

# REGULAR MEETING OF THE BILLINGS CITY COUNCIL

## September 26, 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 – September 12, 2005.** APPROVED as printed.

**COURTESIES** – NONE

### **PROCLAMATIONS**

- Sept. 23: American Indian Heritage Day
- Oct 9-15: Fire Prevention Week

**BOARD & COMMISSION REPORTS** – NONE

**ADMINISTRATOR REPORTS** – ~~Tina Volek~~ Deputy City Administrator Bruce McCandless reminded the Council of the additional material sent out in the Friday packet and copied again on the council desks this evening. The material includes two potential additions to the agenda – 4<sup>th</sup> and Broadway Request for Development Proposal and the Request for Attorney General Opinion. Additions to the agenda would require motions by the council and a 3/4 vote of the council.

### **LATE ADDITION:**

Councilmember Veis moved to add a discussion of the draft Attorney General Opinion Request on the Public Safety Mill Levy Election to the agenda, seconded by Councilmember Clark. Councilmember Brewster noted that a revote of the Public Safety Mill Levy was not an option as discussed at the work session presentation. On a voice vote, the motion was approved with Councilmembers Brewster and Brown voting "no". The item was added to the agenda as Item #15.

Councilmember Clark moved to add the 4<sup>th</sup> and Broadway Request for Development Proposal to the agenda, seconded by Councilmember Boyer. On a voice vote, the motion was approved with Councilmember Brown voting "no". The item was added to the agenda as Item #16.

**PUBLIC COMMENT on "NON-PUBLIC HEARING" Agenda Items: #1, #12, #13 & #14 and LATE Additions #15 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.)*

- KEN REINHARDT, 4205 WELLS PLACE, spoke in opposition to Item 13. He said he owns property across the street from the proposed brewery and the applicant has misinformed people in the neighborhood. He was under the impression that this property would remain Controlled Industrial and he expressed concern for the limited number of parking spaces (6) that are allotted for the proposed brewery. He said the tenant misinformed the Council about the number of existing tenants in the complex; there are currently three. The proposed facility was also stated to have access to other private parking lots and it does not. Mr. Reinhardt said he has a petition signed by many of the petitioners that were in favor of the special review who have changed their minds and are now opposing it because of the misinformation.
- TOM ZURBUCHEN, 1747 WICKS LANE, spoke on the public safety mill levy. He urged the Council to act on resolving this matter. He said this matter needs a resolution and it is the Council's job to provide it. Mr. Zurbuchen said this issue is "city" business and the council needs to take care of it, because the request to the Attorney General has no value to the City.
- TIM MOHR, 1028 CORBETT AVENUE, spoke in favor of SR#790. He said without the sample room, he would not be able to profitably start the brewery. The purpose of the sample room is for both revenue and marketing. Mr. Mohr noted he did not tell people that he had access to private parking lots. The proposed facility meets the zoning criteria for parking, he added. He noted that two distributing companies and a shipping company that are used in their business will be located nearby. The wrist band method they are proposing to use works, so that when the allotment of alcohol has been served and marked on the band, the customer is no longer served.
- MARTIN O'NEIL, NO ADDRESS GIVEN, said he owns the property at 26 Enterprise Avenue, one door from the proposed brewery. He built the building, would like the zoning to remain as is and doesn't want liquor sales in the neighborhood. He is concerned that this facility will devalue the property, noting this building is part of his retirement investment.
- DAN SAYER, 2697 ENTERPRISE AVENUE, said he initially signed the petition supporting the request, but after receiving further information, he has reversed his position and now opposes the request. Mr. Sayer said it is his understanding that the sample room could be open until 2 a.m.
- LESLIE THOMSON, 1028 HARVARD, said she supports SR#790. Ms. Thomson said the clientele that prefers microbrews differs from the general population in that they are typically higher income professionals, well educated, and enjoy trying different flavors of specialty beer.
- DEBBIE REINHARDT, 4205 WELLS PLACE, said she opposes SR#790, noting she didn't know how the brewery could choose its patrons.
- TIM GOODRIDGE, NO ADDRESS GIVEN, spoke in support of the request for the Magic City Blues street closure. He reported on some changes they made in this year's event, noting they reopened the street earlier on Sunday and provided diversion signs. He urged the Council to support next year's event and to

encourage more live, outdoor music events because they generate revenues for the events and the surrounding businesses.

- SANDRA HAWKE, 2223 MONTANA AVENUE, said she and her husband own the Depot Antique Mall. She noted this year Mr. Goodridge did a better job on addressing some of the issues with the Magic City Blues event, but the street closure still has a negative impact on her business. She urged the Council to consider changing the dates to separate the dates for Montana Fair and the Blues Festival, both of which greatly impact the I-90 business route. Ms. Hawke also suggested that the City and Mr. Goodridge work with the impacted businesses to find additional ways to minimize the adverse impacts.
- MIKE ATKINSON, 2702 ENTERPRISE AVENUE, said the proposed brewery and tap room is across the street from his business. Mr. Atkinson expressed concerns about the potential garbage, parking and security problems. He said this is "not the right part of town to place a brewery." Changing the zoning to allow this is a bad choice for this part of Billings.

## **CONSENT AGENDA:**

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

**(1) 9-1-1 Plant Equipment Telephone System Upgrade for the City of Billings Joint City/County 9-1-1 Center.** (Opened 9/13/05). Recommend Qwest Communication, \$104,111.40.

**(2) One (1) New Current Model 24" x 40" Radial Stacking Conveyor for City of Billings Street/Traffic Division.** (Opened 9/13/05). Recommend Western Plains, \$25,900.00.

**(3) W.O. 05-01A: Michigan Street Reconstruction (Water and Sewer Replacement) Project.** (Opened 9/6/05). (Delayed from 9/12/05). Recommend JEM Contracting, \$93,043.00.

**(4) Truck Chassis, Tilt Cabs for the Solid Waste Division.** (Opened 8/23/05). (Delayed from 9/12/05). Recommend Tri-State Truck & Equipment for Schedules I – III; Schedule I: \$109,141.00, Schedule II: \$107,353.00 and Schedule III: \$106,198.00.

**B. Contract** with Mailing Technical Services for full range of mailing services for the City, term: 3 years with an option to renew for an additional 2 years.

**C. Contract** with Associated Employers of Montana and Employers Association, Inc. to complete the classification and compensation plan, \$31,700.00.

**D. Lease Agreement** with Macerich Rimrock Limited Partnership for space for the Cop Shop West, \$0.00, term: 3 years.

### **E. Agreements with Wells Fargo Bank:**

**(1) Sale and Purchase Agreement** of existing automatic teller (ATM) site of the City of Billings.

(2) Temporary Leaseback Agreement from the City to Wells Fargo, \$4,062.50/month.

(3) Wells Fargo ATM Site Lease of the Park II Garage Space from the City to Wells Fargo, \$2,850.00/month with a 2.5%/year inflator; term: 13 years with an option to renew for two 10-year terms. (Note: Staff recommendation to delay to 10/11/05)

**F. W.O. 00-15: Grand Avenue Right-of-Way Agreement** with Welborn Land & Livestock Company on a tract of land located in Lot 1, Block 2, Algeo Subdivision, \$0.00.

**G. Approval** of the 2005 Edward Byrnes Justice Assistance Grant (JAG), \$92,924.00 and authorization for the Mayor to sign the award documents.

**H. Magic City Blues Festival** Street Closure request, Montana Avenue between the 2300 and 2500 Blocks from 9:00 a.m. on Friday, August 11, 2006, until 5:00 p.m. on Sunday, August 13, 2006.

**I. Approval** of the Domestic Violence Unit and Victim Witness Assistance Subgrants from the Montana Board of Crime Control (MBCC); (Domestic Violence grant: \$55,000.00; City match: \$49,962.83. Victim Witness grant: \$38,000.00; City match: \$62,406.48.)

**J. Resolution of Intent 05-18337 to Sell** City-owned real property described as Lot 8A, Block 13, Lake Hills Subdivision, 18<sup>th</sup> filing and setting a public hearing date for 10/24/05.

**K. Preliminary Plat** of Amended Lots 1 and 2, Block 3, Reiter-Beswick Subdivision, Timothy G. and Teresa A. Lehman, owners; approval of preliminary plat and adoption of the findings of fact.

**L. Bills and Payroll.**

- (1) August 26, 2005
- (2) September 2, 2005

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

Councilmember Brown separated Item K from the Consent Agenda. Councilmember Clark separated Items E & H from the Consent Agenda. Councilmember Ulledalen moved for approval of the Consent Agenda with the exception of Items E, H and K, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

Councilmember Ulledalen moved for approval of the Staff recommendation for Item E of the Consent Agenda, seconded by Councilmember Brewster. On a voice vote, the motion was approved with Councilmember Clark voting "no". The item was delayed to 10/11/05.

Councilmember Ulledalen moved for approval of Item H of the Consent Agenda, seconded by Councilmember Ruegamer. Councilmember Clark said he would like to move the closing time on Sunday from 5 P.M. to 10:00 A.M. Councilmember Ruegamer asked Tim Goodridge to respond to Councilmember Clark's request. Mr. Goodridge said there is a verbal agreement with Bob and Sandra Hawke to have the stage and chairs out of the way as soon as possible on Sunday, but it took longer due to the bad weather. He said the ten o'clock deadline is reasonable, but noon would be more feasible in case of any unforeseen deterrents. Councilmember Clark moved to amend the motion to change the street closure to NOON on Sunday, seconded by Councilmember Boyer. On a voice vote, the amendment was unanimously approved. On a voice vote for the motion as amended, the motion was unanimously approved.

Councilmember Ulledalen moved for approval of Item K of the Consent Agenda, seconded by Councilmember Ruegamer. Councilmember Brown said he is concerned about the waiver of right to protest that is attached to this item. Councilmember Brewster said the issue is if the City discontinues the requirement of waivers, all improvements and the related costs would be required up front. The waivers allow the developers to add some improvements at a later date. On a voice vote, the motion was approved with Councilmember Brown voting "no".

**AGENDA CHANGE:**

Councilmember Ulledalen made a motion to move Item #8 Public Hearing and Resolution revising the Heritage Trail Plan to Item #2 on the agenda, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.

