

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

## **June 13, 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 Larry Brewster.

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

**MINUTES – May 23, 2005**. APPROVED as printed.

**COURTESIES** -- Mayor Tooley recognized two former councilmembers in the audience this evening – Jack Johnson and Marion Dozier. Councilmember Veis commended Greg Krueger and his staff at the Downtown Billings Partnership for their work on Saturday's Strawberry Festival.

**PROCLAMATIONS** – None

### **BOARD & COMMISSION REPORTS – Public Utilities Board**

- Eric Coobs, chair of the Public Utilities Board said the board has five (5) members that meet every other month on the third Thursday. The department has a number of construction projects underway, the two largest being the new \$6 million headworks building and the \$16.7 million filter building replacement project. The filter building project is expected to be approximately a two-year project. Annual water and sewer replacement projects are continuing. These projects maintain about 10% of the total system each year. He expressed great confidence in the work of the Public Utilities Department.
- Greg Krueger, Director of the Downtown Billings Partnership announced that the Partnership would be unveiling a new piece of equipment at 9:00 a.m. tomorrow morning under Sky Point. The new equipment is dubbed "The Green Machine" and will assist in the maintenance of the downtown area.

### **ADMINISTRATOR REPORTS – Kristoff Bauer**

- Mr. Bauer noted that revised information was provided to the Council in their Friday packets on Items 1A, U and V. Information was also provided on a Resolution of Intent to create the Sandstone Tax Increment District, an item that relates to Item S on the consent agenda and that needs to be added to tonight's agenda.

**PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Item: #1 and #16 ONLY. Speaker sign-in required.** (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.)*

- TOM ZURBUCHEN OF 1747 WICKS LANE spoke in regard to Item 16. Mr. Zurbuchen said the public has a right to know what its city officials are doing; this is not a privacy issue. The public has a right to know in order to be informed voters. He noted that problems have been identified in the police department and the public needs to know what problems exist in administration. He said this issue needs to be resolved.
- FRANCIS HARRIS OF THE TERRACE spoke in regard to Item 16. She said at a young age she was told "little people do little things" and "little" did not refer to stature, but narrow and closed minds. Ms. Harris also said the "eye for an eye" belief does not belong in America or in the city government of Billings. She urged the Council to use common sense and good judgment when deciding on the administrator's contract.
- JOE WHITE OF 926 N. 30<sup>TH</sup> ST. spoke on Item 16. Mr. White said the city administrator said he had a law license, but it was only a junior law license. He also claimed the city administrator discriminated against the Christian Science Church and was responsible for a number of the City's problems.
- JACK JOHNSON OF 2303 VIRGINIA LANE spoke on Item 16. He urged the Council to table the item, adding that a review of the city administrator's contract is out of order at this time. He urged the Council to let the administrator do the job they hired him for. There are many important projects to get underway and the Council has more urgent and important things to decide.
- GREG KRUEGER, DIRECTOR OF THE DOWNTOWN BILLINGS PARTNERSHIP, 2906 3<sup>RD</sup> AVENUE N. spoke first on Items 1L and 1S, offering to answer any questions. Mr. Krueger then offered his comments on Item 16, stating the he has observed that the city administrator has an efficient, cordial and open working relationship with his staff.
- MARION DOZIER OF 3923 3<sup>RD</sup> AVENUE S spoke on Item 16. She said she fears that a majority of the councilmembers will vote this evening to dismiss one of the best city administrators the City has had. Ms. Dozier said she hopes the Council will vote the "right" vote and not the "popular" vote until some important projects are underway and the firefighter contract is settled before reviewing the administrator's contract.
- MARY WESTWOOD OF 2808 MONTANA AVENUE spoke on Item 16. She said she is speaking in favor of stability for the community. The protracted discussion of the police department and dispute with the police chief has impacted the community. She said the Council must accept its role in the protracted discussion. Ms. Westwood said the city administrator has done an excellent job, stood up to some larger entities in the community, listened to all of the citizens of the community and should be given an opportunity to complete his contract. She asked the Council to make the "right" decision.
- CAROLL SMITH OF 1828 ALDERSON spoke in regard to Item 1G. Mr. Smith said the City should not give up regulation of the library; it is appropriate for the Council to regulate the library.
- DAVE ULRICH OF 1201 CALICO spoke on Item 16. He said the easy thing to do is rarely the right thing to do. Mr. Ulrich said he heard rumors that the decision has already been made on the city administrator's contract, adding that he hoped that was

not the case and that comments offered this evening would be considered. He said the city administrator has made some hard decisions, some of which were unpopular, but they were the right decisions nonetheless. He noted that Mr. Bauer is respected and appreciated by his management team and peers. Mr. Ulrichs also expressed concern for the precedent this action is setting toward the hiring of the next administrator.

**LATE ADDITION:**

Councilmember Brewster moved to ADD the **RESOLUTION OF INTENT TO CREATE SANDSTONE TAX INCREMENT DISTRICT** to the agenda as Item 1S(2), seconded by Councilmember Boyer. On a voice vote, the motion was unanimously approved. The item was added to the agenda.

**CONSENT AGENDA:**

1. A. **Mayor's Appointments**

	Name	Board/Commission	Term	
			Begins	Ends
1.	Delayed to 6/27/05	Zoning Commission	06/13/05	12/31/07
2.	Delayed to 6/27/05	Community Development	06/13/05	12/31/08
3.	Delayed to 6/27/05	Board of Adjustments	06/13/05	12/31/05
4.	Delayed to 6/27/05	Parks/Recreation/Cemetery	06/13/05	12/31/08

1. Unexpired term of David Gelder      3. Unexpired term of Danny Graves  
2. Unexpired term of Aldo Rowe      4. Unexpired term of Sandy Graves

B. **Bid Awards:**

(1) **Gillig Bus Powerplant.** (Opened 5/24/05). Recommend Gillig Corporation, \$59,425.00.

(2) **Demand Response Software Package with AVL and MDT Integrated Modules.** (Opened 4/26/05). (Delayed from 5/9/05). Recommend Routematch, \$126,800.00.

(3) **Billings Logan International Airport, AOC-Fire Alarm Upgrade.** (Opened 5/24/05). Recommend Yellowstone Electric, \$28,105.00.

(4) **W.O. 04-12: Alkali Creek Road Improvements, CTEP Project #STPE 1099(46).** (Opened 5/31/05). Recommend JTL Group, Inc. for Schedules 1-5, \$1,876,403.70 and 190 calendar days, contingent on CTEP concurrence.

(5) **W.O. 04-29: Trans Tech Trail.** (Opened 5/131/05). Recommend JTL Group, Inc. for Schedules 1 and 1A, \$154,364.00 and 45 calendar days.

(6) **Billings Wastewater Treatment Plant Administration Building Electrical Improvements.** (Opened 6/7/05). Recommend delaying award to 6/27/05.

**C. Amendment #6, Airport Miscellaneous Capital Projects, Professional Services Contract, Morrison-Maierle, Inc., \$29,140.00.**

**D. Amendment #3, W.O. 04-13: Water Treatment Plant Filter Building Expansion and Improvements, Professional Services Contract, HDR Engineering, Inc., \$933,419.00.**

**E. Vehicle Lease Agreement** for City/County Special Investigations Unit (CCSIU), Underriner Motors, \$25,200.00, term: 7/1/05 to 6/30/06.

**F. Library HVAC Maintenance Agreement**, Conditioned Air Systems, \$71,300.00, term: 3 years.

**G. Interlocal Library Agreement** between Yellowstone County and the City of Billings to operate Parmly Billings Library.

