

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

## **December 12, 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 Peggy Gaghen.

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

**MINUTES** – November 28, 2005. APPROVED as printed.

**COURTESIES** – None

**PROCLAMATIONS** – None

**BOARD & COMMISSION REPORTS** – None

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

- Interim City Administrator Tina Volek asked that Items C and D be separated from the Consent Agenda. She noted there was additional information for Council consideration.
- Ms. Volek noted additional information on Items I and J had been placed on the Councilmembers's desks this evening.
- Ms. Volek also noted that a copy of a letter from an individual who wished to address the Council later this evening. (Alternatives Inc./Dave Armstrong) had been distributed to the Council.

### **RECONSIDERATION:**

Councilmember Brewster MOVED to reconsider the Preliminary Plat for Bellevue Subdivision, (which was disapproved at the 11/28/05 meeting), seconded by Councilmember Veis. Councilmember Brewster said he had an opportunity to meet with people affected by the Council's previous decision to deny approval of the subdivision. He said they have asked the Council to reconsider its decision. He would be agreeable to delaying this item to the second week of January. On a voice vote, the motion to reconsider was unanimously approved. The item was added as Item #10.

**PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: #1, and #4 through #10 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.)

- FRANCIS HARRIS OF THE TERRACE, said she appreciated the Council's decision to seek an outside legal opinion on the Tussing contract. Ms. Harris said the mayor did not run the City and was only one vote on the Council. She said the mayor's primary duties were ceremonial in nature and to serve as a representative of the City.
- RON TUSSING, 3033 DEMARET PLACE, spoke on Items O and 9. In regard to the ordinance changing the election of the deputy mayor, Mr. Tussing said he felt the Council was changing the wrong document and needed to return to electing the deputy mayor after the 1<sup>st</sup> of the year as indicated in the charter's intent statement. In regard to his settlement agreement, Mr. Tussing noted that today was one day short of six months that the Council voted not to spend any more time or City resources on reviewing the agreement. He asked that the Council do something to get this question finally resolved. If it is determined that the contract has been violated, what is the remedy for all of the issues. Councilmember Veis asked Mr. Tussing who authored the contract. Mr. Tussing said his attorney drafted a contract that "did not see the light of day." A contract that was brought to his attorney's office by Mr. Bauer and City Attorney Brent Brooks eventually became the final contract.
- JIM RENO, NO ADDRESS GIVEN, of the Yellowstone County Commissioner's Office said the commissioners are in favor of the revised Interlocal Library Agreement.
- RON CROCKER, 2009 CLARK AVE., spoke on the Council's decision to hire outside counsel for the Tussing contract, noting that the Council is wasting taxpayer money to do so. The taxpayers elected Ron Tussing. He did not feel the City should spend any more than the \$300,000+ it has already spent on this matter.
- DIANA KAY BACHMAN, 2213 2<sup>ND</sup> AVE. N, said she is a member of the Animal Control Board. She asked the Council to approve the ordinance on the agenda this evening to 1) tighten up holes in the ordinance that present enforcement problems, and 2) assure the safety of small animals.
- MARY WESTWOOD, 2808 MONTANA AVE., said she would like to have the names of the individuals recommended for appointment to boards and commissions in advance of the meeting. Ms. Westwood supported the ordinance electing the deputy mayor and mayor pro tempore after the election, noting these positions gave continuity to the Council. She also spoke on Item 9 – the Tussing settlement agreement. Ms. Westwood said she has been waiting months for good legal advice and said outside counsel was necessary for sound, nonpolitical advice.
- KEVIN WALSH, 451 FREEDOM AVE., said he is the chair of the Animal Control Board. The Board has held a number of public meetings over the past two years on the proposed changes that are included in the ordinance this evening. The Board also spoke to the Council at two of its work sessions about these changes. Mr. Walsh said the Board felt the ordinance changes are basic legal requirements that will enhance and protect the health of the public and small animals. He asked the Council to approve the ordinance changes.

- CAROLL SMITH, 1828 ALDERSON, spoke on the Interlocal Library Agreement. He emphasized that control needed to stay with the Council and not the Library Board. Mr. Smith also noted his concern about controlling the ability to view pornography using Library computers. He provided a handout of material to the Council on pornography addiction and Internet porn.
- FRANCIS HARRIS RETURNED. Ms. Harris said one of her daughters uses the computers at the Library a great deal of the time. She noted her daughter observed only one occasion where a man was viewing pornography on the Internet and Library staff intervened immediately. She asked the Council to use common sense with this issue.
- DAVID BERNHARDT, 426 12<sup>th</sup> St. W, spoke on the second reading of the ordinance electing the deputy mayor. He said the original Charter addressed this issue over 20 years ago in its Intent Statement. Mr. Bernhardt felt the Council needed to follow the language in the “intent” of the Charter and questioned why the Council was changing it at this time. He also noted the administrative section of the City Code which provided guidance for the Council and which stated the deputy mayor would be elected after the first of the year. Mr. Bernhardt was concerned the Council was changing the Charter, adding that the Intent Statement should never have been separated from the Charter. He said the Intent Statement is important to laypeople that may have a difficult time understanding the Charter.
- CAROL BERNHARDT, 426 12<sup>th</sup> St. W, agreed with her husband, the previous speaker. She said this year there were only two new councilmembers elect and a mayor elect that did not have a chance to vote on the deputy mayor. She reminded the Council that in some years there could be as many as six – five councilmembers elect and a mayor elect that do not have a chance to vote on the deputy mayor who may be “running the City” during the mayor’s absences. Ms. Bernhardt said she did not understand why this Council was in such a hurry to make this change.
- DOUG OSBORNE, 2523 LONGFELLOW PL., said he believed Mr. Tussing was in breach of the settlement agreement he signed and agreed to, noting only employees are eligible for various benefits offered by the employer which is available to the mayor. “Being elected to the job is a different avenue to the same result and should not excuse anyone from their contractual obligations,” he said. Mr. Osborne urged the Council to uphold the City’s rights under the agreement.
- COUNCILMEMBER DON JONES noted that the Library’s policy is to allow pornography to be viewed on Library computers under certain guidelines. He asked that additional information be provided during discussion of the Interlocal Library Agreement item this evening.