**REGULAR AGENDA:**

**2. PUBLIC HEARING AND RESOLUTION 05-18358 revising the *Heritage Trail*,**

**The Greater Billings Non-Motorized Trail Plan. Staff makes no recommendation.**

**(Action: approval or disapproval of resolution revising the plan.)**

Transportation Planner Scott Walker said the Heritage Trail Plan is a guiding document for decision-makers, a planning tool that can be modified at any time for a project that is federally funded. The Policy Coordinating Committee (PCC) initially approved the Heritage Trail Plan as a whole document and tonight is a review of that document. The Plan is not a Capital Improvement Plan, nor a blueprint. It is neither a specific plan document with specific alignments of the trail nor a document that takes away property rights. BikeNet was the first non-motorized trail plan in 1994. The Heritage Trail Plan changes the BikeNet plan by addressing multiple modes of non-motorized transportation and expands into South Hills (i.e. the Blue Creek area), Lockwood and Laurel.

Mr. Walker said the plan is being amended because the Yellowstone County Commissioners received petitions claiming the Heritage Trail Plan map infringes on property rights. The County adopted Resolution 05-55 instructing staff to not show trails on maps without the owner's permission. He said the County Commissioner's recommendations are: 1) to adopt the proposed provisions (listed in the Councilmember's packet as Attachment C) for amending the Heritage Trail Plan, and 2) amend the map to remove any reference to non-motorized trails, greenways or public trail system on private property throughout the County unless secured by permission of the landowner,. The

Planning Board recommendations are: 1) adopt the proposed provisions for amending the Heritage Trail Plan (Attachment C), 2) retain the Tour Map showing existing on-street routes and off-street trails, 3) amend the plan language to state "The purpose and intent of the Heritage Trail Plan is not to condemn private property and/or utilize procedures of eminent domain in order to construct public trails on private lands", 4) substitute a stylized, schematic planning map for proposed trails shown on the current "Trails and Bikeways Plan" map, and 5) to encourage neighborhood plans to map specific alignments for proposed trails after involving affected property owners.

Mr. Walker said there are amendment options. The provisions to amend the plan are to include a 5-year review and update and require governing body authorization on any amendments. The map options/scenarios include: 1) remove all proposed trails and greenways, 2) remove proposed greenways, generalize trail corridors, 3) remove proposed greenways only, 4) remove proposed greenways, symbolize/stylize trails corridors, and 5) remove proposed greenways, identify destinations, annotate proposed connections. A disclaimer would be imposed on the map stating "proposed trail corridors shown on this map that cross private property will not be developed without the permission of the property owner."

Councilmember Brown asked why a map would be proposed with trails across private property without permission of the property owners. Mr. Walker said initially the trails are considered proposed only and not existing until there is written consent of the property owner. He noted the 1994 BikeNet Plan had much of the same information. It also gives a general idea of the trail path when new subdivisions are developed. The trail is a hypothetical line and property owners were not contacted at that point. He repeated that it is a planning tool and the current recommendation tonight can hopefully accomplish the goals of the trail and address the concerns of the impacted property owners.

Councilmember Boyer asked for clarification of the amendment concerning areas outside of the City of Billings, but within the unincorporated limits of Yellowstone County. She asked if the County Commissioners would have the sole authority to act on amendments without the approval of the PCC. Mr. Walker said that was accurate. He confirmed that map/scenario #5 is the Planning Board's recommendation.

The public hearing was opened. DELORES TERPSTRA, HILLCREST ROAD, said the petitions that have been submitted requesting the removal of private property from the Heritage Trail Plan cover 70,000 acres. The property owners are asking for the removal of all greenways and proposed trails. She noted the 295 petition signers for the trail plan were gathered at public facilities where the proposed trail plans were not explained. Only 4 of the signers actually own a house in the Blue Creek area. Ms. Terpstra noted none of the Councilmembers own property where the trail is proposed. She said the need for the "almighty federal dollar" has overruled all common sense. She urged the Council to vote to remove all the designated greenways and proposed trails from private property.

KIM PRILL, 3005 37<sup>TH</sup> STREET WEST, said she is not a resident in the Blue Creek area, but is a trail user. She said her home is located where a future trail is planned. She said the trail is about connectivity and vision. It saddened her to think that this will become an "us versus them" situation. Ms. Prill said this is about the future; a framework that will set the stages for opportunities for the trail as they arise. A plan must be in place to encompass the layout of future subdivisions. She said trails attract businesses to the community, bringing economic viability and a healthful way of life. There are many success

stories of how trails benefit people as a good tool to get people outside and enjoying the park system.

MONICA WELDON, MOONSHIRE TRAIL OFF BLUE CREEK ROAD, said she is a long-time resident of the community representing many of the rural signatures on the petition. Coming from a ranching family, one of the greatest lessons is learning to know and respect a property or fence line. Many of the new country residents are not aware of these traditions and that respect is quickly fading. She said vandalism is becoming a very serious problem in their area. Creating more trails in this rural area would just bring more problems. The maps show trails crossing many fence lines without permission and she views that as trespassing.

JIM COONS, CHAIRMAN OF THE PLANNING BOARD, 10 EMERALD HILLS DRIVE, said the board recognized that there should be a map of existing trails. He said the concerns of the citizens who have signed the petitions and testified at the public hearing are also important. The Board consequently decided that it needed a planning document. Scenario five was the document with generalized routes that the Planning Board essentially recommended to be developed. He also noted the importance of input from private property owners and inclusion of any community or neighborhood plans. Mr. Coons said the amendments to the trail plan appear to be a good solution, giving each entity its own say over the plan within its jurisdiction.

NANCY DIMICH, 2702 HIGHWOOD DRIVE, said she moved back to Billings from Paris, France. She said she understands the concerns of the property owners for the trail plans, but noted that it is dangerous to ride bikes in the City. It is important to have a general plan for the future but not "ramrod" the trails on private property. She wants this community to be a place where her children can grow and be safe when they are involved in recreational situations on non-motorized vehicles. Ms. Dimich asked the Council to provide the citizens of Billings with more trails like the one that runs from the Heights to the Airport without trampling on the rights of the private property owners. She added that trail users are not vandals trying to "wreck" other people's land.

SARAH KELLER, 1809 BRIARWOOD BLVD., said the people who are in favor of trails do not want to take away private property rights. Conceptual planning is necessary for the future of the Heritage Trail both for funding and to advance a coordinated trail system. That planning has led private property owners to interpret the lines on a map as a violation of their property rights. She said Scenarios two and three appear to resolve that confusion by more clearly demarcating private property and making the proposed trails more conceptual in nature. Ms. Keller said she also supports Scenario five, but noted that this scenario may force the City to forgo interim federal funding because of the requirement that neighborhood plans must develop the location of potential trail alignments. She said the Yellowstone County Commissioner's action to remove all trails across private land is "a little hasty." Private property rights can be more clearly recognized in the planning document without completely abandoning the conceptual trails that cross private property. She added that the County's resolution interferes with the community's ability to plan and obtain funding for trails. Ms. Keller also noted that studies have shown that crime rates and vandalism along trails were lower than in other parts of the community. Property values also were not affected by the trail system in other studies.

DON DEJARNETT, 2323 BLUE CREEK ROAD, said the Heritage Trail map as now drawn clearly shows four trails going through their home. Their entire 6-1/2 acres is

depicted as a greenway. He said he had no knowledge of this map before it was published and thinks this is wrong. He urged the Council to show respect for private property rights.

GARY ZIEGLER, 8750 PRYOR ROAD, said his concerns are for the trails that run through working ranches. It is not feasible to contain the trail users on the trails and his livestock off of them. His biggest concern is that people do not understand the meaning of the word "no". He suggested putting the \$28 Million into a school rather than a trail that isn't worth it. "There is a lot of public land for outdoor enthusiasts; they don't need to cross his land," he stated. Mr. Ziegler asked the Council if anyone has asked the Native Americans about the portion of the trail that crosses the reservation. He closed by saying "it isn't going to happen in my neighborhood."

ED UHLICH, 907 N. 25<sup>TH</sup> STREET, said he is a member of the Yellowstone Valley Citizens Council who advocates for a healthy, sustainable community. He said he supports a comprehensive trail system linking all residents to all parts of the community and amenities. In order to have a trail system, some sort of map or plan must be devised as a tool for future planning of subdivisions. Mr. Uhlich said the options and scenarios appear reasonable and address the concerns of the private property owners. Scenario five looks reasonable, but he prefers to see the City and County work together. A trail system has great appeal as a recent survey by the Urban Land Institute concluded that 33% of homeowners desired a trail system as an amenity near their neighborhood. He urged the Council to adopt the recommendations for Scenario five.

KEITH NEWMAN, 6043 BLUE CREEK ROAD, said his early objection to the map showed greenways that go nowhere and are outside of the urban areas. Scenario five shows a better resolution to the issues that have been voiced. He has reservations about checks and balances with City and County coordination of the plan. Mr. Newman said this must be a living and governing document and open to some change as those needs arise.

NEIL STESSMAN, 1106 MOON VALLEY ROAD, said safe trails and bike paths are important for any progressive city. Trails are good for families and help with traffic congestion and parking problems. They promote good health by encouraging exercise. He said trails adjacent to private property are no more onerous than roads, streets or sidewalks. He does not condone the abuse of private property rights by legal trespass, but the concerns expressed this evening are from a deficiency in public involvement and participation. These mistakes should be a learning tool and not allowed to neutralize the opportunities the City has to make this community a better and more livable place. Somehow planners need to retain the authority to develop conceptual plans and clearly depict them as general plans and documents with public information and participation provided with careful respect for private property rights at all stages of the process. He added that restricting planners from effectively informing the public of their planning efforts does a disservice to the subdivider, developers, property owners and the general public. Maps are important and necessary tools. Mr. Stessman said he could not identify a particular scenario, but stated that it is important to make clear that future trails are conceptual.