**H. FY2005/2006 Landfill Use Agreements:**

- (1) Bighorn County
- (2) Town of Bridger
- (3) Carbon County
- (4) Town of Columbus
- (5) Town of Fromberg
- (6) Town of Hysham
- (7) Town of Joliet
- (8) City of Laurel
- (9) Musselshell County
- (10) City of Red Lodge
- (11) Stillwater County
- (12) Treasure County
- (13) Yellowstone County – Amendment #2

**I. Renewal of Limited Commercial Building and Ground Lease**, DHL Express, Inc., 1 year term and 1 year renewal option, \$11,628.00 for first year, adjusted by CPI if renewed.

**J. Limited Commercial Building and Ground Lease**, Jack Bolme, term: 7 months to 12/31/05, \$9,240.00.

**K. Agreement** for Library Security Guard Service, Guardian Security, term: 3 years.

**L. Tax Increment Façade Grant**, MCS LLC for O'Donnell Building Project at 2401 2<sup>nd</sup> Avenue North, \$35,000.00.

**M. Acceptance of Quit Claim Deed** from United Blood Services for public improvements on Grand Avenue, \$0.00.

**N. Approval** of Recreational Trails Program Grant application for an additional \$5,000.00 for a portion of the Gabel Road Connector Trail Project. (20% match required, \$1,250.00).

**O. Cancellation** of Checks and Warrants, \$9,730.38 and receivable balances, \$21,076.78.

**P. Resolution 05-18273** making annual all-purpose mill levy and mill levies for library operating, transit operating and public safety for FY 2005-2006.

**Q. Resolution 05-18274** to close the Special Improvement District debt funds and Sidewalk Special Assessment debt funds to the Special Improvement District revolving fund, \$12,454.18.

**R. Resolution of Intent 05-18275** to sell City-owned property described as Lots 5-10, Block 92, O.T., located in the 100 Block of N. 27<sup>th</sup> Street and setting a public hearing date for 7/11/05.

**S. (1) Resolution 05-18276** designating a blighted area within the City and the necessity of rehabilitation and redevelopment of said area to establish a Tax Increment Finance District within the City, boundaries: tract within Block 92, consisting of Lots 5-10, the W2 of N. 27<sup>th</sup> Street measured from the easterly border of Lots 5-10 to the center line of N. 27<sup>th</sup> Street, together with the E2 of the alley that divides Block 92 measures from the western border of Lots 5-10 to the center line of the alley.

**(2) LATE ADDITION: Resolution of Intent 05-18277** to create Sandstone Tax Increment District.

**T. Resolution 05-18278** assessing residential/commercial collection, disposal and landfill fees for FY2005-2006.

**U. Resolution 05-18279** relating to \$1,290,000 Pooled Special Improvement District Refunding Bonds, Series 2005, determining the form and details and authorizing the execution and delivery.

**V. Resolution 05-18280** relating to \$2,520,000 Pooled Special Improvement Districts Bonds, authorizing the issuance and calling for the public sale thereof.

**W. Resolution of intent 05-18281** to expand Park Maintenance District #4012: Village West Subdivision and setting a public hearing date for 7/11/05.

**X. Resolution of intent 05-18282** to create Park Maintenance District #4027: Ironwood Estates Subdivision and setting a public hearing date for 7/11/05.

**Y. Second/final reading of an ordinance 05-5326** extending the boundaries of Ward IV to include the recently annexed properties in Annex #05-02: a

portion of the W2W2SW4 of Section 32, T1N-R25E containing 40.5 acres located on the east side of 54<sup>th</sup> Street West, north of Grand Avenue.

**Z. Second/final reading of an ordinance 05-5327** extending the boundaries of Ward V to include the recently annexed properties in Annex #05-03: approximately 25 acres located south of the intersection of 52<sup>nd</sup> Street West and Grand Avenue.

**AA. Preliminary Plat** of McKay Acres Subdivision Amended, Amended Lot 18B; conditional approval of plat and adoption of the findings of fact.

**BB. Final Plat** of Amended Lot 1, Block 17 of Daniel's Subdivision, Second Filing.

**CC. Final Plat** of King Place Subdivision.

**DD. Bills and Payroll.**

- (1) April 1 – May 15, 2005 (Court)
- (2) May 13, 2005
- (3) May 20, 2005

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

Councilmember Jones separated Item G of the Consent Agenda. Councilmember Boyer separated Item R of the Consent Agenda. Councilmember Brown separated Item S of the Consent Agenda. Councilmember McDermott moved for approval of the Consent Agenda with the exception of Items G, R, and S, seconded by Councilmember Brewster. On a voice vote the motion was unanimously approved.

Councilmember McDermott moved for approval of Item G, seconded by Councilmember Brewster. Councilmember Jones said the Council should be the final authority on Library policy, not the Library Board. Councilmember Jones amended Paragraph 9 of the agreement to read “the Library Board of Trustees shall review and recommend annually revision of all Library policy relating to public services, programs and use of the Library, subject to submission no later than March 1 of each year to the City Council.” Discussion began without a second. Mayor Tooley noted that the discussion constituted a second. Mayor Tooley said the Library is a City/County library and the County should be included in the discussion of any changes. Councilmember Jones said the City has the major stake in the Library, funding 2/3 of its operating expenses. Library Director Bill Cochran confirmed that the City funds the greater portion of the Library and through the chain of command the Council has the authority to execute contracts, and deal with personnel actions including his review and evaluation.

The policy issue is a separate one that has been constrained by lawsuits to where the policies that the Library Board oversees have nothing to do with contracts or Library goals and personnel issues. It is restricted to issues that deal with the Library's interaction with the public and the permitted conduct of the public. These issues have always been governed by the Library Board and this would be a major change and responsibility for the

Council. All other public libraries in Montana handle this issue in the same manner. Mr. Cochran noted another practical reason is that it prevents lengthy agendas on a regular basis. He said the Library staff works closely with the Library Board on these issues and policies, as well as with other libraries throughout the state and the City Attorney's Office to avoid liabilities for the City. He added that personnel issues were removed from the Library Board's responsibilities at the time of the Charter. On a roll call vote, the amendment was approved 7-4 with Councilmembers McDermott, Brewster, Brown, Ruegamer, Boyer, Clark and Jones voting "yes" and Councilmembers Gaghen, Veis, Ulledalen and Mayor Tooley voting "no". On a voice vote, the motion as amended was unanimously approved.

Councilmember McDermott moved for approval of Item R of the Consent Agenda, seconded by Councilmember Brewster. Councilmember Boyer asked where the proceeds of the sale of the parking lots would be placed. Deputy Administrator Bruce McCandless said the property was originally purchased with Tax Increment Funds in 1986 and has been operated since then as a parking lot. The money can be placed where the Council desires, but it is customary to place those funds back with the original source. On a voice vote, the motion was unanimously approved.

Councilmember McDermott moved for approval of Item S of the Consent Agenda, seconded by Councilmember Brewster. City Administrator Kristoff Bauer said the Council would be considering the intent to form a tax increment district with the late addition item that is associated with this agenda item. Two resolutions would be considered relating to Item S. Councilmember Veis asked if this item should be considered as two items - S1 and S2. Councilmember McDermott restated her motion and moved for approval of Item S1 of the Consent Agenda, seconded by Councilmember Boyer. Councilmember Brown said he sees tax increment financing districts as just a tax subsidy for areas that should take care of themselves. He said this makes taxes higher for the major of the taxpayers and he does not support this. Greg Krueger, from the Downtown Partnership said the reason for creating a tax increment district is because the value of the area has declined to a point where the area outside of the district has to subsidize it. The cost of services to the area can be much higher than what is gained in taxes. Mr. Bauer noted that a City property involved in the proposed project is valued at \$500,000 and is currently not being taxed at all. This is part of the process that will bring this property back onto the tax rolls. Councilmember McDermott noted that both of the resolutions for this item would have public hearings on June 27th providing further information. On a voice vote, the motion was approved with Councilmember Brown voting "no".

