

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

## **February 13, 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 Larry Brewster.

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

**MINUTES -- January 23, 2006.** Approved as printed.

### **COURTESIES**

- Airport – American Association of Airport Executives (AAAE) Award. Aviation Director Bruce Putnam introduced Lowell Pratte, Chairman of the AAAE, who presented the 2006 Distinguished Service Award to Assistant Aviation Director Tom Binford. Mr. Pratte noted that only two of these awards are given each year with fewer than four hundred people that are eligible for the award. Billings is the only city that will have two active employees to have received this award. He noted that Tom is the chair of the Board of Examiners for the AAAE credentials committee.
- Finance – Government Finance Officers Assn (GFOA) Budget and Financial Reporting Awards. Interim City Administrator Tina Volek noted that the Finance Dept. has received the GFOA Certificate of Achievement for Excellence in Financial Reporting Award for the Comprehensive Annual Financial Report (CAFR) ending June 30, 2004. She said this is the 20<sup>th</sup> year the City Finance Department has received this award and noted it is the highest form of recognition in governmental accounting and financial reporting. Ms. Volek presented accountants Alene Malloy, Jim Hauck and Vicky Harrison with individual certificates and the GFOA Budget Award to Pat Weber, Financial Services Manager. She noted that in addition, the GFOA has notified the City that the budget document for the fiscal year beginning July 1, 2005 qualified for a Distinguished Budget Presentation Award. This award has been given to the City for the past ten years and is also the highest form of recognition in governmental budgeting, representing a significant achievement by a government and its management. Councilmember Gaghen noted that this community can be very proud and appreciative of the dedicated and capable staff members that have attained these goals.

**PROCLAMATIONS – NONE**

**BOARD & COMMISSION REPORTS – NONE**

**ADMINISTRATOR REPORTS – Tina Volek**

- Interim City Administrator Tina Volek recognized Public Works Director Dave Mumford. Mr. Mumford introduced Engineering Manager Debi Meling, who joined the City's Public Works Dept last month.
- Ms. Volek noted that Item B3 has an amended recommendation to award the bid for SID 1368 to JTL Group, Inc., \$510,280.90.
- She also noted several items on the council desks this evening: A completed list of board and commission recommendations for Item 1A, as well as a letter from David Bovee and a packet of other items for Item 5. Ms. Volek said a binder labeled "Ex-parte` Communications to the Mayor and Council" for Items #2 and #5 was available for review at the back of the council chambers. This binder contains a compendium of what Staff believes to be all of the ex-parte` correspondence to the City Council on these two matters.
- Nicole Cromwell of the Planning Dept. gave a brief presentation on the Rimrock Foundation special review and its revised request. She said a neighborhood meeting was held on February 7<sup>th</sup>. As a result Rimrock Foundation has submitted a revised site plan, revised from what was originally submitted to the Zoning Commission. Ms. Cromwell said the revised/modified site plan includes a T-shaped footprint that changes the three-story structure to a two-story structure with 3,800 square feet on each floor and repositions it more towards 17<sup>th</sup> Street N. Additional units will be duplexes with a walking area, a smaller parking area, recreation area and landscaping. She said the Council may consider this new revised plan if it chooses.
- Ms. Volek noted that an item authorizing the settlement of the Cloverleaf Subdivision lawsuit needed to be added to tonight's agenda. City Attorney Brent Brooks noted successful mediation on a lawsuit that resulted from a City project west of Shiloh Road on Grand Avenue was concluded last week. The City's settlement amount is \$133,500, which he advised is a very small amount in relation to the global settlement. Authorization to proceed with the settlement agreement and execution of the appropriate documents necessary to conclude the litigation needs to be added to the agenda this evening.

**AGENDA ADDITION:** Councilmember Ruegamer moved to add the Cloverleaf Subdivision Settlement Agreement to the agenda, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved. The item was added as Item #11.

**PUBLIC COMMENT on "NON-PUBLIC HEARING" Agenda Items: #1- 3, #9 and #10 ONLY. Speaker sign-in required.** (Comments offered here are limited to 1 minute per speaker. Comment on items listed as public hearing items will be heard ONLY during the designated public hearing time for each respective item.)

*(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.)*

Mayor Tussing noted that public comment at this time was for Items #1 - #3 (including Item 2 concerning the Rimrock Foundation special review), and #9 - #11.

- CHARLIE YEGEN, P.O. Box 959, BILLINGS, MT spoke on Item 3. He said he is secretary-treasurer of Yegen Grand Avenue Farm, Inc. He noted the Yegen family

is pleased to see this item on tonight's agenda and urged the Council to approve Staff's recommendation. He thanked the Public Works Staff for their cooperative and forward-thinking attitude while addressing the right-of-way compensation for the Arlene Corridor project.

- TOM ZURBUCHEN, 1747 WICKS LN, spoke on Item 3. He urged the Council to utilize condemnation for this land, to ensure the Yegens get a fair price and that taxpayers will not have overpaid for the land. He said this is important to this community on this and future projects. The only way to ensure fairness to all parties is through the condemnation process, he said.
- ED STEVENSON, 1721 VUECREST DR. spoke on Item 2. He noted the neighborhood met with Rimrock Foundation on February 7<sup>th</sup>. He felt there was no compromise made by Rimrock Foundation in that they still have a 4-plex in their plans, when the neighborhood wants duplexes. He noted the addition of counseling offices and a dining facility which represents the "business" situation the neighborhood is not in favor of.
- SHIRLEY MCDERMOTT, 2110 10<sup>TH</sup> AVE. N. spoke on Item 2. She said Rimrock Foundation is a business that has chosen to significantly expand its treatment facilities in the North Park neighborhood. The North Park Plan says commercial intrusions in residential areas must not be allowed. She noted the planned offices and cafeteria are commercial intrusions. Ms. McDermott also noted that the Growth Policy's stated objectives are to preserve neighborhood integrity and empower neighborhood groups. She urged the Council to empower the North Park neighborhood group and not allow the proposed commercial 4-plex use.
- JOHN ARMSTRONG, 903 N. 18<sup>TH</sup> ST. spoke on Item 2, stating that he supports Rimrock's amended proposal after having originally opposed the proposed facility. He said it is an improved proposal and addresses an important continuing need for that area -- cleaning up the neighborhood. After reading the North Park Neighborhood Plan, he believes this proposal fits into the plan.
- GENE JARUSSI, 1131 N. 32<sup>ND</sup> ST. spoke on Item 2. He asked the Council to look at the 1993 North Park Neighborhood Plan, its subsequent amendments and the "spirit of the plan". He said the plan was meant to maintain the residential nature of the neighborhood by encouraging single-family homes and duplexes. In 1996, the Residential 6,000 zoning was introduced via special reviews for a three-plex or more. He asked the Council to allow the plan using duplexes only.
- CECI BENTLER, 302 BEVERLY HILLS BLVD. spoke on Item 2. She noted that Rimrock Foundation knew they needed Council approval on this request, yet they chose to proceed even though the neighborhood had concerns. She urged the Council to listen to the neighbors' requests and preserve the current healthy and harmonious environment.
- MARY WESTWOOD, 2808 MONTANA AVE. spoke on Item 2. She said she was speaking in opposition to the special review for Rimrock Foundation because the use does not automatically fit with the zoning in that area. The neighbors have a right to object and should not have to defend their zoning preferences or the character of their neighborhood. Ms. Westwood said this neighborhood is a vulnerable population that needs to be considered when allowing the Rimrock

Foundation treatment center in this location. She urged the Council not to place this business in the “heart” of this neighborhood.