KATHY ARAGON, 645 O'MALLEY DRIVE, said she is a physical therapist by profession and is speaking as a parent, healthcare provider and a recreationalist. She said she hopes the Council, along with the Commissioners, see themselves as proactive members of the community that can and will make a difference in the quality of life for its citizens. As a physical therapist she is very happy to see that there is a trail plan in place

and hopes the “bumps” in the road don’t derail the plan. She said it is important to work through the difficulties for the community and because children need a safe place to walk to school. Communities that don’t plan for the future end up without trails or pedestrian walkways, and it is very difficult to add walkways after the fact. Ms. Aragon said the County Commissioners adopted two thoughtful recommendations: 1) revise the publicly distributed map to include only existing trails, and 2) keep the Heritage Trail Plan as is for the City’s utilization so that with development the City can be proactive in the placement of trails. She believes the majority of the citizens want a pedestrian friendly city for all. Now is the time to create safe routes to schools, build an interconnecting trail system as the City develops so that the community will use less energy, and promote healthy and alternative modes of transportation.

KELSEY JOHNSON, 2705 BLUE CREEK ROAD, asked the Council not to take her pasture for a bike path. She said the federal money for the bike path should be donated to the victims of Hurricane Katrina because they need the money more than we need the bike path.

MICHELE JOHNSON, 2705 BLUE CREEK ROAD, requested that all the maps and the verbiage pertaining to the Heritage Trail and greenways in the Blue Creek area be removed from all of the planning documents. She does not believe the Heritage Trail was planned openly and honestly, and purposely excluded land owners in any of the decision making processes. She believes that condemnation is a very real threat. Ms. Johnson said it is not right that County residents will be affected by the Council’s decision. County residents can’t vote for Councilmembers so this is not proper representation. She also thinks several Planning Board members have a conflict of interest in regard to this issue. She said planners have said they will respect private property owners’ wishes, but they are not demonstrating that respect now. There is an ethical obligation to remove the trails from private property.

DAVID VEEDER, 3131 GREGORY DRIVE, said he supports the trails and demonstrated that by allowing an easement on his property for trail purposes. He said landowners will benefit economically from the Heritage Trail process. He noted an example of trails in the Bozeman area that have increased the property values significantly. He added that it is important to plan and balance property rights. Mr. Veeder is in favor of the recommendations and would like to see the Council proceed for the economic and the esthetic development of Billings.

JOHN SPENCER, 1001 SONOMA AVENUE, said this current discussion is not a dire emergency but a vision of what might be. He added it is not a Request for Proposals for contractors. There is time to cautiously consider all aspects of the Council’s decision. Maps are the heart of planning documents and can be of a tentative nature, but are not of much value if they are blank. Yellowstone River Parks Association is still strongly committed to the concept of greenways and trails, but recognizes that details must be worked out among competing interests. He asked: 1) do not gut the trail plan for the blanket removal of trails and greenways, 2) take time to carefully consider the five options presented by the Planning Staff, and 3) remember that the original petition from the Blue Creek land owners asked for a means to clearly acknowledge private property rights. Mr. Spencer said Scenario five appears to be the most responsible choice.

JAY STOVALL, 8325 PRYOR ROAD, said trails are a good idea, but it doesn’t seem right to put a trail or greenway on a map over private property without the knowledge

or consent of the property owner. This creates a bad feeling toward the planning aspect. Mr. Stovall submitted petitions from the Pryor Creek residents. He noted that the map states land marked as "public" is actually land that he owns and hopes that would be corrected. He added that putting a proposed trail map on the Internet leads people to believe it is an actual existing public trail. He said Scenario five seems acceptable.

CHRIS SCHMECHEL, 5546 BILLY CASPER DRIVE, said she and her husband sponsor the "Ales for Trails" fundraiser and have given \$21,000.00 to be used with a matching CTEP grant for trail building on the West End. BikeNet believes that trails build a healthy community. She believes in putting money back into the community for the enjoyment of the citizens, but many of the BikeNet volunteers have become disillusioned with the current disruption of trail planning and are questioning their commitment to the fund raiser for next year. Ms. Schmechel said the majority of these volunteers thought they were working in cooperation with City/County Planning, understanding that the Heritage Trail Plan was never to be forced down anyone's throat. She said these issues bring everyone to a crossroads where the volunteers need to know whether the Council supports long-term planning for the development of a trail system in the greater Billings area. She urged the Council to go forward and not backward with trail building in Billings.

DEE SCHAFNITZ, 3532 JENE HELENE (BLUE CREEK AREA), said she is a recreationalist but does her running and biking on public roads and animal trails in public parks. As a resident of the area, she is protesting the idea of disrupting the Blue Creek drainage to appease a few Briarwood residents. She appreciates the wildlife and privacy on their property on Jene Helene and is shocked that grant writers have decided to usurp their privacy and the aesthetic beauty they have worked so hard to attain. She objects to the plans to "plow over" Blue Creek and open her property to the vagrancy and gang problems of nearby Riverfront Park. She asked the grant writers to eliminate the Blue Creek area from the trail plan. At this time precedence should be set for the sake of all property owners that no one is allowed to draw lines on a map through private property and that requests federal funding for their personal goals," she stated.

JIM NEWMAN, 6130 BLUE CREEK ROAD, asked the Council to help in reclaiming his backyard property and property rights. He said the public process for the Heritage Trail Plan only included people who were interested in hiking and biking in someone else's backyard and at other's expense. Almost all of the planned trails are on private property. He is concerned about increased trespassing, liability, and decreased property values. The plan needs to be revised and the proposed trails and greenways removed from the map. The Council must start over and involve all the players. He asked the Councilmembers to respect his backyard as much as they would want respect for their backyards. He added that Scenario five seems good, but he would only be willing to discuss it and not accept it outright without a public process.

JAMES COURT, 3525 PRESTWICK AND 18 HEATHERWOOD, said he wants to remind everyone that this is a conceptual document and it is unfortunate that the lines on the map have divided the community. City residents are the victim of poor "past" planning and as the City grows it does not take into account the need for trails. He became involved in a proactive approach to placing trails along the highway right-of-way when the road between Billings and Blue Creek was in the planning process, but the State Highway Department said it was too dangerous. Currently people walk along the edge of the road which is also unsafe, he noted. Mr. Court said a dialogue with the State is a portion that is

missing from this trail system planning process, particularly as it relates to the Blue Creek and Pryor Creek areas. Scenario five seems a logical concept. He does not support taking of private property, but added there is a need to work on this plan together.

SHADD FRITZ, 8075 YELLOWSTONE ROAD, said his family homesteaded the Duck Creek area in 1906. He said he wants to preserve the property for his children and grandchildren. Currently there is a multi-use trail along their entire property border and a portion of bike path on a closed County road. He said the statement that planners will work with the private property owners has never taken place. He feels communication is the key to this process. Mr. Fritz said he is against trails on his property and does not plan on letting anyone come through their property. He does not support any of the scenarios.

MIKE PENFOLD, NO ADDRESS GIVEN, said he thinks most people support private property rights. He has been critical of how the County Commissioners handled this issue because it has added to the misunderstanding at a time when City and County should be working together. Many of the problems occurring now could have been avoided if the Blue Creek residents had become involved in the public process. He said the Heritage Trail Plan is a very thoughtful proposal from the Planning Board who had the most coherent discussions about the issues. The public has not seen the amendment that is before the Council and he is concerned about the provisions that allow the City and County to make independent determinations without coordination.

EARL GUSS, 646 CLARK, said he has been involved with trails since 1991 through the Yellowstone River Parks Association. He noted that no conversations with property owners have included discussions about condemnation of private property and in fact he thinks the City of Billings has not condemned property since 1994 (Airport expansion). It is unfortunate that people who are impacted by the conceptual plan were not contacted ahead of publication of the map. He stated "trails and greenways create jobs, enhance property values, diversify local economies, reduce dependence on industries, exemplify environmental tourism, are a clean industry where users create little trash, promotes better health, and amplifies families." He said he does not like to see a division between the City and the County because this issue concerns greater Billings, but he would reluctantly support Scenario five.

JOAN HURDLE, 210 NALL, said she supports the Heritage Trail Plan and considers it to be a community vision rather than a taking. She understands that some stylizing and generalizing needs to be done to remove the lines from private property. She supports Scenario five but urged the Council not to support the division of City and County for this project. One of the things to consider as the trail is implemented is that it be implemented in more urban areas as those areas are not safe for bike riding.

TOM BONOGOFSKY, 4907 JELLISON ROAD, said he has owned his property for 28 years. He asked that the entire plan be thrown out and started over. He said Billings is a very revenue driven city and he thinks the Council should "clean up their own mess" before coming into the country.

MICHAEL SANDERSON, 3177 SYCAMORE LANE, said he has some professional knowledge of how this trail plan was developed and has considerable perspective about the plan and the process that was undertaken. He said it is not true that the trail plan was developed by a small group of like-minded trail advocates in a dark room and then foisted on the public with no scrutiny. The plan was developed in the open light of day with ample opportunity for public comment during three official public hearings that included the

Planning Board, the City Council and the County Commissioners. He said it was possible that everyone that should have been notified may not have received notice, but that does not invalidate the plan. If every impacted citizen that has an opinion must be heard, then there are many plans that don't meet these criteria. The Heritage Trail Plan in its current form is an update to a plan that was adopted almost 12 years ago. Many of the conceptual trail corridors and greenways (even in the Blue Creek area) were part of the original BikeNet Plan. He asked the Council not to throw out a good plan because of this public outcry because there is an opportunity to amend the plan and to make it better. Mr. Sanderson noted that there is very little "City planning" happening within the City limits; most planning is focused on the "donut" of County land that is quickly urbanizing. The amendment that is before the Council (basically to do away with the PCC) would abdicate to the County the Council's authority to effectively plan for the future of the City. He asked the Council to carefully consider the implication of its decision, not just for the Heritage Trail but for effective City planning in general.

