

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

## **December 19, 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 Dave Brown.

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

**MINUTES** – Not available at this time.

**COURTESIES** -- Mayor Tooley introduced his wife Joanie Tooley, in the audience this evening. Mayor Tooley recognized councilmembers-elect Jim Ronquillo and Joy Stevens, also in the audience. Councilmember Gaghen expressed appreciation to outgoing Councilmembers McDermott and Brown and also to Mayor Tooley for their years of service and leadership to the community and to the Council.

**PROCLAMATIONS** – None

**BOARD & COMMISSION REPORTS** – Greg Krueger, 2815 2<sup>nd</sup> Ave. N, Executive Director of the Downtown Billings Partnership spoke on behalf of the Partnership, expressing his appreciation for the work of Councilmembers McDermott and Brown and Mayor Tooley, their dedication and the hard work they have done for the City. Mr. Krueger also introduced the DBP's "Purple People" and presented a jacket to Mayor Tooley on their behalf.

**ADMINISTRATOR REPORTS – Tina Volek**

- Ms. Volek noted that Item 2 is expanding the boundaries of Ward I, not Ward II. A correction was provided to the Council in the Friday packet.
- Item 12 was corrected to indicate new recommendations for CD Board appointments and a typographical error. This correction was also provided to the Council in the Friday packet.
- A copy of the presentation for Item 5 was placed on the Council desks this evening.
- A copy of a letter from Philip Keith was also placed on the Council desks this evening, in regard to Item 10.
- Ms. Volek also noted that the attorney's report for Item 11 is not yet completed. A contract has been executed, but Mr. Singer has not had time to complete his report. She proposed the Council hold a special meeting at 4:00 p.m. on December 30<sup>th</sup> to handle this item. An executive session will be included at the meeting to advise the Council on a litigation report.

**AGENDA CHANGE:** Councilmember Veis moved to change the order of the agenda – moving Item 11 to Item 2, seconded by Councilmember McDermott. On a voice vote, the motion was unanimously approved.

**PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: #1, and #6 through #12 ONLY. Speaker sign-in required.** (Comments offered here are limited to 1 minute per speaker.)

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

- SARAH GRAU, 2619 WOODY DR., spoke on Item 8. She thanked the City for recovering the money that belongs to the City and not the Police Foundation. She asked the Council to authorize City Administration to investigate the Foundation. Ms. Grau noted that the Police Foundation has no affiliation with the Police Department or the City of Billings and she finds it unconscionable that they received this money in the first place. Mayor Tooley noted that the Foundation has been cooperating with the City and will allow the City to examine its records.
- LAMAR CLARK, 17 N. 31<sup>ST</sup> ST., spoke on Item 9. He said he has been in law enforcement for a number of years and works with Municipal Court regularly. He expressed his thanks for the job Judge Knisely does, stating, “She does not practice ‘folk’ law; she practices the law.” He said she does a wonderful job and the City is lucky to have her.
- LINDA HEISLER, 2205 ROSEWYN LN., said she went to work for the court several years ago. She now works with the drug court program as a coordinator. The program was instituted by the judge with grant monies the judge obtained. She said the drug court has processed 50 clients this year and the judge currently sees 30 on a regular basis, addressing employment and medical issues. Ms. Heisler said she supports the judge and the drug court program.
- VAUGHN RODANCE, 1008 POLY DR., said he is a volunteer in Municipal Court. Mr. Rodance said the volume of work makes it one of the busiest places in Billings, noting it was an eye-opener to him as a volunteer. He asked the Council to consider the salary increase for the judge.
- DEBBIE SCHOEPPE, 2909 GREGORY DR., said she volunteered at the Animal Shelter. She noted the volunteers were instructed that any donations were to be directed to the Police Foundation. Ms. Schoeppe said it is distressing to find out now that monies given to the Foundation for the Animal Shelter did not go to the shelter. She asked that this matter be looked into.
- SHELBY SULLIVAN, 2140 GEORGE ST., said she is from the Billings Animal Coalition. The coalition collected \$70,000 for the Animal Shelter, not for the Police Foundation. Ms. Sullivan said they met with former administrator Kristoff Bauer in April about this matter and have not heard anything back. She said they want accountability for the money.
- HOLLY HUENNEKEN, 3216 RIMROCK RD., said her mother gave \$10,000 to the Animal Shelter. The money was also routed through the Foundation. She said she wondered where the money went and how it was used. Ms. Huenneken said she has come before this body before and asked where the money went and has heard nothing about it.

