

# REGULAR MEETING OF THE BILLINGS CITY COUNCIL

## March 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 Ed Ulledalen.

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

**MINUTES – March 13, 2006.** APPROVED AS AMENDED.

**COURTESIES** – NONE

### **PROCLAMATIONS**

- Fair Housing Month – April
- Donate Life Month – April

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

- Interim City Administrator Tina Volek reminded the Council that the following revised documents were submitted in the Council's Friday packet: Revised attachment for Item 1A which includes the background information for Dr. John Kominsky who is being proposed as the St. Vincent Healthcare representative for the EMS Commission; revised memos for Items B1 containing a corrected bid amount for W.O. #03-23: Turn Lane Construction for Yellowstone River Road and Hawthorne Lane; a revised text amendment for Item 3 deleting the 30-foot sign reference in Section 3, Item 5(l); and a revised resolution for Item 7 setting the salary for the part-time municipal court judge, reaffirming the salary of the full-time judge and clarifying salary increases.
- Ms. Volek noted that several revised documents were also on the Council desks this evening: a revised ordinance for Item 6 concerning debarment of contractors and a revised memo for Item 7, concerning the municipal court judge's salary.
- She reminded the Council of the Agenda Review meeting tomorrow evening at 5:30 p.m. in the City Hall Conference Room.

**PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: #1, #6 & #7 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 BROWN OF 544 WIGWAM TRAIL spoke on Item L regarding the RV ordinance. He said he wished the Council would take no action on the item, stating he thought the original ordinance covered "all that needed to be covered and left protection for property rights." He said the original ordinance contained a mechanism whereby a complaint would generate a response to illegal parking. The new ordinance now "does something about a parking issue that no one has complained about." Mr. Brown noted that a company should be able to take appropriate action to enforce parking rules on its private property.

## **CONSENT AGENDA:**

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

|    | Name              | Board/Commission | Term    |          |
|----|-------------------|------------------|---------|----------|
|    |                   |                  | Begins  | Ends     |
| 1. | Steven Tucker*    | Library Board    | 3/27/06 | 12/31/07 |
| 2. | Dr. John Kominsky | EMS Commission   | 3/27/06 | 12/31/09 |

\*Unexpired term of Sharon Zahn

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

**(1) W.O. 03-23: Turn Lane Construction for Yellowstone River Road and Hawthorne Lane.** (Opened 2/28/06). (Delayed from 3/13/06). Recommend JEM Contracting, Inc., \$333,395.55 \$333,369.55.

**(2) SID 1372 – Summerhill Subdivision.** (Opened 2/28/06). (Delayed from 3/13/06). Recommend rejecting all bids.

**C. Change Order #1 – Airport Restaurant Kitchen Floor Replacement,** Fisher Construction, \$12,291.00.

**D. Amendment #2, W.O. 01-06: Arlene Corridor Improvements,** Professional Services Contract, Kadrmas, Lee & Jackson, Inc., \$79,700.00.

**E. Contract with State of Montana Historic Preservation Office for Certified Local Government Program,** \$5,500.00.

**F. Agreement with Billings Housing Authority to fund one officer,** term: 7/1/05 through 6/30/06.

**G. Declaring surplus property** and authorizing the Police Dept. to release one Marantz Model 225 body wire to the Chippewa Cree Tribal Law Enforcement.

**H. Acknowledging receipt of petition to annex #06-02:** the north 19 acres of Tract 1, C/S 2776, generally located west of Highway 87N, north of intersection of

Highways 87N & 312, 4A's, LLC – Dean Luptak, Secretary, petitioner, and setting a public hearing date for 4/10/06.

**I. Street Closures:**

(1) March of Dimes *Walk America* Event: 2<sup>nd</sup> Ave. N and 3<sup>rd</sup> Ave. N from N. 15<sup>th</sup> St. to N. 34<sup>th</sup> St., on 4/29/06.

(2) St. Vincent Healthcare *Heart and Sole Race*, 12<sup>th</sup> Ave. N and N. 30<sup>th</sup> St.; 11<sup>th</sup> Ave. N and N. 30<sup>th</sup> St.; N 32<sup>nd</sup> St and Locust; Grandview and Ash; Poly and University; Poly and Medical Center; Elevation and N. 29<sup>th</sup> St.; Elevation and N. 30<sup>th</sup> St., Avenue F and Virginia Ln; Beverly Hills Blvd and Virginia Ln; N. 32<sup>nd</sup> St. and Parkhill; and 10<sup>th</sup> Ave. N and N. 30<sup>th</sup> St. on 6/10/06.

