

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

## **February 27, 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 Vince Ruegamer.

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

**MINUTES** – None

**COURTESIES** – Mayor Tussing welcome Boy Scout Troop #10 to the Council meeting chambers.

### **PROCLAMATIONS**

- February 27, 2006: MSU – Billings TRIO Day
- February 28, 2006: Rocky Mountain College TRIO Day
- March 12-18, 2006: Big Sky Senior Services Week

**BOARD & COMMISSION REPORTS** – None

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

- Interim City Administrator Tina Volek noted that revised copies of the staff reports for Items 1A, C, 8, 12 (with an attachment), and 13 were included in the Council's Friday packet. She also noted a letter from the Harvest Church was included that will be addressed later this evening.
- Ms. Volek noted that a copy of a letter from Rimrock Foundation is on the council desks this evening.
- Ms. Volek also noted that a binder with copies of ex parte' communications to the City Council concerning the Rimrock Foundation is available at the back of the Council Chambers this evening.
- Mayor Tussing noted that in regard to Rimrock Foundation he had conversations with Mr. Greg Aldrich of the Board of Directors and David Cunningham (along with a letter). These and other communications from citizens were received and provided to the City Administrator for inclusion into the ex parte' binder.

### **PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: #1 & #11 - #15**

**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.)

- DAVE BOVEE, 424 LEWIS AVE., spoke on Item #12. He said this was another example of a “wealthy parasite” wanting more taxpayer money. Mr. Bovee urged the Council not to approve the grant and “let them pay for their facility themselves”, adding that they needed to “wean these calves from the teat.” He said the public receives no benefit from these types of grants. He asked the Council to keep the money and use it to benefit everyone rather than one developer.
- MARY WESTWOOD, 2808 MONTANA AVE., said she believed the public should have more advance information about Item #12, namely the name of the recipient, the amount of the grant and where the money is coming from. Ms. Westwood said it is important that this information be available on the agenda and in advance of the meeting.
- RANDY HAFTER, 2910 MORLEDGE ST., spoke on Item #12. He encouraged the Council to support the grant to assist with the change of use for a difficult downtown location. The site has a severe negative economic impact on surrounding properties. It is a “public” problem because of the amount of public safety calls to the site and the consistent use of public safety resources on this location. Mr. Hafer noted also that this property is a tremendous tax “black hole” created by its blighted nature. This grant will allow private individuals to buy this property and revitalize it. Another benefit will be the parking facility that will be built on this property that will free up parking spaces in the Park II garage.

## **CONSENT AGENDA:**

### **1. A. Mayor's Appointments:**

	Name	Board/Commission	Term	
			Begins	Ends
1.	Margy Bonner	Parks/Recreation/Cemetery	2/27/06	12/31/09
2.	Warren Grass	County Water District of Billings Heights	2/27/06	12/31/09
3.	Carol Gibson	City/County Planning	2/27/06	12/31/06

1. Unexpired term of Michael Erickson
2. Unexpired term of Ryan Walker
3. Unexpired term of Mick Ohnstad (Ward IV)

### **B. Bid Awards:**

**(1) W.O. 04-18: Expansion and Condition Audit Repair of Park II.**  
(Opened 1/31/06). (Delayed from 2/13/06). Recommend rejecting all bids and rebidding the project after the design and scope of work is modified.

**(2) AIP 30 – Runway 10R-28L Rehabilitation.** (Opened 2/7/06).  
(Delayed from 2/13/06). Recommend JTL Group, \$695,905.80.

**(3) AIP 30 – Runway Incursion Prevention Road Paving & Drainage Improvements.** (Opened 2/7/06). (Delayed from 2/13/06). Recommend JTL Group, \$285,780.60.

**(4) Castle Rock Park Spray Ground.** (Opened 2/7/06). (Delayed from 2/13/06). Recommend AME Inc., \$195,373.70.

**(5) One New Current Model 2006 Trailer with CC Inspection Equipment.** (Opened 2/7/06). (Delayed from 2/13/06). Recommend rejecting all bids, re-evaluating and changing the bid specifications and readvertising.

**(6) (AIP) 30 -- Commercial Ramp Improvements.** (Opened 2/14/06). Recommend delaying to 3/13/06.

**(7) W.O. 95-08 Shiloh/Rimrock Road Landscaping Improvements.** (Opened 2/14/06). Recommend A-1 Landscaping, \$137,000.00.

**(8) W.O. 06-03, Contract #1: 2006 Street Maintenance.** (Opened 2/14/06). Recommend JTL Group, Inc., \$406,727.60.

**C. Professional Services Agreement** for ongoing airport Air Service consulting services, Mean & Hunt, Inc., first year cap: \$75,000.00.

**D. Authorization to submit application** for 2006 Justice Assistance Grant (JAG) and acceptance of award, \$51,856.

**E. Street Closure Requests:**

**(1) Yellowstone Rimrunners for Shamrock Run:** March 19. Beginning at 3<sup>rd</sup> St. W and Daylis Stadium, left on Parkhill Dr. to 17<sup>th</sup> St W, left on Poly Dr., left on Sunnyview, left on Colton Blvd., right on 17<sup>th</sup> St. W and then left on Parkhill Dr., ending at Pioneer Park.

**(2) Yellowstone Rimrunners for Montana Women's Run:** May 13. 2<sup>nd</sup> Ave N. from N. 20<sup>th</sup> St. to Division St; Division St between 2<sup>nd</sup> and 3rd Aves N; 3<sup>rd</sup> Ave N between Division St. and N. 20<sup>th</sup> St.; and N. 20<sup>th</sup> St between 3<sup>rd</sup> and 2<sup>nd</sup> Aves N.

**(3) Big Sky Senior Services for St. Patrick's Day Parade:** March 18. Established downtown parade route.

**(4) Big Sky Senior Services for St. Patrick's Day Celtic Celebration:** March 18. N. 28<sup>th</sup> between 1<sup>st</sup> and 3<sup>rd</sup> Aves N.

**F. Revolving Loan Fund:** loan changes for L & L Development Venture, L.P. increasing bank loan amount from \$150,000.00 to \$170,000.00 and providing for a second lien subordinate to a bank loan of \$213,488.00. (re: renovation of former Arcade Bar structure).

**G. Resolution 06-18393** adopting updates to the *Emergency Operations Plan for Billings, Laurel & Broadview and Yellowstone County.*

**H. Resolution 06-18394** establishing a policy identifying the process of soliciting and receiving input from persons with disabilities regarding accessibility of sidewalks in the City of Billings.

**I. Bills and Payroll.**

- (1) January 27, 2006
- (2) February 3, 2006
- (3) January 1-31, 2006 (Municipal Court)

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

Separations: Councilmember Jones separated Item C.