- BRENDA EMORY, 519 S. 35<sup>TH</sup> ST., said she has worked in animal rescue elsewhere. Her first experience with the Animal Shelter was rude so she sought work elsewhere. She stated that Animal Shelter Superintendent Dave Klein and Mary Wagner directed all funds go to the Police Foundation because this would assure that the shelter would receive the funds. She also saw adoption funds at the shelter not being accounted for. Ms. Emory said she believed the Animal Shelter books should be audited as well.
- KELLY SONDENO, FROMBERG, MT, said the donations for animals are given by people that care about animals. The donations are made from the heart and are desperately needed by the shelter. Ms. Sondeno said she was also concerned about where the money was going and how it was being used.
- MARY FITZGERALD, 3007 17<sup>TH</sup> ST. W., expressed her concern about Animal Shelter donations going to the Police Foundation and the co-mingling of funds and possible fraud. She said she has donated to the Animal Shelter and was directed to go through the Foundation.
- JOLENE RIECK, 470 CONSTITUTION, spoke on the Heights Neighborhood Plan. She briefly explained that the process was accomplished by a 15-member volunteer committee and urged the Council to support the plan. This committee established a planning process that best served their community. She outlined the process. Ms. Rieck also thanked Lora Mattox of the Planning Dept. for her assistance with the plan and planning process.
- MARY WESTWOOD, 2808 MONTANA AVE., said she was concerned about the Animal Shelter donations and a little confused about the process. Ms. Westwood said she was involved with fundraising for the Skatepark. An account for Skatepark donations was established in the Finance Dept and all donations directed to that account, not a separate foundation. She said she is hopeful that a better system will come out of the investigation.
- LYNN COUGHLIN, 835 GEORGE CIRCLE, spoke on Item 9. She said she understood it was tabled because of concern about court operations. Ms. Coughlin said she is the longest-serving staff person in Municipal Court. She was not asked about court operations during the investigatory process. She gave several statistics concerning the court operations. She also spoke briefly about the judge's other obligations, which sometimes take her away from the bench.
- LISA BAZANT, 2717 MILES AVE., spoke on Item 9. She referred to an article in the *Billings Gazette* that compared salaries of other municipal court judges in the state. Ms. Bazant said the case loads are not the same as those in other municipal courts. The municipal court judge also has the same responsibilities as other department heads (including hiring and firing and budgetary responsibility) and should be given equal standing and pay. She said Judge Knisely does an exemplary job and in six years is entitled to some increase in salary.

## **CONSENT AGENDA:**

1. A. **Approval of Consultant Selection** of CTA Architects/Engineers for architectural and engineering design services for the Downtown MET Transit Operations Center.

**B. Modification of Trust Indenture** with Securities Building LLC, establishing reductions to its revolving loan as portions of the building are sold.

**C. Corporate Certificate of Authority** for procurement card approval, authorizing application for *One Card*, a new procurement card through U.S. Bank.

**D. Authorization** of new signatory documents with US Bank to reflect the change of mayor.

**E. Assignment** of West End Hangar Ground Lease from Julia Holdings LLC to First Interstate Bank to secure financing, \$0.00.

**F. Correction** to Professional Services Contract, W.O. 05-15: Howard Heights Storm Drain, Phases I & II, Interstate Engineering, Inc., \$125,700.00.

**G. Professional Services Contract** with PBS&J for the West Billings Flood Hazard Assessment, \$297,600.00.

**H. Bills and Payroll.**

(1) November 25, 2005

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

There were no separations of the Consent Agenda. Councilmember Gaghen moved for approval of the Consent Agenda, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

**REGULAR AGENDA:**

**2. LEGAL ADVICE on Tussing Settlement Agreement.** Staff recommends the Council review the attorney's report and direct Staff regarding further action. **(Action: direction to Staff.)**

Councilmember Veis moved to delay action on the legal advice report to a special meeting on December 30<sup>th</sup>, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

**2.3. PUBLIC HEARING AND FIRST READING ORDINANCE expanding the boundaries of Ward I to include recently annexed property described as 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).** Staff recommends approval. **(Action: approval or disapproval of Staff recommendation.)**

There was no Staff report. The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember McDermott moved for

approval of the Staff recommendation, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

**3. 4. PUBLIC HEARING AND FIRST READING ORDINANCE amending BMCC Chapter 26: Water and Wastewater Utilities; revising public utilities to public works, revising definition of “special benefit facilities”, revising definition of “harmful contribution”, revising remedies and penalties under Section 26-610 to allow the City to recover costs associated with discharge violations. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

There was no Staff report. The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Brewster moved for approval of the Staff recommendation, seconded by Councilmember Ruegamer. Councilmember Jones asked if the prevailing wage requirement must be included in the provisions relating to the compensation issues between the City and developers when the utilities are privately installed and a reimbursement is involved. Public Works Director Dave Mumford said all public works projects require prevailing wage rates be applied. City Attorney Brent Brooks confirmed that even though the project is privately installed it is still considered a public works project where prevailing wage rates are required. On a voice vote, the motion was unanimously approved.

**4. 5. PUBLIC HEARING AND FIRST READING ORDINANCE amending BMCC by repealing Chapter 23, Sections 23-101 through 23-1501, declaring them to be null, void and of no effect, and adding a new Chapter 23 with sections to be numbered 23-101 through 23-1107, providing comprehensive subdivision regulations. Planning Board recommends approval. (Action: approval or disapproval of Planning Board recommendation.)**

Subdivision Coordinator Juliet Spaulding said the adoption of the Growth Policy in 2003 triggered an update of the Subdivision Regulations. The State Legislature in 2005 also mandated procedure updates as well through Senate Bill 116 – changes in procedure to local review of subdivisions and Senate Bill 290 – changes in timing of submittal of water/sanitation requirements. The updates also address outdated standards, common review issues and over-used variance requests.

She said the Planning Staff drafted the new regulations and conducted inter-departmental reviews from March 2004 through June 2005. A Technical Review Committee (comprised of members of the engineering and survey community, realtors and key City Staff) reviewed the draft at a series of meetings from mid-June through mid-August. The Planning Board held a public hearing on November 22, 2005 and is making a recommendation to the Council this evening. No members of the public spoke at that Planning Board hearing.

Ms. Spaulding said the main amendments to the regulations were:

Chapter 3: Subdivision Review Procedures

- 1) Review procedures for 5 different types of subdivisions: major, first minor, subsequent minor, subdivision qualifying for expedited review, amended plats
- 2) Integrates new procedural requirements from SB 116:
  - Pre-application meeting
  - Pre-application completeness review

- Pre-application sufficiency review
- Subsequent public hearing option (for major plats only)

3) Establishes submittal deadlines for final plats based on the Council's meeting schedule.

