochrane Ford for Schedules II and III with trades and Schedule V with no trade, \$94,860.00.

**(4) 4<sup>th</sup> & Broadway Redevelopment – 2005.** (Opened 11/15/05).

Recommend delaying to 12/12/05.

**B. Final Change Order #1, Airport Paving Project.** Hardrives Construction, Inc., deduct \$19,563.77.

**C. Final Change Order #1, Airport Parking Lot Revenue Control System,** Yellowstone Electric, deduct \$1,553.91.

**D. Amendment #9, AIP 30 Engineering Services,** Morrison-Maierle, Inc., \$535,030.00 for engineering design, survey, and construction administration services for the Terminal Ramp Rehabilitation, Overlay of Runway 10R/28L, and Airport Incursion Road Rehabilitation and Drainage Upgrade projects for the airport.

**E. W.O. 05-10: Stewart Park Trail – Billings,** Federal Aid No. STPE 1099(40), Contract for Professional Engineering Services, Engineering, Inc., \$51,043.00.

**F. W.O. 05-12: Big Ditch Trail – Billings,** Federal Aid No. STPE 1099(49), Contract for Professional Engineering Services, Engineering, Inc., \$33,356.00.

**G. W.O. 05-15: Howard Heights Storm Drain,** Contract for Professional Services, Interstate Engineering, Inc., \$119,490.00.

**H. Local Telephone Service Contract,** One Eighty Communications, \$66,852.02, term: 3 years.

**I. Compensation Agreement**, Private Contract #540: Riverfront Pointe Subdivision, Phase I, Regal Land Development, Inc., \$399,069.39 including a 10% construction contingency.

**J. City-County Special Investigations Unit (CCSIU) Agreement**, Yellowstone County, term: 1/1/06 – 12/31/06.

**K. W.O. 00-15: Grand Avenue Right-of-Way Agreements:**

(1) Reifschneider Investments Inc., c/o The Rax Restaurant, a tract of land located in Lot 4, Block 2, Cellan Acre Tracts, \$0.00.

(2) KRV Partnership LLP, a tract of land located in Tract C, C/S 114 Amended, \$0.00.

**L. Acceptance of State Highway Traffic Safety Grant Contract #2006-09-02-03 & 2006-11-03-03**, Montana Dept. of Transportation, \$47,250.00, term: 10/01/05 – 9/30/06.

**M. Approval of Architectural Fees** for Passenger Loading Bridge Replacement Project, CTA Architects and Engineers, \$258,421.61.

**N. Authorization of Sale of Surplus Property** -- kitchen equipment in the new Crime Prevention Center located in the former Sidney's Restaurant at Rimrock Mall.

**O. Assignment and Transfer of West End Hangar Ground Leases:**

(1) Lot 5: From Martin Elshire to Moore, Scott and Tostenrud, LLC, \$0.00.

(2) Lot 7: From Martin Elshire to Julia Holdings, LLC, \$0.00

**P. Amendment of Lighting Agreement for Lighting District #97**, Northwestern Energy, recommend a six-month extension.

**Q. Preliminary Plat** of Falcon Ridge Estates Subdivision, generally located north of Rimrock Road and west of Molt Road in West Billings; recommend approval of the preliminary plat and adoption of the findings of fact.

**R. Cottonwood Grove Subdivision, First and Second Filings**, Amendment to the Subdivision Improvements Agreement; recommend denial of the request.

**S. Final Plat** of Amended Lot 3A of Amended Lot 1, Block 1, Goodman Subdivision, Second Filing.

**T. Final Plat** of Greenfield Subdivision.

**U. Final Plat** of Amended Lot 18B of McKay Acres Subdivision.

**V. Final Plat of Reiter-Beswick Subdivision.**

**W. Bills and Payroll.**

- (1) October 1 - 31, 2005 (Court)
- (2) October 28, 2005
- (3) November 4, 2005

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

Mayor Tooley separated Item A4 from the Consent Agenda. Councilmember Clark separated Items A1, E and F from the Consent Agenda. Councilmember Gaghen separated Item K from the Consent Agenda. Councilmember Gaghen moved for approval of the Consent Agenda with the exception of Items A1, A4, E, F and K, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

Councilmember Gaghen moved for approval of Item A1 of the Consent Agenda, seconded by Councilmember Ruegamer. Councilmember Jones asked if the Internet was used to advertise the sale of the used transit buses. Transit Manager Ron Wenger said Councilmember Brown suggested using Internet sites that specialize in the sale of used transit buses. The City did advertise on two of those sites and received one "hit" which did not result in a bid. He said he was encouraged by the bids that were received. The City received a fair price for the buses from one company, which is unusual. On a voice vote, the motion was unanimously approved.

Councilmember Gaghen moved to postpone the decision on Item A4 to the 1/09/06 meeting, seconded by Councilmember McDermott. Councilmember Gaghen asked Staff to clarify the \$54,000.00 agent's commission that should be the responsibility of the buyer. On a voice vote, the motion was approved with Councilmember Brewster voting "no".

Councilmember Gaghen moved for approval of Item E of the Consent Agenda, seconded by Councilmember McDermott. Councilmember Clark asked if the contract has been reviewed and approved by the City Attorney's Office. Assistant City Attorney Bonnie Sutherland said City Attorney Brent Brooks reviewed the contract. Councilmember Clark made a substitute motion to postpone the decision on Item E to 12/12/05 to clarify the status of the contract with Mr. Brooks, seconded by Councilmember McDermott. Interim City Administrator Tina Volek said the contracts were developed by the legal staff and are the standard contract form. Councilmember Clark said he would rather clarify the status with Mr. Brooks. Public Works Department Director Dave Mumford said this contract and the one for Item F are the standard engineering contracts that were revised with the assistance of the legal department over two years ago. Councilmember Boyer said the Council is concerned that the City be protected as much as possible and asked Mr. Mumford if he felt the City would be in that position with these contracts. Mr. Mumford said the contracts were developed according to the requirements of state statutes. These are standard Public Works contracts, as Public Works is the department administering them. Councilmember Clark said it was a Public Works contract that caused concern last time and he would like to

have Mr. Brook's confirmation of the contract status. On a voice vote on the substitute motion, the motion was approved with Councilmembers Boyer and Ruegamer voting "no".

Councilmember Gaghen moved for approval of Item F of the Consent Agenda, seconded by Councilmember Ruegamer. Councilmember Clark made a substitute motion to postpone the decision on Item F to 12/12/05 to clarify the status of the contract with Mr. Brooks, seconded by Councilmember Brown. On a voice vote, the motion was approved with Councilmembers Boyer and Ruegamer voting "no".

Councilmember Gaghen moved for approval of Item K of the Consent Agenda, seconded by Councilmember McDermott. Councilmember Gaghen asked about the status of acquiring all of the right-of-way needed for widening of Grand Avenue. Mr. Mumford said the property owner of Dairy Queen has refused to sell his right-of-way for any amount of money. He said the Public Works department intends to get started on the section of Grand Avenue between 8<sup>th</sup> and 12<sup>th</sup> Streets this coming summer. Councilmember Jones asked if Engineering has considered shifting the road at the Dairy Queen location and utilizing the opposite side of the road (Happy Diner location) for the widening project. Mr. Mumford said that would make the transitions longer and require more property than is desired on the north side. He said his department would take another look at that however. On a voice vote, the motion was unanimously approved.

## **REGULAR AGENDA:**

**2. PUBLIC HEARING AND FIRST READING ORDINANCE providing that the BMCC be amended by revising portions of Section 4-400 of said code; updating language for definitions, small animal permits, noisy animals, potentially dangerous animals, quarantine procedures, dogs at large, vaccination of small animals for rabies, impoundment, penalty requirements and issuance; establishing a deadline for registration of a dangerous animal and providing proof of vaccination. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

There was no Staff report. The public hearing was opened. RONALD CROCKER, 2009 CLARK AVENUE, said he has experienced many problems only with cats in his neighborhood. He said he has made numerous calls to the Animal Shelter only to find that cats are exempt from any leash laws. He asked the Council to consider adding some kind of leash law or control for cats to the ordinance. He said cat owners must be made accountable for their cat's actions. Mr. Crocker said he owns a cat and keeps it under control for its health and safety.

