

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

## **April 24, 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 Mayor led the Pledge of Allegiance, followed by the Invocation which was given by Councilmember Peggy Gaghen.

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

**MINUTES – April 10, 2006 and April 17, 2006.** The Minutes were approved as printed.

**COURTESIES – Fire Dept.** Delayed to 5/8/06.

### **PROCLAMATIONS**

- **April 23 – 29: Crime Victims' Rights Week**
- **April 23 – 29: Administrative Professionals Week**
- **April 28: Arbor Day.** Mayor Tussing noted that there will be a planting of a tree in Castlerock Park on Friday at 1:30 p.m.
- **April 30 – May 6: Municipal Clerks Week**
- **April 23 – 29: National Volunteer Week**

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

- Interim City Administrator Tina Volek said supplemental documents were placed on the Council desks this evening concerning Items 1H, 2 and 11. She noted that copies of these documents are also available for public inspection in a binder at the back of the Council Chambers.

**PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: #1, #10 and #11 ONLY. Speaker sign-in required.** (Comments offered here are limited to 1 minute per speaker. Please sign up on the clipboard located at the podium. Comment on items listed as public hearing items will be heard ONLY during the designated public hearing time for each respective item.)

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

- JOHN HINES OF 2822 MINNESOTA AVENUE spoke on Item G, the resolution creating the Mayor's Committee on Homelessness. He said the composition of the committee follows federal guidelines. The committee will work on identifying, coordinating and meeting the needs of the homeless population in the community. He urged the Council to approve the resolution creating the committee.
- TED HULTMAN OF THE RESCUE MISSION, 2822 MINNESOTA AVE. also spoke on Item G, the Mayor's Committee on Homelessness. He said he supports the

creation of this committee and urged the Council to approve the resolution creating the committee.

## **CONSENT AGENDA:**

### **1. A. Bid Awards:**

**(1) W.O. 06-01: 2006 Water and Sewer Line Replacement Project – Bid Schedules No. 1 and 2.** (Opened 4/11/06). Recommend Schedule 1 to Cop Construction using trenchless technology, \$2,542,856.00 plus a 10% contingency of \$254,285.60 for a total of \$2,797,141.60. Schedule 2 to Western Municipal for \$1,842,712.20, plus 10% contingency of \$184,271.22 for a total of \$2,026,983.42.

**(2) One New Current Model 2006 Trailer with CCTV Inspection Equipment.** (Opened 4/11/06). Recommend WP Rentals LLC, Schedule I, \$86,200.00.

**B. Approval** of Architectural Fees from CTA Architects and team for the Downtown Transit Operations Center, \$571,913.25.

**C. Amendment of Lease** for office space to the Transportation Security Administration (TSA), additional \$4,175.43/year for a total annual lease rental of \$36,892.11.

**D. W.O. 05-04: Terrace Estates**, acceptance of storm drainage easement, from Brian and Jeanne Koukol in Lot 36, Block 3, Terrace Estates Subdivision, 3<sup>rd</sup> filing, \$0.00.

**E. W.O. 03-23: Turn Lane for Yellowstone River Road & Hawthorne Lane**, acceptance of warranty deed from Tracy R. Arnold for a tract of land in Lot 1, Block 2, Fritz Subdivision, and located at 1147 Eldora Lane, \$0.00.

**F. Acknowledging receipt of petition to vacate** portions of S. 22<sup>nd</sup> St., 2<sup>nd</sup> Ave. S, 3<sup>rd</sup> Ave. S and the alley between S. 22<sup>nd</sup> St. and S. 23<sup>rd</sup> St., ConocoPhillips, petitioner, and setting a public hearing date for 5/22/06.

**G. Resolution 06-18409** creating the Mayor's Committee on Homelessness as an ad hoc committee.

**H. Preliminary Plat** of Caleb Park Subdivision; conditional approval of the plat, approval of the variances and adoption of the findings of fact.

**I. Final Plat** of Amended Lots 1-7 and 8A, Block 1, Spring Valley Subdivision.

**J. Bills and Payroll.**

- (1) March 24, 2006
- (2) March 31, 2006
- (3) March 1-31, 2006 (Municipal Court)**

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

Councilmember Ruegamer separated Item A1. Councilmember Jones separated Items A2, B and F.

Councilmember Jones moved for approval of the Consent Agenda EXCEPT Items A1, A2, B and F, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

Councilmember Jones moved for approval of ITEM A1, seconded by Councilmember Ruegamer. Councilmember Ruegamer noted the wide variation between the bids and asked for the reason. Public Works Director Dave Mumford said the Western Municipal and COP Construction bids are close to the engineer's estimate. Treco is a firm the City has not had dealings with. Mr. Mumford said he was not sure of the company's bidding, adding the company may be trying to learn the City's bidding process and requirements. Councilmember Gaghen said she had received a call from an individual who was thinking of relocating to Montana from South Dakota and Treco was the source of his potential employment. Councilmember Gaghen said the company is an engineering firm with a local office in southwest Billings. Mr. Mumford said the company has not bid with the City before. On a voice vote, the motion was unanimously approved.