Councilmember McDermott moved for approval of Item S2 of the Consent Agenda, the intent to create Sandstone Tax Increment District, seconded by Councilmember Brewster. On a voice vote, the motion was approved with Councilmember Brown voting "no".

## **REGULAR AGENDA:**

### **2. PUBLIC HEARING AND RESOLUTION 05-18283 approving budget amendments for the 4<sup>th</sup> quarter of FY 2004-2005. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

There was no staff report. Councilmember Veis asked if the \$846,000 that has no revenue source would come out of the 2005 undesignated reserves for the General Fund.

Mr. Bauer replied "yes". Councilmember Veis asked for an updated report of the estimated undesignated fund balances for FY2005 with these amendments. Councilmember Veis also asked why the line item amount for the "vacancy savings" is considered an expenditure. Financial Services Manager Pat Weber said the vacancy savings is calculated for the year and an average is used. This year there are less vacancy savings because positions have been filled and stayed full.

Councilmember Jones asked about the increase in the Legal expenditures for outside counsel. Mr. Weber said this related to several cases currently in process. City Attorney Brent Brooks said the major case involved was Kerr vs. the City.

Councilmember Brown asked when the Council would begin receiving financial statements on a monthly basis. Mr. Weber said on May 2<sup>nd</sup> it was decided the revenues and expenses for six major funds and the Health Insurance Fund would be provided to the Council on a quarterly basis, starting the first of August.

Councilmember Veis asked if the \$200,000 loan to the Fire Department from Solid Waste for the land purchase would be completed before June 30<sup>th</sup>. Mr. Weber said there is a buy/sell agreement signed and the funds can be encumbered because there is a contract.

The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Brewster moved for approval of the Staff recommendation, seconded by Councilmember Gaghen. On a voice vote, the motion was approved with Councilmember Brown voting "no".

**3. PUBLIC HEARING AND FIRST READING ORDINANCE adopting the NFPA1/UFC, 2003 edition. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

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

**4. PUBLIC HEARING AND RESOLUTION 05-18284 approving and adopting the FY 2005-2006 annual budget. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

Financial Services Manager Pat Weber said this presentation is a budget overview with the recommendations that have been previously discussed with the Council. He said the total revenues for the FY06 proposed budget total \$195,248,000, a 4.8% decrease from FY05. The total expenditures for FY06 are \$213,203,000, a 5.1% increase from FY05. This represents a difference of \$20,196,000 of which \$18,000,000 is funding for projects that were encumbered in FY05 and will be expended in FY06. The increases in the various funds are:

Personal Services – 9.4% (major increases are COLAs and health insurance)

Total City Operations and Maintenance – 4.5% (major increases are fuel, utilities and property and liability insurance)

Total City Capital – 10.7% (projects)

Total City Debt Service – 4.0% (no significant change)

Mr. Weber reminded the Council that interfund transfers inflate the budget and are not really expenditures as the money transfers from one fund to another and stays within City operations. Mr. Weber outlined the total City expenses less the transfers and Capital noting the 7.0% increase in expenses over FY2005. He said the recommendations for the proposed budget are:

- 1) Implement the \$10 surcharge - \$120,000 in revenue
- 2) Court Clerks, Legal Secretary, Police clerk and Public Defender - \$128,500 in expense.
- 3) Court Equipment - \$90,500 in expense.
- 4) Transfer Funds from SID Revolving Loan Fund to the General Fund - \$765,00
- 5) Investment Software - \$20,900 in expense
- 6) Class and Compensation Study revision - \$25,000 in expense.
- 7) Telephone/Printing left out of budget in Finance - \$11,351 in expense
- 8) BSEDC dues from Mayor/Council - \$1,000 in expense
- 9) Rebudget Cop Shop Remodel - \$18,686 in expense
- 10) Court Clerk - \$32,000 in expense
- 11) Ambulance Dispatch Service in Fire - \$56,000 in revenue that would pay for an additional 911 supervisor
- 12) Transfer Funds from Aquatics Construction Fund to PRPL Budget for several projects - \$306,000 (leaving \$34,000 in Aquatics Construction Fund)
- 13) South Pool Heater/Blankets - \$30,000 (100% funded from CDBG funds)
- 14) Solid Waste - \$300,000 (loan to Fire)
- 15) Streets/Traffic General Obligation - \$81,000 (construction)
- 16) Parks Department Acquisition and Improvements - \$10,000
- 17) Parking Division - \$50,000
- 18) Gas Tax - \$233,400
- 19) Storm Sewer - \$199,400
- 20) Information Technology - \$25,600 (for report writer software)

Mr. Weber said the unfunded PRPL projects by priority are:

- 1) Central Park Playground - \$95,000
- 2) Skatepark Improvements - \$110,000
- 3) Riverfront ADA - \$41,000
- 4) Hawthorne Park Spray Pad - \$175,000
- 5) Athletic Pool Heater/Blankets - \$170,000

Councilmember Brown asked why the revenues for FY2006 are \$9,917,000 lower than in FY2005. Mr. Weber said this was due to interfund transfers in previous years into certain funds that inflated the budget. This method was changed this year creating that difference. He said \$4.6 Million of that figure were transfers. Mr. Bauer said this is a different way of accounting for funds so the budget is not over-inflated. Councilmember Veis asked for an updated summary of last year's budget with the amendments included.

The public hearing was opened. TOM ZURBUCHEN, 1747 WICKS LANE, said he is concerned about the General Fund and Public Safety Fund budgets. There is \$482,000 in additional taxes collected in the General Fund over last year. He said that is a healthy

increase. There is \$786,884 less being transferred from the General Fund to the Public Safety Fund. Last year at this time there was a mill levy increase for Public Safety, yet there is less money being transferred into the Public Safety Fund from the General Fund. Mr. Zurbuchen said that is "stealing \$.30 of every dollar from Public Safety and putting it back into the General Fund to have more money to spend." That means there is \$1.2 Million in the General Fund to spend on activities other than public safety this year over last year. Mr. Zurbuchen said the campaign for the mill levy said there was a change in the state's methodology that decreased the revenues for the General Fund, but there is \$480,000 in new property taxes. He said the citizens were told that funds were needed in public safety, yet \$786,000 was taken from that fund and put into the General Fund. That is not what the citizens voted on; that is not what the citizens were sold on. He said it is not right and if the Council approves this budget, the voters will remember who voted "yes" in November.

JOE WHITE, 926 N. 30<sup>TH</sup> STREET, said the budget should be cut back to a skeleton budget and monies should be directed to health and fire agencies. Government needs to reform because the budget doesn't help Police and mental health services. He said the City cannot keep spending.

TONY O'DONNELL, 3390 CANYON, said he was confused about the City receiving less income/revenue than last year. He asked if the revenue actually went down.

There were no other speakers. The public hearing was closed. Councilmember Ruegamer moved for approval of the Staff recommendation, seconded by Councilmember McDermott. Mayor Tooley addressed the public hearing comments. He said the City has been supporting the Public Safety Fund in an inordinate way with funding from the General Fund up to this point. Mr. Bauer said the contribution from the General Fund to the Public Safety Fund is lower this year than it was last year. The City has been using General Fund reserves to fund the Public Safety Fund in the past. This cannot continue because the City has run out of reserves. He said because of this, the transfer had to be adjusted in order to balance the General Fund and invest in Public Safety. Mr. Bauer noted this is a one-time adjustment to balance the General Fund so that the City is not spending reserves. Over time the projected contributions from the General Fund into the Public Safety Fund will grow. Had that adjustment not occurred the City would be spending General Fund reserves and there would be more money in the Public Safety Fund than was needed to accomplish their goals.