WILLIAM COPLAND, 1111 MOON VALLEY ROAD, said cats don't "leash" very well. He said he thinks all animals should be allowed to "walk on the earth as they were intended to do." It is "wrong-minded to leash an animal against their nature only to make a few people happy." He said he has pets and never has any problems with animal residue in his garden. Mr. Copland said it is wrong to include cats in the leash law.

There were no other speakers. The public hearing was closed. Councilmember McDermott moved for approval of the animal control ordinance on first reading, seconded

by Councilmember Jones. Councilmember Brewster noted that he and Councilmember Veis attended a public hearing in conjunction with the Animal Control Board last summer. There were a number of people there that expressed problems with cats, but in every case the neighbor who had the problem cat was in violation of an existing statute, such as too many animals. This existing law is not enforced and he expressed concern for the ability to enforce portions of this ordinance. He said Animal Control Officers have said they will not be chasing cats down the streets. This makes no sense to him and he has a difficult time approving new ordinances when the City can't enforce the ones we have now. Councilmember Brewster said he will not support this ordinance.

Councilmember Jones said he received information on this issue from the Humane Society who has encouraged the City to develop laws to restrict cats from running loose. He said something must be done about this issue and he will support the ordinance.

Councilmember Brown warned that the SPSCA may step in and declare that incarceration of cats is not right. On a voice vote, the motion was approved with Councilmembers Brown and Brewster voting "no".

**3. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #769: A zone change from Residential Manufactured Home to Community Commercial on an 11.87 acre portion of Tract 2 of C/S 1163. MHC Casa Village, LLC, applicant and Terry Seiffert, agent. Zoning Commission recommends denial of the zone change on first reading and adoption of the determinations of the 12 criteria. (Action: approval or disapproval of Zoning Commission recommendation.)**

There was no Staff report. Interim City Administrator Tina Volek noted that a withdrawal request for this zone change has been submitted. The public hearing was opened. TERRY SEIFFERT, 316 NORTH 33<sup>RD</sup>, spoke on behalf of MHC Casa Village. He said Items #3 (zone change) and #4 (special review) are related and the special review is contingent upon the zone change. He said the owners of MHC Casa Village are requesting a withdrawal of their zone change application. He said there was a recommendation of approval by the Zoning Coordinator, but the Zoning Commission is recommending denial of the zone change. Mr. Seiffert said the owners would like to meet regarding the issues and concerns expressed by the Zoning Commission and resubmit the application in four months.

WADE CARLSON, 24 VISTA DRIVE (CASA VILLAGE), said in the summer of 2004 Casa Village illegally placed campers everywhere in their community. Years ago Casa Village had a legal place to do this and now they do not, but this makes no difference to the owners. He complained about approximately 30-40 illegal campers to City Zoning in October of 2004. This case has been unprofessionally and illegally handled by City Zoning and Casa Village. In response to his complaint and at the insistence of Casa Village, Code Enforcement sent him an illegal violation. Five months after his complaint the City sent only one violation to Casa Village. On the day that violation was received the owners of Casa Village came to his home and threatened him and his dad with eviction, increased rent and a requirement to tear down his garage. He said Casa Village owners learned of his complaint because the City illegally disclosed his name on a letter to the owners and their attorney. Mr. Carlson also noted that his comments at the Zoning Commission hearing were not taken seriously by City officials. He feels the City Zoning

department is arguing in favor of Casa Village. He said Casa Village is asking for 18 RV spots, but he thinks that number will soon be 100. He asked why it was not noted on the City Zoning Dept.'s report that campers are placed everywhere on the 64.97-acre Casa Village community. He asked the Council to deny the zone change application.

There were no other speakers. The public hearing was closed. Councilmember Brewster moved for approval of the withdrawal request, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

NOTE: See reconsideration of Item #3 Zone Change #769 during the discussion on Item #4 Special Review #794. The zone change was subsequently reconsidered and denied.

**4. PUBLIC HEARING AND SPECIAL REVIEW #794: (see zone change #769 above) A special review to allow parking for camping purposes in a Community Commercial zone described as an 11.87 acre portion of Tract 2 C/S 1163. MHC Casa Village, LLC, applicant and Terry Seiffert, agent. Zoning Commission recommends denial. (Action: approval or disapproval of Zoning Commission recommendation.)**

There was no Staff report. The public hearing was opened. WADE CARLSON, 24 VISTA DRIVE, asked that the Council deny the special review rather than allow the withdrawal. This would make them wait a year to reapply. The problems have gone on for 15 months so far. He said this "company" has just spent a large sum of money to purchase more property, while the illegal RVs still remain in the Casa Village community. The manager of the community even lives in one of the illegal RVs with Colorado license plates. This is just another example of their disregard for the laws of Montana. Mr. Carlson said "it is simple. They are illegal. Make them remove them." He asked the Council to disapprove the special review.

JOE WHITE, 926 NORTH 30<sup>TH</sup> STREET, said he is not familiar with this situation but does know that living in a camper in a congested area is a bad thing. He noted that the Police will not allow anyone to sleep in cars for one night even if they have permission of the property owner. He said there is no where in Billings to "pull off the road and sleep when one gets tired."

ORIVILLE MCGUIRE, 103 CACHE DRIVE (CASA VILLAGE), said the applicant indicated at the Zoning Commission hearing that most of the units involved in the zone change request were mostly older units. He said this is not true as there are several fairly new double-wide units currently in that area. He said he did not think the center of Billings is an appropriate place for campers.

BERNICE CARLSON, 24 VISTA DRIVE, noted the proposed campground will be located across from a park where children play. All of the permanent units in Casa Village were required to have background checks, but there will be no background checks for the camper units. There were only 5 camping spots on 24<sup>th</sup> Street in Casa Village when she moved there eleven years ago, making it a modular home community and not a campground. Ms. Carlson also noted that the access into and out of the proposed camper area off of 24<sup>th</sup> Street is extremely difficult. She said she would like to know why campers are still allowed to be there if they are in violation of the law. She asked the Council to "just say no."

TERRY SEIFFERT, 316 NORTH 33<sup>RD</sup>, said he is speaking on behalf of the owners of Casa Village. He said this special review is conditioned on the previous Zone Change #769. He said the owners are requesting withdrawal of the special review in order to address some of the issues that have been presented tonight.

There were no other speakers. The public hearing was closed. Councilmember Brown moved for approval of the withdrawal request, seconded by Councilmember Ruegamer. Councilmember Boyer said she is concerned about what she is hearing this evening. She asked why the campers are still in Casa Village.

Zoning Coordinator Nicole Cromwell said the owners of Casa Village were cited into court in April of 2005 starting the criminal process. There have been discussions between the City Attorney's office and the attorneys for Casa Village to resolve the matter. This case is still pending and until it is resolved either through a zone change and special review or conviction in the courts, the City cannot force Casa Village to remove those campers from the property. The campers are allowed under their state license which allows 18 RV camping spots. She said they were located on the corner of Monad and 24<sup>th</sup> Street West, but when the property was subdivided and sold, the allowed 18 spaces were moved into Casa Village proper. Ms. Cromwell repeated that the City cannot enforce compliance while the court case is in process, so the City is trying to "work through it" through the zone change and special review process. If those are not approved and there is a conviction, those campers will have to be removed.

Councilmember McDermott said she understood that the owners had the appropriate zoning for the camping spots prior to the sale of the land and when the camping spots were moved they were moved illegally to an area that was not zoned for RV camping. Ms. Cromwell confirmed that was correct. The process to correct that situation is to cite the property owner and the defendant has a right to a jury by trial or by bench. She noted it takes a long time, but that is the only process available. She also noted that the trial has been postponed pending the resolution through the zoning process. Another hearing is scheduled the first or second week in December before the judge.