- CONNIE WARDELL, 1302 24<sup>TH</sup> ST. W, spoke on “process” – referring to the provision of copies of the “ex-parte” communications and information received by the Council after the published agenda packet was presented. Ms. Wardell said this represented “open government” and she was encouraged by this “going-the-extra-mile” change.
- RUSS BRIDGES, 1701 VUECREST DR. spoke on Item 2. He noted he was unable to attend the “compromise meeting” with Rimrock Foundation. However, after talking with David Cunningham of Rimrock Foundation he feels Rimrock Foundation regards this special review as only a formality and a legal right to build the four-plex. He asked the Council to look at the long-term goals of the neighborhood and vote to deny the special review.
- AARON FRISBIE, 1687 VUECREST DR. spoke on Item 2. He said Rimrock Foundation does not intend to compromise with its proposal and is still proposing a four-plex, even though the neighbors want duplexes and not a four-plex. The only compromise it was willing to make was on future building plans. He believes duplexes will not affect the quality of treatment that patients will receive and still allow the structures to be sold to families in the future, staying in the “spirit” of the 1993 North Park Plan. Mr. Frisbie said he thinks this is a fair compromise, accommodating Rimrock Foundation and the neighborhood at the same time. He asked the Council to say “no” to a four-plex for offices and a cafeteria.
- BRITTON FRISBIE, 1687 VUECREST DR. spoke on Item 2. She said the tone for the compromise meeting was set when Rimrock Foundation stated that it knew it would not “win over any of the neighbors” with the new proposal. She said the neighbors are opposed to a four-plex because it is a fundamental change to the zoning, noting Rimrock Foundation could do a pleasing campus with duplexes instead. Building duplexes provides a win-win situation for everyone affected by the special review and sends a positive message to the entire city.
- ANNA SNYDER, 1631 VUECREST DR. spoke on Item 2. She said she is opposed to the four-plexes. The Council should not base its decision solely on Rimrock Foundation’s financial reasons for a four-plex. Ms. Snyder asked the Council to say “no” to the special review.
- CURT ZYGMOND, 1695 VUECREST DR. spoke on Item 2. He asked the Council what was at stake here – the will of the people or a special interest? Mr. Zygmund said Rimrock Foundation should locate its business in an area zoned for a medical business. He asked the Council to deny the special review.
- The public comment on non-public hearing agenda items was closed.

## **CONSENT AGENDA:**

### **1. A. Mayor’s Appointments:**

	Name	Board/Commission	Term	
			Begins	Ends

1.	Mat Millenbach	City/County Planning Bd.	2/13/06	12/31/06
2	Fred Rogers	City/County Planning Bd.	2/13/06	12/31/06
3.	Paul Cox	Board of Adjustment	2/13/06	12/31/09
4.	Daniel Eggen	Board of Adjustment	2/13/06	12/31/09
5.	Barbara Walborn	Board of Adjustment	2/13/06	12/31/09
6.	Brent Nelson	Board of Adjustment	2/13/06	12/31/09

1. Unexpired term of Mick Ohnstad
2. Unexpired term of Carol Gibson (due to Ward redistricting)

**Bid Awards:**

**(1) Two New Current Year Large Area Mowers and One Tandem Trailer.** (Opened 1/17/06). (Delayed from 1/23/06). Recommend Turf Care and Specialty Products, \$94,500.00 including trade-ins and rejecting bids on trailer.

**(2) W.O. 04-18: Expansion and Condition Audit Repair of Park II.** (Opened 1/31/06). Recommend delaying award to 2/27/06.

**(3) SID 1368: Lake Hills Subdivision, Annandale Road.** (Opened 1/31/06). Recommend ~~delaying award to 2/27/06~~. JTL Group, Inc., \$510,280.90.

**(4) AIP 30 – Runway 10R-28L Rehabilitation.** (Opened 2/7/06). Recommend delaying award to 2/27/06.

**(5) AIP 30 – Incursion Road Paving & Drainage Improvements.** (Opened 2/7/06). Recommend delaying award to 2/27/06.

**(6) Lower Restrooms Upgrades for Billings Logan International Airport.** (Opened 1/24/06). Recommend rejecting all bids, redesigning the project and rebidding at a later date.

**(7) Wastewater Plant Chemicals – Dry Polymer.** (Opened 1/31/06). Recommend Polydyne Inc., \$1.53/lb with the option for renewal up to three (3) years, upon mutual agreement.

**(8) Castle Rock Park Spray Ground.** (Opened 2/7/06). Recommend delaying award to 2/27/06.

**(9) One New Current Model 2006 Trailer with CC Inspection Equipment.** (Opened 2/7/06). Recommend delaying award to 2/27/06.

**C. Agreement for CAD Interface** with Laidlaw Medical Transportation dba American Medical Response (AMR), term: initial term is eight (8) months commencing May 2, 205 and expiring on 12/31/05, with automatic renewal for up to two (2) subsequent one-year periods thereafter.

**D. Approval Recreational Trails Program Grant Agreement** for Bannister Drain Trail., \$23,000.00 reimbursement and use of \$5,750.00 GO Bond funds for matching funds if reimbursement cannot be secured.

**E. Resolution 06-18386 on Inter-Fund Loan** from General Fund to the Property/Liability Insurance Fund, \$300,000.00 until 8/2007.

**F. Grant Award** to 300 N. 25<sup>th</sup> LLC, fka Marchi-Tolliver Partnership for the façade of the Terrace Apartments located at 300 N. 24<sup>th</sup> St., \$29,725.00.