## **CONSENT AGENDA:**

### **1. A. Mayor’s Appointments:**

	Name	Board/Commission	Term	
			Begins	Ends

1.	Lyn McKinney	Board of Adjustment	01/01/06	12/31/09
2.	Troy Boucher	Board of Adjustment	01/01/06	12/31/09
3.	Leon Pattyn	Board of Adjustment	01/01/06	12/31/09
4.	Tom Holden	Board of Appeals-Architect	01/01/06	12/31/09
5.	Mike Schmidt	Board of Appeals-Electrical	01/01/06	12/31/09
6.	Russell Fagg	Board of Ethics	01/01/06	12/31/09
7.	Michael Dennis	Board of Health	01/01/06	12/31/08
8.	Cary Brown	City/County Planning Board	01/01/06	12/31/07
9.	Kathleen Gilluly	Community Development Board	01/01/06	12/31/09
10.	Sandy Weiss	Community Development Board	01/01/06	12/31/09
11.	No recommendation	Community Development Board	01/01/06	12/31/07
12.	Skip Godfrey	EMS Advisory Commission	01/01/06	12/31/09
13.	Reese Holle	EMS Advisory Commission	01/01/06	12/31/09
14.	Mike Hennessy	Housing Authority	01/01/06	12/31/10
15.	Erica Limberhand	Housing Authority	01/01/06	12/31/07
16.	David Jernigan	Human Relations Commission	01/01/06	12/31/09
17.	Ken Nicholson	Parking Advisory Board	01/01/06	12/31/09
18.	Scott Wetzel	Parking Advisory Board	01/01/06	12/31/09
19.	Pamela Godfrey	Parking Advisory Board	01/01/06	12/31/09
20.	Wanda Walker	Parks/Rec/Cemetery Board	01/01/06	12/31/09
21.	Mike Erickson	Parks/Rec/Cemetery Board	01/01/06	12/31/09
22.	Carol Green	Police Commission	01/01/06	12/31/08
23.	Ron Wilson	Public Utilities Board	01/01/06	12/31/09
24.	Patrick Dawson	Public Utilities Board	01/01/06	12/31/09
25.	Doug Kary	Traffic Control Board	01/01/06	12/31/09
26.	Watt Willet	Traffic Control Board	01/01/06	12/31/09
27.	Brian Roberts	Yellowstone Historic Preservation Board	01/01/06	12/31/07

11\* - Unexpired term of Dorothy Nelson (At Large)

**B. Awards:**

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

(Opened 11/22/05). (Delayed from 11/28/05). Recommend Rule Steel, \$48,580.00.

**(2) Parking Enforcement Handheld Computers and Management Software.** (Opened 11/29/05). Recommend Cardinal Tracking, Inc., \$58,192.00.

**C. Amendment #4, Professional Services Contract, W.O. 00-15: Grand Avenue Widening from 8<sup>th</sup> Street West to 12<sup>th</sup> Street West, Kadrmas, Lee & Jackson, \$93,946.77.**

**D. Amendment #1, Cobb Field Stadium Design and Feasibility Study Consultant Contract, HNTB Montana Inc., \$20,000.00.**

**E. Amendment #1, Non-Commercial Aviation Ground Lease**, Agri-Systems Inc., increase leasehold size, \$895.00/year.

**F. Amendment #1, Non-Commercial Aviation Ground Lease**, Sarpy Creek Land Company, LLC, change the leasehold legal description and location by moving the leasehold twenty feet to the north, \$0.00.

**G. Contract for Professional Services**, Wastewater Plant Air Quality Permit, Brown and Caldwell, \$32,751.00.

**H. Grazing Lease** with Aaron Meyer, 205 acres adjacent to the Landfill, \$615.00/year, term: 5 years with option to renew for one additional 5-year term.

**I. W.O. 05-10: Stewart Park Trail – Billings**, Federal Aid No. STPE 1099(40), Contract for Professional Engineering Services, Engineering, Inc., \$51,043.00. (Delayed from 11/28/05)

**J. W.O. 05-12: Big Ditch Trail – Billings**, Federal Aid No. STPE 1099(49), Contract for Professional Engineering Services, Engineering, Inc., \$33,356.00. (Delayed from 11/28/05)

**K. Resolution 05-18373** authorizing construction bids for SID 1372: Summerhill Subdivision for construction of curb and gutter, sanitary sewer mains, sanitary sewer services, water mains, water services, and necessary street improvements fronting lots on Winter Green Drive, West Antelope Trail, and Antelope Place.

**L. Second/final reading ordinance 05-5351 providing** that the BMCC be amended by revising portions of Section 4-400 of said code; updating language for definitions, small animal permits, noisy animals, potentially dangerous animals, quarantine procedures, dogs at large, vaccination of small animals for rabies, impoundment, penalty requirements and issuance; establishing a deadline for registration of a dangerous animal and providing proof of vaccination.

**M. Second reading ordinance 05-5352 for Zone Change #770:** A zone change from Residential Manufactured Home to R-6,000 on a 1.858 acre tract of land described as Lots 21A & 22A of Pemberton Subdivision and located at North Lakeview Drive & Lake Elmo Drive. Don and Diane McLennaghan, applicants and Tom Mulford, agent. Approval of the zone change and adoption of the determinations of the 12 criteria.

**N. Second reading ordinance 05-5353 for Zone Change #771:** A text amendment to BMCC Sections 27-703, 27-705(a), 27-705(b) and 27-707(b); City sign code definitions, signs permitted and exempt signs, adoption of the revisions as an amendment to the zoning regulations and setting a time period for the regulation to be effective.

