

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

## **January 9, 2006**

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 Ron Tussing 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: Ronquillo, Gaghen, Stevens, Brewster, Veis, Ruegamer, Ulledalen, Boyer, Jones and Clark.

### **MINUTES**

- **December 12, 2005.** Approved as amended.
- **December 19, 2005.** Approved as printed.
- **December 30, 2005.** Approved as printed.
- **January 3, 2006.** Approved as printed.

### **ELECTION OF DEPUTY MAYOR PRO TEMPORE** –

Councilmember Jones nominated Councilmember Clark for Deputy Mayor Pro Tem, seconded by Councilmember Boyer. Councilmember Ruegamer nominated Councilmember Ronquillo, seconded by Councilmember Gaghen. Councilmember Ruegamer moved to close the nominations, seconded by Councilmember Boyer. On a voice vote, the motion to close nomination was unanimously approved. On a voice vote, Councilmember Clark was elected the Deputy Mayor Pro Tempore.

### **COURTESIES**

- Councilmember Ruegamer: recognized Carbon County Attorney Kemp Wilson in audience.
- Councilmember Brewster: recognized former Councilmembers Jack Johnson and Dave Brown in the audience.

### **PROCLAMATIONS** – None

### **BOARD & COMMISSION REPORTS** – None

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

- Ms. Volek noted that the Consent Agenda -- #1 is also to be included in the first public comment period.
- New staff memos or attachments have been provided for Items 6, 8, 9 and 10 and are on the council desks this evening. The information includes a revised resolution for Item #6. Additional information for Item #8, an updated staff memo for Item #9 based on the previous work session and additional information on change orders associated with Item #10.

- Ms. Volek also noted that the Executive Session for the Cloverleaf litigation is no longer required this evening.

**AGENDA CHANGE:** Councilmember Veis moved to delete the Executive Session from agenda, seconded by Councilmember Brewster. City Attorney Brent Brooks said negotiations on the litigation are still on-going and there is no determination to bring to the Council at this time. On a voice vote, the motion was unanimously approved. The Executive Session was cancelled.

Mayor Tussing conveyed information from a letter he received from Family Services re: an open house celebrating 100 years of service on Sunday, January 22nd. He extended an invitation to everyone in Billings to attend.

**PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: #1, and #8 thru #10 ONLY.** (Comments offered here are limited to 1 minute per speaker. Comment on items listed as public hearing items will be heard ONLY during the designated public hearing time for each respective item.)

*(NOTE: For Items not on this agenda, public comment will be taken at the end of the agenda. Please sign up on the clipboard located at the back of the room.)*

- DAVE BOVEE OF 424 LEWIS AVENUE, said he was surprised he had only 1 minute to comment on a multi-million dollar project, i.e. either the Sandstone or CTA projects proposed at 4<sup>th</sup> & Broadway. He noted that not allowing public comment on the item gave the appearance of dishonesty, corruption and graft.
- JOE WHITE OF 926 N. 30<sup>TH</sup> ST. spoke in regard to the 4<sup>th</sup> & Broadway project. He said he had a proposal that had not been considered and asked that a new committee be formed with more downtown representation.
- KEVIN FLYNN OF 416 COOK AVE said he represents the Laborer's International Union of North America and asked the Council to give the 4<sup>th</sup> & Broadway project to a contractor that is responsible – i.e. offers apprentice programs and health insurance to its employees.
- KAY ERICKSON, 2800 4<sup>TH</sup> AVE N said she is chair of the church council at United Methodist Church. They have been interested in the 4<sup>th</sup> & Broadway property and the proposed projects since the beginning and asked the Council to (1) keep the alley open; (2) make sure there is plenty of parking for all planned entities, and (3) not allow any lounge or liquor license in whatever is developed on the site.
- JENNIFER JASPER OF 1630 BREWINGTON DR. spoke in opposition to the Bellville Subdivision, noting it had already been rejected once by the Council. She said this is a quiet residential neighborhood and the proposed subdivision would nearly double the amount of traffic. The safety concerns still remain.
- CONNIE WARDELL OF 1302 24<sup>th</sup> ST W urged the Council to accept the offer from Stockman Bank and to continue to negotiate on the other two projects proposed for 4<sup>th</sup> & Broadway. The plans and financing for these two projects are not yet “fleshed out”, so options should be kept open.
- MARY WESTWOOD OF 2808 MONTANA AVENUE spoke on the 4<sup>th</sup> & Broadway project, urging the council to be cautious about a deal giving Stockman Bank the corner. This will reduce the property value of the remainder of the land. She said

it is important to consider the entire parcel and to have strong participation from the Library. Ms. Westwood reminded the Council that there should be no risk to the taxpayers with this project. She urged the Council to keep these considerations in mind when making their decision.

- DAVE BROWN OF 544 WIGWAM TRAIL spoke on Item B and asked the Council why they are considering using CDs from COP Construction as a surety. Ms. Volek said when the bidder chooses this option it must be offered to him by law. Councilmember Brown asked if the CDs are full value or discounted. Ms. Volek said the Staff would furnish that information to the Council before the vote. She said the amount of the CD is based on a percentage of the total contract and would have to be full value when the City receives it.
- GREG HILL OF 1138 KYHL LANE said a neighborhood meeting was held last Thursday regarding Bellville Subdivision. An alternative route was proposed at the meeting and he wondered if this was a viable option. If this alternate route is not acceptable, he would continue to oppose the subdivision for the safety issues and the burden of the cost of improvements for the streets upon the surrounding residents.
- CHRIS ALLARD OF 1126 KYHL LANE spoke on the Bellville Subdivision. He said the best option is to let this subdivision die. He had concerns about: 1) a possible future SID which is unfair to the current residents, and 2) the safety of the neighborhood children. If the subdivision is approved he would like to see a document that requires the developer to assume the costs of the SID. He said he would also hope that the City could assure the residents that their street would not become a major thoroughfare.
- TOM ZURBUCHEN OF 1747 WICKS LANE spoke on the 4<sup>th</sup> & Broadway project, noting he agreed with Connie Wardell on accepting the Stockman Bank offer. The Bank is not asking for Tax Increment dollars, adding that it is a detriment to invest tax dollars in the Sandstone project by removing the City's increasing tax value.
- STEVE EUBANK OF 1144 KYLE LANE spoke on the Bellville Subdivision. His primary concern was traffic control in the neighborhood. The developer has offered to pay for upgrades on Brewington, but development will ruin the quiet neighborhood and put the neighborhood children in harms way. He agreed with Mr. Allard that an alternative route out of the subdivision should be considered.
- JOE SIEBERT OF 4413½ VAUGHN LANE began to comment on Item 6, the Alternatives Inc. item. Mayor Tussing directed him to hold his comments until the public hearing for that item.
- DAVE BROWN RETURNED. Mr. Brown spoke in regard to Items C & D. He noted that developers that pay for water lines are eventually reimbursed as development continues, but the "cost of money" over time is not considered in these agreements and should be included.

**AGENDA CHANGE:** Councilmember Ruegamer moved to change the order of the agenda and MOVE Item #6 to Item #2, seconded by Councilmember Ronquillo. On a voice vote, the motion was unanimously approved.

**CONSENT AGENDA:**

1. A. **Amendment to Legal Advertisement Agreement**, Billings Times.
- B. **Application for Substitution of Certificate of Deposits in Lieu of Cash Retainage** as security for the performance of a public works contract with COP Construction.
- C. **Compensation Agreement** for Private Contract No. 544 – Copper Ridge Subdivision, First Filing, \$488,634.00.
- D. **Compensation and Reimbursement Agreements** for Private Contract No. 546 – Tracts 1C-2 and 1D of C/S 1479 (Town Pump), \$15,296.75 from the City and \$10,526.84 from property owners.
- E. **Vehicle Lease Agreement** with Laurel Ford for Laurel Police Dept. participation in the High Intensity Drug Traffic Area (HIDTA) Task Force, \$4,200.00, term: 12 months.
- F. **W.O. 04-33: Lake Elmo Road Right-of-Way Acquisition**, Professional Services Contract for right-of-way services, Right of Way Acquisition Group, LLC, \$222,550.00.
- G. **Contract** with QWEST Communication for wireless enhanced 9-1-1 services and Emergency Preparedness Network Services, \$25,615.85 one-time set up charge and \$3,953.12/month.
- H. **CTEP Project Specific Agreement – Highland School Sidewalks**, Federal Air Project #STPE 1099(48), Montana Dept. of Transportation, \$40,000.00 grant.
- I. **Contract** with DialPro Northwest to provide an automated phone system for the Municipal Court, \$74,120.00.
- J. **Acceptance and approval** of the 2006 High Intensity Drug Trafficking Area (HIDTA) Award #I6PRMP606 from the Office of National Drug Control Policy/Eastern Montana Drug Task Force, \$160,659.00.
- K. **Acceptance** of Warranty Deed for right-of-way acquisition along Shiloh Road from Firelake Corp., \$644.49.
- L. **Authorization** of grant application submittal to the Montana Board of Crime Control (MBCC) for the Byrnes, Criminal Justice Records Improvement (CJRI) – RFP #06-10(K) Funds, \$35,000.00 to purchase *Law Enforcement Data Analysis Software*.

**M. Authorization** of grant application submittal to the Montana Board of Crime Control (MBCC) for Stop Violence Against Women Act (VAWA) Funds – RFP #06-9, \$55,000.00.

**N. Acknowledging receipt of petition to annex #06-01:** Lots 5, 6, 26 – 28, 38 and 40, Sunny Cove Fruit Farms, located south of Rimrock Rd. between 58<sup>th</sup> and 62<sup>nd</sup> Sts. W, Thomas E. Romine and Paul V. Hoyer, petitioners, and setting a public hearing for 1/23/06.

**O. Confirmation of Police Officer:** Jon Kristjanson.

**P. Authorization** of architectural/engineering services Request for Proposals for Fire Station #7.

**Q. Declaring surplus equipment** and authorizing the Fire Department to dispose of the equipment to surrounding volunteer fire departments.

**R. Declaring surplus self-contained breathing apparatus (SCBA) equipment** and authorizing the Fire Department to dispose of the equipment per the Fire Act grant application.

**S. Authorization** of application for a Certified Local Government (CLG) grant from the Montana State Historic Preservation Office, \$5,500.00.

**T. Lease** for storage space with Peter Yegen Jr. Yellowstone County Museum Foundation, \$1,226.82/year adjusted annually by CPI-U, term: 5 years

**U. Resolution 06-18381** creating Special Service District #22 for sanitary sewer services only for Lot 1, Block 1, MHC Subdivision and the remainder of Tract 2, C/S 1163.