Councilmember McDermott expressed concern that the property owners are trying to circumvent the City Codes. Ms. Cromwell said she does not think that is the intent of the property owners because Mr. Seiffert has assured her that their intention is to address the concerns that were expressed at the Zoning Commission hearing and reapply in four months. Councilmember Brewster asked if the withdrawal is essentially extending the trial date. Ms. Cromwell replied "yes".

Councilmember Jones made a substitute motion to deny the special review application, seconded by Councilmember Ruegamer. Assistant City Attorney Bonnie Sutherland noted that the property is currently zoned Residential Manufactured Home, not Community Commercial, and the Council would be denying the special review in a Community Commercial zone, which it is not because the zone change application was allowed to be withdrawn. Correct procedure could be to delay action on the special review and reconsider the zone change because the Council must act on the zone change before the special review, she advised. Councilmember Jones withdrew his substitute motion, and Councilmember Ruegamer withdrew his second.

Councilmember Veis made a substitute motion to postpone action on the special review to allow a reconsideration of the zone change, seconded by Councilmember Clark. On a voice vote, the substitute motion was unanimously approved.

RECONSIDERATION OF ITEM #3 – ZONE CHANGE #769:

Councilmember Ruegamer moved to reconsider Item #3 – Zone Change #769, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.

Councilmember Veis asked if denial of the zone change would hinder or expedite the pending trial. Mr. Seiffert said he and the owners met with the court yesterday and there is a stipulation with the City Attorney's office to continue the trial for 6 months based on approval of the withdrawal requests. The continuance was granted to allow the property owners to come into compliance. Councilmember Boyer said she is ready to send a message and that is to deny this zone change and make the owners wait 12 months to reapply.

Interim City Administrator Tina Volek noted that the trial continuance prevents the City from any code enforcement action for 6 months. Councilmember Brewster reminded the Council that this is a zone change request and the real issue before the Council is if that area is appropriate for Community Commercial zoning. He said there is a proposed use there now, but any other use that falls under Community Commercial zoning could apply. So the question becomes, is it appropriate to have Community Commercial zoning in the middle of the Manufactured Housing zone? Councilmember Clark made a substitute motion to deny Zone Change #769, seconded by Councilmember Boyer. On a voice vote, the motion was unanimously approved.

NOTE: No further action was required on Special Review #794 due to denial of Zone Change #769 (Item #3 above).

**5. PUBLIC HEARING AND SPECIAL REVIEW #795: A special review for a beer & wine license with gaming in an existing building in a Community Commercial zone described as Tract 3 of C/S 2631 and located at 3213 Grand Avenue. Calmont, LLC, applicant and Ken Kunkel, agent. Zoning Commission recommends denial. (Action: approval or disapproval of Zoning Commission recommendation.)**

There was no Staff report. Ms. Volek noted that a withdrawal request has been received for this item, but a public hearing must still be conducted.

The public hearing was opened. JEAN THOMPSON, 1528 GOLDEN BLVD., said she has submitted to the Zoning Commission 140 signatures opposing approval of this special review. She said the proposed casino would be across the street from their home owners' association and virtually right in front of several residences. She said the special review application states it will offer a variety of choices to the area residents, but she noted there are currently seven (7) casinos from 24<sup>th</sup> Street to Shiloh Road. Ms. Thompson said "we don't need another casino...and it would distract from the neighborhood" contrary to what is stated in the application. She asked the Council to remember that 140 people have said "please don't put a casino in that area." She said many members of the Carriage Homeowners Association are in the audience to tell the Council why another casino is not needed in their neighborhood.

VALERIE KANE, 1600 GOLDEN BLVD., said this proposed business is near the entrance of a quiet residential neighborhood consisting mainly of retirees. She said there has already been an increase in traffic due to the opening of the Arlene Corridor and feels

that this business will decrease her property values and increase her potential risk of property damage. She does not look forward to the potential risk of property damage from increased traffic, impaired drivers, extra vehicles parked along the street, broken bottles, trash and everything that accompanies this type of establishment. Ms. Kane said the businesses in the immediate vicinity are professional offices, RV storage and a lumberyard. These businesses keep the traditional 8 to 5 business hours which is appropriate for residential areas, but "a 24/7 casino in our backyard will change everything." She urged the Council to approve the Zoning Commission's recommendation for denial.

LEW MORRIS, 3385 AVENUE F, said he is the president of the Hampton Homeowners Association. He said the association is opposed to the location of this casino in their neighborhood. He said a representative of the LDS Church spoke at the Zoning Commission hearing stating that it does not make sense to locate a casino within viewing distance of Will James School and the LDS Church even though it is beyond the 600 foot separation. He urged the Council to deny this special review.

MYRON REESE, 1630 GOLDEN BLVD., said this location does not lend itself to a casino. The area houses many senior citizens and there are enough casinos there now. He asked the Council deny the special review.

ANN DEEGAN, 1732 GOLDEN BLVD., urged the Council to deny this special review request. She does not want to "see this happen in their nice, quiet neighborhood."

MARILYN CUMMINGS, 1636 GOLDEN BLVD., said she resides in the Carriage Homeowners neighborhood that is closest to the proposed special review. She said there was a "holdup" at the nearby Cenex Station and an incident at the Red Door and she is concerned about that possibility at this casino that will be just at the end of their street. Fleeing felons could be running through her neighborhood and she expressed concern for the lack of defense capabilities of the mostly senior citizen population.

There were no other speakers. The public hearing was closed. Councilmember Ruegamer moved to deny the special review, seconded by Councilmember Boyer. Councilmember Boyer said she visited the proposed location and agrees that a casino is a very inappropriate use in that area. Councilmember Jones said another similar special review just to the west of that property was denied previously for the same reasons. The Council must remain consistent and deny this request as well. Councilmember McDermott said the Council must remain cautious when reviewing these types of requests because a casino does change the neighborhood. On a voice vote, the motion was unanimously approved. The special review was denied.

**6. PUBLIC HEARING AND SPECIAL REVIEW #796: A special review to change from one nonconforming use, a muffler repair shop, to another nonconforming use a general auto repair shop for Soelter Auto in an R-6,000 zone described as Lot 1, Block 4 and all of Block 1, Central Avenue Addition and located at 640 St. John's Avenue. Michael & Colleen Manion, owners and Ernie Dutton, agent. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

Planning Staff member Cynthia Wilson said the Planning Staff recommended conditional approval to the Zoning Commission recommendation for this special review. The Zoning Commission voted 5-0 for conditional approval with the conditions being:

1. The special review approval shall be limited to Lot 1, Block 4, 2nd Filing, of the Central Avenue Addition Subdivision.
2. The special review is for automobile repair, service, and associated parking. No other use is allowed or intended by this special review approval.
3. Any lighting on the building or within the parking lot shall have full cut-off shields so light is directed to the ground and not onto adjacent property. Lighting of signs shall be as allowed within the City Sign Code (Section 27-701 BMCC).
4. There shall be no public address system designed to broadcast outside the building.
5. All vehicles stored onsite shall be salvageable and shall not be stored across sidewalks or on the street right-of-way; but inside and behind screened fencing.
6. A change to any other use shall be in conformance with the uses and restrictions for R-6000 zone.
7. As presented in agent Ernie Dutton's letter of October 3, 2005, screening will be installed on the existing fence.

Councilmember McDermott asked if the Central/Terry Task Force has reviewed and approved this request. Councilmember Veis said he attended the task force meeting where this was discussed and reported that they have approved this change in use. He said the task force feels this will lessen the activity at this location.

Councilmember McDermott asked if the owners have applied for the appropriate environmental permits to operate the repair shop. Ms. Wilson said the owner has stated that the repair shop will be only handling general automotive services and will mostly be used to maintain his "private stock of toy cars". She said the owner has stated that the quantity of cars using the repair shop will be less than used the previous muffler shop.