**G. Approval** of Baggage Circulation Study Project with CTA Architects, \$149,210.00.

**H. Downtown Billings Association (DBA) Street Closures:**

- (1) *Food Fairs*: May – Aug (every other Wednesday). 2<sup>nd</sup> Ave. from N. 29<sup>th</sup> to N. 28<sup>th</sup>.
- (2) *Alive After 5*: June 15 (Hooligan's) and July 27 (Montana Brewing Company). N. 28<sup>th</sup> St from 1<sup>st</sup> to 2<sup>nd</sup> Ave. N.
- (3) *Alive After 5*: June 22 (Tiny's Tavern). N. 24<sup>th</sup> St. between 4<sup>th</sup> Ave N. and 3<sup>rd</sup> Ave. N.
- (4) *Alive After 5*: June 29 (CTA Architects). N. 23<sup>rd</sup> St. between Montana Ave and 1<sup>st</sup> Ave. N.
- (5) *Alive After 5*: July 6 (The Carlin). N. 25<sup>th</sup> St. between Montana Ave and 1<sup>st</sup> Ave. N.
- (6) *Alive After 5*: July 20 (Monte Carlo Casino). N. 29<sup>th</sup> St. between Montana Ave. and 1<sup>st</sup> Ave. N.
- (7) *Alive After 5*: August 3 (Don Luis Restaurant). N. 26<sup>th</sup> St. between Montana Ave. and 1<sup>st</sup> Ave. N.
- (8) *Alive After 5*: August 10 (The Q). N. 25<sup>th</sup> St. between Montana Ave. and 1<sup>st</sup> Ave N.
- (9) *Alive After 5*: August 17 (Computers Unlimited). N. 25<sup>th</sup>. St. between Montana Ave. and 1<sup>st</sup> Ave. N.
- (10) *Alive After 5*: August 24 (Pug Mahons). N. 30<sup>th</sup> St. between 1<sup>st</sup> Ave. N and 2<sup>nd</sup> Ave. N.)
- (11) *Strawberry Festival*: June 10. N. 28<sup>th</sup> St. from 1<sup>st</sup> to 3<sup>rd</sup> Ave. and 2<sup>nd</sup> Ave from the alley east of N. 27<sup>th</sup> to N. 29<sup>th</sup> and N. 29<sup>th</sup> from 1<sup>st</sup> to 2<sup>nd</sup> Ave.
- (12) *Montana State Chili Cook-Off*: June 24. N. 28<sup>th</sup> St. from 1<sup>st</sup> to 2<sup>nd</sup> Ave. and 2<sup>nd</sup>. Ave from the alley east of N. 27<sup>th</sup> to N. 29<sup>th</sup>.
- (13) *Farmers' Market*: July 15 thru Oct 7<sup>th</sup> (every Saturday). N. 28<sup>th</sup> from 1<sup>st</sup> to 3<sup>rd</sup> Ave. and 2<sup>nd</sup> Ave. from the alley east to N. 27<sup>th</sup> to N. 29<sup>th</sup> and N. 29<sup>th</sup> from 1<sup>st</sup> to 2<sup>nd</sup> Ave.
- (14) *Farmers' Market*: Aug 2 thru Aug 23 (every Wednesday night). N. 28<sup>th</sup> St. from 1<sup>st</sup> to 2<sup>nd</sup> Ave. and 2<sup>nd</sup> Ave from the alley east of N. 27<sup>th</sup> to N. 29<sup>th</sup>.
- (15) *HarvestFest*: October 14. N. 28<sup>th</sup> St. from 1<sup>st</sup> to 3<sup>rd</sup> Ave. and 2<sup>nd</sup> Ave. from the alley east of N. 27<sup>th</sup> to N. 29<sup>th</sup>.
- (16) *Holiday Parade*: November 24. Established Downtown Parade Route.
- (17) *Christmas Stroll*: December 1. N. 28<sup>th</sup> from 1<sup>st</sup> to 3<sup>rd</sup> Ave and 2<sup>nd</sup>. Ave. from the alley east of N. 27<sup>th</sup> to N. 29<sup>th</sup>.

**I. W.O. 04-11: South Billings Boulevard/SID 1373**, acceptance of the tract of land dedicated with the amended plat of the north half of Lot 6, Sugar Sub, 1.53 acres, from Larry and Marlene Thiel, owners.

**J. Resolution 06-18387** authorizing the City Administrator to approve/execute contracts totaling \$50,000 or less and repealing Res. 03-18016.

**K. Resolution 06-18388** approving and adopting the updated Purchasing Policy dated February 2006.

**L. Resolution 06-18389** relating to financing certain proposed projects, establishing compliance with reimbursement bond regulations under the Internal Revenue Code, regarding the Briarwood sanitary sewer main extension.

**M. Second/final reading ordinance 06-5359** 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. (Delayed from 1/23/06).

**N. Preliminary Plat** of Amended Lot 15, and the East Half of Lot 16, Block 3, Rolle Sub., conditional approval of the plat, approval of variance and adoption of the findings of fact.

**O. Bills and Payroll.**

- (1) January 6, 2006
- (2) January 13, 2006
- (3) January 20, 2006

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

Separations: Councilmember Brewster separated Item B8 from the Consent Agenda. Councilmember Stevens separated Item M from the Consent Agenda. Councilmember Veis separated Item 1A from the Consent Agenda.

Councilmember Jones moved for approval of the Consent Agenda with the exception of Items 1A, B8 and M, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

Councilmember Jones moved for approval of Item 1A of the Consent Agenda, seconded by Councilmember Ruegamer. Councilmember Veis asked if there were other applicants for these board positions. Mayor Tussing said there were six applicants for the Ward IV and three for Ward V Planning board positions, and six applicants for the Board of Adjustment positions. Councilmember Veis said he would like to review all of the information on all of the applicants. Councilmember Boyer said she thought the Council usually receives all of the resumes that are submitted. Mayor Tussing said he understood the process was to submit only the applications for the people that he recommends for appointment. He said he has no objections to Council review of all the applicants and welcomes Council input that would make the selection process more meaningful. He noted that he received the resumes on Monday, February 6<sup>th</sup> due to the submission deadline of February 3<sup>rd</sup> and was required to make his recommendations by February 9<sup>th</sup>. He agreed that more time for the review and research process would be beneficial. He noted also that the Legal Department is

working on a new application and process that would allow for a better selection process.

Councilmember Ruegamer asked if there is a timeframe that is crucial to these appointments. Ms. Volek said the Board of Adjustment has five cases that are due to be heard on February 21<sup>st</sup>. The Board of Adjustment staff is concerned with selection of new members to form a quorum for those cases. Councilmember Ruegamer suggested that the Council be informed when resumes are available for review and those that are interested can make arrangements to review them within a certain timeframe. Councilmember Brewster said the Council has continually asked that all of the resumes be provided in a packet prior to the council meeting. Councilmember Veis made a substitute motion to delay action to 2/27/06, seconded by Councilmember Boyer. Councilmember Ulledalen asked how this motion would impact any noticed meetings. Ms. Volek said the Board of Adjustment meeting for February 21<sup>st</sup> would have to be postponed and cannot be re-advertised until early March. On a voice vote, the substitute motion failed.