Councilmember Jones moved for approval of ITEM A2, seconded by Councilmember Ruegamer. Councilmember Jones asked why the lowest bid from Aries was not being accepted. Public Works Director Dave Mumford said Aries did not meet specifications on 14 items such as: (1) the need for the camera to be attached to a rod to look at lateral lines; (2) needed the camera to have at least one bar submersion rate so that it would not leak fluids or water could not get into it; (3) the camera needed a locator beacon that matches the City's location system because the cameras do get stuck and they often have to dig down to find them; (4) the camera needed a stabilizer so that if it starts to ride up on the sidewalls of the pipe it does not roll over and get stuck. Mr. Mumford said the Aries' system did not meet any of these requirements. On a voice vote, the motion was unanimously approved.

Councilmember Jones moved for approval of ITEM B, seconded by Councilmember Brewster. Councilmember Jones said the council did not receive a copy of the contract, which it normally does. He asked why the Council did not receive a copy of the contract. Ron Wenger, Transit Manager said the Transit Dept. has followed the Federal Transit Administration rules for choosing an architectural and engineering firm since the FTA is funding this project 80/20. This required the Transit Dept. to form an RFP committee, choose an A&E team based only on qualifications, get council approval on the A&E team (in which the CTA team was selected), work with the A&E team to negotiate a fee – which has been done and which is the subject of tonight's request for council approval. Once the fee is approved, the final contract will be prepared based on the standard AIA form with the appropriate Federal Transit

clauses included. Mr. Wenger said it was not possible for them to bring a contract to the Council until the Council had approved the fees.

Councilmember Jones said the Council normally gets a copy of the contract in its packet. "We're approving a contract and we have no idea what the contract actually says. It seems premature to bring a contract to us and to ask us to approve it, when we haven't even seen it," stated Councilmember Jones.

Councilmember Jones asked Jim Wertman of CTA Architects and Engineers what kinds of costs this process adds to the project. Mr. Wertman said this process is rather experimental at this time, standing for "leadership and energy in environmental design". Mr. Wertman said it is a voluntary, consensus-building process that builds on environmental stewardship. Many communities around the country are beginning to mandate this for any municipal buildings. Mr. Wertman said MET has decided it wanted to try it here with this project. He said most of the cost is for recordkeeping because this is a very documentative process – every decision must be documented and at end of project the project must be commissioned with independent third parties to validate that all decisions made were correct. Mr. Wertman said the paperwork cost is approximately \$15,000 as well as additional time for the technical time. He noted that in terms of the overall project cost, the cost for this process is minimal.

Councilmember Jones asked what would happen if approval was delayed until the recommended fees are incorporated into a contract and the contract brought back to the council for approval. Mr. Wenger said there would not be timing issue to incorporate the fees into a contract and bring the contract back to the council in a month. Councilmember Jones asked that this item be brought back to the Council in two weeks. Councilmember Brewster suggested that the Council approve the fees so Staff can incorporate them into the contract and if Staff has the contract ready in two weeks, Councilmember Jones could make a motion to reconsider it if he is not happy with the contract. Councilmember Jones said he wants to make sure the Council gets the contract for approval and it is not forgotten.

Councilmember Jones amended the motion to accept the fees and have Staff bring the contract back as soon as it is done so the Council can review it before the next meeting, so that he can bring it back for reconsideration if necessary, seconded by Councilmember Boyer. Councilmember Brewster said the contract will be available to the Council; asked if it would be revoted. Councilmember Brewster asked Councilmember Jones, "You are going to look at the contract and if you have concerns, you will bring it up for reconsideration?" Councilmember Jones replied "yes". On a voice vote on the amendment, the motion was unanimously approved. On a voice vote on the motion as amended, the motion as amended was unanimously approved.

Councilmember Jones moved for approval of ITEM F, seconded by Councilmember Brewster. Councilmember Jones asked why the square footage differed between Mr. Hamwey's estimate and the City's calculation. Public Works Director Dave Mumford said Mr. Hamwey's estimate was prepared for Conoco to get an idea of the cost. The City actually calculated the exact square footage of right-of-way that the City would be vacating, on which to prepare an actual cost. On a voice vote, the motion was unanimously approved.

**REGULAR AGENDA:**

**2. PUBLIC HEARING FOR THE COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) AND HOME INVESTMENT PARTNERSHIP (HOME) PROGRAMS and the FY 2006 Annual Action Plan. Council action scheduled for 5/8/06. (Action: Public Hearing only.)**

Interim City Administrator Tina Volek said there was no additional Staff report beyond that given at the April 17<sup>th</sup> work session. Staff however was available to answer questions from the Council.