Councilmember Gaghen moved for approval of the Consent Agenda with the exception of Item C, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

Councilmember Gaghen moved for approval of Item C of the Consent Agenda, seconded by Councilmember Ruegamer. Councilmember Jones said he would like to see the committee that was formed to address the issues presented with this agreement be formalized and approved by the Council. Airport Director Bruce Putnam said this committee is a continuation of one that has been in place, first in a formal way and later informally, since before 9/11 when the Chamber asked the Airport to partner with them in an air service committee. This committee would periodically evaluate air service issues. The committee includes members from the Billings Chamber of Commerce, Big Sky Economic Development Authority, both hospitals, Chairman of the Yellowstone County Commission, Mayor Tooley and Mayor Tussing. Councilmember Jones said his concern is that the committee should be formalized because of the amount of money that is involved in the efforts to stabilize air service in Billings. Mr. Putnam said he could not confirm that these committee members have been formally appointed, but there has been active involvement on the part of the members. On a voice vote, the motion was unanimously approved.

**REGULAR AGENDA:**

**2. PUBLIC HEARING AND SPECIAL REVIEW #802: A special review to allow multi-family dwellings in the South 27<sup>th</sup> Street Corridor zoning district, Lots 13-18, Block 231, O.T., homeWORD, applicant; Kim Olsen, O<sup>2</sup> Architects, agent. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

Neighborhood Planner Lora Mattox said this special review is located diagonally from the South Park area. The property is currently vacant. This project is sponsored by the homeWORD organization, which is a non-profit organization that worked extensively with the South Side residents and neighborhood task force. Much of the design was inspired by residents working closely with homeWORD to develop this project. The project includes three buildings that will surround a courtyard area. She noted the main building will have a rooftop garden and bell tower. Councilmember Gaghen noted that this project will assure low-income apartment dwellers the option of low-to-moderate income rental for 40 years.

Ms. Mattox said the Zoning Commission held a public hearing and is recommending conditional approval on a 4-0 vote. The conditions include:

1. The special review approval shall be limited to Lots 13 – 18, Block 231 of Billings Original Town and the number of multi-family units shown on the site plan. Additional multi-family structures shall require additional special review approval of the Billings City Council.
2. All landscaping shall be as shown on the submitted site plan and in accordance with Section 27-805 of the BMCC.

The public hearing was opened. MARY WESTWOOD, 2808 MONTANA AVENUE, a member of the South Side Task Force, but speaking for herself, said this was a marvelous process that should be seen on more projects. homeWORD asked the opinions of the South Side residents before telling them "what they were going to get." This process brought the community together to support the project. She noted this neighborhood is very unified with tremendous compassion for its residents. She noted this project will be a wonderful addition to this neighborhood.

GREG KRUEGER, DIRECTOR OF THE DOWNTOWN BILLINGS PARTNERSHIP, 2815 2<sup>ND</sup> AVENUE N., said his agency has experience working with homeWORD through the renovation of the Acme Hotel building on N. Broadway. He said they are wonderful partners to work with and are cognizant of the neighborhood and of urban renewal. He added that this is a great project and urged the Council's support.

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

**3. PUBLIC HEARING AND SPECIAL REVIEW #803: A special review to allow a drive-through window for a Dairy Queen Restaurant in a Community Commercial zone adjacent to a Residential Multifamily-Restricted zone, described as Lots 1-5, Block 1 of Cellan Acre Tracts, and located at 1045 Grand Avenue. (Former Happy Diner location.) Rich Hageman, applicant; Darrell Kreitzberg, agent. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

Planner Wyeth Friday said this special review is located at the northeast corner of Grand Avenue and 11<sup>th</sup> Street West. The reason for the special review is that the front portion of the property is zoned Community Commercial and the rear portion is zoned Residential Multi-Family-Restricted. Under the zoning regulations, a special review is required if a drive-through facility is requested on a parcel that is adjacent to residential zoning. The property is the former Happy Diner location where the building was located in the Community Commercial zoning and the parking lot was in the Residential Multi-Family-Restricted zoning. He noted the existing Dairy Queen is located across the street along with other fast food facilities. Residential 6,000 is located on Avenue B behind the existing parking area and across 11<sup>th</sup> Street West. Mr. Friday said the proposal is to have the facility located on the front portion of the property, set back farther than the current building. The drive-through facility would circulate around the building, not accessing onto Grand Avenue, but utilizing the 11<sup>th</sup> Street West access (similar to the existing curb cut) as well as one of the two existing accesses on Avenue B. The parking lot would remain the same as it currently is with the dumpster facilities in the back corner and maintaining the three accesses.

Mr. Friday said the Zoning Commission is recommending conditional approval of the special review on a 4-1 vote with the following conditions:

1. The special review approval shall be limited to Lots 1 and 2, Block 1 of Cellar Acre Tracts as shown on the site plans submitted with this application.
2. Any expansion of the buildings or parking area greater than 10 percent will require an additional special review approval as per BMCC 27-613(c).
3. Any lighting within the parking lot areas shall have full cut-off shields so light is directed to the ground and not onto adjacent property.
4. The existing curb cut at the northwestern corner of the property that provides an access to Avenue B shall be removed, leaving one access to Avenue B at the northeast corner of the property. Landscaping shall be provided along the property boundary with Avenue B and shall include at least 2 street trees and 6 shrubs that grow to at least 36" at maturity.
5. A Traffic Accessibility Study (TAS) shall be submitted to the City Engineering Department for review at the time that Building Permits are submitted for the site. Recommendations provided in the TAS shall be implemented by the applicant at the discretion of the City Engineering Department.
6. The drive-through aisle at the front of the property adjacent to Grand Avenue must be buffered from the Grand Avenue right-of-way with a 36" high wall and living landscaping to prevent vehicle lights from blinding drivers and pedestrians westbound on Grand Avenue, or entering Grand Avenue from properties across the road from this property.
7. There shall be no outdoor public address system or outside announcement system of any kind.
8. The proposed development shall comply with all other limitations of Section 27-613 of the Unified Zoning Regulations concerning special review uses, all landscaping requirements specified on Section 27-1101, and all other City regulations that apply.

Councilmember Ruegamer asked if the Planning Department can estimate the number of cars using the Avenue B access as opposed to the 11<sup>th</sup> Street West access. Mr. Friday said he could not "hazard a specific guess", but the applicant has prepared some data that he will present to the Council that may help with that question. During Zoning Commission deliberations and discussion, it was noted that a left turn onto Grand Avenue could be challenging and may route eastbound traffic via the Avenue B access. He noted that the site plan is designed to discourage access onto Grand Avenue and noted this was proposed by the applicant. Councilmember Veis asked if the access on Avenue B were eliminated would the 11<sup>th</sup> Street West access be sufficient. Mr. Friday said the Avenue B access is there to assist with traffic flow in the parking lot area.