**V. Resolution 06-18382** creating Special Service District #23 for sanitary sewer service for Lot 4, Block 1, Wal-Mart Subdivision.

**W. Second/final reading ordinance 06-5357** expanding the boundaries of Ward I to include recently annexed property described as a 0.906-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).

**X. Second/final reading ordinance 06-5355** 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.

**Y. Second/final reading ordinance 06-5356** 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.

**Z. Final plat** of Lincoln Subdivision.

**AA. Final plat** of Amended Lot 3B, Block 10, Parkland West Subdivision, 6<sup>th</sup> Filing.

**BB. Bills and Payroll.**

- (1) December 2, 2005
- (2) December 9, 2005
- (3) December 16, 2005
- (4) November 1, 2005 (Court)

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

Councilmember Jones separated Items C and X. Councilmember Clark separated Item P. Councilmember Clark moved for approval of the Consent Agenda with the exception of items C, P, and X, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.

Councilmember Clark moved for approval of Item C of the Consent Agenda, seconded by Councilmember Brewster. Councilmember Jones asked if the water and sanitary sewer service for Copper Ridge Development, LLC and Golden Acres Partners is scheduled to be in the Capital Improvement Plan (CIP). Public Works Director Dave Mumford said this project is not in the CIP at this time, but it is planned to be part of the upcoming modifications of the CIP. He said the developers have been advised that this modification must be approved by the Council and there is no guarantee at this point that it will be in the next CIP. Councilmember Boyer asked if this "pushes" the City to go forward in areas that are unplanned. Mr. Mumford said this type of extension projects in areas that are unplanned are funded through the rehabilitation program. He noted that reimbursement to the developer follows approval by the Council of the project in the CIP. Interim City Administrator Tina Volek said the Staff is in the process of amending the CIP for presentation to the Council in March. This revision will update the current plan with new dates and revised figures. On a voice vote, the motion was unanimously approved.

Councilmember Clark moved for approval of Item P of the Consent Agenda, seconded by Councilmember Brewster. Councilmember Clark said the Fire Department needs assurances from the Council that additional firefighter personnel can be hired to staff this proposed new station. Ms. Volek said six firefighters were hired in July 2005 and the department is scheduled to hire six additional firefighters this month and three next July. The hiring must be done on a staggered basis so that the firefighters have the opportunity to complete fire school and training. Fire Chief Marv Jochems confirmed six firefighters were hired in July of 2005, but five firefighters retired in

December 2005. The Fire Department was prepared to hire six firefighters this month but has placed that on hold because of the ambiguity and uncertainty with the public safety mill levy. He noted that the Council approved an accelerated construction schedule for the new fire station, requiring construction to begin in January 2007. It takes a year to prepare, hire and train new personnel. Councilmember Brewster said the majority of the Council voted to not put the public safety mill levy back on the ballot and its intent is to move forward based on the planned revenue from the levy. A large majority of the citizens voted for the levy, contemplating a certain level of service from the Police and Fire Departments and the Council has an obligation to provide that, noted Councilmember Brewster. Ms. Volek said the City received an Attorney General opinion in late fall that confirmed the ballot language was adequate and valid.

Councilmember Clark said the intention of the Council when it voted on the validity of the levy was that the Fire Department should proceed with its building and hiring plans. Councilmember Gaghen re-emphasized the support from the Council for the expansion and maintenance of a high level of service in the Fire Department as promised with the public safety mill levy. Mayor Tussing said it was his understanding that additional personnel were to be hired in the Fire Department to sufficiently staff the new fire station. Chief Jochems said that there will be retirements from the Fire Department for the next several years requiring replacements along with the additional personnel. Ms. Volek suggested that an RFP be issued with fire station construction to begin in January 2007.

Councilmember Clark amended the motion to approve the Architecture/Engineering Services RFP for Fire Station #7 and start construction in January 2007, seconded by Councilmember Boyer. On a voice vote, the amendment was unanimously approved. On a voice vote, the motion as amended was unanimously approved.

Councilmember Clark moved for approval of Item X, seconded by Councilmember Ruegamer. Councilmember Jones amended Section 2-222, Section 3, Item #6 to include wording that identifies city staff or designees as agenda item presenters, seconded by Councilmember Clark. Councilmember Jones said he wants flexibility on who makes presentations at work sessions so that opposition proponents to agenda items have an advocate that can make presentations as well. Ms. Volek said this suggestion could lead to debates at work sessions, which is more appropriate for the public comment section of the meeting. She said it is important to make this very clear because the City is constantly being approached by persons wishing to make presentations to the Council at work sessions. Councilmember Stevens said the term "designee" works well because the staff would designate who would speak on their behalf but does not allow for outside, unassigned sources to come before the Council. Councilmember Jones said his biggest concern is if the Council leaves the wording as it is, engineers and consultants who normally give presentations at work sessions would not be allowed to present. On a voice vote, the amendment was approved with Councilmember Brewster voting "no". On a voice vote, the motion as amended was unanimously approved.

**REGULAR AGENDA:**

2. **PUBLIC HEARING AND RESOLUTION 06-18383 endorsing the establishment of a methamphetamine treatment program in Yellowstone County, within the city limits of Billings by Alternatives, Inc.** Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

Interim City Administrator Tina Volek said the Planning Department has determined that there will need to be a special review on the site that is proposed for the methamphetamine treatment program. The Staff is recommending that the Council consider the revised resolution which deletes any reference to a specific location and basically endorses the application by Alternatives, Inc. for a methamphetamine program in the City. This resolution will allow the application to move forward. She noted that Mr. Armstrong from Alternatives, Inc. is available for questions.

The public hearing was opened. DAVID ARMSTRONG, 3307 TAHOE DRIVE, said he is the Administrator of Alternatives, Inc. He said the Department of Corrections has issued a Request for Proposals (RFP) for a Methamphetamine Treatment Center allowing communities in Montana to respond. He noted that methamphetamine addiction is a huge problem in this nation. Alternatives, Inc. is preparing a proposal that is due January 10, 2006 and requires a resolution of support from local government.

He said methamphetamine abuse is an epidemic in Montana. An estimated 65% of women offenders abuse methamphetamine. He stated that methamphetamine addiction is associated with online theft and is found throughout our society. He noted that Alternatives, Inc. has 25 years of experience in providing community corrections in Billings. The proposal that Alternatives, Inc. is submitting is for a 40-60 bed methamphetamine treatment program for women offenders in the Howard Johnson facility with an additional 65-bed women's pre-release center and a 30-bed women's diversion program. These programs would use the entire facility and would house no more than 155 female offenders. He said the offenders would receive 6-9 months of treatment and would not go into the community during their stay. Upon completion of treatment the women would return to their home communities.

Mr. Armstrong said there are benefits to the program. This program will create 40 new jobs and create \$ 4 Million in spending annually. It would also create a reduction in the population at the local detention center. He said there is no intention of changing the façade of the current building and no fences would be visible from the front of the building. Councilmember Ronquillo asked if the drop-off point in front of the building would be "boxed-in" as previously suggested. Mr. Armstrong said the "sally port" where people would be brought into the facility would be on the side of the building and out-of-sight of the public. He noted that the first floor would be an open pre-release center with people coming and going.

Councilmember Veis asked if there is an alternate location for this facility if the special review is not successful. Mr. Armstrong said the pre-release center would not require a special review so Alternatives, Inc. believes it would have the ability to purchase and operate the facility as a pre-release center. The Council would still be involved with future zoning issues, bond hearings and discussions about the site. He said Alternatives, Inc. wants to be sensitive to the Southside community's concerns, but does believe the Howard Johnson site is ideal for this facility because of the character of the neighborhood

(non-residential). The resolution in its revised form would enable Alternatives, Inc. to submit their response to the RFP for the Methamphetamine Program.

Councilmember Gaghen asked if the resolution from the County Commissioners was site specific. Mr. Armstrong said the resolution from the County Commissioners and a letter of support from the Chamber of Commerce are both site specific. Due to concerns about endorsing a site before a zoning review, the City's resolution was revised to eliminate the site. Councilmember Gaghen asked if Alternatives, Inc. does not receive the methamphetamine portion of the RFP, would it still consider expansion of some other program at the Howard Johnson site that would not need a special review. Mr. Armstrong said the pre-release portion (65-bed) of the program would still be considered for that site. He noted that Alternatives, Inc. pledges to work closely with the Southside Task Force and Southside neighborhood regarding the facility. A men's pre-release center is not far from this same area and enjoys support and good relationships with the surrounding businesses, he added. Councilmember Ronquillo stated that no one from the Chamber of Commerce or the County Commissioners sought the opinions of residents on the Southside before providing written support for the proposed methamphetamine program. Mr. Armstrong noted that Alternatives, Inc. did approach the Council with its proposal and is very concerned about having the support of the neighborhood.

Councilmember Veis asked for a breakdown of the bed space per proposed program. Mr. Armstrong said the Howard Johnson facility has 169 bed spaces on three floors. The first floor would house the 65-bed pre-release center that includes counseling and recreational spaces. The second floor would house the Billings Assessment and Sanction Center that would serve offenders that come from jail that the Department of Corrections does not feel are appropriately housed in prison, but do not have another place in the community. These people average 45 days in placement and are considered very low risk offenders that would not leave the facility during their stay and are subsequently placed throughout Montana upon their parole or probation. He added that because of the other needs of the program the facility will not become a 300-bed facility.

Councilmember Ronquillo asked about the difference in costs to incarcerate a female in this facility versus the costs in the women's prison. Mr. Armstrong said the pre-release portion averages about \$55 per day which is \$30 per day less than for the Montana State Women's Prison. The portion that would house those that must be confined as if they were in prison would cost about the same as the prison due to closed-unit requirements. Because of the health problems that arise in a methamphetamine treatment program, the cost rises to about \$50 per day more than the women's prison. He noted that Deering Clinic would have a portion of their facility dedicated to treatment of health issues related to the methamphetamine program.

Councilmember Veis asked what program would be housed in the area proposed for the methamphetamine treatment program if Alternatives, Inc. is not successful with its RFP proposal. Mr. Armstrong said the pre-release center would probably occupy that space, but he believes that having a methamphetamine treatment center is an asset to Billings. Councilmember Veis asked what the total number of beds in the RFP is and what are the chances of being awarded the program. Mr. Armstrong said the RFP included a 120-bed facility, which could include not less than 40 women or less than 80 men. He said the need in Billings is for a women's treatment facility and hoped its chances are good to be awarded the 40-60 bed proposal. He said this RFP is not the end of discussions with the Council,

but the beginning of all the processes that will take place after award of the bid, such as the special review, bond issues and associated (at least 3) public hearings.