Chapter 4: Development Standards

1) Updates to address recent design standard issues where there are common variance requests

Examples: 2 access points to major and subsequent minor subdivisions, reduction in ROW widths, and requiring boulevard sidewalk

Chapter 7(New): Cluster Subdivisions and Planned Neighborhood Developments

1) New to regulations; intended to provide incentives for innovative designs and preservation of open space

Chapter 10: Dedication of Parks, Trails & Open Space

1) Updates to Park Plan Dedication Chapter include:

- Provisions for condo/multi-family development dedication
- School land dedication
- Lineal parkland standards
- Standards for parkland within storm water detention facilities

Chapter 11: Administrative Provisions

1) Updated Variance Requests: subdivider must provide justification

2) Procedures for amendments or corrections to plats and associated documents at different stages

Appendices

1) Example documents for Applications, Submittal checklists, Evasion criteria, Flood Hazard Evaluation, Document templates used by developers

2) Requirement for submittal of a Geotechnical Report at preliminary plat stage

Ms. Spaulding said the Planning Board has reviewed the proposed Subdivision Regulations and recommends adoption of the regulations as amended.

The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Brown moved to delay action to 1/9/06 to investigate the discrepancies between the state and federal law relating to manufactured housing, seconded by Councilmember Jones. Councilmember Jones asked if the Council could get a matrix of the variance changes; what they were and what is proposed. On a voice vote, the motion was approved with Councilmembers Ullendale and Boyer voting "no".

**5.6. PUBLIC HEARING AND FIRST READING ORDINANCE amending BMCC Sections 2-213, 2-214, and 2-222, updating procedure for amending agenda at the council meeting, moving board and commission reports to the work session and updating public participation language. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

Deputy City Administrator Bruce McCandless said proposed procedural changes include:

Section 213 – Proposed Agenda

- Regular meeting agenda items may be added that are ministerial or not of significant public interest

Section 214 – Regular meeting order of business

- Removes Board and Commission reports from the Regular Meeting agendas
- Places the consent agenda following the regular agenda items

Section 222 – Work Session rules of procedure

- City Administrator prepares an agenda and minutes shall be taken
- Board and Commission reports are moved to the Work Session
- Public comment period included (currently practiced)

Agenda Review Meetings

- Section 213 presently provides “an agreed process” to review the draft agenda and request changes. This gives the Council the latitude to establish the agenda review meetings without amending the City code. A motion to state the date, time, and place to hold the meetings and purpose is all that is required. If the Council chooses not to continue those meetings, a motion is the only requirement to discontinue them.

Work Session

- Section 222 does not permit motions or votes
- Council could allow motions and votes that direct staff only on items that will return to Council for final action at a future regular meeting. If the Council chooses to do that, a motion to add this change to the ordinance would be required.

Councilmember Brown asked if Robert's Rules of Order are included in the changes. City Attorney Brent Brooks said Robert's Rules of Order is the default guide for the meetings, but the Council is free to set rules of procedure according to the code.

Councilmember Boyer asked if the Council could change the provision concerning the consent agenda following the regular agenda. Mr. McCandless said the ordinance was prepared with the instructions from the Council at the work session and a motion would be required to change that portion back to the way it was. City Administrator Tina Volek noted that the computer system that indexes the agenda is set up to receive data and prepare minutes as the agendas are currently configured. The Technology Replacement Committee has endorsed the concept of purchasing a new system, but that would be an extraordinary expense this year or a special item added to next year's budget. She also noted that clerical support will be required for the minutes that will be required at the work sessions if the section is approved that permits motions and votes. This will involve hiring additional staff to attend the meetings because the current staff is fully occupied with preparing agendas and minutes.

Councilmember Ulledalen said that taking back the agenda setting will eliminate some of the questions and issues that slow down regular council meetings as they will be dealt with at the agenda setting meeting. He said his thoughts were that this should eliminate the separation of consent items and the time spent deliberating on the issues. He said keeping the consent agenda ahead of the regular items, if this is more reasonable, is not a problem to him.

Councilmember Boyer expressed concern for the agenda setting meeting to be held on the same night as the Council meetings. Councilmember Clark said during his former time on the Council, having the agenda setting meetings on Tuesdays worked fairly

well. Mayor Tooley said he was on the Council at that time and agreed with Councilmember Clark. Councilmember McDermott said she has worked under the current process and noted that when Dennis Taylor was the City Administrator he established a Tuesday agenda meeting that was poorly attended by the Councilmembers. She said she agrees that the Council needs to have more input into the agenda setting process.

Councilmember Ulledalen said his biggest concern is that the Council functions efficiently as a group. He said he is not as concerned about the need for motions and votes at the work session meetings, noting that issue was suggested as an opportunity to meet the need for efficiency. He said additional cost requirements and structure are not worth pursuing that. Councilmember Brown said any Council meetings where the proceedings are not televised are a problem because the people are uninformed.

The public hearing was opened. MARY WESTWOOD, 2808 MONTANA AVENUE, said she attends many meetings and is trying to figure out if adding a meeting is the solution. She said she approves of the idea of moving the consent agenda to the end of the meeting, realizing that it makes difficulties for staff. The public who come to speak at the public hearings should be considered first. She is concerned about moving the board and commission reports to the work sessions because it is currently at a time when the general public can hear what those groups do. Ms. Westwood said the public does watch the televised meetings and she does not think the City should ever make that difficult.