Mr. Friday noted that the Zoning Commission received a letter and a petition with 40 signatures expressing concerns about the proposal. He said the applicant wrote a letter to the neighbors expressing his concerns and outlining the issues of this proposal. He also noted that a letter from the neighbors was included in the councilmembers' packets and included concerns about Avenue B access and traffic, landscaping, fencing and buffering. The location of the dumpster was also noted and discussed at the Zoning Commission. The applicant was agreeable to locating it closer to the building but within

Health Department regulations. Parking lot lighting and delivery truck traffic were other issues discussed. The applicant noted that there can be controls placed on delivery traffic concerning entering and leaving the premise (i.e. only use 11<sup>th</sup> Street West access).

Mayor Tussing asked if the concerns of the residents on Avenue B for headlights shining on their properties were ever addressed. Mr. Friday said the access onto Avenue B that would remain would be aimed at the fence and not directly across from a residence minimizing the impact of the lights.

Councilmember Veis noted that he and Councilmember Ruegamer met with neighbors to discuss this special review and the different options that are available. Councilmember Veis also noted that he has had several phone conversations with the applicant, Rich Hageman.

The public hearing was opened. RICH HAGEMAN, 1212 ALMEDA LANE, said he and his wife are the principal owners and operators of the Dairy Queen currently located on Grand Avenue. He said he tried to place an entrance off Grand Avenue, but after several designing efforts, found it was not prudent and would be dangerous to do so because of the small amount of frontage available for access. Dairy Queen requirements are for a 126-foot frontage. He considered purchasing and vacating a portion of 11<sup>th</sup> Street West but there are problems with utilities in the street and power lines that would need to be relocated. He said meeting the required parking spaces also presented challenges. He understands that the concern of the neighborhood will be for the number of cars traveling down Avenue B. The amount is unknown, but what is known is that 100% of the cars will use the access onto 11<sup>th</sup> Street West as an entrance. He noted that this facility will be the only one that has access onto Avenue B.

BEVERLY HAGEMAN, 1212 ALMEDA LANE, said she is one of the owner/operators of the Dairy Queen restaurant. She said there are unknowns in any new venture that can be frightening and cause misunderstandings. She noted that July is the busiest month (open 12 hours/day) with an estimated 360 cars using the drive-through in that month. The slowest month is November (open 10-1/2 hours/day) with an estimated 155 cars using the drive-through. She noted the Happy Diner provided information to them that stated 300 cars per day used the parking lot all year round. The parking lot held 40 cars with no exit onto Grand Avenue. Ms. Hageman said the traffic count for Avenue B and Alderson Avenue (considered a sister street) show a difference of 485 cars less going both directions on Avenue B. Traffic counts on 11<sup>th</sup> Street West in both directions were comparable to Avenue B.

CAROL MCCRACKEN, 1520 11<sup>TH</sup> STREET WEST, said she is a real estate appraiser. One of her concerns is to have a fence shielding Avenue B from the proposed facility. She would like to see the Grand Avenue entrance utilized or look at other options such as moving the building farther back on the property to accommodate the drive-through. As an appraiser she looks at external obsolescence, which is a loss of value to property from causes outside the property itself. She said when a facility with a drive-through is placed adjacent to residential property, that property will probably lose value due to the increased noise and traffic. As a homeowner in this area, she expressed concern that within two years this establishment will cause a decrease in saleability of the homes in that neighborhood. She asked the Council to investigate other options that will benefit the neighborhood.

KEN BOESCHEN, 1031 AVENUE B, said his home is located 1 block west of the proposed exit on Avenue B. His main concern is for the traffic, noise and litter. He said the most logical and quickest access that will be utilized by drive-through customers will be the one onto Avenue B. There are other alternatives available that will be mutually beneficial to all parties involved. He said a fence is not that attractive, but it will be preferable to seeing the traffic on Avenue B. The neighborhood wants Dairy Queen to locate there, but wish the access and exit could be from Grand Avenue.

DAVE ROBERTS, 1003 AVENUE B, noted there is a veterinary clinic near his house that has an 8-foot fence. He said he likes the fence because it keeps the noise level down. He said he thinks the Dairy Queen at the new location will have more traffic than the Happy Diner did. He said Avenue B is his buffer zone and keeps the traffic "at bay". He would rather see the access be from Grand Avenue. Mayor Tussing asked if it is the City or Dairy Queen that is not allowing the Grand Avenue access. Director of Public Works Dave Mumford said the City did not restrict the Grand Avenue access, but prefers that it not be used because many curb cuts make hazardous traffic conditions. The narrow width of the lot does not allow both entrance and exit onto Grand Avenue.

PEGGIE LIGGET, 1033 AVENUE B, said if the parking lot is used for commercial purposes the appropriate city codes should be "put into place". The lot should be screened from the entire residential area with a minimum of a 6-foot fence, a hedge and shrubs. She said the lot has been an eyesore long enough. The grandfather clause variance given to the Happy Diner should be null and void because the Happy Diner is closed. Grand Avenue must be used for business traffic. Sending business traffic into a residential area is unsafe but will have a negative affect on every home on Avenue B. She stated that redesigning the site will increase Dairy Queen's costs, but the location is good enough to repay the costs. The homeowners will be the losers, because their property values will drop in value with no means to gain that back. Ms. Ligget said she has spent a lot of money improving her home, which is a large part of her retirement. Losing that value is devastating to her as she does not have the means to "start over again." She asked the Council to take the affected residents into consideration because homeowners make the City prosperous.

PEGGY BERGSAGEL, 1512 COLORADO, said she supports her neighbors. She said everyone would welcome the 11<sup>th</sup> Street West closure. She sees no good reason and it is a major concern to exit onto Avenue B as every other business exits onto Grand Avenue. The neighborhood begins to deteriorate when homeowners turn into renters, which will happen with the scenario. She said there should be a fence and evergreens to screen the business from the residential neighborhood. Ms. Bergsagel urged the Council to look at other exits and respect the neighborhood's concerns. Mr. Mumford reminded the Council that Grand Avenue will be changing into a five-lane street and the access and maneuverability will be changing in this area. He urged the Council to give the Engineering Department more time to study the possible vacation of 11<sup>th</sup> Street West to see how it affects everyone concerned and not just the immediate neighborhood.

KAREN ROBERTS, 1003 AVENUE B, said an exit onto Avenue B is not beneficial to any residents that live there. She said drivers on Avenue B are driving along, "feeding their face" after leaving one of the restaurants and not paying attention at the cross streets. She said this is wrong and someone will get hurt.

SCOTT NAGEL, 323 TERRY AVENUE, said the area has been known as "food row" for over 40 years. He said he fears for his life every time he exits onto Grand Avenue. He said the proposed site plan using the 11<sup>th</sup> Street West access is good. If there is a problem with speeding and litter, there are other avenues to address those issues. He said he favors this plan.