Councilmember Brown asked if the building will be altered. Ms. Wilson said the special review does not permit alteration of the building, but does permit a shield to be installed that will block the view from the neighborhood.

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

**7. PUBLIC HEARING AND SPECIAL REVIEW #797: A special review to allow an all beverage license with gaming in a Community Commercial zone described as Lot 5A-1, Block 2 Descro Central Subdivision and located at 2545 Central Avenue. Qayum Investment Properties, LLC owners and Ernie Dutton, agent. Zoning Commission recommends denial. (Action: approval or disapproval of Zoning Commission recommendation.)**

Planning Staff member Aura Lindstrand said this special review is located in Rimrock Plaza, where Countrywide Mortgage is currently located. She said the Zoning Commission is recommending denial on a 3-2 vote. She noted that the Planning Staff is recommending approval.

Councilmember Clark asked if there was another casino in the vicinity. Ms. Lindstrand said CJ's Bar and Casino is located directly across St. John's Avenue.

Councilmember Jones noted that this will be located with 600 feet of Stewart Park where there is more beer consumed at the softball games than most other places during the summer. Councilmember Brewster said that distinction must be made because the code requires it.

Councilmember Gaghen noted that this facility will be within 100 feet of the Splash Page, a facility whose major clientele are teenagers and younger children. She feels this is a very inappropriate location for this casino. Ms. Lindstrand said the owner of the Splash Page said he is "okay" with the location of the restaurant/casino as long as it is at least 75 feet from his facility.

The public hearing was opened. DICK JARRETT, 1824 GREYSTONE, said he represents Qayum Investment Properties, the owners. He said the special review request is for an all-beverage license with gaming, but there will be a restaurant associated with it. He asked the Council to approve the special review as the Planning Department recommended approval and the Zoning Commission recommended denial by a slim margin of 3-2. He noted that many of the other tenants in the complex have requested a restaurant facility be located there because of the convenience and increased day and evening traffic. He added that it is hard for many restaurants to survive without beverage and other services. Mr. Jarrett noted that the parking requirements are adequate as there is an additional lot on the north side of the building that is not greatly utilized. Another concern was the 600-foot separation from churches, schools and parks. He said his understanding is that major arterials serve as adequate separation requirements in those cases. In this case, the arterial which would be Central Avenue.

There were no other speakers. The public hearing was closed. Councilmember Boyer moved for approval of the Zoning Commission recommendation for denial, seconded by Councilmember Clark. Councilmember Jones asked why the Staff recommended approval with conditions. Ms. Lindstrand said that when the Planning Staff reviewed the application it was discovered that there were seven (7) other special reviews granted in the immediate vicinity of this application and it is zoned Community Commercial which is an appropriate zone. She said the two standard conditions that the Planning Staff recommended were:

1. The special review approval shall be limited to 2545 Central Avenue, Suites G and H, a property legally described as Lot 5A-1, Block 2, Descro-Central Subdivision.
2. No outdoor seating, outdoor music or outdoor public announcement systems will be allowed with this application.

Councilmember Ruegamer said he thinks the reasons to deny this special review are inadequate. He agreed with Councilmember Jones about the Stewart Park issue however. He said this is an appropriate place to locate this restaurant/bar/casino, in a busy shopping center.

Councilmember McDermott said Stewart Park does cater to many young people that do not need to be exposed to establishments that serve alcohol. She said the seven other facilities that sell beverages in the area should be sufficient. She would like to see this exposure limited. Councilmember Boyer agreed that this facility is not appropriate for the many young children that frequent the park and shopping area. Ms. Volek noted that alcohol is only sold at the south end of Stewart Park where the adult ball fields are located.

On a roll call vote, the motion to deny the special review was approved with Councilmembers Gaghen, McDermott, Brewster, Boyer, Clark and Mayor Tooley voting “yes” and Councilmembers Brown, Ruegamer, Veis, Ulledalen and Jones voting “no”.

Mayor Tooley called for a recess at 8:28 P.M.

Mayor Tooley reconvened the meeting at 8:40 P.M.

**8. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #770: A zone change from Residential Manufactured Home to R-6,000 on a 1.858 acre tract of land described as Lots 21A & 22A of Pemberton Subdivision and located at North Lakeview Drive & Lake Elmo Drive. Don McLennaghan, applicant and Tom Mulford, agent. Zoning Commission recommends approval of the zone change on first reading and adoption of the determinations of the 12 criteria. (Action: approval or disapproval of Zoning Commission recommendation.)**

Planning Staff member Lora Mattox said the applicant desires to place condominium style duplexes at this location. She said the Zoning Commission recommended approval on a vote of 5-0.

The public hearing was opened. There no speakers. The public hearing was closed. Councilmember Ulledalen moved for approval of the Zoning Commission recommendation, seconded by Councilmember McDermott. On a voice vote, the motion was unanimously approved.

**9. PUBLIC HEARING AND FIRST READING ZONE CHANGE #771: A text amendment to BMCC Sections 27-703, 27-705(a), 27-705(b) and 27-707(b); City sign code definitions, signs permitted and exempt signs, adoption of the revisions as an amendment to the zoning regulations and setting a time period for the regulation to be effective. Zoning Commission recommends approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

There was no Staff report. Councilmember Clark asked why this amendment is being proposed and is it connected to the Neighborhood Watch signs that are currently posted. Planning Director Ramona Mattix said this amendment will now allow those signs (which did not meet code) to be legally posted.

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

**10. PUBLIC HEARING AND RESOLUTION 05-18370 transferring Zimmerman Trail ownership from Highway 3 South to the Billings’ city limits from Yellowstone County to the City of Billings. Staff recommends approval of the transfer of Zimmerman Trail ownership through a quitclaim deed. (Action: approval or disapproval of Staff recommendation.)**

There was no Staff report. Councilmember Veis asked that Staff explain the “swap” between the City and Montana Department of Transportation (MDT) and what the City’s responsibilities will be with the transfer of ownership. Public Works Director Dave Mumford said the City currently maintains all of Montana Avenue of which one-half is

owned by the state. MDT asked the City if there was an arrangement that could be worked out to insure that the City would continue to maintain the entire street without funding from the state. MDT then offered to maintain Zimmerman Trail during the winter months in exchange for the City's maintenance of Montana Avenue if the County would transfer ownership of the road to the City. Sweeping and pothole repairs during the summer months would be the responsibility of the City, he added. An interlocal agreement was placed in the Friday Packet that specified this arrangement. The agreement has been executed pending the transfer of Zimmerman Trail.

Mayor Tooley said the City previously hesitated to accept ownership due to safety of the trail and liability issues. Mr. Mumford agreed that Zimmerman Trail is a steep roadway and does need to be upgraded. The federal appropriation funding that is available should allow the City to work on those concerns. Councilmember Brown asked who would be in charge of the gate. Mr. Mumford said he believes it would remain with the Sheriff's department.

The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Jones moved for approval of the Staff recommendation, seconded by Councilmember Clark. Councilmember Brewster noted that since the City has grown up around the trail it is an appropriate time to assume ownership. On a voice vote, the motion was unanimously approved.

**11. PUBLIC HEARING AND FIRST READING ORDINANCE amending Section 2-204 of the BMCC, providing that the Deputy Mayor be elected at the City Council's first regular meeting following the City General Election. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

There was no Staff report. The public hearing was opened. JOE WHITE, 926 N. 30<sup>TH</sup> STREET, spoke about the requirement that the ordinance should agree with the Charter. There were no other speakers. The public hearing was closed.

Councilmember Gaghen moved for approval of the Staff recommendation with the addition of the election of the mayor pro-tem, seconded by Councilmember Brewster. Councilmember Brown asked if this means after the election is certified. Mayor Tooley clarified that the first regular meeting of the City Council would be the first Monday following the general election (which is normally held on the first Tuesday in the month of November) and the dates would be at least six (6) days apart. Councilmember Brewster said the Charter is clear, stating that the election should be held at the meeting after the general election and not when it is certified. This is not ambiguous at all, he added. On a voice vote, the motion was unanimously approved.

