

# REGULAR MEETING OF THE BILLINGS CITY COUNCIL

## November 14, 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 Nancy Boyer.

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

**MINUTES – October 24, 2005.** Approved as printed.

### **COURTESIES**

- **Human Resources – MMIA First & Second Class Cities Safety Award -**  
Postponed.

### **PROCLAMATIONS**

- **November 15, 2005: National Philanthropy Day**

### **BOARD & COMMISSION REPORTS**

- Councilmember Boyer spoke on behalf of the RV Task Force, noting the task force would like an extension of one to two months to meet with additional stakeholders for input on the RV camping issue. The next meeting is scheduled for November 22<sup>nd</sup>.
- Brenda Burkhartsmeier, Chair of the Parking Advisory Board reported on the Board's activities for the past year. She said the Board was created to provide input to Staff and the Council on all aspects of public parking within the Central Business District, including on-street parking, meters, garages, surface lots, capital projects, long-range financial planning, parking fees and fines, and the existing and proposed parking policies. She said the nine-member board meets on the second Monday of each month and conducts long-range goal planning sessions every other year. The Chair of the Parking Advisory Board also serves as a member of the Downtown Billings Partnership Board coordinating the efforts in the downtown area. Ms. Burkhartsmeier said the Parking Advisory Board has been involved in many changes in the downtown area including a new rate structure for on and off-street parking (implemented in 2001), installation of the green meters in downtown to assist with the DBA's beautification program, the park and shop program (with tokens), installation of diagonal parking and its expansion, installation of the 10-hour meters and permit program, expansion of the Park II garage, a new rate structure proposal and reworking the "booting" policy.

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

- Ms. Volek noted that public comment on "non-public hearing" items should also include Item #4 on the agenda (election of deputy mayor).

- She reminded the Council that a revised staff report concerning Item A4 was provided in the Council's Friday packet. The revised report contained a recommendation for the award.
- Ms. Volek asked that Item F be separated from the Consent Agenda so the public hearing date could be amended to 12/12/05. The petitioner will be out of town on November 28<sup>th</sup>, would like to attend the public hearing and asked for the rescheduled hearing.
- Ms. Volek also noted that the Council's Friday packet contained letters of support from Senator Baucus and Executive Director Cal Spangler for the Young Families Early Head Start Program. Several members of the audience will be speaking in regard to this program during the public comment at the end of the meeting.

**PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: #1, #2, #3 and #4 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.)*

- JOHN BREWER OF 8155 27<sup>TH</sup> ST said he is executive director of the Chamber of Commerce and is speaking in regard to the election of the deputy mayor. Mr. Brewer urged the Council to focus on “the next big win” for the City and to move forward now that the voters have spoken. He said the City should move forward and complete the Shiloh Road Economic Corridor, select a new city administrator and develop new tax increment finance districts and other visionary tools that will continue to make this community one of the best places in the country to live. There is a monumental job ahead of the newly elected officials. He said citizens must respect that job, respect the fact that the voters have been heard and not focus on the legal wording of past employment settlements. The voters have expressed their desires regarding the public safety mill levy, our form of City government and the election of Mayor-Elect Tussing.
- BILL UNDERRINER OF 2605 WESTFIELD DRIVE said he is a third generation auto dealer at the same location for 61 years. His family tries to support the community in every way possible. Mr. Underriner said he has felt ashamed of Billings over the last 20 months, urging the Council to move forward, focus on the positive and move forward with hiring a new city administrator. Belaboring the issues surrounding Mayor-Elect Tussing will only divide the City.
- TOM ZURBUCHEN OF 1747 WICKS LANE spoke in regard to the proposed firefighter contract -- #2 on the agenda this evening. He said he hoped the Council has a thorough understanding of the contract and how to implement it, as that is the responsibility of Mayor and Council. During the work session, where the contract was presented, the contract was not mentioned specifically, leaving him the impression that the Council is not fully informed about it. He said the Charter gives the Council the power to “critique” what the Staff brings forward, but failing to read and understand this contract is what got the City into a legal issue ten (10) years ago. This contract will help to resolve that issue.