LISSETTE MAINZER, 1028 AVENUE C, said her house faces Grand Avenue one street from Avenue B. She said the pictures do not depict the eastern view of Avenue B that will be a blind exit going east because of the fences. She said she sees the traffic all the time and if the site is fenced it will make her home quieter. The neighborhood would appreciate a fence on the back property line and access on 11<sup>th</sup> Street West.

ARDELL RONNING, 3014 GLACIER DRIVE, said he owned the Happy Diner for 30 years. He said he saw a lot of accidents on the only access from Grand Avenue during icy weather. It is a very dangerous access on that narrow lot. He said during the 1970's the Happy Diner was a "fast food" business with 350 to 400 cars a day coming to the facility. Very few of those cars used the Grand Avenue access. During the 1980's business was slow and when the casinos came in it made the traffic worse. He said their marketing strategy to regain their business was to keep the restaurant a "wholesome" place with "wholesome" employees. Mr. Ronning said he knows Rich Hageman and said he is a "wholesome" man and Dairy Queens nationally are "wholesome" businesses. He said it is important to keep a wholesome business at that location. He encouraged the Council to approve the special review and proposed plan.

TAMRA BARNHART, 43 MACARTHUR AVENUE, said she is the manager of the Dairy Queen on Grand Avenue. She said there are four different categories of customers at Dairy Queen: fast food frequenter (men 25 and over - 60% bring kids), treat craver (women 35 and over - 43% bring kids), econo-parents (parents 35-49 - 70% bring kids) and premium quality and selection (men 25 and over - 40% bring kids). She said Dairy Queen is a family restaurant and hardly has many teenagers during the lunch traffic. Teenagers usually come with their parents.

JIM SALSBURY, 3102 SILVERWOOD, said he is a minority owner in the Dairy Queen operation. He said he has also been an appraiser for over 30 years and agreed with the public hearing speaker that spoke about "external obsolescence" noting she read it right from the textbook. Compared to the present Happy Diner facility, having a new building in its place should improve the property values. They are trying to be a good neighbor by building as far from the residential area as possible. The current Dairy Queen location will lose its parking lot due to the Grand Avenue widening making the business questionable. He added that they won't be able to employ as many people as they currently have. The new Dairy Queen will possibly double the current employees. Mr. Salsbury said Dairy Queen is trying to be a good neighbor, comply with all applicable growth plans and City goals and be a responsible employer. He urged the Council to consider all of these things and approve the special review.

DARRELL KREITZBERG, 71 25<sup>TH</sup> STREET WEST, said the Happy Diner was built in 1965, constructed only 5 feet from the property line on Grand Avenue. The building is also too close to 11<sup>th</sup> Street West. He said several entities looked at using the building in the same condition as a restaurant, using the same ingresses and egresses. The Dairy Queen proposal could not be a more "refreshing" business for that location. He said the proposal includes demolishing the existing 4,845 square foot building and replacing it with

a 2,900 square foot building with a 60-foot arterial setback. Mr. Kreitzberg said this is the best use of the property and can't understand why there is so much opposition to an "ice cream store". He asked the Council to approve the special review.

Councilmember Stevens asked Mr. Hageman why he rejected the potential to close 11<sup>th</sup> Street West as an option. Mr. Hageman said he did not reject the option but rather gave up on it. Another concern is the assets that are needed to purchase this right-of-way which could possibly be up to \$100,000 or more. Councilmember Stevens asked Mr. Mumford if this is still a good option to explore if the Hagemans are open to it. Mr. Mumford said the City would consider this option and confirmed that the land could cost between \$9.00 and \$10.00 a square foot and it is a large piece of land. Councilmember Boyer asked if Mr. Hageman is interested in pursuing this option. Mr. Hageman said he is hesitant, but will do what the Council requests. He noted he is still concerned about the financial aspect. Councilmember Gaghen said this vacation option is more complex because of the involvement of Taco John's across the street and a residence on the corner of Avenue B and 11<sup>th</sup> Street West. Mr. Mumford said the house on the corner accesses onto 11<sup>th</sup> Street West so that would create another issue.

Councilmember Jones noted his daughter works for Mr. Hageman so he would be abstaining from discussion and voting on this issue.

Councilmember Boyer asked if the fencing and additional shrubbery are included in the current conditions. Mr. Friday said the Council could add the fencing and one-access conditions as the current conditions only contain language that requires landscaping, trees and shrubbery.

Councilmember Stevens moved to continue the public hearing and delay action, seconded by Councilmember Veis. Councilmember Ruegamer said he does not support delaying this special review because it is adding time and expense to the proposal. He said Mr. Hageman has offered a good alternative with the second curb cut on 11<sup>th</sup> Street West. Councilmember Stevens said she would like the 11<sup>th</sup> Street West vacation alternative investigated further. Mr. Mumford said this would have to be done in less than 30 days. He said the first action would be to see what the other property owners desire.

Mr. Friday said the Council is obligated to the 30-day time period if the public hearing is closed this evening. If the public hearing is continued, there is flexibility beyond 30 days. Councilmember Ronquillo asked that a public safety official speak about the impact of road closures. Fire Chief Marv Jochems said closing one block close to an arterial is not going to be that big of a problem.

Mr. Friday noted that the second curb cut on 11<sup>th</sup> Street West would create a loss of two of the original 29 parking spaces. Councilmember Veis asked if the Council has the authority to allow only 27 parking spaces. Mr. Friday said the variance for the parking requirement would be reviewed through the Engineering Department. Mr. Mumford said his concern is that there may be more than 2 spaces lost. Mr. Hageman said the alternate design for the second curb cut was not drawn by an architect and Mr. Mumford's concerns could be well-founded.

Councilmember Ruegamer said he does not see how closing 11<sup>th</sup> Street West will solve any problems. Councilmember Stevens said closing 11<sup>th</sup> Street West would allow it to become a private driveway for the facility. Interim City Administrator Tina Volek expressed concern for some problems with variances and notice issues to property owners. City Attorney Brent Brooks noted that a street closure requires a public hearing.

Mr. Hageman noted that the property sale will close on March 6<sup>th</sup> and he expressed concern that he will be paying for a building he cannot use and purchasing a right-of-way he cannot afford. Councilmember Stevens withdrew her motion, Councilmember Veis withdrew his second.

Ms. Volek noted that the Council would have to hold a special meeting to accommodate the March 6<sup>th</sup> deadline that Mr. Hageman noted if the Council delayed or continued action tonight. Councilmember Clark moved to close the public hearing and take action this evening, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved. Councilmember Jones abstained from voting.