Mayor Tussing asked if there are estimates of the percentage of women from Yellowstone County that would be treated in the 40-60 bed facility. Mr. Armstrong said this would be the only treatment facility of its kind in the state. Alternatives, Inc. would give first priority to persons from the Yellowstone County Detention facility. In reality, the offenders would be from throughout the state with a higher percentage from Yellowstone County. He said the participants in the program would not remain here but be released to their home communities so Alternatives, Inc. is not "importing" methamphetamine offenders into the Billings area. The program is not employing these people so they are not establishing roots in the community, he added.

Councilmember Stevens asked what changes to the facility would be made to protect the neighborhood. Mr. Armstrong said the men's facility has been in the downtown area for 25 years without serious problems for the neighboring businesses. Letters of support from those businesses state that "they are not seeking protection, but feel safe; that Alternatives, Inc. has been a good neighbor." To protect the community, a small security force of 25 people (5 people per shift) would be employed to ensure that there are no problems or disruptions. Additionally 10-20 persons would be on-staff during the day with at least 10 each night. Physical changes would include screening placed on the windows (interior medium security mesh) and a small chain-link fence behind the facility to accommodate a small outdoor area that would not be visible from 27<sup>th</sup> Street. Councilmember Ronquillo asked if a fence would be erected between the facility and Smith's Funeral Home to the north. Mr. Armstrong replied "no", but added that it would be considered if the funeral home requested it.

Councilmember Gaghen asked if a buy/sell agreement for the Howard Johnson facility is in place. Mr. Armstrong replied "yes". The 65-bed pre-release center will go forward as planned and the 30-bed diversion program would be considered, pending City review.

Councilmember Veis asked if funding would be in perpetuity after the one-time grant. Mr. Armstrong said the grant includes a 20-year contract, subject to review every two years. Councilmember Veis asked about the timetable for the three proposed programs. Mr. Armstrong said the buy/sell agreement gives possession of the facility to Alternatives, Inc. on July 14, 2006. There will be a three-to-four month period to renovate the facility and in late fall the programs can begin. It is expected that the methamphetamine program might open a month later than the others and by January 1<sup>st</sup> to be fully functional.

Councilmember Jones asked Mr. Armstrong to explain the term "closed facility". Mr. Armstrong said pre-release means that people work outside of the facility because they are six months from release. A closed unit is like the prison, but without the highest level of security (guns and bars). Pepper spray is used as the form of security. The doors are set up to sound with an alarm and a security force is on staff to keep the people in the program. There is also 24-hour camera surveillance. He noted that the major deterrent is a ten-year prison sentence for escaping. The participant will be out in 45 days if the program is followed; there is no incentive to escape. Participants in a closed facility would not have jobs in the community and if leaving the facility would be escorted.

The public hearing was opened. ROBIN DRISCOLL, 724 N. 16<sup>TH</sup> STREET, said she represents House District #51 in the state legislature. She said her district includes the proposed facility that Alternatives, Inc. would like to open for women's and men's recovery as discussed this evening. She said she is not opposed to Alternatives, Inc. because they do a great job, and voted against a bill that would have threatened its present site. Ms. Driscoll said the Southside is currently home to the Montana Women's Prison, the Youth Detention facility and the Yellowstone County Detention facility, thus having its fair share of those types of facilities. It is not fair to place another one in their backyard. She said this type of facility is needed, but should be placed elsewhere in the City. A new incarceration facility in the Southside would be a step backward for the new growth and revitalization that is happening in that area. Ms. Driscoll encouraged the Council to not allow this to happen.

JOHN ARMSTRONG, 903 N. 18<sup>TH</sup> STREET, said he is the chairman of the North Park Task Force. He said he is not a resident of the Southside, but is concerned about the City's future and development. He said the proposed facility does "not seem like a good fit." Mr. Armstrong said he believes in the program and the need for that program, but thinks the proposed facility is really ideal for a hotel. The revitalization of that corridor is important to the City and the hotel located there is essential. Councilmember Boyer said the hotel has struggled to stay profitable in that location. Mr. Armstrong suggested that tax incentives to future owners may assist profitability of a hotel.

DAVE BROWN, 544 WIGWAM TRAIL, said none of the Councilmembers asked what the hotel currently pays in taxes and what taxes would be paid if the facility becomes a 501(c)(3) corporation. He expressed concern that this reduction in taxes from the proposed facility will burden taxpayers that are already over-taxed. He said this does not make good sense.

JOE SIEBERT, 4413-1/2 VAUGHN LANE, said he works at Will James Middle School doing in-school suspension detention. He said he sees the same kids everyday. He said the kids ask him what it is like to live on the Southside where all the jails are. The kids have a preconceived notion that living on the Southside has a stigma. He said there are many hard working people that live there. He said he is not opposed to a pre-release center or the methamphetamine treatment center, but asked that it be placed somewhere else.

STACY RONQUILLO, 2714 9<sup>TH</sup> AVENUE SOUTH, said he is opposed to placement of the methamphetamine treatment center in the Howard Johnson facility. The facility would be across the street from his home and he does not want more potential theft in his neighborhood. He agreed that there is a need for the facility but he does not want to see another incarceration facility in his neighborhood or on 27<sup>th</sup> Street. He asked the Council to vote "no" on this. Mr. Ronquillo noted that Mr. Dave Armstrong did not answer the question about a possible alternate location for this facility. He said he would like to know that answer.

MARION DOZIER, 3923 3<sup>RD</sup> AVENUE SOUTH, said she has lived on the Southside for thirty years and has witnessed the growth. She spoke in opposition to the proposed pre-release center and methamphetamine treatment center at the Howard Johnson location. She said this is not a "not in our backyard" issue but an "our backyard is full" issue. The neighborhood has "stepped up to the plate" for years currently housing and supporting the following entities which are all tax-exempt: the Yellowstone County Detention Center (414 men and women) on King and Sugar Avenues, Probation and

Parole (1,000 supervised people) on 27<sup>th</sup> Street, the Women's Prison (230 women) on 27<sup>th</sup> Street, Alpha House Pre-Release (185 residents) on 1<sup>st</sup> Avenue North, the Youth Treatment Center ( 24 youth) east of 27<sup>th</sup> Street, the Rescue Mission, and the Deering Clinic and its expansion. Mr. Armstrong did not come to the neighborhood until a buy/sell agreement was signed for the hotel facility. She is concerned that land that is being considered for purchase by Alternatives, Inc. behind the hotel facility will mean future expansion. This same expansion happened with the Women's Prison. Ms. Dozier said there are currently 1,832 detained, supervised, jailed persons on the Southside. "Our backyard is full and our neighborhood has done its share," she said. She asked the Council to vote "no" on this project and to find another area for its location. She asked the Council to be concerned for their neighborhood.

MARY WESTWOOD, 2808 MONTANA AVENUE, expressed her concern for locating another incarceration facility on the Southside. She is concerned about the "mix of people there overnight and all the time." This creates the potential for some serious problems concerning keeping drugs away from people who already have a problem with them. She said this is a nice neighborhood that is working on two affordable housing projects, is located near a home for the elderly, apartments for low-income persons and a park. There are a lot of vulnerable people in the neighborhood and she does not believe the City should make it easier for them to be preyed upon. She noted there is no place for people to catch public transportation on 27<sup>th</sup> Street; they must catch it within the neighborhood. Ms. Westwood said there is a need for use of the property, but there are better ways to solve the problems than placing this extra burden on this neighborhood again. She said there is certainly a need for methamphetamine treatment in this community but the entire community needs to bear the burden of this, not just this neighborhood. The Southside is trying hard to thrive and if the City allows location of this type of facilities there, it makes that difficult. Ms. Westwood said more dialogue between Alternatives, Inc. and the community should be scheduled to make sure that this type of facility is acceptable in any part of the community.

GENE JARUSSI, 1131 N. 32<sup>ND</sup> STREET, said it is not an issue of whether or not methamphetamine treatment programs are needed, but to continue a course of conduct that labels a neighborhood as a "correctional corridor". The Council must decides if it wants that to happen. He said most people do not object to living next to the "medical corridor", but if the Council desires to encourage affordable or new housing in the Southside, there will be difficulties due to the negative impact of the "correctional" classification. The continuing growth of correctional facilities in that area will not generate a "mix" of business. Communities thrive with mixed uses, he added. Mr. Jarussi also noted that this area is an entryway into the City and he questioned whether this is the "kind of foot" the Council "wants to put forward" to those entering our community. He suggested law enforcement or incarceration facilities are not the best first impression. He said it is not fair to place that burden all in one neighborhood.

PAM BUNKE, 4103 MURPHY, said she works at 2615 4<sup>th</sup> Avenue South and is the Regional Administrator for Probation and Parole, serving 1400 felony offenders. Those offenders do not all live on the Southside. She said she has never had a complaint from the Southside Task Force or the surrounding neighbors. Methamphetamine addition is a huge problem in the community and the City has an opportunity to do something positive to address the methamphetamine problem. Rehabilitation is a positive thing and it is not

about bringing offenders from across the state into the community. Ms. Bunke said it is time the community takes "care of its own" and endorses the program.

BILL KELLY, 518 S. 33<sup>RD</sup> STREET, said he is the chairman of the Southside Task Force and serves on the Board of the Friendship House of Christian Service. He expressed concern for the safety of the children who use the park in this Southside neighborhood and the MET bus passengers that will be catching public transportation near the park. The Friendship House's summer program has 100-200 children who use the park with only so many adult supervisors. Children of all ages use the park at all times of the day and beyond dark. He agreed that a methamphetamine facility is needed, but said this location is too close to a residential neighborhood. Mr. Kelly asked the Council to reject the proposed facility at this location.

DAVE BOVEE, 424 LEWIS AVENUE, said one thing that has not been mentioned is that drug crime and drug criminals have a high degree of recidivism and violence. He said he does not think this proposed facility is the "best idea". He said he does not believe that Alternatives, Inc. is not interested in bringing offenders from all parts of the state to this facility. He said they are in business for the money and don't want to have an empty bed. Mr. Bovee said there are many other locations in the County that are less populated and better suited for this proposed facility. He asked the Council to give this "good, hard consideration" and ask Alternatives, Inc. to locate the methamphetamine criminals someplace else.

LIZ ROMO, 714 S. 31<sup>ST</sup> STREET, said she is a lifetime resident of the Southside. She said the methamphetamine program is greatly needed, but feels the Southside neighborhood is "being dumped on" with correctional facilities. She asked the Council to find another location for this facility.