(3) Chase Hawks Association *Burn the Point Parade and Street Dance*. Parade: established downtown parade route. Street Dance: N. 27<sup>th</sup> St. to N. 29<sup>th</sup> St. from 1<sup>st</sup> Ave. N to 3<sup>rd</sup> Ave. N. on 9/1/06.

**J. Resolution of Intent 06-18397 to Annex #06-04:** contiguous land known as Tract 2B of Amended Tract 2, C/S 727 and located on Alkali Creek Rd., City of Billings, owner, and setting a public hearing on 4/24/06.

**K. Resolution of Intent 06-18398 to Create PMD #4033:** Falcon Ridge Estates, First Filing and Falcon Ridge Subdivision, First Filing and setting a public hearing for 4/24/06.

**L. Second/final reading ordinance 06-5362** providing that the BMCC Section 24-411 be amended to limit RV parking on commercial lots.

**M. Preliminary Plat** of Reflections at Copper Ridge, generally located one-quarter mile northwest of the intersection of Molt Rd. and Rimrock Rd., conditional approval of the preliminary plat, approval of the variances and adoption of the Findings of Fact.

**N. Preliminary Plat** of Falcon Ridge Estates Subdivision, 2<sup>nd</sup> Filing, generally located one-quarter mile northwest of the intersection of Molt Rd. and Rimrock Rd., conditional approval of the preliminary plat, approval of the variances and adoption of the Findings of Fact.

**O. Preliminary Plat** of Amended Lot 5, Block 10, Parkland West Subdivision, 6<sup>th</sup> Filing, generally located on the west side of S. 32<sup>nd</sup> St. West, midway between Central Ave. and Banff Ave., conditional approval of the preliminary plat, approval of the variances and adoption of the Findings of Fact.

**P. Final Plat** of Copper-Falcon Subdivision.

**Q. Bills and Payroll.**

(1) February 24, 2006

- (2) March 3, 2006
- (3) February 1 – 28, 2006 (Municipal Court)

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

Councilmember Jones separated Items I and L from the Consent Agenda. Councilmember Ulledalen moved to approve the Consent Agenda with the exception of Items I and L, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

Councilmember Ulledalen moved for approval of Item I of the Consent Agenda, seconded by Councilmember Ruegamer. Councilmember Jones said the portion of Item I that concerns the Chase Hawks Association *Burn the Point Parade and Street Dance* does not include provisions against burning tires during the parade, which has been a previous concern. He asked if the Mayor, who was the Police Chief at the time this safety issue was brought up, had any concerns. Mayor Tussing said he was not in a position to monitor this event last September and is unaware of any problems that may or may not have occurred.

Councilmember Ruegamer said the Council decided last year that the parade organizers would monitor the event themselves. Any violators would be taken out of the parade and could not participate in another parade. He said this is a good way to handle that concern, noting that he cannot remember a complaint after last year's parade. Ms. Volek noted that Staff comments were solicited relating to this item and the Police department made reference to "no peeling out" during the parade. She said it is her understanding that there were no problems last year. The reference was added as a precaution, but the department does not feel this will be a concern. Councilmember Jones said he would like to remind the Chase Hawks Association that this potential problem must be monitored. On a voice vote, the motion was unanimously approved.

Councilmember Ulledalen moved for approval of Item L of the Consent Agenda, seconded by Councilmember Ruegamer. On a voice vote, the motion was approved with Councilmember Jones voting "no".

## **REGULAR AGENDA:**

### **2. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE**

**#774: A zone change from Residential-9,600 to Residential-7,000 on Lot 123 of Sunny Cove Fruit Farms in the proposed Foxtail Village Subdivision, 2<sup>nd</sup> Filing. Kenmark Corporation, applicant; Engineering, Inc., agent. Zoning Commission recommends approval of the zone change and adoption of the determinations of the 12 criteria. (Action: approval or disapproval of Zoning Commission recommendation.)**

Planning Staff Member Aura Lindstrand said the subject property is located at the northeast intersection of Grand Avenue and 60<sup>th</sup> Street West. She said the property includes 9.33 acres with the current land use being vacant. She said the preliminary plat for Foxtail Village Subdivision, 2<sup>nd</sup> filing was approved by the Council on September 12, 2005 with the condition that the property be rezoned Residential 7,000 to match the lot sizes in the subdivision. She noted the final plat has not been approved at this time. Ms.