**O. Second reading ordinance 05-5354 amending** Section 2-204 of the BMCC, providing that the Deputy Mayor and Deputy Mayor Pro Tempore be elected at the City Council's first regular meeting following each City general election.

**P. Preliminary Plat** of Copper-Falcon Subdivision generally located west of Molt Road, south of Phipps Park, fronting the north side of Rimrock Road, between 6<sup>th</sup> and 66<sup>th</sup> Streets West, Golden Acres Partners, owners, conditional approval of the plat and adoption of the findings of fact and conditions of approval.

**Q. Preliminary Plat** of Copper Ridge Subdivision, 2<sup>nd</sup> Filing, generally located north of Rimrock Road and about 1/4 mile west of the intersection of Molt Road and Rimrock Road, Gary E. Oakland, owner, conditional approval of the plat, approval of the variance and adoption of the findings of fact.

**R. Preliminary Plat** of Kingston Place Subdivision, generally located south of the intersection of Wicks Lane and Bench Boulevard, directly north of Anchor Avenue, Kings Heights LLC, owners, conditional approval of the plat, approval of the variances and adoption of the findings of fact.

**S. Bills and Payroll.**

- (1) November 14, 2005
- (2) November 18, 2005

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

Mayor Tooley separated Items C and D from the Consent Agenda. Councilmember Clark separated Items A, I and J from the Consent Agenda. Councilmember Veis separated Item H from the Consent Agenda. Councilmember Ruegamer separated Item O from the Consent Agenda. Councilmember Jones moved for approval of the Consent Agenda with the exception of Items A, C, D, H, I, J and O, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

Councilmember Jones moved for approval of Item A of the Consent Agenda, seconded by Councilmember Brewster. Councilmember Clark made a substitute motion to delay Item A to 12/19/06, seconded by Councilmember Gaghen. Councilmember Clark said the reason for the delay was that the Council did not receive the recommendations until just recently and did not have time to review the appointments. On a voice vote, the substitute motion was unanimously approved.

Councilmember Jones moved for approval of Item C of the Consent Agenda, seconded by Councilmember Brewster. Public Works Director Dave Mumford presented information pertaining to this item that was received this past Friday. Mr. Mumford said there are two options for the widening of Grand Avenue between 8<sup>th</sup> and 12<sup>th</sup> Streets West. There are five property owners with which the City has not been able to negotiate right-of-way agreements. Condemnation proceedings on those properties are being contemplated on several properties as an item for the December 19<sup>th</sup>

meeting. This amendment and the associated cost would redesign the area in question. He noted this section of the road is in great need of reconstruction and the majority of the property owners are in favor of the project. Mr. Mumford asked the Council for guidance with this delaying development. He noted the five properties are the Dairy Queen property and the vacant lot next to it owned by Mr. Reger (who said his properties are not for sale), and properties at 1144 Grand, 1142 Grand and 1112 Grand where the owners are concerned that they are not receiving fair market value. Interim City Administrator Tina Volek said there are several options for the Council. The first would be to decide whether condemnation proceedings are appropriate and schedule an item for the December 19<sup>th</sup> meeting. A second option would be to approve this item which would eliminate the condemnation item. She said another alternative would be to delay this item to the December 19<sup>th</sup> meeting but it would need to be dealt with prior to the condemnation item.

Councilmember Veis made a substitute motion to table this item indefinitely, seconded by Councilmember Ruegamer. On a voice vote, the motion was approved with Councilmember Ulledalen voting "no".

Councilmember Jones moved for approval of Item D of the Consent Agenda, seconded by Councilmember Brewster. Interim Parks and Recreation Director Gene Blackwell said the proposed contract extension calls for at least fourteen (14) meetings including evening meetings and a City-wide public forum to receive public input. Those meetings would be conducted during the period from January 23<sup>rd</sup> to February 2<sup>nd</sup> with a final report delivered by the end of February. He said the consultants have requested that the City adopt an option for the basic ballpark for further study during the process. This should be completed as soon as possible because of the tight timeline to arrive at the final proposal and an election date. An option recommendation would be presented at the Council work session on January 17<sup>th</sup> which would be based on the recommendations from the Cobb Field Steering Committee and the Parks, Recreation and Cemetery Board. The Steering Committee has made a recommendation and the Park Board will consider it at its December meeting. Mr. Blackwell said the recommended option will be presented at the January 23<sup>rd</sup> Council meeting. The final consultant report will come in late February and would outline a final proposal for the ballpark that meets the minimum requirements of the option and includes any amenities that have support from the community.

Action on the bond issue would need to take place on March 13<sup>th</sup> in order to place it on the June 7<sup>th</sup> ballot. He assured the Council that updates would be provided to the Council throughout the process. Ms. Volek said the consultants are recommending that the Council select an option so that the public forum can focus on the amenities. Councilmember Boyer said she would prefer that the community also give input for the option choice. Councilmember McDermott agreed with Councilmember Boyer's concerns and said the most important decision will be on the options. She would like to receive public input on the choice between the two options. Ms. Volek suggested that the motion be amended to include in the contract discussion of the options at the public meetings. Councilmember Ruegamer amended the motion to include in the contract a clarification to get input from the public on the two options, seconded by Councilmember McDermott. Councilmember McDermott said the Council must consider the two proposed options that address where the stadium will be built.

She emphasized it does not mean that the Council is committed to spending \$12 Million on a stadium. Councilmember Boyer asked what would happen if during the public input process another option is brought forward. Mr. Blackwell said that would be included in the final report.

Councilmember Veis amended the motion to include in the contract options 1 & 2 and any other options the public may come forward with, seconded by Councilmember Boyer. City Attorney Brent Brooks advised that because there are two amendments on the floor, this amendment acts as a substitute amendment. On a voice vote, the amendment was approved with Councilmembers Gaghen and McDermott voting "no".