JAMIE ADIAK, said she resides at Alternatives, Inc., 104 N. 31<sup>ST</sup> STREET. She said she is appalled at the problems the speakers are having with locating a methamphetamine treatment center at the Howard Johnson facility. She said "a Martha Stewart kind of living is not going to happen here" with the rapidly growing methamphetamine problem. She said the Southside is not being "targeted" because rehabilitated felons are everywhere. Ms. Adiak said she is a convicted felon currently going through the Alternatives program and has been on probation for two years. She said the proposed treatment facility is "one of the best ideas she has heard" and until the problem is solved, methamphetamine addicts will be in every neighborhood. She said the Howard Johnson facility is conveniently located for offenders, but it doesn't matter where the treatment center is located. She asked everyone to look at the positive benefits of the program to the community, which include treatment and rehabilitation of those currently in prison with methamphetamine addiction problems.

JOSE BUSTOS, JR., 109 S. 37<sup>TH</sup> STREET, said he works with kids coaching for Lines and Stripes boxing team. This program would subject the kids to another crime-associated venue and he is against that. "Another drug facility in the community is another negative for the kids to look at," he added. He said the community needs more positive programs in the Southside neighborhood.

JOE WHITE, 926 N. 30<sup>TH</sup> STREET, said he is happy that this program is for women only. He said he agrees with Ms. Dozier's comments that there are too many inmates located on the Southside and this can lead to severe problems with the numbers of confined women. He said the prison was a mistake and should be relocated. The Council should seek opinions of experienced professionals relating to locating these types of

programs. Mr. White said he is opposed to locating the methamphetamine treatment program here.

MAGGIE SHANAHAN, 210 NALL AVENUE, said she grew up living near Alternatives, Inc., never had a problem with any of the offenders living there and was not aware of their presence until a few years ago. She now lives close to the proposed new facility and has no fears about that, stating that "this is one of the greatest things that can happen down there." She noted that there is much industry in the area. She does not feel any safer with that presence than the corrective presence. Ms. Shanahan said she hopes the methamphetamine treatment center is successful in its plans.

PENNY STRONG, 115 CLARK AVENUE, said she is the Chief Public Defender for Yellowstone County and a new board member of Alternatives, Inc. She spoke in favor of Alternatives, Inc.'s proposal and asked the Council to take a more positive look at the proposal. Instead of looking at this area as a "correctional corridor", let's think of it as a "rehabilitation corridor". This facility is different from the women's prison and will emphasize treatment and rehabilitation for methamphetamine offenders. She said there are several entities in the area that should alleviate the concerns of the Southside residents starting with the location of the Sheriff's Department and jail facility on King Avenue that houses many law enforcement officers. Probation and Parole law enforcement officials are located nearby and the excellent work of the Billings Police Department should alleviate concerns about excess crime. Ms. Strong noted there has only been one incident at the environs of the prison facility that has come to her attention, and that was a disgruntled husband who came into the area with a make-shift bomb. This person was easily disarmed and no residents were placed in great danger. She also noted that Alternatives, Inc. is celebrating a 25-year anniversary. One can take Mr. Armstrong's promises at face value that he will work with the community residents to make this facility a positive experience. Ms. Strong said methamphetamine addiction strikes at all levels of society and every individual has the constitutional right to fair sentencing with rehabilitation as an important part of that. This facility would meet that requirement. She added that the women who come to the Alternatives, Inc. program are in great need of parity in the number of beds available to them. This facility would serve that need.

KEMP WILSON, CARBON COUNTY ATTORNEY, said he is a board member of Alternatives, Inc. which is a privatized organization that assists and rehabilitates those who have been sentenced for various crimes. He became a board member so that he could find out how to assist those in Carbon County who have "troublesome times" and are sentenced by the courts. He said during his service he has found a hard-working group of dedicated individuals that provide the best care, development and counseling possible for individuals in a pre-release situation. Mr. Wilson said Alternatives, Inc. is "stepping out" into a new area of prolonged, effective treatment for methamphetamine addiction. Experts agree that counseling for methamphetamine addiction should not begin for nine months because it takes that long for addicts to become clean. Most treatment programs in the state that have been privatized are for a one-month duration and a state run alcohol program is six months. Alternatives, Inc. does make a little money, but the organization is non-profit and the money is returned to the organization. He said this is not a money-making operation for Alternatives, Inc., but it can be for the City of Billings and Yellowstone County through the budget expenditures from the program. Mr. Wilson urged the Council to vote in favor of the resolution that will allow Alternatives, Inc. to submit its proposal to the

Department of Corrections. After that, discussions can begin to find alternate sites for the methamphetamine treatment center. If there are no alternate sites, the proposal will be withdrawn and Alternatives, Inc. will continue to use the Howard Johnson facility for rehabilitation and pre-release programs that are currently offered. Alternatives, Inc. was able to purchase this facility at a very attractive price. It would not be able to build a comparable facility in a different location for anywhere near that price.

STEVE PEEK, 2811 VERMILLION DRIVE, said he has worked at Alternatives, Inc. for thirteen years and encouraged the Council to support its proposal. He addressed security concerns by stating that offenders under the supervision of the current Alternatives, Inc. facility are under tighter controls than if they are under Probation and Parole's authority. If anyone in its program is caught even stealing a pack of gum, they are immediately sent back to prison because there is zero tolerance practiced. He also noted that the methamphetamine unit will be a closed unit, so offenders will not be out in the neighborhood.

FRANCIS HARRIS, THE TERRACE, said she lives in the downtown area and has not found any dangerous people around her. After listening to all of the speakers, she does not think this facility will be as harmful to the Southside residents as they think. She urged the Council to support this program and remember that there are a lot of methamphetamine addicts in Yellowstone County. She finds it extremely unkind to deny these people what appears to be an extremely good treatment center. She asked the Council and the community how they can turn their backs on this desperate need.

BLAINE POPPLER, 5403 KING AVENUE WEST, said he is a commercial realtor in Billings who did not directly represent anyone in this purchase, but acknowledged that the property has been for sale since 1997. Alternatives, Inc. offered the first viable offer to purchase this property during that time. He noted that the "Conoco Triangle" area goals have been to locate more industries and less residential in that area. The amount of security in the area is unique with both the U.S. Post Office and the Conoco Refinery, which host large security contingents. Along with the previously mentioned correctional facilities, the amount of available security is unequalled in any other part of the City or state. Mr. Poppler said the "correctional corridor" was created a long time ago and what is there now is a synergy and services available to the clients of Alternatives, Inc. nicely located in a well-planned out street with an industrial heart at the core. He does not see the sense in locating this proposed treatment facility away from this synergy just to assuage someone's feelings that South 27<sup>th</sup> Street isn't "getting a fair shake". He added that South 27<sup>th</sup> Street has had properties available for purchase by any number of enterprises. The only business willing to locate there has been Smith's Funeral Chapel. Mr. Poppler encouraged the Council to wholeheartedly support this proposal.

ANNA SNYDER, 1631 VIEWCREST DRIVE, said she does not live on the Southside, but her initial impression of the area was not the best. She said it appeared a little run down with a jail in the center of town. She said she does not agree that placement of a treatment center in this area is the best decision. She said the treatment program is a great idea, but is concerned with the security issues. Ms. Snyder said that five security officers for a 155-bed facility would not be sufficient to make her feel safe. She said she has small children and she is concerned for their safety. She said Alternatives, Inc. has not convinced her or many Southside residents that the facility should be located on the Southside.

Mayor Tussing called for a brief recess at 9 P.M.  
Mayor Tussing reconvened the meeting at 9:12 P.M.

Mayor Tussing reminded the Council and the public that the issue before the Council is merely to approve a resolution expressing support for location of a methamphetamine program in the City of Billings. He said many are aware that Alternatives, Inc.'s intention is to place that facility at the former Howard Johnson facility on the Southside. He said the Council will not be voting this evening on approval of the location of the facility; there will be another future public hearing that addresses that concern. Ms. Volek reminded the Council and public that there will be a special review required to place the methamphetamine treatment center in the Howard Johnson location. The revised resolution does not specify a location, but simply states that the City of Billings would be willing to accept the location of a methamphetamine treatment facility somewhere in the City which is necessary for the application process.

JAKE ROMERO, 3705 CAMBRIDGE DRIVE, said he owns property at 401 S. 25<sup>th</sup> Street. He participates in both the Southside and the Southwest Corridor Task Force. He is the chairman of the Hispanic Planning Committee, participates in community activities to make a difference and to show that the Southside is full of good, hard-working people and not a bad place to live. Southside residents care what people think of them. He asked the Council to not "shut out" the residents of the Southside, but to "show us that we count" and have a voice in what happens to their community. Mr. Romero asked the Council to not approve this project. He speaks for several members of his family who feel the same way. If the Council approves this project it will make prisoners of the entire Southside.

NADINE NEIGHBOR, 1229 POLY DRIVE, said she lives across the street from a house full of youth offenders and drug addicts and is content to be there. During her time in graduate school studying social work in Spokane, Washington, she learned that Billings, Montana was one of the methamphetamine capitals of the northwest. She subsequently returned to Montana and spent five years as a community social worker in Helena and two years as a supervisor for Centralized Intake for youth. During those years she saw the disabling damage that methamphetamine addiction does to perfectly normal working families. She said she now works at Alternatives, Inc. as a caseworker and stated that it is one of the more hopeful jobs in corrections that she has had. She urged the Council to pass this resolution endorsing a methamphetamine treatment program in Billings and make Billings the methamphetamine "recovery capital" of the northwest.

STEVE WALLACE, 1140 DICKENS, said he is a licensed clinic professional and addition counselor in Billings. He said he has been in drug treatment on the provider side since he was 18 years old doing presentations to his peers in high school. During that time he worked toward his degree and the credentials that he currently holds. He has worked in treatment centers and psychiatric and chemical dependency centers. He said he has witnessed methamphetamine addiction take people who are not criminals (everyday Americans) and within 24 months lose their children, ruin their health, ruin their lives and maybe have collected a couple of felonies along the way. He has watch governments drag their feet and overlook these programs.

STEVE WISER, 1444 YELLOWSTONE AVENUE, said he is the Alternatives, Inc. Job Manager for Alpha House. He has witnessed the hope of a new job, new attitudes and getting their families and spouses back for these residents. He urged the Council to support the resolution and give these offenders a fresh start.

PETE MANGRUM, 519 E. 4<sup>TH</sup> STREET, LAUREL, said he works for Alternatives, Inc. and see lives being changed daily. He said Alternatives, Inc. does the job right and if anyone can pull off the methamphetamine treatment program it would be them.

ADAM RUTHERFOOD, 832 PINE VALLEY ROAD, said he is an employee of Alternatives, Inc. He said the community must face the fact that methamphetamine addiction is in our community. He said this is an opportunity for Billings to take action on this problem.

MICHELE FEBACH, 121 FOSTER LANE, said she works with Probation and Parole inside the women's prison. She sees women who she has gone to college or grade school with, that have taken a wrong turn and become addicted to methamphetamine. She asked the Council to endorse this treatment program.