Councilmember Brewster asked if the Council is going to continue to ignore the problem of not getting all the applications. Ms. Volek said the Staff will make arrangements to have all applications placed in the packet, which may delay some appointments. Mayor Tussing said he would have preferred to have interviewed some of the applicants and would welcome the Council joining the interviews, but timing did not permit this. He asked if this would present a problem. Ms. Volek said this would not present a problem, but a notice of meeting would be required. She noted that one of the Planning Board positions became redistricted out of their ward. Councilmember Veis noted that the Council is approving these appointments when the Mayor has only had one day to review the applications.

Councilmember Jones noted that the Board of Adjustment makes critical decisions where there is error in any order, requirement, decision or determination made by an administrative official in the enforcement or interpretation of land use issues or of any resolution/ordinance adopted and are authorized to decide upon appeal in specific cases such variances. He asked if a temporary appointment is appropriate. Mr. Brooks said he did not think that was advisable, but without the code to consult, he could not verify that. On a voice vote on the original motion, the motion was approved with Councilmembers Veis, Brewster, Boyer and Jones voting "no".

Councilmember Jones moved for approval of Item B8 of the Consent Agenda, seconded by Councilmember Boyer. Councilmember Brewster said that a Park Board member indicated to him that there was a budget shortfall related to this item. Ms. Volek said the Staff has located a source of funding and this item will be brought back to the Council on 2/27/06. On a voice vote, the motion was unanimously approved.

Councilmember Jones moved for approval of Item M of the Consent Agenda, seconded by Councilmember Brewster. Councilmember Stevens moved to amend the motion to change wording in Section 23-406(c) on page 39 from "should" to "may" relating to the multi-use trails to reflect property owner discretion. On a voice vote, the amendment was approved. On a voice vote, the motion as amended was unanimously approved.

## **REGULAR AGENDA:**

**2. SPECIAL REVIEW #800: a special review to allow a four-plex and a rehabilitation service center in a Residential-6,000 zone described as Tract A of C/S 2237 and located at 1721 8<sup>th</sup> Avenue North, Rimrock Foundation, David Cunningham, applicant, Design Lab Architects, agent. Zoning Commission recommends conditional approval. (Delayed from 1/23/06). (Action: approval or disapproval of Zoning Commission recommendation.)**

Councilmember Boyer moved to deny the special review allowing four-plexes for operation of a community residential facility in a Residential 6,000 zone as presented, seconded by Councilmember Gaghen. Councilmember Ronquillo noted that a neighborhood planner was hired to facilitate a neighborhood plan in the Heights. He asked why the City goes to this expense when the Council does not follow the plans. The Council should "follow what the neighborhood wants, that's why we have the plans", he stated.

Councilmember Ruegamer noted that the Zoning Commission recommended approval and added that neighborhood plans are subject to interpretation. Ms. Volek said the Zoning Commission, in their recommendation, cited three requirements with which all special reviews must comply. She asked the Council, if it plans to take an opposite position, to identify which requirement is not being complied with in the alternatives or modifications addressed by the Zoning Commission.

Councilmember Boyer said the special review does not comply with Alternative #2 because it is inconsistent with the purposes of Chapter 27, the Growth Policy and the North Park Neighborhood plan. She noted the plan clearly states that residential uses were to be maintained and Rimrock Foundation can do that by building the duplexes. Councilmember Brewster noted there are five (5) four-plex facilities like the one proposed in his neighborhood. He said the Zoning Commission tried to base its decision on whether the application complied with zoning considerations. He added that what Rimrock Foundation has proposed is governed by state law, not by zoning.

Councilmember Boyer noted that the North Park Plan states that "decisions on special reviews must support the importance of maintaining residential uses." Councilmember Brewster replied that a four-plex is a residential building.

Councilmember Stevens said her concern is that the Council is calling this a four-plex, but a traditional four-plex does not have offices and a cafeteria associated with it. She said this special review is not for a traditional four-plex and is not compatible. Councilmember Gaghen agreed with Councilmember Stevens stating that the proposed four-plex almost becomes a dormitory. On a voice vote, the motion to deny the special review was approved with Councilmembers Brewster, Veis, Ruegamer, and Jones voting "no".

**3. RIGHT-OF-WAY COMPENSATION to Yegen Grand Avenue Farm, Inc. and Yegen Golf Course for Phase II Construction of the Arlene Corridor Project (i.e. Zimmerman Trail Extension from Grand Avenue to Broadwater Avenue), \$575,000.00. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

Public Works Director Dave Mumford said the City must acquire the right-of-way from Yegen Grand Avenue Farms, Inc. and the Yegen Golf Course for construction of Phase II of the Arlene Corridor project. This project extends Zimmerman Trail through the

Yegen Golf Course between Grand Avenue and Broadwater Avenue. He said discussions on acquisition of the property began in 2003. Two appraisals and a review appraisal were obtained in 2004 that were significantly different ranging from \$237,000 to \$478,000. The review appraisal confirmed the lower appraisal. Discrepancies had to do with the lease of the golf course.

This has been an arduous and complicated task because this is not a normal acquisition due to the fact that there are three parties involved (the City, the Yegens and the lessee of the golf course). He noted the golf course has compensational rights that must be dealt with. He said the Yegen family has rejected two previous offers from the City based upon the property appraisals conducted in 2004, refusing to "split the difference between the two appraisals (\$358,000).

Condemnation proceedings were authorized in November of 2004 but negotiations were still ongoing. He said there are three (3) options for the Council to consider. Staff is recommending the Council approve Option 1 which agrees to compensate Yegen Grand Avenue Farm, Inc. and Yegen Golf Course with their proposed settlement offer of \$575,000. This option would eliminate the need to continue with condemnation and allows the construction of Phase II to move forward without further right-of-way acquisition expense. Between the 10% interest under state law of what would be owed to the Yegens if the City proceeds with condemnation and the additional time involved with condemnation proceedings, the cost to the City could be an additional \$100,000 including attorney fees. Weighing all options, the \$575,000 settlement was a reasonable offer.

He noted that right-of-entry was awarded to the City on January 13, 2006 through the courts and the City is moving forward with construction regardless of the action taken this evening. This settlement is \$100,000 above the 2004 high appraisal, he noted. Option 2 would include rejecting the offer and proceeding with condemnation, allowing the courts to decide the fair value of the property. This would involve legal costs for the City and new appraisal costs.

Option 3 would pay the Yegens the original offer of \$358,000 (removing the 10% interest liability) and ask for a new appraisal. He said the Staff believes that the \$575,000 offer is the most reasonable option. Attorney Rod Hamann noted that the Option 3 amount would presumably be higher because property values have increased in the last year. He also noted that the lease information was not available to the appraiser who submitted the low appraisal. The lease language was also found to have significant ambiguities making it difficult to determine how the award is allocated under the lease.