Mr. Bauer responded to Mr. O'Donnell's concern by stating that a portion of the decrease relates to the change in the method of accounting for transfers that appear to be reported as a revenue, but in fact are not. Revenue in FY2005 for projects that were encumbered in FY2005 but will be expended in FY2006 accounts for the change in capital from one year to the next. He said, as proposed in the rate process, the City is proposing to spend down reserves in the Water and Wastewater Funds showing the difference between expenditures and revenues. Mr. Weber said there is \$975,000 between FY2005 and FY2006 for the General Fund and Public Safety Fund that does not have a revenue source. This is offset by the \$765,000 that is recommended to be transferred out of the SID Revolving Fund, leaving \$145,000 from reserves. He said the City is not "stealing dollars from the Public Safety Fund" because a \$13.9 Million commitment from the General Fund made in 1999 when the Public Safety levy was passed would halt the

spending of reserves in the General Fund and make the Public Safety Fund self-sufficient. The City was trying to prevent the spending of reserves with the Public Safety levy.

Councilmember Brewster said the contributions from the General Fund in the past and the future contributions must be taken into account to understand the concept. The General Fund contributions grew over time relative to the Public Safety Fund. Due to the levy, four or five years down the road the Public Safety Fund will receive funding from the General Fund to meet the goals of the Public Safety Fund. It is a method of accounting that must be viewed over the long term to make sense.

Councilmember Brown asked what the estimated property tax increase to the City will be. Mr. Weber said any fund that receives funding through a levy is related to personal property taxes. Councilmember Brown asked what the increase was in the value of the taxable property in the City of Billings over last year. Mr. Weber said that is unknown to date because that information comes from the Department of Revenue. He said he will receive that information by the end of July.

Councilmember Veis asked if there are funds in the City/County Planning budget for the tax increment finance study for the downtown. Mr. Bauer said there are no funds for that purpose in this budget. Councilmember Veis asked if there is an estimate from BSEDA for the funding they would need for the study. Mr. Bauer said the estimate for the cost of that study is approximately \$60,000. However, it has not been established how the cost will be divided between the responsible parties. On a voice vote, the motion was approved with Councilmembers Brown and Jones voting "no".

Mayor Tooley called for a recess at 8:00 P.M.

Mayor Tooley reconvened the meeting at 8:10 P.M.

**5. PUBLIC HEARING AND RESOLUTIONS** levying and assessing annual assessments and fees for FY 2006 on properties within the City, providing for notice, hearing and final adoption. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

- (A)(1) Storm Sewer Maintenance:
- (A)(2) Arterial Construction Fees:
- (A)(3) Light Maintenance Districts:
- (B) Resolution 05-18285 - Park Maintenance Districts:
- (C) Fire Hydrant Maintenance:

There was no staff report. Mayor Tooley noted that the public hearing would be on all of the items even though they will be voted on separately.

The public hearing was opened. RON HILL, 2202 WEST SKOKIE, said Section 22-1003 of the BMCC establishing the rates for arterial construction fees, states that fees are assessed on all premises within the City limits. The arterial fee resolution (item 5A2) assesses fees "on all lots or portions of lots" and there is a big difference. He said a premise is defined as a tract of land with buildings or parts of thereon. This is different from lots or portions of lots. Mr. Hill said it would not be the intent of the resolution to override the ordinance for assessing specific properties. He also said Section 22-804 establishes the rates for storm sewer maintenance assessments on all premises in the City limits, whereas the resolution (5A1) also assesses fees on all lots or portions of lots. The ordinances and resolutions conflict with one another and the resolution does not

override the ordinance, but that is exactly what appears to be "going on". He asked the Council to correct both resolutions to coincide with the intent of the City code.

There were no other speakers. The public hearing was closed. Councilmember Veis moved for approval of the Arterial Construction Fee, Light Maintenance Districts and the Storm Sewer Maintenance Fee resolutions, seconded by Councilmember Ruegamer. Mayor Tooley asked if the Legal Department would comment on the concern raised by Mr. Hill relating to language that relates to lots versus premises. City Attorney Brent Brooks said he would review the ordinances and the resolutions for overall intent and whether there is a contradiction. Councilmember Veis said it was appropriate to continue the public hearing and delay action until the discrepancy is clarified.

Councilmember Brown asked for clarification of the difference between a fee and a tax. Mr. Brooks said a fee is imposed upon users who use a particular service and a tax is for the general purpose and benefit of all the citizens. He said he has distributed to the Council on several occasions a memo that differentiates a tax from a fee.

Councilmember Brewster made a substitute motion to delay action for two weeks to allow the Council to hear the response to the question on the discrepancy, seconded by Councilmember Jones. Mayor Tooley said the information the Council should receive would be a clarification on the difference between a lot and premise when it applies to these resolutions and relating to the ordinances. On a voice vote, the substitute motion was unanimously approved.

Councilmember Veis moved for approval of the Park Maintenance District resolution, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

Councilmember Veis moved for approval of the Fire Hydrant Maintenance resolution, seconded by Councilmember Boyer. Councilmember McDermott made substitute motion to delay action for two weeks, seconded by Councilmember Brewster. On a voice vote, the substitute motion was unanimously approved.

**6. PUBLIC HEARING AND RESOLUTION 05-18286 creating expanded Park Maintenance District #4005 to include High Sierra Subdivision, 3<sup>rd</sup> and 4<sup>th</sup> filings. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

There was no staff report. The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Boyer moved for approval of the Staff recommendation, seconded by Councilmember Brewster. Councilmember Brewster asked about the error on the mailing list for this district. Parks and Recreation Supervisor Gene Blackwell said a group of residents in the Lake Hills Subdivision were included in the district listing and received the notice for creating this district in error. Those residents have recently received a letter notifying them of the error and explaining that they are not a part of the district. On a voice vote, the motion was unanimously approved.

**7. PUBLIC HEARING AND RESOLUTION 05-18287 creating expanded Park Maintenance District #4014 to include Goodman Subdivision, 2<sup>nd</sup> – 4<sup>th</sup> filings. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

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

**8. PUBLIC HEARING AND RESOLUTION 05-18288 authorizing the trade of the Holfield Subdivision Park Tract in return for Tract A-1-B of C/S 1833. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

There was no staff report. The public hearing was opened. Mac Fogelsong, Engineering, Inc., said he represents the owner and would be available for questions. There were no questions.

There were no other speakers. The public hearing was closed. Councilmember Clark moved for approval of the Staff recommendation, seconded by Councilmember Ruegamer. Mr. Bauer noted that no protests were received on creating this district. Councilmember Boyer said she would abstain from voting as this involves one of her employees. Councilmember Jones asked if this trade would assist tying Pow Wow Park into a trail link. Mr. Blackwell said this trade provides the opportunity to obtain some east/west land that can be used for trail construction. If this trade is not accomplished, the City would lose the opportunity to add to the trail right-of-way. On a voice vote, the motion was unanimously approved. Councilmember Boyer abstained.

**9. PUBLIC HEARING AND SPECIAL REVIEW #782: a special review to permit a temporary go-kart track on a property zoned R-9600 and located at 1235 West Wicks Lane. Harvest Church, owner; Glenn Fournier, agent. Zoning Commission recommends denial. (Action: approval or disapproval of Zoning Commission recommendation.)**

Planning Staff member Aura Lindstrand said the applicant is proposing to operate no more than 12 to 15 go-karts at one time during the hours of 8 A.M. to Noon on Saturdays throughout the summer on this proposed track located at 1235 West Wicks Lane. The subject property is surrounded by Residential 9,600 to the east and vacant land on three sides. She said the applicant proposed to locate the track on the east side of the Church in order to mitigate potential impacts to the residential properties. The Staff suggested the track be relocated to the existing parking lot on the south side of the site on a temporary basis until the use is found to be compatible. The temporary site could be used until an amended master plan could be submitted for the remaining acreage and at that time a permanent location for the track would be submitted for special review along with the other recreation facilities proposed by the church.