Councilmember Veis moved for approval of the Zoning Commission recommendation, seconded by Councilmember Gaghen. Councilmember Clark amended the motion to add a condition of fencing in addition to the shrubbery on Avenue B except in the driveway area, seconded by Councilmember Ronquillo. On a voice vote on the amendment, the motion was unanimously approved. Councilmember Jones abstained from voting.

Councilmember Veis moved to amend condition #4 to remove the existing curb cuts on Avenue B leaving no access onto Avenue B, seconded by Councilmember Boyer. Councilmember Veis said the Council should allow whatever reduction in parking would occur with a second access onto 11<sup>th</sup> Street West. He said this would encourage traffic away from Avenue B and is one thing the Council can do to limit that traffic. On a voice vote on the amendment, the motion was approved with Councilmember Ronquillo and Mayor Tussing voting "no". Councilmember Jones abstained from voting.

Councilmember Clark amended amendment #1 to allow for fencing and shrubbery along the entire north side of the property, seconded by Councilmember Boyer. On a voice vote on the amendment, the motion was unanimously approved. Councilmember Jones abstained from voting.

Councilmember Veis asked if the parking space requirement would still apply or does the Council need to add a condition to lower the space requirement. Mr. Hageman said he still has to satisfy Dairy Queen's requirements. He asked if a second curb cut on 11<sup>th</sup> Street West was conditioned in the amendment. Mr. Mumford said a variance from the parking space requirement would be required because it is part of the site development process. Councilmember Veis amended the motion to add a condition to the special review that a second curb cut be allowed on 11<sup>th</sup> Street West, seconded by Councilmember Boyer. On a voice vote on the amendment, the motion was unanimously approved. Councilmember Jones abstained from voting.

Mr. Brooks confirmed that the applicant would have to apply for a variance on the parking space requirement and it would be handled separately and cannot be granted during the special review process. Ms. Volek said the next step for the Dairy Queen would be the site development process that takes about a month and the variance would be part of that process. This process would not preclude Mr. Hageman from purchasing the property unless his corporation has objections. Councilmember Veis said he would like to see leniency for the Dairy Queen regarding the parking requirements. Ms. Volek said a variance is usually based on a hardship that is not created by the action of the owner. She said this appears to be the situation. On a voice vote on the motion as amended, the motion was unanimously approved. Councilmember Jones abstained from voting.

Mayor Tussing called for a recess at 8:45 P.M.  
Mayor Tussing reconvened the meeting at 8:55 P.M.

**4. PUBLIC HEARING AND SPECIAL REVIEW #804: A special review to allow a car wash in a Neighborhood Commercial zone described as Tract 1C of C/S 566 and located on the northeast corner of the intersection of Blue Creek Rd. and Santiago Blvd. Jeff Essmann, owner/applicant. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

Zoning Coordinator Nicole Cromwell said this special review is for recently annexed property and has been zoned Neighborhood Commercial for a number of years. The parcel is a little over an acre in size and the owner intends to develop the property in the future when water and sewer are available. The owner has submitted two site plans that have been approved showing different configurations for a possible retail establishment, a water filling station and car wash. She noted both plans have identical access points.

Ms. Cromwell said the Zoning Commission is recommending conditional approval on a 5-0 vote. The applicant shall comply with the following conditions of approval:

1. The special review approval is limited to this tract of land and no other.
2. The development of the property shall be conformance with the submitted site plans (Plan A or Plan B).
3. The hours of operation for any unenclosed car wash bays and vacuum cleaners shall be limited to between 7 a.m. and 10 p.m.
4. A six-(6) foot sight-obscurring fence shall be located on the east property line at the time the car wash is constructed. As an alternative, the applicant shall install a continuous evergreen hedge may be substituted for the required fence if the evergreen trees or shrubs are at least 4 feet in height when planted, reach a mature height of at least 8 feet, a mature width of at least 6 feet and are planted no greater than 7 feet on center. Any sight obscuring fence must be constructed of wood, stone, vinyl, brick or block or other conventional fencing materials. No chain-link or wire fencing is allowed in this application.
5. Any lighting within the parking lot shall have full cut-off shields so light is directed to the ground and not onto adjacent property.
6. There shall be no outdoor music or public address system on the property.

The public hearing was opened. JEFF ESSMANN, 3130 MCMASTER ROAD, said he is the applicant and would answer any questions. Councilmember Clark asked how Mr. Essmann would prevent use of the car wash facility after hours. Mr. Essmann said new digital technology allows the water service to be activated through the use of time clocks.

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

**5. PUBLIC HEARING AND SPECIAL REVIEW #805: A special review to allow an all-beverage liquor license with gaming in a Community Commercial zone described as Lot 5, Block 1 of North Pointe Square Subdivision 1<sup>st</sup> Filing, and**

located at 2352 Main Street. Ernest and Leanne Dutton, owners/applicants. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)

Zoning Coordinator Nicole Cromwell said this special review applies to a vacant lot in front of the former K-Mart building in the Heights. The property is zoned Community Commercial with vacant Highway Commercial zoning to the south and the former K-Mart parcel recently rezoned Highway Commercial. She said the Planning Staff had recommended denial to the Zoning Commission due to the lack of a definitive site plan. The Zoning Commission considered the site plan a good plan and are recommending conditional approval based on the site plan and the comments from its public hearing. She noted that the only access would be from the former K-Mart parking lot. The conditions include:

- The special review approval shall be limited to Lot 5, Block 1 of North Pointe Square Subdivision.
- The development of the property shall conform to the submitted site plan with the exception of the sidewalk connections into the private property from the public sidewalks adjoining Main Street and Pemberton Lane. The sidewalk connections shall be eliminated from the development.
- No outdoor seating, outdoor music or outdoor public announcement systems will be allowed with this application.
- Any new lighting within the parking lot shall have full cut-off shields so light is directed to the ground and not onto adjacent property. Lighting of signs shall be as allowed within the City Sign Code (Section 27-701 BMCC).
- A dumpster enclosure of sight-obscuring material shall be constructed and shall have a closing gate. Acceptable materials are wood, block, stone, brick, vinyl or other similar fencing materials. No chain link or wire fencing is allowed for this application.
- The applicant shall install a 3-foot decorative fence between the proposed retention area along Pemberton Lane and the public sidewalk.
- All other limitations on expansion shall apply in accordance with Section 27-613 of the Billings Montana City Code.

The public hearing was opened. ERNIE DUTTON, 2046 MARIPOSA LANE, said he is the owner of the property. The proposed owners of the property are Mark and Dave Wass of Little Nevada Casino. He said they have a good record of being responsible property owners. He said he and the proposed owners are in full agreement of the proposed conditions. All adjacent property owners and tenants are agreeable to the proposal. Those neighbors are glad to see some activity on a lot that has seen vandalism, graffiti and abandoned cars on the parking lot.