AUZIE BLEVINS, 3328 AGRI ESTA DRIVE, said he is the principal author of the Blue Creek Area Outdoor Recreation Plan which is in draft form and 90% complete. He is a member of the Blue Creek Trails and Parks Association Volunteer Group. The recreation plan that is being developed is broad-based, addresses a 38-square mile area centered on the Blue Creek community and includes neighboring Briarwood and Cedar Park. The plan provides that the regional trails and the Heritage Trail Plan were to be supplemented with additional local trails connecting parks, schools and neighborhoods. He noted that Resolution 05-55 was directed at the City/County Planning Staff but assumes that it would apply to their volunteer organizations as well. This resolution disrupts the process that is in place and that already involved affected land owners. Mr. Blevins said the two phases of trail planning are the conceptual stage and the design stage and it is during the design phase when property owners are usually contacted. He believes Resolution 05-55 confuses these two stages by requiring individual landowner contact and approval during the conceptual planning phase and gives those landowners a veto over the conceptual trail planning process. Contacting every potential landowner in the trail corridor takes a tremendous amount of staff time and if significant time has elapsed during that process, those same citizens would have to be contacted again during the design phase. Mr. Blevins said he believes Resolution 05-55 and the amendments would roll back trail planning, jeopardize funding and make it difficult to plan future trails ahead of urban growth. He urged the Council to reject the Commissioner's proposal and adopt the constructive recommendations in either Scenario four or five.

RACHEL THOMPSON, 210 BENDER ROAD, said the trails are nice but also a place for litter and vandalism. She often walks the trails with her children and takes a plastic sack along to pick up beer cans, bottles and cigarette butts; things she does not want in her backyard. She also asked what would keep the land from eroding during a flood if the trail is located near the creek. She asked why trails can't be placed along roadways, fence lines or in the barrow pit. Ms. Thompson said her great-grandfather homesteaded the land on which she resides and which will never be sold or subdivided. She believes the trails will adversely affect land values.

MARGY BONNER, 4613 TOYON DRIVE, said she lives in a neighborhood that failed to plan, where there are no sidewalks forcing the children to walk to school in the streets. The children living in the neighborhood where the trail goes under Shiloh Road at

38<sup>th</sup> Street West are fortunate to have a safe path to school. She said the Heritage Trail Plan is conceptual at this stage and is projected to go west as the land to the west develops. Ms. Bonner said she supports the Heritage Trail because it provides a safe way for children to get to school. Future trails plans for alternate modes of transportation are as important as future street rights-of-way.

JENNIFER TAKAC, 4442 JUNIPER CIRCLE, said she opposes the Heritage Trail Plan because it is inherently flawed due to the problems created when private property owners were not consulted. She urged the Council to demonstrate that Billings supports private property rights.

BRAD KRAFT, 1901 S. 80<sup>TH</sup> STREET WEST, said he represents the West End protesters. He said the notification was not sufficient. Much of the potential trail corridor is through ranches and farms. Farmers and ranchers are just protecting their business interests when opposing the trail system plan. He is concerned about possible condemnation for a trail on his property because he has subdivisions on both sides of his property.

MARK TAYLOR, 3544 TOBAGGEN ROAD, spoke in support of the trail plan. The planning effort he witnessed in the Blue Creek area took place over a period of half of a decade. This was initiated because of growth in the area and to make use of the opportunity to direct the use of open space. He asked the Council to do what it can to preserve that space.

MARK OLSON, 4705 SECRET VALLEY DRIVE, said he moved to a rural area for privacy and security. When he moved to the Blue Creek area he recognized that his children would not have direct access to the school and he enjoys the safety aspect of driving his children to school. Putting a trail through his private subdivision invites others into their area promoting the loss of their secure feeling. He said the trails will also affect the property values. Mr. Olson said he supports trails in the form of sidewalks along streets. He believes the City should be concentrating their resources on developing public safety. Scenario five is the best proposal that he has seen, but agrees with other comments that prior to accepting something like this it should come back to the public for local input.

STACEY OSBORN, 500 LOIS PLACE, LAUREL, said she recently found out she was a member of the greater Billings area as the proposed trail goes through her property. She is not against trails, but noted that she was not notified of the conceptual plan for a trail on her property. Ms. Osborn said the Laurel City Council informed her that if she were to subdivide her property, it would request the placement of a non-motorized trail through the subdivision. She agrees with that requirement, but until that time she does not even want to see the trail on a map. She also noted that the conceptual trail is shown going through the Laurel Cemetery. Ms. Osborn asked how a Council ten years from now will interpret the trail plan.

JANICE MUNSELL, 2838 DOZIER ROAD, said she is on the Board of the Blue Creek Trails and Parks Association which supports the Heritage Trail Plan. In 2001 the association mailed a survey to every postal customer in the area and the results showed strong support for a trail from the school to Riverfront Park. She noted the recent petition (that did contain some inaccuracies) opposing the trail plan and said the association also supports those concerns of the opponents about private property trespassing and ultimately supports changing the maps to clarify those concerns. A second petition submitted to the

Commissioners supports the Heritage Trail Plan, but the Commissioners literally “set it aside”, did not review it and took an extreme position for removing trails in the Heritage Trail Plan from the map. Ms. Munsell said she has had personal contact with signers of the first petition who stated they did not agree with removal of the trails. She noted the City’s Mission Statement relating to “services that enhance the quality of life” and stated the association believes Blue Creek’s youth and adults deserve safe, healthful trails as an alternative to motorized transportation. Alignment planning for trails should not be hamstrung by additional requirements beyond those required for motorized transportation (streets and roads). She said development is occurring and she urged the Council to take a leadership role to craft a solution that will meet the needs of all citizens. She noted that Scenario five appears to be the best, but expressed concerns for separating City and County communication on these types of issues and stated that “if we don’t plan together we will not use our resources wisely.”

VICKI THOMPSON, 448 BENDER ROAD, said this seems to be a situation of the city mouse versus the country mouse. She said the land is her home, being a fourth-generation landowner dating back to the 1890’s. The proposed bike trail through her property will disrupt their farming activities and travels along a floodplain area. She said the majority of the Blue Creek residents attending these meetings have stated many times their disapproval of the plan. She wished the planners would “stay off our private property.”

KEN PETERSEN, 424 48<sup>TH</sup> STREET WEST, said his impression of this meeting is that there was a lot of misconception created by showing greenways and trails across private property without property owner’s permission. He said a solution to this situation is to place disclaimers on all maps to show the “conceptual only” nature of them. This disclaimer could further state that “nothing can be used in a court of law or any other tribunal to establish any benefits, any rights, and any obligation.” A clear disclaimer would state that this would not create any rights whatsoever.

LOIS SCHROEDER, 204 EMERALD DRIVE, said she is a private property owner that may be affected by a future trail and does not wish to have a trail across or adjacent to her property. She said trails are for a minority of the population. It is also her experience that hypothetical lines have a way of becoming permanent. She asked if sidewalks can be used for bicyclists, because she sees very few pedestrians or wheelchair users using them. Councilmember Brewster noted that the federal government requires ADA accessibility to all sidewalks and bikes cannot safely navigate the mailboxes that are adjacent to sidewalks.

DOVER SINDELAR, 633 SINDELAR ROAD, said his area is a service entrance to the City of Billings and is “saying no” to any bike trails.

SUE MCCOMBS, 1095 BENDER ROAD, said her wish is that no trails be mapped through private land without the property owner’s permission. It seems that even a conceptual trail should not be documented before affected private land owners are contacted. Some of the trails cross her property and she feels her rights as a land owner have not been respected. She said there is a different opinion between property owners in populous subdivisions and rural areas and she feels the majority of the speakers have been from subdivisions. Ms. McCombs agrees that planning public trails through proposed subdivisions is appropriate, but not through established pastures and next to private homes. She also agrees that trails are okay for public lands and rights-of-way. There are a lot of issues that need further discussion before anything can be put on a map, she added.

CHARLENE MURPHY, 8136 PRYOR ROAD, said bike trails should be placed along side of roadways.

KIM HAGER, 5305 VANDIVERE ROAD, said he is against proposed trails and greenways on private property. He said it is unfair to "pin people down" to one of the scenarios because most of the audience can't see from the back of the room. This is merely a reoccurring problem, trying to pick a plan without public involvement.

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

Mayor Tooley called for a recess at 9:30 P.M.

Mayor Tooley reconvened the meeting at 9:45 P.M.

Councilmember Clark stated that his mother owns property that he has a power of attorney over in the Blue Creek area. Councilmember Clark moved to consider Alternative #5, seconded by Councilmember Veis. Councilmember Boyer made a substitute motion to accept Scenario #5 plus the proposed amendments with the exception of #5 and #6, keeping the collaborative effort between the County, City, Montana Department of Transportation and City/County Planning as stated in Attachment C, seconded by Councilmember Veis.

NOTE: Attachment C states:

"The *Heritage Trail Plan* shall be reviewed and, if necessary, updated every five years. The purpose of the update is to determine what changes are needed to address current trends and technologies, and to make sure the plan continues to reflect community needs and preferences. The *Heritage Trail Plan* may be amended at any time in the five-year period if major changes occur such as a citizen-initiated amendment, a significant budgetary change, or a change in policies of the governing body.

The five-year review and update shall follow the planning and adoption process of the original plan including:

1. Review background information.
2. Conduct public involvement to include numerous community and neighborhood meetings and workshops, press releases, surveys, and direct communication with affected individuals and organizations.
3. Update and prepare draft document and associated maps, charts and tables.
4. Forward proposed updates to the Technical Review Committee for recommendations to the Policy Coordinating Committee.
5. Schedule and conduct public hearings before the Yellowstone County Planning Board, Yellowstone County Board of County Commissions, and City of Billings City Council for their review and recommendations to the Policy Coordinating Committee.
6. Schedule and present recommendations from the Planning Board and the governing bodies to the Policy Coordinating Committee for final action.

Amendment requests can be brought forward by individuals, organizations or by any government agency. Amendments to the *Heritage Trail Plan*, other than those identified in the five-year review, shall follow the following planning and adoption process:

1. Submit request to the Yellowstone County Planning Board to initiate the amendment process.

2. Conduct public involvement to include numerous community and neighborhood meetings and workshops, press releases, surveys, and direct communication with affected individuals and organizations.

3. Update and prepare draft document and associated maps, charts and tables.

4. Schedule and conduct public hearing before the Yellowstone County Planning Board.

5. ~~If the proposed amendment affects areas completely outside the City of Billings city limits, but within the unincorporated limit of Yellowstone County; schedule and present recommendations from the Planning Board to the Yellowstone County Board of County Commissioners for final action. The County Commissioners have the sole authority to act on amendments within the County outside of the incorporated limits of Billings or Laurel.~~ (Deleted via Councilmember Boyer's motion.)