Ms. Lindstrand said the Zoning Commission held a public hearing and is recommending denial of the application. They state the use is incompatible with the adjacent residential uses due to noise (which has been found to be well below acceptable limits), vandalism and dust pollution. She said the Planning Staff recommends the following conditions that will help mitigate the impacts to the surrounding properties if the Council chooses to approve the application:

1. The Special Review approval shall be limited to Lot 1, Block 4, High Sierra Subdivision, Second Filing.

2. The go-kart track shall be limited to the existing church parking lot located on the south portion of the site.
3. The track shall be limited to operating on **Saturdays only** from 8:00 a.m. to 12:00 p.m., May 15th through September 15th. Said times do not include the set up and cleanup of the track each Saturday, which may go above and beyond the specified time, provided that the go-karts are not operated except to load them for removal.
4. No more than 15 go-karts shall be raced at one (1) time.
5. The temporary track and go-karts shall be removed each week and all equipment stored within a completely enclosed and secured site.

Councilmember McDermott noted that representatives from the Harvest Church were not present at the Zoning Commission meeting and therefore did not present testimony in favor of their proposal. Councilmember Brewster asked if the neighbors were notified prior to the noise testing. Ms. Lindstrand said she did not think they were notified. The test was conducted within 25 feet of the closest residence.

Councilmember Brewster noted that mud is a bigger problem than dust for that area. He said the dust issue could be easily mitigated. Ms. Lindstrand noted that if the temporary track is successful this summer, the church intends to construct a permanent facility in a bowl shape. Councilmember Ulledalen asked about the acceptable decibel level for noise. Ms. Lindstrand said during the test run of 12 to 15 karts the decibel level was found to be 27-30 decibels, well below the 80 decibels maximum.

The public hearing was opened. JUDY BACON, 1804 HIGH SIERRA BLVD., said the Harvest Church is not interested in looking and acting like a church but is applying for this special review as a church. She said she purchased her house on what was the edge of a prairie, not Wal-Mart or Geyser Park. Now Harvest Church is proposing to locate a go-kart track 100 yards from her property. She also noted that the church often holds noisy rock band concerts for unsupervised troubled youths that often trespass onto private property causing destruction and high noise levels late at night. There are eight junk cars located on the southeast end of the church property, she added. She also noted that unauthorized go-kart racing began in the field behind her house on April 16<sup>th</sup> many hours before she received the notification of the special review. She said she is vehemently opposed to the location of the track for the following reasons:

- 1) noise from the karts, starting horns, spectators and infield amphitheatre.
- 2) constant dust from the proposed dirt berms and increased track use.
- 3) diminished air quality from emission and latex rubber tire usage
- 4) nuisance litter
- 5) increased traffic
- 6) unsecured go-kart track that will have 24/7 use by unsupervised, unauthorized users.
- 7) demonstrated non-compliance by the Harvest Church with zoning regulations established January 27, 2003 regarding landscaping, berming, parking and lighting.
- 8) lack of cooperation by Harvest Church officials to curtail trespassing by its members and function participants.
- 9) lack of adequate enforcement of codes by appropriate City officials.

She asked the Council to not be fooled by the proposed operation schedule, as a Harvest Church brochure distributed June 11<sup>th</sup> states "this may also be available for other ministries to use, as well as for special events and outreach ministries."

ROBERT LAITUAI, 1680 HIGH SIERRA BLVD., said he is the closest house to the parking lot of Harvest Church. He said the noise is not a problem as the only time he can hear the go-karts is when he "goes out in the back" and only when they are on the edge of the parking lot. He said the dirt berms will contain the sound. He also noted the vandalism issue is ridiculous as the kids using the facilities are considerate and respectful. He has never seen one of them trespass on his property, adding that the antelope are a bigger problem. Mr. Laituai said this is a good ministry and the kids are having a good time. He said there is also dust from the winds in the area. To take this event away from the kids would be a crime.

GLENN FOURNIER, 2535 GARDINER STREET, said he is a representative of the Harvest Church. The parking lot that will be used is not the lot south of the church, but is west of the church, so the church would be a sound barrier between Ms. Bacon's residence and the lot. The noise level is well below the ordinance requirements for noise. He added that the track and the dirt berms would be packed clay soils that would be watered and maintained to reduce the dust factor. The plan is to keep the track located to the west of the church. Any permanent facility would have a special review and master plan addressing the facility and the noise and dust issues. Mr. Fournier said the church intends to be a good neighbor and good citizens of the community. The kids that the church is reaching out to are at-risk children from broken homes that need this type of ministry the most. The church is not a conventional church, but this is not a conventional world and competing influences are difficult to battle. The race track is merely a distraction to get the kids into a ministry that helps them. Councilmember Veis asked if the church is objecting to the proposed special conditions that the Planning Staff is proposing. Mr. Fournier said the church has no problems with the conditions especially the hours of operation, which have been clarified. He said there is no need for fencing because the area is actually a parking lot and the cars are not stored there. Councilmember Ulledalen asked if the church has experienced non-authorized users on their land. Mr. Fournier said there has been some vandalism at the church with the lawns torn up and sprinkler systems damaged. He noted there is some City property farther up Wicks Lane that is used by motorcyclists and ATVs on a regular basis. The residences on Wicks Lane are subjected to off-road vehicles constantly, he added.

BRIAN GIFFORD, 3910 2<sup>ND</sup> AVENUE SOUTH, said he is the outreach pastor at Harvest Church. The special use permit that the church is requesting will allow them to move forward to develop a temporary go-kart track to be located on a small portion of their property. The track will only be used in conjunction with the outreach ministry to the at-risk youth in the community between the ages of 8 and 13 years. He said the church does not plan to ever use the facility as a commercial track. The karts will only be used during the hours specified and would only be actually running for approximately an hour. Mr. Gifford said the church has attempted to keep the community informed of their plans, meeting with each of the neighbors on High Sierra and Siesta Streets to explain their reasons for seeking approval of the special review. Of 23 households, the church actually met with 19 neighbors (3 homes possibly unoccupied). He said the church invited the households to a program at Skyview High School on Saturday where they are currently operating. He

noted that 11 property owners signed a petition of support for the church's special use proposals. Only 2 households objected. Mr. Gifford said the noise level has been measured at 27.3 decibels at the property line. The track will be compacted and watered and only used as part of the outreach ministry to the at-risk youth. No other use is being proposed or considered at this time. He asked the Council to approve this special review request. Councilmember Jones asked if the special conditions were acceptable to him. Mr. Gifford replied "yes", noting that the Planning Staff has asked the church to use the gravel parking area between Wicks Lane and the church as a temporary track area for one year to "see how it goes". Councilmember Ruegamer asked if fifteen go-carts will run all at once. Mr. Gifford replied "no". Councilmember Ruegamer asked the City Attorney if the Council could revoke the special review if it creates a problem. City Attorney Brent Brooks said if the conditions of the special review are being violated that would bring it back before the Council. Mr. Bauer verified that the Council could not revoke the special review unless the conditions were being violated.

ALEX TOMMENY, 170 ERICSON COURT, said he is an architect for the church. He said Council should have received a packet containing the master plan and a map of the location of the temporary track. He noted the track is recessed into the upper end of the property. The residential property lines are about 300 feet from the closest portion of the track.