Mr. Hamann noted that 6 acres are involved in the property acquisition, 3 acres of golf course land and 3 acres of Yegen land, which is not subject to the complications and would not be reduced due to the golf course lease. Councilmember Ruegamer said, in layman's terms, one appraiser assumed the land was developable and the other assumed it was not developable. He asked if the land would be available without compensation if it was developable. Mr. Mumford said the City would ask for a right-of-way dedication for the roadway if the land was platted for development. He added this circumstance would not require payment from the City.

Councilmember Boyer said Option 1 gives the Council an amount whereas the other options would put the Council in the position of not knowing and faced with possibly paying more. She said this should be decided this evening.

Councilmember Ulledalen moved to deny the Staff recommendation for Option 1, seconded by Councilmember Brewster. Councilmember Ulledalen said he would like the Council to consider going the route through condemnation. Councilmember Ruegamer made a substitute motion to delay action to 2/27/06 to allow discussion with the Yegens at the next work session, seconded by Councilmember Veis. Councilmember Ruegamer said he would like to have a face-to-face discussion with the Yegens on the compensation. He said there may be a good explanation and he would like to hear that.

Councilmember Gaghen said it is important to make this decision this evening. She feels certain that the Yegens are dealing with the City in a fair manner and can't conceive of any questions that can be answered that have not already been addressed. Mr. Hamann cautioned the Council that this is a contested legal matter and the Yegens have retained counsel in this matter. He said the Yegens may not wish to have a discussion with the Council at this point.

Councilmember Jones said the Council should move forward with a decision. He said if the City would have accepted the original offer, it could have saved money in construction costs having it completed at this point. Eminent domain laws in the state favor the landowner, as they should. He said legal opinions state that the City could "end up paying a lot more if it doesn't move forward." Councilmember Clark agreed that the Council should just "get this done." On a voice vote for the substitute motion, the motion failed with Councilmember Ruegamer voting "yes".

Councilmember Jones made a substitute motion to approve Option #1 as recommended by Staff, seconded by Councilmember Gaghen. Councilmember Brewster said he admires the way the Yegens do business, but believes the City should move forward with condemnation in the interests of how the City spends its funds.

Councilmember Stevens asked the City Attorney to explain how "could" applies in Option #2 relating to payment of the land, attorney fees and 10% interest on the final settlement. City Attorney Brent Brooks said those fees would be the responsibility of the City if the court determination is that the final amount is more than the last and best offer. He said that is the big risk as well as the attorney fees for the landowner. Mr. Hamann said there are two risks, one is contingent and one is certain. The 10% interest risk is retroactive by statute back to the valuation date; that is certain. If the landowner is awarded more than the offer, the City will be liable for all attorney fees and expert witness (appraiser) fees. This will be based upon the last best offer of \$358,000 in 2004. On a voice vote, the substitute motion was approved with Councilmembers Brewster, Veis, Ruegamer and Ulledalen voting "no".

Mayor Tussing called for a recess at 8:20 P.M.

Mayor Tussing reconvened the meeting at 8:30 P.M.

**4. PUBLIC HEARING AND CITY ADMINISTRATOR SELECTION PROCESS. Staff recommends the Council approve a selection process and direct Staff to assist in any appropriate way. (Action: approval or disapproval of Staff recommendation.)**

The public hearing was opened. JOE WHITE, 926 N. 30<sup>TH</sup> STREET, said he supports the proposal of Councilmember Jones who is proposing the appointment of the committee to take nominations for the City Administrator position. He said he opposes hiring Tina Volek.

TOM ZURBUCHEN, 1747 WICKS LANE, said the Charter states the Council hires the City Administrator. He asked how this is open government when there is no public participation in the selection. He said it is the Council's job to make the final choice, but the public needs to participate in choosing the applicants.

There were no other speakers. The public hearing was closed. Councilmember Veis moved to appoint an ad hoc citizen's committee of at least 11 and no more than 15 members to review and recommend criteria for selecting a city administrator and bring to Council a recommendation, seconded by Councilmember Jones. Councilmember Ulledalen asked how the committee members would be selected. Councilmember Veis said each councilmember would choose one member of the ad hoc committee and if other folks should be included, they could be added to the committee with 6 votes of the Council. He said his motion only creates the committee that would develop the criteria that the Council should use in its selection of the city administrator.

Councilmember Ulledalen amended the motion to retain this committee in place beyond the criteria report, seconded by Councilmember Brewster. Councilmember Ulledalen said not every member may need to be retained, but a sub-committee of the original group should be involved in the interview process. Councilmember Brewster asked if this committee would be involved in screening the candidates. Councilmember Ulledalen said his amendment only intends that several committee members be involved in the interview process. Councilmember Boyer said the committee should provide the Council with the criteria and not dispense with their services beyond that portion of the process. It is clear that the final decision is the responsibility of the Council. She added that the recruitment firm that owes the City money from the last search could assist the Council any place along the way that it could be helpful to the Council.

Councilmember Veis said he made his motion to get the process started and all of the particulars can be developed later. Councilmember Jones said he does not support the amendment and thinks the Council should proceed with the original motion only at this time. The next steps can be taken at a later time because the Council can't decide on the entire process this evening. On a voice vote on the amendment, the motion failed. Councilmember Veis suggested having the appointments ready for the February 27<sup>th</sup> meeting. On a voice vote on the original motion, the motion was approved with Councilmember Brewster voting "no".

**5. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE**  
**#773: text amendments to Section 27-611 of the Unified Zoning Regulations**  
**regarding sexually-oriented businesses. Zoning Commission recommends**  
**approval. (Action: approval or disapproval of Zoning Commission**  
**recommendation.)**

Zoning Coordinator Nicole Cromwell said the Zoning Commission conducted a joint public hearing with the County Zoning Commission on January 17<sup>th</sup> and is recommending approval of the text amendment on a 3-2 vote. She said the Council may be concerned about voting on what appears to be a "County" issue, but acknowledged that this is a

unified zoning regulation. If the County Commissioners initiate a change to the unified text, it must go before both the City and County Zoning Commissions for consideration and recommendation. She noted that different language cannot be adopted for the same amendment. Ms. Cromwell said a recent example of adoption of an amendment to the unified regulation was when the Council adopted the Shiloh Corridor Overlay District and the County Commissioners did not. Therefore the amendment only applies to land within the City and the Shiloh Road Overlay District. Both the City Council and the County Commissioners adopted the recent amendment to the Highway Commercial zone allowing uses to include limited pharmaceutical manufacturing as another example.