Lindstrand said the surrounding zoning includes Agricultural-Open Space to the north and south, Agricultural Suburban to the west, and Residential 7,000 to the east which is Foxtail Village Subdivision, 1<sup>st</sup> filing. She noted that proposed Blocks 2 and 3 would be rezoned Residential 7,000 with Residential 9,600 zoning remaining along the northern border (proposed Block 1). Approximately 16 single-family residences could be proposed for Block 2, and approximately 9 duplexes and 13 single-family residences could be proposed for Block 3 along Grand Avenue.

Ms. Lindstrand said the Zoning Commission is recommending approval based on the 12 criteria. The proposed rezoning is consistent with the uses and densities permitted within Foxtail Village Subdivision, 1<sup>st</sup> filing, directly east of the subject property.

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

**3. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE**  
**#775: A zone change to allow changes to the regulations pertaining to signage within the Medical Corridor Permit Zoning District. Billings Clinic & St. Vincent Healthcare, applicants; Mary Scrim Dyre and Doug James, agents. Zoning Commission recommends approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

Zoning Coordinator Nicole Cromwell said this zone change relates to the section of the Code that deals with the Medical Corridor District and the S. 27<sup>th</sup> Street District. The zone change was initiated by the Planning Board in January 2006 after several months of discussions and development with St. Vincent's Healthcare and Billings Clinic. She noted that several members of the Planning Staff researched sign codes in other communities.

Ms. Cromwell said the Zoning Commission held a public hearing on March 7<sup>th</sup> and is recommending approval on a 4-0 vote of the code as presented at that time. Highlights of the proposed sign code changes include: 1) defines a healthcare purpose sign allowing special permission for healthcare signs in the medical corridor, 2) definition excludes other types of businesses such as restaurants, hotels, motels, churches and gas stations from sign allowances for medical purposes, and 3) allows signs up to 30-feet in height along N. 27<sup>th</sup> Street. She noted that the 30-foot sign allowance has been eliminated along N. 27<sup>th</sup> Street and reverted to the 20-foot maximum sign height proposed for other areas in medical corridor. There is one exception to the 30-foot sign height which is on the west side of N. 30<sup>th</sup> Street, retaining the existing restriction which is 12 feet in height – 2 signs for developed parcels (1 sign to be 40 square feet and 1 sign to be 32 square feet). Ms. Cromwell noted the medical corridor boundaries include N. 27<sup>th</sup> Street, 7<sup>th</sup> Avenue N., the alley between N. 30<sup>th</sup> and N. 31<sup>st</sup> Streets and portions of Poly Drive. The proposed regulations would apply to the entire district with the exception of the west side of N. 30<sup>th</sup> Street.

Ms. Cromwell noted St. Vincent Healthcare and Billings Clinic have requested a change to eliminate the allowance for the 30-foot healthcare-purpose signs along N. 27<sup>th</sup> Street. Councilmember Veis asked if the Council must take action that would amend the original ordinance to reflect the changes in the revised version. Ms.

Cromwell said page 5, item (I) of the revised ordinance deletes references to the 30-foot signs. This reflects the request from St. Vincent Healthcare and Billings Clinic. City Attorney Brent Brooks suggested that the Council identify which version of the ordinance (i.e. Ms. Cromwell's final revision) that it is acting upon. He confirmed that additional advertising or public notification of the revisions is not required, other than the action that the Council takes this evening.