- DAVE BERNHARDT OF 426 12<sup>TH</sup> ST. W said he is concerned about the election of the deputy mayor. Mr. Bernhardt read from BMCC Section 2-204 and said he feels the Council should be voting on a deputy mayor after the first of the year when the newly elected officials take office. Mayor Tooley explained that language in the charter conflicts with this section of City code, and in those instances and upon advice from the City Attorney, the charter takes precedence. City Administrator Tina Volek noted that an ordinance amendment to correct the inconsistent language in Section 2-204 will be on the November 28<sup>th</sup> agenda. She also noted that having a deputy mayor in place is appropriate because of the timeframe where Mayor Tooley's duties as Mayor will end on December 31, 2005 and Mayor-Elect Tussing will not be formally sworn in as Mayor until the January 3<sup>rd</sup> council meeting.
- GREG KRUEGER OF 2815 2<sup>ND</sup> AVE N said he is director of the Downtown Billings Partnership. He spoke on Item #3 – the Wayfinding Plan. He described the project, noting that the downtown and surrounding neighborhoods contain cultural attractions that are often missed by visitors. He said the goal of the Partnership is to keep those visitors engaged in the downtown area and the Wayfinding Plan will achieve that goal. He urged the Council to support the request.
- SKIP GODFREY OF 4146 CLEVENGER spoke on the deputy mayor election. He asked if the councilmembers had asked for input from the councilmembers elect or the mayor-elect and was assured they had.
- CONNIE WARDELL OF 1302 24<sup>TH</sup> ST W spoke on the deputy mayor election. She noted the “intent statement” of the original charter (written 6 to 12 months after passage of the Charter) and said it speaks directly to the election of a deputy mayor that it is the duty of the new council at the first meeting of the year. She expressed concern that the Council is departing from a seventeen (17) year practice at a time when there is great conflict within the City. It also sends a bad message of what this Council intends to do for the next two years. She urged the Council to take this into consideration.
- JIM RONQUILLO OF 820 S. 28<sup>TH</sup> ST. said he is the councilmember-elect from Ward I. Mr. Ronquillo stated it is his personal opinion that the Council should follow the charter language regarding the election of a deputy mayor.

## **CONSENT AGENDA:**

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

- (1) New Current Model One Person Pot Hole Patching Unit.** (Opened 10/18/05). (Delayed from 10/24/05). Recommend Modern Machinery, \$127,950.00 including a 5-year warranty.
- (2) Telephone Water Meter Reading Management System.** (Opened 10/25/05). Recommend FirstPoint Energy Corp., \$68,000.00.
- (3) Private Contract No. 392: Phase II – King's Green Subdivision, Second and Third Filings.** (Opened 10/25/05). Recommend Empire Sand & Gravel Co. for Schedules I (Utilities) and II (Streets), \$357,013.00; A-1 Landscaping for

Schedule III (Landscaping), \$70,000.00 for a total bid cost of \$427,013.00; and approval of an additional \$132,868.42, plus a 10% contingency from the Affordable Housing Fund.

**(4) Hazardous Material Abatement, Building Demolition, Underground Storage Tank Removal and Related Construction Activities for the Properties located at: 114-116 N. 26<sup>th</sup> St. (formerly Daryll Apartments & Commercial Space) and 120 N. 26<sup>th</sup> St. (formerly Smith's Funeral Chapel). REBID.** (Opened 11/8/05). ~~Recommendation to be made at meeting.~~ Recommend C & S Construction, Inc., \$431,410.00.

**(5) Airfield Lighting Vault – Rebid. Schedule I – Airfield Lighting Control.** (Opened 10/25/05). Recommend Ace Electric, \$657,217.20.

**(6) Airport Terminal Kitchen Floor Replacement. REBID.** (Opened 10/25/05). Recommend Fisher Construction, \$79,800.00.

**(7) One (1) New 2006 Current Model Combination Hydraulic Sewer Jet Cleaner and Manhole Vacuum System, Truck Mounted.** (Opened 11/1/05). Recommend Western Plains Machinery Co., \$225,162.00.

**(8) Purchase of Six (6) Replacement Police Vehicles.** Recommend purchasing patrol cars from Bison Motor Company as determined per state bid. \$131,448.00.