Ms. Cromwell said the Zoning Commission is recommending approval of the zone change text amendment. She noted that a letter from a dissenting Zoning Commission voter, Thomas Grimm, urges the Council not to adopt the proposed amendment. A letter from Jo Casey of Hendrickson law firm, who represents clients that own adult-oriented businesses, also urged the Council not to adopt the amendment. She also received a fax from City Attorney Brent Brooks with another letter addressed to Mayor Tussing from MTHOME, Inc., the primary proponent of the text amendment. The letter states that MTHOME, Inc. is "opposed to the City passing the same law that we have proposed to the County" because it feels the City should take a different approach to regulating these type of businesses in the City.

Ms. Cromwell said the options for the Council include conducting a public hearing and proceeding with the first reading of the ordinance. If the Council chooses to close the public hearing, there are five actions the Council can consider: 1) motion to deny the proposed amendment, 2) motion to approve the proposed amendment, 3) motion to delay action for 30 days, 4) allow withdrawal of the proposed amendment (but there is not a quorum of the County Commissioners to withdraw the initiated amendment), or 5) motion to approve the proposed amendment for inclusion on the next available ballot (i.e. general election in November). She noted that the County Commissioners think they have enough time to place this issue on the June 6<sup>th</sup> ballot.

Other options include: 1) allow the public hearing and first reading of the ordinance to remain open until a date certain. If the Council takes this action, it can allow testimony, written or oral and information submitted to it outside of the public hearing and brought forward to the new date certain. She noted this allows the Council to postpone action for more than thirty days because that thirty-day "clock" starts when the public hearing is closed. This also would allow additional time for affected property owners to submit a valid protest petition. She said the letter from Jo Casey stated there was not enough time to gather signatures from affected property owners or those within 150 feet of property that might be affected by the text amendment. Districts that may be affected could include up to 2500 property owners.

Councilmember Jones asked how Council's vote for or against this text amendment would affect the County action. Ms. Cromwell said it would require distinguishing in the code what applied and where.

The public hearing was opened. DALLAS ERICKSON, MISSOULA, MT, said he is not a voting member of this community but has worked in the area for thirty years. He said he is fully aware of the secondary affects of sexually-oriented businesses and what they can do to the community. He asked the Council to consider the Zoning Commission's recommendation, but suggested there is a better way for the City to handle this issue and

that is through licensing and business regulations. Business and licensing regulations are more comprehensive and have the advantage of recouping costs involved through inspection of the business. The people who perform at these businesses could also be licensed. This is an easier and more efficient way for enforcement. He added that this would eliminate "grandfathering". Mr. Erickson said he has assisted other communities in passing these text amendments. The Council has the power to protect the health and welfare of the community and he urged the Council to exercise those powers by looking at other options such as licensing to address this concern. He asked the Council to investigate the text amendment more thoroughly and also look into the licensing suggestion. Councilmember Jones asked what lawsuit liabilities the City would incur with the licensing option. Mr. Erickson said there are several Supreme Court cases concerning this option and he deferred to Harris Heims, a California attorney for that information.

HARRIS HEIMS, HAMILTON, MT, noted the letter from Michael J. DePrimo, Senior Litigation Counsel for Center For Law & Policy and stated that the City could retain this law firm to be involved in this process and they will defend the City for free when it concerns any constitutional problems. He said legal fees are not cheap and if a group that specializes in this area offers to help, he suggested the Council consider using them. He offered to answer any legal questions. Councilmember Brewster asked if this law was challenged in Montana and upheld. Mr. Heims said it has been challenged to some degree, by Judge Fagg, who ruled there were no constitutional problems and analyzed some of the Supreme and District Court cases determining that there would not be "those kinds of problems." This is part of what is before the County Commissioners now.

Councilmember Jones said this is a free speech issue and asked why the City should be "taking this on?". Mr. Heims said the City would not be banning nudity entirely because the County is considering allowing dancers to "express themselves but not totally nude." All of the cases at all levels state this is a permissible regulation of conduct. There is an overriding mandate that is part of the police power that allows the City to decide that the effects of this conduct can create greater incidences of certain other crimes such as property theft and prostitution. The courts have said it is permissible to consider the secondary criminal effects and for the City to have ordinances to control those behaviors.

Mayor Tussing asked Mr. Heims to explain where he obtained his data because the "secondary criminal effects" theory is not apparent in Billings. Mr. Heims said this data was considered in US Supreme Court cases where it was stated that the data was well-founded and customarily found around sexually-oriented businesses. He noted that the County Sheriff has noted an escalation of events since Planet Lockwood has been opened.

PASTOR JOE ROCKSTED, LOCKWOOD, MT, said his primary concern has been for the effects of Planet Lockwood on his community. He said he is the Vice President of CASE (Citizens Against Sexual Exploitation) and has had a dual career of 32 years in law enforcement (part of it as a Police Chaplain) and 34 years as a pastor. He said he deals with the residual effects of sexually-oriented businesses and pornography on family's lives. He stated he was, "addicted to pornography at age ten and was saved by God from that pain and anguish 31 years ago." He said he sees the broken lives and multiple health issues that result from this type of addiction and involvement in sexually-oriented businesses. Pastor Rocksted said the citizens owe it to the community's moral fiber to place regulations on these businesses and protect family values from the effects of these

businesses. He asked the Council to seriously look at this text amendment and take action to "put some more teeth" into other measures that have already been successful for the City.

LOUANNE JONES, 3343 PARKHILL DRIVE, said a young woman spoke at the joint Zoning Commission public hearing in opposition to this issue. She spoke about "cleaning up the messes" in the course of her job. The medical community has a protocol for handling bodily fluids, but to her knowledge there is no protocol for these sexually-oriented businesses. Mr. Jones said she believes this woman made that comment in hopes that someone would understand that workers in these establishments are at risk. She said the community needs to help those people too. She asked the Council to look at this issue from that perspective.

MAE WOO, 517 LAVENDER STREET, presented research on addiction to pornography. She said the research shows that this addiction is the same as an addiction to drugs. With this information, it is important to consider regulating these sexually-oriented and related businesses as much as it is to regulate drugs in the community. She noted Mary Anne Laden a researcher from the University of PA who testified before a Senate Committee that pornography should be classified as an addictive drug due to its destructive nature. She further stated that pornography is more toxic, the more it is consumed. She explained how pornography damages beliefs and behaviors which include the adverse affects of attitudes of what constitutes healthy sexual and emotional relationships. Pornography can cause psychologically unhealthy, socially inappropriate and illegal actions.

Ms. Woo said research has shown that 40% of sex addicts lose their spouses, 58% will suffer financial loss and 27-40% will lose their jobs or professions. She said Dr. Laden considered sexual addiction a dangerous addictive substance and is urging Congress to investigate the harm it causes. According to research the drug of choice for a rapist is pornography. She said this is evident in the increase in sexual crimes and rapes in the area of Planet Lockwood within 1 year of its opening. She quoted statistics from Sheriff Maxwell that show rape crimes increased by 150%. Ms. Woo said these crimes are costly to the community, the individual and their families. She said it is the primary purpose of government to protect the life, liberty, property and safety of its citizens. She urged the Council to do what it can to regulate these businesses.