The public hearing was opened. DOUG JAMES, MOULTON LAW FIRM, 27 N. 27<sup>TH</sup> STREET, spoke on behalf of St. Vincent Healthcare. In January of 2004 he received a call from St. Vincent Healthcare expressing their concerns with the sign code in the medical corridor. He said they had incurred significant cost in applying for numerous variances relating to signs on their campus. Many of the signs in the medical corridor are either "grandfathered" or must have a variance, he stated. As the campus developed, St. Vincent wanted to avoid the high costs related to the variance process. He said he conferred with the Planning Department, that in turn researched what other communities in the same situation had done (i.e. Boise, Rochester). The first three attempts to rewrite the sign code did not solve the problems. Because the medical corridor has developed into a campus with many streets and alleys vacated it required a different approach, which is closer to the sign requirements for a college campus. These signs are used first for identification and wayfinding. Mr. James noted that the list of prohibitions in the current sign code is the most restrictive and extensive than in any place in Montana.

MARY DYRE, LAWYER WITH CROWLEY LAW FIRM, 490 N. 31<sup>ST</sup> STREET, said this has been a collaborative effort between St. Vincent Healthcare and Billings Clinic. She said this is really about wayfinding, i.e. helping people find the places they need to go during times of stress, not about advertising. The City uses wayfinding signage within the City to direct people to their destinations. That signage is exempt from the sign code requirements because it has a special purpose. She said the reason flexibility is needed in a wayfinding program is because it can't be solved just by a sign, but has many components. She noted the hospital entities tried to involve the public in the process. Notices for a public meeting in January were sent to over 600 people.

Ms. Dyre also noted that six changes have been made to the proposed sign code proposal since that meeting, in an effort to address concerns from neighbors in the area. Those six changes include: 1) 100-foot spacing between all 30-foot signs, 2) limit a wall sign to no more than 25% coverage of the wall, 3) remove the possibility of 30-foot signs on the west side of N. 30<sup>th</sup> Street, 4) eliminate the 30-foot sign anywhere except N. 27<sup>th</sup> Street, 5) create a buffer between the neighborhood to the west of N. 30<sup>th</sup> Street and eliminate the application of this proposal to that area, and 6) eliminate the 30-foot signs entirely – even along N. 27<sup>th</sup> Street (reflected in the last revision). Councilmember Stevens asked what the reasoning behind the 175 square foot size was. Ms. Dyre said that was to allow flexibility for the medical campuses that are continuing to grow and evolve.

ROD SCHAEFER, 1740 FOREST PARK DRIVE, said he represents Billings Clinic. He said the number one issue of people trying to navigate the medical corridor is wayfinding. He assured the community that the last thing the Billings Clinic wants is too much signage that confuses its clients. He said the campuses are evolving and will continue to evolve. The medical community wants to put the proper applications in

place to allow wayfinding signs in its facilities. Mr. Schaefer said the clients they serve are already experiencing a high level of stress, so it is the desire of both campuses to mitigate all possible issues with appropriate wayfinding signs. He said many of the current signs are low and unreadable due to size constraints. Those signs would be replaced to make the wayfinding easier. He asked the Council to support the request.

Councilmember Clark expressed concern for the 175-square foot signs and asked what would happen with future generations that may not share the same philosophy that the medical communities currently embrace. Mr. Schaefer said he hoped their good neighbor track record would speak for itself with regard to landscaping requirements and sign development. He said it is not their intention to proliferate the area with unneeded signs or large obtrusive signs that don't mean anything.

DAN POLING, 687 BLACK DIAMOND, said he represents St. Vincent Healthcare. He said he was the person who made the call to Doug James about complaints he was hearing from clients regarding the difficulty in the finding services and independent doctors on their campus. A large percentage of the clients come from very small communities in several neighboring states and are not familiar with the campuses or finding their way around. He said those folks are already under stress. The idea was to simplify the wayfinding for those clients and resolve the confusion in trying to find their way. Mr. Poling spoke about the 175-square foot sign. He asked the Council to think about how important it is to have a sign that is readable from 2 or 3 blocks away that would guide someone to a needed hospital service. He said they have tried hard to work collaboratively and listen to everyone's concerns and incorporate those concerns into the proposed code.

JOE MCCLURE, 4038 PINE COVE ROAD, said he is representing the Big Sky Economic Development Authority (BSEDA) and Big Sky Economic Development Corporation (BSEDC). He said Billings Clinic and St. Vincent Healthcare have shared their proposed sign code changes with BSEDA and BSEDC. These entities have reviewed the proposal, applaud their collaborative efforts and support their creative approach to addressing the needs of the Billings' community and travelers from outside the Billings' area. The medical community is a tremendous economic boon for this area employing an understanding, compassionate and collaborative effort to serve its customers, provide employment opportunities and still consider the concerns of the surrounding neighborhood. Both healthcare facilities have proven track records for responsible development and that will continue as they grow. He encouraged the Council to support the proposed sign code change for the medical corridor.