BETTY ROAN, 3205 COUNTRY CLUB CIRCLE, said she works at Alternatives, Inc. where the current program is located ½ block from the Fratt Middle School. Children there have never been endangered by the resident offenders. She said Alternatives, Inc. is a good neighbor and works very hard to be good neighbors addressing any kind of issue immediately. She said treatment works. Alternatives, Inc. maintains an equal partnership with law enforcement and probation and parole, where treatment is a very important part of the equation. Just incarcerating methamphetamine addicts doesn't help change their lives, but this proposed state-of-the-art methamphetamine treatment module addresses the problem in the appropriate manner. There are 40-50 methamphetamine addicts in the pre-release center presently, that are not in the appropriate kind of treatment. Ms. Roan said methamphetamine treatment takes long-term care in a closed unit to be successful. She added that when addicts are clean, they are decent people who are monitored through urinalysis, enhancing the safety issues.

TOM ZURBUCHEN, 1747 WICKS LANE, said the Howard Johnson facility is going to be a pre-release center at the minimum. This means new jobs and new employment within the City. The methamphetamine treatment center will mean even more jobs that are higher paying. He said he has not heard anything about tax dollars going into this development, which is what it really is – a development that brings employment, widening our tax base by putting people to work. There are no tax dollars going into this project, whereas the Sandstone project, which is coming up later this evening is asking for millions in tax dollars and won't widen the tax base by putting new people to work. He asked the Council which proposal makes sense. If Alternatives, Inc. does not utilize the Howard Johnson as its treatment center, the facility may become another Pierce Packing building. The community doesn't need another one of those.

FRED PINNICK, 6564 KELLER ROAD, said he has worked at Alternatives, Inc. for six years. He started there as a urinalysis supervisor. In those six years he has seen that methamphetamine addiction destroys people, all classes of people. He said the methamphetamine treatment program is a lock-down system – the participants can't leave for nine months. The pre-release program is different; it is a monitored program where random urinalysis drug tests are performed on everyone. He said there are safeguards

built into this process that prevents the participants from being out in the community committing crimes. He urged the Council to support the proposal.

STEVE BALLOCK, 724 TEPEE TRAIL, said he is an Alternatives, Inc. board member and noted that he has not heard anyone argue against a methamphetamine treatment program in Billings. If the Council votes "no" on the resolution how could that happen.

CONNIE WARDELL, 1302 24<sup>TH</sup> STREET WEST, said she thinks that if Alternatives, Inc. had purchased the Howard Johnson facility before Smith Funeral Chapel purchased the former Bungalow facility, the later transaction would not have occurred. If Alternatives, Inc. is located in the Howard Johnson facility, the City can "kiss off" having any viable, tax-paying business locate on South 27<sup>th</sup> Street. She said the City is not going to gain economically from this transaction because another non-profit will be taking property off the tax rolls. She said many people like the convenient location of the current Howard Johnson facility. She thinks the only thing it needs is someone to put some money into it and keep it as a viable hotel. Ms. Wardell said the City should do all it can to keep this facility as a hotel and help Alternatives, Inc. find another location. She also disagrees that this agenda item is not about the potential location tonight. She said the issue is "does the City want to bring people from all around the state into this City with the chance that they will relocate to this area." She said she rents to these people and noted that when a woman is released from prison, within six months she will have a "live-in" and nine times out of ten will begin doing methamphetamine or is doing it. She said she deals with this on a daily basis. These people do not leave town when they come here for incarceration. This is not just a Southside problem, but a Billings' problem that is bringing more people into Billings that will eventually relocate here. On another issue, Ms. Wardell said she consistently checks the City's website and found no information on the revised resolution available on the website or notice that the agenda item had changed to only a document of support for a methamphetamine treatment program and not support for a site-specific location. She said she does not think the Council can vote on this issue because it has not properly provided the public with the information that it needs to testify in a meaningful manner. Ms. Wardell said it is time for the City to stop doing business in this manner. Mayor Tussing asked if Ms. Wardell has a valid issue in regard to potential litigation because this information was not provided in a timely manner. City Attorney Brent Brooks said the Council is entitled to make any amendments to any resolution that comes before it. As long as the City has advertised and the public is aware that an issue is going to be discussed, that is sufficient public notice. He said he would be happy to litigate that challenge. Councilmember Jones said he thinks it is a legitimate request that the public have access to revised information at the back of the Council Chambers. Councilmember Boyer asked when the revised resolution became available. Ms. Volek said she became aware of the special review requirement for the methamphetamine treatment center and that it would be inappropriate to include a specific address in the resolution at 3 P.M. this afternoon and provided a revised resolution (redaction of the site specific location) for distribution shortly before this meeting.

DAVE HENRY, 1109 N. 23<sup>RD</sup> STREET, said he has been on the board of Alternatives, Inc. for fifteen years. His career in later life has been in the human rights arena. He said he has watched Alternatives, Inc. grow over the years and stated that this facility offers hope to people who need to be uplifted. The facility is filled with practical

people who are trained to deal with the kinds of problems that are created by methamphetamine addiction. Methamphetamine addiction is horrible, is a catastrophe and a disaster. He said Alternatives, Inc. offers hope and help to these people; a positive thing that is needed in Billings and also on South 27<sup>th</sup> Street.

TOM HANEL, 1723 IRIS LANE, said he is retired from the City Police Department. He had a successful 22-year career in law enforcement and has been involved with Alternatives, Inc. for many years representing them as a board member and assisting them as a real estate broker. He also noted that he has sponsored several criminals. He said he is disappointed in many public comment speakers who state that "this is our neighborhood". He said it is everyone's neighborhood, everyone's community because every citizen is a taxpayer that is involved with their community. There has been extensive research done on what area of town would be best for this treatment center and what areas are available. The Howard Johnson location is the best-suited location in the City of Billings. This is a win-win situation. Billings needs a facility for methamphetamine treatment and the female population has been neglected. "They need our assistance and we are all here for the betterment of the community." He asked the Council to support this program and hoped that there would be a better sense of reality if this type of issue arises in the future. Councilmember Stevens asked what other communities will be submitting a proposal on this RFP. Mr. Hanel said Butte and Lewistown are the two communities he is aware of.

CHARLES BROOKS, 2226 FAIRVIEW PLACE, urged the Council to support this resolution. He said the intention of responding to this RFP is to avoid "piling up people in prison" just because there is no community program available to them. Billings needs this community program. He said he has been in hearings with the Department of Corrections in Helena a number of times and the reports are that methamphetamine addiction in females is growing at the rate of 25% per year. Treatment is the answer and Alternatives, Inc. has a success ratio of 75% in its program. The program works because it has the talent, the ability and the proven leadership that has built this program over the past 25 years into a very successful community program. Mr. Brooks said this program is necessary for the community. As the City considers its growth, South 27<sup>th</sup> Street will become a corridor to the medical community and the airport. It has been proven that the hospitality industry cannot succeed there. The City needs to turn its attention into developing this area into wholesale distributors and service organizations; it is ideal for that and will provide the tax base. He also noted that the higher paying jobs that this facility will provide are substantially higher than the jobs that the hospitality industry can provide. Otherwise, the future of this property could be that it will be vacant for many years. Mr. Brooks said this treatment center is a viable, effective use of the property and he urged the Council to support this proposal.

CHARLES HAMWEY, 1010 GRAND AVENUE, said it took 3-1/2 years to find a suitable property to relocate the Smith Funeral Chapel so the City could expand its Park II garage. He said Smith's was concerned about locating on the Southside, wanting some assurance of future business and economical development there. He urged the Council to consider the investments of others in the area.

SCOTT JOHNSON, 3137 AVIEMORE COURT, said he serves on the Board of Directors for Alternatives, Inc. The current facility is full of murderers, rapists, sex-offenders and people with terrible chemical dependencies. Most of the business owners in the area don't even know what goes on at that location. He said this facility is well-managed and

well-run and the offenders realize it is a privilege for them to be in that circumstance. Mr. Johnson said there is good communication and interaction with the surrounding businesses. He noted that the Howard Johnson facility is currently grossly under-occupied and does not work for the purpose it was intended. He also noted that the owner of Smith's Funeral Chapel has served on the board of Alternatives, Inc., and understands the program. A letter of support for this endeavor from Smith's owner was presented to the Council this evening. Mr. Johnson said the facility will be well-run with capable people who know how to address the methamphetamine addiction issue. He said this facility will raise the property values on 27<sup>th</sup> Street and help the surrounding businesses and the community.

There were no other speakers. The public hearing was closed. Councilmember Jones moved to approve the resolution endorsing establishment of a methamphetamine treatment program in Billings, seconded by Councilmember Ruegamer. Councilmember Boyer abstained from voting because her husband is a vendor for Alternatives, Inc. but noted there is no doubt of the need for this program in Billings. City Attorney Brent Brooks confirmed this would be a valid conflict of interest due to the personal financial involvement.

Councilmember Veis said the resolution before the Council does not specify a location for the program and he supports its adoption. He noted that he will be very interested in hearing what alternative locations have been investigated during the next phase of locating this program at the Howard Johnson facility. Councilmember Ronquillo said he is not opposed to the methamphetamine program, but feels that it needs to find a different location. Councilmember Gaghen noted that the Howard Johnson facility will still be used as a pre-release center and that is a concern to the Southside neighborhood who feels that it is impacting them due to its correctional nature.

Councilmember Clark said location of the methamphetamine program really must be "looked" at during the special review process because he is not sure the Howard Johnson facility is the best place for it. Mayor Tussing said he sympathizes with the concerns of the Southside residents and he would prefer that the Howard Johnson facility remain viable and the property remain on the tax rolls. He did not think that would happen due to the buy/sell agreement in place. There is no doubt that the 65-bed pre-release center will be placed there. He noted that the Council may be looking at this issue in a negative perspective. He thinks that Billings may one day be proud of having the premiere methamphetamine treatment facility in the region. The City can't afford to say, "this is important, but someone else should do it or it should go someplace else." At some point, someone has to "step up to the plate" and he thinks this could be a source of pride for the City, he added. He said he would support the resolution.

Councilmember Brewster said he thinks that if all of these correctional facilities were in a group in any other part of the City, there would be residents from those areas with the same concerns as those on the Southside. It is far too easy to group these types of facilities together and the Southside appears to be the recipient. Councilmember Jones agreed with the Mayor's comments and looked at this as being a positive step for Billings. If a facility or business wants to move into an area that is appropriately zoned, that is its right. He said it appears that this proposed facility will keep the traffic from the methamphetamine treatment program enclosed and he sees that as a benefit to the neighborhood because of that "closed" nature.