There were no other speakers. The public hearing was closed. Councilmember Ruegamer moved for approval of the Staff recommendation, seconded by Councilmember McDermott. Councilmember Ulledalen clarified a statement that he previously made about the board and commission reports at Council meetings. He said the Council as a whole should pay more attention to and have more interaction with and feedback from the boards and commissions. He said the work session format would allow that.

Councilmember Clark amended the motion to move the agenda meeting to Tuesday at 5:30 P.M., seconded by Councilmember McDermott. Councilmember Brewster said this does not have to be part of the ordinance and is more appropriate for the council initiative portion of the meeting. City Attorney Brent Brooks verified that the ordinance is currently drafted to allow the councilmembers that flexibility without including this request as an amendment. Councilmember Clark withdrew his amendment and Councilmember McDermott withdrew her second.

Councilmember Brewster noted that the Council really does set agenda items through the council initiative process. The items that Staff adds to the agenda are operational issues and planning items that are brought forward through the council goal-setting process. To say that the Staff sets the agenda alone is not accurate. He said he feels the purpose of the agenda meeting would be for the councilmembers to review items on the Consent Agenda that should be moved to the regular agenda because more information is required, changes or amendments are desired or a councilmember wants the opportunity to vote "no" without using the separation process. Councilmember Ulledalen said another point is that the councilmembers would have the opportunity to prioritize the items on the agenda and place important issues earlier in the agenda. Councilmember Gaghen noted that many task forces meet on Tuesday evenings and this may be a problem for councilmembers who wish to attend those meetings and the agenda meeting.

Councilmember Jones amended the motion to place the Consent Agenda at the beginning of the meeting (i.e. leave as it currently is), seconded by Councilmember Boyer. Councilmember Jones said many people come to the meetings for consent agenda items only and leave after that is approved. Facilitating the consent agenda at the agenda setting meetings will assist that portion of the process. On a voice vote on the amendment, the motion was unanimously approved.

Councilmember Brewster amended the motion to allow motions and votes to only give Staff direction at the work sessions, seconded by Councilmember Ruegamer. Councilmember Brewster said the Staff can only get clear direction from the Council through the majority vote process. He said the ordinance should be drafted to state that Council can only act on items on the work session agenda that only give direction and always have to come back to the Council for a vote at a regular meeting. This will satisfy the need for public information and Staff direction. Councilmember Veis noted that this amendment would require the additional expense of hiring additional Staff to take minutes at those meetings. On a voice vote for the amendment, the motion was unanimously approved. On a voice vote, the motion as amended was unanimously approved.

**6.7. RESOLUTION 05-18379 OF INTENT TO ADOPT the *Billings Heights Neighborhood Plan* as part of the Yellowstone County/City of Billings 2003 Growth Policy. Planning Board recommends approval. (Action: approval or disapproval of Planning Board recommendation.)**

Neighborhood Planner Lora Mattox said the following procedures were included in the completion of the *Billings Heights Neighborhood Plan*:

- 1) May 20, 2004 – Neighborhood Planning Kickoff meeting was held to announce this planning effort and to ask for resident volunteers to guide the process.
- 2) Since that time fifteen residents have met monthly to identify and discuss issues facing the Heights.
- 3) The Steering Committee developed a Heights web page ([www.bilingsheights.com](http://www.bilingsheights.com)) that offered information of the process such as agendas, minutes and surveys.
- 4) A resident/business survey of the Heights was completed through an online survey with distributed hard copies. Approximately 157 surveys were completed.
- 5) Several large neighborhood meetings were held to discuss the issues (January, September and October 2005).
- 6) September 22, 2005 – Discussion session with the County Commissioners on the Neighborhood Plan.
- 7) November 22, 2005 – Public hearing with the Yellowstone County Planning Board.

The following are the focus areas that are included in the Plan:

- 1) Transportation (including Inner or Outer Belt Loop)
- 2) Land Use
- 3) Utilities and Infrastructure
- 4) Housing
- 5) Parks & Recreation
- 6) Community Facilities
- 7) Public Safety

- 8) Economic Development
- 9) Schools & Education

Councilmember Brown asked how many people participated in the process. Ms. Mattox said during the year and a half process approximately 5 to 7 regular members came to every meeting. These meetings were open and always included public input. Councilmember Brewster said he attended meetings in the beginning of the process and noted that it is difficult to keep people engaged in that lengthy of a process. Community groups and the task force were involved in the process to the end. Ms. Mattox also noted that the *Gazette* helped to get information to the public through articles in its Friday Height's addition to the *Gazette*. Surveys were also distributed to all of the businesses on Main Street, she added. She added that the Heights Task Force was very involved in the process.

Councilmember Veis moved for approval of the Planning Board recommendation to adopt the *Billings Heights Neighborhood Plan*, seconded by Councilmember Gaghen. Councilmember Brewster said he received varied comments and most of the criticism came from folks that had not invested time in the process. He said it is a great plan and gives the Heights a framework that it has not had before. Councilmember Brown said he sees the map as an encroachment on property rights so he will vote against the measure. Councilmember McDermott said neighborhood planning has to start somewhere and this plan is a good start. On a voice vote, the motion was approved with Councilmember Brown voting "no".

**7.8. AFFORDABLE HOUSING FUND APPLICATION from homeWORD for a \$300,000.00 grant, to be funded from the HOME/CHDO Reserve and transfer of additional funds as needed from the Affordable Housing Fund. CD Board and Staff recommend approval. (Action: approval or disapproval of CD Board and Staff recommendations.)**

There was no Staff report. Councilmember Boyer moved for approval of the \$300,000 grant request from homeWORD and the transfer of additional funds from the Affordable Housing Fund to the Community Housing Development Organization (CHDO) reserve in order to fully fund the request, seconded by Councilmember Gaghen. Councilmember McDermott said homeWORD has done a wonderful job with this project and has been very open to recommendations from the neighborhood. There is no doubt of the need for affordable housing and this is a perfect location close to public transportation and the downtown.