6. ~~If the proposed amendment affects areas completely inside the City of Billings city limits; schedule and present recommendations from the Planning Board to the City of Billings City Council for final action. The City Council has the sole authority to act on amendments inside the Billings city limits.~~ (Deleted via Councilmember Boyer's motion.)

7. For amendments that are not specific to any jurisdiction; the procedure shall be the same as described for the five-year review." END – Attachment C.

Councilmember Boyer said it is important that the City, County, Montana Department of Transportation and the Planning Board collaborate on this type of planning. Not doing this is a step backward. Councilmember Jones said he is against excluding the language because the City and County representation should be separate. The responsibility belongs with the County Commissioners outside of the City limits and with the City Council inside of the city limits.

Councilmember Ruegamer said he would like to delay this decision for four weeks until the Planning Department can present a comprehensive report to residents for review. Councilmember Clark asked how the residents would be able to comment on the report if another public hearing is not planned. Councilmember Gaghen agreed that it is important for the residents to be able to read and review what has been currently proposed.

Councilmember Brewster asked if the County should consider the proposed recommendation prior to submission to the PCC. Mr. Walker said the Mayor will forward the Council's recommendation to the PCC. That recommendation may not be the same as the recommendations of the County or the Planning Board. Councilmember Brewster amended the substitute motion to add a disclaimer to the maps that states their conceptual nature and not final status as suggested by Ken Petersen, seconded by Councilmember Clark. On a voice vote, the amendment was unanimously approved.

Councilmember Boyer said excluding the language in #5 & #6 would mean that the recommendation would not go to the PCC. She said that is an important collaborative step. She said she is not ready to abdicate the City's responsibility to the County. Mr. Walker said including the language in #5 & #6 means that the plan would be written to state that what is County is County responsibility and what is City is City responsibility. He confirmed that with this language, the Heritage Trail Plan or any changes would not come back to the PCC when it is revisited in five years. Councilmember Brewster said the City should still be able to negotiate with the County relating to small areas where annexation or changes have taken place. Mr. Walker said that could go before the PCC and be discussed and agreed

upon. Councilmember Brewster noted that he could not envision that the City and County will not cooperate on this issue in the future.

Councilmember Veis asked if excluding #5 & #6 would create a possibility for loss of funding because of the lack of coordination with the entities through the PCC. Mr. Walker said there would not be a loss of funding but expressed concern about some of the grants that have been applied for that require approved plans. Councilmember McDermott noted there may be some grants that will be lost, but the CTEP funding will not "go away" and will eventually be spent in Yellowstone County, even if not on trails.

On a roll call vote, the amended substitute motion was approved 6-5 with Councilmembers Gaghen, Ruegamer, Veis, Boyer, Ulledalen and Mayor Tooley voting "yes" and Councilmembers McDermott, Brewster, Brown, Clark and Jones voting "no".

**2.3. PUBLIC HEARING on the FY 2004 Community Development Block Grant Program (CDBG) and HOME Investment Partnership Program Comprehensive Annual Performance Evaluation Report (CAPER). (Action: public hearing only.)**

Community Services Manager Brenda Beckett reported on the FY2004 Comprehensive Annual Performance and Evaluation (CAPER) Report for the CDBG and Home Programs. She said the CAPER is a report and public document required by federal regulations covering the period from July 1, 2004 to June 30, 2005 and reports on the City of Billings' fifth year of progress in meeting the goals established in its five year FY2000-2004 Consolidated Plan.

Ms. Beckett said the five strategies of the Consolidated Plan include:

Strategy #1 – Improve the economic conditions of lower income households in the community.

Strategy #2 – Promote affordable housing and fair housing citywide.

Strategy #3 – Promote the preservation of the existing supply of affordable housing in the community.

Strategy #4 – Promote the preservation and revitalization of the community's older neighborhoods where the affordable housing stock is located.

Strategy #5 – Work as an active partner with non-profits, neighborhood groups, and others to address housing, community and neighborhood needs.

Ms. Beckett said the accomplishments for Strategy #1 include providing funding to Big Sky Economic Development Association (BSEDA) for technical assistance to low and moderate-income persons to start or expand a business. BSEDA provided technical assistance to 128 individuals during the program year. The City of Billings provided the full 15% available in CDBG funding to public service activities ranging from the Billings Food Bank to the YWCA shelter for victims of domestic abuse.

Ms. Beckett said the accomplishments for Strategy #2 include providing assistance to 34 low and moderate-income individuals through the City's First Time Homebuyer programs, continuing to use \$4 Million in low interest financing from the Montana Board of Housing (MBOH) in conjunction with the First Time Home Buyer Program. She said the MBOH has provided the City with \$18.7 Million in low interest funding since 1994. In FY2004, 259 households attended the three-day homebuyer workshops, which is a requirement of the program. Infrastructure for King's Green Subdivision Phase I was developed in the Spring of 2004 with 9 of the 10 single-family homes sold to low to moderate-income families. She said Phase II of this project with 14 homes will be

awarded in the coming year. Ms. Beckett said Habitat for Humanity is in the process of completing 8 single-family homes with CDBG funding. Family Services, Inc. used CDBG funds to provide emergency housing assistance to 129 households. Tumbleweed provided runaway counseling services to 511 youths. The YWCA Women's Center provided emergency shelter to 377 victims of spouse abuse.

Ms. Beckett said accomplishments of Strategy #3 include completing minor home repairs to 15 households through the Housing Rehab Loan Program during the program year. The Yellowstone County Council on Aging assisted 26 elderly households with repairs of up to \$500 and Rebuilding Together (in their second year of operation) rehabilitated 5 homes. She said the Rental Rehab Program provided funding that resulted in rehabilitation of 14 units, with 12 more units in progress. The Paint Program was resurrected in FY2004 and assisted 4 homeowners paint the exterior of their homes. Funding was provided to LIFTT to construct 6 new ramps and home modifications for disabled homeowners. She said the City continues to implement the new Low Interest Loan Program established in June 2002 through a partnership with Wells Fargo Bank which has financing for home repairs.

Ms. Beckett said Strategy #4 accomplishments include two new water features to the North Park Spray Pad. Funding assistance helped resurface tennis courts at three parks in the City. She said \$10,000 in CDBG funds was re-programmed to provide pool heaters and covers for Athletic Pool contingent on the future of the pool within the Cobb Field complex. Rehabilitation to 46 owner-occupied units of affordable housing was completed. The Billings Heights Milton Road Improvement Project is scheduled to be completed in the coming year. The City assisted 14 homeowners in removing diseased or dangerous trees during the program year. The Council also continued to provide \$10,000 of City General Fund dollars to help support the activities of existing task forces. During FY2004 the City promoted the redevelopment of the South 27<sup>th</sup> Street Corridor through completion of the Skatepark and expansion of the Deering Clinic. She said the City assisted in the redevelopment of the Food Bank Grocery for the offices of the Northern Plains Resource Council and the new offices for Mailing Technical Services. The City also donated land for the Montana Rescue Mission's new campus. Historic preservation activities completed during the year were the expansion of the City's Historic District and review of building permits for the Depot, Rex, CTA Architect's building, and Eleven Café. An architecture and style study in the South Side neighborhood and inventories of properties in the 2600 block of Montana Avenue and 2500-2700 blocks of Minnesota Avenue were completed. A Laurel Walking Tour brochure was also finished.

Ms. Beckett said Strategy #5 accomplishments include providing staff support for the Adjacent Neighborhood Committee, for efforts of the Over, Under and Around Committee and to the Billings Partners for American Indian Homeownership.

The public hearing was opened. There were no speakers. The public hearing was closed. This was a public hearing only; no action was taken.

**3.4. PUBLIC HEARING AND RESOLUTIONS regarding the original spread assessments on the following Special Improvement Districts:**

**(A) RES 05-18338: SID 1358: construction of curb, gutter, sidewalks, sanitary sewer mains, sanitary sewer services, water mains, water services**

and necessary street improvements to portions of C/S 793, Deep Power Subdivision and Lake Hills Subdivision.

(B) RES 05-18339: SID 1365: installation of water, sanitary sewer, storm drain and street improvements in Lake Hills Subdivision, 25<sup>th</sup> filing.

(C) RES 05-18340: SID 1366: construction of a park, city water supply, concrete parking lot and storm drain in Rimrock West Estates Subdivision, 1<sup>st</sup> – 5<sup>th</sup> filings and C/S 1350.

(D) RES 05-18341: SID 1371: installation of water, sanitary sewer, storm drain and street improvements in Blue Meadow Acreage Tracts, Monty's Place Subdivision, C/S 369 Amended, C/S 369 Third Amended and C/S 1188.

(E) RES 05-18342: SW 2401: miscellaneous sidewalk, curb and gutter improvements located in areas throughout the City.

(F) RES 05-18343: SW 2402: sidewalks in the Washington School area.

**Staff recommends approval of resolutions. (Action: approval or disapproval of Staff recommendation.)**

There was no Staff report. The public hearing was opened. KEN PETERSEN, 424 48<sup>TH</sup> STREET WEST, said he is a licensed Montana attorney representing an owner of property within SID 1358 – Charles Schneiter of Schneiter Enterprises in protesting SID 1358. He said the Schneiters were part of the original developers of the Lake Hills Golf Course and Lake Hills area. He spoke in protest of SID 1358, objecting to the cost of curb and gutters when they were informed those improvements were not needed. He said the Schneiters believe they are being unfairly assessed for the benefit of other developers in the area. Mr. Petersen read some portions of the protest letter that Mr. Schneiter submitted to the City Clerk. He agrees with Mr. Schneiter, that if the properties are adequately served by the current improvements, he should not have to participate in another SID. He urged the Council to take another look at the SID and reduce the unfair and unnecessary additional burden to the Schneiters. Councilmember Brewster explained that the addition of the curb and gutter is to deal with stormwater drainage issues that have been created by newer subdivisions.