Councilmember Brewster asked if the participants at the public meetings will be informed that the Council is open to other options. Mayor Tooley replied "yes". On a voice vote on the motion as amended, the motion was approved with Councilmember Jones voting "no".

Councilmember Jones moved for approval Item H of the Consent Agenda, seconded by Councilmember Brewster. Public Works Director Dave Mumford said the grazing rate on small pastures averages from \$2.50 and \$3.00 per acre. The City chose the \$3.00 amount. The lessee is the prior property owner (the property is adjacent to his current property) and the City has a good working relationship with him. On a voice vote, the motion was unanimously approved.

Councilmember Jones moved for approval of Item I of the Consent Agenda, seconded by Councilmember Brewster. Councilmember Clark asked if the City is covered on this contract with respect to liability insurance. City Attorney Brent Brooks said the current contract form included the required liability insurance. He added that the City is looking at current industry practices and may revise the contract form as noted in the additional information placed on the Council desks. On a voice vote, the motion was unanimously approved.

Councilmember Jones moved for approval of Item J of the Consent Agenda, seconded by Councilmember Ruegamer. Councilmember Clark said his question was answered during the previous discussion. On a voice vote, the motion was unanimously approved.

Councilmember Jones moved for approval of Item O of the Consent Agenda, seconded by Councilmember Brewster. Councilmember McDermott noted that a recent court case established that the voters of Billings had not voted on the Intent Statement portion of the Charter and the District Court judge was reluctant to use any of the guidance in that statement because of that. Mayor Tooley said the positions of deputy mayor and mayor pro tem have traditionally been chosen at the first meeting of the new year since the Charter went into effect. But, he noted, the Charter language is very clear in stating that the deputy mayor must be selected at the first meeting after the general election, which is the first meeting in November. This conflict has been troubling. In order to be faithful to the Charter it was decided that the position should be voted on in November. He said the action this evening includes the deputy mayor pro tempore, which is not indicated in the Charter. The motion before the Council is whether both the deputy mayor and the deputy mayor pro tempore should be elected at the same time at the first meeting in November after the general election.

Councilmember Ruegamer noted that when he took his seat on the Council, the deputy pro tempore was chosen at the first meeting and he was unfamiliar with any of

the candidates and was unsure of whom to vote for. He said after a six-month period he would have been in a better position to make that choice. Councilmember Jones said other Councilmembers may not be comfortable with this requirement, but it is the way it is supposed to be done. Councilmember Gaghen noted that there would be several days between December 31<sup>st</sup> and January 3<sup>rd</sup> where the City would technically be without a mayor and this would bridge that gap. On a voice vote, the motion was approved with Councilmembers Brewster, Brown and Ruegamer voting "no". Mayor Tooley noted that the ordinance would not go into effect for 30 days after approval on second reading.

## **REGULAR AGENDA:**

**2. PUBLIC HEARING AND RESOLUTION 05-18374 annexing 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 (and all adjacent right-of-way of Montana Highway #416 (Blue Creek Road)), Jeffrey V. Essmann, petitioner, Annex #05-10. (Delayed from 11/14/05 at request of petitioner.) Staff recommends approval of the public services report and resolution. (Action: approval or disapproval of Staff recommendation.)**

Planning Manager Candi Beaudry said this annexation request is for a parcel that is located south of the Yellowstone River on Blue Creek Road (immediately south of the Blue Basket). The annexation also includes the portion of the right-of-way that fronts the parcel. The parcel is very small (1 acre) and currently vacant with the remainder of the 1.709-acre annexation being the Blue Creek Road right-of-way. She said the parcel is surrounded on three sides by City limits and is zoned Neighborhood Commercial with the proposed land use being commercial. She also noted that water service extends into Blue Creek Road nearby.

Ms. Beaudry said the annexation complies with the Annexation Policy except that the property is not currently within the annexation limits, which is a critical point. It is identified for potential annexation after 2011 because of the single access across the river, a the concern of the Police and Fire departments. She noted that there was no opposition to the annexation from City departments during the comment period and City services may be safely and efficiently provided within the next year. Ms. Beaudry said this parcel probably would have been included in the Annexation Policy had the Staff been aware of the petitioner's desires.

Ms. Beaudry said the Staff recommendation is to approve the annexation (which is inconsistent with some of the Council's recent decisions) with the following conditions. She said the Annexation Policy allows the Council to condition an annexation to bring it into conformance. 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. Beaudry said the Council may choose to delay this annexation until the Annexation Policy is modified according to the recommendations of the updated Water and Sewer Master Plan. She added that this annexation will help reimburse the cost of the water and sewer infrastructure. Councilmember Boyer said she would rather wait until the Water and Sewer Master Plan is updated and the Annexation Policy is modified to include the parcel before approving the annexation.

The public hearing was opened. SENATOR JEFF ESSMANN, 3130 MCMASTER ROAD, asked the Council to approve the annexation petition, recognizing that it violates the Annexation Policy. He said the policy is only a guidance tool. He said the parcel is small but would help to retire existing debt for City services. The lot lies between Cedar Park Subdivision and the central part of the City. Senator Essmann said it is his intention to develop the property in conformance with zoning regulations. Councilmember Brown said he understood that a water business was being considered for the parcel. Senator Essmann said he is examining the area for a water-filling station, a car wash and potential retail rental spaces.

There were no other speakers. The public hearing was closed. Councilmember Gaghen moved for approval of the Staff recommendation, seconded by Councilmember Brown. Councilmember Boyer made a substitute motion to delay the annexation until the Council reviews the Annexation Policy and the Water and Sewer Master Plan, seconded by Councilmember Ruegamer. Councilmember McDermott said this property is within the "circle of the City's annexation" and even though it is several years out, the policy states that the City will encourage in-fill development during certain periods of time. This should not mean that all annexation should stop. The City has spent millions of dollars in infrastructure in this area and needs to begin to recoup that investment. She supports the annexation.