Councilmember Clark asked for confirmation that the transfers are all legitimate. Interim City Administrator Tina Volek confirmed that they are. She noted that the Council had asked that Staff negotiate a payment in lieu of taxes (PILT) with this organization. She said homeWORD did gladly comply and their total assessment will be \$1,115.00 initially, with a \$25.00 per year increase. This represents 1% of the project cost.

Councilmember Gaghen added that this will guarantee that the units will remain affordable for 46 years. The fact that there is a reserve fund for maintenance and repair in place is commendable. On a voice vote, the motion was approved with Councilmember Brown voting "no".

Mayor Tooley called for a recess at 8:00 P.M.  
Mayor Tooley reconvened the meeting at 8:05 P.M.

**8. 9. ACCEPTANCE of donations to the Animal Shelter from the Louise Hobeck Trust and Walmart totaling \$47,072.90. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

Councilmember Ulledalen moved for approval of the Staff recommendation, seconded by Councilmember Ruegamer. Interim Police Chief Rich St. John addressed some of the earlier public comments regarding the co-mingling of funds with the Police Foundation and the Animal Shelter. He thanked Ms. Grau for bringing this issue to the attention of the Staff. He said errors were found and corrected. The monies that the Council is acting on this evening were given back to the City from the Foundation. He also noted that clear delineations have been established between the Police Foundation and Animals Shelter donations.

Interim Chief St. John said he is not concerned about what has happened in the past because a new process has been established. He indicated some misperceptions needed to be clarified, such as:

- 1) It is not true that the City cannot offer 501(c)3 tax benefits to donors, this has been remedied.
- 2) It is not true that donations will supplant General Fund money for the Animal Shelter.
- 3) It is not true that donated monies will be used elsewhere.

He said the Police Foundation is a group of wonderful volunteers; prominent business people who help raise money to assist the Police Department. They have agreed to an audit by the City which will commence in January.

Councilmember McDermott asked why the City is paying for an audit of a private foundation and weren't they required to perform and pay for audits periodically. Ms. Volek said since the questions have been raised on behalf of the City, it was deemed appropriate for the City to fund the audit. A quote from the City auditor's - EideBailey will be obtained before any audit (regular or forensic) is begun. Foundations are required to have a formal report to the state when donations in excess of \$25,000.00 are made during any year. The City has those records for recent years through 2003. In addition to the audit, recommendations have been requested from the auditors to insure proper separation of foundation monies.

Councilmember Brewster asked how the funds came to be co-mingled in the first place. Councilmember Ulledalen said there is information on the Animal Shelter's website that explains the process for donations for the shelter is to go through the Police Foundation. A checkbox is available for direction of the funds to the Foundation. He asked how that evolved. Interim Chief St. John said he did not know how that evolved, but the documents he gathered through his research of the issue go back to 1999. It was explained to him that there are restricted spending accounts within the Foundation. Where the trouble arose was having funds go to the Foundation that were marked for Animal Shelter use. This practice has been corrected and the requested detailed accounting will be provided to the Council. Ms. Volek said the answers to some of these questions will be discovered in the audit. She noted a Foundation statement from 2002 tracked a payment (a \$40,000 contribution) that was used to fund the incinerator at the

Animal Shelter. Ms. Volek added that the website will be corrected and a newsletter was delayed to remove the same erroneous information.

Councilmember McDermott requested that the address of the City be removed from the Police Foundation's information when reports are sent to the state. She said that gives the impression that the Foundation is part of the City. Ms. Volek said this would be part of the recommendation requests directed to the auditors. Councilmember Boyer asked when the Foundation began and who does it report to. Interim Chief St. John said it began in 1999 and it reports to a Board of Directors and a Chairman. Mayor Tooley said the foundation is a non-profit organization (autonomous) and a 501(c)3 entity that was created to assist the Billings Police Department. Councilmember Clark asked if any City staff is involved in Foundation work. Chief St. John said one Staff person was involved but will now be separated from Foundation work.

Councilmember McDermott said she did not think any councilmembers were aware of the accounting problems and just assumed that the Foundation was raising money from grants and fundraisers. It was likened to the task forces that have a small treasury but do not report to the City because they are independent.

Councilmember Ruegamer asked what a forensic audit was. Ms. Volek said her understanding is that it is an audit that investigates more thoroughly and deeply the background on all the issues. It may follow up with donors to assure that the check that was written was applied to the appropriate account that was intended.

Councilmember Brewster said the Foundation serves a good purpose. He said the real concern is why these two entities (Foundation and the Animal Shelter) have been combined and how did that happen. Ms. Volek said that is what the City intends the audit to uncover. She said that she and the Deputy City Administrator met immediately with the Police Staff and all department heads when this issue came to their attention to make it clear that this "transfer between funds" situation is not an acceptable accounting practice. Further conversations with the chair of the Foundation brought about full compliance with return of the funds in question and the audit. Councilmember Gaghen said she would like all of the concerns on the part of the donors during the public comment period addressed. Ms. Volek said there are four accounts involved within the Animal Shelter donation procedure. When a certain account is not identified, the donation is split equally between the accounts. It is hoped that most of those donations will be tracked and accounted for in the audit.