The public hearing was opened. CHRISTIANE SIKORA, Executive Director of Big Sky Senior Services. She thanked the CD Staff and Board for their recommendation for the Big Sky Senior Helping Hands program and the Big Sky Prevention of Elder Abuse program. Ms. Sikora acknowledged the hard work the volunteer board does. "It takes a lot of education to make these decisions. They need to know a lot about the programs and agencies and spend a lot of their spare time. Many have to take vacation time from their jobs to go to all the agencies and to educate themselves properly," she stated. She said perhaps they are not at acknowledged as they should be and she wanted the opportunity to recognize them. Ms. Sikora said some of the decisions the board makes are probably heart-wrenching because the better one gets to know a cause and the more one understands the needs in the community, the tougher it is to give an agency less money or perhaps even cut the program all together. Mayor Tussing noted that the Board had \$110,196 less funding to work with this year than last year.

JOE BURST OF 1251 LONESOME PINE commented on HN7 – the Community Housing Investment Program. As the vice chair of the eastern Montana Association for Affordable Housing, fka CHIP, he noted that they asked that CHIP's former request be rejected. Mr. Burst said they withdrew their application as well because they were not comfortable with how the request was presented and how CHIP was going. He said the organization has been reorganized with a new name and a new director and they are basically starting over. Mr. Burst also thanked the CD Staff for their hard work on this process.

MARIE KELLY OF 7559 CHAROLAIS said she is the Development Director for Family Services. She also thanked the CD Board and Brenda Beckett, Community Development Manager and the professional staff in the CD Dept. Ms. Kelly urged the Council to approve the CD Board's recommendation. She said Family Services is looking at some new initiatives in trying to address root problems and work on community collaboration. Ms. Kelly said they are trying to make this community a better place for those families at risk and for the vulnerable. If the agency receives the funding as recommended, the agency will be able to take care of basic needs – make sure people have safe, warm homes and food for their families. She noted also that Family Services is celebrating its 100<sup>th</sup> anniversary this year, indicating it has been doing things for this community for many years.

There were no other speakers. The public hearing was closed. Council action is scheduled for the next meeting on May 8, 2006.

**3. PUBLIC HEARING AND RESOLUTION 06-18410 creating Park Maintenance District (PMD) #4033 in Falcon Ridge Subdivision. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

Interim Parks and Recreation Director Gene Blackwell said this subdivision is located east of the Copper Ridge Subdivision, where another maintenance district was created at the last council meeting. The resolution of intent to create this district was approved on March 27<sup>th</sup>. The statutory legal advertising and notification was done. There were no protests received.

The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Boyer moved for approval of the Staff recommendation, seconded by Councilmember Ruegamer. Councilmember Jones noted this is a new subdivision with only one or two houses in it at this time. The City is moving forward with creating this district before neighbors will actually buying their homes. Mr. Blackwell said the park development will be done through private contract. As the infrastructure is completed, probably before most of the houses are built, the park area will be completed in this phase of the subdivision. That required that the City proceed with the creation of a maintenance district. On a voice vote, the motion was unanimously approved.

**4. PUBLIC HEARING AND SPECIAL REVIEW #808: A special review to allow a drive-through service for a Walgreens in a Highway Commercial zone adjacent to a residential zoning district on Lots 15 A-H, Block 3 of Vista Heights Subdivision, located at 1600 Main Street. Heights Home Center, LLP, applicant; Jessica Aquilar, Hawkins Company, agent. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

Zoning Coordinator Nicole Cromwell gave the Staff presentation on this special review request. She said the subject property is located on the northwest corner of the intersection of Wicks Lane and Main Street. The primary development is proposed for the southern four lots of this parcel. The property to the west is zoned Neighborhood Commercial and has been developed for multi-family use – which triggered the special review. The property south across Wicks Lane is Highway Commercial and Neighborhood Commercial and has been developed as a bank and a small strip mall.

Ms. Cromwell briefly discussed the highlights of the submitted site plan. Part of the current building may remain in place. The drive-thru will be located on the north side of the building so patrons will enter from Wicks Lane or off of Main Street, enter the drive-thru around the west side of the building to the exit. The Zoning Commission has recommended approval of the special review with the following conditions:

- The special review approval shall be limited to Lots 15A through 15H of Block 3, of Vista Heights Subdivision as shown on the site plans submitted with this application.
- Any expansion of the proposed new Walgreen's building greater than 10 percent will require an additional special review approval as per BMCC 27-613(c).
- Any new lighting within the parking lot areas shall have full cut-off shields so light is directed to the ground and not onto adjacent property.

- The existing drive approach near the intersection of Wicks Lane and Main Street shall be marked for right turns and right turns out of the property.
- Landscaping shall be installed as shown on the site plans submitted with the application including the dumpster enclosures and the 6-foot sight-obscuring fence along the west property boundary.
- There shall be no outdoor public address system or outside announcement system with the exception of the speaker system for the drive through service windows.
- 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.