There were no other speakers. The public hearing was closed. Councilmember Brewster moved for approval of the Staff recommendation for Item 4A – SID 1358, seconded by Councilmember Gaghen. Councilmember Clark asked if the work has already been completed. Councilmember Brewster said the SID has been approved and completed and this resolution would simple spread the cost of the improvements among the owners included within the boundary of the SID. On a voice vote, the motion was unanimously approved.

Councilmember Brewster moved for approval of the Staff recommendation for Item 4B – SID 1365, seconded by Councilmember Boyer. On a voice vote, the motion was unanimously approved.

Councilmember Brewster moved for approval of the Staff recommendation for Item 4C – SID 1366, seconded by Councilmember Brown. On a voice vote, the motion was unanimously approved.

Councilmember Brewster moved for approval of the Staff recommendation for Item 4D – SID 1371, seconded by Councilmember Brown. On a voice vote, the motion was unanimously approved.

Councilmember Brewster moved for approval of the Staff recommendation for Item 4E – SW2401, seconded by Councilmember Brown. On a voice vote, the motion was unanimously approved.

Councilmember Brewster moved for approval of the Staff recommendation for Item 4F – SW2402, seconded by Councilmember Gaghen. Councilmember McDermott said she would abstain from voting as she owns property in the McKinley School area. She said she is protesting the assessment because she received a letter stating that they would not be charged for the existing sidewalk that was constructed at their expense nearly 14 years ago. Part of the sidewalk (which was in good condition) was then removed and expenditures for that construction were billed to her. Had she waited to put the sidewalk in at this time, part of the sidewalk would have been funded through the School Route Program. She asked that the policy of forcing property owners to construct sidewalks in older isolated areas be reviewed. On a voice vote, the motion was approved with Councilmember Gaghen voting “no”. Councilmember McDermott abstained.

**4.5. PUBLIC HEARING AND RESOLUTIONS regarding the respread of assessments on the following Special Improvement Districts:**

- (A) RES 05-18344: SID 1258: (Combining tax codes), paving, widening, curb, gutter, sidewalk and storm drain extension located in Maltese Sub. and Hansen Sub.**
- (B) RES 05-18345: SID 1332 & 1341: (Combining tax codes); SID 1332 is for curb, gutter, sidewalk and street improvements in Circle Fifty Sub., SID 1341 is for park improvements located in Circle Fifty Sub.**
- (C) RES 05-18346: SID 1332, 1341 & 1353: (Combining tax codes); SID 1332 is for curb, gutter, sidewalk and street improvements in Circle Fifty Sub., SID 1341 is for park improvements located in Circle Fifty Sub., SID 1353 is for water, sewer, storm drain, curb, gutter, and street improvements located in Circle Fifty/Hancock Grand Sub.**
- (D) RES 05-18347: SID 1341 & 1353: (Splitting tax codes); SID 1341 is for park improvements located in Circle Fifty Sub., SID 1353 is for water, sewer, storm drain, curb, gutter, and street improvements located in Circle Fifty/Hancock Grand Sub.**
- (E) RES 05-18348: SID 1346: (Splitting tax code); streetscape improvements located on N. Broadway, Montana Avenue to 4<sup>th</sup> Ave. N.**
- (F) RES 05-18349: SID 1356: (Splitting tax code); water, storm drain, curb, gutter, and street improvements located in Studer Acreage Tracts Sub.**
- (G) RES 05-18350: SID 1360: (Respread based on actual costs); installation of water, sanitary sewer, storm drain and street improvements in Transtech Center Subdivision, Gabel Subdivision - 2<sup>nd</sup> filing, Tierra Yellowstone Industrial Park, Subdivision, Gabel Road Commercial Center Sub., Parkco Industrial Sub., Millennium Market Sub., and Broso Valley Sub.**
- (H) RES 05-18351: SW 2001: (Combining tax codes); Broadwater Phase I Sidewalk, Curb and gutter located in Normandy Addition, 3<sup>rd</sup> filing.**

(I) RES 05-18352: SW 2011: (Combining tax codes); sidewalk, curb and gutter in Foster Addition.  
(J) RES 05-18353: SW 9898: (Combining tax codes); miscellaneous sidewalk, curb and gutter improvements in Non-Task Force areas throughout the City.

Staff recommends approval of resolutions. (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. City Attorney Brent Brooks said it would be appropriate to vote on these assessments separately.

Councilmember Jones moved for approval of the Staff recommendation for Item 5A, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

Councilmember Jones moved for approval of the Staff recommendation for Item 5B, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

Councilmember Jones moved for approval of the Staff recommendation for Item 5C, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

Councilmember Jones moved for approval of the Staff recommendation for Item 5D, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

Councilmember Jones moved for approval of the Staff recommendation for Item 5E, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.

Councilmember Jones moved for approval of the Staff recommendation for Item 5F, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.

Councilmember Jones moved for approval of the Staff recommendation for Item 5G, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.

Councilmember Jones moved for approval of the Staff recommendation for Item 5H, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.

Councilmember Jones moved for approval of the Staff recommendation for Item 5I, seconded by Councilmember McDermott. On a voice vote, the motion was unanimously approved.

Councilmember Jones moved for approval of the Staff recommendation for Item 5J, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

**5. 6. PUBLIC HEARING AND RESOLUTIONS fixing the amount of the annual special assessments for FY2006 and levying and assessing special assessments for:**

(A) RES 05-18354: Encumbrances, obstructions or encroachments on, over, across or above the streets, avenues, sidewalks or alleys of the City;

(B) RES 05-18355: Weed Cutting and removal;  
(C) RES 05-18356: Park Maintenance Districts: PMD #4005, #4012, #4014, #4023, #4026, #4027 and #4029.

**Staff recommends approval of resolutions. (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 Gaghen moved for approval of the Staff recommendation for Item 6A (Encumbrances, obstructions or encroachments), seconded by Councilmember McDermott. On a voice vote, the motion was unanimously approved.

Councilmember Gaghen moved for approval of the Staff recommendation for Item 6B (Weed Cutting and removal), seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

Councilmember Gaghen moved for approval of the Staff recommendation for Item 6C (Park Maintenance Districts), seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

**6. 7. PUBLIC HEARING AND FIRST READING ORDINANCE expanding the boundaries of Ward II to include recently annexed property in Annex #05-08, described as: a 33.71 acre parcel described as Tracts 1 and 2, C/S 3190, located at 120 Wicks Lane, Ernest and Francisca Shaw, petitioners. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

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

**7. 8. PUBLIC HEARING AND RESOLUTION 05-18357 annexing Grand Acres Park and right-of-way, an undeveloped 0.363-acre parcel located on Broadwater Avenue, west of 52<sup>nd</sup> St. W, DC Capital Real Estate, LLC petitioner. (#05-09). Staff recommends approval of the resolution with conditions. (Action: approval or disapproval of Staff recommendation.)**

Zoning Coordinator Nicole Cromwell said this annexation concerns the Grand Acres Park that is south of the previously annexed Legacy Subdivision and which is now being developed. It was not included in the original annexation due to an oversight. The park (.294 acres and includes .069 acres of right-of-way of Broadwater Avenue also to be annexed) was abandoned in 1997 and is now owned by DC Capital Real Estate, LLC.

Ms. Cromwell said this annexation complies with the Annexation Policy and is recommended for annexation with the following conditions:

That prior to development of the site the following shall occur:

- a. A Development Agreement shall be executed between the owner(s) and the City that shall stipulate specific infrastructure improvements and provide guarantees for said improvements; or
- b. A Subdivision Improvements Agreement (SIA) and Waiver of Protest of the Creation of an SID shall be approved and filed that will stipulate specific infrastructure improvements and provide guarantees for such

infrastructure improvements. The subdivider will be responsible for forming a Park Maintenance District and developing a neighborhood park within the subdivision.

Ms. Cromwell said the area will become part of a future lot and part of a future park dedication.

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

**8. ~~PUBLIC HEARING AND RESOLUTION 05 revising the Heritage Trail, The Greater Billings Non Motorized Trail Plan. Staff makes no recommendation. (Action: approval or disapproval of resolution revising the plan.) Note: See Item #2.~~**

**9. PUBLIC HEARING AND SPECIAL REVIEW #793: a special review for an All Beverage liquor license with gaming in a Community Commercial zone described as Lots 20 & 21 of Block 1, Murn-Morrow Subdivision, located at 1720 Grand Avenue. Mayflower of China, Shelly Ma, owner; Angelina and Patrick Cormier, agents. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

Zoning Coordinator Nicole Cromwell said the Mayflower of China restaurant has been at the present location for a long time. In 2000, the beer and wine license with gaming was sold to another party. State liquor law requires a one-year time period before reinstatement of the license. This special review upgrades that liquor license to all-beverage with gaming. She said the owners are selling the property and business to the Cormiers, who will in turn convert the facility into a casino and bar. There will be food service, but it will not be a major portion of the business. She noted that access and parking will be shared with adjacent properties. Parking concerns were raised by the Mattress King business and it was recommended by the Zoning Commission that the Cormiers work out an agreement with Mattress King, but it was not a condition of their recommendation.

Ms. Cromwell said the Zoning Commission is recommending approval with the following conditions:

1. The special review approval shall be limited to Lots 20 & 21, Block 1 of Murn-Morrow Subdivision.
2. No outdoor seating, outdoor music or outdoor public announcement systems will be allowed with this application.
3. Any existing lighting on the building or within the parking lot shall be retrofitted with full cut-off shields so light is directed to the ground and not onto adjacent property. Any new lighting shall be fitted with full cut-off shielding. Lighting of signs shall be as allowed within the City Sign Code (Section 27-701 BMCC).
4. A dumpster enclosure of sight obscuring material shall be constructed and shall have a closing gate. Acceptable materials are wood, block, stone, brick, vinyl or chain link with sight obscuring inserts.

5. All other limitations on expansion shall apply in accordance with Section 27-613 of the Billings Montana City Code.

The public hearing was opened. ANGIE CORMIER, NO ADDRESS GIVEN, said the parking (23 spaces) is sufficient for the size of the business. Additionally there were discussions with the former Signed, Sealed and Delivered business to rent additional spaces. She said she has talked with the owners of Mattress King, who said the problem with the parking was during the height of the Mayflower's business. A fence separating the two lots was erected and they indicated that corrected the problem. The owners also stated that a parking agreement is a possibility if problems arise. Ms. Cromier also noted that they applied for a full-beverage license because that is what they have owned since 1985.