**B. Amendment to Professional Services Contract, W.O. 03-25: Rimrock Road, HKM Engineering, Inc., \$39,199.00.**

**C. Approval of the CTEP Project Specific Agreement with Montana Dept. of Transportation (MDT) for the Gabel Road Bike/Pedestrian Project.**

**D. Approval of the Storm Water System Construction, Reimbursement and Maintenance Agreement with Paragon Homes, Inc., \$11,297.49.**

**E. Approval of the submittal of the *Bikes Belong* grant application for The Big Ditch Trail, \$10,000.00.**

**F. Acknowledging receipt of petition #05-10 to annex:** a 0.91-acre parcel of property located on the east side of Blue Creek Road at the intersection of Santiago Blvd, described as Tract 1C, C/S 566, Tract 1 2<sup>nd</sup> Amended, Jeffrey V. Essmann, petitioner, and setting a public hearing date for ~~11/28/05~~ 12/12/05.

**G. Approval of the use of \$50,000.00 in CDBG funds for storm drain improvements on Milton Road, contingent on Policy Coordinating Committee (PCC) approval of the road as a 2006 CTEP project.**

**H. Second/final reading ordinance 05-5349 for Zone Change #767:** a zone change from Residential 9,600 to Residential Professional, Community Commercial and Residential Multi-Family on a 39.4 parcel located northwest of the intersection of Molt Road, 62<sup>nd</sup> Street West and Rimrock Road described as Tract 6A, C/S 2465, Golden

West Partners, LLC, owner, Engineering, Inc., agent. Zoning Commission recommends approval and adoption of the twelve criteria.

**I. Second/final reading ordinance 05-5350 for Zone Change #768:** a zone change from Residential 9,600 to Residential Multi-Family and Residential 7,000 on property located northwest of the intersection of Molt Road, 62<sup>nd</sup> Street West and Rimrock Road described as Tract 5A, C/S 2465, Golden West Partners, LLC, owner, Engineering, Inc., agent. Zoning Commission recommends approval and adoption of the twelve criteria.

**J. Final Plat** of Bitterroot Heights Subdivision, 1<sup>st</sup> Filing.

**K. Final Plat** of ZooMontana Subdivision.

**L. Bills and Payroll.**

- (1) September 16-30, 2005 (Court)
- (2) October 7, 2005
- (3) October 14, 2005
- (4) October 21, 2005

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

Mayor Tooley separated Item F from the Consent Agenda. Councilmember Clark separated Item E from the Consent Agenda. Councilmember Brown separated Item G from the Consent Agenda. Councilmember Jones moved for approval of the Consent Agenda with the exception of Items E, F and G, seconded by Councilmember Ruegamer. Councilmember Gaghen asked if the City has projected possible costs for infrastructure relating to the zone change Items H and I on the Consent Agenda. She expressed concern due to the impact this would place on the Hagemans who are property owners in close proximity. Planning Manager Candi Beaudry said the zone changes are precursors to the subdivision process. At that time the subdivider will be required to pay his proportional share of upgrading the infrastructure in Rimrock and Molt Roads. Councilmember Boyer said Mr. Hageman is also concerned about the density of the proposed project. Ms. Beaudry said the zone change will dictate the allowable density which is greater than what is currently there. The Northwest Shiloh Plan and the West Billings Plan indicate that this is an area for higher densities and commercial development.

Councilmember Boyer asked if the traffic on Molt Road will be addressed. Ms. Beaudry said the future traffic from the proposed subdivision has not been addressed, but will be during the subdivision process where a traffic accessibility study will be required. Rimrock Road will remain a county road and the Commissioners have not asked that the road be upgraded. There are also no future improvements scheduled for Rimrock Road. Councilmember Clark asked if any portion of Molt Road will be in the City. Ms. Beaudry said state law is requiring the City to annex the adjoining roadway and portions of Molt Road are in the City. On a voice vote, the motion was unanimously approved.