\*\*NOTE\*\* Approval of this Special Review does not constitute approval of a building permit, sign permit or fence permit. Compliance with all applicable local codes will be reviewed at the building permit level. This application is for a Special Review as noted above and no other request is being considered with this application. The Planning Department points out that the use and development of the property must be in accordance with the submitted site plan.

The public hearing was opened. JESSICA AGUILAR OF THE HAWKINS COMPANIES said she was available for any questions the Council had. She clarified that one of the access points would be removed. The developer is also considering widening the landscape guard on Main Street to provide a larger buffer, as well as create a buffer on the back of the property. She noted that the store will shift forward a little to accommodate the additional landscape guards. Ms. Aguilar said they are working with a possible tenant for the existing building, but it has not yet been decided if the remaining building will remain or be demolished. She said as soon as that information becomes available she will notify Ms. Cromwell. There were no questions for Ms. Aguilar.

There were no other speakers. The public hearing was closed. Councilmember Ulledalen moved for approval of the Zoning Commission recommendation, seconded by Councilmember Gaghen. Councilmember Brewster said it will be nice to have a stable tenant on that corner, rather than it be the revolving door of the Heights. On a voice vote, the motion was unanimously approved.

**5. PUBLIC HEARING AND SPECIAL REVIEW #809: A special review to allow an outdoor patio where alcoholic beverages are served at Montana Chad's Bar in a Community Commercial zone on Lots 1A, 2A, 3-5, Block 16 of Suburban Subdivision, located at 3953 Montana Avenue. G & L, LLC, applicant; Charles B. Goldy, Jr. of cbg architects, agent. Zoning Commission has no recommendation. (Action: approval or disapproval of special review.)**

Zoning Coordinator Nicole Cromwell said this request is to add an outdoor patio lounge to Montana Chad's Bar on Montana Avenue. The subject property is a rectangular shaped lot that is bordered by Cook Avenue, 4<sup>th</sup> Street West and Montana Avenue. The current parking lot contains about 25 spaces, depending on which spaces can be counted and which spaces cannot. She noted this is a popular location, so that issues of parking did come up at the Zoning Commission hearing. These issues could

not be resolved at that hearing because of unavailable data on which to make a recommendation.

Ms. Cromwell said in the interim, the applicant and agent have presented a new site plan that shows the additional parking lot the applicant owns across 4<sup>th</sup> Street West, which presently has a Mountain Mudd coffee drive up on it. This lot could accommodate up to 48 vehicles depending on how it was paved and striped. She noted a "fluke" in City site development regulations is "that any building that existed before May 1972 is not required to comply with the off-street parking standards that currently exist, except for NEW additions." The current building was built in 1947. Ms. Cromwell said the addition is the patio which would require nine parking spaces. Therefore, technically under the City code the owner only has to show nine off-street parking spaces for the patio addition. The revised site plan shows 74 parking spaces, with only 70 spaces likely because of the Montana Mudd structure, 26 available at the 3953 location and 48 on the lot west of 4<sup>th</sup> Street West. Ms. Cromwell noted the applicant is requesting approval based on the revised plan. Councilmember Jones asked if the owners were required to meet current off-street parking requirements, how many spaces would be required. Ms. Cromwell said 84 spaces would be required, including the nine for the new patio addition.

Ms. Cromwell said the Planning Staff recommended the following conditions:

- The special review approval shall be limited to Lots 1A, 2A, 3, 4, & 5 of Block 16, of Suburban Subdivision as shown on the site plans submitted with this application.
- Any expansion of the proposed new outdoor patio lounge greater than 10 percent will require an additional special review approval as per BMCC 27-613(c).
- Any new lighting within the parking lot areas shall have full cut-off shields so light is directed to the ground and not onto adjacent property.
- The angle parking spaces between the existing south elevation of the building and the sidewalk adjacent to Montana Avenue shall be eliminated. Backing and turning of vehicles encroaches on the public sidewalk and will interfere with the safe operation of the proposed south exit door from the patio lounge.
- The remaining parking spaces that abut the public sidewalk on Montana Avenue shall have wheel stops installed to prevent parked vehicles from encroaching on the public sidewalk or driving over the public sidewalk.
- There shall be no outdoor public address system, outside announcement system or music broadcast of any kind.
- The existing dumpster shall be enclosed on three (3) sides by a sight obscuring fence or wall and by a sight obscuring gate on the remaining side. No chain-link or wire fencing material is allowed for this enclosure.
- 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.

\*\*NOTE\*\* Approval of this Special Review does not constitute approval of a building permit, sign permit or fence permit. Compliance with all applicable local codes will be reviewed at the

building permit level. This application is for a Special Review as noted above and no other request is being considered with this application. The Planning Department points out that the use and development of the property must be in accordance with the submitted site plan.