**12. APPROVAL of the Fair Housing Action Plan for FY05-06. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

Councilmember McDermott moved for approval of the Staff recommendation, seconded by Councilmember Gaghen. Planning Director Ramona Mattix said this information is received at the end of every year that explains the fair housing activities of the Staff and other agencies. This will include for next year an RFP requested by the Council for fair housing activities. On a voice vote, the motion was approved with Councilmember Brown voting "no".

**13. RESOLUTION 05-18371 adopting the Cobb Field Feasibility Study Report and preliminary planning recommendations for the repair or replacement of Cobb Field Stadium in Athletic Park. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

Councilmember Brown moved for approval of the Staff recommendation, seconded by Councilmember Veis. Councilmember Veis asked what approval of the report meant for the City. Interim Parks and Recreation Director Gene Blackwell said approval of the report accepts the recommendations contained in the report and allows the Staff and the Steering Committee to move forward with the recommendations, refining them into a proposal that would be approved by the Council and eventually placed on the ballot.

Councilmember Brewster expressed concern that this and other reports like it limit the options and takes away the flexibility. Because of this he said he would not support the motion even though he does want to see Cobb Field get repaired.

Councilmember McDermott said she think the study does have flexibility and the two options have several supplemental variations of the two options. Mr. Blackwell said there are several options or adjustments that can be made on top of the variations.

Councilmember Veis asked what the difference is between this report and the previous recommendations of the Blue Ribbon Committee. Mr. Blackwell said two years ago the Blue Ribbon Committee brought forward a proposal that placed the replacement stadium closer to 27<sup>th</sup> Street and 9<sup>th</sup> Street. This report recommends either leaving the stadium where it is, sinking the field, leaving the field at ground level, building up the structure or moving it closer to 27<sup>th</sup> Street with the same options previously stated. Recommendations were also given for different coverings and skyboxes.

Councilmember Clark noted that the previous proposal included underground batting cages and concession stands away from the playing action. This report includes many different options and there will be public meetings to explain the report to the community and receive feedback about the options.

Councilmember Ruegamer said keeping the options open will prevent the City from ever completing this project. He said at some point the options must be selected to move forward to the building phase. What is known is the location of the stadium (at the same place it currently is) and with the report there is a way to move forward.

Councilmember Veis said he would not support the motion because it appears that the City is getting the same proposal as before with less of a stadium for the same cost. The results of the previous ballot initiative showed that the greatest support was in the Heights where the possibility of a Heights' pool was also on the ballot.

Mr. Blackwell said this report focused heavily on the standards and requirements of the National Association of Professional Baseball League covering the minor leagues. The options were based on and expanding from those criteria.

Councilmember McDermott asked Jim Workman to comment on the increased costs. Mr. Workman said the escalation in price from this point to the end of 2006 is about \$1 Million on the project. This would have been a \$9 Million project last year and an \$11 Million project now. The project has been scaled-down with much of what the voters had objected to being eliminated. Ms. Volek noted that the next step of this process is an extensive public forum process in December and January with additional community feedback as to what the community wants to see in a stadium.

Councilmember Jones said he agrees with Councilmember Brewster but thinks the report is a good baseline to start with. He would rather acknowledge the report and not expect that this report is what the City "sticks with". Councilmember Brewster said he expects that this is the report that will be used but he said the voters didn't reject the ballot initiative because of the batting cages, but because of the \$11 Million price tag. This may be difficult for the people who love baseball to accept, but there are a lot of people who don't support more taxes. He added that he believes this would be a tough sell to the community.

Councilmember Boyer said the City should use the same process that was used to educate the community on the public safety mill levy and reach a broader cross section of groups. It is time to take something to the public, find out what they have to say and the Council can accept or reject the proposal at that time, she said. Councilmember Clark said that is the original idea of the Steering Committee - to take this out to many groups and get their feedback.

Councilmember Ruegamer said the Council really doesn't have a clear answer of what the community wants in a stadium because the previous ballot issue was clouded with the Heights' pool issue. That is what is important about the community process and if the voters reject it after that, the Council will have a clear answer. He added that it doesn't matter how long the Council delays this decision, the costs will just continue to rise at \$1 Million each year. He added that he believes the major league teams that sponsor the minor league teams here in Billings will take a look at the two failed bond issues and (1) realize there is very little private funding for a new stadium, (2) see the existing stadium has little life left and (3) move the franchise to another city. He said the bottom line is that the Council needs an answer from the community about its desires for a stadium.

Councilmember Boyer asked about a survey that was done that gave reasons why the previous bond issue did not pass. Mr. Blackwell said a survey was conducted on the bond issue failure and the issue of the pool and the stadium were a big part of the reason. Another issue was that the stadium design was more elaborate than was needed. The survey also found that there was strong support for a stadium with a price tag of \$7 Million to \$8 Million. The ten proposed forums will also ask about the current level of support that the community is interested in. He noted that the overall proposal lost by only 1200 votes and a movement of 600 votes could have produced a different outcome. Councilmember McDermott said the survey also ascertained that there was support for a stand-alone stadium up to \$11 Million.

Councilmember Veis asked if there are provisions in the study that consider an \$8 Million stadium. Mr. Blackwell said the options for an \$8 Million stadium are difficult to do and still meet the league standards and requirements. Councilmember Ruegamer said the cost to demolish the stadium as it stands will be \$650,000.00. There is at least \$1 Million involved in replacing the turf and associated infrastructure that must be totally torn up and replaced. The Council has to face the fact that the field is worn out and must be totally replaced for no less than \$11 Million.

Councilmember Veis said the Parks and Recreation Board stated that this process would proceed slowly. Mr. Blackwell said 2006 is an election year and the opportunity to place this bond proposal on the ballot ends on January 10<sup>th</sup> because the County Election official must have the information by March 15<sup>th</sup> for a June 7<sup>th</sup> ballot. He noted that both

the Parks and Recreation Board and the Steering Committee have recommended adoption of the report. In answer to Councilmember Brown's question about other uses for the stadium property, Mr. Blackwell said the deed requires that the property be used as an athletic or recreation park. Councilmember McDermott said that the minutes show that the Council accepted the money to purchase the property from a group of business people with a "gentlemen's agreement" that the land be utilized as an athletic facility for the City of Billings.

Councilmember Jones said the report states that any private funds would not go toward construction but maintenance. Mr. Blackwell noted that private funding creates the problem of collecting the funds in a timely manner to use for capital construction which could ultimately delay the project. Therefore the report recommends using private funds for maintenance rather than construction.

On a voice vote, the motion was approved with Councilmembers Brewster, Brown, Veis and Jones voting "no".

**14. LIBRARY EXPANSION/GSA LEASE. Staff recommends terminating further negotiations with the GSA for interim U.S. District Court space. (Action: approval or disapproval of Staff recommendation.)**

Councilmember Brewster moved for approval of the Staff recommendation, seconded by Councilmember Ruegamer. Councilmember McDermott amended the motion to support other agencies' or entities' efforts to find suitable space for the federal court system in the downtown area, seconded by Councilmember Gaghen. Ms. Volek noted that the City has already contacted Big Sky Economic Development Authority and the Downtown Billings Partnership to identify private sector locations for the GSA court system needs. In another discussion with the County Commissioners, it was agreed that the City would provide them a copy of the CTA proposal for their efforts to find suitable space. On a voice vote, the amendment was unanimously approved. On a voice vote, the motion as amended was unanimously approved.