Councilmember Jones moved for approval of Item E of the Consent Agenda, seconded by Councilmember Ruegamer. Councilmember Clark asked if the City has obtained any rights-of-way for the trail along the Big Ditch. Ms. Beaudry said the City has obtained all of the rights-of-way that are needed for this portion of the trail through parkland acquisition. The trail is currently graded and most of the adjacent property owners are aware of the proposed trail.

Councilmember McDermott asked for the status of the school sidewalk program that was to be updated to make use of next year's CTEP funding rather than use that funding on the trails. Public Works Director Dave Mumford said the criteria for the sidewalk program was presented at a previous work session. These criteria were utilized to proceed with three sidewalk projects for CTEP funding. He said this trail project will be competing for those funds. On a voice vote, the motion was unanimously approved.

Councilmember Jones moved for approval of Item F of the Consent Agenda with an amended public hearing date set for 12/12/05, seconded by Councilmember Boyer. On a voice vote, the motion was unanimously approved.

Councilmember Jones moved for approval of Item G of the Consent Agenda, seconded by Councilmember Ruegamer. Councilmember Brown asked if this project was the one that was turned down several times by the property owners. Community Development Manager Brenda Beckett said this area is now designated as eligible for CDBG funding on either side of Milton Road. Councilmember McDermott asked why a similar request in the North Park area was rejected on the grounds that it was against Council policy. Ms. Volek said the Staff would have to research that question. On a voice vote, the motion was unanimously approved.

## **REGULAR AGENDA:**

### **2. LABOR CONTRACT between IAFF Local 521 and City of Billings, 3-year term: 7/1/05 to 6/30/08. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

Councilmember Gaghen moved for approval of the labor contract between the IAFF Local 521 and the City of Billings, seconded by Councilmember McDermott. Deputy City Administrator Bruce McCandless said it was reported in the Gazette and on several radio stations that the proposed labor contract resolves a lawsuit between the City and the firefighters. He said the contract does not resolve the lawsuit. The lawsuit will only be resolved through the court system. This contract does address the same issues that are the subject of the lawsuit and resolves those issues going forward, but does not address past issues.

In response to earlier public comment Councilmember Gaghen said the Council did not have enough time to study the proposed contract prior to the work session, but enough pertinent questions were asked along with additional time to review the contract to give the Councilmembers the confidence to vote on this issue. Councilmember Clark noted that the Councilmembers have been involved with the contract negotiations all during the process. He said everyone has had to "give" a little during negotiations to get to this point and he thinks this is a good contract.

Councilmember Ruegamer said the Council was "not in the dark" about the contract negotiations because Mr. McCandless gave them numerous updates. He said he attended several updates and actual negotiations and feels everyone on the Council is well informed about the contract. He also noted that the questions at the work session were good and it was the Council's responsibility to ask them.

On a voice vote, the motion was approved with Councilmembers Brown, Ulledalen and Boyer voting "no".

**3. AUTHORIZATION of a request to Montana Department of Transportation (MDT) for the Wayfinding Sign experiment for four (4) years, beginning in November 2005. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

Councilmember McDermott moved for approval of the Staff recommendation, seconded by Councilmember Gaghen. Downtown Billings Partnership Executive Director Greg Krueger said this request is to get permission to do a "test" because the Wayfinding signs are not the standard and usual directional signs that are found in most cities. Because 27<sup>th</sup> Street is part of the state highway system, the state has jurisdiction over the signage. The Wayfinding package is under federal guidelines, so the contractor had to work with several entities to come to a resolution on a unique wayfinding signage system for the City. The requested authorization states the City is willing to test these signs (that will be placed within the Tax Increment District from North 27<sup>th</sup> Street to the interchange and several blocks off each side of North 27<sup>th</sup> Street) and obtain survey results on their effectiveness. There is a small chance that after the test the federal agency will require that the signs come down, but at least 99% of the requirements prior to putting the signs up will have been met. He said the four-year time frame was established by the federal agency. Mr. Krueger said this request only addresses authorization for the signs, funding requests is another step that will come before Council. On a voice vote, the motion was approved with Councilmember Brown voting "no".