TED WHITE, 822 HOWARD, said he is affiliated with the BSEDA and supports the sign code changes as proposed.

BRUCE MCINTYRE, 1209 18<sup>TH</sup> STREET WEST, said he represents the Billings Chamber of Commerce. He said the Chamber's Government Affairs Program and Board of Directors both reviewed the proposed sign code changes and recommend that the changes be approved and implemented.

Councilmember Stevens asked how the S. 27<sup>th</sup> Street Corridor is impacted by these changes. Ms. Cromwell said the current sign code combines the Medical Corridor and the S. 27<sup>th</sup> Street Corridor for the purposes of regulating signs. The proposed changes that the Council is considering tonight only apply to the Medical Corridor. The current restrictions that apply to the S. 27<sup>th</sup> Street Corridor will continue to apply,

including the 12-foot maximum height, 2 signs per developed parcel and 2 wall signs per developed parcel. She said these proposed changes will only apply to healthcare-purpose signs in the Medical Corridor.

RON BACHMAN, 2549 WYOMING AVENUE, said he had the same question concerning S. 27<sup>th</sup> Street. He also asked about the impact of the proposed changes on the east side of N. 27<sup>th</sup> Street. Ms. Cromwell said the east side does not change; this would only apply to the west side of N. 27<sup>th</sup> Street. Mr. Bachman said a 175-square foot sign sounds enormous, but that size relative to the size of the campus must be considered. He said it is also important to keep local sign industry people involved in this process.

JOE WHITE 926 N. 30<sup>TH</sup> STREET, said he has sought information on the expansion of the Medical Corridor and both entities have ignored his requests. He said he legally resides in the Medical Corridor and he objects to the size of the signs proposed. Mr. White said the residents should be informed.

DAVE BROWN, 544 WIGWAM TRAIL, posed a question and a comment. He asked "does any of this have to do with private property (i.e. property not owned by Billings Clinic or St. Vincent Healthcare)?" If this proposed sign code is only for property owned by the two medical facilities, then all this work is being done for non-tax paying entities. Councilmember Stevens said she verified with one of the attorneys in the audience this evening that there are for-profit entities in the Medical Corridor that are paying property taxes.

MIKE TUSS, 1046 N. 31<sup>ST</sup> STREET, said he represents the North Elevation Task Force. This task force was formed twenty years ago and represents the neighborhood that is immediately west of the Medical Corridor. He said he appreciates the hospital's desire to involve the task force in the sign code discussions. He said the task force has a good relationship with the Medical Corridor entities and supports the proposed sign code changes. Mr. Tuss said he appreciates the compromises that have been made during this process and asked that the Council remember that the neighborhood is also making compromises. He said the neighborhood feels that the current signs are currently very visible. He discussed and illustrated several more proposed options. He asked the Council to postpone action and give the task force the opportunity to have one more time to sit down with the hospitals to work out other options.

SHAWNA KERR, 907 N. 31<sup>ST</sup> STREET, said she lives directly west of the Medical Corridor and requested that the Council delay action to iron out a few more issues on N. 30<sup>th</sup> Street. She said the proposed sign code changes will impact the residential characteristics of her neighborhood if large signs are allowed on N. 30<sup>th</sup> Street. She suggested the use of a buffer zone to protect the neighborhood. Ms. Kerr said she understands the need for wayfinding and appreciates the campuses redirecting their entrances off of N. 27<sup>th</sup> Street.