Councilmember Jones said it was never the intention of the City to wait several years to annex property after spending millions of dollars on infrastructure in the area. He noted there is plenty of water to supply this 1-acre parcel. On a roll call vote on the substitute motion, the motion failed 3-8 with Councilmembers Ruegamer, Boyer and Ullendalen voting "yes" and Councilmembers Gaghen, McDermott, Brewster, Brown, Veis, Clark, Jones and Mayor Tooley voting "no".

Mayor Tooley said the Annexation Policy was a valid process, but when he hears the City Staff classifying this parcel as one that "would have been included", he is inclined to believe that this annexation "fits the spirit of the Annexation Policy." Because of that he will vote in favor of the annexation. On a voice vote, the motion was approved with Councilmember Boyer voting "no".

Mayor Tooley called for a recess at 7:50 P.M.  
Mayor Tooley reconvened the meeting at 8:00 P.M.

**3. PUBLIC HEARING AND RESOLUTION 05-18375 renaming 34<sup>th</sup> Street West between Colton Boulevard and Grand Avenue to Zimmerman Trail. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

There was no Staff report. The public hearing was opened. MARY WESTWOOD, 2808 MONTANA AVENUE, said she supports the name change as it will provide clarity and honors the historic trail that has been part of the community for a long time.

There were no other 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.

**4. COMMITTEE RECOMMENDATION for amending BMCC Sections 18-302 and 27-601 by adding definitions, providing for the allowance of restoration project vehicles and providing for a procedure whereby property owners may store such vehicles for limited periods of time, establishing an effective date and providing a severability clause. Citizen's Committee on Antique and Classic Car Restoration recommends approval. (Action: approval or disapproval of Committee recommendation.)**

There was no Staff report. Councilmember Brewster moved for approval of the Citizen's Committee recommendations, seconded by Councilmember Boyer. Councilmember Brewster asked if the last sentence in Section 1 regarding the prohibition of storage of vehicles in any front or side yard or driveway applies to those residents who cannot access their backyards for that purpose. Planning Director Ramona Mattix said it would preclude them from parking in those designated areas.

Councilmember Brewster asked for clarification of the sentence in Section 2 that related to someone standing at ground level from outside of the property being able to view the vehicle or vehicle parts. Ms. Mattix said the view must be measured from the front of the property and not over a fence next door to the property. Councilmember Brewster suggested that should be clarified in the second reading.

Councilmember Brewster asked what type of insurance would be required in the section that requires insurance on the vehicle being restored. Ms. Mattix said that has not been defined, but it should relate to insurance that would cover damage to the view. City Attorney Brent Brooks agreed that the type of insurance should be defined based on the risk involved. He said this would be clarified prior to the second reading. On a voice vote, the motion was unanimously approved.

**5. INNER BELT LOOP PLANNING STUDY. Staff recommends supporting the study. (Action: approval or disapproval of Staff recommendation.)**

Planning Director Ramona Mattix said a consultant worked on a corridor for the Inner Belt Loop looking at the topography for possibilities for a road. This transportation link would be between the Billings Heights and Montana Highway 3. They studied the length of the road, possible cost with the design they were given and any cultural activities that would prohibit construction. The proposed corridor starts in the Rehberg Ranch Subdivision and continues north and east to the Skyview High School because that was the most cost-effective route. She said the Staff is recommending support for this study so that the mayor may bring the recommendation to the Policy Coordinating Committee (PCC) for adoption. Ms. Mattix noted that a number of community meetings about the proposal were held for residents of the Rehberg Ranch Subdivision.

No motion or second were made. The Council approved the study by consensus.

**6. REVISED DRAFT INTERLOCAL LIBRARY AGREEMENT. Ad Hoc Library Interlocal Agreement Committee recommends approval of the revised draft agreement and submitting the approved agreement to the Board of County Commissioners. (Action: approval or disapproval of Ad Hoc Library Interlocal Agreement Committee recommendation.)**

Councilmember Ruegamer moved for approval of the Interlocal Library Agreement, seconded by Councilmember Gaghen. Councilmember Jones amended the motion to go back to the original language that the Council approved in Section 9 only (i.e. the Council has the final say on Library policies), seconded by Councilmember Brown. Councilmember Boyer said she has heard from constituents that do not want the Council responsible for annual reviews, but that this should be the responsibility of the Library Board. She added that the County Commissioners did not approve the language change either. Councilmember Jones said he believes that the elected body (the Council) should make the final decision on all policies and procedures. Many of the boards already have that arrangement. Right now the policies are set by an unelected body that can "take the policies anywhere they desire" with no input from the Council, he added.

Councilmember McDermott asked if there are any other boards that act in the manner that is being proposed in this agreement. City Attorney Brent Brooks said there are some boards that have limited authority, such as the Board of Adjustment. Councilmember Boyer said constituents feel that the Council would be "micro-managing" the Library and there could be censorship issues involved. She said this is why the County Commissioners rejected the agreement. Councilmember Gaghen asked the Library Director to address this issue and the issue of children accessing pornographic or inappropriate sites via computers at the library.

Library Director Bill Cochran said this agreement process was begun because of the confusing language in the prior agreement (which predates the Charter) that did not clarify the Board's responsibilities. The policy-making authority has always been with the Library Board here as well as in libraries throughout the state. In all but two cases this is by statute. He noted that those libraries still have to appear before governing bodies and apply for their funding. The Library Ad-Hoc Committee recommended to the Council a new Interlocal Agreement that changed a number of things, not including policy authority that clarified what the Board's responsibilities were.

Mr. Cochran said the limits for children using the computers include no Internet access or filtered access and is monitored through the use of birthdates for the users. If the user declines to enter their birth date or is under the age of 13, only filtered access is granted. If the user is between 13 and 18 years of age, optional parental guidance permission may be requested by the parent and is verified by Library Staff. No users over the age of 18 are permitted in the Children or Teen areas because those are areas where it is expected that the users are minors. All monitors in the adult area are recessed and the user must lean over the screen under the desk top to view it, adding that the filter is optional in this area. This is a policy that the Library Board adopted and is state-of-the-art for libraries while still 1) maintaining the free access to constitutionally-protected speech for adults, and 2) protecting people passing by from being offended. Mr. Cochran said there have only been three statements of concern (the most recent 5 years ago) about

the Internet issue and those persons were invited to speak to the Library Board about their concerns.