**15. PRELIMINARY PLAT of Twin Oaks Subdivision, generally located directly to the north of Uinta Park Subdivision, south of Wicks Lane. Staff recommends conditional approval of the plat, approval of the variances, and adoption of the Findings of Fact. (Action: approval or disapproval of Staff recommendation.)**

There was no Staff report. Councilmember Ruegamer moved for approval of the Staff recommendation, seconded by Councilmember McDermott. Councilmember Brewster asked about the two land-locked lots that the Council was informed about at the public hearing. Ms. Lindstrand said those two lots are located in Goldenview Subdivision to the west and are land-locked on two sides by the BBWA ditch. The lots were created in 1973 by Goldenview Subdivision. The access road did not get constructed because at that time the Montana Subdivision and Platting Act did not require legal and physical access to lots that did not come into effect until 1993. In several discussions with City Attorney Brent Brooks, it was concluded that the City holds no liability for those parcels being land-locked and it is not incumbent on deed landowners to provide access to the lots. She noted the lots were purchased at a tax sale with the knowledge that there was no legal physical access to the lots. Councilmember Brewster asked if the owner of those lots purchased one of the lots in Twin Oaks Subdivision, could he use that as an access.

Ms. Lindstrand replied “yes”. The owner could also combine the lots and due to the Residential 7,000 zoning build duplexes depending on the total square footages. Ms. Lindstrand confirmed that the owner has several options to solve the land-locked problem. Planning Director Ramona Mattix said the lots have legal access, but to use that access the owner must construct a bridge across the canal ditch because there is appropriate right-of-way on only one side of the ditch. Public Works Director Dave Mumford said that solution could cost less than buying one of the lots. Interim City Administrator Tina Volek reminded the Council that these lots were purchased through a tax sale at a relatively low cost due to the lack of access and not acquired through normal and more costly acquisition. On a voice vote, the motion was unanimously approved.

**16. PRELIMINARY PLAT of Bellville Subdivision, generally located north of Wicks Lane, west off of Brewington Lane at the terminus of Kyhl Lane. Planning Board made no recommendation. Staff recommends conditional approval of the plat, adoption of the findings of fact and approval of the requested variances. (Action: approval or disapproval of Staff recommendation.)**

Councilmember Veis moved for approval of the Staff recommendation, seconded by Councilmember Ruegamer. Councilmember Brewster made a substitute motion to delay approval for two weeks, seconded by Councilmember Gaghen. Councilmember Brewster said he spoke with some of the public comment speakers during the break and feels there is not good or sufficient information to make this decision tonight. He would like to see a meeting with the developers, the planning staff and the affected property owners to assure that everyone has the correct facts and to reach an agreement on all issues. On a voice vote, the substitute motion was unanimously approved.

**RECONSIDERATION of Item #16 – Preliminary Plat of Bellville Subdivision:**

Acting City Administrator Tina Volek said she needs to return to Item #16 to inform the Council of an issue that Staff has just brought to her attention. The Council action to delay the preliminary plat of the Bellville Subdivision will go past the sixty (60) day period in which the Council must act under state law. If the developer and the concerned residents cannot come to an agreement, and there is an indication that may be the case, then the Council will have approved the subdivision by non-action. Ms. Lindstrand said the expiration date is November 30<sup>th</sup>.

Councilmember Brewster asked the developer if he would agree to the delay. QUINTEN EGGART, 3340 SOUTH 74<sup>TH</sup> STREET WEST, said he represents EEC, Inc. and is the engineer for the developer. He said their firm would like the chance to discuss the issues raised by the residents before postponing for the two-week period. He said there is more information he would like to present and he has not been allowed to speak, nor did the Staff give a presentation.

Councilmember Brewster said the reason for the delay was to allow the developer and the Ward II councilmembers to meet with the concerned residents who raised the objections this evening. The intent of the meeting is to provide the residents with accurate information and give the developer and Staff an opportunity to respond to their questions. Mr. Eggart said he was not aware that this meeting would be called and assumed that the Council would make them aware of this possibility. Councilmember

Brewster said the developer could take the risk of a council reconsideration that could either approve or deny the plat.

Councilmember Brewster moved to reconsider Item #16 – Preliminary Plat of Bellville Subdivision, seconded by Councilmember Clark. On a voice vote, the motion to reconsider was unanimously approved. Councilmember Brewster moved to deny the preliminary plat of Bellville Subdivision, seconded by Councilmember Boyer. On a voice vote, the motion was approved with Councilmembers Brown and McDermott voting “no”.

**17. RESOLUTION setting the annual salary of the Municipal Court Judge. Staff recommends approval of the adjustment of the base salary for the position of municipal judge to \$91,250.00 and to provide longevity pay for years of service. (Action: approval or disapproval of Staff recommendation.)**

Councilmember Boyer moved to approve the adjustment of the base salary for the municipal court judge to \$91,250.00 and to provide longevity pay for years of service, seconded by Councilmember Jones.

Councilmember Brewster asked what the impacts were on the budget for adding a second judge if this salary adjustment is approved and would that salary be commensurate with this one. Ms. Volek said the hourly salary of the Pro-Tem judge that was previously authorized by the Council is set by state legislation and is higher than the municipal court judge. Municipal Court Judge Mary Jane Knisely said the part-time judge’s salary would not have to be the same as hers. She noted that a Pro-Tem judge is paid at \$50.00 per hour and a part-time judge could be \$10.00 per hour less than the municipal court salary because the municipal court judge also has supervisory and management duties.

Councilmember Brewster asked if a municipal judge must be an attorney. Judge Knisely said they do. There are five (5) municipal courts in the state and they are required to be a court of record. The only trial one receives is in municipal court whereas in city or justice court one gets trial denovo (two chances). The only appeal you have in municipal court is through the district court on issues of law.

Councilmember Boyer asked how many people Judge Knisely manages and for some statistics. Judge Knisely said she manages eleven (11) people including a secretary, court administrator, two (2) bailiffs and five (5) clerks. Councilmember Boyer asked how Judge Knisely’s salary compares to other Staff attorneys. Ms. Volek said Judge Knisely’s current salary is below the Assistant and Deputy City Attorneys and the City Attorney. Councilmember Boyer said she sees that disparity as a “bit of a challenge”.

Councilmember Clark asked how much the longevity pay would be. Ms. Volek said that would have to be calculated. Councilmember Clark said the Council should know that amount before their decision. Judge Knisely said she researched the County court system longevity pay of 1% of salary as a guideline because she feels that 15 years of service to the City (7 years as a prosecutor and 8 years as a judge) warranted some sort of longevity pay. Under the City’s longevity system she would be entitled to \$1,500.00 a year forward. Ms. Volek noted that longevity pay is not normally offered to elected officials. Councilmember McDermott said elected official’s salary should not be compared to permanent employees and she would prefer that the Council look at the salaries of municipal court judges throughout the state and even into the larger cities of surrounding states for comparisons. The salary comparisons that were emailed to the

Council do not include the complexity of the job and are not helpful for comparison purposes, she added. Councilmember Boyer said she was shocked to learn the amount of work that Judge Knisely does and the complexity of the job.

Councilmember Ruegamer said he used to perform his own reviews and this is basically what Judge Knisely has presented to the Council. He said his reviews always contained the "good stuff" and never the "bad stuff". He said he would like to review statistics provided as he questions the 115+ cases processed per day. He said he needs to see "something very compelling" to approve a 30% salary increase. Judge Knisely noted, for instance, that 292 people will be in court tomorrow morning at 8:30 A.M. and must be processed by 10:30 A.M. due to the Thanksgiving day closure. She invited the Council to come to the courtroom and view the proceedings. Councilmember Ruegamer said he would like to see this item delayed because he has many more questions and he needs to know about the entire situation. He said this request is unprecedented and speaking on behalf of the taxpayers it is his job to take a hard look at the request.

Councilmember Brown asked how many days of the week the Judge must make herself available. Judge Knisely said seven (7), because there is court five (5) days of the week. On Saturday there may be a couple of search warrants to process and on Sunday she may have to process faxes that come to her house pertaining to any probable cause hearings for any defendant arrested after 5 P.M. on Friday night. She noted that she and her family are awakened frequently to deal with an issue arising with an inmate at the jail, noting this is not just traffic court anymore.

Councilmember Boyer asked when the judge received her last salary increase. Judge Knisely said it was six (6) years ago when she became the supervisor over the court clerks, but noted that she has received cost-of-living increases the last five (5) years. The reason she has not brought this to the Council's attention previously is because there were many more pressing and tumultuous issues (the strike and lawsuits) facing the City and she did not think the timing was appropriate.