TOM EMERLING, 1516 9<sup>TH</sup> STREET WEST, said he represents Shelly Ma and the rest of the owners in the sale of the building. He said it has been a restaurant for twenty (20) years and the facility is only suited for a restaurant or its present use.

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

**10. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #766: a text amendment to the Unified Zoning Regulations, amending BMCC Sections 27-201 and 27-306, adding a definition of limited pharmaceutical manufacturing and setting limited pharmaceutical manufacturing uses allowed in Highway Commercial and Controlled Industrial Zoning Districts. Zoning Commission recommends approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

There was no Staff report. Councilmember Brown asked if this item is related to the company that is interested in the K-Mart building in the Heights. Ms. Cromwell said this zone change was initiated at the request of All American Nutrition, which plans to repackage bulk nutritional and supplemental items into smaller packages. The Planning Board agreed to the request.

The public hearing was opened. ERNIE DUTTON, 2046 MARIPOSA LANE, said this is the final step in a zone change that was previously approved by the Council. He said there is a deed restriction and negotiations with the property owner are progressing.

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

**11. PUBLIC HEARING AND FIRST READING ORDINANCE amending Section 11-102; providing for new Council Ward boundaries, establishing an effective date, repealing all previous ward boundaries and providing a severability clause, changing ward district boundaries to reduce population deviations and repealing Ordinance 05-5337. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

The public hearing was opened. MARY WESTWOOD, 2808 MONTANA AVENUE, said she objects to the manner that the Council continues to do the ward boundaries. She

said the proposed boundaries have not been posted on the website, so the public is uninformed. If this is a permanent change, public input should be allowed. She said this is violating all the ways that redistricting has been done in the community and state. She also believes it is probably violating the Voting Rights Act. Ms. Westwood said a petition stating that the City is not doing this properly is continuing to collect signatures. She noted that these people are all potential plaintiffs in future litigation against the City.

There were no other speakers. The public hearing was closed. Councilmember Veis moved for approval of the Staff recommendation, seconded by Councilmember Boyer. Councilmember McDermott asked if this will meet the conditions of the ACLU lawsuit. City Attorney Brent Brooks said discussions with one of the attorneys for the ACLU have indicated that a permanent ordinance will stay the response of the current lawsuit in federal district court. It is their belief that this ordinance would satisfy the allegations in the complaint filed by the ACLU. On a voice vote, the motion was approved with Councilmember McDermott voting "no".

**12. UPDATE ON 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. (Action: council update report only; no action necessary.)**

Zoning Coordinator Nicole Cromwell said this is the first season of operation of the go-kart track. The Code Enforcement Officer has received no complaints relating to the operation at this location. The Planning Staff is recommending extending the permit to use the property from May 15<sup>th</sup> to September 15<sup>th</sup> for a temporary go-kart track until a master plan is completed. The master plan should be completed within the next 6 to 12 months. NOTE: Council update report only: no action necessary.

**13. SPECIAL REVIEW #790: a special review to allow on-premise beer service without gaming on Block 2, Lot 10 Claimstake Subdivision, located at 2701 Enterprise Ave., Suite 1. Delbert L. Bailey and Timothy Dernbach, owners; Tim Mohr, agent. Zoning Commission recommends conditional approval. (Public hearing held 8/22/05). (Action: approval or disapproval of Zoning Commission recommendation.)**

Planning Staff member Laura Mattox said this is a request to allow an on-premise beer service without gaming in a Controlled Industrial zone located at 2701 Enterprise Road. At the August 22<sup>nd</sup> Council meeting, the Council requested more information concerning the 600-foot separation and the definition of churches and schools. The A.W.A.R.E. facility is outside of the 600-foot radius, she noted. The 600-foot radius is between property lines measured in a straight line and maintained from any building that is used as a church or school or a public park that contains a children's playground or playfield. A school, college or university definition includes an institution that is approved and accredited and trade or vocational schools are operations that are endowed and/or supported by taxation.

Councilmember Ruegamer asked for an explanation of how the tax revenue to the City would be increased by approval of the special review. Ms. Mattox said increasing development or a change in use can impact the taxes that are generated from the property, through the liquor license and the taxes associated with it.

Councilmember Boyer moved for approval of the Zoning Commission recommendation including the conditions, seconded by Councilmember Veis. Councilmember Jones made a substitute motion to deny the special review, seconded by Councilmember Gaghen. On a voice vote, the substitute motion was unanimously approved. The special review was denied.

**14. PROFESSIONAL SERVICES CONTRACT with Peaks to Plains Design P.C. for Castle Rock Park Spray Ground Facility, \$32,382.00. (Delayed from 9/12/05). Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

There was no staff report. Councilmember Ulledalen moved for approval of the Staff recommendation, seconded by Councilmember Boyer. Councilmember Boyer asked if the contract issues have been resolved. Parks Department Planner Mark Jarvis said the contract language is acceptable to the contractor. The concern was that specialty items that are purchased for the operation of the facility remain the property of the City. Councilmember Boyer said she is still concerned that contract language be consistent relating to the concerns of engineers and architects. On a voice vote, the motion was unanimously approved.

**LATE ADDITION:**

**15. DISCUSSION of Draft Attorney General Opinion Request on Public Safety Mill Levy Election of November, 2004. Staff recommends approval of the draft AG Letter of Advice request. (Action: approval or disapproval of Staff recommendation.)**

Councilmember Clark moved for approval to send the advice letter to the Attorney General, seconded by Councilmember Ruegamer. Councilmember Veis asked if the brochure and meeting schedule would be included as an amendment to the letter. Mr. Brooks said that would be included. Councilmember Veis asked if any minutes from the meetings have been obtained. Mr. Brooks said the Staff is working to obtain whatever minutes are available. This may require up to two weeks to accomplish.

Councilmember Brown asked if Mr. Brooks has reviewed the draft that he edited and did the City Attorney's office make any of those changes. Mr. Brooks said he reviewed the suggestions, but was not requested to make any changes to the original draft.

Councilmember Jones said the Attorney General opinion is not going to solve anything and is a waste of time. Councilmember Jones made a substitute motion to put the issue back on the ballot, seconded by Councilmember Brown. Councilmember Brewster said he agrees that the Attorney General opinion won't do anything. He said there are two options – 1) approve the substitute motion, or 2) do nothing and stand firm.

Councilmember Ruegamer said the AG opinion will give some guidance. He said the Council is weighing the opinions of only ten people on whether the ballot language was ambiguous. Very few people have weighed in on the issue and one of the objectioners was a mayoral candidate who used this for political purposes. He said it troubles him that the Council is taking action on the outcry of a small number of people. Councilmember Boyer said she has heard from several constituents who do not want this issue back on the ballot. This is where the Council must stand up and take a leadership position, she

said. The only reason to send the letter to the AG is to put the City in the "in charge of this issue" position, rather than the County.

Councilmember Veis asked how the Council can insure that the ballot language would be completely unambiguous the next time. Councilmember Jones said two words, "cumulative" and "perpetual" added to the language would solve the problem. He said folks at the Descro Task Force meeting last week said they did not understand the ballot language. He agrees with Councilmember Ruegamer that this is a quandary, but it is something the Council must deal with and be fair to the voters. If public safety is important to the voters, they will approve the measure again. He said the Council did not try to deceive anyone because the resolution is very clear as to the intent of the levy.

Councilmember McDermott said she is willing to sign a certification that at every meeting she attended the sixty mills were discussed on a cumulative and permanent basis. If the voters of Billings want to put this issue back on the ballot, they should form a petition drive.

Councilmember Brown asked if the letter is sent to the AG and there is a lawsuit, how does that affect the cash flow for the expenses that will be incurred. Mr. Brooks said there are no expenses involved in an AG opinion and if there is litigation on this issue, the AG will cease any work on the opinion until the litigation is resolved. Councilmember Brown asked if the lawsuit would stop the County from collecting the taxes. Mr. Brooks said that cannot be predicted because he does not know what the lawsuit would say.

Councilmember Boyer reminded the Council that nine months passed before this issue was raised (for political purposes) and she does not think the Council should react to that.

Mayor Tooley said he is concerned about the practical politics of the substitute motion. He said the residents of Billings voted overwhelmingly to increase fire and police protection. If the City puts this back on the ballot during a non-presidential election, he is concerned that the "no" voters will prevail. He does not support the substitute motion.

Councilmember Ulledalen echoed Councilmember Jones' concerns. He said a lawsuit would place the public safety program in jeopardy. The only way to resolve this is to put it on the ballot in a November election next year.

Councilmember Veis asked if this situation has ever happened before and what steps does the Council need to take on a revote. Mr. Brooks said the preliminary assessment would be to amend the ordinance language in the charter to include the new language. The resolution included the same language as the ballot. He said a more definitive answer will be available after discussions with the Election Administrator. Mr. Brooks noted that as long as he has lived here this has not happened but that does not mean it can't be done.

Councilmember Ruegamer said the City can't spend the money from the levy until there is a resolution to this issue. Councilmember Brewster said it was interesting that the County does not have to ask anyone when they want to raise taxes, but the City has the greater burden. He agrees with Councilmember Ruegamer that a resolution to the issue needs to be in place before funds are spent. Councilmember Boyer said she does not believe 28,000 voters did not understand the ballot language. She said the Council is starting to waffle and she thinks it is a huge mistake. Mayor Tooley said it would be extremely difficult to re-create the circumstances of the last campaign. There was a tremendous effort by people in this community to come together to support public safety.

Councilmember Ulledalen asked if the Council should consider another option such as requesting a District Court decision as a preemptive move rather than a reactive one. Mr. Brooks said that is an option, whether or not that is possible is another separate potential action. On this particular issue it is unclear as to whether that would be procedurally appropriate. Any court action would have to have Council authorization, he noted.