Councilmember Jones noted this Council has budgetary authority over the Library making it a hybrid and not like most of the other libraries in the state. He said when a Council has budgetary authority, they have control over all things.

Councilmember Ruegamer said it appears that the Library Ad-Hoc Committee and the Library Board have recommended the original motion. It also appears that the City will lose members of the Library Board if it begins to "censor or govern" them. The County Commissioners have rejected the amended agreement and the City could lose \$400,000 in funding in the process. He added that the current system has been in place and working for a long time, so he cannot understand why the Council wants to change all of this. Councilmember Gaghen agreed with Councilmember Ruegamer and said these issues have been studied carefully. The constitutional right is certainly a big part of the issue, but this model still has the safeguards that are appropriate, she said. Councilmember Brewster noted that all the policy body is asking for is approval or disapproval authority of the policies.

On a roll call vote on the amendment, the motion failed 5-6 with Councilmembers Jones, McDermott, Brewster, Brown and Clark voting "yes" and Councilmembers Gaghen, Ruegamer, Veis, Boyer, Ulledalen and Mayor Tooley voting "no". On a voice vote on the original motion to approve the agreement, the motion was approved with Councilmembers McDermott, Jones and Clark voting "no".

**7. 2005-06 CTEP PROJECT APPLICATIONS. Staff recommends the Council formulate a recommendation so the Mayor can take it to the Policy Coordinating Committee (PCC) meeting. (Action: approval or disapproval of Staff recommendation.)**

There was no Staff presentation. Councilmember Veis moved for approval of the Planning Board recommendation, seconded by Councilmember Ruegamer. Councilmember McDermott said over the years the CTEP funding proposals have been narrowed down to projects concerning trails with the exception of the school route program. She said the City needs to get back to having more variety in the proposals because some very important projects have been neglected because of the concentration on the trails program.

Councilmember Brewster suggested that the Council should make this yearly recommendation an agenda item early in the spring to discuss next year's allocation ahead of time. Councilmember McDermott made a substitute motion to follow the Technical Advisory Committee (TAC) recommendation, seconded by Councilmember Clark. On a roll call vote, the substitute motion was approved 8-3 with Councilmembers Gaghen, McDermott, Brewster, Brown, Ruegamer, Clark, Jones and Mayor Tooley voting "yes" and Councilmembers Veis, Boyer and Ulledalen voting "no".

**8. RESOLUTIONS adopting three (3) property tax incentive programs and operating guidelines:**

(A) **RESOLUTION 05-18376 creating a Tax Incentive Program for New and Expanding Industry.**

- (B) **RESOLUTION 05-18377 creating a Tax Incentive Program for Remodeling, Reconstructing or Expanding Buildings or Structures and repealing Resolution 89-16126.**
- (C) **RESOLUTION 05-18378 creating a Tax Incentive Program for Remodeling, Reconstructing or Expanding Certain Commercial Property.**

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

Deputy City Administrator Bruce McCandless said the Council requested that Staff bring forward resolutions that would adopt the four property tax incentive programs described in a work session and conform those programs to programs that the County already operates with Big Sky Economic Development Authority's management of the programs. The four incentives allowed by state law are:

- 1) MCA 15-24-1401 – new or expanding industries,
- 2) MCA 15-24-1501 – remodel, reconstruct or expand existing buildings,
- 3) MCA 15-24-1502 – remodel, reconstruct or expand certain existing commercial buildings, and
- 4) MCA 15-24-1601 – rehabilitate, restore, expand or new, qualifying construction of historic properties.

He said all programs allow either full or partial property tax exemption and apply only to the new or added taxable value of the project and not to the existing value. These incentives also only apply to the local levies. He noted there is no resolution proposed for the incentive that applies to historic properties because the Yellowstone Historic Preservation Board has requested delaying action until after the first of the year to review the criteria that would apply to these tax incentive applications and how that will affect its work load.

Mr. McCandless asked the Council to give the Staff direction on the definition of industry. He said state code defines industry as "a firm that engages in but is not limited to manufacturing, extraction, or processing Montana raw materials into products, etc." He said the Council can either apply the definition conservatively (only applies to the stated instances) or liberally as was done in the instance of the County in reference to the Bresnan facility on Monad Road.

He said MCA 15-24-1401 – new or expanding industries is a ten-year tax incentive program that is phased in over a period of years and applies only to local levies. He said there would be a public hearing before the Council acts on each application prior to granting the tax incentive. The MCA 15-24-1501 – remodel, reconstruct or expand existing buildings applies to commercial and residential buildings that increase taxable value by 2.5% and is for a period of 5 years with the 5<sup>th</sup> year being the only year the incentive applies (at 100%). This resolution would repeal a 1989 program adopted by the Council and requires a 2.5% value increase and a \$500,000 investment. He said MCA 15-24-1502 – remodel, reconstruct or expand certain existing commercial buildings that increase their taxable value by at least 5% is similar to the other programs and would require a public hearing before the Council can act on each application before the tax incentive is granted.

Mr. McCandless reminded the Council that these resolutions only establish the programs and no incentives are granted to any particular business. He said there is little

legislative history with these programs and the legal department cannot speculate why the requirements differ. City Attorney Brent Brooks noted all of the tax incentive programs are discretionary and each application must be approved on a case by case basis. Ms. Volek noted that the Council should consider each resolution separately.