ED ZINC, 750 REVOLUTION AVENUE, said he is a Deputy County Attorney and it is his business to spot crime. He agrees with Mr. Laituai, that it would be a crime to shut down this worthwhile ministry. What Harvest Church is accomplishing in the neighborhood is getting the attention of 75 young kids and making a meaningful difference in their lives. If the church manages to reach these youths now the likelihood increases that the courts, police, judges or he will not see them in the future. This ministry is wonderful and priceless. Mr. Zinc said he is a crew chief in this ministry working with the 8 year old girls and boys. He added those kids are really having fun even though they are basically afraid of the cars. He has seen growth in the short time he has worked with these kids. This ministry is a blessing to these kids and the community.

CAROLL SMITH, 1828 ALDERSON, said his son lives close to the church. He said the family does not favor the go-karts, but do support most of the other ministries. He said he supports the track and thinks it is good for the community. He noted that it may affect the property values, however.

There were no other speakers. The public hearing was closed. Councilmember Jones asked if 27 decibels is a reasonable noise level. Ms. Lindstrand said anything under 80 decibels is reasonable. Mr. Bauer noted that noise levels must be considered with the incidents of background noise that the area property owners are accustomed to. Councilmember Jones moved to approve the special review with the 5 recommended conditions of the Planning Staff and with the additional condition #6 that the noise level cannot exceed 35 decibels at any time at the property line adjacent to the homes on High Sierra Blvd. where it was previously measured, seconded by Councilmember Ruegamer.

Councilmember Gaghen asked how the noise level would be monitored. Mr. Bauer said the only way to monitor the noise would be to check it manually as it was previously measured at the property line adjacent to the homes on High Sierra Blvd. Councilmember McDermott noted the code states a level of 80 decibels and requiring a lower level at this facility would be setting a precedent. City Attorney Brent Brooks said this may not set a

precedent, but noted that traffic noise levels have been previously measured at 51 decibels. This does not answer the question, but demonstrates the difficulties in confining this requirement.

Councilmember Ruegamer said he watched the races at Skyview High School and said the noise was not loud, but noted that noise levels are different for everyone. He said the Harvest Church is doing a great, proactive community service and he is 100% in support of it. His only reservation is for the concerns of the property owners on High Sierra Blvd. who were there before the church and should have some say in what happens in that area. Councilmember Clark said he attended the race at Skyview High School and said it was not that noisy. Councilmember Ruegamer suggested that this item be revisited in 30 to 90 days to see how it is working.

Councilmember McDermott amended the motion to separate condition #6, seconded by Councilmember Gaghen. On a voice vote, the amendment was unanimously approved.

Councilmember Ruegamer made a substitute motion to approve the special review with the 5 recommended conditions of the Planning Staff to 9/15/05 (season end) with the option to extend after a status report of the neighbor's satisfaction to the Council on 9/26/2005, seconded by Councilmember Veis. On a voice vote, the substitute motion was unanimously approved.

Councilmember Jones withdrew his motion for condition #6, Councilmember Ruegamer withdrew his second.

**10. PUBLIC HEARING AND SPECIAL REVIEW #783: a special review to allow the operation of a powder coating business on a property zoned Controlled Industrial and located at 119 S. 25<sup>th</sup> Street. Montana Rescue Mission, owner; Jim Huertas and Mitch Lee of Coatings Inc., agents. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

Planning Staff member Aura Lindstrand said the applicant is requesting a special review to operate a powder coating business within an existing 19,000 square foot building that is currently used for steel fabrication and warehousing and is owned by the Montana Rescue Mission. Coatings, Inc. is currently located at 441 Riverside Road and will be relocating to the subject property.

Ms. Lindstrand said the Zoning Commission is recommending approval in a 4-0 vote for the special review with the following conditions:

1. The special review approval shall be limited to Lots 17 – 24, Block 143 Billings Original Town.
2. The applicant shall comply with all other requirements of Section 27-613(C) of the BMCC limiting the floor area, maximum occupancy and increases in parking spaces for this application.

The public hearing was opened. JIM HUERTAS, NO ADDRESS GIVEN, said he is the owner of Coatings, Inc. He said he started this business in 2001 and it has grown to where additional space is needed for their operation and new employees. He said the business is an electrostatic application of a plastic based pigmented powder to ground metal subsurface that is then baked in an oven. This process is an environmentally

friendly alternative to liquid paint. Car frames, motorcycle parts and heavy industrial equipment are some of the items with which his company works.

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

**11. PUBLIC HEARING AND RESOLUTION 05-18289 vacating a portion of Madison Avenue right-of-way east of Orchard Lane, valued at \$2,222.00. JL Partnership, petitioner. Staff recommends approval of the vacation and Council to determine the cost. (Action: approval or disapproval of Staff recommendation.)**

There was no staff report. Mayor Tooley noted the property was originally donated to the City as a condition of the plat.

The public hearing was opened. BILL COLE, NO ADDRESS GIVEN, said the Haugett's donated this property when it was platted in 1971. This donation was a condition of the approval, but since that time the City has concluded that Madison Avenue will never be extended in that area. The only issue now is the one of payment. He said the Haugetts were forced to dedicate almost 20% of their original parcel without receiving compensation from the City for that land. From his client's perspective, basic fairness requires that the City give back the land it does not need. Due process laws prohibit taking private property without compensation to the owner. Government does have the power to acquire land as a condition of property development when it is necessary to mitigate impacts from the development. He said there are no impacts to be mitigated with this property, so the land is not needed for that purpose. The law is clear; when an easement is abandoned, the property must be returned to the owner. Mr. Cole asked the Council for the land to be released at no cost to the petitioners.

SHARON RIGGS, NO ADDRESS GIVEN, said she resides in Butte, MT. She is a managing partner of the JL Partnership. She said the partnership was created to assist with the development of their family property. She asked the Council to return the 30' X 140' area that is within 10' of the side of the Haugett's house (her parents). She noted that the Haugetts relinquished this land to the City for the purpose of extending Madison Avenue. They did not receive any funds for this land as it was a stipulation of the platting process. Because the City has no intention of extending this road in the future the petitioners are asking the Council to approve the vacation of this portion of land at no cost to the Haugetts. Councilmember Gaghen noted that this request is a privacy and safety issue for Mrs. Haugett as there is no need for access to the land adjacent to the Haugett's residence because it is all pasture and very rural.

There were no other speakers. The public hearing was closed. Councilmember McDermott moved for approval of the vacation and a Quit Claim Deed at no cost to the original owner's family, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.

Mayor Tooley called for a recess at 9:40 P.M.  
Mayor Tooley reconvened the meeting at 9:50 P.M.

**12. PUBLIC HEARING AND RESOLUTION 05-18290 vacating a portion of S. 26<sup>th</sup> Street between 1<sup>st</sup> and 2<sup>nd</sup> Avenues S., valued at \$50,000.00. Yellowstone Health Partnership/Yellowstone City-County Health Department, petitioners. Staff recommends approval of the vacation and Council to determine the cost. (Action: approval or disapproval of Staff recommendation.)**

There was no staff report. The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Brewster moved for approval of the Staff recommendation, seconded by Councilmember McDermott. Mr. Bauer said the value of the land is \$50,000 based on a cost of \$2.50 per square foot. Councilmember Ruegamer noted the land is not worth anything as it is a street. Councilmember Ruegamer made a substitute motion to approve the vacation at no cost to the petitioner, seconded by Councilmember McDermott.

Councilmember McDermott reminded the Council that a similar situation with the Montana Rescue Mission was recently approved and the same circumstance should be offered to the City-County Health Department in this case. She noted that Yellowstone County has been very generous in giving up Tax Increment dollars to the Partnership. Mr. Bauer cautioned the Council about the precedent they are setting. He said the City does acquire land for right-of-way, often paying market prices for it, such as is currently occurring along Grand Avenue. He expressed concern that gifting these rights-of-way back will create an expectation that it would be done in other cases. Councilmember Veis agreed with Mr. Bauer's comments.