The public hearing was opened. CHARLES GOLDY OF 2127 LYNDALE LANE said he is the agent for the owners. He noted that the property is owned by Glen Fink. Montana Chad's has a 20-year lease with an option to buy the property. Mr. Goldy said the proposed patio represents a proactive approach with a retractable roof, heat tubes in the floor, screens, thermal pane inserts, security roll-down screening to lock the facility. Mr. Goldy said the revised site plan has 88 parking spots, ten of which are motorcycle spots with camera monitoring. This gets the motorcycles out of the regular parking stalls. He said the entire site will be re-graded for proper drainage, paved and re-striped. Landscaping will also be incorporated. Mr. Goldy said Mountain Mudd has a 20-year lease for its space, which will be striped for day-time use only. He said this proposal is meant to be proactive in meeting the 2009 no-smoking requirements.

JOE WHITE OF 926 N. 30<sup>TH</sup> ST. said he opposes a patio at this location. Mr. White said the area does not have an adequate air supply for the additional patio. He noted this is an industrial area that is subjected to heavy traffic and the railroad, both of which contribute to the pollution in this area.

RICK KEMMIS OF 3107 POLY DRIVE said he is co-owner of Montana Chad's. Mr. Kemmis said there will not be live bands on the patio; it will be someplace to hang out with one's friends. He said he knows of no accidents coming out of their parking lots. He urged the Council to approve their request. Mr. Kemmis said they are attempting to be proactive in meeting the mandatory no-smoking regulations that become effective in 2009 and would rather do it now rather than waiting to do it later. He said they started with the idea of a deck off to the side, but not have quite an investment in a patio than can be used year-round. Councilmember Ruegamer asked if the recommended conditions are acceptable to them. Mr. Kemmis said the conditions were acceptable. Councilmember Ruegamer said there will be a concern from the neighbors about music or noise and asked what their plan was for music on the patio. Mr. Kemmis said the music on the deck will not be live bands, but the radio music in the casino that is piped out to the patio.

KEVIN NELSON OF 4235 BRUCE AVE. said he strongly suggested considering Montana Chad's be allowed to have music on the patio, adding that it would be better to listen to the music than the loud stereos in cars and illegal mufflers on Montana Avenue.

There were no other speakers. The public hearing was closed. Councilmember Veis moved for approval of the special review with the Planning Staff recommendations, seconded by Councilmember Ruegamer. Councilmember Ruegamer said he believed the Council will be seeing more of these kinds of requests coming forward because of the smoking issue and he believes it is a good solution. On a voice vote, the motion was unanimously approved.

**6. PUBLIC HEARING AND FIRST READING ORDINANCE expanding the boundaries of Ward II to include the recently annexed property in Annex #06-02, a 19-acre parcel described as a portion of C/S 2776 located on the west side of Highway 87, north of its intersection with Main Street in the Heights, 4A's LLC,**

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

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

**7. PUBLIC HEARING AND FIRST READING ORDINANCE expanding the boundaries of Ward V to include the recently annexed property in Annex #06-03, Tracts 1 and 2, C/S 3139, Tract 1, C/S 2379 and two unplatted tracts containing 79 acres located near the southwest corner of the Grand Avenue and 56<sup>th</sup> Street West intersection, Douglas and Ronald Frank, 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 Stevens moved for approval of the Staff recommendation, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

**8. PUBLIC HEARING AND RESOLUTION 06-18411 annexing the contiguous City-owned land known as Annex #06-04: Tract 2B of Amended Tract 2, C/S 727, located on Alkali Creek Rd. 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 Gaghen moved for approval of the Staff recommendation, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

**9. PUBLIC HEARING AND RESOLUTION 06-18412 annexing the remaining tract of corrected C/S 3223, Amended Tract 1, known as Annex #06-05, McCall Development Inc., petitioners. Staff recommends conditional approval. (Action: approval or disapproval of Staff recommendation.)**

Planning Staff member Aura Lindstrand gave the presentation on the annexation request. Ms. Lindstrand said the subject property is proposed for a 445 lot subdivision and there is a concurrent subdivision application submitted at this time. She indicated that tomorrow evening the Planning Board will hold a public hearing on that subdivision. Next week the Zoning Commission will hear a zone change request on this property, with both the subdivision and the zone change coming to the Council on May 22<sup>nd</sup>.

Ms. Lindstrand said the general location is east off of Mullowney Lane and directly south of Elysian Road and north of the Yellowstone River. The property consists of 89 acres that is currently vacant agricultural land. It is proposed for major subdivision development with both residential and commercial uses. The subdivider is considering donating 30 acres of Norm's Island with a future filing of the subdivision. Ms. Lindstrand said this property is contiguous to the City on the north. Ms. Lindstrand noted that the proposed development is for a new traditional neighborhood concept with pocket parks and smaller lot sizes. 3000 sf lots with traditional front porches and alley access will be proposed.