Councilmember Jones said he agrees with most of the issues brought up, but his concern is getting this solved so the City knows what it is going to do with its police and fire departments. He suggested a mail-in ballot would address the participation problem. On a roll call vote, the substitute motion failed 4-7 with Councilmember Brewster, Brown, Ulledalen, and Jones voting "yes" and Councilmembers Gaghen, McDermott, Ruegamer, Veis, Boyer, Clark and Mayor Tooley voting "no".

Councilmember Jones amended the motion to add a request for a declaratory judgment to the AG letter. Mr. Brooks said the declaratory judgment would delay the letter of advice. Councilmember Boyer said the letter of advice would be more expedient. Councilmember Jones withdrew his amendment.

Mayor Tooley said he thinks the County felt obliged to seek the AG letter because of the issue raised by an elected County Official and not because they wanted to do that. The Commissioners have advised the City that if the City proceeds with a letter they will not bother with it. Letting the Council frame the issue with the Attorney General is a proactive approach and protecting its own situation.

On a voice vote, the original motion (to send the letter to the AG requesting advice) was approved with Councilmembers Jones and Brown voting "no".

#### **16. DISCUSSION of 4<sup>TH</sup> & BROADWAY SALE/REQUEST for development proposals.**

Deputy City Administrator Bruce McCandless explained the contents of the RFDP noting the description of the properties that may be available for development. The proposed developer would be required to submit personal and corporate financial records as part of the proposal. The criteria and points for judging the proposal that are received have been restructured. Councilmember McDermott asked for clarification that the Parmly Library is included in the RFDP. Mr. McCandless said all of the property is included to allow the Council to strike the properties that they choose to. Councilmember Brewster said the third floor of the Library should be included in the request.

Councilmember Jones moved for sending out the RFDP minus the Library Building, seconded by Councilmember McDermott. Councilmember Boyer amended the motion to include the Library Building, seconded by Councilmember Ruegamer. On a voice vote, the amendment was approved with Councilmembers Gaghen, McDermott, Brown and Jones voting "no".

Councilmember Ruegamer asked why the Council would eliminate a possibility from the equation when it "doesn't cost a nickel" to look at every potential proposal. Councilmember Gaghen asked what deadline will be placed on receiving the proposals. Mr. McCandless said that depends on the advertising sources (local or national) and could be anywhere from 30 to 60 days.

Councilmember McDermott asked if that will be a time problem for the fast-track GSA building. Mr. McCandless said the GSA intends to issue the Solicitation for Offers

(SFO) within the next couple of weeks and Administration hopes to have a consultant contract before the Council by October 11<sup>th</sup> or 24<sup>th</sup>.

Councilmember Gaghen expressed concern as to how the offer that the GSA is proposing at 4<sup>th</sup> & Broadway will be affected by the RFDP. Councilmember Ruegamer reminded the Council of the offer of Stockman Bank for the corner lot. He said neither offer was firm and the Stockman offer could not be acted upon because the City was not prepared legally to sell any properties. The RFDP prepares the City to accept potential offers. Councilmember Veis noted that an RFP was requested many months ago for 4<sup>th</sup> & Broadway and the City is now in a time crunch because that request was not acted upon in a timely manner. Councilmember McDermott said the City will be making a mistake in letting the GSA offer "slip through its fingers" and will eventually have to build a new court system without the financial assistance of the GSA. She added that the Stockman Bank offer can also be considered. Councilmember Boyer said the City is going around in circles and asked that the RFDP be sent out as she originally requested months ago. Councilmember Ulledalen noted that there is no assurance that the GSA proposal will go forward.

MIKE OWENS, GSA/DENVER, said the RFDP and the GSA proposal may not be mutually exclusive to each other. The problem is the timeline. When the GSA issues the SFO to the City, capital expenditures will be required for the design study. If the RFDP takes 60 or 90 days and the SFO is received within a couple of weeks, the question for the Council would be "will the City wait 60 or 90 days before proceeding to work on the SFO?" He said the problem for the GSA will be the time period the City will require to look at the RFDP and decide how to proceed. Councilmember Clark asked if the GSA can confirm the length of the lease for the proposed building. Mr. Owens said the best estimate would be 4 to 7 years. He added that this should be part of the negotiations. Councilmember Veis asked if the GSA is committed to staying in the downtown area. Mr. Owens said the GSA has an Executive Order that requires them to remain in the downtown except in extenuating circumstances. He feels that everyone is committed to staying in the downtown and understands that the \$100,000 design study offer is to assist the "deal with the City" happen, which has residual value for the City. Councilmember Veis asked when the GSA expects a response from the City to their SFO. Mr. Owens said initial discussions included a 30-day response time with the option to work with the City if required.

Councilmember Brewster amended the motion to impose a deadline of Tuesday, November 1<sup>st</sup> for responses to the RFDP, seconded by Councilmember Ruegamer. Councilmembers Boyer and Brewster offered to review the RFDP proposals to assure this is handled in a timely manner. On a voice vote, the amendment was approved with Councilmembers Gaghen and McDermott voting "no".

On a voice vote on the motion as amended, the motion was approved with Councilmembers McDermott, Clark and Gaghen voting "no".

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

- BILL COLE, NO ADDRESS GIVEN, suggested the Council work with the City Attorney and the Planning Department to develop a different approach (Notice Plan) to public notice on long-term planning projects. Mr. Cole said the Council

typically finds out about notice problems at the end of lengthy planning processes. The result of a notice plan would be a buy-in by the governing bodies making the final decision one of the governing body and not of the planning staff.

- DAVE BOVEE, 424 LEWIS AVENUE, said the Downtown Billings Partnership is throwing around taxpayer dollars. He suggested the Council consider establishing an independent position as auditor to monitor the expenditure of these funds. The public is entitled to a full, complete and open disclosure of funds collected and accumulated. Mr. Bovee also spoke about his difficulty in obtaining information about these funds and their use. He expressed concern that in three years when the Tax Increment District sunsets, there will be a huge bond debt from many specialty stores that are in the downtown that will ultimately "fall on" the citizens of Billings.

## COUNCIL INITIATIVES

- COUNCILMEMBER BREWSTER: Councilmember Brewster moved to direct Staff to demand the Ball Bookstore on S. 26<sup>th</sup> Street come into compliance with the Zoning Code, notify them and after a period of time require the bookstore to move, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.
- COUNCILMEMBER VEIS: Councilmember Veis moved to direct Staff to set up a meeting with the Blue Creek residents to go over the 5 scenarios of the Heritage Trail Plan so they can comment at the next PCC meeting, seconded by Councilmember Jones. Councilmember Veis said the Council should "go the extra mile" and present an opportunity to those residents that would like more information on the scenarios and to provide direct comments to the PCC. On a voice vote, the motion was unanimously approved.
- COUNCILMEMBER ULLEDALEN: Councilmember Ulledalen asked Staff to send copies of tonight's meeting minutes to the Yellowstone County Commissioners.
- COUNCILMEMBER CLARK: Councilmember Clark moved to direct Staff to not send a letter to mayoral candidate/former Police Chief Ron Tussing at this time, seconded by Councilmember Ulledalen. Councilmember Brown and Ruegamer expressed concern that the Council could "foul" the election and should "step away" from this issue. Councilmember Boyer said it is important that the Council document their position on the terms of the settlement agreement. She said it is a moral and ethical issue. Councilmember Ruegamer said an attorney has advised him that the settlement agreement contains two major flaws that may create enforcement problems for the City. He said the City would inevitably be looking at a lawsuit if it does enforce the agreement and he has no appetite for that. Councilmember Brown said this is a moot point because the election has not happened yet. Mayor Tooley said the City Attorney has advised three actions for the Council on this issue that would not interfere with the campaign: 1) have the City Attorney write a letter to Mr. Rapkoch (Ron Tussing's attorney) reiterating the City's rights, 2) hold a work session to discuss the issues and get a briefing on all aspects surrounding this concern, and 3) let the previous directive stand, which is to do nothing at this time. Councilmember McDermott said the Council should review the previous initiative by Councilmember Jones to stop spending taxpayer dollars on outside specialists and

attorneys. Councilmember Jones said this is a voter's issue and he thinks the Council should let the voters decide. Mayor Tooley said the Council seems to be discussing two separate concepts: 1) whether the Council should impose themselves on a Mayoral campaign, and 2) whether a person or institution that has signed a contract with the City should be held to the conditions of the contract. Councilmember Ruegamer asked who wrote the settlement agreement. City Attorney Brent Brooks said Mr. Rapkoch crafted most of the language, but it was reviewed by the City Attorney's office and former City Administrator Kristoff Bauer. Councilmember McDermott said the Council should accept the suggestion of the City Attorney's office and hold a work session to find out what the issues are and decide an action at that time. Councilmember Boyer said it is foolish to assume that the Council will not eventually do something. Councilmember Gaghen expressed concern for not upholding contract obligations and the precedent that will be set for future or retroactive contractual dealings. On a voice vote, the motion was approved with Councilmembers Boyer, McDermott, Gaghen and Mayor Tooley voting "no".

- **MAYOR TOOLEY:** Mayor Tooley notified the council of the PCC action relating to the Zimmerman Trail. Before the PCC can vote to accept federal dollars, the City of Billings must accept ownership of Zimmerman Trail. He said Public Works Director Dave Mumford said the liability issue of that ownership may not be as serious as has been portrayed in the past. Deputy Administrator Bruce McCandless noted there is an agreement that is being developed between the state and the City for future maintenance of that roadway and the decision on ownership would be easier to reach after that agreement is completed. Mayor Tooley stated that Commissioner Ostlund has asked that the City accept maintenance of Zimmerman Trail because it is so far for the County to travel in the winter. He said it is also a great distance for the City to travel for maintenance as well. The proposed agreement will contain an offer that the state would be willing to consider plowing Zimmerman Trail in return for the City of Billings plowing Montana Avenue. Since the City already plows Montana Avenue, this is no extra effort or expense on the City's part.
- **COUNCILMEMBER CLARK:** Councilmember Clark asked Staff to add the City's acceptance of ownership of Zimmerman Trail to a future agenda – after receipt of the proposal from MDOT.

**ADJOURN** – With all business complete, the Mayor adjourned the meeting at 12:58 A.M.

THE CITY OF BILLINGS:

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

ATTEST:

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