Councilmember Ulledalen asked what amount of money is spent on pro-tem judges. Judge Knisely said the City has spent \$10,000 at the mid-point of the year.

Councilmember Ruegamer asked if the judge is reviewed by or reports to anyone in the City. Judge Knisely replied "no". Mayor Tooley noted that as an elected official she is "reviewed" through the election process. She noted that the Council is the only body that approves raises for her. She also noted that she has asked to be reviewed and has completed two self-evaluation forms to get some feedback and set some goals. Councilmember Ruegamer asked what City departments she works closest with that he could talk with and get information about her job performance. Judge Knisely said she interacts with the legal department and the public defender the most. She also said the Council could talk with probation and parole, the finance department and the jail personnel. Councilmember Brown suggested "checking with the voters", they have elected her for the past eight years.

Councilmember Jones called attention to the fact that the additional police officers will impact the court system greatly. He said the Council has failed to address the court system when it adds onto these other departments. Councilmember Jones asked where the salary increase will be budgeted. Ms. Volek said this is an unbudgeted request at this time. She said the judge has indicated to her that she would have sufficient funds for this year, but that still creates the commitment for the next budget year that would have to

come from City revenues. Councilmember Jones noted that he has sat on the bench with Judge Knisely and surveyed a day's proceedings commenting that "it was a rat race". He also noted that he was unaware of the varied type of cases that the judge handled. Councilmember Boyer said she has attended a court proceeding and found it to be "an eye-opener".

Councilmember Ulledalen said the 30,000 cases means that the judge either deals with 1/3 of the population of Billings, or that there are a lot of repeat offenders with multiple issues. Judge Knisely said it would be the latter of the two as there are a lot of repeat offenders with multiple issues.

Councilmember Ruegamer made a substitute motion to delay action on this item to 12/19/05, seconded Councilmember McDermott. Councilmember Boyer asked what the specific reasons for the delay were. Councilmember Ruegamer said he would like to interview people that interact with the judge such as City Attorney Brent Brooks, Acting City Administrator Tina Volek and personnel in the police department. He said he would also attend court. He reiterated that he will not approve a 30% salary increase for anyone without knowing what he is approving. Councilmember Jones said the delay is a reasonable request because the Council should be comfortable with their decision. Councilmember Ulledalen asked the administrator to assist the council in framing this decision and that it receives the information it needs to make the right decision.

Judge Knisely commented that the email information the Council received was factually incorrect regarding how the district court salaries are set. She noted that the district court judges would be happy to answer the Council's question and explain why the salaries are not too far apart. Councilmember McDermott said she would also like to receive information including comparisons on the types of cases and case load from the five major cities in Montana, particularly Missoula and Helena. She said the Council needs to proceed cautiously and research not only the job that is being done, but the type of duties and authority because they are dealing with an elected official and not a permanent employee. She noted also that the councilmembers could not accept an increase unless the voters approved it at the next election.

Councilmember Brewster said this is a professional position and he is ready to move forward with a decision tonight. He said the councilmembers have a 24/7 job also and he acknowledged that "it is tough". If the Council continues to let the salary stay where it is the City will not retain or attract good judges, he added. Councilmember Brown added that the salary evidently does not attract competition as Judge Knisely has run unopposed several times.

Councilmember Clark asked when the salary increase would take effect. Ms. Volek said it would become effective immediately upon approval of the resolution. However, the effective date is at the discretion of the Council, she added. Councilmember Clark said the delay is not unreasonable and the increase can be made retroactive if needed. Councilmember Boyer said she agrees with Councilmember Brewster and noted that the City has a judge with a law degree and the salary should be competitive.

On a roll call vote, the substitute motion was approved with Councilmembers Gaghen, McDermott, Ruegamer, Veis, Ulledalen, Clark, and Jones voting "yes" and Councilmembers Brewster, Brown, Boyer and Mayor Tooley voting "no".

**LATE ADDITION:**

**18. RESOLUTION 05-18372 creating a 4<sup>th</sup> and Broadway Development Proposal Review Ad Hoc Committee. Staff recommends approval. (ACTION: approval or disapproval of Staff recommendation.**

Deputy City Administrator Bruce McCandless said the RFDP issued by the City specified what the composition of the review committee would be. The committee should include a City Councilmember, a City Staff person and a Staff member of the Downtown Billings Partnership. At the November 19<sup>th</sup> Work Session, the Council asked that the committee be composed of representatives from the development community. Mayor Tooley proceeded on that basis and contacted two (2) development representatives to serve on the committee who have agreed to do so. Mr. McCandless said he spoke to the firms that submitted the proposals asking if they had any objections to a change in that committee membership. Both firms have verbally committed to no objection to the change in composition and are willing to put that in writing. He said the City does not however have those written statements at this time.

Mayor Tooley noted that one of the firms that submitted a proposal said they would prefer that one member from the Downtown Billings Partnership participate in the committee. He suggested that the committee be composed of two (2) developer representatives, one (1) Staff member and one (1) Downtown Billings Partnership representative. Councilmember Boyer said she sees a conflict of interest because Mr. Fagg is a member of the DBP Board. Ms. Volek said she believes he is an alternate. Councilmember McDermott agreed that there is a conflict of interest. The Council should try to get the committee to be as independent as possible, she added.

Councilmember Brewster said the Council's intent was to have a small committee that could make a recommendation as quickly as possible. He said other agencies such as the DBP and the Chamber of Commerce can make independent reviews on their own. Councilmember McDermott agreed that other organizations do not have to be represented on the committee. Mayor Tooley said the subject property at 4<sup>th</sup> and Broadway is a big point of interest for the entire Downtown Billings Partnership and in some way it is important to get input from them.

Councilmember Ulledalen said his point at the work session was that the Council should focus on due diligence for this project, because the Council does not even know what questions to ask. He said he wants to rely on someone with a professional background and objectivity in this area to outline the strengths and weaknesses of the proposals. Councilmember Boyer agreed with Councilmember Ulledalen that the DBP would not have the objectivity that the Council needs at this point. Councilmember Clark agreed with Councilmember Brewster to keep the committee as the Council originally intended.

Mr. McCandless said a quick recommendation is not going to happen for two reasons: 1) the meeting associated with the decision must be public and publicly advertised, and 2) the earliest that a meeting can be scheduled is December 7<sup>th</sup>. With the holidays coming only one firm is available. Councilmember Ruegamer said he would like to see a recommendation ready for the January 9<sup>th</sup> meeting. Mayor Tooley restated portions of the proposed resolution relating to the composition and duration of the committee.

Councilmember Brewster moved for approval of the resolution, seconded by Councilmember Boyer. On a voice vote, the motion was unanimously approved.

**19. PUBLIC COMMENT on Non-Agenda Items. (Restricted to ONLY items not on the printed agenda; comments limited to 3 minutes per speaker.)**

- MIKE KENNEDY, 2013 CLARK AVENUE, said he is a former councilmember, has been in City and State government for 17 years and a vocal critic at times. He said he has held many positions, worked under both strong and weak mayors and the Charter. He reminded the Council of a situation when he was on the Council where a city administrator was dismissed immediately. He said the previous city administrator (Kristoff Bauer) was noted to have a lack of public relations abilities and was allowed to resign with a sizeable salary and the use of City equipment. He noted the Council is about to muddy the waters by raising the issue of requesting the \$160,000.00 back from Mayor-elect Tussing. He suggested the Council drop the subject and not involve itself in a lengthy and costly battle of unknown legal consequences and community embarrassment. Mr. Kennedy also said he is not happy about the ambiguous language of the public safety tax initiative. He thanked the Mayor and Council for allowing him to present his “harsh sounding” but well meaning dissent.
- CLAYTON FISCUS, 1111 MAIN STREET, said he represents the *Montanans for Better Government*. He said this group is requesting action on insuring better language on future mill levy ballots. He said the language on the 2004 Public Safety mill levy ballot was deceptive, ambiguous, missing vital information and the wording of the ordinance was not contained on the ballot. He also stated that the realtor association did not see the words “cumulative” or “permanent” during their public safety presentation. Mr. Fiscus said the recent Attorney General letter advised that the issue is controversial. He said he is submitting a citizen’s initiative that contains five points that should be specified on future ballots: 1) permanent or duration date, 2) is or is not cumulative, 3) dollar amounts and the mills for each year and the total mills and dollars after the last increase stated, 4) contain ordinance language in its title, and 5) any Powerpoint presentations will display the ballot. He said he thinks 95% of the people did not know what they were voting on.
- RON CROCKER, 2009 CLARK AVENUE, said he voted for Mr. Tussing for Mayor because he wanted the best man in the position. He said he does not think Mr. Tussing should be required to return the \$160,000.00 because he got short-changed in the long-run. He asked the Council not to pay additional money to out-of-state attorneys to get this money back. With all the budget constraints, the last thing the City needs to do is spend more money. He said he would like to see the City going in the right direction and have everyone working together.