Councilmember McDermott said it was her understanding that when special accounts for special purposes are set up, the donations do not have to come to the Council for approval. She said these concerns must be addressed for future fundraisers including Cobb Field. Deputy City Administrator Bruce McCandless said through the annual budget-setting process, the Council has authorized acceptance and expenditure of funds such as for the Skatepark. Councilmember McDermott said that is correct as long as a special fund is set up. City Attorney Brent Brooks noted that there is a state statute that addresses donations and states that any funds earmarked for a certain purpose must be used for that particular purpose. On a voice vote, the motion was approved with Councilmember Brown voting "no".

**9. 10. RESOLUTION setting the annual salary of the Municipal Court Judge. (Delayed from 11/28/05). Staff recommends approval of adjusting the base salary**

**to \$91,250.00 and providing longevity pay for years of service. (Action: approval or disapproval of Staff recommendation.)**

Councilmember Clark moved for approval of the Staff recommendation, seconded by Councilmember Boyer. Judge Knisely thanked the Council for considering her request. Regardless of the final decision that is made, this has brought attention to the Municipal Court and the position of the municipal court judge, she said. This issue is long overdue and the Council has learned much in the last month. She corrected a misconception about the alleged 28% increase that she has requested by saying that she calculated the increase as a 21% increase which is a \$9.00 per hour increase, but over a six-year period is really a little over \$1.00 per hour. She asked the Council to consider that the Municipal Court is a court of record (one of only five in the state) that requires the judge to be an attorney and to have the same qualifications as a district court judge by statute through professional training and years of service. For that reason, the amount of money that the municipal court judge should be compensated should be commensurate with an experienced attorney's salary. The amount that she initially requested is under the City Attorney matrix and she is currently paid at the step one level of that matrix. She said she has not asked for a raise in six years, so she moved up a couple of steps to arrive at her request. Judge Knisely asked the Council to consider that the jurisdiction of the municipal court is continually being expanded to take the burden off of the district court. She asked the Council to consider these issues when taking action on her salary request. She also added that she has the additional duties of supervising court staff which maintains the separation of powers.

Councilmember Clark asked if the Judge considers herself an employee of the City when asking for longevity pay for years of service. Judge Knisely said she does not consider herself to be an employee of the City, but judges across the street (justices of the peace) are paid a base salary and longevity pay (1% for each year of service). This is their way of compensating for years of service and retaining a trained professional. Other cities make contributions to various retirement plans, she added.

Councilmember Brown asked the Judge to explain her connection to the Supreme Court. Judge Knisely said she serves on two Supreme Court committees, the Commission on Courts of Limited Jurisdiction (to set curriculum and train other judges around the state) and Equal Justice Task Force Commission (to assure that people regardless of income have access to the courts). Both appointments are through the Supreme Court. She noted that the Supreme Court reimburses all of her travel allotted to these appointments.

Councilmember Clark asked about the Judge's retirement plan. Judge Knisely said she belongs to the PERS retirement plan that is available to City employees with matching contributions from the City. Councilmember McDermott said anyone receiving employment benefits such as retirement and health insurance should consider themselves City employees.

Ms. Volek said in her experience there is a certain index where upper level judges make a certain salary and then there are percentages based on that. Staff feels that in order to retain qualified candidates in these positions it is important for the City to offer a salary that is attractive to someone who is ready to embark on a judicial career after private practice. For that reason she proposed an alternative to what has been requested by the Judge to predicate the salary of the municipal court judge on that of a district court

judge. For instance, a first-term judge would be paid at 80% of the district court judge (which is approximately \$94,000.00 per year currently), second term judge at 85% and third or longer term judge at 90%. This would bring Judge Knisely's salary up to \$84,600.00 from her current \$71,000.00. She added that the longevity issue will be researched.

Councilmember Boyer made a substitute motion to accept the proposed alternative that indexes the municipal court judge's salary to the district court judge's salary, seconded by Councilmember McDermott. Councilmember Ruegamer made a substitute motion that the municipal court judge receive 82% of the district court judge's salary with no longevity, seconded by Councilmember McDermott. Councilmember Ruegamer said this is an unusual situation because the City pays Judge Knisely's salary, but she is responsible to the Supreme Court who does not actively manage her position and where she ultimately reports to the citizens at election time. In his experience salaries cannot always be compared to the same position in other cities or areas because there are differing circumstances. He added that he is uncomfortable with giving longevity to elected officials. He came to his calculation by using the district court matrix with the 82% amount with is \$77,000 and adding a \$3,600 car allowance making her the highest paid municipal court judge in Montana. Each subsequent year she would receive a raise commensurate with the district court matrix. He said this is reasonable. Councilmember Ruegamer said it is the Council's responsibility to do what is reasonable for the judge and what is reasonable for the taxpayers. Councilmember Brewster said he agrees with some of Councilmember Ruegamer's comments but noted that the judge does not work for the Council and it is not their responsibility to review her. She is elected and works for the voters. Councilmember Brewster said the issue is the judge's position and pay and the Council must view only that part of it. Her abilities are assessed by the voters. If the pay is not enough to attract other good candidates that concern is within the purview of the Council. On a voice vote, the substitute motion failed with Councilmembers Ruegamer, Veis and McDermott voting "yes".

Councilmember Ruegamer said Councilmember Boyer's substitute motion is not making the Council good stewards of the City's money. He said he is troubled by "giving out raises this way" and setting a precedent. Councilmember Clark asked how many of the numbered points of the resolution will remain if the substitute motion is passed. Ms. Volek said only point #1 will remain. On a voice vote, the substitute motion to accept the proposed alternative that indexes the municipal court judge's salary to the district court judge's salary was approved with Councilmembers McDermott, Brewster, Brown, Ruegamer and Ulledalen voting "no". (See reconsideration under Council Initiatives.)