**4. ELECTION of Deputy Mayor.**

Mayor Tooley said the timing for the election of the Deputy Mayor is different than it has been in the past. He said the Council has been advised by the City Attorney that with conflicts between the Charter and Council procedures, the Charter wording prevails. For this reason, the election of the Deputy Mayor will be held this evening. The following procedures will be followed: 1) nominations accepted (with a second), 2) a motion will be made to close nominations, 3) remarks from the nominated Councilmembers will be given, 4) roll call vote taken, and 5) the candidate receiving the majority of the votes will become the next deputy mayor.

Mayor Tooley called for nominations for deputy mayor. Councilmember Brewster nominated Councilmember Boyer, seconded by Councilmember Ulledalen. Councilmember Jones nominated Councilmember Clark, seconded by Councilmember Brown. Councilmember Gaghen moved to close the nominations, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

Councilmember Boyer said running a very difficult campaign in Ward IV was a test of her abilities. In the last 22 years she has run a business that involved a lot of public speaking, team building and motivational work. This assists her in representing the City

in a positive manner. She said the next two years will be difficult and some consensus building and compromise will be involved. This has been part of her practice during the past two years on the Council. Councilmember Boyer noted that she was instrumental with the MET Transit facility going forward.

Councilmember Clark said in his work he deals with a wide variety of people. He notes that this requires getting along with those one works with and he feels he has the ability to do that. He said he has had eight years of council experience and feels he has done a good job representing the people of Ward V. Councilmember Clark said he has the endorsement of both the newly elected councilmembers for the deputy mayor position. He said he is well prepared to do a good job.

On a roll call vote, Councilmembers Gaghen, McDermott, Brown, Clark and Jones voted for Councilmember Clark, while Councilmembers Brewster, Ruegamer, Veis, Boyer, Ulledalen and Mayor Tooley voted for Councilmember Boyer.

Councilmember Jones said his understanding of the language in the Charter states that the Council elects the deputy mayor. He does not understand how the Mayor can vote. Mayor Tooley said he consulted with the City Attorney about his voting position. City Attorney Brent Brooks said the Charter states that "the Mayor shall be presiding officer of the City Council and shall vote on all issues" and in his opinion does include a vote on the deputy mayor election. Councilmember Jones said there is a conflict in the Charter. Mr. Brooks said he would not classify this as a conflict in the Charter, but certainly the language could be better clarified in terms of the way the Charter provision is worded. He said the City is going by the statutory rule of construction that the state legislature has laid out where two provisions are read together to give both the same force and effect. One of the statutory rules is that where a specific provision is cited, such as "the Mayor shall vote on all issues" prevails over the more general one. He also noted that the answer to the Mayor being part of the Council is also in the statutory rule of construction.

Councilmember Brown said the state Constitution states that the legislature has no control over charter government. Mr. Brooks said one would still use the same statutory rules of construction when looking at any statute in the state of Montana including the state Constitution and the City charter.

Councilmember Gaghen noted that the odd-numbered vote is needed to bring a tie-vote to a conclusion. Councilmember Jones said he finds it ironic that there is an ambiguity in the rules that the Council must go by.

Mayor Tooley announced that Councilmember Boyer is the new Deputy Mayor.

**5. PUBLIC COMMENT on Non-Agenda Items – Speaker sign-in required.  
(Restricted to ONLY items not on the printed agenda; comments limited to 3 minutes per speaker.)**

- SKIP GODFREY OF 4146 CLEVENGER said he had questions and comments about the Council's intent regarding Mayor-Elect Tussing. Mr. Godfrey said he was concerned about the turmoil of the last twenty months and would like to see it end. He urged the Council to respect the will of the people as expressed at the last election and that nothing further would be pursued. He said the citizens of Billings do not wish to see any further expenditures of funds or legal actions relating to this issue.