GENE JARUSSI, 1131 N. 32<sup>ND</sup> STREET, said he lives one block west of the Medical Corridor. He agrees that the medical facilities have created a beautiful campus atmosphere. This shows that the current, existing sign code works very well. He stated he and other residents west of the campuses would like to see the existing code remain in place for purely selfish reasons. He added that his neighborhood also understands the current signs cause difficulties for the hospitals and other medical providers also understands why the entities are requesting these changes. For the most part, his

neighborhood does not disagree with the proposal, but is concerned with 20-foot signs that would be placed within many fully matured trees along N. 30<sup>th</sup> Street. He said the consequences are that many of those trees may be removed to make the signs visible, losing the beauty that has become part of the Medical Corridor. Mr. Jarussi said he thinks there is a way to solve this issue and he would like an opportunity to do that with the two medical entities. He asked the Council to defer action and allow that meeting to take place. Mayor Tussing asked if the changes in this ordinance would give the medical facilities the authority to remove the trees that are currently in the City right-of-way along N. 30<sup>th</sup> Street. Ms. Cromwell replied "no". They would have to apply through the City Forester for permission to remove trees.

MARILYN FLOBERG, 1002 N. 30<sup>TH</sup> STREET, said her home is surrounded on three sides by parking lots associated with the Medical Corridor. She said she has always trusted her medical neighbors to make her surrounding very pleasant. She understands that the sign code proposal does allow for the possibility that the larger signs will be put into place. She noted that N. 30<sup>th</sup> Street is a residential neighborhood on one side with very little signage and is quite different from N. 27<sup>th</sup> Street. Ms. Floberg said she hoped the hospitals would sit down with the task force for another conversation about not treating N. 30<sup>th</sup> Street exactly the same as the rest of the campus. She noted that the speakers in opposition to the proposal are all N. 30<sup>th</sup> Street residents who are very concerned that the residential character can be damaged. Ms. Floberg said the 12-foot signs appear to be adequate.

There were no other speakers. The public hearing was closed. Councilmember Veis moved for approval of the Zoning Commission recommendation, seconded by Councilmember Brewster. Councilmember Ruegamer said the property tax issue always comes up when the Medical Corridor is the subject of discussion. He said he does not think that is relevant, but if it is relevant it must be considered that the medical facilities employ many people who do pay property taxes. The Medical Corridor is an economic driver and many cities would love to have the medical campuses that Billings has. He also said he can see where the confusion issue (need for wayfinding) could be a great difficulty to travelers from other areas. He said he supports the ordinance change and commended the two entities for the work they have done on this.

Councilmember Clark made a substitute motion to delay action to 4/10/06 to allow the task force to meet with the hospitals one more time, seconded by Councilmember Gaghen. Councilmember Clark said he believes the 175-square foot signs are too large. Councilmember Gaghen suggested a four-week delay and noted that some residents did not receive the notification for the proposed sign code change or have the chance to attend the informational meeting.

Councilmember Clark made a substitute motion to delay action to 4/24/06, seconded by Councilmember Gaghen. Councilmember Ruegamer questioned whether this would represent additional costs to the two medical facilities. Doug James said there certainly would be additional costs in additional legal fees. He said the ideas expressed by several residents had been presented to the hospitals previously. He said there have been discussions with Mr. Tuss and Mr. Jarussi and the hospitals have given the options sensitive consideration, and have rejected them. He asked the Council to make a decision this evening.

Councilmember Veis said the public hearing should have been continued if the Council was interested in delaying its decision. That would avoid additional exparte communication and deliberations of the Council without public involvement. Mayor Tussing said he would have been inclined to vote for the substitute motion had he not heard the information from Doug James about rejections of the options of Mr. Tuss and Mr. Jarussi. He said there doesn't seem to be much point in allowing for further discussion with the hospitals if they aren't receptive to the suggestions. On a voice vote, the substitute motion failed.

Councilmember Veis moved to amend the ordinance to reflect the ordinance change in the handout this evening (Section 3D, 5(l) – that signs should not exceed 20 feet), seconded by Councilmember Brewster. On a voice vote, the amendment was unanimously approved.

Councilmember Clark amended the motion to change the ordinance to limit freestanding signs to a maximum of 80 square feet instead of 175 square feet, seconded by Councilmember Gaghen. Councilmember Stevens said there are two large sign issues, one involving a sign on a building and the other is street level signs. These two issues should be separated. Ms. Cromwell said if the Council changes the maximum size of signs as stated in Section 5, Item "m", it would be changing all types of signs. She confirmed that wall signs would still remain at 25% surface area of the wall. On a voice vote, the amendment failed with Councilmembers Brewster, Veis, Ruegamer, Ulledalen, and Jones voting "no". On a voice vote, the motion as amended was approved with Councilmembers Gaghen, Stevens and Clark voting "no".