## **COUNCIL INITIATIVES**

COUNCILMEMBER BROWN: Councilmember Brown moved to direct Staff to research and prepare an ordinance to include specific information on mill levies to be required on future ballot initiatives including the suggestions A through E on the citizens initiative

submitted to the Council by the *Montanans for Better Government*, seconded by Councilmember Jones. Councilmember Brewster said the suggestions are not terribly complicated and thought it was a good idea to require that information. In response to Ms. Volek's question about the purpose of the ordinance, Mayor Tooley said the purpose is to specify how future City ballot measures are printed for the public so that the wording is complete and informative.

Ms. Volek noted that state law also affects what may be on the ballot. Councilmember Ruegamer expressed concern that this may open the door to many other groups who want to continually change the ballot wording. He noted this will be a "nightmare" if that happens. Councilmember Boyer asked why this needs to be in the form of an ordinance. Councilmember Jones said it is good to be in an ordinance so there is no oversight by future councils. Councilmember Brewster said it also gives clarity to Staff on what language is appropriate on future ballots. Councilmember Ulledalen reminded the Council that the public hearing process of the ordinance is another avenue to allow public input on this issue. On a voice vote, the motion was unanimously approved.

COUNCILMEMBER BREWSTER: Councilmember Brewster moved to direct Staff to investigate adding the additional small group of people (6-8) that were uninformed about the Arterial Fee exemption based on zoning into the exemption for the 2005 budget year, seconded by Councilmember Ruegamer. Councilmember Brewster said this is a new ordinance, a new process and significant money for a couple of these people. On a voice vote, the motion was unanimously approved.

COUNCILMEMBER MCDERMOTT: Mayor Tooley said the Council asked the City Attorney's office to come back to the Council with specific alternatives that exist for this Council to review with regard to the agreement between the City and former Police Chief Ron Tussing. The City Attorney's office researched this request with the counsel for the Montana State Bar Association who indicated this could be a conflict of interest because the City Attorney's office represents both the Mayor and the Council, possibly against each other even to the extent that proposing options may be considered a violation of ethics. He noted the City Attorney's office states that they should not be advising the Council as to the options and asked the Montana Municipal Insurance Authority (MMIA) to convey to the Mayor and Council the names of law firms that work with city contracts and that would be willing to provide the same information that was asked of the City Attorney's office, i.e. a list of options. Mayor Tooley said there are four lawyers that Bob Worthington, CEO of MMIA forwarded to him including Rick Larson, Steve Bolek, (Helena), Maureen Lennon and Bob Plenough, (Bozemen). Mayor Tooley said the next step can be to engage a law firm to do what was asked of the City Attorney's office which is determine the City Council's options. Councilmember McDermott said if the City has an improper contract, it needs to know that and fix it. The worst thing this Council could do is leave future councils with this council doing nothing about this issue. If it is enforceable, then the Council has an obligation to enforce the contract. This does not in any way interfere with Mayor-elect Tussing serving as Mayor, she added. Councilmember McDermott moved to direct Staff to hire suitable outside counsel specializing in contract law to advise the Council on performance of the Tussing contract, seconded by Councilmember Gaghen.

Councilmember Ruegamer said he does not support his motion and thinks the Council should drop this issue forever. He said the Council has “looked bad enough over and over” on this issue and now the City is going to engage an outside attorney. Councilmember McDermott said the reason for hiring an outside attorney is to protect the local attorneys who may have a relationship with some of the parties involved on this complicated and conflicting issue.

Councilmember Boyer said she would like the constituents to know that the Council acknowledges that Mayor-elect Tussing is the new mayor and this is not about personalities, but about process and the contractual model of the City. She also expressed the need for closure. If the Council leaves this “hanging out there” it’s not good for the mayor-elect, nor is it good for the Council. Councilmember Brewster said he did not think independent advice on the contract is unreasonable.

Councilmember Brown said the Council is in the middle of a polarization and the only way out of that is to have someone else make the decision. Councilmember Ulledalen said one of the things the Council needs to pay attention to is how it responds to the advice it receives and what it does with the recommendation. The Council needs to be clear in what it asks for and decisive in how it responds to what it receives. Councilmember Veis said he thinks Councilmember Brewster’s idea to sit down and talk with Mayor-elect Tussing is a better way to go. Councilmember Jones said the only way the Council will get a definitive answer is to take the issue to court.

Councilmember Boyer said it was her understanding that Mayor-elect Tussing’s lawyer wrote the contract. Assistant City Attorney Bonnie Sutherland said Mr. Rapkoch (Tussing’s lawyer) wrote the first part of the contract and former City Administrator Kristoff Bauer and the legal department reviewed it and made some changes. Councilmember McDermott said it does not matter who writes the contract as long as both parties review and approve it. She said to proceed without some legal assistance is folly.

Mayor Tooley asked about the legality of Staff hiring outside counsel. Ms. Volek said she is signatory to the contract and has been advised by her professional association that she also has a potential conflict of interest. She said Mr. McCandless does not believe he has a conflict and also believes he can negotiate a contract for Council consideration. Councilmember Boyer said she is concerned that this be completed by the end of the year.

Councilmember Ruegamer made a substitute motion to appoint the Deputy Mayor and two (2) Councilmembers of her choice to sit down with Mayor-elect Tussing to negotiate a conclusion to the contract issue, seconded by Councilmember Veis. Councilmember Boyer said she would like to know what the options are before proceeding with that strategy as she would not feel comfortable without some data. Councilmember Veis said he believes the negotiation should come before involving outside law firms. Councilmember Boyer said one of the issues that the Council is hearing from the community is the contract issue - knowing whether the contract is valid or not. She said there will be no closure until that is resolved. Councilmember McDermott said the contract doesn’t need to be negotiated because the contract is binding, but the Council does need to find out if it is a good contract or a bad contract. On a voice vote on the substitute motion, the motion failed with Councilmembers Brewster, Veis and Ruegamer voting “yes”.

Councilmember Veis amended the original motion to have the legal advice back to the Council by 12/19/05, seconded by Councilmember Ruegamer. On a voice vote, the amendment was approved with Councilmembers Ruegamer and Jones voting “no”.

MINUTES: 11/28/05

Councilmember Brewster said this item needs to be noticed and placed on an agenda to allow for public comment. Assistant City Attorney Bonnie Sutherland said simple administrative acts do not have to be on the agenda nor is public participation required. The Council directing Staff to find available attorneys is an administrative act and once it decides who it will hire and contract with; then it is a matter of significant interest to the public and should be placed on an agenda. She said this is a very controversial issue and the actual hiring should be on an agenda. On a voice vote on the motion as amended, the motion was approved with Councilmembers Jones, Veis, Ruegamer and Mayor Tooley voting "no".

**ADJOURN** – With all business complete, the Mayor adjourned the meeting at 11:23 P.M.

THE CITY OF BILLINGS:

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

ATTEST:

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