- FRANCIS HARRIS OF THE TERRACE said she has heard a lot of outrage regarding the mayor-elect. She reminded the Council there was a contract and said she wondered what each party's intent was when they signed that contract. She urged the Council to honor the contract and suggested getting an outside legal expert on contract law if necessary.
- MARY WESTWOOD OF 2808 MONTANA AVE. said she was very concerned about City government. Ms. Westwood said she was looking for courage and honor in City officials and believes it exists in each councilmember and in Mr. Tussing. She asked the Council to put behind the atmosphere of animosity and intimidation that has overtaken our City. Ms. Westwood said she believes Mr. Tussing has the right to run for public office, but he also signed a contract. The honorable thing to do would be for him to return the money because she believes he becomes an employee of the City when he acts as Mayor of Billings. It is important and a matter of honor for Mr. Tussing to live up to his contract which would ultimately end this conflict. She asked the Council to find their courage and honor for the sake of the community.
- TOM ZURBUCHEN OF 1747 WICKS LANE said he agreed with Ms. Westwood. The position of mayor is a job where there is a salary, taxes are withheld and benefits are given. If his contract with the City is binding, he cannot work for the City with Tina Volek, he noted. The City should move forward in one direction now that the voters have spoken.
- WAYNE NELSON OF 2940 RONAN DR. said he is a board member of Young Families Early Head Start. He urged the Council to approve a lease with Young Families program for use of the North Park Naval Reserve Center. Their current temporary home at Beartooth School in the Heights does not allow them to serve the entire Billings' community. The Reserve Center is a centralized location and timely action by the Council will allow them to obtain grant funding for remodeling. He said Young Families Early Head Start provides no-cost services to teen parents, families of disabled children and low-income families with children ages 0-3. Their comprehensive services help strengthen families and help parents complete their education and become productive members of the community. Mr. Nelson said the services include child care, health and wellness, mental health, nutrition, family enrichment, child development, parent and pre-natal education and home visits. The program maintains strong partnerships in the community providing resources and support to the client base through the School District, Early Childhood Intervention, Maternal Child Health, United Way, CBG and many faith-based organizations. He encouraged the Council to read the letters of support for approval of the lease.
- CAROL WICKER OF 1208 EL DORADO DR said she is Executive Director of Secondary Education for Billings Public Schools. She spoke on the important service that Young Families Early Head Start provides to high school students in this community. During her tenure as a high school principal she saw many young students turn their lives around with the help of this program. The temporary situation with the location of the program in Beartooth School makes the entire program staff feel tentative each year. She said the location at the North Park Naval Reserve Center is much more convenient for all of the students than any other previous location. The program currently serves 13 students, but could be serving twice that number if there

was a more centralized location. She urged the Council to support their request for use of the Naval Reserve Center building.

- TERRI FISCHER OF 3854 AVE F gave personal testimony as to the importance of the Young Families Early Head Start program. She described her experience as a client of the organization from 1988 through 1989 and the difference it made in her life. It was her counselor at West High School that gave her mother the information about the program and she is so thankful that he did this. She said she loved the support of the staff and the other students at Young Families, realizing that she was not alone. After her daughter was born she would spend half of the day at West High School finishing her education while the Young Families staff took extremely good care of her daughter. She is now married, has three children and a good job at US Bank. Ms. Fischer said she wondered where she would be today if it had not been for the support of the Young Families program. She said education is so important and Young Families help keep girls in school providing the daycare and the support and motivation that is so important. It is important to give those young girls this start in life and urged the Council to consider the Naval Reserve Center at North Park to house Young Families.
- DOUG OSBORNE OF 2523 LONGFELLOW PLACE spoke on the settlement agreement concerning Mayor-Elect Tussing. Mr. Osborne said he was addressing the Council at the suggestion of Mr. Tussing. He said Mr. Tussing directed him to ask the Council if Mr. Tussing had broken the agreement. He asked the Council to pursue the City's rights under the contract, noting it had a right to get the money back and Mr. Tussing had a right to run, be elected and serve as mayor. Seeking a position with the City through the election process still violates the agreement and a vote to elect Mr. Tussing as Mayor was not a vote to excuse him from that obligation. Mr. Osborne said it would be an abdication of the Council's responsibility if they do not make some effort to enforce the agreement. What kind of message would the City be sending if it ignores this wrong because it is politically expedient to do so, he asked. Placing laws before men and principles before personalities are important doctrines. He asked the Council to uphold the citizens' rights under this agreement.
- CONNIE WARDELL OF 1302 24<sup>TH</sup> ST. W said she finds the discussion of the contract with Mr. Tussing bothersome, if the Council's intent was to disenfranchise voters and prevent a citizen from exercising his First Amendment rights to run for office just because he terminated his employment with the City.
- JOE WHITE OF 926 N. 30<sup>TH</sup> ST. noted that he dropped off a claim for damages last week at the City's Finance office and has not heard back from them. He asked that the status of the claim be checked. Regarding the Charter, he said there needs to be a charter reform and a citizen's commission to study the Charter.
- SKIP GODFREY (CONTINUED). Mr. Godfrey said he did not view councilmembers as employees, but elected public officials, noting there was a definite distinction.
- JIM RONQUILLO OF 820 S. 28<sup>TH</sup> ST. said he was recently elected to the Council and feels he will be an employee of the City. Mr. Ronquillo said he believes Mr. Tussing should return the settlement money to the City and that Mr. Tussing has the right to be elected mayor.