Ms. Lindstrand said departmental responses were all favorable. The area is served by City Police and Fire. Sewer and water service are available in the local streets and will be extended with the subdivision. The developer will be responsible for all fees. She noted the annexation is consistent with many of the land use goals in the Comprehensive Plan and conforms to the annexation criteria and within the acceptable limits for annexation according to the Annexation Policy.

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

**10. RESOLUTION 06-18413 setting building permit fees at the same level established in 1993 and repealing Res. #03-17998. (PH held 4/10/06; action delayed from 4/10/06). Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

Building Official Kim Palmieri said previously the Council had asked for additional information on the building reserves. Mr. Palmieri said his staff researched the number of open permits. Presently about 927 permits remain open, which represents about 56% of all permits issued in the past year. This means there are 927 projects out there for which inspections will be needed. These projects are in various stages of completion. For calculation purposes, the number of open permits was divided by half, assuming that one-half of the work would be completed this year and one-half would be uncompleted and represent an obligation for the City, i.e. about 28% of the total permits. Mr. Palmieri said any time there is 25 – 30% of the permit work that has been prepaid but has not been completed, an obligation is created. He noted this percentage has been included in reserves, but probably should not be included. If the obligation or prepayment of services is subtracted from the reserves, the level is reduced to closer to the 25% envisioned by the Council. Mr. Palmieri emphasized that expenses continue to grow and are higher than revenues, which means that reserves are constantly being reduced.

Mr. Palmieri discussed the history of permitting activity over the past four years, from 2002 to 2005. Councilmember Stevens asked why the operating reserve fund is continuing to decline. Mr. Palmieri replied the decline is due primarily to the fact that expenses continue to exceed revenues. Councilmember Stevens asked if the reserve fund is drawn from to actually pay expenses and it is not truly just a reserve fund. Mr. Palmieri confirmed that was correct. Councilmember Stevens noted that it is suggested the cash balance be maintained at 6 to 9-month level of annual operating costs and the annual cost is \$1.6 million. She said that means the reserve should be about \$800,000 to \$1.2 million. He noted the figures are based on the Council approving this fee increase. Deputy City Administrator Bruce McCandless added that even with a rate increase, expenses will continue to exceed revenues by about \$50,000.

Councilmember Brewster said if revenues are down and the number of permits is also down, why is the City not reducing the number of staff. Interim City Administrator Tina Volek said there are several reasons that the staff has not been reduced. First, she noted these are projections for the coming year, and secondly, the City has a certain set of requirements for staff. They must have state certifications and Montana is a state that does not have a large pool of that kind of staff. If the City were to reduce the staff and

then have an increase in permitting activity, it would be hard pressed to fill those positions again. In 2004, two positions were added at the specific request of the building community that wanted to see the review and permit process speeded up. She noted that Staff has offered the development community other alternatives, including sending plans out of state for review, but their preference remains to have plan review here because of its convenience and the ease of working with a local plan reviewer. Ms. Volek said it is a double-edged sword in that the City was asked to increase staff, which it did, and it is difficult to replace those people if they were to be cut. Councilmember Boyer indicated she has received favorable comments about the permit processing time from members of the community. She said she did not think reducing staff would be a good thing.

Councilmember Jones said the Council is looking at nearly a 10% increase in expenses between 2006 and 2007. He asked why the increase is so large. Mr. McCandless said generally the increase in expenses is attributable to increases in wages and benefits for staff and operating cost increases such as rent, energy, fuel, etc. He said the only increase in any operating budget that is allowed in the FY07 budget (with the exception of supplemental budget requests that the Council will see) is for any cost that cannot be controlled.

Councilmember Jones noted that the staffing was increased because the number of permits was increasing, but the numbers are declining at this time and substantially so from 2003. He said he was concerned about the declining trend and thought the City needed to watch this carefully. Ms. Volek reminded the Council that 2003 was the last year the City did inspections in the County. This change was one reason for the drop-off in the number of permits. The two new positions were added in 2004. Ms. Volek noted there is a decline in commercial permits, but not much of a change in residential permits. Councilmember Jones said commercial plans are more intensive than residential plans as far as plan reviews go. He said the main priority or the largest amount of time is actually dropping in commercial, which is more time intensive to review. Councilmember Jones said he is concerned about keeping two positions when the area that demands the greatest amount of plan review time is declining. Councilmember Boyer reminded the Council about the potential for increased plan review needs with the potential development on Shiloh Road that is proposed over the next two years.

Ms. Volek added that the development community has been advised of the proposed fee increase. Mr. Palmieri presented the proposal to the Homebuilders Association and the Development Process Advisory Review Board. Everyone at these entities understood the need for the fee increase.

Councilmember Boyer moved to approve the resolution, seconded by Councilmember Gaghen. Councilmember Stevens amended the motion to approve the resolution and to require an annual review of the fees, seconded by Councilmember Ronquillo. On a voice vote, the amendment was approved. Councilmembers Veis and Ruegamer voted "no". On a voice vote on the original motion as amended, the motion was approved. Councilmembers Brewster, Jones and Ruegamer voted "no".