Councilmember Stevens said this will be a treatment center for the entire state of Montana. She noted that the results of the RFP are unknown at this point as it is not known

whether it will be placed in Billings. She said comments on both sides of the issue have made good arguments making this a difficult decision. On a voice vote, the motion was approved with Councilmembers Ronquillo, Stevens, Gaghen and Brewster voting "no". Councilmember Boyer abstained from voting.

**2.3. PUBLIC HEARING AND VARIANCE #CC05-02: a variance from BMCC Section 6-1206: curbs, gutters and sidewalks in all zones, regarding Lot 10, Block 1, Valley View Subdivision, located at 411 S. 24<sup>th</sup> St. W. Buffalo Wild Wings Bar and Grill Restaurant, applicant. Staff recommends denial. (Action: approval or disapproval of Staff recommendation.)**

Councilmember Boyer moved for approval of the Staff recommendation for denial, seconded by Councilmember Gaghen. Councilmember Ruegamer asked why the City, as stated in the "Financial Impact" section of the staff memo, is required to construct the sidewalk that will not be constructed by the owners. Director of Public Works Dave Mumford said ADA requirements are currently being assessed relating to that sidewalk which is an access issue. Councilmember Ruegamer asked if the sidewalk is required, can the variance be subject to the sidewalk being the responsibility of the owner. Mr. Mumford said he believes that can be done. He noted that Staff is limited due to the site development ordinance that requires that the sidewalk be constructed. City Attorney Brent Brooks verified that the motion could include an amendment that stipulates the financial responsibility of the sidewalk. The motion and second were withdrawn so that the public hearing could be held.

The public hearing was opened. CHUCK GOLDY, 2127 LYNDALE LANE, said he represents Brad Anderson of Buffalo Wild Wings. He noted that the proposed sidewalk "goes nowhere." He said he has walked the whole wall without problems and noted that skateboarders use it continually. He said that he has suggested to the owner that a handicapped curb-ramp may address some concerns. He said the owner has followed every rule and set of drawings that came from the corporate office. The site has a sandy soil base and the current retaining wall has been in place for a long time. When it is finally terraced and landscaped it will "be great; it is natural, why change it?." He presented pictures for Council review. Councilmember Gaghen asked about the steeply sloped sidewalk. Mr. Mumford said it is not a "sidewalk", but a stabilizing concrete slab for the retaining wall. Councilmember Brewster asked if Mr. Goldy is suggesting that if a regular sidewalk were to be constructed replacing the current retaining wall, that the soils won't allow the grade to be maintained. Mr. Goldy said this area is fill-dirt and when the retaining wall is removed the soils may run out into the street and possibly cause water to collect in a neighboring basement. He said the owners are willing to place a handicapped curb-cut across the street to solve the problem. He said to remedy the sidewalk concern may cost hundreds of thousands of dollars for a sidewalk that goes nowhere.

Councilmember Boyer asked if Mr. Goldy dealt with the requirements of the site development code when changing the use of the business. Mr. Goldy said he got an interpretation in writing from a Staff member of the Planning Department that said there is no change in use under the zoning code and that the footprint that existed could be used. It was the Engineering Department that stated it did not recognize what the Planning Department had stated, he said. Ms. Volek said the Planning Staff is noting that the interpretation applied to expanding the existing building. The original building was

demolished and a new one constructed. This is a new site so the previous interpretation did not apply to a new structure. Mr. Goldy said it is not a change in use. Planning Director Ramona Mattix agreed that there is not a change in use, but the site development ordinance (that is not part of the building code) governs and creates the need for the sidewalk. Mr. Mumford said the site development ordinance states that once a structure is removed for new construction, the site is considered a new site. Mr. Goldy said there is a conflict in the site development ordinance by how certain things are interpreted. He said he got assurances about using the same footprint and not increasing the building. He emphasized that the proposed sidewalk will be of no use to the site because it will be 7 feet below the site.

Councilmember Boyer asked Mr. Mumford to clarify how the process came to this point. Mr. Mumford said the owners have until July to resolve the sidewalk concern and the variance process is available to them. The variance process started after construction was completed. Councilmember Boyer asked if the engineers that Mr. Goldy has employed, as he has inferred, have more knowledge about the soil and structural conditions than the City Engineering Staff. Mr. Mumford said he would not argue soils engineering, but a retaining wall can be constructed and may be somewhat difficult and probably very expensive. That is the issue, he said. He said the variance could have come forward at any time during the site review because the sidewalk was required at that time. Councilmember Clark asked if the original paved parking area was unchanged. Mr. Mumford said that may have been left unchanged.

Councilmember Ronquillo asked why this sidewalk was not required of the former owners. Mr. Mumford said he could not speak to the issue of the original site development, but can address only the current site development requirements. He added that the Staff does not have the authority to decide when to implement or not implement an ordinance; that is the Council's prerogative. Councilmember Jones asked if the Public Works Department has any concerns with Councilmember Ruegamer's amendment. Mr. Mumford replied "no". Councilmember Clark asked if Mr. Goldy's suggestion regarding the handicapped curb-cut would suffice. Mr. Mumford said that may suffice, but the Staff's concern is trying to interpret the Justice Department's ruling on the ADA requirements. The City will be putting handicapped accesses along this area as part of the ADA requirements.

Councilmember Gaghen asked if there is a question of liability for the City or the owner. Mr. Mumford said if someone is hurt in a City right-of-way it would be a liability for the City. The current construction does not remotely resemble a sidewalk and if someone got hurt it would be the City's responsibility. He added it is no more of a liability than it has been in the past. Mayor Tussing asked how this situation fits into the 5-year plan to have the City's sidewalks handicap-accessible and meeting federal standards. Mr. Mumford said the priority in the plan is to address first the segments of the City that do not have handicap ramps available. He said this issue would not be addressed in the first 5 years.

Mr. Goldy noted that he applied for the interpretation on December 4, 2004 and not after the fact. The interpretation applies to a "no change in use" and he cautioned that if the written document is not valid then another method must be devised to assess these types of issues. Mr. Mumford agreed that the building did not change use and could retain the current site, but because a new "structure" was built, the site development ordinance demanded certain requirements. He said Mr. Goldy's question to the Planning

Department did not include plans for new construction. Councilmember Veis asked if Mr. Goldy consulted with the Engineering Department during his process. Mr. Goldy said he consulted with the Building Department first and the Planning Department next. It was only after construction started that the Engineering Department noted the concerns and the variance was considered. Ms. Volek noted there is a process in place that allows applicants to have single discussions of options with Staff, but noted that this process was not part of Mr. Goldy's issue possibly due to timing.

JERRY JONES, 2231 HYACINTH DRIVE, said he is the General Manager for ABC6-Fox4 and noted that if the sidewalk is constructed it would run into the side of their building; go nowhere and "dump" out into the street. The sidewalk would put their building in jeopardy. He is concerned about removing the old retaining wall and adding a sidewalk. He asked the Council to approve the variance.

There were no other speakers. The public hearing was closed. Councilmember Boyer moved for approval of the Staff recommendation for denial of the variance, seconded by Councilmember Gaghen. Councilmember Ruegamer made a substitute motion to approve the variance with the stipulation that if the ADA requires that the work be done, Buffalo Wild Wings will be required to pay for it, seconded by Councilmember Jones. Ms. Volek said the motion should include any possible successor to Buffalo Wild Wings and that it be recorded with the deed in order to insure that subsequent purchasers of the property are aware of the obligation. Councilmember Veis moved to amend the substitute motion to state that the landowner of the lot or lots adjacent to the sidewalk are responsible for payment of the sidewalk and not a specific business, seconded by Councilmember Ruegamer. Mr. Brooks said this should include an amendment to the deed so that future landowners are made aware of the stipulation. Councilmember Boyer asked what the City's exposure is with these motions. Mr. Brooks said the biggest concern would be the future ADA requirements. He added that sidewalk injuries are a major portion of the claims with which the City has to deal. Because the City is being "put on notice" now about this potential hazard, there is the risk that someone could get hurt and the City could face potential litigation. Councilmember Jones said the area is not currently a sidewalk and is probably safer in its present form. Mr. Brooks said he would like the Council to be aware that there is risk. Councilmember Stevens asked if there is any other entity outside of the Department of Justice that would require the sidewalk section. Mr. Mumford replied "no". On a voice vote, the amendment to the substitute motion was approved with Councilmember Brewster voting "no".

Councilmember Veis amended the substitute motion to include requiring Buffalo Wild Wings to pay for the handicapped access across the street, seconded by Councilmember Jones. Mr. Mumford said this would be the City's responsibility in the future and will be done that as part of the program. It is not customary to ask developers to upgrade facilities across from their sites. Councilmember Veis said the Council is "doing something good for them and they have offered to do something good for us; why not let them do it." Councilmember Stevens said the only good the City is doing at this point is delaying the requirement until the ADA makes it a requirement. Councilmember Veis said if the substitute motion does not pass, the landowner will be spending "large" dollars for this. Councilmember Jones asked if this amendment is appropriate. Mr. Mumford replied "no". Councilmember Ruegamer's substitute motion solves both problems, deals with the ordinance as written and provides a way to comply. On a voice

vote, the amendment failed with only Councilmember Veis voting "yes". On a voice vote on the substitute motion as amended, the motion was unanimously approved.

Mayor Tussing called for a recess at 11:00 P.M.

Mayor Tussing reconvened the meeting at 11:07 P.M.

**3. 4. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #772: a zone change from Residential Manufactured Home to Residential 6000 on Lot 6, Block 3, Superior Homes Subdivision, located at 406 Roxy Lane, Ann Bustell, owner. Zoning Commission recommends approval and adoption of the determinations of the 12 criteria. (Action: approval or disapproval of Zoning Commission recommendation.)**

There was no Staff presentation. Planning Department Staff Aura Lindstrand offered to answer Council questions. The public hearing was opened. DAVE BROWN, 544 WIGWAM TRAIL, said he does not think most folks understand the determinations of the 12 criteria and asked the Staff to explain that. He also asked for an explanation of Residential 6,000 and Residential Manufactured Home designations because homes in those designations are built to the same standards.

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

**4. 5. PUBLIC HEARING AND SPECIAL REVIEW #799: a special review for the production and storage of hydraulic cement and concrete materials in a Controlled Industrial zone on Lot 2, Block 6, Tierra West Industrial Park Subdivision, 2<sup>nd</sup> Filing, generally located at the northeast corner of Hesper and South 32<sup>nd</sup> Street W. Cretex Concrete Products West, Inc. (dba Elk River Concrete Products), Steve Wagner, applicant, Engineering, Inc., agent. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

There was no Staff presentation. Planning Staff Member Cynthia Wilson said she was available for questions. Ms. Volek acknowledged the request from Engineering, Inc. to delay the public hearing to 1/23/06, but advised that the hearing has been noticed and Staff recommends the Council conduct the public hearing but delay action to 1/23/06.