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

**6. PUBLIC HEARING AND SPECIAL REVIEW #806: A special review to allow outside storage of wholesale trade goods – stone and masonry products - in a fenced/screened enclosure in a Planned Unit Development (PUD) – Highway**

Commercial zone described as Lot 7A, Block 2 of Southgate Subdivision 1<sup>st</sup> Filing, and located at 5201 Southgate Drive. Willie Dowdle, owner/applicant; A.L. Koelzer, agent. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)

Zoning Coordinator Nicole Cromwell said this special review concerns a proposed Masonry Center where palletized masonry products would be wrapped and stored outside. The property is located on Southgate Drive in a Planned Unit Development which has a specialized zoning. She noted the existing site plan that includes an existing fenced enclosure. The proposed plan adds to the fenced enclosure and place inserts into the fencing to further block visibility.

Ms. Cromwell said the Zoning Commission is recommending conditional approval with the following six conditions:

1. The special review approval is limited to Lot 7A, Block 2 of Amended Plat of Lot 6 and Lot 7, Block 2, Southgate Subdivision, First Filing, located at 5201 Southgate Drive.
2. The development of the property shall be in conformance with the submitted site plan.
3. Any new lighting within the lot shall have full cut-off shields so light is directed to the ground and not onto adjacent property.
4. There shall be no outdoor public address system on the property.
5. All materials, parts, equipment and similar items shall be stored outside in a fenced enclosure, screened from public view and neighboring property.
6. All other limitations on expansion shall apply in accordance with Section 27-613(c) of the Billings Montana City Code.

The public hearing was opened. AL KOELZER, 2828 WESTWOOD, said this is the former Keebler warehouse which is a 21,000 square foot building. He said he is the agent for the Masonry Center in Idaho that is planning to purchase the property. He said this outlet sells quality tile products and sells only to places like Pierce Flooring, that buys from this outlet. He said the visual impact to the neighborhood is limited due to all of the screening. He noted the business would be a wholesale outlet.

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

**7. PUBLIC HEARING AND FIRST READING ORDINANCE expanding the boundaries of Ward IV to include recently annexed property in Annex #06-01 described as: 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. 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 Clark moved for approval of the ordinance on first reading, seconded by Councilmember Veis. On a voice vote, the motion was unanimously approved.

**8. PUBLIC HEARING AND FIRST READING ORDINANCE providing that the BMCC be amended by revising Article 10-200: Judge, allowing an elected municipal court judge, with the approval of the governing body of the city, to appoint a part-time assistant judge as allowed under state law. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

Interim City Administrator Tina Volek said three years ago the City began budgeting for a part-time judge. Since that time and up until now, the City has been employing pro-tem judges to assist in the Municipal Court. The City sponsored legislation to allow the appointment of a part-time assistant judge. She said there is budget available for this position which will lessen the use of pro-tem judges and allow consistency in the presentation and decision-making in the courtroom. Ms. Volek said the Staff recommends approval of this ordinance.

The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Ronquillo said he sat in on a court session and confirmed that the Municipal Court judge is extremely busy. Councilmember Ronquillo moved for approval of the Staff recommendation, seconded by Councilmember Gaghen. Councilmember Boyer stated that the Council authorized a lobbyist to lobby for this provision in the law. Councilmember Gaghen noted that a pro-tem judge is paid at a higher rate. An additional judge will also generate more revenues. On a voice vote, the motion was unanimously approved.

**9. PUBLIC HEARING CONTINUED AND RESOLUTION FOR ANNEXATION #05-06: a 116.17 acre parcel located on the north side of Rimrock Road at the intersection of 70<sup>th</sup> Street West and extending to the railroad property on the north and west, known as Tract 1, C/S 1871 and Tract 2A, C/S 2465. Larry Staley and Westward Ho Company, petitioners. (Action delayed from 7/11/05). Staff recommends delaying the continuation of the public hearing and action on the resolution to 4/10/06. (Action: approval or disapproval of Staff recommendation.)**

Councilmember Gaghen moved for approval of the Staff recommendation to delay continuation of the public hearing and action to 4/10/06, seconded by Councilmember Clark. On a voice vote, the motion was unanimously approved.

**10. PUBLIC HEARING AND SITE DEVELOPMENT ORDINANCE VARIANCE #CC05-03: a variance from Section 6-1208(h)(3) concerning driveway width and Section 6-1203(j)(2) concerning curb cuts on property located on Lots 7-12, Block 21, O.T. generally located between N. 27<sup>th</sup> St. and N. 26<sup>th</sup> St and between 1<sup>st</sup> Ave N. and 2<sup>nd</sup> Ave N, known as the former Smith Funeral Home site. City of Billings, applicant. Staff recommends delaying action ~~60 days~~ to 4/10/06. (Action: approval or disapproval of Staff recommendation.)**

Ms. Volek noted this site development variance request is tied to the Park II expansion so the Staff is recommending that the action be delayed to 4/10/06 when the new construction bids should be coming back to the Council. Councilmember Stevens moved for approval of the Staff recommendation to delay action to 4/10/06, seconded by Councilmember Ronquillo. On a voice vote, the motion was unanimously approved.

**11. RESOLUTION 06-18395 adopting the Yellowstone County Community Wildfire Protection Plan. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

Fire Chief Marv Jochems introduced Tara King with Northwest Management, Inc., who is a forester/technical service associate and is the consultant for the Yellowstone County Community Wildfire Protection Plan. Ms. King gave her address as 335 Julie Drive, Moscow, ID and said she represents the committee that has been working the past six months to develop this plan. This is an update to the wildfire chapter in the Pre-Disaster Mitigation Plan that was approved by the Council in 2004. The update allows the plan to be compatible with FEMA, National Fire Planning and Healthy Forest Initiatives which will open the door to funding for many different wildfire protection programs. Ms. King said there are many recommendations in the plan for protection projects in outlying areas and policy recommendations for emergency response. Councilmember Stevens asked if this was a regulatory document. Ms. King said it was a "guideline". Mayor Tussing asked if there was funding for the recommendations in the plan. Ms. King said this is basically a wish list and a multi-jurisdictional plan that when approved, allows application for grant funding.

Councilmember Veis moved for approval of the resolution adopting the Yellowstone County Community Wildfire Protection Plan, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

**12. APPROVAL OF A DEVELOPMENT GRANT for land assemblage in the 2700 block of Montana Avenue, recipient: TBA 50/50 to William D. Honaker & TG&F Properties for purchase of the Empire Bar property. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

Downtown Billings Partnership Executive Director Greg Krueger said this grant would use the Tax Increment District funding under the budget category of Development Incentive Programs. The Urban Renewal Grant Program Development Incentives was brought to the Council six or seven years ago and requires that all grants exceeding \$49,999.00 be approved by Council. The 2700 block of Montana Avenue has been identified as a potential "bookend" project, compatible to what has been known as the 4<sup>th</sup> and Broadway project. The 2700 block has not kept up with surrounding area streets regarding the pedestrian-friendly concept. There were over 298 police calls to that area in 2005 and 8 weapons and 1 homicide in over 120 fire calls.