Councilmember Boyer moved for approval of the resolution creating a Tax Incentive Program for New and Expanding Industry applied liberally, seconded by Councilmember Ruegamer. Councilmember Veis said his desire would be for the Council to be liberal in the definition of the word industry. Councilmember Ulledalen and Brewster both agreed. Councilmember Brown said he does not agree because the City should not be subsidizing some businesses with taxpayer's money and not others. He said the increase in business does not justify this action. On a voice vote, the motion was approved with Councilmember Brown voting "no".

Councilmember Boyer moved for approval of the resolution creating a Tax Incentive Program for Remodeling, Reconstructing or Expanding Buildings or Structures and repealing Res. #89-16126, seconded by Councilmember Gaghen. On a voice vote, the motion was approved with Councilmember Brown voting "no".

Councilmember Boyer moved for approval of the resolution creating a Tax Incentive Program for Remodeling, Reconstructing or Expanding Certain Commercial Property, seconded by Councilmember Gaghen. Councilmember Brown said the word "certain" seems to exclude some businesses. He stated this is the "good ol' boy network" which costs a lot of jobs in the City and state, bringing the economy down. Councilmember Brewster noted that the Bresnan facility has brought 100 plus jobs to an area that was not generating any jobs or taxes. There is now a significant amount of tax revenue because of that business. Councilmember Brewster said if Bresnan had not received the tax incentives from Billings they would have got them from Butte, Colstrip or Casper, WY.

Councilmember Jones asked if it was possible to change the five-year exemption. Mr. McCandless said the 1501 program is the only one that specifically allows the governing body to modify the percentages, but even in that one the number of years cannot be changed. He said the code does not allow the Council to change either the years or the percentages in the 1502 program. Councilmember Ruegamer said he agreed with Councilmember Brewster that the City must either find ways to compete with other cities to attract businesses or "we will be out of the game" and be just a retail or fast food industry city. On a voice vote, the motion was unanimously approved.

**9. LEGAL SERVICES to review the Tussing Settlement Agreement.**  
**Recommendation to be made at meeting. Staff recommends a contract with either Robert Planalp (Bozeman) or Tom Singer (Billings).**

Deputy City Administrator Bruce McCandless said Staff has received information from two attorneys that were contacted about the Tussing settlement agreement. The two individuals that have agreed to work with the City are Bob Planalp, a principal in a Bozeman firm and Tom Singer, a Billings Attorney. Both parties have forwarded a proposed letter of engagement (which outlines the scope of services) to the City after discussion of the issues involved. The Staff is asking the Council to choose one of the individuals to perform the services. Both of the firms will charge \$100 to \$175 per hour for its services, which is the norm for this type of work.

Councilmember Ulledalen moved to approve the contract with Tom Singer, seconded by Councilmember Boyer. Councilmember McDermott said she prefers to use someone from outside the City. She noted that Mr. Planalp has experience with employment issues in the cities of Three Forks and Ennis. Councilmember McDermott made a substitute motion to employ Robert Planalp, seconded by Councilmember Gaghen.

Councilmember Boyer said she has received a lot of emails that favor hiring a local attorney. Councilmember McDermott said Bozeman is fairly local and yet still retains an "outside" attorney status which gives the City a certain degree of independence. Councilmember Ulledalen said the Billings attorneys are professional enough to give the City a valid and honest opinion of the issues. Councilmember Gaghen said there is a benefit from getting advice from someone outside of the community.

Councilmember Brewster asked if either attorney can complete this task by next week. Mr. McCandless said both attorneys have been informed about the timeframe and have expressed reservations about being able to meet the deadline. The Staff has asked them to do their best to complete the work. Councilmember Brewster said he wants finality on this by the end of the year and if the attorneys cannot complete the work, he would rather they not be engaged. Mr. McCandless said that can be a provision in the letter of engagement. Councilmember McDermott noted if it takes a special meeting the Council is prepared to do that.

Councilmember Jones asked what the intent of the Council is once it receives the information from the attorney. Councilmember Brewster said the intent is to get some advice to make the decision on what the Council will do next. He said Mr. Tussing's attorney has alleged that there is no cause and if this attorney concurs then "we're done." Councilmember Brown said he thinks a judge should make the ruling. Councilmember McDermott said this attorney would advise the Council as to whether it has an enforceable contract and what the next step should be. This Council must make a decision by the end of the year, she added.

Mr. McCandless said the Staff has asked the attorneys to give their opinion particularly in regard to paragraph nine in the settlement agreement, the provision concerning employment and re-employment of Mr. Tussing. The opinion will concern whether the mayor is an employee or if there is any other part of the agreement that may be violated by Mr. Tussing taking office as mayor. The advice, based on review of the state statutes, the Charter, City Code and case law would then include options for the City.

Councilmember Ulledalen said the Council must be sure to carefully define the scope of work in terms of guidance. Mr. Brooks said it would be wise to define the scope of work just like any other contract. Councilmember Ulledalen also said a certain dollar limit should be set. Councilmember Brewster said all he wants to know "is the mayor an employee." Councilmember Ulledalen said the Council needs further information that pertains to the probability of prevailing if a court action is taken. Mr. McCandless said the City Attorney has agreed to advise him in defining the scope of work. He said he would send the Council a draft of the Letter of Engagement as soon as it is completed.

Mayor Tooley said it is his personal intention to extend the courtesies of the office to his successor and hopes Mr. Tussing's request to the Council to resolve all the issues including any remedies is honored. For this reason he will support the substitute motion.

On a roll call vote for the substitute motion, the motion failed 5-6 with Councilmembers Gaghen, McDermott, Brown, Clark and Mayor Tooley voting "yes" and Councilmembers Brewster, Ruegamer, Veis, Boyer, Ulledalen and Jones voting "no". On a voice vote for the original motion to engage Tom Singer, the motion was approved with Councilmembers Jones, Veis and Ruegamer voting "no".

**LATE ADDITION:**

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

Councilmember Brewster moved to place the reconsideration motion of Bellville Subdivision on the January 9<sup>th</sup> agenda conditioned on approval of the developer, seconded by Councilmember Gaghen. City Attorney Brent Brooks said the Council would need a tangible document from the developer agreeing to the extension of time. On a voice vote, the motion was unanimously approved.