MARNE JACOBSON, 1861 COUNTRY MANOR, said this really is a health issue even though it is coming before the Council as a zoning issue. She asked the Council to consider regulation of these businesses because many people are not aware of what goes on within them. Many other businesses are required to be licensed and regulated. She said the community may be a little "shocked" as to the health issues that arise from these businesses. Ms. Jacobson said research should be done on the health issues and health codes should be developed to protect the community. She urged the Council to support a licensing program for these businesses.

Councilmember Veis moved to continue the public hearing and first reading to June 26, 2006, seconded by Councilmember Gaghen. Councilmember Veis said there are many issues that have not been "worked out" with this text amendment change. He said this is primarily a County Commissioner's issue and the Council should let them complete their process before the City makes its decision.

City Attorney Brent Brooks said the Council has the discretion to take this action. Councilmember Jones said he does not think the Council should make the public come back to another public hearing when they have waited to testify this evening. Councilmember Ruegamer called for the question, seconded by Councilmember Ronquillo. On a voice vote to stop debate, the motion failed.

Councilmember Stevens said she does not support the continuance. She said the ordinance language is vague and terms are ill-defined and feels it is beyond what the Council can do with zoning. The ordinance is so flawed in its current state that it could not be fixed to withstand a legal challenge. Mayor Tussing said he agrees with Councilmember Stevens that this issue should be disposed of tonight. He said he could not approve the ordinance as it is currently written. He said he would entertain a motion for a licensing ordinance proposal for a later date, noting that it is difficult to legislate morality. Councilmember Brewster said the licensing is something that can be done independent of the County and he would like to see this considered.

Mr. Brooks agreed this could be a council initiative, but cautioned the Council about the Montana and US Supreme Court opinions and issues between the Montana Constitution versus the Supreme Court. He said the Montana Supreme Court has often said it will not "march, march, step" with the US Supreme Court in their decisions and Constitution. He said an ordinance to develop licensing for sexually-oriented businesses would require researching case law and contact with other cities that have these ordinances to ascertain what challenges have been brought. To incorporate licensing requirements into the current ordinance would require re-advertisement of the public hearing. The cleanest way to develop the licensing issue from the current ordinance would be to separate the issues. He said a "no" vote for the text amendment would not, in his opinion, affect what the County action will be and would require denoting the differences in the ordinance between City and County for the regulation of sexually-oriented businesses. It would create an "exception" to the unified zoning code, such as the Shiloh Overlay District.

Ms. Cromwell noted that licensing regulations are in a completely separate part of the City code so there should be no conflict with a proposed licensing regulation. Councilmember Brewster said the delay will allow the County to complete their process, which helps the public comment speakers tonight, because they do not know what the County decision will be at this point. He said it makes more sense to take testimony after the County decision because it is principally their ordinance. He said he is interested in hearing public comment on the County's decision.

On a voice vote, the motion to continue the public hearing and first reading was approved with Councilmembers Jones, Stevens, Ulledalen and Mayor Tussing voting "no".

**6. PUBLIC HEARING AND RESOLUTION 06-18390 approving and adopting budget amendments for FY 2005/2006. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

There was no Staff report. The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Veis moved for approval of the Staff recommendation, seconded by Councilmember Brewster. Councilmember Jones asked about the \$11,000 nuisance abatement expenditure. Ms. Volek said the original budgeted amount (\$10,000 - \$11,000) for nuisance abatement, which cleans up

sites that have been damaged by graffiti, has been expended and a second property is in process. The costs will be recouped if the properties are sold at a tax sale. On a voice vote, the motion was unanimously approved.

**7. PUBLIC HEARING AND RESOLUTION 06-18391 vacating Broadwater Avenue right-of-way located directly west of 52<sup>nd</sup> Street, on the existing C/S 1877, Tract 3, Engineering, Inc., petitioner. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

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

**8. PUBLIC HEARING AND FIRST READING ORDINANCE providing that the BMCC be amended by adding a section 13-505; providing for a procedure whereby city contractors can be debarred from bidding on city contracts, establishing an effective date and providing a severability clause. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

There was no Staff report. The public hearing was opened. MARY WESTWOOD, 2808 MONTANA AVENUE, said she supports the ordinance as an essential way to have a mechanism to discipline contractors who do business with the City. She said bids had to be rejected twice on the Skatepark because of issues with local companies taking advantage of the City.

There were no other speakers. The public hearing was closed. Councilmember Stevens moved for approval of the Staff recommendation, seconded by Councilmember Boyer. Councilmember Jones asked about item (c) of the ordinance that would debar the contractor because their bid failed to conform to the request. Financial Services Manager Pat Weber said this ordinance was modeled after the state requirements and would be directed at contractors that continually can't perform the work or provide the necessary financial documents but are consistently the low bidders.

Ms. Volek said the process for debarment would include an investigation after appropriate notice of suspension to the affected contractor. If the investigation reveals just cause for debarment, the contractor will be notified and have access to an appeal process. This will prevent frivolous actions against contractors, however contractors that consistently fail to produce appropriate documents after award of a bid would be subject to possible debarment. It will be used with great caution.

Councilmember Stevens noted that items (b) and (c) have the potential to be abused and an appeals process could be expensive for the smaller contractors. Councilmember Jones amended the motion to delete items (b) and (c), seconded by Councilmember Boyer. City Attorney Brent Brooks said items (b) and (c) could be used as a continuation of item (h) with connecting language such as "including by not limited to". He noted that some of these items are designed to discourage contractors who bid low and then come back with change order requests for additional monies or contractors that cancel required insurance policies after the bid is awarded. Ms. Volek said the suggestion by Mr. Brooks to amend items (b), (c) and (h) to clarify these issues could make the ordinance more acceptable. Councilmember Ulledalen said there is merit in

staying in line with state policies. Councilmember Jones withdrew his motion and Councilmember Boyer withdrew her second.

Councilmember Brewster made a substitute motion to delay action to the second meeting in March, seconded by Councilmember Jones. Councilmember Brewster said this would allow time for revisions to the ordinance. Councilmember Stevens asked that the concern about abuse of change orders be addressed in the ordinance. Councilmember Jones noted that there are bid bonds, payment and performance bonds that cover most of the areas of concern for projects. Mr. Brooks said using the performance bonds to complete projects sometimes is not always successful. He said the ordinance provisions would serve as a deterrent.

Councilmember Boyer called for the question, seconded by Councilmember Veis. On a voice vote, the motion to stop debate was unanimously approved.