**10.11. RESOLUTION pursuant to BMCC Chapter 12: Eminent Domain, declaring public purpose and use, describing the properties to be taken and authorizing City officials to proceed with condemnation of six properties on Grand Avenue. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

Councilmember Gaghen moved for approval of the Staff recommendation, seconded by Councilmember Boyer. Public Works Director Dave Mumford said this is a very important request for an important project. The City is running out of options on how to proceed on this section of Grand Avenue (between 8<sup>th</sup> and 12<sup>th</sup> Streets West) widening. This project began five years ago. Of twenty properties that the City needed to

acquire right-of-way from only these six properties with one being an entire "take" (because there is no parking available to it after the right-of-way) are left to be acquired. He said the City does not take this procedure lightly but has tried many avenues to resolve issues with the property owners. Offers were made on the high value of the last appraisals done in October 2004, but counter offers are well beyond the 5% of high value that is allowed by statute. Mr. Mumford said there is no property owner who does not think this is a good project. They want to move forward noting that many have donated property. Some of the properties have leases involved that complicate the issue. He added that negotiations with a mediator may still go forward even though the Staff is requesting authorization of acquisition via eminent domain. This option allows the City to have a third party (i.e. a judge) look at both sides, the issues and rule on what is a fair value. He said the Staff is not asking the Council to take property without fair compensation, but noted that Staff is having a difficult time reaching agreement on fair value. The need of the community for a five-lane road is important due to safety issues. Without the requested option, he feels there will never be a resolution on these six properties.

Councilmember Ruegamer asked if there is a tax benefit to property owners when the land is condemned for public purpose. He wondered if there is some ulterior motive that these property owners are using to get the City to proceed with eminent domain. Mr. Mumford said he did not know if they are doing it for that reason, but noted there is a 3-year deferred tax benefit for reinvestment. That benefit is given even if the process is only started and not completed. He added that he does not believe there will be six properties that ultimately result in eminent domain proceedings.

Councilmember Ulledalen noted that the criticism he heard was that in trying to benefit the affected businesses with additional lanes for traffic, the City was materially damaging the property these businesses currently have. Mr. Mumford said the City has employed realtors and right-of-way agents to deal with the property owners and the right-of-way transactions. He reiterated that all but one property owner are willing to sell their rights-of-way; it is just the cost difference that is the concern.

Councilmember Jones said he is concerned about making this decision without the benefit of a public hearing. Councilmember Jones made a substitute motion to delay this item to 1/9/06 and include a public hearing, seconded by Councilmember Brown. Councilmember McDermott said she would like to hear from each property owner involved. On a voice vote, the substitute motion was unanimously approved.

**11. LEGAL ADVICE on Tussing Settlement Agreement.** Staff recommends the Council review the attorney's report and direct Staff regarding further action. **(Action:** direction to Staff.) (See Item #2)

**12. MAYOR'S APPOINTMENTS.** (Delayed from 12/12/05).

	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	01/01/06	12/31/09
5.	Mike Schmidt	Board of Appeals	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 (Low Mod)	01/01/06	12/31/09
10.	No recommendation	Community Development Board (Low Mod)	01/01/06	12/31/09
11.	*Kathleen Walters	Community Development Board (at Large)	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.	Rod 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.	Walt Willett	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)

Mayor recommends approval. (Action: approval or disapproval of Mayor's recommendation.)

Councilmember McDermott moved for approval of the Mayor's recommendations for the Board and Commission appointments, seconded by Councilmember Brewster. Mayor Tooley noted that no application was received for Item #10 - Community Development Board (Low-Moderate Income level). He said that applications for this position will continue to be solicited. Councilmember McDermott noted that the meeting time was a detriment to applicants because most low-moderate homeowners could not leave their work to attend the meetings. She suggested leaving that position open until the North Elevation Task Force is up and running and can determine if there is someone from that area who could serve on the board. On a voice vote, the motion was unanimously approved.

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

- CARROLL SMITH, 1828 ALDERSON, expressed his concern about the Council's action at the last meeting concerning the Library Interlocal Agreement. He did not think the Council had heard the other side. Mr. Smith noted the Council received a copy of a letter this week from Mr. Cochran that stated incorrect facts. He also objected to the "obscene" material that is viewed at the library, noting a person using the library was prosecuted by the FBI. He is concerned about the way the Council is handling this. He said there should be a hearing that should be conducted with experts in this field. Mayor Tooley suggested that any lengthy letters Mr. Smith would like the Council to read be submitted to the Council for their review.
- KEVIN NELSON OF 4235 BRUCE AVE, spoke in regard to the Board of Adjustment appointments and BMCC Section 27-1505. He said there are currently no vacancies on the board; vacancies will occur after the first of the new year. Additionally, he called the Council's attention to the citation that stated the terms of each member shall run "concurrent to that of the mayor's term." Mr. Nelson said he believed the Board was not being seated properly since only three members were being appointed tonight and the appointments were not being made in January or July as the code stipulates. The powers of that Board affects citizen's lives dramatically and by not properly seating the Board the Council is exposed to possible litigation. Mr. Nelson said the appointments should be made next month when there are actual vacancies and the new councilmembers can vote on the appointments. He asked the Council to reconsider their decision. Mayor Tooley said the Board and Commission members must be seated by the January 9<sup>th</sup> meeting so there is a quorum. For the past many years this has been done with a process starting in November so that they may be seated by January. When there are vacancies mid-year the process is begun in May for appointment in June. He said it is important to have a full quorum so the board can function legally. If the literature that Mr. Nelson provided the Council regarding the Board of Adjustment's appointment state the terms should be concurrent with the mayor's term, then seven members should have been seated this evening rather than four. He noted that many boards and commissions have staggered terms so a completely new membership that has no experience in the work of that board or commission is formed. He asked the Legal Department to research this statute to assure that the Council is following the law. (See Council Initiatives.)
- JIM RONQUILLO, NO ADDRESS GIVEN, said he is chair of the South Side Task Force. He thanked Councilmembers McDermott and Brown and Mayor Tooley for their service on the Council, emphasizing that the Council has helped clean up blight on the South Side. Mr. Ronquillo said the task force is now working with homeWORD to bring affordable housing to the neighborhood. He said they want their community to be family-oriented, not an "incarcerated" community. He urged the Council to consider this when they act on the Alternatives Inc. request at the January 9<sup>th</sup> meeting. He noted that several community members have expressed concern about the request by Alternatives, Inc.