Councilmember Brewster said there is value to the land and noted that the City/County Health Department is a pseudo government and not actually part of County government. On a roll call vote, the motion was approved 6-5 with Councilmembers Gaghen, McDermott, Ruegamer, Boyer, Ulledalen and Mayor Tooley voting "yes" and Councilmembers Brewster, Brown, Veis, Clark and Jones voting "no".

**13. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #757: a zone change from R-7,000 to R-6,000 on property described as Lot 6, Block 1, Burnstead Sub., 2<sup>nd</sup> filing and located at 945 N. 19<sup>th</sup> St. Larry & Judith Hauk, owners. Zoning Commission recommends approval of the zone change and adoption of the determinations of the 12 criteria. (Action: approval or disapproval of Zoning Commission recommendation.)**

Zoning Coordinator Nicole Cromwell said this zone change request is for property located at 945 North 19<sup>th</sup> Street. The Zoning Commission held a public hearing on May 17<sup>th</sup> and is recommending approval on a 3-0 vote. She said there was a valid protest against the zone change received that was signed by 50% or more of the property owners within 150' of the zone change. The subject property is surrounded on three sides by Residential 7,000 zoning and to the east by Residential 6,000. She said the applicant discovered the underlying zoning district was Residential 7,000 when they entered an agreement to sell the property. The current use is a nonconforming use of the property under the Residential 7,000 zoning. Ms. Cromwell said the property is approximately 12,000 square feet.

Ms. Cromwell said the recommendation is based on the 12 review criteria. The three main points in favor of the zone change are:

- 1) There is adjacent Residential 6,000 zoning to the east.

2) There are similar uses in the neighborhood even though they may not conform to the Residential 7,000 zone. The North Park Neighborhood Plan does state the need to maintain Residential 7,000 zones but the lot has supported a four-plex apartment since 1984 and is not out of character with the existing neighborhood.

3) Any expansion of the building to accommodate an additional dwelling unit would require a Special Review approval from the Council.

Councilmember McDermott noted the four-plex was built due to an error on the City's part. She said she does not like the idea of a permanent zone change because of a City error, but does not want the property owner to absorb the problem either. Ms. Cromwell noted the error was made in 1984 when the City allowed a fourth unit to be added to a tri-plex that was originally built in 1954. If the zoning is not changed and the building was replaced, a duplex is the only building the owners could construct. She noted that if the structure was voluntarily or involuntarily damaged by 50% or more, the owners could rebuild what exists on the property currently as far as the number of units is concerned without a special review. If the Council approves the zone change, it is saying a four-plex is appropriate on this property.

The public hearing was opened. LARRY HAUK, NO ADDRESS GIVEN, said he and his wife are the owners of the building. He asked the Council to approve the zone change. He understood the Residential 7,000 zoning was in place in the 1970s prior to their purchase of the subject property in 1981. In 1984, he said he was granted a permit to add a fourth unit. The plans were approved by the City and upon completion they were granted a certificate of occupancy under the Residential 6,000 zoning. He sold the building in March of 2005 and the buyer's appraiser discovered the Residential 7,000 zoning and advised that the owners could only replace the building with a duplex if 50% damage to the existing structure occurred. This decreases the value of the property as a mortgage company will not finance this property as it is currently zoned. He said he has maintained the property very well and it blends in with the surrounding neighborhood. Their intentions are to maintain the existing property as a four-plex structure. Mr. Hauk noted the Zoning Commission approved the zone change with a 3-0 vote. He said the building has not been zoned properly for 51 years and they bought the property when the zone problem already existed. He asked the Council to approve the zone change and resolve this issue.

JOAN HENDRICKS, 463 TABRIZ, said she is the Executive Director of Yellowstone Boys and Girls Club Endowment Foundation, Inc. She said the Hauks intend to establish a charitable trust to benefit the Boys and Girls Club's Campaign for Youth. The sale of this property was part of the plan to establish that trust. She urged the Council to approve the zone change.

GARY WICHMAN, 1103 NORTH 19<sup>TH</sup> STREET, said this area in the 1970s was zoned multi-family, using different connotations. Because the area was being overrun with multi-family dwellings the neighborhood pursued a zone change to Residential 7,000. This property was part of that change. The subject property has changed hands since it has been a non-conforming use. The footprint for the building is very small and there is no off-street parking for the two upper apartments. He said the neighbors are concerned that Residential 6,000 would allow a substantially larger building to be built there, doubling the number of occupants. Mr. Wichman said 28 residents that live within 320 feet of the property oppose the zone change.

JUSTIN ENGLE, 1819 LACOUNT LANE, said he is worried what will happen if the zone change is approved and the property is sold. He said Mr. Hauk has been a good neighbor and it is hard to oppose the zone change because of that, but he is worried what will happen when the zone change is approved and what will be built there. He noted the Council is always concerned about how their decisions affect the neighbors. Mr. Engle said all of the surrounding residences are smaller homes.

EVERETT MILLER, NO ADDRESS GIVEN, said he has lived across the street from the subject property since 1967. He has observed the four-plex for many years and said the parking sometimes "gets out of hand" and tenants can be noisy. He said he does not want to "put up with a big apartment complex" if something happens to this one, and therefore does not support the zone change.

There were no other speakers. The public hearing was closed. Councilmember Brown moved for approval of the Zoning Commission recommendation, seconded by Councilmember Ruegamer. Councilmember Gaghen said she would abstain from voting because she is on the Advisory Board of the Boys and Girls Club. Ms. Cromwell reminded the Council that because of the valid protest, the required number of votes to approve the zone change is now seven (2/3 majority). Councilmember Brewster asked how large of a building could be built with the Residential 6,000 zoning and still maintain the setbacks. Planning Director Ramona Mattix said the lot coverage at Residential 6,000 is 40% (4,400 square feet), so a duplex up to three stories that is the same lot coverage as a four-plex could be built and onsite parking would be required.

Councilmember McDermott expressed concern that Residential 6,000 would spread to other areas. The task force has promised to "hold the line of this" and that is what these concerned neighbors are saying. There is some unusual zoning in this neighborhood because of the zoning errors that have been made and the City must devise a plan to solve the problems.

Councilmember Ruegamer said it is not fair to Mr. Hauk to condemn him to never being able to sell this property because of a City error. Councilmember McDermott said the Hauks are not condemned to keep that property forever; they may have to make an extra effort to sell it. She asked the Council to remember that the speakers tonight all live in owner-occupied homes in that area and Mr. Hauk is an absentee landlord. She said she does not support the zone change. On a voice vote, the motion failed due to the lack of a 2/3 majority with Councilmembers Brown, McDermott, Brewster, Clark and Jones voting "no". Councilmember Gaghen abstained.

**14. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE**  
**#758: a zone change from R-6,000 to R-Multi-Family Restricted on property**  
**described as Lot 1, Robinson Subdivision and located at 416 Orchard Lane. T.J.**  
**Van Winkle, owner; Eric Van Winkle, agent.** Zoning Commission recommends

approval of the zone change and adoption of the determinations of the 12 criteria. (Action: approval or disapproval of Zoning Commission recommendation.)

Zoning Coordinator Nicole Cromwell said the Zoning Commission held a public hearing on this zone change request on May 17<sup>th</sup> and is recommending approval on a 2-1 vote. The property is located on the west side of Orchard Lane. Residential 6,000 zoning is to the east, west and north and multi-family dwellings and other mixed uses are to the north and east of the property. The zoning is compatible with the adjacent collector street

and should be compatible with existing proposed Gunn Subdivision to the north and west. There is an existing family home on the subject property and a non-conforming vehicle repair shop at 428 Orchard Lane south of the subject property. The proposed multi-family structure would be located behind the single-family dwelling and would have access off the proposed Lux Avenue and not Orchard Lane.