## **11. CITY ADMINISTRATOR SELECTION.**

**(A) Approval of recruitment brochure. Staff recommends approval.**  
**(Action: approval or disapproval of Staff recommendation.)**

Deputy City Administrator Bruce McCandless said the council packet contained a resolution for the use of Council Contingency for the payment of the recruitment expenses incurred by Mr. Mercer. He noted also that the Council received via email on Friday afternoon the copy of the 2002 contract the City executed with the Mercer Group, a proposed amendment to that contract that is dated 2006 that would take care of the recruitment assistance and would not exceed the \$7500 for expenses, a draft of the recruitment brochure and a draft job description. He noted also that copies of the contract, brochure and job description were also placed on the Council's desks this evening.

Mr. McCandless asked the Council if they had any guidance for Staff on the recruitment brochure that he could pass along to Mr. Mercer, concerning things like factual errors, additional information the Council would like to see included, additional or different issues facing the City that need to be included, and any other comments on the position and candidate. Mr. McCandless said the agreement that is proposed for approval shows that Ms. Volek would be the signer. He noted that the Mayor would actually be signing the agreement to prevent any conflict with the ICMA code of ethics.

Councilmember Boyer had a question on the job description. She asked if the question should be directed to AEM. Mr. McCandless said AEM drafted the job description, so she could either direct her question to them or to Mr. McCandless to forward to AEM.

Councilmember Veis said he spoke with Mr. Mercer this afternoon. He said his impression was that Mr. Mercer had not thoroughly reviewed it, but compiled it and forwarded it to the Council quickly so the Council could comment on it and get it back to him for finalization. Councilmember Veis added that Mr. Mercer also needs some pictures from the City, as well as a logo, etc. before he can complete the brochure. Councilmember Veis noted that many comments were sent directly to Mr. Mercer and there was little ability for the Council to synthesize those comments to make them more coherent. He added that Mr. Mercer indicated that if the Council sent the suggested changes to him by tomorrow or Wednesday, he could have another draft for the Council to review again at next week's work session on Monday.

Mayor Tussing said he was not impressed with the brochure. He noted that tenses varied throughout the brochure – from passive to active, present sometime, pronouns sometimes, etc. He added this needed to be more consistent to look more professional. Mayor Tussing asked Mr. McCandless if it was more critical to approve the contract and the Council could "tinker more" with the brochure and job description or is it imperative that a brochure be ready to go out tomorrow. Mr. McCandless replied there is a little time to finalize the brochure, while Staff pulls together the photographs Mr. Mercer has requested. He said the agreement and the brochure are the most critical items on which the Council needs to take some action. There is time to finalize the job description, since AEM's final report on the Classification and Compensation Plan is not expected until July.

Councilmember Boyer asked if the job description would be sent out with the recruitment brochure. Mr. McCandless said the job description would typically not be sent out with the brochure unless the Council directed it to be included. Councilmember Boyer said she is concerned that prospective applicants will ask for it and it needed to be ready.

Councilmember Ulledalen said after reviewing both the brochure and job description, they both need a little polishing. He suggested that in the job description and brochure under "Education" the City drop the requirement that a candidate have a master's degree. He said there is probably a tight pool of potential applicants anyway and the master's requirement may set the bar a little too high and exclude some very qualified people who may not apply because of that requirement.

Councilmember Veis asked if the master's requirement should be dropped entirely or stated as "preferred". Councilmember Ulledalen said a bachelor's degree is sufficient and added that the Council should be open to applicants from other disciplines. He said typically the Council would receive applications from people with degrees in public administration, but the Council is also looking for someone that has business credentials as well. Councilmember Veis asked if the wording should be changed to a bachelor's degree in a related field. Councilmember Ulledalen concurred. Mayor Tussing said the material could still say that a master's degree and/or equivalent is/are preferred.

Councilmember Jones asked that the requirement for continued professional development via workshops, seminars and training programs in the local government management field be changed to "preferred". Councilmember Boyer said this is a learning workforce and the "bar should be going up, not down." She said she was comfortable with removing the requirement for a master's degree but would not support removing the requirement for continued professional development and training.

Councilmember Ulledalen said it is important to recruit someone that actually knows something about running a city. He said if the Council hired someone from some other field may not have an understanding of operating a government entity.

Councilmember Veis suggested taking the word "management" out of that qualification, noting he would like to see someone that is staying abreast of what is going on in local government. Councilmember Jones concurred with that suggestion. Councilmember Stevens asked if "required" should be changed to "preferred" in that qualification. Several Councilmembers indicated it should be changed.