**4. PUBLIC HEARING AND SPECIAL REVIEW #807: A special review to allow an all-beverage liquor license with gaming in a Highway Commercial zone described as Lot 1, Block 1 of Vaquero Subdivision, and located at 5435 Midland Rd. Jerke Real Estate, applicant; Roger Tuhy, agent. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

Planning Staff Member Lora Mattox said there are no plans to alter the building in the special review process. The property is currently developed as the Los Mayas Restaurant and the Silver Dollar Casino with a beer and wine license. Ms. Mattox said the Zoning Commission on a 4-0 vote is recommending conditional approval with the following conditions:

1. The special review approval is limited to Lot 1, Block 1 of Vaquero Subdivision located at 5435 Midland Road.
2. No outdoor seating, outdoor music or outdoor public announcement systems will be allowed with the application.
3. 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. ROGER TUHY, 216 NORMANDY DRIVE, asked the Council to approve the special review. He said this does not change much with the exception of full beverage and wine service. Several entities in the area have casinos and the same type of services. He noted this will not be a nightclub type of facility.

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

**5. PUBLIC HEARING AND RESOLUTION 06-18399 adopting amendments to the 2006-2011 Capital Improvement Plan (CIP), Equipment Replacement Plan (ERP) and Technology Replacement Plan (TRP). Staff recommends approval of the amendments presented by Staff at the 3/6/06 Work Session. (Action: approval or disapproval of Staff recommendation.)**

Interim City Administrator Tina Volek said there is no additional presentation to the Council beyond the work session presentation last week. She said Staff is available to answer any questions.

Councilmember Jones asked if the microphones in the Chambers have been repaired. Ms. Volek said City Clerk Marita Herold worked with a firm to make some adjustments that seems to have solved some of the problems.

Councilmember Jones noted a concern that the Fire Department was going to review. He asked if there still would be a presentation from the Fire Department if the CIP is passed now. Ms. Volek said the Fire Department would still make their presentation. She said an item can be added to the CIP at that time.

Councilmember Brewster said there are a couple of items (i.e. Hawthorne Park Sprypad) in the Parks Department portion of the CIP that are unfunded and not scheduled. He asked if those projects can still be adopted in that current status and could they be added during the budget process if there is funding found for it. Ms. Volek replied "yes". She said the CIP is a budgetary guide for the Staff and the Council may make changes to it.

Councilmember Brewster asked about the Inner Belt Loop. City Engineer Vern Heisler said the FY2007 amendments to the CIP document are meant to be minor changes to the 2007 projects. The process for the FY2008 CIP amendments will be similar to what the Council saw with FY2006, which included much public involvement, public meetings and a time to "do a bigger tweak" to the 2006-2011 Capital Improvement Plan. It will be at that time that the Staff would take a look at projects like the Inner Belt Loop because there may be a better idea as to when that may happen, what the funding might be and what the dollar amounts might involve. Councilmember Brewster said because there has been some discussion of that project, more people are interested and anxious for that to come about.

Councilmember Ronquillo asked about the Gateway Triangle project and its funding. Mr. Heisler said this document is really a "roadmap" to direct the Staff. He said changes to dollar amounts, descriptions, scheduling and funding sources can still occur. The Gateway project funding in the current amendment represents Council approved funding for that particular project to date. The project is currently in the Special Improvement District process and it may stretch over several years. He reminded the Council that the CIP can change to reflect what the Council desires for that project. He noted that the funding numbers for that project do not include the water and sewer improvements that are taking place right now.

The public hearing was opened. TOM ZURBUCHEN, 1747 WICKS LANE, spoke in regard to the Inner Belt Loop not being included in this amendment. He said there is

\$38 Million in new projects in this CIP document, but an existing project like the Inner Belt Loop has been left out. A new project of widening and reconstructing Bench Blvd. from Lake Elmo to Mary Street for 2009 is included, but the Inner Belt Loop must be in place before the Bench connection to meet the requirement for a route around that construction. He said this is not just a "Heights" issue, but a citywide issue because Fire Station #6 could not respond to the West End without this connection. Mr. Zurbuchen said the City should not let the Inner Belt Loop follow the path of the Arlene Corridor. He said the City should place the Inner Belt Loop project on the CIP and start acquiring properties before the price tag become astronomical. It must not be left sitting as a non-project.