Ms. Cromwell said the Planning Department received several letters of objection to the Zoning Commission recommendation. The primary objection was that the petitioners did not take advantage of the zone change from Residential 7,000 to Residential 6,000 on the same property granted in 2003. They were also concerned about absentee owners and not having control over property noise. Councilmember McDermott said the Southwest Task Force really needs a plan to determine the future of the zoning in their area.

The public hearing was opened. ERIC VANWINKLE, NO ADDRESS GIVEN, said he represents his mother and brothers in the development of this property. He said the proposal is to construct a tri-plex behind the single-family dwelling that would face north toward Lux Avenue. The existing single-family residence would remain.

There were no other speakers. The public hearing was closed. Councilmember Ruegamer moved for approval of the Zoning Commission recommendation, seconded by Councilmember Veis. On a voice vote, the motion was approved with Councilmembers McDermott, Gaghen and Jones voting "no".

**15. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE**  
**#759: providing that the BMCC be amended by revising Section 27-305 and 27-306; setting standards for all utility and pipeline transmission and distribution systems, adopting the revisions as an interim zoning regulation and setting a time period for the regulation to be effective. Zoning Commission recommends approval of the zone change and allowing the interim zoning regulation to be effective for a period not to exceed six (6) months. (Action: approval or disapproval of Zoning Commission recommendation.)**

Zoning Coordinator Nicole Cromwell said this interim zoning regulation that the County Commission brought forward is an initiative based on an application from Wilson Basin Pipeline. Their appraiser found that the zoning regulations as they are currently composed prohibit new gas transmission and distribution lines in all residential zoning districts and requires special review in all commercial and industrial districts. This was found to be a severe conflict with reality to the actual written code. She said this action would put interim zoning in place to allow pipelines and electrical distribution lines in zoning district while the Planning Staff researches and develops appropriate regulations and restrictions on pipelines in residential and commercial districts and electrical distribution lines in residential and commercial districts.

Ms. Cromwell said the Zoning Commission held a public hearing and is recommending approval of the interim zoning regulations. The County Commissioners adopted the interim zoning regulations and put a six-month time limit on them. She noted there is a very small chance that someone could abuse the openness of the interim zoning regulations.

The public hearing was opened. SCOTT BESMER, 2010 MONTANA AVENUE, GLENDIVE, MT, said he is the project engineer for Williston Basin Pipeline and is

overseeing the project that brought this inadequacy to light. He said Conoco-Phillips Refinery is currently developing a low-sulphur diesel process that requires natural gas service. The current gas supply to the refinery is not adequate for that process, hence the reason Williston Basin Pipeline got involved in the project. During the easement process, the appraiser discovered the zoning code was unusually worded. Conoco-Phillips is required to produce the low-sulphur diesel by June 2006 and in order to supply the diesel down the pipelines, the process must be in place months before that date. The gas pipeline must be in place by November 1, 2005.

There were no other speakers. The public hearing was closed. Councilmember Veis moved for approval of the Zoning Commission recommendation, seconded by Councilmember Ruegamer. Councilmember Brewster said the company he works for provides the existing transmission line into the refinery so he would be abstaining from discussion and voting. On a voice vote, the motion was unanimously approved. Councilmember Brewster abstained.

**16. REVIEW of the City Administrator Contract. Staff makes no recommendation.**

Mayor Tooley announced that the City Administrator has submitted a letter of resignation. The Councilmembers were just made aware of it this evening and received a copy confirming the details of the letter. He said the major points in the letter are:

- 1) Mr. Bauer is requesting 10 months severance pay
- 2) Mr. Bauer's last day in office will be July 1, 2005
- 3) The Council is requested to recognize vacation time and other miscellaneous details of this separation.

Mayor Tooley said this letter will be available to the public at the end of the meeting. Councilmember Ulledalen moved to accept the letter of resignation from Mr. Bauer, seconded by Councilmember Veis. Councilmember Ulledalen requested a roll call vote. Councilmember Brewster moved for the previous question, seconded by Councilmember Veis. On a voice vote, the motion to stop debate failed due to lack of a 2/3 majority with Councilmembers Jones, Brown, Gaghen and McDermott voting "no".

Councilmember McDermott asked if the Council is allowed to discuss this issue given that Mr. Bauer has not waived his privacy rights. Mayor Tooley said the City Attorney has advised that the Council would be at risk if they discuss Mr. Bauer's performance in a public forum. He has reserved all of his privacy rights as an employee. He noted the letter would be released to the media and the public after the meeting.

Councilmember Gaghen said she is not in favor of the discussion and her vote to stop debate was in error. Mayor Tooley called a misvote and asked for a new voice vote. On a voice vote to stop debate the motion was approved with Councilmembers Brown, Jones and McDermott voting "no".

On a roll call vote, the motion to accept the resignation was approved 7-4 with Councilmembers Brewster, Ruegamer, Veis, Boyer, Ulledalen, Clark and Mayor Tooley voting "yes" and Councilmembers Gaghen, McDermott, Brown and Jones voting "no".

**17. PUBLIC COMMENT on Non-Agenda Items -- Speaker sign-in required.**  
(Restricted to ONLY items not on the printed agenda; comments limited to 3 minutes per speaker.) THERE WAS NO PUBLIC COMMENT.

## COUNCIL INITIATIVES

- COUNCILMEMBER GAGHEN: Councilmember Gaghen commented that she is frustrated with the vote on the administrator's contract. She said she would have preferred to table the issue because she feels the whole situation has been unfairly handled and without the justice that she had hoped would be present in the system. Councilmember Gaghen said she feels the Council will look back and recognize that the City has lost a capable administrator and done a disservice to the City. She said she is sorry the City will not benefit from his knowledge and expertise.
- COUNCILMEMBER McDERMOTT: Councilmember McDermott commented that she also wanted the administrator's contract issue tabled this evening. She said she would have preferred that Mr. Bauer stayed in his position as City Administrator. She said the City is losing a very good administrator, one that has brought with him many positives and advantages. She added she feels the Council will regret tonight's decision.
- COUNCILMEMBER VEIS: Councilmember Veis moved to direct staff to write a letter to the Federal Highway Administration emphasizing the importance of having the Shiloh Road and Airport Road projects move forward through their organization as quickly as possible and extend an offer to the County Commissioners and Yellowstone County legislative delegation to join the City in signing the letter, seconded by Councilmember Ruegamer. Mr. Bauer said a tentative meeting with the County Commissioners is scheduled for July 15<sup>th</sup>. On a voice vote, the motion was unanimously approved.
- COUNCILMEMBER JONES: Councilmember Jones moved to direct staff to stop spending money on researching whether former Police Chief Ron Tussing can run for mayor in the November election, seconded by Councilmember Ruegamer. Councilmember Jones said that is an issue the voters can decide upon. He said it is a waste of money. Councilmember McDermott said if he is elected he would be an employee of the City of Billings and at that point the City deserves to get their money (the \$160,000) back. Councilmember Gaghen asked if the City should disregard the terms of the settlement agreement and the impacts on Assistant City Administrator Tina Volek. Councilmember Ruegamer said City Attorney Brent Brooks said thus far it is a grey area. Another attorney offered that state law backs Mr. Tussing, he added. He said he would prefer not to waste money on a legal battle over a grey area and he supports the motion. On a voice vote, the motion was unanimously approved.

**ADJOURN** – With all business complete, the Mayor adjourned the meeting at 11:05 P.M.

THE CITY OF BILLINGS:

MINUTES: 06/13/05

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

ATTEST:

BY: \_\_\_\_\_  
Marita Herold, CMC/AAE, City Clerk