Councilmember Ullendale asked how what the applicant is proposing going to be different from what they are currently doing. Ms. Wilson said it will not be different in any manner and will just be an extension of the present operation adding outside storage. Councilmember Clark asked why the delay was requested. Ms. Wilson said the owner/applicant could not be present at tonight's council meeting and wanted the opportunity to address the Council.

The public hearing was opened. MARSHALL PHIL, ENGINEERING, INC., 1500 TRANSTECH WAY, said the owner and the neighbors have been discussing several items related to landscaping and screening of the property. He said the owner is out of town and requested the delay to 1/23/06 for a chance to expand discussions with the neighbors. Two meetings have been held with surrounding property owners and a landscaping plan has been developed.

JERRY THOMAS, 2010 PLAZA DRIVE, said he represents the Bottrell Family Investments, that owns the TransTech Center. He said the owners initially had concerns about consolidation of the applicant's business adjacent to the TransTech Center. This center has been a big investment in Southwest Billings and the owners are concerned about how that neighborhood was being developed. He said meetings with Steve Wagner of Cretex included good discussion that brought forward some possibilities that would allow the Bottrell Family Investments to approve the development. These options included landscaping and screening that would be done in a tasteful manner. He said Mr. Wagner has indicated that he would comply with a request to plant 8-foot Austrian Pine trees around the perimeter of the property on a minimum of 20-foot centers with irrigation. This would be acceptable to the Bottrells. Mr. Thomas said he would like the action to be delayed so that they can ascertain that the final plan will be developed according to the verbal agreement.

There were no other speakers. The public hearing was closed. Councilmember Veis moved to continue the public hearing and delay action to 1/23/06, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

**5.6. PUBLIC HEARING AND 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. (Delayed from 12/19/05). (Action: approval or disapproval of Staff recommendation.)**

Public Works Director Dave Mumford said the department is not bringing the idea of condemnation to the Council for the segment of Grand Avenue between 8<sup>th</sup> and 12<sup>th</sup> Streets lightly. Staff has been in negotiations and discussions with property owners on this section since 2002. The last appraisal on the identified properties was done in October of 2004. The property owners on this section have been offered high appraisal price immediately after appraisals were completed, but have refused to sell. Full value for relocation of the business signs has also been approved and provided. He stated that most of the property owners on Grand Avenue agree that the widening project needs to be done. The issue is that the City has come to a point where there is no room for further negotiations due to price constraints. Additional appraisals would take between four to six months.

Condemnation would allow the Staff to employ a third party that would assist the City in determining the proper value of the property. Mr. Mumford said if it is found in court that the appraisals are too low, the risk to the City would be that it is required to pay attorney and expert witness fees for the property owners. Councilmember Jones asked what percentage of discrepancy exists between the high offers and what the property owners are willing to accept. Mr. Mumford said some property owners and the City are not far apart and some may be in the 50% range. One property owner may be a "full take", while some are very close and the Council could make the determination to accept the property owner's higher dollar offer. Councilmember Ulledalen asked how much the appraisals increased between 2002 and 2005. Mr. Mumford said the increase was not significant. The 2002 figures were estimates from sales in the area and the appraisals were done in 2004.

Councilmember Brewster said one of the property owners is his insurance agent and he asked if that was a conflict of interest. City Attorney Brent Brooks said it would not be, unless there was a personal or financial interest in the business.

Mayor Tussing asked how many other property owners agreed to the appraisals. Mr. Mumford said there were 14 property owners involved and five owners of six properties are left to negotiate with. Mayor Tussing asked if offering more money to the remaining property owners would create any legal problems with the property owners that have currently agreed to sell their properties. Mr. Brooks said each property is analyzed on its own value based on fair market value and other considerations. Mr. Mumford added that property values have risen in the last year.

Councilmember Ulledalen asked if the condemnation and court procedure would draw this process out and delay widening efforts. Mr. Brooks said the issue is not a public use issue, but a compensation issue and the City could go to court and ask for permission to proceed with the project and litigate the compensation issues later.

Councilmember Brewster asked if the offers were adjusted based on the changes in the market. Mr. Mumford said the offers have not been adjusted because Staff is only authorized to offer 5% above the appraisals.

The public hearing was opened. MERLE JOHNS, OWNER OF 1144 AND 1146 GRAND AVENUE, said the City wants 1,120 square feet in front of his property at \$8.91 per square foot. This is only half of the current market value of that property, he stated. By removing 1,120 square feet the City would be taking all of the customer parking and drive-up access rendering the building useless. The City has offered \$37,123 as compensation for loss of value and he is insulted by the offer. He said the City has made it impossible to lease this property because every potential lessee knows that the parking will disappear due to street widening. This has created a loss to him of \$36,000 per year for the past two years. Current rental prices on Grand Avenue range from \$10.00 to \$15.00 per square foot on an annual basis. The City has valued the property at \$173,000 making the rental value between \$2.89 per square foot on an annual basis. He said rental property for that price is not available. Mr. Johns said the City's position in negotiations has been "take it or leave it." He said he is willing to negotiate, however the City will have to review the appraisals. Councilmember Ruegamer asked Mr. Johns what he thinks is a fair price for the right-of-way. Mr. Johns said the value of the building is \$432,000 from an income approach and it appraises for more than \$173,000.

RANDY REGER, NO ADDRESS GIVEN, said he represents two groups that own property on Grand Avenue. He said negotiations with Mr. Mumford have been good but the City has not allowed the landowners to negotiate. The property owners that have completed agreements have properties where the right-of-way didn't matter; where plenty of ground is available. He said his property is not for sale for the price offered and there have been no negotiations since 2001. He added that there have been too many restrictions on alternate options he has provided to the City. Mr. Reger said he has sold several properties to the City through the condemnation process that have been successfully negotiated. He warned the Council that condemnation can result in damages and attorney fees in favor of the property owners. Councilmember Jones asked what Mr. Reger is asking. Mr. Reger said the Dairy Queen property is not for sale and each year the lease goes up 6%. He has had that property appraised anywhere from

\$350,000 to \$525,000. He noted that the City has no one that can negotiate. Mayor Tussing asked how far apart the appraisal prices are. Mr. Reger said "a long way."

Councilmember Brewster said his conversation with one of the property owners indicated that there are some options to consider. He asked if that has been done. Mr. Mumford said the City has tried to find a way to provide parking for Mr. Johns' property, but it has to go through the appraisal process. He said the City is limited because the price that has been offered is at high appraisal price. There is no doubt that the prices have gone up since the 2004 appraisal. Mr. Mumford said getting new appraisals are an option, but that could take from four to six months or the Staff could talk to realtors and ascertain a market price for properties in that area. The Council can also make the decision to offer more money without an appraisal if it is comfortable with that, he added.

DAVE BROWN, 544 WIGWAM TRAIL, read the following quote, "its long been known that liberty is tied to the institution of private property that Decalogue codified private property in four words – thou shalt not steal – private property and freedom are inseparable" (George Washington).

CHARLIE HAMWEY, 1010 GRAND AVENUE, said he served on the condemnation commission dealing with 24<sup>th</sup> Street West and the biggest problem for that commission after everything was resolved was the terminology of damage to the remainder. He said that is a consideration in appraising and evaluation during the negotiation process.

MICHELE JOHNSON, 2705 LACREEK ROAD, said she doesn't own property on Grand Avenue but is a property owner. She said condemnation does not sound like a way to encourage business by taking away its livelihood. She said it does not sound right to offer low value for the properties.

There were no other speakers. The public hearing was closed. Councilmember Ruegamer moved to approve the Staff recommendation, seconded by Councilmember Boyer. Councilmember Brewster make a substitute motion to allow Staff 90 days to obtain expert advice to evaluate the appraisals and come up with alternatives for negotiations, seconded by Councilmember Gaghen. Councilmember Brewster said he anticipates that his motion would allow the Staff to employ some people to evaluate the appraisal to make sure the City is offering fair market value and consider the other issues that have been expressed this evening. He said the City will be making substantial impacts on some of these properties. Councilmember Gaghen said the City Staff has been hampered by the constraints of the process and she hopes there will be greater dialogue and more tools provided to the Staff to come to a successful conclusion. She said if new appraisals are required she would rather see the time spent obtaining them. Mayor Tussing said it is tough to make a decision without knowing all of the particulars of the offers and counter-offers. He did not want to see the City held hostage with the appraisals either.

Councilmember Veis asked how this delay impacts the construction schedule. Mr. Mumford said there are other factors that have pushed the start of paving to this time in 2007. On a voice vote, the substitute motion was unanimously approved.

**6. PUBLIC HEARING AND RESOLUTION 06—endorsing the establishment of a methamphetamine treatment program in Yellowstone County, within the city limits**

~~of Billings by Alternatives, Inc. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)~~ See Item #2.

**7. 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. (PH held 12/19/05. Action delayed from 12/19/05). (Action: approval or disapproval of Planning Board recommendation.)**

There was no staff report. Ms. Volek said this item was the subject of a previous work session and the Staff is available for questions. Councilmember Veis moved for approval of the Planning Board recommendation, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

**8. PRELIMINARY PLAT of Bellville Subdivision, generally located north of Wicks Lane, west off of Brewington Lane at the terminus of Kyhl Lane. (Reconsidered and delayed from 12/12/05). Staff recommends conditional approval of the plat, approval of the requested variances and adoption of the findings of fact. (Action: approval or disapproval of Staff recommendation.)**

Planning Staff Member Aura Lindstrand said the gross area of the Bellville Subdivision plat is 7.14 acres and the net area is 5.2 acres. The size of the lots range from 9,600 to 9,754 square feet and there are 22 lots proposed for duplex development with a zoning of Residential 7,000. She noted that a portion of Kyhl Lane will be vacated to be part of the subdivision where the subdivider is proposing to pave Kyhl Lane to the intersection of Brewington Drive. A storm water issue at that intersection will be corrected by the subdivider. Ms. Lindstrand said the Planning Board could not reach a consensus on what would be the best transportation plan for the subdivision and did not make a recommendation to the Council. Kyhl Lane is a platted right-of-way all the way to Hawthorne Lane on the east side, but does not go through because of Brewington Park.