Mr. Krueger noted also that private parking is needed in almost every area of the downtown, but is definitely needed in this area. He said any proposal must demonstrate ownership of the land. The grant for land assemblage cannot exceed \$145,000.00 and this proposal is in line with the development incentives budget item. He said private investment match must exceed a 2-to-1 ratio and the development plan must show how the project will attempt to improve the pedestrian-friendly status of the development area and the ability to add off-street parking to the inventory. A portion or all of the developed property must remain as taxable private property that is designated for business or commercial use. He said the proposal must demonstrate ownership of the land involved or consent of the landowner. The grant funding requires execution and satisfactory completion of the large project development grant agreement between the developer and the Downtown Billings Partnership.

Mr. Krueger said this grant was approved for funding on the 6<sup>th</sup> of January. A revised RFP was issued on January 16<sup>th</sup> with a closing date of February 3<sup>rd</sup>. He said the executive committee received two proposals that were reviewed on February 17<sup>th</sup> and subsequently recommended one proposal for full board review and Council approval on February 24<sup>th</sup>. He said the two partners, William D. Honaker and TG & F Properties are 50% partners in the proposal. The land that is proposed for development is located at 2709 and 2713 Montana Avenue and includes 2 buildings on 3 lots. The total development cost estimate is \$502,000 including property acquisition of \$350,000 which places this within the 2-to-ratio. The total private investment is \$357,000. He said the current owner has signed a sale/purchase agreement contingent on the approval of this grant.

He said the interim use of the site would be 24 reserved parking spaces (cars that are currently parked in Park II). There would be no ingress and egress onto Montana Avenue and will take place via the alleys. There will be limited landscaping and the site will comply with all City codes. The long-term goal for the site includes mixed-use development that would include a parking structure like the one being discussed for the 4<sup>th</sup> and Broadway project. Councilmember Ruegamer asked if the empty buildings adjacent to the Empire Bar are the reasons for crime problems in the area. Mr. Kruger noted that a developer of an adjacent building has concerns about fire hazards in the empty buildings. He agreed there are issues there as well.

Mayor Tussing clarified that Tax Increment funds do not take taxpayer funds from public safety or public service. Tax increment funds are placed into the district by the property owners of the district to be available for improvements to the district.

Councilmember Jones moved for approval of the Staff recommendation, seconded by Councilmember Gaghen. Councilmember Jones said this is a good plan for an area that needs rehabilitation. On a voice vote, the motion was unanimously approved.

**13. BID AWARD: W.O. 01-06 Arlene Corridor. (Opened 2/21/06).  
Recommendation to be made at meeting. JTL Group, Inc., \$2,221,635.07. (Action: approval or disapproval of Staff recommendation.)**

Public Works Department Dave Mumford said the Staff is recommending approval of the bid award to JTL Group, Inc. for \$2,221,635.07. Ms. Volek noted the engineer's estimate was \$2,500,000.000. Funding sources are noted in the staff report. Mr. Mumford said construction is scheduled for April 2006 and the street should be operational in the Fall of 2006. Councilmember Clark moved for approval of the Staff recommendation, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.

**14. W.O. 04-33: LAKE ELMO ROAD – Hilltop Road to Wicks Lane, selection of street option. Staff recommends approval of Option #2: the Bicycle Lanes Option as the preferred option. (Action: approval or disapproval of Staff recommendation.)**

Public Works Director Dave Mumford said these are street section options to consider as the City grows. The options are basically the same cost and include the same safety issues. He said Lake Elmo Road carries approximately 6,000 cars per day and it is important to have the Council's guidance on how the streets will look.

Staff Engineer Nick Bailey said there are three options to consider for the Lake Elmo Road – Hilltop Road to Wicks Lane corridor. He said Phase I of the corridor (Wicks Lane to Angel) was completed in 1999 and is similar to option #1. It is a two-lane street section with parking and sidewalks on both sides. Phase V (Angel to Pemberton) is not completed and carries the least amount of traffic. This section is currently not proposed for improvements. Phase II (Main Street to Hansen) is to be re-bid this year and is planned to be similar to option #2. He said the street section that the Council is considering this evening relates to Phase III and IV (Hilltop to Wicks Lane). The three options for improvements are:

Option #1 – On-street Parking Option: Mr. Bailey said this option provides on-street parking for residents and a buffer between pedestrians on the sidewalk and the traffic on the street. The disadvantages are: 1) vehicles merging into traffic from parking lanes, 2) no separation of bicycle and pedestrian traffic on sidewalk and 3) reduced sight distances at driveways.

Option #2 – Bicycle Lanes Option (No On-Street Parking): Mr. Bailey said this option provides continuity with bicycle lanes that are planned in Phase II south of this section. He said Lake Elmo Road is a primary Bikeway on the Heritage Trail Plan and bicycle lanes are eligible for CTEP funds. The bicycle lanes would narrow travel lanes which may reduce speeds. The disadvantages are: 1) there is no on-street parking for residents, and 2) increased sweeping is needed to keep bicycle lanes clear of debris.

Option #3 – Multi-Use Path Option (With On-Street Parking): Mr. Bailey said this option better accommodates recreational/children cyclists. He said it also provides on-street-parking for residents. The bike path portion is eligible for CTEP funds. The disadvantages are: 1) roadway centerline would be offset from the right-of-way centerline, 2) bike path would need to be directly adjacent to the curb line, and 3) multi-use path mixes cyclists and pedestrians.

Mr. Bailey said there was public input from the Heights Task Force, the Traffic Control Board and adjoining property owners on the options. The Heights Task Force discussed the top but gave no formal recommendation. It was noted that there is currently no parking along Lake Elmo. One email response to the graphic presentation indicated a preference for option #2. He said the Staff attended the Traffic Control Board and gave a presentation. The board's formal recommendation to the Council is to adopt option #2. The Staff sent letters to all 85 adjoining property owners between Hilltop and Wicks. There were 19 responses with 8 favoring option #1, 4 favoring option #2 and 7 favoring option #3. He said option #2 is the Staff's recommended option because of the specific recommendations received. This option would provide continuity with what is planned to the south. Councilmember Stevens asked if there were comments included with the 19 responses from the property owners. Mr. Bailey said the comments generally involved the desire to have on-street parking. Councilmember Boyer asked if option #3 would keep Lake Elmo as a primary bikeway. Mr. Bailey said the primary bikeway purpose would be accomplished by either using the multi-use bike trail or on-street bike lanes.