**10. 11. 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.)

- DAVE ARMSTRONG, Administrator of Alternatives, Inc., 3109 1<sup>st</sup> AVE N, spoke on the methamphetamine treatment program for women proposed for the current Howard Johnson (HoJo) Inn facility. Mr. Armstrong noted they have entered into a buy/sell agreement to purchase the HoJo Inn on S. 27<sup>th</sup> St. Alternatives plans to renovate the facility and reopen it as a women's community correctional center, consisting of a 65-bed prerelease unit for women offenders, a Billings Assessment Center for 30-40 women with 45-day stays, and a 40-60 bed methamphetamine treatment program for women, providing 9-12 months of inpatient treatment followed by 6 months in a pre-release center. He added that this facility will bring over 40 new jobs to the area with a budget of \$3.5 Million. In answer to Councilmember McDermott's question, Mr. Armstrong acknowledged that the facility would be non-profit and would be exempt from property taxes. He also noted that their plans will proceed regardless of the success or failure of the RFP for the methamphetamine treatment program. Funding will mostly come from the state with a small portion from the Federal Bureau of Prisons (2 or 3 women offenders of 140). Councilmember McDermott expressed her concern that there are too many facilities of this type in the downtown area. Mr. Armstrong said the location at the HoJo Inn is conducive to their proposal because it is surrounded by services that are needed to operate the facility and there is no other facility in the area that offers the extensive services that are required with a methamphetamine drug treatment program. He urged the Council to approve a resolution endorsing the establishment of a methamphetamine treatment program in Yellowstone County. Ms. Volek noted this resolution is needed before the grant can be considered by the state. Councilmember McDermott requested a public hearing to allow the concerns of the

neighborhood to be expressed. Mr. Armstrong asked that the Council schedule this item with a public hearing at the January 9<sup>th</sup> meeting.

- CHARLES BROOKS, 2226 FAIRVIEW PLACE, spoke in support of the Alternatives Inc request for the methamphetamine program for women. Mr. Brooks, an advisory board member of Alternatives, Inc., noted statistics show a 25% increase in methamphetamine use by women. This program would serve a critical need in the community, as well as provide 40 additional jobs over and above the number currently employed by the HoJo. The program structures the participant's lives for 6 months, with periodic drug testing. They must have a job and pay a certain amount for their treatment from their earnings. He said Alternatives, Inc. is a 501c3 corporation run by a board of directors. Mr. Brooks recommends this program to the Council because the most rapid growth of this problem is among females. This is a "golden opportunity" to combat a major problem with a well-run facility and satisfy a need in the community. He asked the Council to approve a resolution to allow the start of this program.
- CARROLL SMITH OF 1828 ALDERSON, questioned the legality of a 3-minute limit on speaking. Mr. Smith also objected to the "lies" told this evening by Mr. Cochran of the Library, specifically in regard to letters regarding the Internet policy being sent. He said he requested a copy of the policy, was told it was being revised and subsequently never received a copy of the policy when finalized.
- JIM RONQUILLO, 820 S. 28<sup>th</sup> ST., Chair of the South Side Task Force, asked the Council to hold off on a decision on the Alternatives Inc. request for the methamphetamine facility at the HoJo Inn facility until the South Side Task Force had a chance to meet with Mr. Armstrong for further information on the proposal.
- GREG POHLE, 109 LEXINGTON DR., of Community Solutions Inc., said they provide misdemeanor probation supervision services, drug and alcohol testing, anger management and chemical dependency evaluations and out-patient treatment also. Mr. Pohle noted they have provided some of these services to Municipal Court. He asked the Council to look at their program offerings and issue a letter of support for those court services. He said this is a new company offering programming for 120 people. City Attorney Brent Brooks suggested a memorandum of understanding would be more appropriate for any program services they would provide for the court.
- JOE WHITE OF 926 N. 30<sup>TH</sup> ST, asked what the City is planning to do with the former Smith Funeral Chapel property. Mayor Tooley informed Mr. White that the City purchased the property for future expansion of the Park 2 parking garage.

## COUNCIL INITIATIVES

- COUNCILMEMBER McDERMOTT: Councilmember McDermott moved to direct Staff to investigate contracting the animal control program to the private sector, including a "no kill" program, seconded by Councilmember Brown. Councilmember McDermott said the City is spending a great deal of money on this program which is the responsibility of the County who has "opted out" this year. The controversy surrounding the ordinance changes makes investigating the possibility of contracting the program out a potentially better solution. On a voice vote, the motion was unanimously approved.

- COUNCILMEMBER ULLEDALEN: Councilmember Ulledalen moved to RECONSIDER Item O, seconded by Councilmember Clark. Councilmember Ulledalen said he feels the election of the deputy mayor pro tem was left with a "loose end". He would like the voting to be held during the first meeting in January. On a voice vote for the reconsideration, the motion was approved with Councilmembers Gaghen and McDermott voting "no". Councilmember Ulledalen moved to not change the day of the election of the Deputy Mayor Pro Tem – keeping it at the first meeting in January, seconded by Councilmember Clark. On a voice vote, the motion was unanimously approved. (See discussion with Item O).
- COUNCILMEMBER BREWSTER: Councilmember Brewster moved to ADD the Alternatives, Inc. request to the January 9<sup>th</sup> meeting with a public hearing, seconded by Councilmember Boyer. On a voice vote, the motion was unanimously approved.
- COUNCILMEMBER BREWSTER: Councilmember Brewster moved to direct Staff to prepare a response to the Community Solutions request (Greg Pohle) regarding misdemeanor probation supervision for Municipal Court, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

**ADJOURN** – With all business complete, the Mayor adjourned the meeting at 10:10 P.M.

THE CITY OF BILLINGS:

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

ATTEST:

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