Ms. Lindstrand said the Council denied the subdivision on November 28<sup>th</sup> and at the request of the developer, the subdivision was brought back at the December 12<sup>th</sup> meeting. The plat was delayed to this meeting to allow the developer to hold neighborhood meetings to discuss the issues with surrounding property owners. She said a neighborhood meeting was conducted on January 5, 2006 and three options came out of that meeting and they were:

1. Approve the subdivision as presented in the staff report with Staff's recommendation of conditional approval, subject to 8 conditions.
2. The subdivider has proposed paving Kyhl Lane through to Hawthorne Lane (on the west) at his expense (rough estimate \$72,000), in order to lessen congestion on Brewington Lane and alleviate the need for a future SID.
3. Pave Lynch Drive from the southwest portion of the site across the existing park and bike path to create a second access from Bench Boulevard to the subdivision.

Ms. Lindstrand said the subdivider is proposing an emergency vehicle access in the southwest corner of the site. There have been discussions with the subdivider about paving Lynch Drive across the park and the bike path, creating a 60-foot right-of-way.

The issue is that Lynch Drive across the park is not a platted right-of-way at this time and may create issues with those neighbors. The Planning Staff would recommend that this issue go before the Planning Board for another public hearing process.

Councilmember Brewster asked Ms. Lindstrand to address the issues that Mr. Allard raised in his letter to the Council. Ms. Lindstrand said relating to the SID concerns, it is her understanding that only property owners fronting a road would participate in the SID. She added that there could be an addition to the Subdivision Improvement Agreement that all property owners within Bellville Subdivision would pay their proportional share in the future. She noted there are no proposals or future proposals for SIDs on this property at this time.

Councilmember Brewster asked if the half-width paving of Kyhl Lane is too narrow. Ms. Lindstrand said it would be a 30-foot width and is two driving lanes, but would not allow for on-street parking. There would be curb and gutter on the south side only. The 60-foot width would "come into play" when the northern property develops. Ms. Lindstrand said the owner of the northern property stated that he would access off Hawthorne Lane which would alleviate the fears that Kyhl Lane would become a major thoroughfare and make Hawthorne Lane the main thoroughfare instead. Councilmember Brewster asked if Kyhl Lane can be terminated one lot away from Hawthorne Lane to assure that it will not become an arterial. Ms. Lindstrand said she could not answer that question because she does not know what the transportation plan is for that area. The road is currently a platted right-of-way and has collector status so a specific process to upgrade the road would be required. Ms. Volek noted that this process would be separate from the subdivision process and would hinge on traffic counts.

Ms. Lindstrand said another concern was safety of the children in the neighborhood. Speed bumps or traffic calming on Brewington Drive was discussed at the neighborhood meeting where the property owners were amenable to this suggestion.

Councilmember Brewster moved for conditional approval of the plat, variances and adoption of the findings of fact, seconded by Councilmember Jones. Councilmember Brewster amended the motion to add Lynch Drive as an alternative access to the subdivision, seconded by Councilmember Ruegamer. Councilmember Veis asked if there are any right-of-way problems with the Parks Department for this route through the Park. Ms. Lindstrand said in preliminary discussions with the Parks Department, it is agreeable with some conditions, but the Planning Staff is proposing that this issue go through a public hearing process because those residents have not been notified of this possible change. Councilmember Brewster said he agrees that a public process should begin, but feels that the subdivision can move ahead independently. On a voice vote, the amendment was unanimously approved.

Councilmember Brewster expressed concerns about the Subdivision Improvement Agreement that states Kyhl Lane would be improved. City Attorney Brent Brooks said if the agreement is within 8 years the City can pursue the developer for conditions that were agreed to in the Subdivision Improvement Agreement. He said the City Attorney's office would review the agreement. On a voice vote on the motion as amended, the motion was unanimously approved.

9. 4<sup>TH</sup> & BROADWAY REDEVELOPMENT – 2005. (Opened 11/15/05. Delayed from 11/28/05). ~~A recommendation will be made at meeting. The Review~~

**Committee recommends approval of the Stockman Bank offer to purchase subject to a development agreement as discussed with the Council at its January 3<sup>rd</sup> work session and authorization for Staff and the Review Committee to negotiate with Downtown Billings Investors for up to 90 days for a development agreement that will outline all parties' obligations. (Action: approval or disapproval of Staff recommendation.)**

Deputy City Administrator Bruce McCandless said the revised staff report provided to the Council this evening is consistent with the presentation that was made to the Mayor and Council at last week's work session. The recommendations are to: 1) accept the offer from Stockman Bank to purchase the six lots on the corner of 4<sup>th</sup> & Broadway and the City to enter into a Development Agreement with Stockman Bank to allow a 3-year construction period for the bank building and if the building does not occur within that time the City would have the first right of refusal to repurchase the property. Concerns were expressed by the Council whether Stockman Bank would agree to enter into the Development Agreement or extend the expiration time to 2/15/06 on their offer. Mr. McCandless said in discussions with Mr. Coffey of Stockman Bank, the Bank agreed to extend the time limit. The second recommendation is: 2) approve a 90-day exclusive negotiating period with Downtown Billings Investors, LLC concerning development of the remainder of the property. The property development is essentially the proposed Sandstone Development on N. 27<sup>th</sup> Street moved to this new location, including some additional suggestions by the committee that reviewed the proposals. Councilmember Brewster asked for confirmation that the recommendations would minimize public investment and maximize developer equity. Mr. McCandless replied "yes that is the idea."

City Attorney Brent Brooks recommended that the Council address these two recommendations separately. He noted that at some point the Council must adopt a resolution and schedule a public process to actually sell the lots. Councilmember Stevens moved to conditionally accept the Stockman Bank offer to purchase 6 lots (including a discussion of the air rights over the northern lot) at the corner of 4<sup>th</sup> and Broadway and enter into a Development Agreement, seconded by Councilmember Gaghen. Councilmember Gaghen said she is gratified to see that the real estate fees are the responsibility of the Bank and is included in the offer. Mr. McCandless explained that a development agreement is required because of a few minor conditions that the committee is recommending to the Council. On a voice vote, the motion was unanimously approved.

Councilmember Stevens moved to approve the development proposal for a 90-day exclusive negotiation period with Downtown Billings Investors, LLC, seconded by Councilmember Gaghen. Mayor Tussing said there is sentiment in the public that the City is "giving away money" and that is not the case as he understands it. A tax increment district is being considered for the development, but that money would not be available unless there was a development. He said the Fannie Mae loan appears to be minimum risk to the City. Mr. McCandless said that is only true according to how the Fannie Mae loan is structured. The agreement with Fannie Mae currently does require the City to secure the loan. He said this loan would be part of the negotiations. On a voice vote, the motion was unanimously approved.

**10. CHANGE ORDERS #1 AND #2: CONTRACT FOR CLASSIFICATION AND COMPENSATION STUDY, Associated Employers of Montana (AEM) and Employers Association Inc. Recommendation to be made at meeting. Staff recommends approval of Change Order #1 in the amount of \$6,600.00 and delaying action on Change Order #2 until 1/23/06. (Action: approval or disapproval of Staff recommendation.)**

Deputy City Administrator Bruce McCandless said the Council received a revised staff report on their desks this evening. The recommendation is to approve Change Order #1 and defer action on Change Order #2 to January 23rd. He said the reason for the deferral recommendation is because the City is still working on what Change Order #2 would contain, the associated cost and how the City would pay for it. He said the Staff needs more time to gather the answers to those questions.

Councilmember Clark said he would abstain from voting because these contractors work for a board that he chairs. Councilmember Gaghen moved for approval of the Staff recommendations to approve Change Order #1 and delay Change Order #2, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved. Councilmember Clark abstained.

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

- DAVE BROWN OF 544 WIGWAM TRAIL asked for a status update on the RV camping issue. Councilmember Boyer said the RV Committee will give an update at a February work session.
- JANEE WEBER OF 179 MOLT RD said she is proposing the City of Billings adopt the City of Long Beach, Mississippi as a sister city. She asked to meet with the Council to further discuss the proposal. Ms. Volek said Long Beach, Mississippi was one of the cities hit by Hurricane Katrina. The Staff has talked about pairing with a city in the disaster area. Ms. Weber is proposing to be a contact for the City allowing the Staff to work through her. A proposed resolution can be circulated to the Council that addresses this. Councilmember Boyer suggested this be placed on a work session agenda.
- BILL COLE, NO ADDRESS GIVEN, suggested the Council take a lesson from churches and how they schedule their services – i.e. an early service and a late service. Mr. Cole suggested breaking council meetings into two parts – an early session and a later session, with a mid-point break in between. There could be public comment periods for both sessions, he added. Scheduling two sessions would help persons who were on the later agenda to not have to sit through the first session.

**COUNCIL INITIATIVES:**

- COUNCILMEMBER BOYER noted that the committee comprised of Councilmembers Brewster, Ruegamer, Clark and herself will be meeting with Mayor Tussing at Noon on Thursday in the City Hall Conference Room relating to a working relationship with Interim Administrator Tina Volek.
- COUNCILMEMBER BREWSTER: Councilmember Brewster moved to authorize Staff to prepare a letter to Michael Erickson (for signature by the Mayor) notifying

him of his ineligibility for the Parks Board appointment, seconded by Councilmember Boyer. Councilmember Boyer suggested that a copy of the ordinance be included with the letter. City Attorney Brent Brooks noted that eight of the boards and commissions (the Park Board included) possess the same qualifications for their members as the Mayor, that any member must have obtained a final discharge for all state supervision. On a voice vote, the motion was unanimously approved. Mayor Tussing asked if the Council could add a requirement for board membership i.e. check records, age of 21 years, etc. City Attorney Brent Brooks said the Legal Department would do some additional research into what can be required and come back to council at a later date.

- **COUNCILMEMBER JONES:** Councilmember Jones asked for an update of the status of the sign review committee. Councilmember Brewster said he and Councilmember Ronquillo have not had a chance to meet but some names have been discussed. He suggested that this composition be brought to the next council meeting via initiative.
- **COUNCILMEMBER STEVENS:** Councilmember Stevens moved to direct Staff to work on standardizing the qualifications for all boards and commissions, seconded by Councilmember Jones. Mr. Brooks said he would contact other cities for a copy of their application and inquire as to their requirements for serving on a board. He agreed that standardizing the requirements is the best approach and understands the Council's desires. He said the Staff would provide a proposed revised application form and a proposed revision of the qualifications for boards and commissions to the Council at a future date. Councilmember Stevens asked that the higher level of qualifications of the Mayor be proposed for all boards and commissions. No vote was taken; Councilmembers approved by consensus the direction to Staff to recommend changes to the board and commission qualifications and the application form.

**EXECUTIVE SESSION** ~~DELETED~~. See motion at beginning of meeting.

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

THE CITY OF BILLINGS:

By: \_\_\_\_\_  
Ron Tussing, MAYOR

ATTEST:

MINUTES: 01/09/06

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