On a voice vote on the substitute motion, the motion was unanimously approved.

**9. RESOLUTION 06-18392 annexing the west half of Lots 5 and 28, and all of Lots 6, 26, 27, 38, and 40 of Sunnycove Fruit Farms, 58.041-acres 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, Annex #06-01. Staff recommends approval of the resolution of annexation with conditions. (PH held 1/23/06 and closed. Action delayed from 1/23/06). (Action: approval or disapproval of Staff recommendation.)**

Planning Manager Candi Beaudry said this item was delayed due to an error in the staff report that listed some of the property involved in the annexation incorrectly. The concern was that the correct lots were appropriately noticed in the public hearing notification. Ms. Beaudry confirmed that they were. She reminded the Council that the property includes 63 acres in the West End, south of Rimrock Road between 58<sup>th</sup> and 62<sup>nd</sup> Streets West. The properties are currently zoned Residential 9,600, Residential 15,000 and Agricultural Open-Space and are currently undeveloped. She said residential development is proposed but a conceptual plan has not been submitted.

Ms. Beaudry said the annexation is within the limits of annexation as defined by the Annexation Policy. There were no negative comments from City departments regarding the annexation and services may be safely and efficiently provided. The Staff is recommending conditional approval with the following conditions:

1. That prior to development of the site the following shall occur:
  - a. A Development Agreement shall be executed between the owner(s) and the City that shall stipulate specific infrastructure improvements and provide guarantees for said improvements; or
  - b. A Subdivision Improvements Agreement (SIA) and Waiver of Protest the Creation of an SID shall be approved and filed that will stipulate specific infrastructure improvements and provide guarantees for such infrastructure improvements. The subdivider will be responsible for forming a Park Maintenance District and developing a neighborhood park within the subdivision.

Councilmember Gaghen moved for approval of the Staff recommendation, seconded by Councilmember Veis. Mayor Tussing said he is concerned about continual annexation and not being able to "catch up" with public safety demands. Ms. Volek said the Staff is currently working on revising the Annexation Policy with that

concern in mind. A report with revised annexation boundaries will be submitted to the Council in March. The Staff is also working with the Police department to put International Association of Police Chiefs (IACP) recommendations into place. She also noted that land has been recently acquired at 52<sup>nd</sup> and Grand Avenue that will accommodate construction of a new fire station in the next few years.

Mayor Tussing noted that he voted for approval of placing this in the Urban Planning Area, but is not sure he wants to approve annexation at this time because of the staffing concerns for increased public safety requirements. He said he would like to review the new Annexation Policy before approving further annexations. Councilmember Stevens said she is concerned about the leap-frog annexation that is occurring. Councilmember Brewster said the Council continually struggles with annexations and does not have a way to compel property owners in potential infill areas to annex. The City will grow and it is better to annex these areas and develop them to urban standards than risk inheriting them without these standards. On a voice vote, the motion was approved with Councilmember Stevens and Mayor Tussing voting "no".

**10. RECONSIDERATION OF APPROVAL OF BELLVILLE SUBDIVISION. (Councilmember Brewster request). (Delayed from 1/23/06). Staff makes no recommendation. (Action: direction to Staff.)**

Planning Manager Candi Beaudry said the Council conditionally approved Bellville Subdivision with the eight conditions with the added amendment "to add Lynch Drive as an alternative access to the subdivision." She said the Staff is asking for clarification as to whether this is a "condition of approval" or "direction to Staff" to explore the option of providing additional access to the subdivision.

Councilmember Brewster asked about the statement in the staff memo that states "the City Council cannot reconsider this plat." Ms. Beaudry said Montana Code Annotated (MCA) as well as the City Code (BMCC) states that the governing bodies cannot add additional conditions to a motion once it has been approved. The preliminary plat has been approved. She said the Council can make a motion to reconsider the entire approval motion via City code, but the state law states the Council cannot change the conditions. Councilmember Brewster said the concern was that the developer offered an option that the residents in the area had no knowledge of, which was to build Kyhl Lane out to Hawthorne Lane. He said the problem with this option has to do with grade levels and the need to rectify the problems of tying into Hawthorne Lane due to the grade elevations being 5 feet above Hawthorne's street grade. He said it is not clear how Kyhl Lane can ever be completed. There are also issues with Lynch Drive regarding right-of-way issues.

Ms. Beaudry said clarifying a condition would be appropriate. Councilmember Brewster moved to look at the Subdivision Improvement Agreement (SIA) and review language for emergency access on Lynch Drive and utilize condition #7 to make sure Lynch Drive is engineered for emergency access, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

**11. LATE ADDITION: AUTHORIZATION TO EXECUTE THE SETTLEMENT AGREEMENT for the Cloverleaf Subdivision litigation in the amount of \$133,500.00.**

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

Councilmember Ronquillo moved to authorize \$133,500.00 for the settlement agreement on Cloverleaf Subdivision, seconded by Councilmember Boyer. On a voice vote, the motion was unanimously approved.

**14. 12. PUBLIC COMMENT on Non-Agenda Items. (Restricted to ONLY items not on the printed agenda; comments limited to 3 minutes per speaker.)** NONE

## **COUNCIL INITIATIVES**

- **COUNCILMEMBER RUEGAMER:** Councilmember Ruegamer moved to resume regular meetings with the county commissioners and school board and appoint two councilmembers and the City Administrator to attend these meetings, seconded by Councilmember Veis. Councilmember Brewster said during his time on the school board he found it informative to meet with the City Council, but small committees working with other entities just "doesn't fly". He said meetings that involve the entire Council are more appropriate. Councilmember Ruegamer said large meetings usually don't accomplish anything. He said he believes there needs to be better communication and dialogue with the different entities and thinks this is a solution. Councilmember Gaghen said communication with other entities is important and a benefit to all concerned. Ms. Volek said the Mayor and the chair of the Board of County Commissions have met monthly in the past. She said Commissioner Ostlund has initiated that practice again. Councilmember Boyer encouraged the Council to develop relationships with members of other entities to establish ground work for better communication. Councilmember Brewster said there are not a lot of issues that the Council has in common with the School Board. Annual meetings could cover the common issues such as growth. On a voice vote, the motion failed.
- **COUNCILMEMBER VEIS:** Councilmember Veis said Commissioner Kennedy would like to speak with the Council on Shiloh Road maintenance. He said he would volunteer to do this. Councilmember Jones moved to appoint Councilmember Veis to represent the City at the Shiloh Road maintenance meetings, seconded by Councilmember Boyer. On a voice vote, the motion was unanimously approved.

**ADJOURN** – With all business complete, the Mayor adjourned the meeting at 10:55 P.M.

THE CITY OF BILLINGS:

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

MINUTES: 02/13/06

ATTEST:

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