Councilmember Brewster said the more inclusive the search is, the more potential there will be for quality candidates. Councilmember Veis said he would rather be more inclusive than less inclusive. Councilmember Boyer noted that the Council also added a minimum of twelve years of experience. Councilmember Gaghen said she was not sure where the twelve years came from. Mr. McCandless said that was a recommendation from AEM and came from the job description.

Councilmember Boyer reminded the Council that the brochure represents comments from Staff, the Council and the committee. Councilmember Brewster said he thought the recommendations should be used as a "filter" as applicants are considered. "I think what we are saying here is that we are going to advertise with a 'broad brush' and see who pops up, then filter those applications based on the input received from the public, staff and the council," he said. Councilmember Boyer said she believed the broad approach will prolong the process because there will be people who apply that are not equipped to do the job.

Councilmember Stevens agreed with Councilmember Brewster and said she would prefer to "cast the net a little wider. If it makes our job a little tougher, that's fine.

I'd rather take the tougher road to get the best candidate than take the easy path and maybe miss somebody," she stated.

Councilmember Veis asked for any suggestions under the other categories such as "skills, knowledge and abilities" and "personal characteristics". He noted he eliminated some bullets because of duplication. Mayor Tussing said it was obvious that the Council was not going to approve a final brochure product this evening. Councilmember Veis also noted that the compensation amount was left blank in the brochure. The committee recommended \$125,000. He asked if that was the amount the Council wanted to proceed with. Councilmember Jones said wages are negotiable; the Council could put any amount in there.

Councilmember Jones moved to change the wording on the position description under candidate education, to delete "management" on the second bullet and change that to "preferred", seconded by Councilmember Stevens. After additional discussion, Mayor Tussing commented the Council "will be here awhile if we're going to work on the brochure like this." Councilmember Brewster asked Mr. McCandless if he could condense his notes of the Council's discussion and bring the brochure back on Monday or email it to the Council for additional review.

Councilmember Jones withdrew his motion and Councilmember Stevens concurred. Councilmember Ruegamer moved to direct Mr. McCandless to summarize the Council's comments from this evening and bring them back to the Council next Monday, seconded by Councilmember Boyer. Councilmember Gaghen noted the last time many of the applicants were at the stage of nearly semi-retirement. She expressed concern that the minimum of twelve years of increasing responsibility with challenges equal to or greater than those in Billings seems to be too challenging. She asked the Council to think more about this requirement. Councilmember Gaghen said her concern was that if this is stated as a minimum of twelve years, people with less experience may not even apply. Councilmember Stevens suggested eliminating the word "required" on that bullet and substitute "preferred". Councilmember Jones suggested also eliminating the word "minimum" in that bullet, as well as "required". Councilmember Ulledalen added that someone with twelve years of work experience is not close to retirement. Mayor Tussing asked what the requirements were for the Police Chief and the Parks Director. Ms. Volek said it was ten years of progressively responsible experience for the Police Chief.

Councilmember Boyer asked how many applications were received for the Police Chief. Ms. Volek said 49 applications were received. Two withdrew and from the 47 remaining, some did not meet the necessary requirements for education, experience and like-size community. There are about 50 applications for the Parks Director.

Councilmember Ruegamer said the Council will never get through this process and could "stay here for weeks. I think Mr. McCandless has a feel for what we want to take out and put it and I would like to vote on it. If we take out the "required" and "minimum" we've opened the field up the way we want to and we can move ahead at some point soon," he stated.

Councilmember Boyer amended the motion to extend the time for Council to forward additional comments to Mr. McCandless by a couple of days, seconded by Councilmember Gaghen. On a voice vote, the amendment was approved.

Councilmembers Veis and Brewster voted "no". On a vote on the original motion as amended, the motion was approved. Councilmember Veis voted "no".

**(B) Approval of contract with The Mercer Group to assist with City Administrator recruitment. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

Councilmember Brewster moved to approve the contract, seconded by Councilmember Ruegamer. On a voice vote, the motion was approved. Councilmember Jones voted "no".

**(C) Resolution 06-18414 authorizing up to \$7500 from Council Contingency for recruitment expenses incurred via the contract with The Mercer Group. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

Councilmember Brewster moved to approve the resolution, seconded by Councilmember Stevens. On a voice vote, the motion was approved. Councilmember Jones voted "no".

**12. PUBLIC COMMENT on Non-Agenda Items – Speaker sign-in required. (Restricted to ONLY items not on the printed agenda; comments limited to 3 minutes per speaker. Please sign up on the clipboard located at the back of the Council Chambers.)**

There was no public comment.

**COUNCIL INITIATIVES**

- COUNCILMEMBER VEIS moved to add an item to the next agenda – a resolution of support for the Central Terry Task Force to move their Superfund site on up on the state DEQ's Superfund list, seconded by Councilmember Ruegamer. On a voice vote, the motion was approved.

**ADJOURN** – With all business complete, the Mayor adjourned the meeting at 9:00 P.M.

THE CITY OF BILLINGS:

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

ATTEST:

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