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

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

## COUNCIL INITIATIVES

- COUNCILMEMBER BREWSTER: Councilmember Brewster moved to ask the Deputy Mayor and several Councilmembers to visit with Mr. Tussing and ascertain if there is any room to reach an agreement on his contract, seconded by Councilmember Ruegamer. Councilmember Ulledalen asked the Legal Department to provide a memo with options and guidance to remedy this situation. That could be the basis for the Council to proceed. City Attorney Brent Brooks said he could provide a memo with the potential outcomes and possibilities. Councilmember Boyer said she has concerns about the message this will send to all other contractors that do business with the City. Councilmember Gaghen agreed with Councilmember Boyer and voiced concern that this may set a precedent in contractual terms. She suggested requesting an Attorney General opinion on the definition of an employee and what basis this has in this situation to bring clarity to this matter. Councilmember Ruegamer sees this as an unending set of questions that will only end when this Council says it ends. Councilmember McDermott said this situation needs an outside expert in contract law to review the contract and determine the course of action to take. She also agreed with Councilmember Gaghen on the AG opinion request. Councilmember Clark said he is receiving the same volume of calls and emails that were generated during the Tussing/Bauer negotiations that are now asking to have the contract clarified and to determine the outcome of the \$160,000.00 payment. Councilmember McDermott said it is not a good idea to ask Councilmembers to negotiate an amendment to the contract with Mr. Tussing without legal advice. Councilmember Brewster said this motion would just be a dialogue because there are more issues than just the money. Mr. Brooks said it would be advisable for the Legal Staff to develop a comprehensive memo considering the options because as a government in-house attorney the question becomes an ethical one as to who is the client, the taxpayers, the governing body or a future elected official. Councilmember Boyer said the Council needs this information before a committee is appointed. On a voice vote, the motion failed.
- COUNCILMEMBER VEIS: Councilmember Veis moved to have the Public Works Dept. clean out the Spring Creek Drain each spring, now that flow has been restored, seconded by Councilmember Ruegamer. Councilmember Veis said he put forth this initiative to document the required action needed for maintenance of the Spring Creek Drain. On a voice vote, the motion was approved with Councilmember Brown voting "no".
- COUNCILMEMBER CLARK: Councilmember Clark moved to direct the Legal Staff to research and present options on the Tussing contract, one of which is to get assistance from outside counsel, along with cost estimates, seconded by Councilmember McDermott. On a voice vote, the motion was unanimously approved.
- COUNCILMEMBER GAGHEN: Councilmember Gaghen moved to schedule a Council tour of the North Park Naval Reserve Center with the facilities manager present, seconded by Councilmember Clark. City Administrator Tina Volek noted that there are

issues with surrounding neighbors about Young Families being located there and also the concern about asbestos in the building that houses the firing range area. Councilmember Ulledalen said he would like the facilities manager to assess the building and its potential for use. Councilmember McDermott asked that the facilities manager take a look at the building in terms of expansion for the Police Department because of the excellent location close to Fire Station #1. On a voice vote, the motion was unanimously approved.

**ADJOURN** – With all business complete, the Mayor adjourned the meeting at 8:35 P.M.

THE CITY OF BILLINGS:

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

ATTEST:

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