Councilmember Ronquillo moved for approval of option #2 for the Lake Elmo Road – Hilltop Road to Wicks Lane street section, seconded by Councilmember Veis. Councilmember Stevens said it is fairly significant when 15 out of 19 responses from property owners want on-street parking. Councilmember Stevens made a substitute

motion to approve option #3 for the street section, seconded by Councilmember Gaghen. Councilmember Ruegamer noted that 66 impacted property owners did not respond and are essentially saying "do whatever you want." Mixing cyclists with pedestrians happens on many bike paths around town, so he did not consider that an issue. On a voice vote on the substitute motion, the motion was approved with Councilmember Veis and Mayor Tussing voting "no". Option #3 was approved.

**15. CREATION OF AD HOC COMMITTEE for determining selection criteria for a City Administrator and appointment of members. (Councilmember Veis).**

Councilmember Veis moved for approval of the Ad Hoc City Administrator Criteria Committee with 11 members appointed by all members of the Council, seconded by Councilmember Ruegamer. Councilmember Clark asked about the second member representative from Ward I. Councilmember Veis said Councilmember Ronquillo selected Dr. Doug Moore but his selection was not made before packet preparation. On a voice vote, the motion was unanimously approved.

Councilmember Ronquillo suggested that a minority member be included in the committee membership. Councilmember Ronquillo moved to add Aldo Rowe to the committee, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

Councilmember Veis moved to add Charlie Hamwey (realtor) to the committee, seconded by Councilmember Gaghen. Councilmember Veis noted that the realtor group was in contact with him about the nomination. On a voice vote, the motion was unanimously approved.

Councilmember Jones moved to add Dr. Joe Michaels. The was no second – motion died.

Councilmember Veis noted the draft letter that will go to the committee members confirming their appointment and stating the first meeting time. The agenda for the meeting that the councilmembers received will be included with the letter. The letter will go out tomorrow. Councilmember Veis said he plans on attending the meeting to give an overview of what the Council desires. He said other councilmembers can attend and answer questions if they desire.

Councilmember Veis said he has asked Deputy City Administrator Bruce McCandless to provide the councilmembers with a current job description for the City Administrator, a copy of the Charter and a copy of any materials related to the last effort to fill the position. He discussed the agenda. He said he will ask the committee to provide the Council with its selection criteria by the March 27<sup>th</sup> meeting or the first work session in April. Councilmember Veis requested that the department heads also provide the Council with input on selection criteria within the same timeframe. Councilmember Boyer asked that the department heads be provided the same materials as the committee members. Councilmember Veis asked Mr. McCandless to also check with the Mercer Group on their availability and what their duties were under the terms of the previous contract and report back to the Council. Mr. McCandless said he would provide the Council with what services were contained in the previous contract to allow the Council to select what service they would like Mercer Group to perform. He asked the Council if a decision item should be placed on the April 10<sup>th</sup> meeting. Councilmember Veis replied "yes". He said the action would be a motion on the job description and advertisement.

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

- KEN WOOSLEY, 2532 HOWARD AVE., said he is the Executive Director of the Harvest Church Community Foundation. Harvest Church is asking the Council to endorse the request for federal funding of the water and sewer line project (\$222,000) for their proposed recreation facility (1200 block of West Wicks Lane) in the Heights and to include the project among the federal appropriation requests the City intends to submit to Senator Burns. He noted this request was included in last year's appropriation, but the City funds were not approved. He also asked the Council to be the responsible fiscal agent for the project and also to share the match requirement equally with Harvest Church for this sewer and water project. Councilmember Gaghen said this request needs to be reviewed for how it will affect items already on the Federal Affairs list.
- COUNCILMEMBER RONQUILLO thanked Public Works Director Dave Mumford for having the Street Dept. clean out the 6<sup>th</sup> Street underpass and asked if this could be scheduled on a regular basis.

**COUNCIL INITIATIVES**

- COUNCILMEMBER JONES: Councilmember Jones moved to add the Harvest Church request for federal funding to the federal appropriations request list, seconded by Councilmember Ronquillo. Ms. Volek said the appropriation list has been submitted to the congressional delegation and Mr. Putnam is planning to go to Washington, DC in mid-March to assist with planning legislation. She said she believed Mr. Woosley has spoken with Mr. Putnam on this issue. Councilmember IRuegamer said he would like to hear from Mr. Putnam about adding this item and whether it will jeopardize any other project. Councilmember Veis expressed concern about setting a precedent for other non-profits to request the City partner with them on projects. Councilmember Jones said these types of projects must be viewed on a case-by-case basis; this one is a worthy project that will benefit the community. Councilmember Veis said this appropriation list should be reserved for City projects only. On a voice vote, the motion was approved.
- COUNCILMEMBER VEIS: Councilmember Veis moved to direct Bruce McCandless to ask the MMIA about providing protection for cities for inverse condemnation, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.
- COUNCILMEMBER JONES: Councilmember Jones moved to direct Staff to bring back information on how the airport committee (associated with Item C) works, seconded by Councilmember Clark. On a voice vote, the motion was unanimously approved.
- MAYOR TUSSING: Mayor Tussing asked for discussion and a process on how the Council would like to handle council absences. He noted that former Mayor Tooley advised him that the Council talked about setting a certain number of meetings that could be missed, but did not resolve the issue. He also was advised that the councilmembers were to notify the Mayor or the City Clerk of their absences.

Councilmember Boyer said notification to the Mayor and/or the City Clerk should be required. Councilmember Jones said this is something that should be reviewed to get a policy in place. Mayor Tussing asked Mr. Brooks (with the assistance of the City Clerk) to research the current ordinance and previous action on council attendance for a work session item. Mr. Brooks noted there was a draft of an ordinance for councilmembers that become incapacitated (as in the case of Councilmember Michael Deisz) that can also be included.

- **COUNCILMEMBER STEVENS:** Councilmember Stevens asked that every councilmember speak up enough so that all members of the council can hear one another's votes.
- **COUNCILMEMBER JONES:** Councilmember Jones moved to direct Staff to take a look at the sound system problems in Council Chambers and get it repaired, seconded by Councilmember Boyer. Councilmember Stevens amended the motion to direct Staff to look into finding a better venue for Council meetings, seconded by Councilmember Jones. Ms. Volek noted that other venues would have a cost attached to them. Councilmember Ruegamer called for the question, seconded by Councilmember Veis. On a voice vote to stop debate, the motion was approved with Councilmember Jones voting "no". On a voice vote on the amendment, the motion was approved with Councilmembers Clark, Gaghen, and Mayor Tussing voting "no". Councilmember Veis suggested taking a look at wireless mics. He also suggested have a more sensitive microphone with an on/off button to be utilized when the councilmember did not want to be heard. On a voice vote on the motion as amended, the motion was unanimously approved.

**ADJOURN** – With all business complete, the Mayor adjourned the meeting at 11:10 P.M.

THE CITY OF BILLINGS:

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

ATTEST:

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