There were no other speakers. The public hearing was closed. Councilmember Clark moved for approval of the Capital Improvement Plan (CIP), Equipment Replacement Plan (ERP) and the Technology Replacement Plan (TRP) amendments for 2006-2011, seconded by Councilmember Ruegamer. Councilmember Jones stated that the City should start working on the Inner Belt Loop and make it a priority. Mayor Tussing said that would be a good subject for the Strategic Planning process. On a voice vote, the motion was unanimously approved.

**6. 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. (Public hearing held and closed on 2/13/06. Action delayed from 2/13/06). (Action: approval or disapproval of Staff recommendation.)**

Deputy City Administrator Bruce McCandless said the Council received a revised ordinance on the desks this evening. The following are the changes that have been made: 1) on page 2, items (b) & (c) have been deleted and were the two provisions the Council asked to be removed, 2) on page 3, paragraph #3 addresses the concern about excessive use of change orders where the contractor frequently bids low and then requests multiple change orders. The change allows for this contractor to be debarred for this practice, 3) on page 6, item 11 (b) strikes the word "may" and inserts the word "to" correcting a misstatement, 4) on page 10, paragraphs #18 repeats paragraph 16 and #19 repeats paragraph 17, requiring the need to delete paragraph #18 and 19.

Councilmember Stevens asked if there would be a vagueness issue with #2, item (c) contractor does not have a satisfactory record of integrity. City Attorney Brent Brooks said this is patterned in part after the Administrative Rules of Montana Debarment Procedure. His opinion was that this should be read in "combination" with the other subsections such as the excessive change order provision and failing to provide workers' compensation coverage and appropriate insurance coverage. He said it is a broad subjective term.

Councilmember Ronquillo moved for approval of the revised ordinance dated 3/27/06, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.

**7. RESOLUTION 06-18400 setting the annual salary for a part-time assistant municipal court judge as allowed under Ord. #06-5361, reaffirming the salary of the**

**full-time elected judge, clarifying salary increases and repealing Res. #05-18380.**  
**Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

There was no Staff report. Councilmember Jones moved for approval of the Staff recommendation including the revised resolution, seconded by Councilmember Brewster. Councilmember Clark asked for clarification of the revisions. Municipal Court Judge Knisely said the revisions include: 1) changing the part-time judge position from 20 hour per week to 40 hours per pay period because of the situation where there may be a long trial or when this judge would be attending judge's school, and 2) changing the raise schedule to comply with state law and the district court judges salaries. The intent was to give the municipal court judge and the part-time judge a cost of living raise every two years, which allows the second raise to be available the second two years of a term, whereas with the other option there is only one raise in four years. Councilmember Brewster said the position would get the raises. Ms. Volek said the judge's salary is a step process and a first-term judge would receive 80%, a second-term judge would receive 85% and a third-term judge would receive 90% of district court judge salary. Councilmember Jones noted that all other City workers receive a raise on a yearly basis. This is the only position to receive a raise every two years.

Judge Knisely introduced Collette Davies as the new part-time judge. Ms. Davies has been an attorney since 1997 and a pro-tem judge with the City for the last eight months. She noted also that Ms. Davies has done trial and litigation work in Montana, which works well for Municipal Court.

On a voice vote, the motion was approved with Councilmembers Stevens and Clark voting "no".

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

- JOE WHITE OF 926 N. 30<sup>TH</sup> ST. spoke on the "air choke" occurring from development on Grand Avenue, 27<sup>th</sup> Street, Shiloh Rd., etc. He reminded the Council he has spoke on numerous previous occasions about the need for the City to establish air parks in several areas.
- DAVE BROWN OF 544 WIGWAM TRAIL asked about the status of the petition creating an initiative to rewrite the public safety mill levy. City Attorney Brent Brooks explained the process whereby the City is obligated to review proposed initiative language and assist in its preparation.

**COUNCIL INITIATIVES**

There were no Council initiatives.

**ADJOURN** – With all business complete, the Mayor adjourned the meeting at 8:56 P.M.

THE CITY OF BILLINGS:

MINUTES: 03/27/06

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

ATTEST:

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