## **COUNCIL INITIATIVES**

- COUNCILMEMBER MCDERMOTT: Councilmember McDermott moved to investigate options for privatizing the CDBG program and report back to Council, seconded by Councilmember Brown. Councilmember McDermott said she has been frustrated during her entire time on the Council trying to ascertain budget figures of the CDBG program and a lack of attention to the needs of the task forces. Task forces were created to assist in spending Community Development monies as they are in fact the low-income areas and are the reason why the City receives that money. She expressed concern that Community Development administration is funded from that program up to 15% which is the maximum by law and in some cases up to 20% which can jeopardize that program money. She said this program may be administered more efficiently and economically through an RFP to the private sector. On a voice vote, the motion was unanimously approved.
- COUNCILMEMBER BREWSTER: Councilmember Brewster asked that the Legal Staff look at the Board of Adjustment appointments and determine who has the authority to appoint and when. Councilmember Veis asked that this item be added to the December 30<sup>th</sup> meeting.
- COUNCILMEMBER BROWN: Councilmember Brown moved to direct Staff to look at freeing up more money for Channel 7, seconded by Councilmember Clark. Councilmember Ruegamer said the Council should review their budget before handing them any more money. Councilmember McDermott said Channel 7 receives \$100,000 for taping council meetings two nights a month. She said that is fairly good compensation. On a voice vote, the motion failed.

## **RECONSIDERATIONS:**

- COUNCILMEMBER RUEGAMER: Councilmember Ruegamer moved to reconsider Amendment #1, Cobb Field Stadium Design and Feasibility Study Consultant Contract, HNTB Montana Inc., \$20,000.00, which was approved at the 12/12/05 meeting, seconded by Councilmember Jones. Councilmember Ruegamer heard much trepidation from community members and councilmembers on this issue. He also suggested that a public hearing be held. On a voice vote, the motion to reconsider was approved with Councilmembers Gaghen, McDermott, Clark and Mayor Tooley voting "no". Councilmember Ruegamer moved to delay action on the HNTB contract amendment until 1/23/06, seconded by consensus. Councilmember Ruegamer said he is concerned about putting Cobb Field in motion without the new councilmembers input. On a voice vote, the motion was approved with Councilmembers Gaghen, McDermott, Clark and Mayor Tooley voting "no".
- COUNCILMEMBER JONES: Councilmember Jones moved to reconsider Item #10 – setting the annual salary of the municipal court judge, seconded by Councilmember Brown. Councilmember Jones said the resolution is directly tied to Judge Knisely and not to the position. This is a legitimate concern. Councilmember Veis said he would like to see the revised resolution language before voting on this issue. City Attorney Brent Brooks said the Legal Department can craft the resolution to make it more neutral and address the "position" rather than Judge Knisely. On a voice vote, the motion was approved. Councilmember Clark moved to re-draft the resolution with the salary indexing and revised language and schedule it for action at

the 12/30/05 special meeting, seconded by Councilmember Veis. On a voice vote, the motion was approved with Councilmembers Brewster, McDermott, Brown and Ruegamer voting "no". (See also the initial discussion under Item 10.)

- **COUNCILMEMBER CLARK:** Councilmember Veis moved to set an agenda meetings on January 9<sup>th</sup> at 5:30 P.M., seconded by Councilmember Brewster. Councilmember Clark made a substitute motion to set the agenda meeting on January 10<sup>th</sup> at 5:30 P.M. in the City Hall Conference Room, seconded by Councilmember Ulledalen. On a voice vote, the substitute motion was approved with Councilmember Jones, Veis and Brewster voting "no".
- **COUNCILMEMBER BROWN:** Councilmember Brown moved to reconsider RESOLUTION 05-18378 creating a Tax Incentive Program for Remodeling, Reconstructing or Expanding Certain Commercial Property, approved at the 12/12/05 meeting, seconded by Councilmember McDermott. Councilmember Brown said he is troubled by the word "certain". Mayor Tooley said the word certain is there because of certain criteria that needs to be met in order for the tax incentives to be granted. On a voice vote, the motion failed.

### **CLOSING REMARKS:**

Councilmembers McDermott and Brown and Mayor Tooley spoke briefly about their experiences during their terms on the Council. Councilmember McDermott thanked the residents of Ward I for their support. Mayor Tooley said it has been his great pleasure to serve as the City's mayor and he was proud to serve with all of the councilmembers. These three individuals will leave office on 12/31/05 when their terms expire. Incoming members will take their oaths of office at a special meeting on 1/3/06.

**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